SOUTH AFRICAN REVENUE SERVICE

DRAFT GUIDE ON THE TAXATION OF FARMING OPERATIONS

Another helpful guide brought to you by the
South African Revenue Service

Draft Guide on the Taxation of Farming Operations

Preface

This guide is a general guide regarding the taxation of farming operations in South Africa.

It does not delve into the precise technical and legal detail that is often associated with tax, and should, therefore, not be used as a legal reference.

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

This guide is based on the legislation as at date of issue.

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

For more information, assistance and guidance you may –

- visit the SARS website; at **www.sars.gov.za**;
- contact your nearest SARS branch office; preferably after making an appointment via the **SARS website**;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- contact the SARS National Contact Centre –
  - ➢ if calling locally, on 0800 00 7277; or
  - ➢ if calling from abroad, on +27 11 602 2093 (only between 8h00 and 16h30 South African time); or
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Glossary

In this guide, unless the context indicates otherwise -–

- **“capital development expenditure”** means expenditure incurred by a farmer which is of a capital nature and for which a deduction may be claimed under paragraph 12;
- **“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 farming operations;
- **“farming operations”** means the carrying on of pastoral, agricultural or other farming operations as contemplated in section 26;
- **“paragraph”** means a paragraph of the First Schedule;
- **“Schedule”** means a Schedule to the Act;
- **“section”** means a section of the Act;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962;
- the terms **“person”**, **“taxpayer”** and **“farmer”** are used interchangeably; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

Farming contributes largely to job creation and is a major contributor to the gross domestic product.[1] Just as there are many different types of farming operations, for example pastoral farming, crop farming, plantation farming, aquaculture and game farming, there are also a variety of different methods of conducting farming operations, such as free-range farming, organic farming and conventional farming.

Various factors such as the climate, demand for products as well as the high costs associated with farming have an impact on successful farming. These factors can potentially negatively impact a farmer’s income and expenditure on a regular basis.

To assist farmers, a beneficial set of tax rules applies to farming operations and the income and expenses emanating from such operations.[2] Section 26(1) provides that the taxable income of any person carrying on 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 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 a taxable income from farming operations. The First Schedule may also apply even after farming operations have been discontinued.[3]

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1 **http://southafrica.co.za/farming-in-south-africa.html** [Accessed 22 September 2022].

2 *Western Platinum Ltd v Commissioner for South African Revenue Service* [2004] 4 All SA 611 (SCA); 67 SATC 1.

3 Section 26(2).

The main aim of this guide is to highlight the tax consequences for persons conducting farming operations in South Africa.

2. Concepts and terms relevant to the farming industry

In order to benefit from the special dispensation under the First Schedule, a person bears the onus to prove that farming operations are being carried on (see **3.1.2** for detail on "carrying on farming operations").[4]

The main categories of farming in South Africa are large-scale commercial farming and, to a lesser extent, subsistence farming.[5]

- Commercial farming involves the production of crops and rearing of animals for sale, usually with the use of modern technology.[6] The aim of this type of farming is to make a financial gain.
- Subsistence farming is when only enough crops are grown or animals reared to feed the farmer and the farmer's family. Usually, there is not much harvest to sell or trade, and what surplus there is if sales are made tends to be stored to last the family until the next harvest.[7]

  Subsistence farming is generally practised to provide food for the farmer and not with a profit motive in mind. A person, not carrying on farming operations, falls outside the ambit of section 26 and does not benefit from the First Schedule.[8] This will apply even if a subsistence farmer decides to sell surplus produce which are not stored for future use.[9] If sales are made, it is usually minimal in value.

Apart from the different categories of farming, there are various types of farming activities also conducted under the broader groups of animal (or livestock) farming and crop or produce farming. The type of farming practised often depends on, amongst others, the climate, soil fertility and demand.

The terms "livestock" and "produce" are not defined in the Act. Its grammatical meaning or guidance from case law should thus be considered when determining the meaning of these terms.

The term "livestock" is defined in the *Merriam Webster dictionary* as follows:[10]

> ":[A]nimals kept or raised for use or pleasure especially: farm animals kept for use and profit".

Nicholas JA stated in *R Koster and Son (Pty) Ltd & another v CIR* that –[11]

> "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."

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4 Section 26(1).

5 **www.researchgate.net/publication/227365360_Defining_Small-Scale_Farmers_in_the_South_African_Context** [Accessed 22 September 2022].

6 **https://dictionary.cambridge.org/dictionary/english/commercial-farming** [Accessed 22 September 2022].

7 **www.africadevelopmentpromise.org/what-is-subsistence-farming/** [Accessed 22 September 2022].

8 *C: SARS v Smith* 2002 (6) SA 621 (SCA), 65 SATC 6 at 9 and 10.

9 ITC 1324 (1980) 42 SATC 288 (Z).

10 **www.merriam-webster.com/dictionary/livestock** [Accessed 22 September 2022].

11 1985 (2) SA 831 (A), 47 SATC 23 at 32.

Consequently, livestock will include animals whether held for breeding purposes which is generally referred to as fixed capital assets or animals held for resale which is referred to as floating capital assets.[12] This does not mean that the livestock will be considered as being capital in nature. For purposes of the First Schedule, all livestock and produce used by a farmer is revenue in nature. This will apply even if, for example, livestock was acquired for breeding purposes or to be used by a dairy farmer for non-resale purposes. The costs incurred in acquiring the livestock will therefore be deductible under section 11(*a*) subject to the ring-fencing rules contained in paragraph 8 (see 3.5.3). Section 11(*a*) provides for the deduction of expenses and losses that were actually incurred during a year of assessment in the production of the taxpayer's income. It is also a requirement that these expenses not be of a capital nature in order to be deductible.

The term "produce" is defined in the *Collins Dictionary* as follows:[13]

> "Produce is food or other things that are grown in large quantities to be sold."

For practical purposes, SARS regards produce to include harvested crops but excludes growing or standing crops[14] until such time as these crops are reaped and packed for sale. Likewise, unshorn sheep's wool is not accounted for as produce until it is shorn and ready for sale. In other words, the items will only be regarded as produce and will be taken into consideration for income tax purposes when a value can be placed on it. Prior to this point, a price will not be able to be placed, since items such as crops are volatile in nature and can, for instance be destroyed before being harvested.

When it comes to standing crops, for example, it is important to determine whether the crop is ready for sale or not. If it is found that the standing crop is ready for sale, the value of such crop must be included in income. The onus to determine when something is ready for sale and can be valued rests on the farmer.[15] Decisive factors include the intention of the person planting the crop and whether the crop was destined to be removed without forming part of the soil such as, for example, tulip bulbs.[16]

In all instances, the merits of each case must be considered and evaluated when making a determination on whether the value of livestock and produce is to be included (closing stock) in or deducted from (opening stock) the farmer's income for income tax purposes.

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12 See **3.6** for more information on assets.

13 **www.collinsdictionary.com/dictionary/english/produce** [Accessed 22 September 2022].

14 A "standing crop" is defined in the *Lexico Dictionary* as "a growing crop". **www.lexico.com/definition/standing_crop** [Accessed 22 September 2022].

15 See Interpretation Note 79 "Produce held by Nursery Operators" for more detail.

16 *Gore NO v Parvatas (Pty) Ltd* 1992 (3) SA 363 (C).

3. Tax rules applicable to farmers

3.1 Requirements under section 26(1)

Section 26(1) states that –

> "[t]he 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."

The term "person" is defined in section 1(1) and includes –

- an insolvent estate;
- a deceased estate;
- any trust; and
- any portfolio of a collective investment scheme.

Foreign partnerships are, however, excluded.

Any of the entities included in the definition of "person" may therefore apply the First Schedule with regard to the carrying on of farming operations. A person can also include a natural person (whether farming as a sole proprietor or in partnership), a company and a close corporation.

The terms "taxable income" and "income" are also defined in section 1(1).

"Taxable income" means the aggregate of—

> "(*a*) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and
>
> (*b*) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;"

The term "income" means "the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II". For purposes of the First Schedule, "farming income" refers to income derived from farming operations only.

While section 26 stipulates the persons and circumstances under which this section will find application, the First Schedule sets out how to compute the taxable farming income. Generally, the sections contained in Chapters 1, II and III of the Act will apply to farmers unless a special rule in the First Schedule provides specific relief or rules for taxation. In such case, the First Schedule will apply. In the event that a farmer receives income from farming activities as well as from other activities, the former income will be subject to section 26 and the First Schedule while the normal income tax rules will apply to the latter income. The taxable income from farming is combined with the taxable income from other sources to arrive at the taxpayer's taxable income for the year of assessment.

With regard to making a declaration on an income tax return, special provision is made for farming income when a particular tick box is selected. A farmer will therefore be able to declare farming income as well as non-farming income separately on a return.

The First Schedule applies regardless of whether a taxpayer derives an assessed loss or a taxable income from farming operations.

3.1.1 Pastoral, agricultural or other farming operations

The term "pastoral, agricultural or other farming operations" is not defined in the Act and guidance must be sought from its grammatical meaning, legislation and from case law.[17]

The term "pastoral" is defined in *Lexico.com* and refers to the use of land for keeping or grazing of sheep or cattle.[18] Goat farmers, pig farmers and game farmers will also be considered as conducting pastoral farming operations.

The term "agriculture" is defined in the *Merriam-Webster Dictionary* and means –[19]

> "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."

In addition to the keeping of livestock for the sale of its meat, dairy farming and raising sheep for wool also fall under the category of farming.

Section 26 refers to pastoral and agricultural farming operations as well as "other farming activities". The latter term includes farming activities such as horse breeding, fish farming and bee keeping.

3.1.2 Carrying on farming operations

The expression "farming operations" is not defined in the Act and should be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.[20]

The question of whether a person is carrying on farming operations is one of fact and must be decided considering all the facts of a particular case.

When evaluating whether a person is carrying on farming operations and whether a genuine intention exists, various factors must be taken into consideration.

These factors were laid down by Erasmus J in ITC 1698:[21]

> "[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."

While a wide expanse of activities may fall within the bracket of farming operations, not every activity will constitute "farming operations".

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17 See Interpretation Note 69 "Game Farming" for a detailed consideration.

18 **www.lexico.com/definition/pastoral** [Accessed 22 September 2022].

19 **www.merriam-webster.com/dictionary/agriculture** [Accessed 22 September 2022].

20 E A Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworth's Durban at 224.

21 (2000) 63 SATC 161 (SEC) at 170.

This principle was confirmed by Heher AJA in the Supreme Court of Appeal in *C: SARS v Smith* when he stated the following:[22]

> "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 ITC1324[23] 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.

Thus, 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. This was held to be the case in the *Smith* case above.

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 ITC1698:[24]

> "[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."

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 ITC1548[25] in which the court found that the shearing and harvesting activities undertaken by a farmer on behalf of others on their land was not farming and neither were the transport services the farmer provided the farmer was performing a service for other farmers and did not have a right to those farmers' land or the yield from it.

The mere fact that a person is the owner of the land on which farming operations are conducted by another person does not necessarily result in the former being considered to be conducting farming operations. The Supreme Court of Appeal considered this issue in *C: SARS v Kluh Investments (Pty) Ltd*.[26]

[22] 2002 (6) SA 621 (SCA), 65 SATC 6 at 9 and 10.
[23] 42 SATC 288.
[24] 63 SATC 161 at 170.
[25] 55 SATC 26.
[26] [2016] 2 All SA 317 (SCA).

Steinhoff Southern Cape (Pty) Ltd (Steinhoff) initially did not want to own immovable property in South Africa and engaged Kluh Investments (the appellant) as a special purpose company to assume its place as purchaser of certain land with a timber plantation on it in the Southern Cape. Steinhoff, however, still wanted access to the plantation. Steinhoff purchased all the machinery and equipment (including a sawmill) while the appellant acquired the land, the timber plantation and certain other assets. Steinhoff and the appellant agreed orally that Steinhoff would be entitled to conduct the plantation business on the appellant's land for Steinhoff's own profit and loss. Steinhoff was granted access to the land and was entitled to harvest the timber for its own account. Steinhoff used its own equipment to conduct the plantation operations, employed employees to work on the plantation and contracted with service providers in relation to the plantation operations. All plantation operational income and expenditure was earned and incurred by Steinhoff and reflected in its accounts. It was not obliged to render reports to the appellant regarding the plantation operations.

The appellant owned no equipment and had no employees. It had no expertise in operating plantations. The appellant considered the acquisition of the land and plantation as a strategically advantageous long-term investment. To protect its investment, the appellant and Steinhoff agreed that upon termination of the oral agreement, which was to continue indefinitely, Steinhoff would ensure that the plantation comprised trees of the same volume and quality as at beginning of the arrangement. The oral arrangement was terminated by agreement in June 2004 when Steinhoff changed its policy, in light of escalating timber prices and the scarcity of timber resources and wanted to purchase the land from the appellant.

Steinhoff later changed its policy and bought the land and plantation from the appellant. SARS assessed the proceeds from the sale of the land and plantation as revenue while the appellant argued that it was capital in nature. SARS argued, among others, based on paragraph 14(1) that when the landowner sold the plantation it was deemed to be farming. The issue in the case was thus whether the appellant was conducting farming operations for purposes of section 26.

Ponnan JA confirmed that there is no definition of “farming operations” in the Act and whether a person’s economic activity constitutes farming operations is essentially a question of fact. Ponnan JA held that it is dangerous in income tax cases to depart from the actual facts; the true course is to take the facts as they stand and apply the provisions of the statute. Thus, from the very beginning the appellant wanted nothing to do with any farming operations. Quite apart from the fact that it had neither the appetite for the risks associated with farming nor the requisite skills, equipment and personnel to undertake farming operations, the whole reason of the appellant’s involvement was to acquire bare ownership of the land and the plantation, which Steinhoff was prevented from doing.

Ponnan JA held that the deeming provision in paragraph 14(1), on its plain wording, only applies to farmers, and logically one cannot use the deeming provision itself to determine who is and who is not a farmer. One cannot use a deeming provision that only applies if the appellant is a farmer to determine whether it is a farmer. Section 26(1) and the First Schedule to the Act do not apply unless the taxpayer is carrying on farming operations.

In the interpretation of a specific provision of the Act which is part of a Schedule acquiring its authority from a specific empowering section in the Act, one must first identify whether the taxpayer falls within the scope of the empowering provision. The provision of the Schedule does not extend the authority of the empowering provision. The Schedule acquires no greater authority than is given to it under the empowering provision. Therefore, the Schedule cannot determine whether the empowering provision applies, but the empowering provision determines whether the Schedule applies. Since section 26(1) was inapplicable, the

characterisation of the plantation disposal proceeds fell to be determined in accordance with the normal provisions of the Act. SARS's appeal was therefore dismissed.

The question whether farming operations are being conducted will depend on all the facts and circumstances of each case.

Example 1 – Agreements concluded in relation to farming operations

Facts:

Toll (Pty) Ltd was the owner of a vineyard in the Northern Cape. In 2021, Toll entered into an agreement with Wine Co under which Wine Co would assume responsibility for all farming operations as well as maintenance of the assets (equipment and buildings) on the vineyard. The agreement also provided for Toll to, if it is deemed that Wine Co is not fulfilling its obligations, appoint a supervisor to oversee the farming operations.

In exchange for the use of the land, Wine Co was obliged to make rental payments to Toll. These payments were fixed amounts calculated on the value of the land and not dependent on the profits or losses of Wine Co.

Result:

In order for section 26 to apply, the taxpayer must be conducting pastoral, agricultural or other farming operations. In this case, Wine Co is actively involved in farming operations on its own account. It pays Toll a rental amount which is fixed in advance irrespective of the profits and losses it makes.

Toll is not involved in the farming operations. The rental income was derived from the ownership of the land and not farming operations.[27]

Thus, only Wine Co could apply the First Schedule to determine its taxable income from farming as it was indeed conducting farming operations. Toll has to apply the normal provisions of the Act, that is, not section 26 or the First Schedule, when determining its taxable income.

Note, if the rental payments were not fixed in advance but determined as a percentage of the yield from the vineyard, Toll might apply the First Schedule to determine its taxable income derived from farming.

3.1.3 Income derived from farming operations

Under section 26, a person must obtain or derive taxable income from conducting farming operations. To "derive" is to obtain something from a specified source.[28]

The court considered the meaning of "derived from farming operations" in *CIR v D&N Promotions (Pty) Ltd*[29] and held that for income to be derived from farming operations "the income and the source from which the income arises, namely farming operations, which embraces numerous agricultural activities, must be directly connected. An indirect connection or a remote one will not suffice."

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27 ITC 166 (1930) 5 SATC 85.

28 **www.lexico.com/definition/derive** [Accessed 22 September 2022].

29 1995 (2) SA 296 (A), 57 SATC 178.

In ITC 1285[30] the court held that the price money from racing horses, which the breeder had initially intended to sell, was not part of the taxpayer's stock farming and horse breeding business and did therefore not fall under section 26(1).

Generally, a farmer's main source of income will be from the sale of the produce grown and harvested or from the sale,[31] breeding or slaughtering of livestock.[32] A farmer may also supplement income by conducting other farming operations which will also be included in income.

These supplementary operations that form part of farming operations include, but is not limited to –

- the sale of manure;
- the sale of firewood;
- the letting of grazing rights if the rental amount is derived from farming proceeds;
- the sale of plantation and forest produce;
- prize money received, for example, best wool or biggest pumpkin; or
- compensation received from the Government for the compulsory destruction of livestock due to disease.

