
SOUTH AFRICAN REVENUE SERVICE

**DRAFT GUIDE
ON THE TAXATION OF
PROFESSIONAL SPORTS
CLUBS AND PLAYERS**

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



Draft Guide on the Taxation of Professional Sports Clubs and Players

Preface

This guide is a general guide regarding the taxation of professional sports clubs and sports players in South Africa. It also refers briefly to the position of visiting professional sports players.

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.

The main focus of this guide is the taxation of *professional* sports players and clubs and *not amateur* players and clubs. Additionally, the guide focuses on South African resident players and clubs, and not on foreign athletes, but the position of visiting foreign professional players is touched upon.

All guides, interpretation notes and binding general rulings referred to in this guide are available on the SARS website at www.sars.gov.za.

Should you require additional information in this regard you may –

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

Comments on this guide may be sent to policycomments@sars.gov.za.

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Glossary

In this guide, unless the context indicates otherwise —

- “**SDL**” means the skills development levies imposed under the Skills Development Levies Act 9 of 1999;
- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**South Africa**” and “**the Republic**” are used interchangeably;
- “**sports player**”, “**athlete**”, “**sportsperson**” or “**player**” (used interchangeably) is any person who participates in a sport as a professional;
- “**taxpayer**” and “**person**” are used interchangeably;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**UIF**” means the unemployment insurance fund contributions imposed under the Unemployment Insurance Contributions Act 4 of 2002;
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991;
- “**VAT**” means value-added tax; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Introduction

The professional sports industry is one of the fastest growing industries internationally. The main aim of this guide is to explain the South African tax consequences for professional sports clubs and sports players in South Africa.

2. General principles

A growing number of sports players now earn their livelihood from a diverse range of income sources, sometimes from a number of different countries. Consequently, depending on the nature of the income derived by them, different tax rules will apply. The tax treatment will also depend on whether players are employed by clubs or are considered to be independent contractors.

Clubs may also earn income from various sources, for example, ticket sales and the sale of advertising rights. As these clubs employ players and other staff, they must comply with the general employees’ tax obligations for employers as provided for in the Act. Should the clubs be required to account for employees’ tax in relation to their staff and players, they will in all likelihood also be liable to account for SDL and UIF. They will in most instances be liable to register as VAT vendors. They therefore incur a range of tax obligations that will be considered in this guide.

Certain key tax concepts are clarified below in order to contribute to a better understanding of the discussion that follows relating to the obligations and entitlements of both players and clubs.

- **Income tax** – Normal tax (also known as income tax) is imposed on any taxable income (see **3**) derived by a “person” - which would include individuals, companies,

close corporations, voluntary associations governed by constitutions, trusts, estates of deceased persons or insolvent estates.

- **Gross income** – In calculating a person's taxable income, the person's gross income must first be determined. The definition of "gross income" in section 1(1) includes all amounts, in cash or otherwise, received by, or which have accrued to, any resident - irrespective of where the amounts were earned. In the case of non-residents, the amounts received by or accrued to them will only be "gross income", and accordingly subject to income tax, if the amounts are from a source within South Africa. Receipts and accruals of a capital nature are generally excluded from a taxpayer's gross income, but may be subject to capital gains tax (CGT). Certain receipts or accruals of a capital nature are, however, specifically included in a taxpayer's gross income by the inclusions listed in paragraphs (a) to (n) of the definition of "gross income". Given that the definition of "gross income" includes receipts and accruals in kind, the market value of exchanged or bartered assets or services (including the value of the use of an asset) must also be included in a taxpayer's gross income, provided that what is received or accrued has an ascertainable monetary value.
- **General deduction formula** – The so-called general deduction formula, contained in section 11(a), read with section 23(g), contains the general principles with which an expense must comply in order to be deductible from income, so as to arrive at a taxpayer's taxable income. Other provisions allow for special deductions, often contrary to these general principles. Thus, certain capital allowances, such as wear and tear on assets, are permissible under specific provisions. However, if no special deduction applies for a particular expense, the expense in question must comply with the general deduction formula before it will be deductible. The general deduction formula provides that for expenditure or losses to be deductible, it must –
 - be actually incurred during the year of assessment;
 - in the production of income;
 - not be of a capital nature; and
 - be laid out or expended for the purposes of the taxpayer's trade.
- **"Trade"** is defined in section 1(1) as including –
 - a) every profession, trade, business, employment, calling, occupation or venture;
 - b) the letting of property; and
 - c) the use of or the grant of permission to use any patent, design, trade mark, copyright or any other property which is of a similar nature.

The definition is very wide and involves an active step. The question as to whether any specific activity can be regarded as the carrying on of a trade is a question of law that depends on the facts and circumstances of the specific case.

- **Allowances and taxable benefits** – The term "allowance" is usually used in the context of an employment relationship and means the grant of an amount additional to ordinary salary. Allowances are generally paid to employees to meet expenditure incurred on behalf of their employers. The portion of the allowance not expended for business purposes must be included in an employee's taxable income. The most common types of allowances are travel, subsistence and cellular phone allowances. Taxable benefits (also referred to as fringe benefits) are payments made to

employees usually in a form other than money. An example of a fringe benefit is the use of a company car.

- **“CGT”** is an abbreviation for the term capital gains tax. CGT is not a separate tax, but is part of normal (income) tax and is payable on the taxable portion of a capital gain. CGT is a tax levied on capital gains arising from the disposal of assets under the Eighth Schedule. A capital gain arises when the proceeds from the disposal of an asset exceed the base cost of that asset. South African resident taxpayers are subject to CGT on the disposal of their assets on a world-wide basis. Non-residents are subject to South African CGT only on the disposal of (a) immovable property situated in South Africa, or any interest or right of whatever nature of that non-resident to or in immovable property situated in South Africa, and (b), any asset which is attributable to a permanent establishment (PE) of that non-resident in South Africa.
- **“Employees’ tax”** is defined in paragraph 1 of the Fourth Schedule as the tax that is required to be deducted or withheld by an employer under paragraph 2 from any “remuneration” (see below) paid or payable to an “employee” (see below). Employees’ tax is generally required to be deducted and withheld on a monthly basis. The mechanism by which employees’ tax is deducted and withheld is referred to as Pay-As-You-Earn (PAYE).
- **“Remuneration”** is defined in paragraph 1 of the Fourth Schedule. It includes, amongst others, any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension or the cash equivalent of the value of any taxable benefit paid or granted by an employer to an employee, whether or not for services rendered. Importantly, specifically excluded from the definition of “remuneration” is any amount paid for services rendered by a person in the course of a trade carried on by that person independently of the person to whom the services are rendered – colloquially referred to as an **“independent contractor”** (see below).
- An **“employee”** is defined in paragraph 1 of the Fourth Schedule and means, amongst other things, any person who receives remuneration (see above) or to whom remuneration accrues. Also deemed to be an employee is any labour broker (essentially any natural person who provides a client with other persons to render services or perform work for such client) and any person who receives any remuneration from a labour broker for services rendered to or on behalf of the labour broker. A person who is regarded as a personal service provider is also regarded as an employee for employees’ tax purposes. A personal service provider is essentially any company or trust in which any connected person in relation to that company or trust renders services to clients of the company or trust and certain other requirements are met.¹
- An **“independent contractor”**, while not a defined term, is usually used to refer to a person who would otherwise be regarded as an employee (see above) but for the fact that the person provides his or her services independently from the person who pays that person for services rendered - under terms usually specified in a contract. Unlike an employee, an independent contractor does not work regularly under the control and supervision of an employer, but works as and when required and retains control over schedules, number of hours worked, work accepted and the manner of performance of that work. The person who has engaged the services of an independent contractor normally does not have to withhold and pay over employees’ tax to SARS. A person is regarded as an independent contractor if that person

¹ Definition of “personal service provider” in paragraph 1 of the Fourth Schedule.

employs three or more employees (other than connected persons) who are on a full time basis engaged in the business of that person, and who are employed throughout the year of assessment.

For more information on independent contractors, see Interpretation Note 17 (Issue 3) dated 31 March 2010 “Employees’ Tax: Independent Contractors”.

- “**Provisional tax**” is paid under Part III of the Fourth Schedule by taxpayers earning taxable income other than remuneration (see above), for example, income from a business or profession. Taxpayers who are required to pay provisional tax (a provisional taxpayer) must estimate their taxable income and make a provisional tax payment on this estimated taxable income twice a year. The provisional tax paid by a provisional taxpayer is credited against the taxpayer’s income tax liability as finally determined.
- “**VAT**” is an abbreviation for value-added tax, which is an indirect tax levied on the taxable supply of goods or services in South Africa. VAT is also levied on the importation of goods into South Africa, and in some instances, on imported services.² Persons who make taxable supplies in excess of R1 million in any 12-month period are required to register as a vendor for VAT purposes,³ but a person may also choose to register voluntarily as a vendor provided the total value of taxable supplies made by that person has exceeded R50 000⁴ in the past 12-month period. There are also some exceptions in which this minimum threshold is not applicable. A person who is registered or liable to register for VAT purposes is referred to as a “**vendor**”.

Currently, the standard rate of 14% applies on most supplies made by vendors and on importations of goods or services, but there is a limited range of goods and services which are either exempt, or which are subject to tax at the zero rate (0%). For example, exports are taxed at the zero rate (0%). Taxable supplies include supplies on which VAT is charged at either the standard rate or the zero rate.

The mechanics of the VAT system are based on a subtractive or credit-input method which allows a vendor to deduct the VAT incurred on qualifying enterprise inputs (input tax) from the VAT collected on the taxable supplies made by the enterprise (output tax). The vendor files a return after each tax period (usually every month or every two months), and the net VAT, being the difference between the output tax and input tax, is paid to SARS. Alternatively, the difference is refunded to the vendor when the sum of the vendor’s input tax deductions exceed the vendor’s output tax liability in the tax period concerned.

For more details regarding the general application of the VAT law on associations not for gain and recreational clubs, see the *Tax Guide for Recreational Clubs* (Issue 2) and the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

² The term “imported services” is defined [section 1(1) of the VAT Act] as services supplied by a person who is not a resident of South Africa to a resident of South Africa to the extent that such services are used or consumed in South Africa other than for the purpose of making taxable supplies.

³ Compulsory registration is dealt with in section 23(1) of the VAT Act.

⁴ Voluntary registration may also be allowed at the discretion of SARS when the person has not exceeded the minimum threshold of R50 000, or in certain cases when taxable supplies will only be made after a period of 12 months. The registration in these special cases is subject to certain conditions and is governed by Regulation [see section 23(3)(b) and (d) of the VAT Act]. In addition, the minimum taxable supply threshold is R60 000 in the case of persons who supply “commercial accommodation” and not R50 000.

3. Taxation of professional sports clubs and persons

All persons, whether South African residents or non-residents, who ply their trade in South Africa will generally be liable to pay tax in South Africa on income derived from that trade. As professional sports clubs and sportspersons are actively engaged in carrying on trade in the pursuit of income, the income received by them will generally be of a revenue nature and therefore “gross income” that is subject to income tax. Additionally, as most of the amounts a professional sports club or sportsperson receives will be received for services rendered, these amounts will also constitute gross income under paragraph (c) of the definition of “gross income”,⁵ even if such amounts could be considered to be of a capital nature.

A taxpayer’s taxable income is determined as follows:

- The first step is to determine the taxpayer’s gross income (see **2**).
- The next step is to determine if any of this income is exempt from tax and if it is, that amount is deducted from the taxpayer’s gross income in order to arrive at “income”.
- From income is deducted the aggregate of all amounts allowed as general or specific deductions, for example general running expenses under the general deduction formula (see **2**) and donations made to certain public benefit organisations (section 18A), thereby arriving at the taxpayer’s taxable income.
- Taxable capital gains are then included (at the taxpayer’s inclusion rate) as part of the taxpayer’s taxable income, as well as the unexpended portion of any allowance paid to the taxpayer. The income tax due is calculated on the taxable income at the relevant statutory rates of tax.
- A natural person will also be entitled to deduct primary, secondary or tertiary rebates (depending on the taxpayer’s age and other personal circumstances), a medical scheme fees tax credit or additional medical expenses tax credit if certain requirements are met, and possibly taxes paid on income earned in foreign jurisdictions.

Professional sports clubs and sportspersons deal with many varied receipts and expenses on a daily basis. These receipts and expenses are generally taken into account in determining their taxable income during a year of assessment and it is therefore important for them to know how to deal with each item. Thus, consideration will be given below to specific issues relevant to professional sports clubs and sportspersons.

Although clubs and players are as far as possible dealt with separately in this guide, there are instances in which, for the sake of completeness, both players and clubs are dealt with together to clarify a particular point.

4. Taxation of receipts and accruals of professional sports clubs

Professional sports clubs generate income through a variety of sources. Many clubs have an associate system under which affiliated supporters pay an associate fee. These fees, as well as attendance receipts, sponsoring contracts, team merchandising, TV rights and player transfer fees, are usually the primary sources of sports clubs’ income. Some receipts, accruals and expenses relevant to sports clubs are discussed below.

⁵ Section 1(1).

4.1 Transfer fees

4.1.1 Introduction

In professional sport, players are often transferred from one club to another. These transfers could be local (within South Africa) or across international borders.

For example, under rules established by the *Fédération Internationale de Football Association* (FIFA), players who are contracted to a club can have their contract “sold” to another club through a process known as the transfer system. This system requires the club that is “buying” a player to pay compensation to the club “selling” its player. This compensation is referred to as a transfer fee.

Simply put, a transfer fee is an amount paid by one club to another club that is contractually entitled to a player’s performance to acquire the services of that player. Usually the player is also given a percentage of the transfer fee, but this is negotiated between the player and the club surrendering the services of such player. It thus follows that what is being sold is not the player *per se*, but the services of that player, or more precisely, the right of the “selling” club to the player’s services is abandoned in favour of the “acquiring” club, paving the way for the “acquiring” club to enter into a new contract with that player.

4.1.2 Income tax implications

Typically, especially if the player is an employee, the right to demand performance from a player does not constitute trading stock of the club and the value of the contract between the club and the player is not brought into account as opening and closing stock as provided for in section 22. Under ordinary circumstances, it is unlikely that clubs could be said to be actively trading in players’ contracts and the transfer fee will accordingly generally not be revenue in nature, but rather capital. The frequency of the transfers are typically limited and the intention of the clubs would not be to trade players at a profit, but to acquire the services of players with the potential to enhance their club’s performance thereby making financial gains and ensuring lasting benefits for the club. Therefore, in most circumstances the contract that a club has with a player will be an “asset” as defined for CGT purposes.

An “asset” is defined in paragraph 1 of the Eighth Schedule to mean property of any kind, including assets that are intangible. As the definition of “asset” includes property of an intangible or incorporeal nature, the contractual right that the club holds to demand performance from a player would qualify as an “asset” of the club for CGT purposes.