(a) Barter transactions

Income from barter transactions is also included in the taxable income from farming operations unless it is of a capital nature in which case CGT may apply. A barter transaction may, for example, occur when a farmer trades livestock or produce for another item other than cash. The other item does not necessarily have to be related to farming. As long as the item has a monetary value or can be turned into money, such value will be included in taxable income.[33]

As regards the determination of the market value of the assets or services given in exchange in a barter transaction, Binns-Ward J noted in *South Atlantic Jazz Festival (Pty) Ltd v C: SARS*[34] in relation to sponsorships in kind provided to the Jazz Festival that –

> "…accepting, as one may [in these specific circumstances], that the transactions were at arm's length, the value of the goods and services provided by the appellant [the South Atlantic Jazz Festival] to the sponsors in each case falls to be taken as the same as that of the counter performance by the relevant sponsor…In an ordinary arm's length barter transaction the value that the parties to it have attributed to the goods and services that are exchanged seems to me, in the absence of any contrary indication, to be a reliable indicator of their market value."

Therefore, it can be accepted that in a barter transaction, the market value of the assets or services will, "absence any contrary indication", be the market value of the assets or services as agreed between the parties and would be of equal value. In most instances the market value of the assets or services to be exchanged between the parties is reflected in the relevant agreement. The facts and circumstances of the particular transaction, including the contractual terms, must be considered as they could impact on valuation and timing.

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30 41 SATC 73.
31 See Interpretation Note 79 "Produce Held by Nursery Operators" for more detail.
32 See Interpretation Note 69 "Game Farming" for more detail.
33 *CIR v Delfos* 1933 AD 242, 6 SATC 92 at 99. See also *Lategan v CIR* 1926 CPD 203, 2 SATC 16.
34 2015 (6) SA 78 (WCC), 77 SATC 254 at 260 and 261.

Example 2 – Income from a barter transaction

Facts:

Farmer A is a lucrative wine farmer in the Western Cape. To expand farming operations, A entered into an agreement with S, the owner of the neighbouring farm under which S would sell 50 acres of the farm to A. Instead of payment in cash, the agreement entailed the transfer of 30 000 already bottled wine which S plans to resell.

The market value of 300 bottles of wine (a 225 litre barrel) amounted to R10 500 with bottling at R46 per bottle. The price for 300 bottled wine thus amounted to R24 300 [R10 500 + R13 800 (R300 × R46)]. The cost of the 30 000 bottles of wine was R2 430 000 (R24 300 × 100). The market value of the 50 acres of land was R3 million at the time of the barter transaction.

Result:

Income from barter transactions must be included in a farmer's taxable income unless it is capital in nature in which case it may be subject to CGT. The amount to be included in Farmer A's income will be the market value of the land, namely R3 million.

(b) Income from the disposition of livestock or produce other than in the ordinary course of farming operations

Paragraph 11 deals with the disposition of livestock or produce other than in a farmer's ordinary course of farming operations. The manner in which the livestock or produce is disposed of or applied, determines the amount to be included in the farmer's income:

- Should a farmer apply any livestock or produce for private or domestic use or consumption during any year of assessment, an amount equal to the cost price of such livestock or produce must be included in income in that year of assessment. If the cost price cannot be readily determined, the market value[35] of such livestock or produce must be included [paragraphs 11(*a*) and 11(A)].
- Under paragraphs 11(*b*) and 11(B), if a farmer's livestock or produce is removed from South Africa, an amount equal to the market value of such livestock or produce must be included in income, unless the stock was removed in pursuance of a sale.
- In the event that a farmer donates livestock or produce, the market value of the donated item must be included in income [paragraphs 11(*c*)(i) and 11(B)].

  The term "donation" is not defined in the Act. A *bona fide* donation is a gratuitous donation or gift disposed of by the donor out of liberality or generosity, whereby the donee is enriched and the donor impoverished.[36] It is a voluntary gift which is freely given to the donee and there may be no *quid pro quo*, no reciprocal obligations and no personal benefit for the donor. Should the donee give any consideration at all, it is not a donation.

[35] The term "market value" is not defined in the First Schedule. In the context of this Schedule, the meaning of this term would bear its ordinary meaning, that is, the price which could have been obtained upon a sale of the produce between a willing buyer and a willing seller dealing at arm's length in an open market. See Interpretation Note 79 "Produce Held by Nursery Operators".

[36] **www.sars.gov.za/FAQs/Pages/255.aspx** [Accessed 22 September 2022].

A donation of livestock or produce may result in donations tax being applicable and therefore sections 54 to 64 should be considered. Essentially, donations tax is payable by the donor on the value of any property disposed of under any donation by any resident[37] unless an exemption applies.[38] If the donor fails to pay the donations tax by the end of the month following the month during which a donation takes effect, or a longer period as allowed by the Commissioner, the donor and the donee become jointly and severally liable for the tax.[39]

- Paragraphs 11(*c*)(ii) and 11(B) provides that the market value of livestock or produce disposed of by the farmer, other than in the ordinary course of farming operations and for a consideration which is less than the market value must be included in the farmer's income. Under proviso (*b*) to paragraph 11, the amount (market value) included in income should be reduced by the amount of the consideration received by or accrued to the farmer. Property disposed of for an inadequate consideration is deemed to be a donation under section 58(1). In determining the value of the livestock or produce for donations tax purposes, such value should be reduced by the amount of consideration.
- If the farmer is a company and has made an *in specie* distribution of livestock or produce to a holder of a share of such company on or after 21 June 1993, the market value of the livestock or produce distributed must be included in the income of the farmer [paragraphs 11(*c*)(iii) and 11(B)].
- In the event that livestock or produce has been disposed of for any purpose other than in the ordinary course of business and under any other circumstance other than those listed in paragraph 11, the market value of the livestock or produce must be included in income [paragraphs 11(*c*)(iv) and 11(B)].

  An example of a scenario falling under paragraph 11(*c*)(iv) is if the farmer opts to provide the farm workers with food allowances in the form of livestock or produce. This may occur, for example, when the farm is in an isolated location and the only feasible option for food is from the farm itself. The livestock or produce in such cases are applied by the farmer in the ordinary course of farming operations. The value of livestock or produce that is included in income under paragraph 11, that is, the market value, should be deemed as expenditure incurred in respect of the acquisition of such livestock or produce (paragraph (*a*) of the proviso to paragraph 11). The market value will be included in income and the same value allowed as a deduction which effectively results in an inclusion of nil.

(c) Income from activities falling outside the ambit of farming operations

Not all taxable income from activities carried on by a farmer are, however, determined under the First Schedule. Income derived from farming activities falling outside the ambit of section 26 and the First Schedule include –

- income derived from shearing, harvesting and transporting of other farmers' products;
- income from harvesting (thrashing, baling, re-opening and stamping) of other farmers' products;[40]
- packing of fruit for other farmers;

[37] Section 54.
[38] Section 56.
[39] Section 59, read with section 60.
[40] ITC 1548 (1991) 55 SATC 26 (C).

- manufacturing of jam and wines which are sourced from other farmers;
- sale of water, gravel or some minerals;[41]
- stakes won by a farmer as a result of racing horses which were bred by such farmer; and
- fixed rental income received in respect of farming property.
- However, in the event that a rental takes the form of a percentage of the crops or livestock, the lessor will be deemed to be carrying on farming operations in partnership with the lessee and will consequently be assessed as a farmer.[42]
- accommodation and catering, admission fees for people spending holidays on the farm.

The normal tax rules will be applicable to the income from the above activities. In other words, the other sections of the Act (and not the First Schedule) will apply to the income from these activities.

(d) Assessed losses

Owing to various factors the possibility of assessed losses being created are very high.

The term "assessed loss" is defined in section 20(2) and means "any amount by which the deductions admissible under section 11 exceeded the income in respect of which they are so admissible."

Under section 20(1), a taxpayer may set off an assessed loss which has been carried forward from the preceding year of assessment against income derived in the succeeding year. Regard should be had to the requirements of section 20(1) applicable to a company. For details, see Interpretation Note 33 "Assessed Losses: Companies: The "Trade" and "Income from Trade" Requirements".

An assessed loss from farming operations may be set off against taxable income derived by such farmer in the carrying on of *any* trade, that is, a non-farming trade and a farming trade. However, the ring-fencing of assessed losses rules under section 20A should be considered. Section 20A applies to natural persons to whom the maximum marginal rate of tax chargeable applies and limits the set-off of an assessed loss derived from, amongst others, farming not carried on or conducted on a full-time basis. For more information, see the *Guide on the Ring-Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals*.

See **3.6.1** for detail on whether an assessed loss from farming operations from a previous year should be included in the calculation of the limitation of capital development expenditure.

41 ITC 740 (1951) 18 SATC 219 (C).

42 ITC 166 (1930) 5 SATC 85 (U) and confirmed in ITC 1630 (1996) 60 SATC 59.

3.2. Farming operations and processes of manufacture

Commercial farmers often process the yield from their own farming operations. A distinction must, however, be drawn between a farming operation and a process of manufacture or a process similar to a process of manufacture.

The Act does not define "process of manufacture or similar process". Guidance can, however, be found in case law.

In *SIR v Hersamer (Pty) Ltd*[43] it was stated that the test for determining whether a process of manufacture exists is that –

- the process must be a complete process, and
- there must be an essential change from input to the end product.

For a process to be one of "manufacture", it has to produce something essentially different from the original article before under-going the manufacturing process.

Depending on the facts, a taxpayer may carry on farming operations and a manufacturing process simultaneously. An example is where the farmer uses produce from carrying on farming activities and convert it to a manufactured article produced in a separately run factory. The courts have confirmed that a process of manufacture may be included in the ambit of farming operations but *limited* to the use of the taxpayer's own produce and not produce from outside sources.[44] If a farmer therefore uses produce from the farm as well as further produce purchased to manufacture something, the process will no longer be part of carrying on of farming operations.

An example is that of a salmon farmer. A person is conducting farming operations by breeding and selling fish. Ancillary to the salmon farming, this person also smokes the salmon of the neighbouring aquafarms. The act of smoking the salmon that is bought from neighbouring farms will be considered to be a process of manufacture. As such, the income derived from the smoking of the fish will not fall within taxable income as determined under the First Schedule. In this instance, the farmer will be seen as carrying on two distinct trades, farming in relation to the salmon farming and a process of manufacturing in relation to the smoking of the fish. However, should the farmer only smoke the fish bred on the farm, that is, excluding those from other farms, the entire act of breeding and smoking the salmon will be considered to be farming operations.

The above principle will also apply to, for instance, grape farmers who produce wine. In other words, if the farmer uses its own grapes to make the wine, farming operations will be conducted. However, should the farmer produce wine from grapes provided by someone else, this will be considered as being a process of manufacture.

When it is determined that distinct trades are being conducted by a farmer, income derived from manufacturing activities must not be included in the taxable income of farming operations. Instead, separate accounts should be drawn up for the two trades.

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43 1967 (3) SA 177 (AD), 29 SATC 53.

44 *Ko-operatieve Wynbouwers Vereneging van Zuid-Africa Beperkt v Industrial Council for the Building Industry and Others* [1949] 3 All SA 8 (A); *Rex v Giesken and Giesken* [1947] 4 All SA 343 (A).

Other examples of activities considered as farming operations and processes of manufacture:[45]

Farming operation	Process of manufacture or a process similar to a process of manufacture
Raising and shearing of sheep	Packing and pressing of wool
Production of eggs	Liquefaction of eggs
Growing and harvesting of wheat	Baking of bread
Aquafarming	Processing, freezing and packaging of fish

When determining whether a farming operation or a process of manufacture or a process similar to a process of manufacture is being conducted, the merits of each case must be considered.

3.3 Discontinuation of farming operations – section 26(2)

Section 26(2) states the following:

> "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."

Section 26(2) essentially provides that certain provisions of the First Schedule will remain applicable for a taxpayer who discontinues farming operations, but who retains livestock or produce or who has entered into a sheep lease or similar agreement.[46] A sheep lease is a lease agreement which entails livestock being leased to another person or entity such as a trust. The agreement usually provides that the lessee must return the same number of livestock to the farmer at the end of the lease period and any offspring produced will remain with the lessee.[47] These are not, however, definite terms, since the participants to the lease agreement will decide on the specific conditions.

Paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 11 will apply until such time that all the retained livestock or produce has been disposed. These paragraphs basically provide the values of the stock that should be taken into account as well as the timing of the valuations. See **3.4.1** for detail on trading stock held and not disposed of by a person who discontinued farming.

45 See Practice Note 42 "Income Tax: Processes of Manufacture, Processes Similar to a Process of Manufacture and Process Not Regarded as Processes of Manufacture or Processes Similar to a Process of Manufacture" for more examples.

46 Also provided for under paragraph 3(2) and (3).

47 **www.farmersweekly.co.za/farm-basics/how-to-business/need-know-trust-laws/** [Accessed 22 September 2022].

3.4 Treatment of a farmer's trading stock for purposes of the First Schedule

A farmer's trade is fundamentally to grow, breed or buy and sell livestock or produce. The farmer can therefore conduct activities relating to animal farming or crop farming:

- Animal farming includes activities such as beekeeping, fish farming, poultry farming, horse breeding, game farming and dairy farming.
- Crop farming involves the planting and harvesting of produce like cut flowers, fruit and vegetables, tobacco, sugar cane, nuts and grain.

The above is known as a farmer's trading stock. For purposes of this guide, a farmer's trading stock will also be referred to as livestock and produce. A farmer must include in the income tax return, the value of livestock or produce held and not disposed of at the beginning and the end of every year of assessment.[48] This includes the trading stock of farmers who are part of a cooperative and pool their livestock or produce with that of other farmers, for example, sugarcane pools or the pooling of grapes to be made into wine (see **3.4.1**). Section 22 dealing with amounts that a taxpayer (not carrying on farming operations) should include in opening and closing stock does not apply to farmers.[49] Under paragraph 2, the only items that a farmer should include in opening and closing stock are livestock and produce.

Unlike section 22 which deals with the values to be accounted for with regard to trading stock and which includes amounts relating to consumable stores, the First Schedule does not require an accounting of consumable stores. Therefore, a farmer's consumable stores, for example fuel and spares used for farming equipment, and non-livestock or non-produce items still on hand at the end of the year does not have to be taken into account for the purposes of the First Schedule.

Natural increases of livestock will form part of the closing stock of a farmer. On the other hand, any livestock lost as a result of death will be excluded from the figure of livestock held and not disposed of at the end of the year of assessment.

Situations may also arise in which different operations merge into other farming operations. For instance, horse breeding is considered as being a farming operation. Such breeder may also use the horses in horse racing for profitable gain. In this case, only the activity of horse-breeding will be considered as being a farming operation and thus, the First Schedule applies to only the farming operation. The normal tax rules will apply to the proceeds derived from the horse racing.

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48 Paragraph 2.

49 See section 22(1) and (2).

3.4.1 "Held and not disposed of"

The term "held and not disposed of" was considered in ITC 1873[50] a case in which grapes were pooled with those of other farmers for the purpose of being crushed and made into wine. The question before the court was whether it could be said that the farmer still held produce which was not disposed of and could be accounted for at the end of the year of assessment.

It was stated by Allie J that the phrase "held and not disposed of" meant that the produce in question must have formed part of the farmer's produce and that a legal right to such produce must exist as at the financial year end.[51] Further, that the farmer did not have to have physical possession or control of the produce.[52] As such, the value of the pooled grapes must have formed part of the farmer's closing stock.

This was confirmed in *Avenant v C: SARS*,[53] in which it was held that the fractional ownership of pooled resources was to be included in produce on hand and not disposed of.

A farmer has to include in produce held and not disposed of, the value of produce acquired for purposes of farming, whether it was acquired for purposes of selling together with the farmer's own crop or to use for feeding livestock.

3.4.2 Standard values of livestock under paragraphs 6 and 7

Any opening stock which is 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.

In ITC 55[54] the following was stated with regard to the purpose of applying standard values:

> "The object of applying standard values seemed to be to obtain a fair average value per head of stock which could be applied at any time to the whole herd or flock, and so give a comparison of its value between any two dates, which ignored all market fluctuations in value. This method made it easy to obtain a fair estimate of the increase of wealth which had accrued to the farmer from the natural increase of his livestock and the growth of his previous year's increase to maturity. If the value of each head of stock on hand at each end of the tax year were kept the same, then the two figures balanced each other, and the annual profit or loss on unsold stock was due to the increase or decrease of the numbers. It was true that every farmer must know the number of his sheep or cattle, if only to guard himself against loss, but it was not every farmer who could give a value to his sheep or cattle at any given date. By the standard values he was saved from the trouble of trying to do so."

Standard values in respect of livestock are fixed by regulation.[55] The regulations do not, however, fix a standard value for game livestock.[56] For the purpose of standard values the Commissioner accepts that game livestock may be allocated a standard value of nil. If there is no value for a particular type of livestock, a value must be agreed upon with SARS.

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50 (2014) 77 SATC 93 (WC).

51 At 103.

52 At 103.

53 [2016] ZASCA 90, 78 SATC 343 (A).

54 (1926) 2 SATC 176 (U) at 177.

55 Paragraph 6(1)(*b*)(i), (*c*)(i) or (*d*)(i) read with paragraph 6(3). See the **Annexure** for the standard values as provided for in Part D of Government Notice R105 in *Government Gazette* 1011 of 22 January1965 and amended by Government Notice R1814 in *Government Gazette* 5309 of 8 October 1976.

56 See Interpretation Note 69 "Game Farming" for more information on game livestock.

A farmer may adopt a different value other than the standard value specified in the regulation, but such value cannot be more than 20% higher or lower than the standard value fixed by the regulations.[57] Additionally, once the farmer adopts a specific standard value, it will be binding in respect of all subsequent returns filed by the farmer and cannot be altered or varied.[58]

If a farmer classifies any kind of livestock on a basis other than that specified in the regulation, the Commissioner may approve a standard value for the class the farmer classifies the livestock in. In these instances, the Commissioner must have due regard to the values in the regulation.[59]

Example 3 – Application of standard values of livestock

Facts:

Farmer X is a horse breeder who owned 200 horses of varying ages during the 2021 year of assessment as follows:

- 50 stallions and 30 mares over four years old. The standard values were R40 and R30 per head, respectively.
- 60 colts and fillies over three years old. The standard value was R10 per head.
- 60 colts and fillies over two years old. The standard value was R8 per head.

During the 2021 year of assessment, Farmer X applied the above standard values to the horses. Owing to some of the horses aging out of the respective classes, new standard values had to be applied for the 2022 year of assessment. Furthermore, Farmer X acquired 10 weaned lambs during the 2022 year of assessment resulting in a new class of livestock to be accounted for. The standard values for these lambs were R2 per head. However, after consultation with the Commissioner, the price of the lambs was adjusted to R2,10 per head.

The following therefore applied for the 2022 year of assessment:

- 65 stallions and 40 mares over four years old at R40 and R30 per head, respectively.
- 55 colts and fillies over three years old at R10 per head.
- 40 colts and fillies over two years old at R8 per head.
- 10 weaned lambs at R2,10 per head.

X's year of assessment begins on 1 March and ends on the last day of February.

57 Paragraph 6(1)(*b*)(ii), (*c*)(ii) or (*d*)(ii) read with paragraph 6(2).
58 Paragraph 7.
59 Paragraph 6(3).

Result:

		R
Closing stock as at 28 February 2021		
Stallions	50 × R40 each	2 000
Mares	30 × R30 each	900
Colts and fillies over three years old	60 × R10 each	600
Colts and fillies over two years old	60 × R8 each	480
Value of closing stock to be included in taxable income (2021 year of assessment) and constitutes opening stock for the 2022 year of assessment		**3 980**
Closing stock as at 28 February 2022		
Stallions	65 × R40 each	2 600
Mares	40 × R30 each	1 200
Colts and fillies over three years old	55 × R10 each	550
Colts and fillies over two years old	40 × R8 each	320
Weaned lambs at the new standard value	10 × R2,10 each	21
Value of closing stock to be included in taxable income (2022 year of assessment)		**4 691**

3.4.3 Values to be accounted for under paragraph 3

Any trading stock held and not disposed of at the end of a year of assessment is generally referred to as closing stock and any trading stock at hand at the start of a year of assessment is referred to as opening stock. Effectively, the closing stock in the preceding year of assessment becomes the opening stock in the current year of assessment. The trading stock of farmers are not dealt with under section 22[60] but is accounted for under the First Schedule.

Under paragraph 3(1), the value of trading stock held and not disposed of by the farmer at the end of the year of assessment must be included in income.

The value to be placed on livestock is the standard value (see **3.4.2**).[61] This includes breeding stock which is held and not disposed of by the farmer.

The value of produce held and not disposed of should be a fair and reasonable value.[62] A reasonable value is considered to be the lower of production cost or market value.[63]

60 Section 22 deals with the amounts to be taken into account in respect of the values of trading stock. If the livestock was acquired by the taxpayer, the value that must be accounted for will be at cost price. Alternatively, if the livestock was acquired for no consideration or for a consideration not measurable in money, the market value must be taken into account.

61 Paragraph 5(1).

62 Paragraph 9 and ITC 1873 (2015) 77 SATC 93.

63 See Interpretation Note 79 "Produce Held by Nursery Operators". Also see **3.1.3(b)** for more detail on the meaning of "market value".

When determining a fair and reasonable value, all the relevant factors must be taken into consideration.[64] This valuation is also subject to objection and appeal.[65]

Should a farmer completely or partially discontinue farming operations during a year of assessment, the value of trading stock must be included in the farmer's income for as long as the stock is still held and has not been disposed of [paragraph 3(2)].

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.[66]

3.5 Opening Stock

3.5.1 Farmers who carried on farming operations in the previous year of assessment [paragraph 4(1)(a)]

A deduction will be allowed for the value of trading stock held at the beginning of the current year of assessment. This deduction is determined under paragraph 4.

Under paragraph 4(1)(*a*), a farmer who was conducting farming operations on the last day of the year immediately preceding the current year of assessment, for example, if the current year of assessment begins on 1 March 2021 and the farmer was trading on 28 February 2021, should include in opening stock the sum of the following:

- Paragraph 4(1)(*a*)(i) – the standard value[67] of closing livestock and the fair and reasonable value[68] of produce at the end of the previous year of assessment.

AND

- Paragraph 4(1)(*a*)(ii)(*aa*) – the market value of livestock or produce acquired during the current year of assessment otherwise than by purchase, natural increase of livestock or in the ordinary course of farming operations. This would include, for example, acquisitions by inheritance or donation; or
- Paragraph 4(1)(*a*)(ii)(*bb*) – the market value of livestock or produce which was held for domestic or private purposes and brought into farming stock during the current year of assessment.

  If both paragraphs 4(1)(*a*)(ii)(*aa*) and (*bb*) apply, both values must be included.

In the case of inherited or donated livestock or produce acquired during a current year of assessment, this paragraph will essentially apply only when the livestock or produce is used or held for farming purposes.

64 ITC 1873 (2015) 77 SATC 93 at 105.
65 Section 3(4).
66 See Draft Interpretation Note "Disposal of Assets by Deceased Persons. Deceased Estate and Transfer of Assets between Spouses" for more information.
67 Paragraph 5(1).
68 Paragraph 9.

Example 4 – The value of opening stock under paragraph 4(1)(*a*)

Facts:

Farmer L grows a special variety of red apples and has been conducting farming operations for the past 10 years. On the last day of the 2021 year of assessment, L had the following produce on hand:

Apples	Market value per kg	Stock on hand per kg
Unpicked	R3	1000
Picked but not sorted	R5	200
Picked but not packed	R7	700
Packed and ready for market	R11	500

During the 2022 year of assessment, L received 80kg of yellow apples from a neighbour at no cost. The market value of these apples was R7 per kg. Farmer L decided to give these apples to the workers on the farm for their consumption, since these apples were different from the red apples grown by L and could, therefore, not be mixed.

Additionally, L brought 150kg of apples kept for private use into trading stock during the 2022 year of assessment. The market value of these apples was R5 per kg.

Calculate the value of opening stock of Farmer L for the 2022 year of assessment under paragraph 4(1)(*a*).

Result:

Only the apples that were packed and ready for market could be included in closing stock at the end of the 2021 year of assessment. While the market value of the apples was R11 per kg, the cost price of the apples packed and ready for sale, was R9 per kg. The value to be placed on the closing stock had to be the **lower** of market value or cost price. Hence, the value included in closing stock was R4 500 (500kg × R9). Under paragraph 4(1)(*a*)(i), this value may be deducted by Farmer L as opening stock.

For purposes of paragraph 4(1)(*a*)(ii)(*aa*), the market value of the 80kg apples acquired from the neighbour (R560) must be disregarded when calculating the opening stock value for 2022 because the apples were not used for farming purposes, but given to the farm workers.

With regard to the produce brought into trading stock from private use during the 2022 year of assessment, the amount of R750 (150kg × 5) must be included in the opening stock figure for the 2022 year of assessment as required under paragraph 4(1)(*a*)(ii)(*bb*).

Under paragraph 4(1)(*a*) and in the context of this example, if a farmer was conducting farming operations on the last day of the year immediately preceding the current year of assessment, a deduction will be allowed on the sum of:

- the standard value of produce held at the end of the previous year of assessment (R4 500); and
- the market value of the produce brought into trading stock and which were originally kept for private use (R750).

Provided that all the requirements are met, Farmer L may include an amount of R5 250 (R4500 + R750) in opening stock and accordingly claim a deduction under paragraph 4(1)(*a*) for this amount.

3.5.2 Farmers who commenced or recommenced farming operations in the current year of assessment [paragraph 4(1)(*b*)]

In the event that a farmer commences or recommences farming operations during the year of assessment, the value of opening stock under paragraph 4(1)(*b*) is the sum of the following:

- Paragraph 4(1)(*b*)(i) – the standard value[69] of the livestock and the fair and reasonable value[70] of produce held and not disposed of by the farmer at the end of the day immediately preceding the date that such farmer commenced or recommenced farming operations.

AND

- Paragraph 4(1)(*b*)(ii)(*aa*) – the market value of livestock or produce acquired during the year of assessment in which farming operations commenced or recommenced otherwise than by purchase, natural increase of livestock or in the ordinary course of farming operations; or
- Paragraph 4(1)(*b*)(ii)(*bb*) – the market value of livestock or produce held for domestic or private purposes and brought into farming stock during the year of assessment in which farming operations commenced or recommenced.

3.5.3 Deductions of purchased livestock ring-fenced under paragraph 8

The cost price of livestock purchased by a farmer during a year of assessment is deductible under section 11(*a*).

Under paragraph 8(1) and in the case of a farmer, the deduction of livestock purchases is limited as follows:

The cost price of the livestock + the value of opening stock

must not exceed

The farming income received by or accrued to the farmer + the value of closing stock

Farming income for purposes of this formula includes income received by or accrued to the farmer from all farming activities and not only from livestock farming. Farming income is calculated as gross income from all farming operations reduced by exempt farming income (see **3.1** for details on the meaning of "income").

Under paragraph 8(2) any expenditure which is not allowed as a deduction under section 11(*a*) owing to the limitation, is carried forward to the following year of assessment and is deemed to be expenditure incurred in such year.

[69] Paragraph 5(1).
[70] Paragraph 9.

According to paragraph 8(3), paragraph 8(1) and (2) do not, however, apply if it can be shown that the livestock purchased during the current year of assessment is no longer held by the farmer at the end of the year. A farmer may, for example, lose livestock because of a disease, resulting in the farmer not having to include the standard value of the lost livestock in closing stock.

Paragraph 8(1) and (2) will also not apply to any expenditure [that would have been deductible under section 11(*a*)] which when added to the value of opening stock, exceeds the market value of livestock held and not disposed of as at the end of the year of assessment.

Example 5 – Limitation of deduction under paragraph 8

Facts:

Farmer Z is a cattle farmer. At the beginning of the 2021 year of assessment, Z had livestock with standard value of R70 000 on hand.

During the year, Z purchased an additional 500 cows for R400 000. The standard value of Z's closing stock was R120 000 and R62 000 was received as farming income (before deductions). All the livestock bought during the year was still on hand at the end of the year with a market value R1 million.

Calculate the deduction that will be allowed under section 11(*a*) in respect of the 500 heads of cattle purchased and determine whether any limitations apply.

Result:

The cost price of livestock purchased by a farmer during a year of assessment is deductible under section 11(*a*). This deduction is, however, limited under paragraph 8. The limitation is calculated as follows:

	R
Farming income for the year	62 000
Add: Closing stock at standard values	120 000
Less: Opening stock at standard values	(70 000)
Expenditure deductible under section 11(*a*)	112 000

The amount not deductible in the 2021 year of assessment is R288 000 (R400 000 – R112 000).

The ring-fencing provision does not apply to so much of the amount of R288 000 as, together with the standard value of opening stock (R70 000), exceeds the market value of all the livestock on hand at the end of the year of assessment (R1 million). Since there is no such excess, the limitation on the deduction applies, and the amount of R288 000 must be carried forward and deemed to be expenditure incurred in the 2022 year of assessment.

In the event that Farmer Z lost all 500 cattle to, for example disease, the above limitation will not be applicable.

3.6 Assets used for farming purposes

There are different types of assets that are acquired by farmers to be used in the course of conducting farming operations.

The term "asset" is defined in paragraph 1 of the Eighth Schedule and includes –

> "(*a*) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum; and
>
> (*b*) a right or interest of whatever nature to or in such property;".

The above definition, while only applying to the Eighth Schedule, provides valuable insight on what generally constitutes an asset. Essentially, the term "asset" has a very wide meaning which includes all forms of property and all rights or interests in such property.[71]

Assets of a farmer can include, for example –

- land and buildings, such as farm buildings or the farmer's house;
- shares;
- farming equipment and vehicles;
- a participatory interest in a farming collective investment scheme;
- a bank account, whether local or foreign; and
- trading stock.

Specified capital development costs incurred in relation to capital assets can be claimed as a deduction under paragraph 12. For those capital costs which are not deductible under paragraph 12, a special deduction may be claimed under other sections of the Act. Depending on the nature of the particular asset and the context in which it is used, allowances may be claimed under sections 12B, 12C or 11(*e*) and in respect of buildings, sections 13*bis*,[72] 13*quin*[73] or 13*sept*[74] if the requirements of the relevant section have been met.

An in-depth consideration of the above sections is beyond the scope of this Guide. For more information, see the relevant Interpretation Notes or Guides as mentioned in the footnotes. However, for purposes of augmenting the content in this Guide, the provisions directly relevant to farming operations are briefly examined below (see **3.6.3**)

[71] See the *Comprehensive Guide to Capital Gains Tax* for in-depth commentary on what constitutes an asset.
[72] See Interpretation Note 105 "Deductions in respect of Buildings Used by Hotelkeepers".
[73] See Interpretation Note 107 "Deduction in respect of Commercial Buildings".
[74] See the *Guide to Building Allowances*.

3.6.1 Deduction of capital development expenditure under paragraph 12

Capital expenditure is non-deductible under section 11(*a*). Paragraph 12 does, however, provide for a special dispensation for farmers which allows for a deduction in respect of specified capital expenses.

(a) General mechanics of paragraph 12

Under paragraph 12(1), expenditure incurred "in respect of" specified capital items are allowed as a deduction.

The words "in respect of" have been considered in many cases. Viviers J in ITC 1340 summarised the position as follows:[75]

> "As was pointed out by Solomon JA in *CIR v Crown Mines Ltd* 1923 AD 121 at 128, the expression 'in respect of' may be used in various senses, and in each case it is necessary to examine the context in order to ascertain the sense in which it is used. … I need refer only to two of the more recent decisions … *SBI v Raubenheimer* 1969 (4) SA 314 (A) at 320 (31 SATC 209) and *SIR v Wispeco Housing (Pty) Ltd* 1973 (1) SA 783 (A) where Ogilvie Thompson CJ said the following at 792:
>
> > 'No doubt the expression "in respect of" must, in certain contexts, be restricted to a direct or causal relationship (cf eg *De Villiers v CIR* 1929 AD 227 at 229); but, as was pointed out in *CIR v Butcher Bros (Pty) Ltd* 1945 AD 301 at 320, the expression "in respect of" does not necessarily or invariably indicate such relationship. In that case, it was held to be used in the sense of "in relation to" or "in reference to". (Cf also *SBI v Raubenheimer* . . .) The expression "in connection with" *prima facie* extends the ambit of matters comprehended *in casu*,…'
>
> As appears from all the aforegoing, the context wherein the expressions 'in respect of' and 'in connection with' occur is of vital importance."

By applying the above principles and taking the purpose of the First Schedule into account, the words "in respect of" must be interpreted as requiring a causal (or direct) connection between the expenditure incurred and the capital expenditure mentioned under paragraph 12(1)(*a*) to (*i*).

Paragraph 12(1) is subject to paragraph 12(2) to (6) which means that before claiming a deduction, consideration must be given to the provisions mentioned in the latter paragraphs. Moreover, the deduction must be claimed during the year in which the expense was incurred.

Any amount deducted under paragraph 12 may not be claimed as a capital allowance under another provision of the Act, for example section 11(*e*) or (*o*).[76]

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[75] (1980) 43 SATC 210 (C) at 212.

[76] Paragraph 12(2).

(b) Capital development expenditure allowable under paragraph 12(1)

The following capital development expenditure are allowed as a deduction under paragraph 12(1), subject to paragraph 12(2) to (6):

- The eradication of noxious plants and alien invasive vegetation [paragraph 12(1)(*a*)]

  Noxious plants are those that are considered as being harmful or poisonous. Alien invasive vegetation refers to plants brought into South Africa from other countries, both intentionally and unintentionally, that cause human, environmental or economic harm.[77]

  One of the greatest risks to farmers is the loss of produce or livestock owing to the presence of noxious or alien plants. In the case of produce, these plants can crowd out crops, consume fertilizer and water or reduce crop yields.[78] With regard to livestock, these types of plants can lead to poisoning thereby causing death, loss of condition or reproductive failure such as abortions or birth defects.[79]

  The above could have a detrimental effect on the farmer's income producing structure. Therefore, steps have to be taken to eradicate noxious and alien invasive plants. Although a capital expense, it will be allowed as a deduction under this paragraph.

- The prevention of soil erosion [paragraph 12(1)(*b*)]

  The health of soil is a primary concern to farmers whose livelihoods depend on crop production. A problem that often occurs relates to soil erosion which is a naturally occurring process that refers to the wearing away of a field's topsoil by the natural physical forces of water and wind or through forces associated with farming activities such as tillage.[80] Soil erosion essentially reduces crop productivity and hence affects a farmer's ability to efficiently produce income.

  For income tax purposes, any expense incurred in preventing soil erosion will be classified as a capital development expense and will be deductible under paragraph 12(1)(*b*).

- Dipping tanks [paragraph 12(1)(*c*)]

  Dipping tanks are used as a method of dipping cattle in an attempt to kill ticks, parasites and prevent disease.

  A farmer who incurs an expense in procuring dipping tanks will be allowed a deduction on the cost of such tanks under this paragraph.

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[77] **www.capenature.co.za/care-for-nature/conservation-in-action/integrated-catchment-management/alien-vegetation-management/** [Accessed 22 September 2022].

[78] **https://bcinvasives.ca/resources/tips/invasive-plants-in-agriculture-and-horticulture** [Accessed 22 September 2022].