In the case of something being classified as a capital asset for tax purposes, gains or losses on its sale or disposal are regarded as capital gains or capital losses which in most instances would be subject to CGT. When the selling club disposes of the right that the club holds to demand performance from the contracted player (an asset) at a higher price (proceeds) than what it paid to acquire it (base cost), a capital gain arises. The sale or disposal of the right to demand performance will result in a capital loss when the club disposes of that right (asset) at a lower price (proceeds) than what it paid for it (base cost). While certain specified expenditure items may be included in the base cost of an asset, remuneration costs may, however, not be brought into account in determining the base cost of the asset consisting of the club’s contractual right to the player’s performance because the expense cannot be said to have been incurred in acquiring or creating the asset. In addition, any expenditure incurred in relation to an asset that would normally constitute part of the base cost of that asset is specifically excluded from the asset’s base cost if it is, or was, allowed as a deduction for income tax purposes. If the asset consisting of the selling club’s contractual right to the player’s performance has not been acquired from another club, the

base cost of that asset will be zero and any transfer fee received by or accrued to the selling club will be subject to CGT in full.

By contrast, if the club paid a transfer fee to the player's previous club in order to obtain the services of the player who is now being transferred, the transfer fee paid to the player's previous club would be regarded as expenditure incurred in relation to the contractual rights held by the present club and would accordingly constitute deductible base cost in the existing contractual rights.

Example 1 – Transfer fees and CGT

Facts:

During the annual transfer window-period, Club Striker "buys" Player Y from Club Goalie for R300 000. After a few years Club Striker enters into negotiations with Club Defender regarding the "sale" of Player Y, resulting in Player Y joining Club Defender for a transfer fee of R500 000.

Result:

CGT will be payable on the capital gain of R200 000 (R500 000 – R300 000) made by Club Striker on the "sale" of Player Y.

In the unlikely event that it is found that a club actively trades in the acquisition and disposal of such transfer rights for speculative purposes, the proceeds received by that club upon the disposal of its rights will be of a revenue nature and subject to income tax and not CGT.

For the acquiring club, the transfer fee incurred in acquiring the right to contract with the player will typically also be an expense of a capital nature, since what it is really doing is paying for the opportunity to enter into a contract with the relevant player so as to expand its income-producing capacity. The expense will accordingly be of a capital nature and no deduction of the transfer fees will be allowed to the club. However, as mentioned above, this expenditure can be said to be expenditure incurred in acquiring the new contractual rights relating to the performance of the player and would therefore constitute the base cost of that new asset.

Situations also arise which may involve a complicated series of transactions between two contracting clubs. For example, Club A may decide to "sell" Player X to Club B for a cash transfer fee of R600 000 plus Player Y from Club B (in essence an in kind transfer fee). In other words, a swop or trade is made for Player X and Player Y. Club A must then place an arm's length value in monetary terms on Player Y, failing which such value will be determined by SARS. Such value would form part of the transfer fee (together with the cash transfer fee of R600 000) derived by Club A from the "sale" of Player X (essentially the surrender of its contractual rights to Player X's services).

Club B in turn will have incurred the cash transfer fee of R600 000 plus the in kind transfer fee (being the market value of Player Y's services) in acquiring the services of Player X. That expenditure will constitute the base cost of the Player X's contractual rights acquired from Club A. However, Club B will also have disposed of Player Y to Club A for a transfer fee equal to the market value of Player Y's services and would need to account for CGT on the value received by Club B for the disposal of Player Y.

4.1.3 VAT implications

The surrender by the selling club of the club's contractual right to the player's performance in favour of another club is the supply of a service in the course or furtherance of the enterprise carried on by the selling club. The transfer fee paid in exchange for the club releasing the player from the contract constitutes consideration received by the selling club for a taxable supply made by that club, if a vendor, at the standard rate. These services, when supplied to a foreign club which is not a resident of South Africa and not a vendor, may be subject to VAT at the zero rate provided certain requirements are met.⁶ In either case, the selling club is required to issue a valid tax invoice to the acquiring club.

See also to 5.2.

4.2 Signing-on fees

4.2.1 Introduction

Signing-on fees are paid when a player becomes a contract player for a club. These fees are, in most cases, an enticement and are used by clubs to encourage a player to join one club instead of another. Although the fee is in most instances agreed on before entering into the contract, it is usually paid only after the contract of employment is concluded. In terms of standard employment contracts used by most clubs, the player is under no obligation to repay this fee to the club should such player decide to cancel the contract before the agreed termination date. The contract may of course provide that the player is obliged to repay the signing-on fee should the player terminate employment before the specified termination date.

4.2.2 Income tax implications

The signing-on fee is not a restraint of trade payment as judicially considered⁷ and accordingly does not fall to be dealt with as such under the provisions of the Act that specifically deal with restraint of trade payments.⁸ A mere prohibition against competition is not a restraint of trade. In any event, an obligation to keep secret and confidential an employer's trade-sensitive information whilst in employ is not a restraint of trade since it is already implied by the contract of employment under our common law.

Signing-on fees paid by the club to the player will generally be deductible, but may be spread over the period of the contract in accordance with section 23H since the services rendered to the club by the player will be performed in future years of assessment.

As a signing-on fee is paid to a player to entice the player to become a contracted player, that is, an employee, signing-on fees will constitute remuneration and as such be subject to employees' tax.

In the event that a contract with a club has ended or has been transferred before the expiry of the contract period, the balance of the signing-on fees will be deductible during the period when such contract ends or the transfer takes place. The income tax implications relating to the signing-on fees received by sportspersons are discussed in 5.3.

⁶ Section 11(2)(l) of the VAT Act.

⁷ See ITC 1338, 43 SATC 171.

⁸ Paragraph (cA) of the definition of "gross income" in section 1(1), and section 11(cA).

4.2.3 VAT implications

Any signing-on fee paid to a player that constitutes remuneration for employees' tax purposes will not give rise to any VAT implications. The player would in such circumstances not account for any VAT on the fee, and the club will not be entitled to any input tax deduction.

A player that carries on an enterprise independently of the club (which would be the case for example if the player was entitled to exploit the player's image rights independently of the club) may be required to register as a vendor for VAT purposes if the aggregate consideration received by the player from conducting taxable activities exceeds the registration threshold. While the player as vendor may be carrying on a separate "enterprise" in relation to the player's non-employment activities, given the nature of the signing-on fee (to secure exclusive use of the player's services), a signing-on fee paid to such a player is, as argued above, nevertheless remuneration. In such a case, any signing-on fee received by that player would not be subject to VAT, notwithstanding that the player is a vendor in relation to the player's taxable activities, and the club, in turn, would not be entitled to claim an input tax deduction as no VAT will have been payable on the signing-on fee.

As regards agents, any VAT incurred on fees or commission paid to the club's agent⁹ for securing the services of the player may be deducted as input tax if the agent is a vendor, subject to the usual documentary requirements.

4.3 Sponsorships

4.3.1 Introduction

Many clubs earn additional income through sponsorships. According to the Sponsorship Code of the Advertising Standards Authority of South Africa (ASA),¹⁰ the term "sponsorship" is defined as –

"a form of marketing communication whereby a sponsor contractually provides financial and/or other support to an organisation, individual, team, activity, event and/or broadcast in return for rights to use the sponsor's name and logo in connection with a sponsored event, activity, team, individual, organisation or broadcast".

Sponsorship can take many forms, from an altruistic act of donating funds or the use of goods for a charitable cause, to a formal business arrangement (corporate sponsorship) under which goods, services or funding is made available under a sponsorship agreement to a club in return for specific advertising, branding and promotional services by the club.

In the commercial world it is seldom that funds are donated, or the use of assets such as motor vehicles are made available, to sporting organisations or sportspersons without expecting something of value in return which is in pursuance of the sponsoring organisation's business objectives.

⁹ The club will not be able to deduct input tax if the agent acts for the player and not the club. Refer, German Federal Fiscal Court's judgment (XI R 4/11) on 28 August 2013 and the United Kingdom High Court case of *Newcastle United Plc. v. HMRC* [2007] EWHC 612 (Ch). In both of these cases the courts could not confirm that input tax was deductible by the clubs concerned, not only because of the lack of evidence of a contract between the clubs and agents concerned, but also considering the fact that the FIFA regulations do not allow for the players' agents to represent both the soccer player and the club.

¹⁰ The Sponsorship Code is available at www.asasa.org.za/codes/sponsorship-code. [Accessed 25 May 2016.]

Under a typical sponsorship arrangement the sponsor undertakes to make available to the club funds, kit, equipment, prizes, and the like. in exchange for advertising and promotional services by the club.

4.3.2 Income tax implications for the sponsor

A sponsor that receives advertising and promotional services from a club in exchange for the sponsorship derives gross income, even though not in the form of money. As mentioned in **2**, gross income includes all receipts and accruals, not of a capital nature, whether “in cash or otherwise”. The services provided by a club under a sponsorship arrangement to a sponsor clearly constitute a receipt or accrual “otherwise” than in cash as contemplated in the definition of gross income. The sponsor will therefore be taxed on the market value of the services provided to it by the club. The market value of the services provided by the club to the sponsor must be determined objectively and the ability to turn the goods or services into money is not a critical factor, but merely one factor that would be taken into account in determining the market value of the advertising and promotional services received “in kind”.¹¹

In the recent case of *South Atlantic Jazz Festival (Pty) Ltd v C: SARS*, Binns-Ward J noted in relation to sponsorships in kind provided to the Jazz Festival by various sponsors that –¹²

“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 [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”.

The main principle that emerges from this case is that when assets or services are provided by a sponsor to a club in exchange for advertising and promotional services to be rendered by the club, the agreed market value of the sponsored goods and the services to be rendered by the club under the sponsorship arrangement will be the same, “in the absence of any contrary indication”.

For expenses or losses to be deductible from a sponsor’s income, they must comply with the requirements of the general deduction formula as discussed in **2**. In essence, the sponsor will have incurred expenditure in manufacturing or acquiring the sponsored goods or services to be provided to the club, and will have incurred expenditure in acquiring the advertising or promotional services from the club.

The assets or services provided by the sponsor to the club in exchange for the advertising and promotional services to be provided by the club under the sponsorship arrangement will be deductible if the relevant expenditure is of a revenue nature.

¹¹ See *C: SARS v Brummeria Renaissance (Pty) Ltd and others*, 2007 (6) SA 601 (SCA), 69 SATC 205. The court had held in *Stander v CIR* (1997) 59 SATC 212 (CPD) that the fact that a receipt in a form other than money could not be turned into money meant that there was no ‘amount’ that fell to be taxed. The Supreme Court of Appeal in the *Brummeria* case held that this view was not correct. The learned judge held that the question of whether a receipt or accrual in a form other than money can be turned into money is but one of the ways in which the money value of such a receipt or accrual can be determined.

¹² 2015 (6) SA 78 (WCC), 77 SATC 254 at 260/261.

Expenditure incurred to acquire or create an income-earning asset would normally be of a capital nature.¹³ By contrast, expenditure incurred in actually working the income-earning asset would be of a revenue nature. The sponsorship will have been disbursed by the sponsor with the intention of increasing its income by means of positive endorsements for its products from the club. The sponsorship expense is therefore spent in working the sponsor's income-earning asset in the production of its income and will therefore be revenue in nature. Therefore, sponsorship expenditure, whether incurred in cash or kind, with the intention of maximising the sponsor's income during the duration of the sponsorship will, in most instances, be deductible by the sponsor. It is not inconceivable, however, that sponsorship expenditure could bring into existence an asset of enduring benefit, and therefore be of a capital nature.

Sponsorship arrangements are often entered into for a number of years. Sponsorship expenditure incurred by a sponsor in a year of assessment that relates to advertising and promotional services to be provided by the club in subsequent years of assessment must be pro-rated under section 23H over the period that the advertising and promotional services are to be rendered by the club.

Should the sponsorship be provided in the form of assets or services, the sponsor will have incurred deductible expenditure equal to the agreed market value (see **4.3.1**) of the assets or services provided to the club.

As regards the expenditure incurred by the sponsor in providing the sponsored assets and services to the club, such expenditure will be deductible against the income derived by the sponsor from the club in the form of the advertising and promotional services. Thus, for example, if the sponsor acquired branded kit to be provided to the club in exchange for advertising and promotional services to be provided by the club, the cost of acquiring the kit would be deductible by the sponsor, as would any general expenses incurred in administering the sponsorship.

Example 2 – Sponsorships in kind: the income tax implications for the sponsor

Facts:

A clothing manufacturer X (Manufacturer X) enters into a 2-year sponsorship arrangement with a professional soccer team (Team Y) under which Team Y is supplied with branded kit for a period of 2 years in exchange for Team Y providing specified advertising and promotional services to Manufacturer X. The services include the team wearing the kit and team members making public appearances on behalf of Manufacturer X from time to time. The agreed market value of the branded kit and advertising and promotional services to be provided by Team Y over the period of the 2 year sponsorship is R2 million. While the market value of the branded kit to be provided by Manufacturer X is R2 million, the kit cost Manufacturer X only R1 million to manufacture. The club in turn incurs expenditure of R750 000 (general overheads, rental of ground, salaries, and so on) in providing the advertising and promotional service to Manufacturer X, although the market value of the advertising and promotional services to be provided by the club under the sponsorship arrangement is the agreed market value of R2 million.

¹³ See *Seeff Properties CC v CIR* (1993) 60 SATC 407 (CPD).

Result:

Since Manufacturer X and Team Y are trading at arm's length and are not connected persons, the market value of the branded kit supplied by the sponsor and specified advertising and promotional services provided by the club may be regarded as being of equal value (that is, the agreed market value of R2 million).

Manufacturer X has provided branded kit to Team Y in return for the performance by the club of specific advertising and promotional services and Manufacturer X is therefore required to include the market value of the services received from Team Y in exchange for the branded kit (R2 million) as part of its gross income.

Manufacturer X has incurred deductible expenditure of R2 million (the market value of the branded kit provided by it to the club) in acquiring the advertising and promotional services from the club. However, since the advertising and promotional services to be supplied by Team Y to Manufacturer X in exchange for the sponsorship will be provided over 2 years of assessment, the expenditure incurred by Manufacturer X in acquiring the advertising and promotional services from Team Y (R2 million) may be claimed only pro-rata over the 2 years of assessment under section 23H. The expenditure incurred by Manufacturer X in manufacturing the branded kit is, however, immediately deductible as the expenditure relates to the income derived by Manufacturer X on disposal of the branded kit to Team Y (R2 million).

See **4.3.3** for the tax implications for the club.

4.3.3 Income tax implications for the club

A club may receive sponsorship in cash as well as in kind (such as airline tickets, branded kit and the use of vehicles) in exchange for providing advertising and promotional services to the sponsor. Both the cash and market value of assets and services received by a club in exchange for providing such advertising and promotional services constitute gross income of the club. As mentioned above, the market value of the assets or services provided to the club by the sponsor must be determined objectively, which, on the basis of the judgement of Binns-Ward J in the *South Atlantic Jazz Festival case*¹⁴ will, absence any contrary indication," usually be the agreed value of the goods and services provided "in kind" by both the sponsor and the club under the sponsorship arrangement.