[79] **www.farmersweekly.co.za/farm-basics/how-to-crop/watch-out-for-those-poisonous-plants/** [Accessed 22 September 2022].

[80] **www.omafra.gov.on.ca/english/engineer/facts/12-053.htm** [Accessed 22 September 2022].

- Dams, irrigation schemes, boreholes and pumping plants [paragraph 12(1)(*d*)]

  Dams, irrigation schemes, boreholes and pumping plants are employed by farmers to ensure efficient water use that guarantees plant growth, crop irrigation and watering of animals.[81] Also included are costs incurred in relation to surveyor fees, installation of irrigation systems and the construction of dams, since these costs will be considered as being incurred in respect of dams and irrigation schemes.

  In addition to irrigation purposes, dams can also be used for fish farming, that is, aquaculture or to store water for later use, such as, in times of a drought.

  The expenses incurred in acquiring the above irrigation systems are considered as capital expense but will be deductible under paragraph 12(1)(*d*).

- Fences [paragraph 12(1)(*e*)]

  The costs associated with the erection of a new fence is deductible under paragraph 12(1)(*e*). In the event that a fence is repaired or maintained, section 11(*e*) which provides for deductions relating to wear-and-tear, will find application.[82]

- 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 [paragraph 12(1)(*f*)]

  The Act provides for various allowances relating to the erection, extension, addition or improvement to a building depending on the type of building. The deduction under paragraph 12(1)(*f*) relates specifically to the erection, extension, addition or improvement by the farmer to a building used in connection with farming operations such as stables, barns, machinery- and supply-storage buildings; buildings and facilities for crop storage amongst others.

  Buildings used to house employees are, however, excluded (see **3.13.5**).

- 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 [paragraph 12(1)(*g*)]

  A deduction is provided under this paragraph for crops and produce which is generally grown on a plantation. Tree plantations are, however, excluded and are instead covered under paragraphs 14 to 16.[83]

  In addition to allowing a deduction on the costs incurred in planting flora for farming purposes, the costs associated with preparing the area that the planting will occur is also deductible as long as such costs are directly related to the activity of planting trees, shrubs or perennial plants for the production of grapes or other produce mentioned in paragraph 12(1)(*g*). This will include, for example, the cost of excavation and soil preparation. It is important to consider all the merits of a case when determining what costs may be deductible under this paragraph.

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81 **https://smartirrigation.co.nz/smart-irrigation/what-is-irrigation/why-we-irrigate/** [Accessed 22 September 2022].

82 See **3.6.3(a)** for more information on section 11(*e*).

83 See **3.9**.

- The building of roads and bridges used in connection with farming operations [paragraph 12(1)(*h*)]

  Farms would generally consist of vast areas of undeveloped land. To get from one area of the farm to another, it would be necessary for proper access channels to be developed.

  As such, a farmer could incur huge costs in the building of roads and access bridges. These costs may be deducted under this paragraph provided that it is used specifically for farming operations such as moving livestock or for the purposes of transporting produce.

  In the event that an access road or bridge is constructed which provides access to the farm from the main road, the farmer may claim the costs incurred provided that such farmer bore the costs of the construction and the costs directly relate to enabling the farmer to conduct farming operations. In ITC 923[84] it was stated that the words "in respect of" should be strictly construed as meaning that there must be some direct relationship between the expenditure incurred and the establishment and maintenance of a plantation. It was thus held that the roads constructed were as "essential and so closely associated with the actual planting as to be inseparable from it" and that the cost incurred was a deductible expense.

- 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 [paragraph 12(1)(*i*)]

  In South Africa, the Electricity Supply Commission is commonly known as Eskom. If a farmer enters into an agreement with Eskom pertaining to the supply of electricity to the farm which entails the payment of a part of the cost, such cost will be deductible. This will also apply if the farmer concludes a private agreement which allows for the supply of electricity directly from the main transmission lines to the farm.

  For a deduction to be allowed, the farmer must use the electricity wholly or mainly for the purposes of farming. The determination whether something is wholly or mainly used for a particular purpose tends to be a question of fact.

  In *SBI v Lourens Erasmus (Eiendoms) Bpk*[85] Botha JA held that the word "mainly" prescribed a purely quantitative standard of more than 50%. Therefore, a deduction under this paragraph will be unavailable to a farmer who used more than 50% of the electricity for private use. If a farmer uses for example 70% of the electricity for farming and 30% for private use, the full cost incurred for connecting the electricity would be deductible.

[84] (1960) 24 SATC 246 (T).

[85] 1966 (4) SA 444 (A), 28 SATC 233 at 245.

(c) Limitation of deductions under paragraph 12(3)

As mentioned above, a deduction is allowed on all expenditure incurred under paragraph 12(1)(*a*) to (*i*). However, under paragraph 12(3) a limitation is placed on the total amount that may be allowed as a deduction in any year of assessment under paragraph 12(1)(*c*) to (*i*). This effectively means that no limitation is placed on those amounts allowed as a deduction under paragraph 12(1)(*a*) and (*b*). Expenditure under paragraph 12(1)(*c*) to (*i*) is allowed only to the extent that there is sufficient taxable income derived from farming operations (including taxable capital gains) after the deduction of expenditure incurred under paragraph 12(1)(*a*) and (*b*).

Any excess expenditure that is not deductible from farming income because of the limitation under paragraph 12(3), cannot be deducted from non-farming income and must instead be carried forward to subsequent years until it has been deducted from farming income in its entirety. The amount carried forward is often referred to as the "qualifying balance" and can be reduced under paragraph 12(1B)(*a*) and (3B) by recoupments of capital development expenditure on movable assets.

In the event that a farmer ceases farming operations in any year of assessment, the farmer will not be entitled to carry forward any qualifying balance of capital expenditure. This is because the taxpayer is not being regarded as a farmer and therefore not assessable under the First Schedule any longer. The farmer may elect under paragraph 20A(1) of the Eighth Schedule that the qualifying balance be added to base cost of the immovable property on which the farming operations were carried on.

A question for consideration is whether taxable income derived from farming operations during a year of assessment for purposes of calculating the limitation amount under paragraph 12(3), must be determined exclusive of any assessed loss carried forward from the previous year of assessment

In *CIR v Zamoyski*, Grosskopf J stated the following with regard to the effect of paragraph 12(3) in relation to assessed losses and deductions:[86]

> "The effect of this subparagraph [paragraph 12(3)] is that the capital expenses referred to in items (*c*) to (*j*) (hereinafter referred to as the permitted capital deductions) are to be deducted only from 'the taxable income...derived...from farming operations during the year of assessment'. If they exceed this income, they cannot be set off against income emanating from any other source, but may be carried forward to be deducted from farming income in the next or succeeding years. The reason for this limitation is obvious. This special privilege of being able to deduct certain capital expenses is granted only to farmers, and it would be anomalous if this privilege were to be used to reduce taxable income accruing to a farmer from sources other than farming."

Effectively, the above extract means that the set-off of an assessed loss must take place after the deductions provided for in paragraph 12 have been accounted for.[87]

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[86] 1985 (3) SA 145(C), 47 SATC 50 at 53.

[87] See 3.6.1 for more information on paragraph 12 and paragraph 12(3).

Example 6 – Limitation under paragraph 12(3)

Facts:

Farmer B has been conduction farming operations for the past three years. For the 2021 year of assessment, Farmer B had farming income of R50 000. Expenditure incurred during the current year in relation to eradicating noxious plants [paragraph 12(1)(*a*)] and preventing soil erosion [paragraph 12(1)(*b*)] was R10 000.

In 2020, expenses were incurred which related to improvements made to a building used for farming purposes [paragraph 12(1)(*f*)] as well as the erection of a bridge on the farm [paragraph 12(1)(*h*)]. These costs were deductible under paragraph 12(1) but had to be limited under paragraph 12(3) and R30 000 was consequently carried forward. An additional R15 000 was incurred during the 2021 year of assessment on the erection of fences [paragraph 12(1)(*e*)].

At the beginning of the 2022 year of assessment, Farmer B decided to cease farming activities because of a decline in demand and growing costs with plans to recommence operations should circumstances improve.

Result:

2021 year of assessment

		R
Farming income before any capital development expenditure		50 000
Less: Capital development expenditure under paragraph 12(1)(*a*) and (*b*)		(10 000)
Taxable farming income before expenditure under paragraph 12(1)(*c*) to (*i*)		40 000
Less: Balance of previous expenditure under		
paragraph 12(1)(*c*) to (*i*)	30 000	
Current expenditure under paragraph 12(1)(*c*) to (*i*)	15 000	(45 000)
Excess		(5 000)

The excess, that is, the qualifying balance of R5 000 must be carried forward to the next year of assessment (2022). However, because Farmer B discontinued farming operations, this excess will not be deductible in the 2022 year of assessment under paragraph 12, and the First Schedule is thus not applicable.

Farmer B may elect under paragraph 20A(1) of the Eight Schedule for the qualifying balance to be added to the base cost of the immovable property, when the immovable property is disposed of in the future.

3.6.2 Conservation and maintenance of farm land – paragraph 12(1A)

It may occur that farmers enter into agreements known as biodiversity management agreements in which such farmers as landowners undertake to protect and manage their properties according to acceptable conservation management principles in accordance with the National Environmental Management: Biodiversity Act.[88] The biodiversity agreement is generally concluded between the landowner and the conservation authorities. The landowner can then lease the land but the agreement will remain in operation between the owner, and not the lessee, of the land and the authorities.

Under paragraph 12(1A), if the agreement has a duration of at least five years,[89] is entered into under section 44[90] of the above-mentioned Act[91] and the land is used for farming purposes or is in the immediate proximity of the land used for farming,[92] a deduction may be allowed on the cost incurred in relation to the –

- eradication of noxious plants and alien invasive vegetation;[93]
- prevention of soil erosion;[94]
- acquisition or erection of dams, irrigation schemes, boreholes and pumping plants; or[95]
- erection of fences.[96]

The phrase "immediate proximity" refers to land which is adjacent to or across the road from the farming land[97] or even on the same plot or a plot within the same neighbourhood as the farming land.[98]

The costs in question must have been incurred in conserving and maintaining the land in order for it to be deemed as expenditure incurred in the carrying on of farming operations and to be deductible.

Under paragraph 12(1D), in the event that the taxpayer is in breach of the biodiversity management agreement or violates that declaration, all the expenditure previously allowed as deductions under paragraph 12(1A) will be included in the farmer's income during the year of assessment in which the breach took place. The amount included will be the equivalent of deductions allowed within the last five years preceding the date that the breach or violation took place.

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88 Act 10 of 2004.

89 Paragraph 12(1A)(*a*).

90 Section 44 of the National Environmental Management: Biodiversity Act states that "the Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it".

91 Paragraph 12(1A)(*b*).

92 Paragraph 12(1A)(*c*).

93 Paragraph 12(1)(*a*).

94 Paragraph 12(1)(*b*).

95 Paragraph 12(1)(*d*).

96 Paragraph 12(1)(*e*).

97 *Explanatory Memorandum on the Revenue Laws Amendment Bill 60 of 2008*.

98 SAICA "Deductions 1713. Environmental Conservation and Maintenance" March 2009 (Issue 115) **www.saica.co.za/integritax/2009/1713_Environmental_conservation_and_maintenance.htm** [Accessed 22 September 2022].

With regard to the acquisition or erection of dams, irrigation schemes, boreholes and pumping plants or the erection of fences, should the costs exceed the farmer's taxable income which are derived from farming operations, the excess amount of expenditure must be carried forward to the next year of assessment.[99]

3.6.3 The application of other sections of the Act

(a) Wear-and-tear allowance under section 11(e)

Section 11(*e*) allows a taxpayer to claim a deduction on the value that assets used in carrying on a trade diminishes owing to wear-and-tear or depreciation during the year of assessment. Under this section, qualifying assets for farmers include any farming machinery, plant, implements, utensils and articles.

A deduction under section 11(*e*) is not available for any machinery, plant, implements, utensils or articles for which a deduction under paragraph 12(1) (capital development expenditure) or 12(1A) (certain conservation related expenditure) is allowable.[100]

To qualify for a deduction under section 11(*e*), the asset must have been used for the purposes of trade and owned by the farmer or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in paragraph (*a*) of the definition of that term in section 1(1) of the VAT Act.[101]

An apportionment of the deduction will be required if the qualifying asset is used for private purposes or if it has not been used for purposes of trade for an entire year of assessment, for example, if the asset was sold during the relevant year.[102] Furthermore, in the event that an allowance is claimed under section 12B, a deduction cannot be claimed under section 11(*e*) on the same amount [see **3.6.3(a)**].

(b) Loss on disposal of depreciable assets as provided for under section 11(o)

Should a farmer incur a loss on an asset owing to its alienation, loss or destruction, an allowance may be claimed under section 11(*o*).[103]

The terms "alienation, loss and destruction" are not defined in the Act. As such, its ordinary grammatical meaning must be applied.

The term "alienation" is defined in the *Lexico Dictionary* as follows:[104]

> "2 The transfer of the ownership of property rights."

The *Merriam Webster Dictionary* defines "loss" (in the context of this section) as –[105]

> "b: an amount by which the cost of something exceeds its selling price".

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[99] Paragraph 12(3).
[100] Paragraph 12(2).
[101] Value-Added Tax Act 89 of 1991.
[102] See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance" for more information on this section.
[103] See Interpretation Note 60 "Loss on Disposal of Qualifying Depreciable Assets" for more detail.
[104] **www.lexico.com/definition/alienation** [Accessed 22 September 2022].
[105] **www.merriam-webster.com/dictionary/loss** [Accessed 22 September 2022].

The term "destruction" is defined in the *Lexico Dictionary* as follows:[106]

> "1 The action or process of causing so much damage to something that it no longer exists or cannot be repaired."

Section 11(*o*) gives the farmer the option to elect to claim the allowance under this section as a revenue loss on the alienation, loss or destruction of a qualifying asset instead of claiming a capital loss under the Eighth Schedule. Should the farmer not make the election, a capital loss will result under the Eighth Schedule.[107]

A deduction under section 11(*o*) is not available for any machinery, implements, utensils or articles for which a deduction under paragraph 12(1) (capital development expenditure) or 12(1A) (certain conservation related expenditure) is allowable [see **3.6.1(b)** and **3.6.2**].[108]

Note that it is not a requirement under paragraph 12(2) that the deduction was allowed under paragraph 12(1) or (1A), but merely that it was allowable under those paragraphs. A farmer who could claim a deduction under paragraph 12(1) or (1A) but did not and subsequently loses the asset owing to, for example because of fire, cannot claim a deduction under section 11(*o*).

(c) Depreciation allowance provided under section 12B

Section 12B is a special depreciation allowance. Section 12B(*f*) allows farmers to claim an allowance on the cost of machinery, plant, implements, utensils and articles (excluding livestock) that are used in carrying on farming operations.

An allowance is also available under section 12B(*g*) should a farmer use the assets in the production of renewable energy which is used in farming operations.

Furthermore, section 12B(*h*) includes an allowance for the production of electricity from –[109]

- wind power;
- photovoltaic solar energy (solar PV) of more than one megawatt;
- photovoltaic solar energy (solar PV) of up to one megawatt;
- concentrated solar energy (CSP);
- hydropower to produce electricity of not more than 30 megawatts; and
- biomass comprising organic wastes, landfill gas or plant material.

The cost of improvements to the assets mentioned under section 12B(*f*), (*g*) and (*h*) as well as to the foundation or supporting structures which are deemed to form part of these assets are deductible under section 12B(*i*).

For section 12B to apply, the assets must be owned by the farmer or must have been acquired under an instalment credit agreement. It must also have been brought into use for the first time by that particular farmer. This means that a new asset does not necessarily have to be acquired. Rather, an allowance can be claimed on a second-hand asset as long as the farmer is bringing it into use for the first time.

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[106] **www.lexico.com/definition/destruction** [Accessed 22 September 2022].

[107] See the *Comprehensive Guide to Capital Gains Tax* in paragraph 10.6 for more information.

[108] Paragraph 12(2).

[109] This section is applicable for years of assessment commencing on or after 1 January 2016.

In addition to listing the qualifying assets undersection 12B(*f*), the section also states which assets are specifically excluded and thus the cost is not deductible.

These excluded assets are the following:

- Any motor vehicle the sole or primary function of which is the conveyance of persons.
- Any caravan.
- Any aircraft other than an aircraft used solely or mainly for the purpose of crop-spraying.
- Any office furniture or equipment.

A wear-and-tear allowance under section 11(*e*) may, however, be applicable with regard to the excluded assets.[110]

The deduction under section 12B(2) is allowed in the year in which the farmer brought the asset into use for the first time as well as the succeeding two years. It is calculated on the cost price at the following rates:

- 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.
- 20% of the cost to the taxpayer in the third year.

The cost of photovoltaic solar energy (solar PV) of up to one megawatt is, however, deductible at a rate of 100% in the year that it is brought into use.

Under section 12B(3), the cost of the asset is calculated as follows:

The actual cost (excluding VAT if the farmer is a vendor)

OR

The cost under a cash transaction concluded at arm's length on the date on which the transaction for its acquisition was concluded

PLUS

The direct cost of its installation or erection including the cost of any supporting or other structures necessary for the proper functioning of the asset

In the event that the asset is sold by the farmer, any deductions allowed under section 12B will be recouped and included in such farmer's taxable income under section 8(4)(*a*). Moreover, if a deduction is claimed under section 11(*e*), an allowance cannot be claimed under section 12B on the same amount (see **3.6.3 (a)**).

[110] See **3.6.3(a)**.

(d) Treatment of assets under the First Schedule

(i) Paragraph 12(1B)

Deductions are allowed under paragraph 12(1) or (1A) on specified capital development expenditure. Usually when an asset is disposed of, a recoupment takes place under section 8(4)(*a*). This section does not, however, apply to assets on which a deduction was allowed under paragraph 12(1) or (1A), since separate recoupment provisions are applicable.

Under paragraph 12(1B)(*a*), should a farmer dispose of a movable asset mentioned in these paragraphs or dispose of an asset which became movable, a recoupment will apply to the amount previously allowed as a deduction in respect of the disposed asset.

If a wear-and-tear allowance was granted under section 11(*e*) on any of the assets, the recoupment provisions in section 8(4)(*a*) will not apply.[111]

(ii) Paragraph 12(1C)

Paragraph 12(1C) includes in a farmer's income, the fair value of an asset that is or became a movable asset which has been disposed of as a donation, for an inadequate consideration or for a consideration which is not readily capable of valuation.

The amount included in the farmer's income must not exceed the original cost of the asset in question on which a deduction was allowed under paragraph 12(1) or (1A) and such amount will be deemed to have been paid to the farmer by the person acquiring the asset.

(iii) Paragraph 12(2)

Paragraph 12(2) states that no deduction will be allowed under section 11(*e*) or section 11(*o*) in respect of machinery, implements, utensils and articles for which a deduction is allowable under paragraph 12(1) or (1A).

(iv) Paragraph 12(3B)

Under paragraph 12(3), if a farmer's capital development expenditure exceeds the taxable income derived by such farmer from farming operations, the excess amount of expenditure must be carried forward to the next year of assessment.

Paragraph 12(3B) shields a farmer from taxation of a recoupment of capital development expenditure under paragraph 12(1B) if a qualifying balance of capital development expenditure, which was not deducted in the previous year, is carried forward under paragraph 12(3).

While recoupments of capital development expenditure in respect of movable assets may not be included in taxable income under section 8(4)(*a*), they are dealt with by first reducing any qualifying balance of capital development expenditure brought forward from the previous year under paragraph 12(3B). To the extent that the qualifying balance is insufficient, the excess recoupment is included in farming income.[112]

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[111] Paragraph 12(1B)(*b*).

[112] See the *Comprehensive Guide to Capital Gains Tax* in paragraph 8.22.1.

(v) Paragraph 12(3C)

Under paragraph 12(3C), capital development expenditure which has been carried forward under paragraph 12(3) and which is deemed to be incurred by the farmer in the next succeeding year of assessment, must be reduced by any amount of expenditure in respect of which an election has been made under paragraph 20A(1) of the Eighth Schedule.

Under paragraph 20A(1) of the Eighth Schedule, a person is allowed to add the cost of unutilised capital development expenditure to the base cost of a farm property on which farming operations have ceased. In the absence of this paragraph, the unutilised capital development expenditure will be forfeited unless farming operations are recommenced in the next year of assessment.

For the cost of unutilised capital development expenditure to be added to the base cost of the immovable property, the person must have –

- unutilised capital development expenditure;
- ceased farming operations during the current or a previous year of assessment;
- disposed of the farm property in the current year of assessment; and
- made an election as to how much of the capital development expenditure is to be added to the base cost of the ex-farm property disposed of. [113]

3.7 Drought, stock disease, damage to grazing by fire or plague or livestock reduction scheme under paragraph 13

The farming operations of many farmers in South Africa may be affected by severe drought, fire or disease that negatively impacts grazing fields, destroys crops or affects the lifespan and health of livestock. Special provision is thus made in the First Schedule to cover these types of situation in which farmers are forced to sell livestock by allowing for the deduction of the cost of replacement livestock in the year of the forced sale.

Paragraph 13 provides some tax relief for a farmer selling livestock in a year of assessment under any of the following circumstances:

- In the case of drought, stock disease or damage to grazing by fire or plague and the farmer has within four years after the close of that year of assessment purchased livestock to replace the livestock sold.[114]
- By reason of the farmer's participation in a livestock reduction scheme organised by Government and the farmer has within nine years after the close of that year of assessment purchased livestock to replace the livestock sold.[115]

When replacing the livestock sold the farmer has the option to deduct the cost of purchasing the replacement livestock from the income for the year in which the livestock was originally disposed of provided the claim for such deduction is made within –

- five years after the close of that year of assessment in the case of a farmer that sold livestock on account of drought, stock disease or damage to grazing by fire or plague, or

[113] See the *Comprehensive Guide to Capital Gains Tax* in paragraph 8.22.3.7 for more information.

[114] Paragraph 13(1)(*a*).

[115] Paragraph 13(1)(*b*).

- ten years after the close of that year of assessment in the case of a farmer that participates in a livestock reduction scheme organised by Government.[116]

The cost of livestock which is allowed as a deduction under paragraph 13(1) shall not be allowed as a deduction in the year of assessment in which the purchases were made.[117] Further, paragraph 13(1) provides that the cost of the livestock be allowed as a deduction, *notwithstanding* anything contained in the First Schedule. The limitation under paragraph 8(1) will therefore not apply if the farmer elects a deduction under paragraph 13(1).[118]

A farmer that claims a deduction under paragraph 13(1) must notify the Commissioner accordingly in such form and within such time as may be prescribed and obtain and retain full particulars of the livestock so sold. This must be done in the year of assessment in which the farmer sold livestock on account of conditions of drought or stock disease or by reason of participation in a livestock reduction scheme organised by the Government.[119] If a farmer anticipates that the livestock will be replaced and the cost of it deducted in a year of assessment that will be likely to have already prescribed at the time of the claim, it is suggested that the farmer enter into an agreement with SARS under section 99(2)(*c*) of the TA Act. The agreement should be made before the year of assessment in which the deduction wants to be made, prescribes. This will result in the period of limitation under section 99 of the TA Act not to apply.

Paragraph 13 cannot apply to the cost of any livestock purchased to replace livestock sold if the proceeds derived from the sale of such livestock have been dealt with under paragraph 13A.[120]

3.8 Proceeds from disposal of livestock deposited in Land and Agricultural Bank of South Africa – paragraph 13A

Paragraph 13A contains an alternative tax relief provision for a farmer to invest the whole or part of the proceeds from the disposal of livestock due to drought with the Land and Agricultural Bank of South Africa (Land Bank). Paragraph 13A(3) stipulates when the farmer will be taxed on these proceeds (see below).

For the tax relief under paragraph 13A to apply, a farmer must have –

- disposed of any livestock on account of drought,
- deposited the whole or any portion of the proceeds of the disposal due to drought with the Land Bank in an account in the farmer's name, and
- deposited the proceeds as soon as possible but within three months after its receipt by the farmer.[121]

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116 Paragraph 13(1).
117 Paragraph 13(2).
118 See 3.5.3 for more information on paragraph 8(1).
119 Paragraph 13(3).
120 Paragraph 13(5).
121 Paragraph 13A(1).

The whole or part of the proceeds derived from the disposal of livestock due to drought and deposited with the Land Bank will only be deemed to be gross income of the farmer on the following dates:

- On the date of the disposal, if the money is withdrawn from the account less than six months after the last day of the year of assessment in which the disposal took place.[122]
- On the date of the withdrawal, if the money is withdrawn from the account more than six months but less than six years after the last day of the year of assessment in which the disposal took place.[123]
- On the day before the farmer's death or insolvency, in the event of either occurring before the expiry of the said period.[124]
- On the last day of the six-year period (therefore, six years after the last day of the year of assessment in which the disposal took place), if the money is not withdrawn before the expiry of that period.[125]

A farmer that elects to apply paragraph 13A to the proceeds from the disposal of livestock due to drought, must notify the Commissioner in such form and within such time as may be prescribed by the Commissioner.[126]

3.9 Tax rules relevant to plantation farming – paragraphs 14 - 16

Plantation farming is a form of commercial farming in which crops are grown on large tracts of land for the purpose of making a profit.[127]

Paragraph 16 provides the following definitions for purposes of paragraphs 14, 15 and 16:

> " **'plantation'** means any artificially established tree as ordinarily understood (not being a tree of the nature described in paragraph 12(1)(*g*)) or any forest of such trees and includes any natural extension of such trees;
>
> **'forest produce'** means trees (other than trees of the nature described in paragraph 12(1)(*g*)) and anything derived from such trees, including timber, wood, bark, leaves, seeds, gum, resin and sap."

Other plantation type farming described in paragraph 12(1)(*g*), namely, 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" is excluded from plantation farming and instead amounts to normal farming operations.

Plantation trees are used for various purposes such as the collection of timber, wood for pulp or wood that can be chipped to provide material for reconstituted products.

122 Paragraph 13A(3)(*a*).
123 Paragraph 13A(3)(*a*A).
124 Paragraph 13A(3)(*b*).
125 Paragraph 13A(3)(*c*).
126 Paragraph 13A(2).
127 **www.driftwoodplantation.com/what-is-plantation-farming/** [Accessed 22 September 2022].

The expenditure incurred by a plantation farmer is generally different from a livestock and produce farmer since a plantation farmer may experience many years of expenditure before earning any income. The First Schedule therefore contains unique rules specifically for this type of farming in paragraphs 14 to 16. These paragraphs apply only to plantations involving the growing of trees for the purposes listed in the definition of "forest produce".

3.9.1 Disposal of a plantation – paragraph 14

Paragraph 14 requires that a distinction be made between the price of the plantation, that is, the trees and the price of the land on which the trees grow. Under paragraph 14(1), irrespective of whether the plantation is sold inclusive or exclusive of the land, the amount received by or accrued to the farmer for the disposal of the plantation is deemed to be of a revenue nature. The amount will consequently be included in the farmer's gross income and will be taxable. This paragraph applies only if it was the taxpayer, and not some other person, who was carrying on the plantation farming. It is stated that "there must be conduct by the taxpayer apart from disposing of a plantation previously acquired by the taxpayer in order to constitute the carrying on by him of farming operations".[128]

In the event that the plantation is sold inclusive of the land on which it grows, paragraph 14(2)(*b*) stipulates the following:

- If the farmer and buyer agree on the consideration payable in respect of the sale of the plantation, the amount so agreed will be included in the farmer's gross income.
- If no such agreement was entered into, the amount included in the farmer's gross income will be the portion which represents the consideration payable for the plantation itself excluding the cost of the land. This will also apply should a fictitious or wholly disproportionate value be placed on the disposal in which case the Commissioner may determine the portion of the consideration attributable to the plantation.[129]

3.9.2 Deductible expenses in relation to plantations under paragraph 15

Under paragraph 15(1), a plantation farmer may claim a deduction for any expenditure incurred –

- during the year of assessment in establishing or maintaining a plantation [paragraph 15(1)(*a*)]. This deduction is not limited to the farmer's gross income from that plantation and may be set off against other taxable income; or
- prior to 1 July 1948 in establishing or maintaining a plantation or the cost incurred in acquiring a plantation before or after this date provided that the deduction does not exceed the gross income derived by the farmer in that year from that plantation operations and the aggregate of the deduction does not exceed the amount of the expenditure incurred or the cost of the acquisition.

  The non-deductible excess must be carried forward to the next year and will be allowed as a deduction in that year, again limited to the gross income derived in that year of assessment from that plantation.

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[128] AP de Koker & RC Williams *Silke on South African Income Tax* [online] (My LexisNexis: February 2020) in § 15.54 and quoting from *Kluh Investments (Pty) Ltd v C: SARS* [2015] JOL 33753 (WCC), 77 SATC 23.

[129] ITC 1235 (1975) 37 SATC 233 (T).

Examples of costs that may be regarded as establishing or maintaining costs include, amongst others, excavations costs, soil preparation, planting of seedlings and crop spraying. In the event that a farmer has multiple plantations on different farms, the taxable income from each plantation must be calculated separately.

Example 7 – Calculations of the taxable income of a plantation farmer (mixed farming)

Facts:

Farmer Q carries on farming operations on two separate plantations and is also a chicken farmer. For the current year of assessment, Q earned taxable income from the chicken farming of R39 000.

On Plantation A, the following occurred:

	R
Gross income derived from the disposal of plantation and forest produce	32 000
Expenditure incurred during current year of assessment for maintenance	11 000
Expenditure previously incurred on acquisition of the plantation with the land	80 000*

On Plantation B, the following occurred:

Gross income derived from the disposal of plantation and forest produce	17 000
Expenditure incurred during the current year in respect of maintenance	8 000
Disposal of plantation and land	210 000**

Calculate Farmer Q's taxable income for the 2021 year of assessment.

Result:

Plantation A

	R	
Gross income	32 000	
Less: Expenditure incurred in respect of maintenance	(11 000)	
	21 000	
Less: Cost of acquisition R60 000, limited to gross income	(32 000)***	
	(11 000)	

Plantation B

Gross income (R17 000 + R160 000)	177 000	
Less: expenditure incurred in respect of maintenance	(8 000)	
	169 000	
Taxable income from plantations (R169 000 – R11 000)		158 000
Taxable income from chicken farming		39 000
Taxable income		197 000

Notes:

* Of the R80 000, R60 000 represents the consideration payable for the plantation excluding the land. No portion of this amount has ever been deducted.

** The parties came to an agreement that R160 000 represented the consideration payable for the plantation without the land.

*** The balance of the cost of acquisition, R28 000 (R60 000 – R32 000), may be carried forward to the next year of assessment.

Under paragraph 15(2) and for the purposes of claiming a deduction on the cost of the acquisition of the plantation inclusive of the land on which it is growing, the provisions contained in paragraph 14(2) will apply *mutatis mutandis*, as follows:

- If the farmer and buyer agree on the consideration payable in respect of the sale of the plantation, the amount so agreed may be deducted by the farmer.
- If no such agreement was entered into, the amount that may be deducted by the farmer will be the portion which represents the consideration payable for the plantation itself excluding the cost of the land.

3.9.3 Calculation of normal tax

Paragraph 15(3) states that –

> if a plantation farmer, other than a company or close corporation,[130] derives taxable income from the disposal of plantations or forest produce during a year of assessment (Year D);
>
> AND
>
> the taxable income emanating from such disposal exceeds the annual average taxable income from the plantation derived during the preceding three years (Years A, B and C)
>
> the farmer will be liable to normal tax determined in accordance with the formula stipulated in section 5(10).[131]

In the event that a plantation farmer derives any excess farming profits in the years of assessment mentioned above and which were determined under paragraph 20(3)(*g*), such excess –

- if derived during Year D, will be excluded from the farmer's income in Year D [paragraph 15(3)(ii)(*aa*)]; and
- if derived during Years A, B or C, will not be taken into account in the determination of the average taxable income derived by the farmer over these particular years [paragraph 15(3)(ii)(*bb*)].

Under paragraph 20(3)(*g*), a farmer's *excess plantation profits* for the year is regarded as the amount that the current year's plantation profit does not exceed the plantation profits as determined under paragraph 15(3) – before applying proviso (ii) – that exceeds the annual average income derived from plantations over the three years immediately preceding the current year of assessment.

The Commissioner determines what portion of a farmer's income is derived from the disposal of a plantation or forest produce. This determination is final.[132] Furthermore, paragraph 15 should not be read as relieving the farmer from any liability for tax under the Act upon any portion of the farmer's taxable income.[133]

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130 See the definition of "person" in **3.2** for those parties qualifying as a farmer.

131 See the **Annexure** for the formula to be applied under section 5(10) and Interpretation Note 29 "Farming Operations: Equalised Rates of Tax" for more information.

132 Paragraph 15(3)(iii).

133 Paragraph 15(3)(iv).

Paragraph 15(3) will not apply under the following circumstances if –

- the disposal of the plantation or forest produce does not form part of the normal farming operation of the plantation farmer [paragraph 15(3)(i)]; and
- the plantation farmer has been taxed under the general rating provisions contained in paragraph 19[134] during the same year [paragraph 15(3)(v)].

3.9.4 Sugar cane farmers – paragraph 17

The sugar industry in South Africa is one of the world's leading producers of high quality sugar and makes an important contribution to employment, sustainable development and to the national economy.

The cane is harvested over the period April to December of each year with the majority of the cane being burnt prior to harvesting. A portion is, however, green cane harvested.[135] Burnt cane harvesting involves the sugar cane fields being set on fire with the purpose of burning off leafy material before harvesting. This reduced transportation costs to the mill, improves harvesting efficiencies and enhances sugar recoveries at the mill.[136] With green cane harvesting, sugarcane is harvested without burning. Advantages of green cane harvesting includes soil and moisture conservation as well as a potential increase to yields.

Under paragraph 17, if a sugar cane farmer other than a company has sold sugar cane resulting from the fields being damaged by fire, the taxable income from such sale shall be taxed in accordance with the formula stipulated in section 5(10).

As with paragraph 15, paragraph 17 should not be read as relieving the farmer from any liability for tax under the Act upon any portion of the farmer's taxable income. Paragraph 17 will also not apply if the sugar cane farmer has been taxed under the general rating provisions contained in paragraph 19 during the same year.

With regard to deductions available to a sugar cane farmer for capital development expenditure and as mentioned in 3.6.1, such farmer may claim a deduction under paragraph 12(1)(*g*) on the cost incurred in planting sugar cane or in establishing the area for planting.

3.10 Game farming

The same principles for determining whether a person is carrying on farming operations apply to game farming.[137] Generally, 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.[138]

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

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134 See **3.11**.
135 **www.huletts.co.za/ops/south_africa/agriculture.asp** [Accessed 22 September 2022].
136 **https://edis.ifas.ufl.edu/sc100** [Accessed 22 September 2022].
137 See Interpretation Note 69 "Game Farming" for more detail.
138 ITC 1698 (2000) 63 SATC 161 (SEC); ITC 1414 (1986) 48 SATC 174 (T).

species of game. In all instances, however, there would be a level of active involvement appropriate to the particular species and farming operations.