Given that the sponsored club earns income in the form of sponsorship, whether in cash or in kind, the question arises as to what extent the club is then entitled to any deductions for expenditure (whether in cash or in kind) incurred on the acquisition of the sponsorship. The club may, for example, be required to provide the sponsor with an agreed number of match tickets for each match for the duration of the sponsorship as well as specified advertising and promotional services.

In such cases, it must first be determined whether the expenditure is of a revenue or capital nature. Essentially, the question is whether the expenditure incurred by the club to meet its obligations under the sponsorship arrangement forms part of the cost of the club's income-producing structure (being capital in nature and not deductible), or part of the cost of the club's income-producing operations (being revenue in nature and deductible). Generally, a

¹⁴ 2015 (6) SA 78 (WCC), 77 SATC 254 at 260/261.

club generates its income from the activities of the players who represent it, of their coach and other support staff and by exploiting its physical facilities. Marketing and securing additional funding and promotional benefits, however, also form part of the day-to-day income-producing operations of the club and related expenditure is therefore of a revenue nature and accordingly deductible by the club.

What expenditure may be deducted by the club in fulfilling its reciprocal obligations under the sponsorship arrangement? A sponsor and the sponsored club will in most instances agree what services the club will need to render in exchange for the sponsorship, as well as the market value of such services. Thus, for example, a sponsored club will undertake to provide advertising and promotional services to the value of RX, in exchange for assets or services from the sponsor to the value of RX. The club in this example will have incurred expenditure of RX *in acquiring the sponsored assets and services*.

As mentioned above, the club will also have derived income equal to the market value of the sponsored assets and services received by the club in exchange for the advertising and promotional services to be rendered by it under the sponsorship arrangement. The club will have incurred expenses (for example, general overheads, security, billboards and signage.) *in relation to such income* which may be deductible. Such expenditure will be deductible under the general deduction formula if it can be said that the expenditure has been actually incurred in the production of that income, not being of a capital nature. While it may be accepted that the club will have incurred the relevant expenditure in the production of its income, being the market value of the assets and services received from the sponsor in exchange for the advertising and promotional services to be rendered by the club, the question of whether such expenditure is of a revenue or capital nature is one of fact. Expenditure incurred by a club to obtain a long-term sponsorship may be regarded as being of a capital nature if it can be said that the expenditure was incurred for the purpose of establishing or adding to its income-earning structure.¹⁵

Certain assets acquired by a club from a sponsor may constitute “trading stock” as defined,¹⁶ for example, branded kit that would constitute “consumable stores”,¹⁷ and these assets would need to be taken into account in the determination of the taxable income of the club under section 22. The cost price (market value in the case of sponsored assets acquired in exchange for services rendered by the club) of any asset that constitutes trading stock that is held and not disposed of by the club at the end of its year of assessment would need to be accounted for as closing stock.¹⁸ SARS may allow the cost price of a sponsored asset to be written down in the specific circumstance contemplated in section 22(1)(a). A club is, however, not entitled to automatically write down the value of its closing stock and any revaluation of closing stock below cost price must be disclosed to SARS.¹⁹ The value of closing stock must be reflected as opening stock in the determination of the club’s taxable income.²⁰

¹⁵ *New State Areas Ltd v CIR* 1946 AD 610, 14 SATC 155.

¹⁶ Section 1(1).

¹⁷ Paragraph (a)(iii) of the definition of “trading stock” in section 1(1).

¹⁸ Section 22(1).

¹⁹ See Practice Note: No. 36 dated 13 January 1995.

²⁰ Section 22(2).

Example 3 – Sponsorships in kind: the income tax implications for the club

Facts:

A clothing manufacturer X (Manufacturer X) enters into a 2-year sponsorship arrangement with a professional soccer team (Team Y) under which Team Y is supplied with branded kit for a period of 2 years in exchange for Team Y providing specified advertising and promotional services to Manufacturer X. The services include the team wearing the kit and team members making public appearances on behalf of Manufacturer X from time to time. The agreed market value of the branded kit and advertising and promotional services to be provided by Team Y over the period of the 2-year sponsorship is R2 million. While the market value of the branded kit to be provided by Manufacturer X is R2 million, the kit cost Manufacturer X only R1 million to manufacture. The club in turn incurs expenditure of R750 000 (general overheads, rental of ground, salaries, and so on) in providing the advertising and promotional service to Manufacturer X, although the market value of the advertising and promotional services to be provided by the club under the sponsorship arrangement is the agreed market value of R2 million.

Result:

Since Manufacturer X and Team Y are trading at arm's length and are not connected persons, the market value of the branded kit by the sponsor and provision of the specified advertising and promotional services by the club may be regarded as being of equal value (that is, the agreed market value of R2 million).

Since Team Y has undertaken to provide advertising and promotional services to Manufacturer X in return for the branded kit provided by Manufacturer X, Team Y must include the market value of the branded kit received in exchange for such services (R2 million) in its gross income.

Team Y will in turn be entitled to claim a deduction of the R2 million expenditure incurred by it in acquiring the branded kit from Manufacturer X, being the market value of the advertising and promotional services to be provided by it to Manufacturer X in exchange for the sponsored kit. Since the branded kit acquired from Manufacturer X will most probably constitute trading stock (being "consumable stores" as contemplated in paragraph (a)(iii) of the definition of "trading stock") in Team Y's hands, should any of the branded kit be held and not be disposed of at the end of the club's year of assessment, the cost price (agreed market value) must be taken into account in the determination of Team Y's taxable income under section 22(1). Had the club received assets from Manufacturer X that did not constitute trading stock, Team Y would have had to pro rate the expenditure of R2 million under section 23H over the period of use of the branded kit.

In addition, Team Y may claim a deduction of R750 000 incurred by it in providing the advertising and promotional services to Manufacturer X. This expenditure is immediately deductible since it relates to the income derived by the club for the provision of the advertising and promotional services to be supplied by it over a two-year period, and not the acquisition of the branded kit.

See **4.3.2** for the tax implications for the sponsor.

4.3.4 VAT implications

A payment made by a sponsor under a sponsorship agreement to a club constitutes consideration paid in return for advertising or promotional services provided by the club. The club, if a vendor, will accordingly be making a taxable supply of services to the sponsor and is required to account for output tax on that supply and to issue a tax invoice to the sponsor. The sponsor may, if a vendor, deduct the VAT incurred by it as input tax if the advertising or promotional services provided by the club have been acquired from the club for the purposes of making taxable supplies.

As discussed above, sponsorship can also take the form of a barter transaction in which the club agrees to provide the sponsor with advertising and promotional services in exchange for goods or services. A sponsor could, for example, provide the club with the use of a motor vehicle for a specified period of time in return for advertising or promotional services to be supplied by the club. Since the consideration received by each party to the agreement is not in money, the open market value of each supply must be determined.²¹ The open market value is the consideration in money (including VAT) that the supply of those goods or services would generally obtain if supplied in similar circumstances on the relevant date in South Africa if the supply were freely offered and made between persons who are not “connected persons” as defined.²² On the basis of the decision in the *South Atlantic Jazz Festival (Pty) Ltd v C: SARS case*,²³ it may be accepted that the open market value of the goods and services provided in exchange under a barter transaction, “in the absence of any contrary indication”, is that agreed by the parties and the value of the goods or services supplied in exchange are of equal value.

In such a barter transaction, the sponsor (the motor dealer in the example above) must declare output tax on the open market value of the advertising or promotional services received from the club, since this constitutes the consideration received by the sponsor for the supply of the right of use of the motor vehicle to the club. Similarly, if the club that is granted the right of use of the sponsored motor vehicle is a vendor for VAT purposes, output tax must be declared on the open market value of the right of use of the motor vehicle, being the consideration for the taxable supply of the advertising or promotional service supplied by the club to the motor dealer. Generally, the determination of the open market value for each of the supplies in this kind of barter transaction should be of equal value, as long as the parties are trading at arm’s length. The factors that determine the open market value of any goods or services received as consideration for a taxable supply will depend on the nature of the supply and the facts in each case. For example, a fair method of determining the open market value to be used by each party in the example above may be to adopt the average rental (including VAT) which would be charged to the public by a motor vehicle rental enterprise operating under normal business conditions in South Africa for the specific type of motor vehicle.

Normally, if both parties are vendors, each party is liable to account for output tax on the consideration received for the supply made, and to issue a tax invoice to the other. Each party will also be entitled to deduct input tax on the consideration for the supply of the goods and services acquired by the relevant party, provided that –

- the goods or services are acquired for the purpose of making taxable supplies;

²¹ Section 10(3)(b) of the VAT Act.

²² Section 3 of the VAT Act.

²³ 2015 (6) SA 78 (WCC), 77 SATC 254.

- a tax invoice is held at the time the party seeks to claim the relevant input tax deduction; and
- the deduction is not specifically denied.

A vendor is denied an input tax deduction in respect of VAT incurred on certain specified goods and services, for example, goods and services acquired for the purposes of “entertainment”, membership fees of social and recreational clubs and a “motor car” – section 17 of the VAT Act. Entertainment” is defined in section 1(1) of the VAT Act as “*the provision of food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him.* There are, however, some exceptions to this rule as set out in the provisos to section 17(2) of the VAT Act – see further *VAT 411 – Guide for Entertainment, Accommodation and Catering* dated 1 November 2009. A “motor car” is in turn defined in section 1(1) and is essentially a passenger motor vehicle normally used on public roads, which has three or more wheels. Certain motor vehicles are excluded, such as vehicles suitable for carrying more than 16 persons and vehicles having an unladen mass exceeding 3 500 kilograms.

Example 4 – Sponsorships in kind: the VAT implications for the sponsor and club

Facts:

A motor manufacturer (Manufacturer X) enters into an agreement with a professional soccer team (Team Y) under which Team Y is supplied with the right to use 10 passenger motor cars manufactured by Manufacturer X for 12 months. In return, Team Y must participate in all of Manufacturer X’s advertising campaigns, and the vehicles must carry the branding and logos of Manufacturer X.

Manufacturer X and Team Y agree that the market value of the monthly right of use of the 10 passenger motor cars provided by Manufacturer X and the monthly advertising and promotional services to be provided by Team Y is R64 980 (R57 000 plus VAT of R7 980) per month.

Result:

Since the parties are trading at arm’s length and are not connected persons, the open market value of the monthly supply of the right of use of the vehicles by Manufacturer X and the monthly supply of advertising and promotional services by Team Y are of equal value, being the agreed monthly open market value of R64 980.

Manufacturer X

Manufacturer X has granted the right of use of the motor cars to Team Y in return for the performance of specific advertising and promotional services to be supplied by Team Y. Manufacturer X is therefore liable to account for output tax on the consideration received for the supply of the right to use the motor cars. The consideration received is equal to the open market value of the advertising and promotional service supplied to it by Team Y. Manufacturer X must therefore declare output tax of R7 980 a month ($R64\,980 \times 14 / 114$) for the duration of the contract. Manufacturer X will also be entitled to deduct input tax of R7 980 a month ($R64\,980 \times 14 / 114$) since this is the consideration paid by it for the supply of the advertising and promotional services acquired from Team Y. The input tax deduction is subject to the usual requirements, for example, Manufacturer X must be in possession of a valid tax invoice issued by Team Y.

Team Y

Similarly, Team Y supplies advertising and promotional services to Manufacturer X in return for the use of the motor cars. Team Y must accordingly account for output tax on the consideration received by it for the supply of the services to Manufacturer X, being the open market value of the right of use of the motor cars. Team Y must, therefore, declare output tax of R7 980 a month ($R64\,980 \times 14 / 114$) for the duration of the contract. However, Team Y has also acquired the right of use of a “motor car” as defined for VAT purposes²⁴ and has incurred VAT on such acquisition. Team Y will, however, not be entitled to deduct input tax incurred by it (being the VAT portion of the open market value of the advertising and promotional services to be supplied by the club to Manufacturer X as consideration in kind) for the supply of the right of use of the motor cars, since an input tax deduction will be denied under section 17(2)(c) of the VAT Act. Section 17(2)(c) denies a vendor an input tax deduction for VAT paid on the supply of any “motor car” as defined and applies in these circumstances since the club is not in the business of continuously or regularly supplying motor cars.

If the right to use the vehicles is supplied by Team Y to any of the players in the team (being employees) for their personal use, this constitutes a taxable fringe benefit for employees’ tax purposes and also results in a deemed supply by the club for VAT purposes. The consideration in money for such deemed supply is the amount determined in the manner prescribed by the Minister of Finance by notice in the *Gazette*. Team Y will accordingly be required to account for output tax on the value of the benefit, calculated at 0,3% of the determined value of the motor vehicle (for each month or part thereof) for each employee.²⁵

See **5.10.5(c)** for more details in regard to the special rules which apply in determining the VAT implications of providing a motor car as a fringe benefit.

4.4 Prizes

4.4.1 Introduction

A club or player may receive a prize, in money or in kind, for participating in (often referred to as an appearance fee) and/or winning a particular sports competition. This prize (which

²⁴ Section 1(1) of the VAT Act.

²⁵ Section 18(3) read with section 10(13), of the VAT Act and Government Notice No: 2835 of 22 November 1991.

could be in the form of money or assets) is provided by the person sponsoring the competition (event holder). Successful clubs or players will receive different amounts or assets depending on their position at the end of the competition.

A club may in turn be the holder of the event and offer prizes for other participating clubs or players.

4.4.2 Income tax implications

Amounts (in money or in kind) that first accrue to a club before distribution to its players will form part of the club's gross income²⁶ and will be fully taxable. Should the club subsequently distribute part of the prize to the players, then provided that all the requirements of the general deduction formula are met, the club will be able to claim a deduction under section 11(a) of the amount so distributed to its players.

The issue that often arises in these circumstances is whether it can be said that the prize accrued to the club before distribution to the players. The general principle that applies in these circumstances is that the prize will be regarded as having accrued to the club prior to distribution to the players if it can be said that the club received, or will receive, the prize on its own behalf and for its own benefit, or contractually on behalf of the player or players concerned. Once the income accrues to or is received by the club on its own behalf and for its own benefit, the amount should be included in the club's gross income.²⁷

Any entry fee paid by a club or player to an event holder (a club) will constitute gross income and fall to be taxed as such.

4.4.3 VAT implications

As a general principal, a club that enters a competition is regarded as having made a supply of services to the event holder, although the club may not in fact win any prize. The meaning of "supply"²⁸ is very broad and encompasses the participation by the club in the competition. "Services", in turn, are defined²⁹ as including anything done or to be done, and the making available of any facility or advantage - which the club clearly does by participating in the competition.

An event holder is similarly making a supply of services to participating clubs by permitting the club to enter the competition.