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

- 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.

The income earned from the following activities is not regarded as having the required direct connection to game-farming operations 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 game-viewing fees (for example, the fee paid to go on a game drive) constitutes income from game farming, it is necessary in the first instance to determine whether or not the particular taxpayer is conducting a farming operation. This 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 uses such as the hunting and sale of the game may be a part of a valid farming operation. However, when game viewing is incidental to activities which do not constitute farming activities, the income from game viewing will not constitute income from farming operations. For example, certain eco-tourism operations the purpose of which is tourism and accommodation and those elements are the revenue and profit generators, while the game viewing serves as an attraction and is 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 the deductions provided for under the First Schedule can only be used to reduce the income derived from farming operations.

3.11 Equalised rates of tax – paragraph 19

A person deriving income from farming operations may, under paragraph 19(5), elect to be subject to tax according to the rating formula set out in section 5(10). Under paragraph 19(1), the rating concession applies only to individuals (natural persons), executors of deceased estates and trustees of insolvent estates. Once the option has been exercised to adopt the equalised rates, this election will be binding on the taxpayer for the current year as well as all future years of assessment, irrespective of the fact that farming operations may be terminated. The election will be binding on the taxpayer for any period of assessment that farming operations are carried on or income from farming operations are derived and the taxable farming income for the relevant period exceeds the average taxable income from farming as determined in relation to the relevant period.[139]

[139] Paragraph 19(1).

Furthermore, under paragraph 19(3) once the farmer's assessment has become final and conclusive under section 100 of the TA Act, the Commissioner can only reassess the farmer or authorise a refund under section 190 of the TA Act if it appears that the annual average taxable income from farming should be increased or reduced by at least R600.

The deductions allowed under section 6, which relate to tax rebates, are disregarded when determining the farmer's normal tax liability under paragraph 19(1) read with section 5(10). The taxpayer is, however, still entitled to these rebates under section 6(2). In addition, paragraph 19 must not be read as relieving the farmer from any liability for tax under the Act upon any portion of the farmer's taxable income.[140]

Paragraph 19(5) provides that a taxpayer must elect that the normal tax to be levied on farming income must be determined under this paragraph. This election must be made within three months after the end of the year or period of assessment. The three-month period may be extended by the Commissioner if the taxpayer has not made an election during this prescribed period.

If an election was made under paragraph 19(5), a taxpayer may not apply the following paragraphs:

- Paragraph 13(1)(*b*) – Provisions relating to the replacement of livestock sold as a result of the person's participation in a livestock reduction scheme organised by government.
- Paragraph 15(3) – Rating formula on taxable income derived from plantations.
- Paragraph 17 – Rating formula arising as a result of abnormal receipts from the disposal of sugar cane damaged by fire.
- Paragraph 20 – Relief relating to income for any year of assessment including income derived from excess profits as a result of farming land acquired by the state or certain juristic persons.

For more detail on paragraph 19 and section 5(10) see Interpretation Note 29 "Farming Operations: Equalised Rates of Tax".

3.12 Land expropriation – paragraph 20

Land expropriation is "the act of a government claiming privately owned property against the wishes of the owners, ostensibly to be used for the benefit of the overall public".[141] Land expropriation can be effected with or without monetary compensation.

In the context of farming, a farmer's income producing structure will be lost if the land on which farming operations are conducted is expropriated. In the event that such farming operations are wound up owing to the sale of the farm land to the State, a concessionary rate of tax may be applied as provided for under paragraph 20.

3.12.1 Calculation of the normal tax payable when farm land is expropriated

Paragraph 20(6)(*a*) allows a farmer to elect for the normal tax payable by the farmer to be determined under this paragraph if land used for farming was expropriated. The concession does not apply automatically but only upon election and is only applicable to a taxpayer other than a company. This means that a company will not be able to elect for paragraph 20(6)(*a*) to apply and instead will be taxed according to the normal tax rules. The concession is

140 Paragraph 19(4).

141 **www.investopedia.com/terms/e/expropriation.asp** [Accessed 22 September 2022].

available to the farmer in the year of assessment that the farm was acquired by the State and the succeeding two years of assessment [paragraph 20(1)].

When electing for this paragraph to apply, paragraph 20(6)(*b*) requires that certain records be obtained and retained. This includes a certificate from: –

- the department of State or local authority, or the administration of such State department or local authority that acquired the land; and
- the Minister mentioned in section 3(1) of the Expropriation Act 63 of 1975 and who has been charged with administering the law of that Act stating that the land was acquired by a juristic person or body. If the owner of the farm had agreed to dispose of the land, the certificate must state that had the owner not agreed to sell the land in question, steps would have been taken that would have resulted in the expropriation of the land.

If an election is made for normal tax to be determined under paragraph 20 and if –

- the farmer's income was derived in whole or in part from farming operations executed on the land which has been acquired by the State or any local authority or specified juristic person by expropriation, or the farmer, as the owner of the land voluntary agreed to dispose of the land before having it expropriated [paragraph 20(1)(*a*)];
- the farming operations on the land has been wound up or is in the process of being wound up owing to the expropriation [paragraph 20(1)(*b*)]; and
- the income earned by the farmer during the year of assessment in which the land was expropriated or during the two succeeding years includes any abnormal farming receipts or accruals related to farming operations;

the normal tax chargeable shall be determined at an amount equal to the sum of –

- the farmer's excess farming profits multiplied by the relevant rate of tax fixed in respect of the first rand of taxable income (lowest rate of tax, currently 18%), and
- the normal tax which would have been payable by the taxpayer on taxable income excluding the excess farming income.

Under this paragraph, normal tax is calculated before any rebates are deducted and the other sections of the Act which may be contrary to the provisions of this paragraph must be disregarded. For this concession to apply, all three of the listed requirements under the bullet points above should be met. Moreover, if the land was expropriated within 12 months of the owner accepting an offer to purchase the land, the land will be deemed to have been acquired on the date that the offer was accepted.[142]

As mentioned in bullet point three above, a farmer's taxable income may include abnormal farming receipts and accruals. In the course of winding-up farming operations, any amount obtained from the disposal of livestock that was normally held for the purposes of the farming operations will be deemed as constituting abnormal farming receipts and accruals under paragraph 20(2). This will also apply to amounts derived from the expropriation of a plantation inclusive of the land or to the disposal of a plantation on the expropriated land or any forest produce from such plantation being disposed of in the course of the winding up of the farming undertaking.

[142] Paragraph 20(1A).

3.12.2 Calculation of CGT on expropriated land

In the ordinary course of events, for CGT to be applicable there must, amongst others, be a disposal of an asset. A "disposal" is defined in paragraphs 1 and 11 of the Eighth Schedule and includes the expropriation of land under paragraph 11(1)(*a*).[143]

The compensation that is received by a farmer owing to an expropriation of farm land, will constitute proceeds. Such proceeds less the base cost of the land will give rise to CGT and the normal CGT rules will apply.[144]

Provision is made under paragraph 65 which enables a person to elect to defer a capital gain when an asset has been disposed of by way of, amongst others, operation of law, theft or destruction.

The requirements that must be met in order for this paragraph to apply are, amongst others, that an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more replacement asset or assets and that the proceeds from the disposal must be equal to or exceed the base cost of that asset.

Moreover, paragraphs 65(1)(*d*)(iii) and (iv) require that the contract relating to the acquisition of the replacement asset must have been or will be concluded within 12 months after the date of the disposal of that asset or assets and that the replacement asset must be brought into use within three years of the disposal.

Under the proviso to paragraph 65(1)(*d*), the Commissioner may on application by the taxpayer, extend the period within which the contract must be concluded or asset brought into use by *no more than six months* if all reasonable steps were taken to conclude those contracts or bring those assets into use.

The normal rules applicable to CGT related transactions are extensively considered in the *Comprehensive Guide to Capital Gains Tax* and are not repeated here.

3.12.3 Calculation of livestock and farming profits for purposes of paragraph 20

In determining a farmer's normal tax, various values relating to livestock and plantations have to be taken into consideration for purposes of paragraph 20. These values relate to a farmer's excess livestock profit, average livestock profit, abnormal livestock profit and excess plantation profits. These terms are briefly explained below.

In accordance with paragraph 20(3)(*d*), a farmer's *livestock profit* for each year of assessment is determined as follows:

	Proceeds from the sale of livestock
PLUS	Closing stock at the standard value
LESS	(Opening stock at the standard value)
LESS	(Purchases allowed for livestock acquired)
	Livestock profit/loss

[143] See the *Comprehensive Guide to Capital Gains Tax* in paragraph 6.1 for the complete definition of "disposal".

[144] **www.saipa.co.za/wp-content/uploads/2019/06/SAIPA-Tax-Chronicles-Monthly-11MR.pdf** [Accessed 22 September 2022].

A farmer's *average livestock profit* is the sum of the livestock profits and losses for the immediately preceding years (before the year in which the undertaking was carried on but limited to five years) divided by the number of years.[145]

Under paragraph 20(3)(*c*), the farmer's *abnormal livestock profit* for the year of assessment will be regarded as the amount that the current year's livestock profit exceeds the average livestock profit for the immediately preceding years, limited to five years.

A farmer's *excess plantation profits* for the year is regarded as the amount that the current year's plantation profit does not exceed the plantation profits as determined under paragraph 15(3) – before applying proviso (ii) – that exceeds the annual average income derived from plantations over the three years immediately preceding the current year of assessment.[146]

Provided that excess farming profits does not exceed taxable income, the farmer's excess farming profits for any year of assessment will be deemed to be the sum of the farmer's excess livestock profits and the farmer's excess plantation profits.[147] Additionally, excess livestock profits for the year will be regarded as the amount that the current year's livestock profit does not *exceed* the farmer's abnormal livestock profits.[148]

In the event that livestock –

- is sold other than in the ordinary course of farming operations;
- owing to unusual circumstances which causes the profits and loss to be undeterminable; or
- the farmer's average livestock profits cannot be determined in a satisfactory manner;

paragraph 20(3)(*f*) states that the livestock profits or loss or such average livestock profits will be determined by the Commissioner on application by the taxpayer.

Example 8 – Paragraph 20 concessions

Facts:

Farmer X, 66 years of age, is a livestock farmer and owns a 50-acre farm on which all farming operations are carried on. In anticipation of an expropriation of the land without any monetary compensation, X decided to sell the farm to the State during the 2021 year of assessment.

As required under paragraph 20(6)(*b*), X presented all the necessary documentation to the Commissioner and elected for the normal tax payable to be determined under paragraph 20.

Farmer X's books reflected the following:

	R
Average livestock profit for the preceding five years	85 000
Other taxable income for the year	350 000
Excess livestock sales for the current year	200 000

145 Paragraph 20(3)(*e*).
146 Paragraph 20(3)(*g*).
147 Paragraph 20(3).
148 Paragraph 20(3)(*b*).

Farmer X's farming accounts reflected the following:

	R
Closing stock at the standard value	22 000
Opening stock at the standard value	40 000
Total livestock sales	373 600
Livestock sales in the course of winding-up the undertaking	200 000
Purchases allowed (livestock acquired)	100 000

Calculate Farmer X's normal tax liability. Note that the concession under paragraph 20 is applicable to the year of assessment in which the farm was acquired by the state as well as the two succeeding years of assessment, that is, the 2021 (year of acquisition), 2022 and 2023 years of assessment.

Result:

	R
Sales from livestock sold	373 600
Closing stock at the standard value	22 000
	395 600
Less: Opening stock at the standard value	(40 000)
Less: Purchases allowed (livestock acquired)	(100 000)
Livestock profit/loss	255 600
Livestock profits for the year	255 600
Less: Average livestock profit	(85 000)
Abnormal livestock profit	170 600
Excess livestock profits = Livestock sales limited to abnormal livestock profit	170 600
Total taxable income (350 000 + R255 600)	605 600
Less: Excess livestock profits	(170 600)
Balance of taxable income	435 000
Net Normal tax on excess livestock profits (R170 600 × 18%)	30 708
Net Normal tax on balance of taxable income	
67 144 + 31% × {435 000 – 321 600}	102 298
	133 006
Less: Rebates	(23 157)
Normal tax payable	109 849

3.13 Miscellaneous issues

3.13.1 Capital Gains Tax

Upon the sale of any asset used for farming purposes or upon the disposal of land which was used to conduct farming operations, the provisions relating to CGT must be taken into consideration.

These provisions are contained in the Eighth Schedule and are thoroughly explained in the *Comprehensive Guide to Capital Gains Tax*. These provisions are not repeated in this document and regard should be had to the contents of the *Comprehensive Guide* when determining any CGT consequences relating to the disposal of farming property, be it land or other assets.

3.13.2 Expenditure incurred in respect of soil erosion works

It often happens that land is not farmed by the owner but is instead let for the purposes of conducting farming operations. In maintaining the land, the lessor may incur certain expenditure during a year of assessment relating to the construction of soil erosion works.

If a certificate issued by the Executive Officer designated under section 4 of the Conservation of Agricultural Resources Act,[149] stating that such works have been approved under this Act can be produced by the lessor, a deduction may be allowed on the expenditure incurred on the construction costs. This deduction is permitted under section 17A(1) and the expenditure may be deducted by the lessor from the income derived from leasing the land.

In the event that the expenditure incurred by the lessor exceeds the taxable income derived from letting the land, the deductible amount will be limited to an amount equivalent to such taxable income. Any excess will be carried forward and be deemed to be expenditure incurred by the lessor during the next succeeding year of assessment in respect of the construction of soil erosion works.[150]

3.13.3 Environmental conservation and maintenance of land

Should the government enter into an agreement with a farmer in terms of which a particular area of land will be conserved and maintained by the landowner on behalf of the government to encourage biodiversity conservation, special dispensation is provided under section 37C.

Under this section, expenditure actually incurred by a farmer to conserve or maintain land will be deemed to be expenditure incurred in the production of income and for purposes of trade carried on by that farmer. This effectively allows such farmer to treat the expenditure as deductible under paragraph 12(1A) as long as the expenditure is not of a capital nature. Any deduction permitted is limited to the income derived from farming activities.

If the land owned by the farmer is declared a national park or nature reserve, a percentage of the cost of acquiring the land will be deemed to be a tax deductible donation made to the government.

Expenditure will only be deductible if:

- the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years;
- the land is utilised by the landowner in the production of income and for the purposes of trade; and
- such land consists of, includes or is in the immediate proximity of the land that is the subject of the biodiversity management agreement.

3.13.4 Subsidies or grants

An amount received by or accrued to a farmer in the form of a grant or subsidy covering the cost of any soil erosion works referred to in section 17A or any expenditure incurred on farming development and improvements referred to in paragraph 12(1)(*a*) to (*i*), must be included in the farmer's gross income under paragraph (*l*) of the definition of "gross income" in section 1(1). The specific inclusion applies regardless of the capital or revenue nature of an amount received or accrued.

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149 Act 43 of 1983.

150 Section 17A(2).

3.13.5 Employee housing

Before 21 October 2008 farmers were allowed under paragraph 12(*5*) to claim a deduction on the cost of buildings that were used for domestic purposes by farm employees. Section 13s*ex* replaced paragraph 12(5) and some other provisions and brought in one simplified and comprehensive provision for low-cost housing in respect of residential units and improvements acquired or the erection of which commenced on or after 21 October 2008.

Section 13*sex* provides for an allowance on new and unused residential units or new and unused improvements to a residential unit, owned by the taxpayer which are used solely for the purpose of trade and an additional allowance on that residential unit if it qualifies as a low-cost residential unit.

As of 22 October 2008 no deduction is allowed under paragraph 12(*5*) for employee housing. Farmers can, however, still make use of other provisions in the Act and potentially claim a deduction on the cost of these houses.[151]

With regard to the costs already claimed under the previous paragraph 12(*5*), if during any year of assessment the building becomes occupied by a person, who is not a farm employee, for domestic purposes, a recoupment will take place of the deducted amount.[152]

3.13.6 Security-related expenditure

Owing to the increased levels of theft of livestock and produce in the country, farmers may resort to taking security measures in an effort to curb such theft.

The security measures that may be undertaken includes, but is not limited to the following:

- Fixing cameras to masts with the intention of monitoring traffic by identifying suspicious vehicles or activity.
- Making use of armed guards.
- The use of boom gates with security guards.

Typically, the installation of the security infrastructure as well as its ownership can be attributed to individual farmers, a group of farmers or to farming associations that cover the costs from contributions that were made by the farmers and which have accumulated over time.

(a) Deductions under section 11(a)

A deduction may be allowed under section 11(*a*) on expenses and losses incurred provided that they were actually incurred by a taxpayer during a year of assessment in the production of a taxpayer's income. The expenses and losses must also not be of a capital nature, to be deductible. In addition, under section 23(*g*), any moneys against income derived from trade to the extent such moneys were not laid out or expended for the purposes of trade will not be deductible.

When determining whether security-related expenditure is deductible under section 11(*a*), consideration will thus have to be given to all the requirements of the section, in particular, the capital or revenue nature of the expense.

[151] See Interpretation Note 106 "Deduction In Respect Of Certain Residential Units" for more detail.
[152] Paragraph 12(6).

Generally, expenditure incurred to perform income-earning operations is regarded as being of a revenue nature and any expenditure incurred to establish, improve or add to the income-earning structure of a taxpayer's business will be capital in nature.[153] There must also be a sufficiently close link between the expenditure and the taxpayer's income-earning operations to conclude that it forms part of the cost of performing the taxpayer's income-earning operations, rather than the cost of expanding the income-producing structure. Usually, if an asset is created which has an enduring benefit, the associated costs will be of a capital nature. Costs of a capital nature are not deductible under section 11(*a*).