Should a club that is a vendor receive the prize money on its own behalf and for its own benefit the prize money is consideration for the taxable supply of services made by the club to the event holder. The prize money is deemed to be VAT-inclusive and the club must declare output tax at the standard rate on the receipt of the prize money by applying the tax fraction (14/114) to the amount of the prize money.

The same result arises when the prize is in the form of goods or services. Section 10(3)(b) of the VAT Act provides that if any consideration is not in money, that is, in the form of goods or

²⁶ Specifically included in the "gross income" of a taxpayer is any amount "*in cash or otherwise*" which has been received by or has accrued to the taxpayer [section 1(1)].

²⁷ See *CIR v Witwatersrand Association of Racing Clubs*, 1960 (3) SA 291 (A); 23 SATC 380 at 383.

²⁸ Section 1(1) of the VAT Act.

²⁹ Section 1(1) of the VAT Act.

services, then the consideration is deemed to be the “open market value”³⁰ of the relevant goods or services received for having made the taxable supply.

The club should therefore issue a valid tax invoice to the event holder reflecting the consideration received and the tax payable (being the tax fraction of the amount of the prize money or, if the prize is in the form of goods or services, the tax fraction of the open market value of the prize provided by the event holder). The event holder is in these circumstances entitled to deduct the VAT component of the prizes awarded to the winning clubs as input tax,³¹ regardless of whether the prizes are in the form of money or goods or services.

In the event that an event holder (which could be a club) acquires goods or services in order to provide those goods or services as a prize to the winning club or players, the event holder, if a vendor, may generally claim an input tax deduction of the VAT incurred on acquiring the prize. However, should the prize constitute ‘entertainment’ (for example, accommodation, food, alcohol, etc.) or a ‘motor car’ as defined, the event holder will be denied an input tax deduction on the acquisition of those goods or services under section 17(2)(a) and (c) respectively. An event holder will nevertheless be entitled to claim a deduction of any input tax incurred on the acquisition of entertainment or motor car if one or other of the exclusions provided for in section 17(2)(a) and (c) applies.

Should cash and/or goods or services be given as a prize, the provisions of sections 8(13) and 16(3)(d) of the VAT Act, that essentially permit a vendor to deduct the tax fraction of any payment made by the vendor as a prize or winnings, are not applicable. This is because the prize is not provided by the event holder to the club in consequence of a “bet” being placed³². It follows that the event holder is, in these circumstances, not entitled to deduct the tax fraction of any cash amount paid as a prize on the basis of these sections. Rather the event holder, as mentioned above, is entitled to deduct the VAT incurred on the acquisition of the participation of the winning club, as well as any goods or services provided as a prize (unless the goods or services provided as a prize constitute ‘entertainment’ or a ‘motor car’ and none of the exclusions apply) as input tax under section 16(3)(a) of the VAT Act.

However, while the winning club will have received consideration for rendering taxable services to the event holder, the event holder will, in turn, have received consideration in the form of the participation by the club for the prize given in the form of cash or goods or services. As such, the event holder is required to account for output tax on the consideration received (being the open market value of the services provided by the winning club) for the supply of the prize in the form of money or goods or services. The event holder should therefore also issue a valid tax invoice to the club reflecting the consideration received from the club in the form of services rendered by the club in exchange for the prize. The tax invoice must reflect the tax payable on the supply (being the tax fraction of the open market value of the services rendered by the club, which would be expected to equal the open market value of the prize provided to the club).

³⁰ “Open market value” is defined in section 1(1) of the VAT Act as the amount (including VAT) as determined in accordance with the provisions of section 3 of the VAT Act. Section 3 essentially provides that the open market value of consideration received in-kind is the consideration in money that the supply of goods or services would generally fetch if supplied in similar circumstances, being a supply freely offered and made between persons who are not connected persons.

³¹ Section 16(2)(a) read with sections 16(3)(a) or 16(3)(b) of the VAT Act (as the case may be).

³² See Interpretation Note 84 dated 26 March 2015 “The Value-Added Tax Treatment of Bets”.

Any entry fee received by the event holder will be subject to VAT and the event holder will be required to account for output tax thereon, unless the zero rate applies as discussed in **4.5.3**).

The income tax and VAT implications relating to players winning prizes are discussed below at **5.6**.

4.5 Ticket sales and the sale of merchandise and other sundry items

4.5.1 Introduction

Ticket sales and the sale of merchandise and other sundry items, such as programmes, are important sources of income for the owners of sporting venues, who are often, but need not necessarily be, the hosting club. In hosting the event, the club will usually incur expenses such as security, gate control, catering and, if applicable, ground rental expenses.

4.5.2 Income tax implications

The gross amount derived from the sale of tickets and sundry items will be included in the club's gross income. All revenue expenses incurred in the production of such income, for example, the ground rental fees and security, will be allowed as a deduction under the general deduction formula (see **2**).

4.5.3 VAT implications

The sale of tickets for entry into any sporting event, as well as the sale of sundry items, will usually be subject to VAT at the standard rate if the event takes place in South Africa. This rule applies regardless of where the ticket is sold because the place of performance is in South Africa.³³

However, if the event is hosted by a local club in a stadium or other venue outside South Africa, the ticket price will in most instances be subject to VAT at the zero rate. The club in these circumstances is regarded as physically rendering the services (the event) outside South Africa. Such services are zero-rated under section 11(2)(k) of the VAT Act. Should the club sell the tickets as agent on behalf of some other entity that is staging the event outside South Africa, any commission or fee earned for selling the tickets will only be zero rated provided the requirements of section 11(2)(l) of the VAT Act are met. The zero-rating under section 11(2)(l) of the VAT Act requires the agency services to be rendered to a person who is not a resident of South Africa and that the person is not in South Africa at the time the services are rendered. Should the agency services (ticket sales on behalf of the non-resident) not be zero-rated, the local club will need to account for output tax on its commission or fee.

The general time of supply rule is applicable to sales of tickets and sundry items. Thus such supplies are regarded as being made at the earlier of the time that an invoice³⁴ is issued or any payment is received for such supplies. As tickets for entry into an event are usually issued instead of invoices, the payment of the admission price or any part thereof will usually determine the tax period in which the club must account for output tax on the ticket sales. As invoices are often not issued for the supply of sundry items such as programmes, the club will similarly be required to account for output tax when payment is received. In the event that the club issues invoices for sundry items supplied prior to payment, the issue of the

³³ See *South African Football Union v CIR*, 61 SATC 406.

³⁴ An "invoice" for VAT purposes is any "document notifying an obligation to make payment" [section 1(1) of the VAT Act].

invoice will trigger a liability to account for output tax. The time of supply for admission to a series of events, for example, when a season ticket is issued, will take place upon the earlier of when an invoice is issued or payment (or part thereof) for the season ticket is received by the club.

A club is required under section 20(1) of the VAT Act to issue a valid tax invoice to the recipient in respect of the supply of tickets and sundry items by the club, whether or not the supply is subject to VAT at the standard or zero rate. The club is not obliged to issue a valid tax invoice to the recipient if the consideration for the ticket or sundry item does not exceed R50.³⁵ The requirements of a valid tax invoice are prescribed in section 20(4) and (5) of the VAT Act. Should a club be of the view that it is impractical to issue a valid tax invoice in relation to the sale of the tickets or sundry items, it may approach SARS for a ruling that –³⁶

- any of the particulars prescribed by section 20(4) or (5) not be reflected in the tax invoice;
- a tax invoice need not be issued; or
- the particulars prescribed in section 20(4) or (5) be furnished in any other manner.

As there is no special value of supply rule which applies to sales of tickets and sundry items, VAT will be levied on the full price of the ticket or sundry item. Unless the amount of VAT is indicated separately on the relevant tax invoice issued by the club, the amount of output tax that must be accounted for on the ticket or sundry item must be determined by applying the tax fraction (14/114) to the VAT-inclusive price.

In the event that a person has to buy a programme to get into a sporting event, the payment for the programme is regarded as the consideration for the admission. Moreover, if tickets, tokens, vouchers or programmes are issued on payment of the admission charge which entitles the bearer to admittance to the premises, function or event, the payment thereof will usually determine the time the supply is made and the liability for output tax arises.

There are a variety of contractual arrangements which may apply in regard to admissions to sporting events and other supplies made at the event. The VAT treatment of these supplies will depend on who stages the event, who owns or operates the venue, what supplies are made between the parties (or other outside contractors), and whether the parties to the agreement are VAT vendors or not. For example, sports stadiums are usually owned by provincial sporting bodies, sports clubs, municipalities or property holding entities connected to sporting bodies.

The contract between the sporting organisation and the owner of the stadium will determine for whose benefit the admission or entrance fee is charged, and should provide details of any other supplies which may be necessary to stage the event, or which are allowed to be made by other persons carrying on activities at the event. For example, vendors that supply snacks, drinks and sporting memorabilia will usually be responsible to account for VAT on their own supplies, but they may pay a facility fee or rental charge to the owner or operator of the stadium. The owner or operator of the stadium will therefore also have to account for VAT on these other amounts of consideration received in connection with the event.

In circumstances in which a club stages an event, the stadium owner's fee may be a certain percentage of the entrance fees charged and/or sales, or it may be a predetermined rental or

³⁵ Section 20(6) of the VAT Act.

³⁶ Section 20(7) of the VAT Act.

fee. In such a case, the club, if a vendor, must charge and account for the VAT collected from the patrons of the event and for the other supplies which it may make at the venue. Further, if the stadium owner is a vendor, the owner must account for output tax on the rental, fee or percentage of gate takings received for making the stadium available to the club and the club must be provided with a valid tax invoice in this regard so that it may deduct the VAT paid as input tax. Input tax may, however, not be deducted if the supply is characterised as entertainment which is specifically denied under section 17(2)(a) of the VAT Act, unless one of the exceptions in that provision apply.

Alternatively, the stadium owner may stage the event and pay the clubs a performance fee. In such a situation, the stadium owner will charge and account for the VAT on any entrance fees collected from patrons and the VAT paid on performance fees may be deducted as input tax subject to the normal prescribed documentary requirements being met. The clubs must declare output tax on any performance fees which they receive.

4.6 Insurance premiums paid by clubs

4.6.1 Introduction

In the sporting world, accidents to sports players could result in severe adverse financial implications for the player, especially if sport is such player's livelihood and only source of income. Insurance that covers the player's earning capacity or personal liability is therefore an important component to consider. For a club, an injury to a player or the destruction of sporting premises owned by it could have drastic consequences for both the club and the players, thus insurance is also vital for clubs. A prudent club would also take out insurance to cover the potential loss of, or damage to, training kit, equipment and facilities.

4.6.2 Income tax implications

Short-term insurance premiums paid to cover, for example, player injuries, damage to, or loss of, training kit, equipment or facilities, will in most instances be regarded as having been incurred in the production of the club's income and will be a deductible expense under the general deduction formula (see 2).

Any compensation received from the insurance company under an insurance claim must be included in the club's gross income if the amount is received to fill a hole in the profits³⁷ of the club. If the insurance claim is received to fill a hole in the capital assets³⁸ of a club, the amount will be of a capital nature and will not be included in the club's gross income in which case the amount could be subject to CGT. However, compensation received from an assurance company may result in a recoupment under section 8(4)(a) of any deductions or allowances previously claimed under the Act,³⁹ in which case the compensation amount would be included in the club's gross income and accordingly excluded from "proceeds" for CGT purposes (see below).

Should the capital asset that is insured be lost or destroyed, a disposal for CGT purposes will have occurred and any compensation received by the club under the policy of insurance will constitute "proceeds" for CGT purposes. A club may, however, qualify for the deferral of any capital gain that might arise in consequence of such an event under paragraph 65(1) of the Eighth Schedule provided the requirements of that provision are met.

³⁷ *Bos v Commissioner for the South African Revenue Service* (2008) ZAGPHC 208, 70 SATC 187.

³⁸ *Burmah Steamship Co Ltd v IRC* 1931 SC 156, 16 TC 67.

³⁹ *Moorreesburg Produce Co Ltd v CIR*, 1945 CPD 289, 13 SATC 245.

Importantly, under section 23(c), any loss or expense incurred by a club which would otherwise be deductible is not deductible to the extent to which it is recoverable under a contract of insurance.

4.6.3 VAT implications

A club may take out short-term insurance to cover injury to a player or the loss of, or damage to, training kit, equipment or club facilities. The provision of short-term insurance is a taxable supply. Insurance taken out on the life of a player would constitute long-term insurance and is exempt from VAT.

Any VAT incurred on the short-term insurance premiums may be deducted as input tax by the club, if a vendor, as the expenditure will have been incurred in the course or furtherance of the club's enterprise. The same will apply if the club pays an insurance premium to cover the risks associated with injury to players (employees). However, the ability to deduct input tax on insurance premiums incurred for enterprise purposes by the club is limited to short-term insurance, as the provision of long-term insurance is an exempt financial service and the premiums will accordingly not include any VAT.

When an indemnity payment is made to a club that is a vendor under a taxable short-term insurance policy, the club receiving the payment (the insured) is deemed to make a taxable supply to the insurer. As the indemnity payment is regarded as having been received by the club in the course or furtherance of the club's enterprise, the club will be required to declare output tax at the standard rate on the amount of the indemnity payment.⁴⁰

No deemed supply arises and no output tax should be declared by the club if any indemnity payment is received under a long-term insurance contract.⁴¹

4.7 Fringe benefits

4.7.1 Introduction

It is not unusual for a club to provide players with so-called fringe benefits, such as the use of club assets, low-rental or rental-free residential accommodation, the use of free or cheap services provided by the club, the use of a club-owned vehicle, the provision of interest-free loans and so forth.

4.7.2 Income tax implications

The Seventh Schedule imposes certain duties upon employers who award their employees taxable benefits in the course of their employment or as a result of services rendered. The cash equivalent of the value of the relevant taxable benefits as determined under the Schedule is included in paragraph (j) of the definition of "gross income" and as such the value is included in the player's remuneration and is also subject to the deduction of employees' tax.

⁴⁰ See section 8(8) of the VAT Act.

⁴¹ See the *VAT 421 – Guide for Short-Term Insurance* and Binding General Ruling No. 14 for more information on insurance and VAT.

Certain conditions must be met before a benefit will constitute a taxable benefit for purposes of the Seventh Schedule. These include that the benefit must –

- be granted by an employer⁴² to an employee;⁴³
- have been granted to the employee or to his or her relatives or any other person;
- have been granted in respect of the employee's employment with the employer;
- have been granted during the year of assessment; and
- be a taxable benefit as defined in the Seventh Schedule.

Once these requirements have been met, the cash equivalent of the taxable benefit as determined under the provisions of the Seventh Schedule must be included in the player's gross income.

A benefit is also granted to a player when an **associated institution** in relation to a club grants a taxable benefit to the player. An associated institution in relation to a club is essentially any company managed or controlled directly or indirectly by the same person, as well as any fund established for the benefit of employees or former employees of an employer or any company associated with that employer.