Consequently, the costs related to, for example, the installation of an alarm system, an electric fence or the installation of masts are not deductible under section 11(*a*) as these are considered to be expenditure of a capital nature. This is because these assets form part of the farmer's income-earning structure and have an enduring benefit.

Examples of costs that may be claimable by the farmer include the monthly service fees for a satellite tracking system for motor vehicles used for farming or business purposes (excluding vehicles used for private purposes), monthly payments to an armed-response company and salary costs of security personnel. These costs must be incurred by the farmer, since a taxpayer cannot claim deductions on expenditure incurred by another person. In the event that money is pooled to cover security-related expenditure, an apportionment will have to be made and only the proportionate costs incurred by the farmer in question will be deductible. The onus rests on the farmer to prove to SARS that the expenditure was in fact incurred and that the determination applied in calculating the portion of expenditure which is deductible is fair and correct.[154]

(b) Section 23(*b*) – private or domestic use

Section 23(*b*) prohibits the deduction of domestic or private expenditure. As such, a farmer will only be able to claim a deduction on those security-related costs incurred to secure the business premises and not such farmer's private or domestic residence. This will also apply to those costs incurred on security-related infrastructure on public roads unless it can be shown that the costs directly relate to the farmer's business premises and not public locations in general.

In the event that the farmer's business premises, such as an office, falls within the private residence an apportionment will have to be made. It is therefore important to consider the merits of each case when applying section 23(*b*).

In addition to the information in a) and b) above, a section 12B deduction may be claimed on capital costs incurred on the security-related infrastructure owned by the farmer and used in carrying on farming operations. An allowance under section 11(*e*) may be claimed by farmers on qualifying assets not falling within the ambit of section 12B.[155]

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153 *New State Areas Ltd v CIR* 1946 AD 610, 14 SATC 155.

154 Section 102 of the TA Act.

155 See **3.6.3** for more information on sections 11(*e*) and 12B.

3.13.7 Donation of land under a land reform programme

In the event that a farmer opts to donate the farm or a part of it, donations tax will apply. Donations tax is leviable at a flat rate of 20% on donations up to a cumulative value of R30 million and at a rate of 25% thereafter.

However, should the land be disposed of by way of donation in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997 and which has been approved of by the Minister of Land Affairs or if the land in question was acquired under a land reform initiative, no donations tax will be payable on the value of such land under section 56(*o*).

3.13.8 Value Added Tax (VAT)

A farmer whose total value of taxable supplies exceeds R1 million in a twelve-month period should register as a vendor for VAT and submit VAT returns according to the tax period allocated to such farmer.[156]

Vendors who –

- solely carry on farming activities whose total value of taxable supplies has not exceeded R1,5 million per consecutive period of 12 months and is not likely to exceed that amount in the next consecutive 12 months; or
- solely carry on farming activities as a separate enterprise, branch or division of a vendor or an association not for gain and whose total value of taxable supplies has not exceeded R1,5 million in the past 12 months and is not likely to exceed that amount in the next 12 months,

are required to submit one tax return for every six calendar months ending on the last day of February and August.[157]

Special concessions may also exist on many of the products which are produced or consumed in the course of conducting a farming enterprise. These may be zero-rated or exempt from VAT on importation. Examples of products on which a concession may apply are fertilizers, plants and pesticides.[158]

3.14 Administrative provisions – Tax Administration Act

The TA Act deals with tax administration and seeks, among other things, to simplify administrative provisions by incorporating into one piece of legislation administrative provisions that are generic to all tax Acts, remove duplicated or redundant administrative provisions in the different tax Acts and as far as possible harmonise administrative provisions.

Some administrative provisions that apply only to, and are unique to, the administration of a specific tax type remain in the Act imposing that tax. If the TA Act is silent on the administration of a tax Act and it is specifically provided for in any other tax Act, the provisions of that Act apply.[159] If there is any inconsistency between the TA Act and any other tax Act, the other Act prevails.[160]

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[156] Section 23 of the VAT Act.
[157] Section 27(4) of the VAT Act.
[158] For more information on the VAT rules applicable to farmers, see *VAT 404 – Guide for Vendors.*
[159] Section 4(2) of the TA Act.
[160] Section 4(3) of the TA Act.

General administrative provisions contained in the TA Act relating to, for example, record-keeping (see **3.14.3**), returns (see **3.14.4**), assessments and dispute resolution (see **3.14.6**), interest, refunds and anti-avoidance also apply.

For comprehensive information relating to taxpayers' obligations and entitlements under the TA Act, see *SARS Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011)*.

3.14.1 Furnishing of information

The Commissioner may in enforcing the provisions of the Act, submit a written request to any person to furnish information and may require that person to –[161]

- answer any questions relating to the farming operations;
- make books of account, records or other documents relating to the farming operations available for inspection; or
- meet with the Commissioner's representative and produce for examination any documents relating to the farming operations.

A person who wilfully and without just cause refuses or neglects to furnish, produce or make available any document or thing, or reply to or answer truly and fully any questions posed by SARS is guilty of an offence.[162]

3.14.2 Changes in registered particulars

A taxpayer must inform SARS of changes in its registered particulars to ensure that SARS has the most accurate and current information. Any changes in postal, physical or electronic addresses and banking particulars must be communicated to SARS.[163]

A person who wilfully and without just cause refuses or neglects to notify SARS of a change in registered particulars is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.[164]

3.14.3 Record-keeping

All taxpayers are required to keep records for five years from the date of the submission of a return.[165] A return[166] includes any form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS.

Although records are generally required to be kept and retained for five years, there are circumstances in which they are required to be retained for longer periods.[167]

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[161] Section 46(1) of the TA Act.
[162] Section 234 of the TA Act.
[163] Section 23 of the TA Act.
[164] Section 234(*a*) of the TA Act.
[165] Section 29(3) of the TA Act.
[166] The term "return" is defined in section 1 of the TA Act.
[167] Section 32 of the TA Act.

The record retention periods for records, books of account or documents required to be kept and retained are as follows:

- Five years from the date of the submission of a return.[168]
- If no return is submitted for a tax period but is required to be submitted, records, books of account or documents must be kept and retained indefinitely until the obligation to submit a return has been complied with, and then for five years from the date of submission of the return.[169]
- If an objection or appeal against an assessment or decision is lodged, the records, books of account or documents relevant to the objection or appeal must be kept and retained until the disputed assessment or decision becomes final or the applicable five-year period has elapsed, whichever is the later.[170]
- A person notified of, or is aware of an audit or investigation by SARS must retain the records, books of account or documents relevant to that audit or investigation until it is concluded or the applicable five-year period has elapsed, whichever is the later.[171]

The records, books of account, or documents that must be kept and retained may include anything that contains a written, sound or pictorial record or other record of information whether in physical or electronic form.

The following are non-exhaustive examples of records, books of account or documents that must be kept and retained:

- Cash books
- Debtors, creditors and sales ledgers
- Journals
- Fixed-asset register
- Bank statements and deposit slips
- Invoices
- Records relating to capital development and paragraphs 13 and 13A

To ensure the safe retention of records as well as easy and efficient access to records by SARS, especially for inspection or audit purposes during the prescribed retention period, a taxpayer is required to keep and retain its records in their original form, in an orderly fashion and in a safe place.[172]

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168 Section 29(2)(*a*) read with section 29(3)(*a*) of the TA Act.
169 Section 29(2)(*b*) of the TA Act.
170 Section 32(*b*) of the TA Act.
171 Section 32(*a*) of the TA Act.
172 Section 30 of the TA Act.

The electronic form of record-keeping is regulated by the Electronic Record-Keeping Rules.[173] The rules require that electronic records must be kept in their original form,[174] and should within a reasonable time be accessible to, and readable by, SARS. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions. For further information, see *Electronic Communications Guide*.

A person who wilfully and without just cause fails or neglects to retain records is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.[175]

3.14.4 Income tax returns

The Commissioner annually gives public notice in the *Government Gazette* of the persons that must furnish an income tax return.[176]

The prescribed Income Tax Return must be submitted on an annual basis. It may be obtained from –

- the eFiling website;
- any SARS branch office; or
- the SARS National Contact Centre.

A return must be a full and true return[177] and be signed by the taxpayer or by the taxpayer's duly authorised representative. The person signing the return will be regarded as being cognisant of the statements made in the return.[178]

Non-receipt of an income tax return does not affect the obligation to submit an income tax return.[179]

A person who wilfully and without cause refuses or neglects to submit a return or document to SARS is guilty of an offence and on conviction is subject to a fine or imprisonment for a period not exceeding two years.[180]

3.14.5 Year of assessment

A "year of assessment" is defined in section 1(1) and means –

> "any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, in the case of a company or a portfolio of a collective investment scheme in securities be construed as a reference to any financial year of that company or portfolio ending during the calendar year in question."

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173 See Government Notice 787 in *Government Gazette* 35733 of 1 October 2012.

174 Section 14 of the Electronic Communications and Transactions Act 25 of 2002. Under that section a document will be regarded as being in original form if the integrity of the data is maintained, for example, when it is complete and unaltered.

175 Section 234(*e*) of the TA Act.

176 Section 66(1).

177 Section 25(2) of the TA Act.

178 Section 25(3) of the TA Act.

179 Section 25(4) of the TA Act.

180 Section 234(d) of the TA Act.

A farmer can, however, close its accounts on a day other than the last day of the year of assessment if approved under section 66(13A) or (13C).[181]

Under paragraph 1, a reference to a "year of assessment" will therefore mean the period accepted by the Commissioner and covered by the farmer's accounts which relate to the income emanating from farming operations. In the event that the period being assessed ends on a date other than the last day of the year of assessment, the term "end of a year of assessment" will signify the end of that specific period.

3.14.6 Objection and appeal

Under section 3(4)(*c*), any decision of the Commissioner made under paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 is subject to objection and appeal.

The issues on which an objection and appeal can be raised, relate to the following:

Paragraph 6	Valuation of livestock
Paragraph 7	Variation by farmer of standard values
Paragraph 9	Valuation of produce
Paragraph 13 and 13A	Excess farming profits resulting from sale of livestock on account of drought, stock disease or damage to grazing by fire or plague, or by reason of participation in a livestock reduction scheme organised by Government
Paragraph 14	Amount included in income on sale of plantation in the absence of an agreement
Paragraph 19	Averaging of farming income (rating formula)
Paragraph 20	Excess profits on expropriation by or sale to State or certain bodies

In the event that the taxpayer lodges an objection to or an appeal against an assessment, the onus rests on the taxpayer to establish *mala fides* on the part of the Commissioner or that the Commissioner has failed to apply his mind properly to a particular matter.[182]

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[181] See Interpretation Notes 19 "Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date Other Than the Last Day of February" and 90 "Year of Assessment of a Company: Accounts Accepted to a Date Other Than the Last Day of a Company's Financial Year" for more information.

[182] ITC 1478 (1989), 52 SATC 258 (T).

3.14.7 Provisional tax

Under paragraph 17 of the Fourth Schedule, all provisional taxpayers must make provisional tax payments to the Commissioner in respect of their liability for normal tax for every year of assessment. A "provisional taxpayer", as defined in paragraph 1 of the Fourth Schedule, includes natural and juristic persons. This also applies to persons carrying on farming operations.

As such, during every period within which provisional tax is or may be payable, all farmers must submit a return of an estimate of the total taxable income that will be derived in the year of assessment for which provisional tax is or may be payable.

4. Conclusion

Farming can be a very lucrative business in South Africa. It is, however, very dependent on various factors such as the climate, demand for a product and the weather, amongst others. This may result in fluctuations in taxable income with farmers not producing any yield in one year but exceeding expectations in the next.

To assist farmers, a beneficial set of tax rules applies to farming operations and the income and expenses emanating from such operations. Section 26 stipulates the persons and circumstances that this section will find application while the First Schedule sets out how to compute the taxable income of the persons engaged in farming operations.

Generally, the farmer will be required to bring to account the value of livestock and produce in opening and closing stock. In the event that standard values have been prescribed by regulation, these must be used, unless the farmer has entered into an agreement with the Commissioner that other values may be used. Livestock and produce which are acquired by donation or through inheritance must also be 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 and produce 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.

Annexure – The law

Section 5(10)

(10) Where any taxpayer's income includes any special remuneration, or where the provisions of paragraph 15 (3), 17 or 19 (1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit or severance benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—

$$Y = \left(\frac{A}{B + D - C}\right) \times B$$

in which formula—

(*a*) "Y" represents the amount of normal tax to be determined;

(*b*) "A" represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of taxable income equal to the amount represented by the expression "B + D – C" in the formula;

(*c*) "B" represents the taxpayer's taxable income (excluding any lump sum benefit or severance benefit) for the said year;

(*d*) "C" represents an amount equal to the sum of—

(i) the amount of any special remuneration (as defined in subsection (9)) which is included in the taxpayer's income for the said year;

(ii) where the provisions of paragraph 15 (3) of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount determined in accordance with those provisions as being the amount, if any, by which the taxable income derived by the taxpayer during the said year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by the taxpayer from that source over the three years of assessment immediately preceding the said year;

(iii) where the provisions of paragraph 17 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount equal to so much of the taxable income of the taxpayer for such year as has been derived from the disposal of sugar cane as a result of fire in the taxpayer's cane fields and but for such fire would not have been derived by the taxpayer in that year; and

(iv) where the provisions of subparagraph (1) of paragraph 19 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, the amount by which the taxpayer's taxable income derived from farming for that year exceeds the taxpayer's average taxable income from farming as determined in relation to that year in accordance with subparagraph (2) of the said paragraph; and

(*e*) "D" represents an amount equal to so much of any current contribution to a pension fund, provident fund or retirement annuity fund as is allowable as a deduction in terms of section 11F solely by reason of the inclusion in the taxpayer's income of any amount contemplated in paragraph (*d*) (i), (ii), (iii) or (iv):

Provided that in no case shall the amount of normal tax so payable be less than the amount of normal tax which would be chargeable at the relevant rate fixed in terms of subsection (2) in respect of the first rand of taxable income, and nothing in this section contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.

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.

Section 66(13A)

(13A) Where—

(*a*) it is established to the satisfaction of the Commissioner that the whole or any portion of the income of any person to whom the provisions of subsection (13) (*a*) apply cannot be conveniently returned for any year of assessment, the Commissioner may, subject to such conditions as he or she may impose, accept accounts in respect of the whole or a portion of the taxpayer's income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the year of assessment under charge, and the income disclosed in any such accounts must be deemed to be income of that person in respect of that year under charge;

(*b*) any such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of any subsequent year of assessment;

(*c*) any such accounts are drawn to a date falling within the year of assessment and the person concerned dies or his or her estate is sequestrated during the interim period between that date and the last day of the year of assessment, any income received by or accrued to that person during that interim period must be deemed to be part of that person's income for the year of assessment.

First Schedule to the Act

FIRST SCHEDULE

COMPUTATION OF TAXABLE INCOME DERIVED FROM PASTORAL, AGRICULTURAL OR OTHER FARMING OPERATIONS

(Section *twenty-six* of this Act)

1. In this Schedule—

(*a*) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of section 66 (13A) of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and

(*b*) a reference to the end of a year of assessment includes, where the period assessed ends on a date other than the last day of the year of assessment, a reference to the end of that period.

2. Every farmer shall include in his return rendered for income tax purposes the value of all livestock or produce held and not disposed of by him at the beginning and at the end of each year of assessment.

3. (1) Subject to the provisions of sub-paragraphs (2) and (3), the value of livestock or produce held and not disposed of at the end of the year of assessment shall be included in income for such year of assessment, and there shall be allowed as a deduction from such income the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.

(2) For the purposes of subparagraph (1), the value of livestock or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year and for all subsequent years of assessment so long as such livestock or produce, or any portion thereof, is so held and not disposed of.

(3) Any livestock which is the subject of any "sheep lease" or similar agreement concerning livestock, and any produce which is the subject of a similar agreement, shall be deemed to be held and not disposed of by the grantor of such lease or agreement.

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.

7. The exercise of an option under subparagraph (1) (*b*) (ii), (1) (*c*) (ii) or (1) (*d*) (ii) of paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer whether under this Act or any previous Income Tax Act may be varied by him in respect of any subsequent year of assessment.

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.

9. The value to be placed upon produce included in any return shall be a fair and reasonable value.

10. . . . . . .

11. If during any year of assessment livestock or produce—

(*a*) has been applied by the farmer for his private or domestic use or consumption;

(*b*) has, for purposes other than that of the production to the farmer of income from sources within the Republic, been removed by him from the Republic; or

(*c*) (i) has been donated by the farmer;

(ii) has been disposed of by the farmer, other than in the ordinary course of his farming operations, for a consideration less than the market value thereof;

(iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* to a holder of a share in such company; or

(iv) has been applied by the farmer for any other purpose other than the disposal thereof in the ordinary course of his farming operations and under circumstances other than those contemplated in subparagraph (*a*) or (*b*) or item (i), (ii) or (iii) of this subparagraph,

there shall be included in the income of such farmer for that year of assessment—

(A) where such livestock or produce has been applied in a manner contemplated in subparagraph (*a*), an amount equal to the cost price to him of such livestock or produce, or where the cost price cannot be readily determined, the market value of such livestock or produce; or

(B) where such livestock or produce has been applied, disposed of or distributed in a manner contemplated in subparagraph (*b*) or (*c*), an amount equal to the market value of such livestock or produce:

Provided that where—

(*a*) any livestock or produce so applied, is used or consumed by the farmer in the ordinary course of his farming operations, the amount included in his income under this paragraph shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such livestock or produce; or

(*b*) the provisions of subparagraph (*c*) (ii) are applicable and an amount of consideration as contemplated in such subparagraph has been received by or accrued to the farmer, the amount included in his income in terms of this paragraph shall be reduced by such consideration.