Examples of taxable benefits received from employers include –

- the acquisition of an asset from the employer, either free of charge or at a reduced cost;
- the use of free or cheap services provided by the employer;
- the private use of an employer-owned asset;
- low-interest or interest-free loans;
- free or cheap meals or refreshments provided by the employer;
- medical scheme contributions paid by the employer;
- medical and dental services provided to the player at the employer's expense;
- insurance provided by the employer to the player; and
- the settlement or forgiveness of a player's debt by the employer.

Note: For most of these benefits, certain exclusions may apply. For example, no value is placed –

- on meals and refreshments provided at the club's business premises;
- if the beneficial interest rate loans granted are casual loans and do not exceed R3 000;
- on loans granted for study purposes;
- if the private use of the club's asset is incidental to its business use;
- if the asset consists of a telecommunication device or computer equipment which the employee uses mainly for business purposes;

⁴² An "employer" for purposes of the Seventh Schedule is essentially any "employer" for employee's tax purposes.

⁴³ An "employee" for purposes of the Seventh Schedule is essentially any "employee" in relation to an "employer" for employees' tax purposes.

- on any communication service (for example cellular services) provided to the player, if the service is used mainly for the club's business purposes; and
- on any transport service rendered by the club to players in general for the conveyance of the players from their homes to their work and *vice versa*.

As mentioned above, the amount that is required to be included in a player's gross income when the club has granted the player a taxable benefit is the cash equivalent of the value of the taxable benefit as determined under the provisions of the Seventh Schedule. In most instances, the cash equivalent value of taxable benefits is based either on the cost to the club or the market value of asset granted to the player, or the amount of expenditure incurred by the club in granting the benefit. Section 23C provides that if the club is a vendor under the VAT Act, and the club was entitled to an input tax deduction under section 16(3) of the VAT Act, the cost, or market value, or amount of expenditure incurred, as the case may be, is deemed to be the cost, market value, or amount of expenditure incurred excluding the deductible input tax for purposes of calculating the cash equivalent of the value of the fringe benefit.

If the employer is not a VAT vendor, or was not entitled to an input tax deduction in relation to the relevant expenditure, the cost or market value of the asset, or the amount of expenditure incurred, must include VAT for purposes of calculating the value of the taxable fringe benefit.

The most common fringe benefits granted to players and the determination of the cash equivalent value of those fringe benefits is dealt with in detail in **5.10.2**.

4.7.3 VAT implications

To the extent that any club (being a vendor) has granted a fringe benefit to a player, the club is deemed for VAT purposes to have made a supply to the player. The club may therefore be liable to account for output tax at the standard rate on the deemed consideration for such supply, provided that the supply concerned is a taxable supply of goods or services for VAT purposes.⁴⁴ The deemed consideration for such a supply is the cash equivalent of the value of the fringe benefit - except in the case of the right of use of a motor car which is subject to specific VAT valuation rules⁴⁵ - see **5.10.5(c)**. As will be apparent, while the player enjoys the fringe benefit provided by the club, it is always the club that must account for VAT (output tax) on the provision of the fringe benefit.

The VAT treatment of fringe benefits generally follows the timing and valuation rules as set out in the Seventh Schedule. Another general principle which applies is that if the benefit has no value, or is not regarded as a fringe benefit for income tax purposes, the same result will apply for VAT purposes. That is, if the cash equivalent of the value of the fringe benefit is nil for income tax purposes, the deemed consideration for VAT purposes is also nil. Similarly, when a benefit provided by a club does not constitute a taxable fringe benefit for income tax purposes, the same will apply for VAT purposes. A fringe benefit will only be subject to VAT if two conditions are present, namely –

- the supply must be a fringe benefit as contemplated in the Seventh Schedule; and
- the type of supply must constitute a taxable supply for VAT purposes.

⁴⁴ Section 18(3) of the VAT Act.

⁴⁵ Section 10(13) of the VAT Act.

The deemed supply may, however, itself be exempt or zero rated for VAT purposes.⁴⁶ In addition, no deemed supply is triggered if the relevant fringe benefit is granted by the club in the course of making exempt supplies.⁴⁷

For example, although low-interest loans and residential accommodation (discussed in **5.10.4**) may constitute taxable fringe benefits for income tax purposes, for VAT purposes no deemed taxable supply by the club arises as the underlying supplies are exempt from VAT.

As mentioned, there are special rules governing the valuation of a fringe benefit involving the supply of the right of use of a motor vehicle for VAT purposes. See **5.10.5(c)** for more details in this regard.

The VAT implications of the most commonly provided fringe benefits granted to players and the determination of the deemed consideration for the related deemed supplies are dealt with in detail in **5.10.3**.

For more details on the VAT implications of fringe benefits in general, see the *VAT 404 – Guide for Vendors* on the SARS website as well as sections 18(3) and 10(13) of the VAT Act.

5. Taxation of receipts and accruals of sportspersons

There are many types of receipts and accruals relevant to sportspersons. Those most pertinent are discussed below.

5.1 Player salaries and other remuneration

5.1.1 Introduction

The majority of sportspersons participating in team sports enter into contracts with clubs, franchises or unions. Sports players who are retained on a contract will normally be employees of the club and therefore subject to the tax provisions relating to employment income.

Non-contracted sports players, for example golf or tennis players, are not employees of a club, but are self-employed. These non-contracted players, or independent contractors as they are colloquially referred to, have full control of their involvement in the relevant sport and get to decide which events or games they will enter and also on the frequency of entering events.

5.1.2 Income tax implications

Salaries, wages and similar amounts paid to a contracted player fall within the ambit of the definition of “gross income” and are subject to income tax in the hands of the player concerned. As the amounts also constitute “remuneration” as defined for employees’ tax purposes, a club paying such amounts to a contracted player has an obligation to deduct employees’ tax and pay what was deducted over to SARS within the prescribed period.

Independently contracted players also receive payments arising out of their participation in matches or competitions, which also constitute “gross income” and such payments are accordingly taxable in the hands of the player concerned. These receipts must also be declared in the player’s annual tax return. However, as the independent player and the

⁴⁶ First proviso to section 18(3) of the VAT Act.

⁴⁷ Second proviso to section 18(3) of the VAT Act.

person paying the player for the player's participation are not in an employer – employee relationship, the payments will not constitute “remuneration” as defined for employees' tax purposes and as such will not be subject to employees' tax.

The deductions that an independent sports person may make from gross income differs significantly from those permitted to a player who is an employee and who earns income primarily from salary.

In the case of an independent sports person, a deduction would only be available under the general deduction formula (see **2**) if the player is able to demonstrate that the relevant expenditure (a) has been incurred in the production of income, (b) laid out for the purposes of trade, and (c), is not of a capital nature. Certain other expenditure and allowances may be available to the independent sports person under other specific provisions of the Act, such as the wear and tear allowance available under section 11(e) that may be claimed on sporting equipment used by the sports person.

For more information on independent contractors, see Interpretation Note 17 (Issue 3) dated 31 March 2010 “Employees' Tax: Independent Contractors”.

By contrast, a sports person who is an employee of the club and accordingly receives remuneration is limited in the deductions which may be claimed. Under section 23(m), an employee may only claim the following deductions against any remuneration earned by the employee:

- Any qualifying contributions to a pension fund or retirement annuity fund;
- Any allowance or expense allowed as a deduction under section 11(c) – legal expenses, section 11(e) – wear and tear allowance, section 11(i) – bad debts, and section 11 (j) – doubtful debts;
- Any deduction allowed under section 11(nA) – amounts included in the hands of the sports person that are subsequently refunded to such sports person by the club, and section 11(nB) – any restraint of trade paid to the sports person that is subsequently refunded to the sports person;
- Any premium paid under a contract of insurance against a loss of earnings owing to illness, injury, disability or unemployment that is deductible under section 11(a) and the compensation will constitute income when received by the sports person; and
- Any rental of, or cost of repairs to, any dwelling house or domestic premises that is deductible under section 11(a) or (d) respectively, provided that the expense does not constitute domestic or private expenditure that is prohibited under section 23(b).

See **5.13** for more information.

5.1.3 VAT implications

As the payment of salaries and wages to employees constitutes the receipt of remuneration for employees' tax purposes, no VAT implications arise for the employees or the club when salaries and wages are paid. No input tax may therefore be deducted by a club on any remuneration paid to a player that is an employee.

Any payment made to a player who is not an employee (that is, an independent contractor) may be subject to VAT if the person concerned is registered as a VAT vendor. In such a case, the player will have to charge VAT and account for output tax at the standard rate on any match fees or other payments received for rendering services to the club, as the

payments will be received in the course or furtherance of the player's enterprise. Should a player who is a vendor receive a payment from a club for services physically rendered outside South Africa, the payment received by the player will be zero rated⁴⁸. In both instances the player must provide the club with a tax invoice for the services rendered so that the club may deduct the VAT charged by the player as input tax.

5.2 Transfer fees

As mentioned above, should a player be transferred from one club to another, the club that is "buying" a player will in most instances be required to pay compensation (a transfer fee) to the club "selling" its player – essentially the "selling" club disposes of its contractual right to the player's services to the "acquiring" club. The player concerned may also be given a percentage of the transfer fee.

5.2.1 Introduction

5.2.2 Income tax implications

In the event of a player receiving a transfer fee, this portion will be regarded as forming part of such player's signing-on fee, the income tax implications of which are dealt with in **5.3.2**.

5.2.3 VAT implications

As in the case of income tax, any transfer fee paid to a player is regarded as a signing-on fee, the VAT implications of which are dealt with in 5.3.3.

5.3 Player signing-on fees

5.3.1 Introduction

Signing-on fees are received by a player when agreeing to sign on with a club. This fee could be paid directly to the player by the player's new club, or to the player's old club as part of the transfer fee paid to the old club by the player's new club.

5.3.2 Income tax implications

Should the player be an employee of the club, or will become an employee of a club, the signing-on fee will form part of such player's gross income, and accordingly remuneration for employees' tax purposes. The club making the payment is responsible for withholding employees' tax on the player signing-on fees and paying it over to SARS.

It is considered that a signing-on fee paid to an independent contractor will constitute remuneration for employees' tax purposes as signing-on fees generally secure exclusivity of productive capacity and indicate an employment relationship.

At the end of the year of assessment, the club that paid the signing-on fee to the player must give the player an employees' tax (IRP5) certificate indicating the amount paid to the player as well as the employees' tax deducted. The signing-on fee must be reflected under code 3605 on the IRP5 certificate.

5.3.3 VAT implications

Salaries ('remuneration' for employees' tax purposes) paid to employees are not subject to VAT. The payment of signing-on fees by a club to the new player (being remuneration) will

⁴⁸ Section 11(2)(k) of the VAT Act.

accordingly not be regarded as consideration paid for any taxable supplies made by the player receiving the signing-on fee.

As noted above, the view is held that a signing-on fee paid to an independent contractor will similarly constitute 'remuneration' for employees' tax purposes and as such will not be subject to VAT even if the player is registered for VAT purposes in relation to the player's other taxable activities.

5.4 Image rights payments

5.4.1 Introduction

South African sports players are, like their overseas counterparts, enjoying the benefit of being able to exploit other commercial opportunities such as image licensing agreements, celebrity endorsements and appearance fees. Image licensing agreements involve the commercial exploitation of a player's image, such as the use of the player's name, photograph, reputation, voice, signature, initials or nickname. Image rights are the legal rights associated with using the image of a sportsperson in marketing or promotional activities. Image rights payments refer to the payments that a player receives from an enterprise that uses such player's image for advertising purposes.

5.4.2 Income tax implications

Talented sportspersons receive sums of money to appear in, amongst others, television and print advertisements, as well as appearances at social gatherings. The sportsperson's participation is usually intended to promote the sale of a product or products, or an event, owing to the perception or "image" that the public has of the sportsperson.

Image rights are essentially personal rights that are vested in the player as an individual person.⁴⁹ These rights cannot be separated from the sportsperson, and consequently, cannot be disposed of or "sold" to another person. Further, "a sportsperson has a proprietary interest in his identity and an infringement of such personality right caused by unlawful commercial exploitation can lead to economic loss."⁵⁰

The Tax Court was called upon in ITC 1735⁵¹ to decide whether a payment made to a famous golfer for the right to use his name, likeness and biographical material for promotional purposes was of a revenue or capital nature. The court held⁵² that:

"The appellant by allowing his name and reputation to be used did not dispose of such assets and continued to possess them after the tournament and after he received the agreed consideration for allowing them to be used for publicizing the Tournament. In our opinion there can be no doubt that the payment was not of a capital nature and was the type of income that a professional golfer would expect to earn for participating in a golf tournament that traded on the reputation of the participants. Accordingly the monies received formed part of his "gross income" as defined in s 1 of the (Income Tax) Act."

It is clear therefore that payments made to a sportsperson for the right to use the sportsperson's "image" rights will be included in the sportsperson's gross income and will be taxable as such.

⁴⁹ R Cloete "The Taxation of Image Rights: A Comparative Analysis" (2012) 45(3) *De Jure* 557.

⁵⁰ R Cloete "The Taxation of Image Rights: A Comparative Analysis" (2012) 45(3) *De Jure* 559.

⁵¹ 64 SATC 455.

⁵² At 10,2.

Should such a payment be made to a sportsperson by the club to whom the sportsperson is contracted, such payments will constitute “remuneration” for employees’ tax purposes. As the amount paid to the sportsperson for the exploitation of the sportsperson’s “image” rights is in these circumstances paid by an “employer” (the club) to an “employee” (the sportsperson) as contemplated in the Fourth Schedule to the Act, the club is obliged to withhold employees’ tax and the amount paid for the use of the sportsperson’s “image” rights must be disclosed on the sportsperson’s IRP5.

The same treatment will apply to endorsement fees and appearance fees, as all three are of a revenue nature and therefore taxable.

5.4.3 VAT implications

The amount paid directly to a sportsperson for the right to use that sportsperson’s “image” rights will not attract VAT in the hands of the sportsperson unless that sportsperson is a VAT vendor, or liable to be registered as a vendor outside of any employment contract with the club.

However, if the sportsperson receives any payment from the sportsperson’s club for the use of the sportsperson’s “image” rights, no VAT implications arise as the amount paid to the sportsperson constitutes “remuneration” for employees’ tax purposes (see **5.4.2**) and as such is excluded from the ambit of the VAT Act under paragraph (iii) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act.

The person who pays for the right of use of the sportsperson’s “image” rights may be entitled to deduct input tax on the consideration paid for the rights, subject to the usual requirements for deducting input tax, for example, a tax invoice must be held and the expense must be incurred for the purpose of making taxable supplies.

5.5 Sponsorships

5.5.1 Introduction

Sponsorships are offered to players in various forms, for example, cash, equipment, clothing, watches, transport and travel.

5.5.2 Income tax implications

Amounts received or accrued for services rendered or to be rendered, *whether in cash or otherwise*, are specifically included in the definition of “gross income”, even if the amount is of a capital nature. Sponsorships will therefore generally be included in a player’s gross income, regardless of whether paid in cash or in kind.

Generally an employer-employee relationship will not exist between the provider of the sponsorship and the player. In situations in which no such relationship exists, and the player is not deemed to be an employee for employees’ tax purposes,⁵³ the sponsor will not be required to withhold employees’ tax. The player is nevertheless required to disclose the amount of the sponsorship (in cash or otherwise) in such player’s annual tax return. When the sponsorship is something other than money, the value to be included in the player’s gross income is the market value of the sponsored goods or services. However, if the

⁵³ Which could be the position if, for example, the player is regarded as a “personal service provider” as defined (paragraph 1 of the Fourth Schedule). A “personal service provider” is essentially any trust or company where services are provided on its behalf by a connected person in relation to such trust or company, that is, the player.

sponsor has sponsored the club or employer of the sportsperson and the club in turn provides its players with a portion of the sponsorship received, the amount of such sponsorship will constitute remuneration in the relevant player's hands. The club is, in these circumstances, required to deduct or withhold employees' tax from the amount of sponsorship paid to the players. This is irrespective of whether the receipt by the player is in cash or kind.

Example 6 – Sponsorships

Facts

Player B and Player C are both employed by Club A, which has entered into a sponsorship deal with Swiss Watches Limited in terms of which each player of the club receives a free watch worth R5 000. Both Player B and Player C have received such a watch. In addition, Player C has, independently of Club A, entered into an agreement with Magic Motor Manufacturers [MMM], in terms of which Player C will be granted the right to use a vehicle manufactured by MMM for a period of 3 years in exchange for the right to have Player C's name advertised on the vehicle.

Results

As the watches would have been given to the players by virtue of their employment with Club A or for services rendered or to be rendered by the players to the club, the club is regarded as having provided them with a taxable benefit under the Seventh Schedule. The market value of the watches (R5 000) is accordingly both gross income and remuneration in Player B and Player C's hands. Club A is obliged to deduct or withhold employees' tax from such remuneration. While the sponsorship received by the players is not in cash, Club A will still need to deduct or withhold the relevant employees' tax from any other cash remuneration derived by the players. Should the aggregate amount of employees' tax to be deducted or withheld be greater than the cash remuneration derived by the players, Club A must notify SARS immediately.

The market value of the use of motor vehicle sponsorship received by Player C from MMM is also gross income in Player C's hands and is subject to income tax. However, in this instance the amount received is not remuneration as Player C has not received the sponsorship by virtue of her employment with Club A. Club A therefore does not have to deduct or withhold any employees' tax for the vehicle sponsorship enjoyed by Player C.

5.5.3 VAT implications

The VAT treatment of sponsorships paid to players will depend on whether the player is a vendor or not. In the event that the player is not a vendor, no output tax is payable by the player and the sponsor will not be entitled to deduct any input tax for the sponsorship paid to the player. On the other hand, if the player is a vendor, the player would need to account for output tax on the sponsorship received by the player and the sponsor would be entitled to an input tax credit if it can be said that the services of the player were acquired for the purpose of making taxable supplies. In some instances, the services rendered by the player are zero rated, for example, if the player is paid by a sponsor for services physically rendered outside South Africa.⁵⁴

⁵⁴ Section 11(2)(k) of the VAT Act.

The position is the same regardless of whether the sponsorship is in cash or in kind (goods or services). Should the sponsorship be in kind then, in essence, two supplies have taken place, namely, a supply of services by the player to the sponsor in exchange for the sponsorship and the supply of the goods or services by the sponsor to the player in exchange for the services rendered by the player. The consideration for the relevant supplies (by the player and by the sponsor) is, in these circumstances deemed to be the open market value of the consideration received.⁵⁵ In an arm's length situation the open market value of the services rendered by the player and the sponsorship in the form of goods and services would be expected to be the same⁵⁶.

Example 7 – Sponsorships

Facts

Player X and Player Y are both employed by Club Hockey on a full-time basis. Club Hockey enters into a sponsorship deal with Shirts Limited in terms of which each player of the club receives branded casual clothing worth R50 000 for the season. Player Y is a vendor in relation to her non-employment related taxable sporting activities.

While both Player X and Player Y have received their R50 000 worth of branded casual clothing, Player Y has, independently of Club Hockey, entered into an agreement with Smart Motors in terms of which she will be granted the right to use a motor vehicle of the type usually sold by Smart Motors for a period of 3 years, and in exchange the motor vehicle will have Player Y's name as well as Smart Motors' logo painted on the vehicle. The reciprocal supplies are regarded as being of equal value and the open market value of the use of the motor vehicle was determined as being R5 000 per month (including VAT) under sections 3 and 10(3) of the VAT Act.

Results:

As the branded clothing has been acquired by the players by virtue of their employment with Club Hockey or for services rendered or to be rendered by the players to the club, Club A is regarded as having granted the players a taxable benefit for income tax purposes. The market value of the clothing is accordingly both gross income and remuneration in Player X and Player Y's hands. As the sponsorship constitutes remuneration in Player X and Player Y's hands, the sponsorship does not give rise to any VAT implications for either player, regardless of the fact that Player Y is a vendor in relation to her non-employment related activities.

Although the market value of the use of the sponsored motor vehicle enjoyed by Player Y is also gross income in Player Y's hands, the sponsorship is not remuneration as Player Y and Smart Motors are not in an employment relationship. Player Y would accordingly need to account for output tax on the monthly open market value (R5 000) of the use of the vehicle.

⁵⁵ Section 10(3) read with section 3 of the VAT Act. If the consideration for a supply is not in money (cash), the consideration is deemed to be the open market value of the goods and services supplied.

⁵⁶ The High Court in *South Atlantic Jazz Festival (Pty) Ltd v CSARS* (Case No: A 129/2014, dated 6 February 2015), after noting that it was common cause that the transactions under the relevant sponsorship agreements could be regarded as barter transactions, held that: "In consequence, and accepting as one may, that the transactions were at arm's length, the value of the goods and services provided by the appellant to the sponsors in each case falls to be taken as the same as that of the counter performance by the relevant sponsor" (at paragraph 4).

5.6 Prizes

5.6.1 Introduction

A prize for winning a sporting event may be paid in cash or in kind and either directly or indirectly to the winning club, team or individual sportsperson, or a combination thereof. In the event of a team winning a tournament and the players not being paid the prize directly by the tournament sponsor, two scenarios could occur regarding the winning team and the subsequent entitlement of the sportsperson to all or part of the prize.

The first is that the sponsor awards the prize to the winning club and the club then distributes the prize amongst the players. In the case of all or part of the prize being distributed to the players it is often at the discretion of the club or determined by prior agreement between the club and the players as to how much each player receives.

The second scenario is that the prize is paid to the club, but the prize is expressly for the benefit of the individual players. The club in these circumstances acts merely as a conduit through which the prize is distributed to the players.

5.6.2 Income tax implications

The sportsperson receives the prize directly

The professional sportsperson would have entered the sporting event with the purpose of winning the prize and the prize, whether paid in cash or in kind, will form part of the sportsperson's gross income and fall to be taxed as such. Should the prize be in the form of goods or services, for example, a motor car or free services, the sportsperson will be required to account for tax on the open market value of the relevant goods or services.

The sportsperson receives the prize indirectly: The prize is paid to the club for its benefit but is subsequently paid to the players

Any prize (whether in cash or in kind) received by a club that is subsequently distributed by the club to the players in its employment is derived by the players by virtue of their employment or for services rendered by them and accordingly forms part of their gross income. The prize would also fall within the definition of "remuneration" for employees' tax purposes and would be subject to employees' tax, as an employer-employee relationship exists between the club and players.

In the unlikely event that the relevant player is an independent contractor, the prize would still be gross income in this player's hands, but would not be remuneration that would be subject to employees' tax as the club and player is in these circumstances not in an employee-employer relationship for employees' tax purposes.

The sportsperson receives the prize indirectly: The prize is paid to the club for the benefit of the player

Should the prize initially be given to the club, but it is clear that it is the players who are contractually entitled thereto, the prize will not be included in the gross income of the club since it merely received the prize, not for its own benefit, but as a conduit on behalf of the players.⁵⁷

Should the prize accrue to the player via the club as conduit, there will generally be no obligation on the part of the sponsor to withhold employees' tax, as it cannot be said that

⁵⁷ See *CIR v Witwatersrand Association of Racing Clubs*, 23 SATC 380.

there is an employee-employer relationship between the player and the sponsor. Similarly, the club will not need to account for any employees' tax in this instance as it will not have paid any remuneration to the player as the club has in effect merely acted as conduit for the payment of the prize (often referred to as a paymaster arrangement).

5.6.3 VAT implications

A prize provided to participants in a sporting event will not be regarded as arising in consequence of any bet placed on the outcome of a race or any other event or occurrence as contemplated in section 8(13) of the VAT Act. Section 8(13) provides that if any person bets an amount on the outcome of a race or other event or occurrence, the person with whom the bet is placed is deemed to have made a supply to the person who placed the bet. That person, if a vendor, is accordingly liable to account for output tax on the amount of the bet received.

A betting transaction is when one person places a sum of money at risk with another person who accepts the money as a bet, based upon the outcome of a race, competition or other event or occurrence if the outcome is uncertain. By contrast, participants in a sporting competition are competing on the basis of the application of their skill and knowledge and cannot be said to have entered the competition on the basis of a 'bet'.⁵⁸

As the provisions of section 8(13) of the VAT Act will not apply to participants in sporting competitions, the provisions of section 16(3)(d) that allow a person with whom the bet is placed to claim a deduction of the VAT fraction (14/114) of the amount of any prize or winnings awarded to a successful punter, does not apply.

The sportsperson receives the prize directly

A player that is an employee, or an independent person that is not registered or liable to register as a vendor, need not account for any VAT on the prize received. However, if the player is a vendor and receives the prize for having participated in and winning a sporting event, the prize (whether in cash or in kind) will constitute consideration for the supply of services by the player in the course or furtherance of the player's enterprise and the player will need to account for output tax thereon. Should the prize not be in money, but in kind, the open market value of the prize needs to be determined and such value constitutes the consideration for the supply of services made by the player. The player is required in these circumstances to issue a valid tax invoice to the event holder.

The sportsperson receives the prize indirectly: The prize is paid to the club for its benefit but is subsequently paid to the players

Any part of the prize that is contractually due to the club but which is distributed by the club to any individual team player who is an employee of the club would constitute remuneration for employees' tax purposes. Such remuneration is specifically excluded from the ambit of the definition of "enterprise" and as such would not be subject to VAT, even if the player was registered as a vendor in respect of the player's other taxable activities. It follows that the player would not be required to account for any VAT on the portion of the prize received by him or her. As no VAT is included in the payment to the player, the club would not be entitled to deduct any tax it might have incurred on acquiring the prize awarded to the player.

In the unlikely event that the player is an independent contractor and is a vendor, the player would need to account for VAT (output tax) on the prize (consideration) received by the player for the supply of his or her services to the club. Should the prize be in kind, for

⁵⁸ See Interpretation Note 84 dated 26 March 2015 "The Value-Added Tax Treatment of Bets".

example, a car or free services, the open market value of the prize would need to be determined and such value would constitute the “consideration” derived by the player for the services supplied by the player to the club. The player is required in these circumstances to issue a valid tax invoice to the club.

The sportsperson receives the prize indirectly: The prize is paid to the club for the benefit of the player

Should a prize that is paid to a club be contractually payable to a player, the club will not be liable for any output tax since the prize would merely be received by the club on behalf of the player. As the prize given to the player in these circumstances would not constitute remuneration for employees’ tax purposes as the player is not an employee of the sponsor, the player would need to account for output tax on the prize if the player is a vendor for VAT purposes. The fact that the player is an employee of a club does not mean that the prize paid by a sponsor via the club as conduit constitutes remuneration. It follows that if the player is continuously or regularly engaged in competitions, that is, carries on an enterprise, and prizes are earned in excess of the VAT registration threshold from sponsors that are not employers in relation to the player, then the player needs to register for VAT purposes and account for output tax on the prizes received.

5.7 Indemnification of sportspersons

5.7.1 Introduction

Every year thousands of serious injuries occur to sportspeople by, amongst other things, foul or negligent play, and unexpected violence or even by playing in unsafe facilities. An injured player’s sporting career can be temporarily or permanently disrupted, depending on the seriousness of the injury. The non-participation in any sport-related activities may result in the player not receiving any income for a period of time.

In the event of an injury to a player, a sum of money in the form of compensation is sometimes paid to the injured player. Such compensation may be paid to a player under a contract of insurance, by the club to which the player belongs or by the offending party that caused the injury. Compensation will usually only be paid by the club to the player when it is under a legal obligation to make the payment, and by the offending player when the player is ordered by a court to do so.

5.7.2 Income tax implications

In determining whether an amount paid as compensation otherwise than under a contract of insurance (see below) is taxable or not, the question that needs to be considered is whether the money was paid to compensate the player for loss of earnings that the player might have otherwise received had the injury not occurred. In this case, the money will be regarded as part of the player’s gross income. The reason for this is that the compensation received would “fill the hole” left by the absence of the income, thus being revenue in the hands of the player as opposed to capital.⁵⁹

Should a player receive compensation that is not regarded as being revenue in nature, the compensation could constitute proceeds derived by the player for the disposal of a capital asset, being the right to claim compensation. However, under paragraph 59 of the Eighth Schedule a natural person must disregard a capital gain or a capital loss on such a disposal that results in that person receiving compensation for personal injury, illness or defamation. The stated reason for this exclusion is that “*any compensation received would normally be*

⁵⁹ See footnote 35.

*intended to restore the person who has suffered harm to the position he or she was in before the injury, illness or defamation.*⁶⁰

Example 8 – Amounts received for personal injury

Facts:

Magic Striker was seriously injured while playing in the semi-finals of the National Cup and will be out of active football for a period of 6 months. Magic Striker was awarded an amount of R250 000 by his club as compensation for not being entitled to match fees for the period that Magic Striker is injured and will not be able to play. Magic Striker also sued the opposing player who had caused the injuries for pain and suffering. The opposing player refuted the claim. After protracted negotiations Magic Striker agreed to accept R20 000 in full and final settlement of the claim.

Result:

The amount of R250 000 compensation received by Magic Striker from the club is taxable in Magic Striker's hands under paragraph (c) of the definition of "gross income". The compensation of R20 000 received from the other player, being of a capital nature and unrelated to Magic Striker's employment, falls outside paragraph (c) and is excluded from CGT under paragraph 59 of the Eighth Schedule.

Should a player have entered into a loss of earnings contract of insurance with an insurer and receive a payment from the insurer owing to the loss of income occasioned by a serious injury, such compensation is gross income and falls to be taxed in the hands of the player. The premiums paid on such a policy will have been deductible. A new regime came into effect on 1 March 2015 and from that day the premiums paid on income protection policies are no longer be deductible, but any compensation paid under the policy is tax-free.⁶¹

Each case should be considered on the facts of that particular case when deciding whether an amount of compensation constitutes a receipt of a revenue or capital nature in the player's hands.