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.

13. (1) If—

(*a*) any farmer—

(i) has in any year of assessment sold livestock on account of drought, stock disease or damage to grazing by fire or plague; and

(ii) has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold; or

(*b*) any farmer—

(i) has in any year of assessment (other than a year of assessment in respect of which the normal tax chargeable in the case of such farmer is required to be determined under paragraph 19) sold livestock by reason of his participation in a livestock reduction scheme organised by the Government; and

(ii) has within nine years after the close of the said year of assessment purchased livestock to replace the livestock so sold,

the cost of the livestock so purchased shall, notwithstanding anything in this Schedule contained, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years after the close of that year of assessment in the case of a farmer referred to in item (*a*), or within ten years after the close of that year of assessment in the case of a farmer referred to in item (*b*).

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases were made.

(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall for the year of assessment in which he or she sold livestock on account of conditions of drought or stock disease or by reason of his or her participation in a livestock reduction scheme organised by the Government notify the Commissioner accordingly in such form and within such time as may be prescribed and obtain and retain full particulars in regard to the livestock so sold.

(4) . . . . . .

(5) The provisions of this paragraph shall not apply to the cost of any livestock purchased to replace livestock sold if the proceeds derived from the sale of such last-mentioned livestock have been dealt with under the provisions of paragraph 13A.

13A. (1) If any farmer has on or after 1 March 1982 disposed of any livestock on account of drought, and the whole or any portion of the proceeds of such disposal has as soon as possible, but in any case within three months after the receipt thereof by the farmer, been deposited by him in an account in his name with the Land and Agricultural Bank of South Africa, so much of such proceeds as has been so deposited by him shall, notwithstanding the provisions of section 23 (*e*) of this Act but subject to the provisions of subparagraph (3), be deemed not to be gross income derived by such farmer.

(2) Every farmer who desires that the proceeds derived by him or her from the disposal of livestock be dealt with under the provisions of this paragraph shall notify the Commissioner in such form and within such time as may be prescribed by the Commissioner.

(3) Any amount, being the whole or any portion of a sum deposited in an account following the disposal of livestock as contemplated in subparagraph (1), shall—

(*a*) if it is withdrawn from such account before the expiration of a period of six months after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such disposal; or

(*a*A) if it is withdrawn from such account after the expiration of a period of six months but before the expiration of a period of six years after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such withdrawal; or

(*b*) in the event of the taxpayer's death or insolvency before the expiration of the said period, be deemed to be gross income so derived on the day before the date of his death or insolvency, as the case may be; or

(*c*) if it is not so withdrawn and the taxpayer does not die or become insolvent before the expiration of such period, be deemed to be gross income so derived on the last day of such period.

(4) . . . . . .

14. (1) Any amount received by or accrued to a farmer in respect of the disposal of any plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) Where any plantation is disposed of by a farmer with the land on which it is growing the amount to be included in such farmer's gross income in terms of sub-paragraph (1) shall—

(*a*) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed to; or

(*b*) failing such agreement, be such portion of the consideration payable in respect of the disposal of the land and the plantation as represents the consideration payable for the plantation.

15. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction—

(*a*) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of plantations;

(*b*) any expenditure incurred by such farmer prior to the first day of July, 1948, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1948: Provided that—

(i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in that year from the said plantation;

(ii) the aggregate of the deduction allowed in terms of this item or the corresponding provisions of the Income Tax Act, 1941, or by virtue of any other provisions of the last-mentioned Act or the Income Tax Act, 1925 (Act No. 40 of 1925), in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of subparagraph (2) of paragraph 14 shall apply *mutatis mutandis* in the case of any plantation acquired by any farmer with the land on which it is growing.

(3) If in any year of assessment the income of any farmer other than a company includes income derived from the disposal of plantations or forest produce and the taxable income derived by him in that year from the disposal of plantations and forest produce (determined as though the income derived by him from that source were his only income) exceeds the annual average taxable income derived by him from that source (as so determined) over the three years of assessment immediately preceding the said year of assessment, the normal tax chargeable in the case of such farmer for the said year of assessment shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section: Provided that—

(i) the provisions of this subparagraph shall not apply unless the disposal of plantations or forest produce forms part of the normal farming operations of the farmer concerned;

(ii) for the purposes of this subparagraph, where the farmer has in respect of any of the aforesaid years of assessment derived any excess plantation farming profits determined under paragraph 20 (3) (*g*) such excess plantation farming profits shall—

(*aa*) where such excess plantation farming profits have been derived during the first-mentioned year of assessment, be excluded from the farmer's taxable income derived in that year from the disposal of plantations and forest produce;

(*bb*) where such excess plantation farming profits have been derived during any of the aforesaid three years of assessment, not be taken into account in the determination of the aforesaid average taxable income derived by the farmer over those years;

(iii) the Commissioner's determination as to what portion of a farmer's taxable income is derived from the disposal of plantations and forest produce shall be final;

(iv) nothing in this paragraph contained shall be construed as relieving any farmer from liability for taxation under this Act upon any portion of his taxable income;

(v) the provisions of this subparagraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the first-mentioned year of assessment is required to be determined under the provisions of paragraph 19.

16. For the purposes of paragraphs 14, 15 and 20—

"plantation" means any artificially established tree as ordinarily understood (not being a tree of the nature described in paragraph 12 (1) (*g*)) or any forest of such trees and includes any natural extension of such trees;

"forest produce" means trees (other than trees of the nature described in paragraph 12 (1) (*g*)) and anything derived from such trees, including timber, wood, bark, leaves, seeds, gum, resin and sap.

17. Where the sugar cane fields of any farmer other than a company have been damaged by fire and the taxable income of such farmer for any year of assessment includes taxable income derived from the disposal of sugar cane as a result of such fire which but for such fire would not have been derived by him in such year, the normal tax chargeable in the case of such farmer in respect of such year shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (10) of that section, but nothing in this paragraph contained shall be construed as relieving such farmer from liability for taxation under this Act upon any portion of his taxable income: Provided that the provisions of this paragraph shall not apply if the normal tax chargeable in the case of such farmer in respect of the said year of assessment is required to be determined under the provisions of paragraph 19.

18. . . . . . .

19. (1) If any taxpayer has made an election as provided in subparagraph (5) which is binding upon him in respect of any period of assessment (hereinafter referred to as the relevant period) during which he or his spouse has carried on farming operations or has derived income from farming operations, and his taxable income derived during the relevant period from farming exceeds his average taxable income from farming as determined in relation to the relevant period in accordance with subparagraph (2), the normal tax chargeable in respect of his taxable income for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with section 5 (10).

(2) For the purposes of subparagraph (1) the taxpayer's average taxable income from farming in relation to the relevant period shall be deemed to be—

(*a*) where the taxpayer or his spouse carried on farming operations before the commencement of the relevant period, such amount as represents the taxpayer's annual average taxable income (if any) from farming in respect of the periods of assessment—

(*aa*) for which the taxpayer was assessable under this Act and which fall within the period of five years ending on the last day of the relevant period; and

(*bb*) during which such farming operations were carried on or farming income was derived by the taxpayer:

Provided that any excess farming profits derived by the taxpayer in any of the said periods of assessment shall not be taken into account in the determination of such annual average taxable income: Provided further that in the case of the estate of an insolvent person any farming operations carried on by such person prior to insolvency, any income derived by him from such operations and any deductions allowable against such income under this Act shall, so far as such estate is concerned, be deemed for the purposes of this item to be respectively operations, income or deductions of such estate, and the annual average taxable income derived by such estate from farming shall be determined accordingly; or

(*b*) where the taxpayer is a person referred to in subparagraph (5) (*a*) and did not carry on farming operations before the commencement of the relevant period, an amount equal to two-thirds of such taxable income.

(3) Where the taxpayer's assessment for a relevant period has in terms of section 100 of the Tax Administration Act, become final and conclusive, the Commissioner shall not, merely by reason of the fact that the amount determined under subparagraph (2) (*a*), as the taxpayer's annual average taxable income from farming in relation to such period is incorrect, be required to make a further assessment upon the taxpayer for such period in terms of section 99 of that Act or to authorize a refund under section 190 of that Act of any tax overpaid in respect of such period, unless it appears that such annual average taxable income from farming should be increased or reduced by at least six hundred rand.

(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 of this Act, and nothing in this paragraph contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.

(5) Any person—

(*a*) who is a natural person and whose taxable income for any period of assessment consists of or includes taxable income derived from farming operations carried on by him for his own benefit or by his spouse for such spouse's own benefit; or

(*b*) who is the executor of the estate of any deceased person or the trustee of the insolvent estate of a natural person and who in his capacity as such has during the period of assessment commencing immediately after the death or insolvency of the said person continued farming operations commenced by such deceased or insolvent person prior to his death or insolvency,

may, within three months after the end of such period of assessment or within such further time as the Commissioner may approve and in such form as the Commissioner may prescribe, elect that the normal tax chargeable in respect of his taxable income if item (*a*) is applicable or the taxable income of such estate if item (*b*) is applicable, be determined as provided in subparagraph (1), and such election shall be binding upon such natural person or estate, as the case may be, in respect of the said period of assessment and every succeeding period of assessment: Provided that—

(i) no election may be made under this subparagraph by any person in respect of any period of assessment referred to in item (*a*) if during such period such person was married and such person's income for such period is in terms of section 7 (2) of this Act deemed to be income accrued to such person's spouse;

(ii) where an election has been made by such person in respect of any period of assessment referred to in item (*a*) and such person's income for any succeeding period of assessment is in terms of section 7 (2) of this Act deemed to be income accrued to such person's spouse, such election shall, with effect from such succeeding period, cease to have any force or effect.

(6) . . . . . .

20. (1) If a taxpayer (other than a company) who derives income from farming operations makes an election as provided in subparagraph (6) and if—

(*a*) the taxpayer's income was in whole or in part derived from farming operations carried on on any land acquired—

(i) by the State (including the Railways Administration and any provincial administration) or any local authority as defined in section 1 of the Expropriation Act, 1975 (Act No. 63 of 1975); or

(ii) by any juristic person or body mentioned in section 3 (2) of the said Act, if such juristic person or body acquired the land by expropriation or, where the owner of the land agreed to dispose of it, the Minister referred to in subparagraph (6) (*b*) (ii) has given a certificate as contemplated therein;

(*b*) in consequence of the acquisition of such land as aforesaid the farming undertaking on such land (hereinafter referred to as the undertaking) has been or is being wound up; and

(*c*) the taxpayer's income for any year of assessment (being the year of assessment during which the said land was acquired as aforesaid or the first or the second year of assessment succeeding the first-mentioned year of assessment) includes any abnormal farming receipts or accruals referred to in subparagraph (2) which relate to the aforesaid farming operations,

the normal tax chargeable (as determined before the deduction of any rebate) in respect of the taxpayer's taxable income for such year of assessment shall, notwithstanding any other provisions of this Act to the contrary, be determined at an amount equal to the sum of—

(i) an amount equal to the taxpayer's excess farming profits for the year of assessment (as determined in accordance with subparagraph (3) (*a*)) multiplied by the relevant rate of tax fixed for the year of assessment in terms of section 5 (2) in respect of the first rand of taxable income; and

(ii) an amount equal to the amount of normal tax (as determined before the deduction of any rebate) which would have been payable by the taxpayer in respect of the year of assessment if his or her taxable income for that year had been an amount equal to the balance of his or her taxable income for that year (as determined in accordance with, subparagraph (4)).

(1A) Where the land referred to in subparagraph (1) was acquired as contemplated in item (*a*) of that subparagraph within the period of twelve months after the owner accepted an offer to purchase the land, it shall be deemed for purposes of that subparagraph that such land was acquired on the date on which the offer was accepted.

(2) For the purposes of subparagraph (1) (*c*), the taxpayer's abnormal farming receipts or accruals for any year of assessment referred to in subparagraph (1) (*c*) shall be deemed to be such amounts as consist of—

(*a*) any amounts derived from disposals, in the course of the winding-up of the undertaking, of livestock normally held for the purposes of the undertaking; or

(*b*) any amounts derived from the disposal of any plantation together with the land referred to in subparagraph (1) (*a*) or from the disposal in the course of the winding-up of the undertaking of any plantation on such land or any forest produce from such plantation.

(3) (*a*) For the purposes of this paragraph the taxpayer's excess farming profits for any year of assessment referred to in subparagraph (1) (*c*) shall be deemed to be the sum of the taxpayer's excess livestock profits (if any) for such year, as determined under item (*b*), and the taxpayer's excess plantation farming profits (if any) for such year, as determined under item (*g*): Provided that the amount of such excess farming profits shall not be determined at an amount exceeding the amount of the taxpayer's taxable income for such year.

(*b*) The taxpayer's excess livestock profits for such year shall be so much of the sum of the amounts referred to in subparagraph (2) (*a*) which have been derived by the taxpayer during such year as does not exceed the taxpayer's abnormal livestock profits for such year, as determined under item (*c*).

(*c*) The taxpayer's abnormal livestock profits for such year shall be the amount by which his livestock profits for such year, as determined under item (*d*) or (*f*), exceed his average livestock profits (as determined under item (*e*) or (*f*)) for the years of assessment (but not exceeding five years of assessment) which immediately precede the said year and during which the undertaking was carried on.

(*d*) For the purposes of this subparagraph, the taxpayer's livestock profits for any year of assessment shall be the amount by which the sum of the amounts included in his income from farming for such year in respect of disposals of livestock during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the end of such year exceeds the sum of the amounts allowed to be deducted from such income in respect of livestock acquired by him during such year and the value (as determined under this Schedule) of the livestock held and not disposed of by him at the beginning of such year, and the taxpayer's livestock loss for such year shall be determined accordingly.

(*e*) The taxpayer's average livestock profits for the years of assessment referred to in item (*c*) shall be the sum of his livestock profits for the said years, as determined under item (*d*) (reduced by any livestock loss as determined under that item in respect of any such years), divided by the number of such years of assessment.

(*f*) If by reason of disposals of livestock otherwise than in the ordinary course of farming or because of any unusual circumstances the taxpayer's livestock profits or loss for any year of assessment cannot be determined in a satisfactory manner under item (*d*) or the taxpayer's average livestock profits for the years of assessment referred to in item (*c*) cannot be determined in a satisfactory manner under item (*e*), such livestock profits or loss or such average livestock profits shall be determined by the Commissioner on application by the taxpayer.

(*g*) The taxpayer's excess plantation farming profits for any year of assessment referred to in item (*a*) shall be so much of the sum of the amounts referred to in subparagraph (2) (*b*) which have been derived by the taxpayer during such year, as does not exceed the amount by which the taxpayer's taxable income (as determined under subparagraph (3) of paragraph 15 before applying paragraph (ii) of the proviso to the said subparagraph) derived during such year from the disposal of plantations and forest produce exceeds the annual average taxable income (as determined under paragraph 15 (3)) derived by him from that source over the three years of assessment immediately preceding the said year of assessment.

(4) For the purposes of this paragraph, the balance of the taxpayer's taxable income for a year of assessment referred to in subparagraph (1) (*c*) shall be deemed to be the amount remaining after deducting the taxpayer's excess farming profits for that year (as determined under subparagraph (3) (*a*)) from the full amount of the taxpayer's taxable income for such year, as determined under this Act.

(5) . . . . . .

(6) (*a*) Any taxpayer (other than a company) may elect for the normal tax payable by the taxpayer to be determined under this paragraph.

(*b*) For purposes of such election the following records must be obtained and retained:

(i) a certificate by the head of the department of State or the administration concerned in the acquisition by the State or such administration of the land referred to in item (*a*) of subparagraph (1), or where such land was acquired by a local authority, juristic person or body referred to in the said item, by the chief executive officer of such local authority, juristic person or body, to the effect that the State or such administration, local authority, juristic person or body, as the case may be, has acquired such land; and

(ii) where such land was acquired by such juristic person or body, a certificate by a Minister referred to in section 3 (1) of the Expropriation Act, 1975, to the effect that the land was acquired by such juristic person or body by expropriation or, where the owner of the land agreed to dispose of it, to the effect that, if the owner had not so agreed, steps would have been taken for the expropriation of the land.

Standard classification and standard values of livestock

Deaths during the year	Standard classification		Standard values (Rand)	Own value (Rand)	Number on hand	Total values (Rand)
	Cattle:	Bulls	50			
		Oxen	40			
	-	Cows	40			
	-	Tollies and heifers 2 - 3 years	30			
	-	Tollies and heifers 1 - 2 years	14			
		Calves	4			
	Sheep:	Wethers	6			
		Rams	6			
		Ewes	6			
		Weaned lambs	2			
	Goats:	Fully grown	4			
		Weaned kids	2			
	Horses:	Stallions over 4 years	40			
		Mares over 4 years	30			
		Geldings over 3 years	30			
		Colts and fillies: 3 years	10			
		Colts and fillies: 2 years	8			
		Colts and fillies: 1 years	6			
		Foals: 1 year	2			
	Donkeys:	Jacks over 3 years	4			
		Jacks under 3 years	2			

Deaths during the year	Standard classification		Standard values (Rand)	Own value (Rand)	Number on hand	Total values (Rand)
		Jennies over 3 years	4			
		Jennies under 3 years	2			
	Mules:	4 years and older	30			
		3 years	20			
		2 years	14			
		1 year	6			
	Ostriches:	Fully grown	6			
	Pigs:	Over 6 months	12			
		Under 6 months	6			
	Poultry:	Over 9 months	1			
	Chinchillas:	All ages	1			