5.7.3 VAT implications

Compensation payments, whether of a capital or revenue nature, would not normally be regarded as payment for a taxable supply made by the sportsperson and would therefore not generally give rise to any VAT implications. The same applies in cases of compensation which are determined as damages in a court of law.

Any indemnity payment made under a contract of insurance to a player who is a vendor is deemed to be consideration received for a supply by the player⁶² to the extent that it relates to a loss incurred in the carrying on of his or her enterprise. This will, however, apply only if the contract is one of taxable short-term insurance. While the definition of "insurance"⁶³ is very broad and includes any insurance against loss, injury or risk of any kind whatever, specifically excluded is any "long-term insurance policy" as defined.⁶⁴ As a general rule,

⁶⁰ *Comprehensive Guide to Capital Gains Tax* (Issue 5) in paragraph 12.8.

⁶¹ Sections 10(1)(gG)(i), 10(1)(gl), 23(r), and paragraph 12C of the Seventh Schedule, as amended and inserted by the Taxation Laws Amendment Act, 2013 with effect from 1 March 2015.

⁶² Section 8(8) of the VAT Act.

⁶³ Section 1(1) of the VAT Act. See also the *VAT 421 – Guide for Short-term Insurance* for more details in this regard.

⁶⁴ Section 2(2) of the VAT Act.

therefore, a player who is a vendor who receives compensation under a contract of long-term insurance for loss of earnings will not have to account for output tax. As in the case of income tax, there may be some exceptions as each case must be considered based on the facts and circumstances of the particular case. As a general principle, VAT will not be applicable unless the compensation can properly be regarded as consideration for a taxable supply made by the recipient of the payment to the person making the payment.

5.8 Bonuses and benefit matches

5.8.1 Introduction

Professional sportspeople sometimes receive moneys arising out of a benefit match or a series of events throughout a benefit period. The money raised during this initiative held by the club is then paid over to the player concerned.

5.8.2 Income tax implications

A player who receives monies as a result of a benefit activity is not using his or her skills for the purpose of commercial exploitation. The activities by the club are a means of recognising the personal attributes of the player and showing gratitude to the player for his or her contribution on the sporting field and to the game itself. The payments that the player receives will be once-off and *ex gratia* from the club. It is thus not something that is anticipated nor does the player have an expectation of receiving the benefit payments. However, all amounts (including voluntary awards) received for employment, services rendered or the termination of employment, are specifically included in gross income, whether the receipt is of a capital nature or of revenue nature.⁶⁵ Receipts and accruals arising out of benefit events are accordingly taxable in the hands of the player as they are expressly included in the player's gross income on the basis that they are directly related to services rendered by the player, regardless of whether the benefit is intended to recognise past or future services by the player.

In other situations a player will be paid a bonus on achieving a certain result, such as a bonus paid to members of a team on winning a particular competition or for achieving a personal best; or an award such as a "man-of-the-match" award. This additional amount paid to the player is an incentive payment or bonus that arises from normal employment and thus forms part of the player's taxable income.

All of these benefits (benefit match proceeds, bonuses and man-of-the-match awards) received by a player from his or her club constitute remuneration, as they are received for or by virtue of services rendered, employment or the termination of employment. The full award (whether in cash or kind) is taxable and employees' tax must be deducted by the club.

In the case of benefit match proceeds, bonuses and man-of-the-match awards being received directly by a player from sponsors or third parties, the amount of the proceeds, bonuses or man-of-the-match awards must also be included in the gross income of the player. Should the player receive these benefits in the form of goods or services, the market value thereof must be included in the player's gross income. However, if there is no employer-employee relationship between the sponsor and the player in these circumstances, no employees' tax withholding obligation arises.

⁶⁵ Paragraphs (c) and (d) of the definition of "gross income" in section 1(1).

5.8.3 VAT implications

As discussed above, the payment of bonuses and benefits to contracted players would constitute remuneration subject to employees' tax and as such would fall outside the scope of VAT.

Similar bonuses and benefit payments made to non-contracted players (that is, so-called independent contractors) would be subject to VAT only if the player is a vendor as the player would in these circumstances have received these payments as consideration for the supply of taxable services.

5.9 Allowances, advances and reimbursements

5.9.1 Introduction

The differences between allowances, advances and reimbursements are important and can be distinguished as follows:

- Allowances and advances are amounts of money granted by an employer to an employee in circumstances in which the employer is certain that the employee will incur business-related expenditure on behalf of the employer. The difference between the two is that, in the case of an allowance, the employee is not obliged to prove or account for the business expenditure to the employer whereas in the case of an advance, the employee is obliged to provide the necessary evidence.
- A reimbursement of business expenditure occurs when an employee incurs business-related expenses on behalf of an employer out of his or her own pocket (that is, without having had the benefit of an allowance or an advance) and is subsequently reimbursed for this expenditure by the employer after having proved and accounted for the expenditure to the employer.

(a) Income tax implications

All allowances and advances are included in a taxpayer's taxable income to the extent that the amounts are not expended for travelling on business; or for accommodation, meals and incidental costs while the employee is obliged to spend at least one night away from his or her usual place of residence as a result of that business.⁶⁶

Reimbursements and advances are not subject to tax in the hands of the employee when the employer instructs the employee to expend money on its behalf for business purposes and requires proof of the expenditure from the employee.⁶⁷

Should a player be in receipt of a subsistence allowance to cover accommodation, meals and other incidental costs while the player is obliged to spend at least one night away from his or her usual place of residence in South Africa, the player is allowed to deduct the amount actually expended on such expenditure items. The Act provides two methods for calculating the amounts which may be deducted in these circumstances.⁶⁸ Essentially the player is entitled to deduct the actual expenditure incurred or a deemed amount for meals and other incidental costs determined by SARS for the relevant year of assessment.

Sometimes employees are in receipt of allowances that are much greater than the true anticipated business expense. This excess portion is regarded as normal remuneration for

⁶⁶ Section 8(1)(a)(i).

⁶⁷ Section 8(1)(a)(ii).

⁶⁸ Section 8(1)(c).

services rendered, and constitutes gross income that is subject to the normal employees' tax rules. Also applicable to allowances and advances are the exemptions provided for in section 10. For example, uniform allowances and relocation cost allowances are exempt from income tax, provided they meet the conditions specified in the particular exemption provisions.

For more information on allowances, reimbursements and advances see Interpretation Note 14 (Issue 3) dated 20 March 2013 "Allowances, Advances and Reimbursements".

(b) VAT implications

Should an amount such as an allowance or advance be included in a player's remuneration, the club will not be allowed to deduct input tax on any expenses paid for by the employee as these are not regarded as the expenses of the club or employer. The club may, however, deduct input tax if an advance is provided to pay for expenses which are contractually incurred by the player on behalf of the employer. For example, a player might be provided with a specific advance to pay for travel, accommodation, meals and incidental costs which relate to work duties carried out at a place other than the player's usual working place which requires the player to spend at least one night away from home. In such a case, the expenses are for the account of the employer and not the employee. The employee, in such cases, should ensure that valid tax invoices are issued to the employer so that the employer may deduct the VAT incurred as input tax if this is allowed.

5.9.2 Travelling allowance

(a) Introduction

This allowance is granted to an employee to cover costs incurred by the employee for the use of a private motor car while travelling for business purposes.

(b) Income tax implications

A distinction must be drawn between the determination of the taxable portion of a travel allowance and the employees' tax treatment of such an allowance.

As regards employees' tax, eighty per cent (80%) of the allowance is generally subject to the deduction of PAYE on a monthly basis. However, in the event that an employer is satisfied that at least 80% of the use of the vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance is included as remuneration and is subject to employees' tax on a monthly basis.

While 80% of any travel allowance granted to a player would generally be treated as remuneration subject to employees' tax, this is not necessarily the amount that is taxable in the player's hands. The travel allowance granted to a player need only be included in the player's taxable income to the extent that it is not expended on business travel. In order to determine the cost incurred by the player on travelling for business, the player is required to keep accurate records of business travel (often referred to as a logbook). Two methods may be used to calculate the deduction – the player can choose either of the two methods described below:

- Actual business kilometres travelled during the year of assessment multiplied by the deemed rate per kilometre.⁶⁹

⁶⁹ The deemed rates per kilometre are published annually in the *SARS Electronic Travel Logbook*, available on the SARS website.

- Actual business expenditure, that is, actual business kilometres travelled during the year of assessment multiplied by actual expenditure divided by total kilometres. The player must be able to provide accurate information to substantiate the expenses by keeping a logbook.

The logbook must reflect the following minimum information:

- The odometer reading at the beginning of the year of assessment (1 March).
- The odometer reading at the end of the year of assessment (28 or 29 February).
- Details of business mileage, including date, destination, reason for the trip and kilometres travelled.

No deduction for travelling is permitted if detailed records are not kept. Expenditure on private travelling (for example, from home to office) is not deductible.

Having determined the actual kilometres travelled by the player on business, the next step is to multiply the kilometres travelled on business by the actual or deemed cost per kilometre to arrive at the deductible business expense. In the event that actual data is used to determine the cost per kilometre, a player must retain sufficient documentation in order to prove, if requested, the accuracy of such data. In the alternative, the player can use the deemed cost per kilometre specified by the Minister of Finance in the *Government Gazette*.

In circumstances in which the allowance granted to a player is for a vehicle that the player has been granted the right to use under paragraph 7 of the Seventh Schedule (that is, an “employer-owned company car”), the allowable deduction is Rnil.

A player that receives a travel allowance and a travel reimbursement must add the amount of the travel reimbursement to the amount of the allowance and determine the allowable deduction for the amount of business usage using one of the two methods discussed above.

See Interpretation Note 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements” for additional guidance on the calculation of the travel deduction (including examples) if required.

(c) VAT implications

To the extent that the travel allowance is treated as remuneration, the allowance will fall outside the scope of VAT.⁷⁰ No VAT implications will therefore arise in the hands of the player when receiving a travel allowance. However, to the extent that the travel allowance granted to a player is not treated as remuneration (on the basis that the player is not in an employee-employer relationship), that amount is consideration for a supply of services by a player. In the unlikely event that portion of a travel allowance, together with other non-remuneration income, exceeds the registration threshold, the player would need to register for VAT purposes and account for output tax thereon. The player would then also need to issue the club with a valid tax invoice to enable the club to deduct input tax.

As the player (being an employee) will have incurred the related travel costs in a private capacity, no VAT implications should arise. It cannot be said that the player has in these circumstances acted as an agent on behalf of the club in incurring the relevant expenditure. Should the player be a vendor and part of the travel allowance does not constitute remuneration, but rather, consideration for a taxable supply by the player, the player would

⁷⁰ Paragraph (iii)(aa) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act.

be entitled to claim an input tax deduction for the VAT incurred on any qualifying expenditure. As noted above, no input tax deduction may be claimed on the acquisition of a “motor car” as defined,⁷¹ while fuel is zero rated and no input tax deduction is similarly available on this expenditure item.

5.9.3 Reimbursements

(a) Introduction

It sometimes happens that a player does not receive a travel allowance but instead is reimbursed by the club for actual expenditure incurred or on an agreed per kilometre rate when the player is required to use his or her private vehicle to travel on club business.

(b) Income tax implications

In the event that the player does not receive a travel allowance and is reimbursed for the actual distance travelled for business purposes (at a rate per kilometre that does not exceed the rate per kilometre specified by the Minister of Finance by notice in the *Gazette* from time to time) and the total business kilometres travelled during the year of assessment do not exceed 8 000 km, the reimbursement is not regarded as taxable income or remuneration and is accordingly not subject to employees' tax. In essence, the player is in these circumstances deemed to have expended the amounts reimbursed to him or her by the club on business travel. The total reimbursement must, however, be reflected under code 3703 on the player's IRP5 certificate.

Should the amount reimbursed meet the requirements set out above, either as to the rate per kilometre paid by the club or the actual number of kilometres travelled on business by the player, the amount falls to be treated in a similar manner to a travel allowance, namely, that the amount of the reimbursement is regarded as taxable income to the extent that the amounts reimbursed are not expended on business travel.⁷² However, as in the case of a travel allowance, the player will be regarded as having expended so much of the amounts reimbursed on business travel as does not exceed the actual distance travelled multiplied by the rate per kilometre fixed by the Minister of Finance in the *Government Gazette*. The amounts reimbursed will nevertheless not constitute remuneration⁷³ and the club will accordingly not need to account for employees' tax on any amount reimbursed to a player for having used his or her private vehicle to travel on the club's business even though the reimbursements exceed the limits referred to above. The amount reimbursed to the player in such circumstances is also required to be reflected under code 3702 on the player's IRP 5.

As mentioned above, a travel reimbursement that is received in addition to a travel allowance, or *vice versa*, must be added together on assessment and both must be treated as a travel allowance.

The distance travelled for business purposes can be proved by a logbook in which the business kilometres, destinations and dates on which the travelling occurred, must be reflected.

⁷¹ Section 1(1) of the VAT Act.

⁷² Section 8(1)(a).

⁷³ Paragraph (cA) of the definition of “remuneration” in the Fourth Schedule, read with section 8(1)(b)(iii).

(c) VAT implications

To the extent that an amount reimbursed to players for having used their private motor vehicles for travelling on club business constitutes remuneration for employees' tax purposes,⁷⁴ no VAT implications arise. In the event that all or some of the amounts reimbursed to a player in these circumstances is not remuneration for employees' tax purposes, the amounts will constitute consideration received by the player for the supply of services to the club. If the relevant player is, or should be, registered as a vendor for VAT purposes because, for example, the income derived by the player from sponsorships and other third party payments is in excess of the VAT registration threshold, the player will need to register for VAT purposes and account for output tax on the non-remuneration amounts reimbursed to the player by the club.

5.9.4 Accommodation

(a) Introduction

A player may receive an allowance to cover the cost of expenses for accommodation, meals and other incidentals incurred while away on business. The allowance would be applicable if the club does not pay for or reimburse the player for the expenditure incurred.

(b) Income tax implications

The allowance is fully taxable⁷⁵ but the player will be entitled to a deduction⁷⁶ against the allowance received when the player is required to spend *at least one night away* from his or her usual place of residence. The deduction is always limited to the amount of the allowance.

The deduction available on the portion of the allowance for accommodation is the actual expenditure incurred by the player, limited to the portion of the allowance for accommodation.

The deduction available on the portion of the allowance for meals and incidentals (commonly referred to as a subsistence allowance) may be calculated as follows:

- Actual expenditure, limited to the amount of the allowance⁷⁷ (the player must retain the supporting documentation to prove the expenditure incurred); or
- The amount as set by the Commissioner and published in the *Government Gazette*.⁷⁸ For the year of assessment ended 29 February 2016, the amount for meals and incidentals for travel in the Republic is R353 per day and for incidentals R109 per day. The amount for travel outside the Republic depends on the particular country where the travel occurred – a list of the rates is available on the SARS website.

⁷⁴ Paragraph (cA) of the definition of "remuneration" in the Fourth Schedule, read with section 8(1)(b)(iii).

⁷⁵ Section 8(1)(a)(i)(bb).

⁷⁶ While the Act provides that any subsistence allowance must be included in a player's taxable income, the amount of subsistence allowance to be so included must in essence be reduced by the amount actually expended by the player on accommodation, meals and other incidental costs while the player is away from his or her usual place of residence in South Africa for at least one night [section 8(1)(a)(i)(bb)]. In reality therefore, no deduction *per se* may be claimed by the player, the amount of the subsistence allowance is merely reduced by the amount actually expended by the player on accommodation, meals and other incidental costs.

⁷⁷ Section 8(1)(c)(i).

⁷⁸ Section 8(1)(c)(ii).

See Interpretation Note 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements” for additional guidance on the calculation of the travel deduction (including examples) if required.

(c) VAT implications

As explained earlier, this type of allowance is treated the same as any other allowance, advance or reimbursement constituting remuneration.⁷⁹ Any allowance granted to a player to cover the cost of accommodation, meals and other incidentals which was incurred while the player was away on business for at least one night will therefore not give rise to any VAT implications if the allowance constitutes remuneration for purposes of employees’ tax.

In a case in which the allowance or advance does not constitute remuneration for employees’ tax purposes, the amount received will constitute consideration received by the player for the supply of services for VAT purposes and the player would need to account for output tax thereon if registered as a vendor. This will also be the case if such amounts (either alone, or together with other non-remuneration amounts earned) cause the player to exceed the compulsory VAT registration threshold.

5.10 Fringe benefits

5.10.1 Introduction

As mentioned above, clubs often provide fringe benefits to players – see **4.7.1**. The cash equivalent value of the fringe benefit, if any, is gross income in the player’s hands and the club as employer is required to deduct employees’ tax in relation to such gross income.

From a VAT perspective, the club, if a vendor, is deemed to have made a supply of the fringe benefit to the player concerned and may be required to account for output tax on the deemed consideration for that supply. The consideration for such a supply is deemed to be the cash equivalent value of the fringe benefit for income tax purposes (except in the case of the grant of the right of use of a motor car by the club, in which case specific valuation rules apply for VAT purposes).

5.10.2 Income tax implications

A player that has been granted a taxable fringe benefit by a club will be liable for income tax on the cash equivalent of the value of the fringe benefit. The most common fringe benefits provided by a club to its players are dealt with in detail in **5.10.4** to **5.10.12**.

5.10.3 VAT implications

As mentioned above, see **4.7.3**, clubs may be required to account for output tax at the standard rate on the deemed consideration for any fringe benefit provided to a player. The VAT implications that arise in consequence of the grant by a club of specific taxable fringe benefits are dealt with in detail under **5.10.4** to **5.10.12**.

5.10.4 Residential accommodation

(a) Introduction

Clubs often provide free or cheap residential accommodation to players or pay for the accommodation of players.

⁷⁹ Paragraph (iii)(aa) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act.

(b) Income tax implications

A taxable benefit arises when the player is provided with accommodation either free of charge or for rental consideration that is less than the “rental value” (see below regarding the various methods that may be adopted in determining the rental value) of the accommodation.

The taxable amount of the benefit is equal to the rental value (calculated as stipulated in the Act) less any amount the player pays to the club for the benefit.

There are a number of ways to calculate the rental value depending on the detailed facts applicable. However, the rental value is generally equal to the greater of the cost to the employer of the accommodation (if rented by the employer) or the amount calculated in terms of the following formula if the property is owned by the club:

$$\text{Annual rental value} = (\text{Remuneration in previous year of assessment} - \text{R70 700}) \times 17\%^{80} \times \text{number of completed months during which the employee is entitled to occupation of the accommodation} / 12.$$

No rental value is placed on accommodation provided by an employer to an employee if the employee is away from his or her usual place of residence in South Africa for business.

Holiday accommodation is also a taxable benefit but it is not calculated using the aforementioned formula – it would be based on the cost incurred by the employer or a market related rental if the employer does not incur any direct costs (for example, a holiday house owned by the employer).

A cash allowance that has been granted to a player in order to defray accommodation costs will be subjected to employees’ tax (see **5.9.4**).

The cash equivalent of the value of the taxable benefit must be calculated during the year of assessment at the same intervals at which the player is remunerated, and employees’ tax must be deducted.

The cash equivalent of the value of the taxable fringe benefit must be reflected under code 3805 on the player’s IRP5 certificate.

(c) VAT implications

No VAT implications arise when residential accommodation is provided to a player as the supply of residential accommodation is an exempt supply for VAT purposes. It follows that although the provision of residential accommodation by a club to a player will give rise to a taxable fringe benefit for income tax purposes, the club is not liable to account for any output tax thereon. As the supply of the residential accommodation is an exempt supply for VAT purposes, the club is prohibited from claiming any input tax deduction on any goods or services (for example: repairs, electricity, and refuse removal) acquired in order to supply the accommodation to the player.

⁸⁰ A rate of 18% will apply if the accommodation is unfurnished but power or fuel is supplied by the club, or if the accommodation is furnished but power and fuel is not provided by the club. A rate of 19% will apply if the accommodation consists of at least 4 rooms which are furnished and power or fuel is supplied by the club. Lower percentages will apply if the accommodation

5.10.5 Right of use of a motor vehicle

(a) Introduction

Clubs often receive vehicle sponsorships from car dealers or manufacturers. The club may in turn provide the right of use of the vehicles to players.

(b) Income tax implications

A taxable benefit arises when the club or an associated institution in relation to the club provides the player with the right to use the motor vehicle for the player's private or domestic use. The method used to determine the taxable benefit is based on the determined value of the motor vehicle.

The value of the private use is calculated at 3,5% per month of the "determined value" of the vehicle (as defined in the Seventh Schedule, generally the cash cost of the vehicle including VAT). The percentage reduces to 3,25% per month if the vehicle is the subject of a maintenance plan which commenced at the time the vehicle was acquired. The actual cost incurred (including the cost of fuel) must be used to calculate the taxable benefit when the motor vehicle was acquired by the employer under an operating lease concluded by parties transacting at arm's length and that are unconnected to each other.

The determined value of the motor vehicle is reduced when the player is first granted the right of use of the motor vehicle 12 months or more after the club first acquired the motor vehicle or the right of use thereof. The reduction is by means of a depreciation allowance of 15% determined in accordance with the reducing balance method for each completed 12-month period from the date the club acquired the motor vehicle.

The value of private use of a motor vehicle which is only used for part of the month must be apportioned and only that part of the month in which it was used must be taken into account. For example, if a player only gets the use of the motor vehicle half way through the month then only half a month is taken into account. The period taken into account does not exclude temporary absences, such as the motor vehicle being in for repairs or the player being on holiday.

Should more than one vehicle be made available to a player at the same time, each vehicle represents a separate taxable benefit. However, if a player is able to satisfy SARS that each vehicle was used during the year of assessment primarily for business purposes, the value to be placed on the private use of all the vehicles is deemed to be only that of the vehicle with the highest value of private use.

The cash equivalent value of the taxable benefit is equal to the value of private use (generally calculated as discussed above) less any consideration the player pays the club for the private use of the vehicle (excluding any consideration for the cost of licences, insurance, maintenance or fuel).

See Interpretation Note 72 dated 22 March 2013 "Right of Use of Motor Vehicles" for additional detailed guidance on the calculation of the taxable benefit arising from the use of an employer-owned vehicle if required.

The taxable benefit may be adjusted on assessment of a player's income tax return, based on the ratio of business kilometres and private kilometres travelled, provided the player maintains an accurate logbook. Further relief could be available on the cost of licence, insurance, maintenance and fuel for private travel, if the full cost of these expenses were borne by the player.

The cash equivalent value of the taxable benefit accrues monthly and employees' tax must be deducted. The cash equivalent value of the taxable benefit must be reflected under code 3802 on the player's IRP5 certificate.

(c) VAT implications

An employer is deemed to have made a taxable supply to an employee in the course or furtherance of the enterprise if a motor vehicle is provided to the employee for private or domestic purposes either free of charge, or for a consideration which is less than the determined value of such use. Thus if a club provides a player with the use of a motor vehicle the club will be required to declare output tax on the taxable benefit in every tax period during which the motor vehicle is provided to the player.

However, the cash equivalent value of the motor car fringe benefit is not the deemed consideration upon which output tax must be accounted for by the employer (club). The consideration for the supply is instead required to be calculated in the manner prescribed by the Minister of Finance in *Regulation GN 2835 – Directions for purposes of sections 10(8) and (13) – dated 22 November 1991*.

This Regulation basically provides that the consideration in money for the deemed supply (taxable benefit) upon which VAT is payable is calculated as being –

- 0,3% of the determined value (see above) of the motor vehicle (for each month or part thereof) if an input tax credit on the supply of the motor vehicle was specifically denied under section 17(2) of the VAT Act; or
- 0,6% of the determined value (see above) of the motor vehicle (for each month or part thereof) if an input tax credit has, or may be deducted by the club on the supply to the club of the motor vehicle.

See **4.3.4** and **Example 3**.

5.10.6 Personal use of business cellular phones and computers

(a) Introduction

Clubs may allow players to use cellular phones or computers owned by the club for personal use. The player's may have sole use of these assets or only intermittent use.

(b) Income tax implications

A player is deemed to have to have been granted a taxable benefit if the player is granted the right to use any asset owned by the club for private or domestic purposes. The cash equivalent of the value of the taxable benefit is 15% per annum on the lesser of the cost of the asset to the club or the market value thereof on the date that the player commences using the asset. Should a player be granted sole use of a cellular phone or computer for its useful life or a major portion thereof, then the cash equivalent value of the taxable fringe benefit is the cost to the employer of the asset. In this case, the taxable benefit is deemed to have accrued to the player on the date that the player is granted the use of the cellular phone or computer. If the club holds the asset under a lease, the value of the taxable benefit is the rental payable by the club.

However, no value is placed on the private or domestic use of an asset provided by a club to a player if the asset consists of a telephone or computer which the player uses mainly for the purposes of the club's business. The term "mainly" has been interpreted by our courts to mean usage in excess of 50%.

See Interpretation Note 77 dated 4 March 2014 “Taxable benefit – Use of Employer-provided Telephone or Computer Equipment or Employer-funded Telecommunications Services” for additional detailed guidance on the income tax implications that arises on the use of employer-provided cellular phones and computers.

(c) VAT implications

The club is required to account for output tax on the cash equivalent value of the taxable benefit in each tax period in which the player has the use of the asset. In essence the club will need to account for output tax by applying the tax fraction (14/114) to the cash equivalent value of the taxable benefit. If the taxable benefit has a nil value for income tax purposes as explained in **5.10.6(b)**, the employer will not be liable to account for any output tax on the taxable fringe benefit.

5.10.7 Free or cheap communication services

(a) Introduction

A club may pay for the provision of communication services, such as access to a cellular telephone network, to a player. To the extent that the player uses these services for private purposes, a taxable benefit is granted by the club to the player and the following tax implications arise.

(b) Income tax implications

A player is deemed to have received a taxable benefit if –

- any service that has been rendered to the player at the club’s expense (whether by the club or by some other person); and
- that service has been used by the player for his or her private and domestic purposes; and
- no consideration has been given by the player or the consideration is less than the cost to the club of providing that service.

The cash equivalent value of the taxable benefit is the cost to the club of rendering the communication services or having such services rendered to the player, less any amount paid by the player to have the services rendered.

No value is placed on a communication service which the player uses mainly for the purposes of the club’s business. The term “mainly” has been interpreted by our courts to mean usage in excess of 50%. For example, the portion of the bill that relates to private use will not result in a taxable benefit in the hands of the player when the monthly network subscription is paid for by the club but the network access is used mainly for business purposes.

See Interpretation Note 77 dated 4 March 2014 “Taxable benefit – Use of Employer-provided Telephone or Computer Equipment or Employer-funded Telecommunications Services” for additional detailed guidance on the income tax implications that arises on the provision of free or cheap telecommunications services.

(c) VAT implications

As previously mentioned, the VAT implications essentially follow the income tax treatment so that the club is required to account for output tax on the cash equivalent value of the taxable benefit as determined for income tax purposes. The output tax liability is determined by

applying the tax fraction (14/114) to the cash equivalent of the value of the taxable benefit. As the club is deemed to make a taxable supply of the taxable benefit to the player, the club will be entitled to deduct input tax on any goods or services acquired by it in order to supply the free or cheap communication services. If the taxable benefit has a nil value for income tax purposes as explained in **5.10.7(b)**, then the employer will not be liable to account for any output tax.

5.10.8 Employer owned insurance policies

(a) Introduction

It may be that a club pays an insurer under an insurance policy that directly or indirectly benefits the employee, the employee's spouse, child, dependent or nominee, such as group life or death and disability policies.

(b) Income tax implications

A player will have been granted a taxable benefit if a club has made any payment, directly or indirectly, under any insurance policy for the benefit of the player or the player's spouse, child, dependant or nominee. A taxable benefit does not arise when the insurance policy relates to an event arising solely out of and in the course of the employment of the player.

Thus insurance products such as group life or death and disability policies, in which the player is covered under the policy irrespective of whether the insured event occurs as a result of such player's employment, constitutes a taxable benefit. However, insurance such as flight insurance while travelling to a match in another city is not a taxable benefit as the relevant insurance policy relates to an event (the match) arising solely out of and in the course of the player's employment by the club.

The cash equivalent value of the taxable benefit is the amount of any premiums incurred by the club, directly or indirectly, under the policy. To the extent that the premium is paid for an income protection policy, and is taxed as a taxable benefit in the player's hands, it is regarded as having been paid by the player and may therefore be deductible in the player's hands. A new regime came into effect on 1 March 2015 and from that day the premiums paid on income protection policies will no longer be deductible, but any compensation paid under the policy will be tax-free.⁸¹

(c) VAT implications

While the club is deemed to make a supply of the taxable benefit to the player, as the supply of long-term insurance is an exempt supply, the club need not account for output tax on the deemed supply of the taxable benefit. The club will therefore not be entitled to deduct input tax on the premiums paid to the insurer.

5.10.9 Relocation or transfer costs of an employee

(a) Introduction

A club may bear the cost of relocating or transferring a player in consequence of –

- the player's relocation from one place of employment to another;
- on the appointment of the player; or
- termination of the player's employment.

⁸¹ Sections 10(1)(gG)(i), 10(1)(gl), 23(r), and paragraph 12C of the Seventh Schedule, as amended and inserted by the Taxation Laws Amendment Act, 2013 with effect from 1 March 2015.

(b) Income tax implications

While the club will in these circumstances have provided the player with a taxable benefit under the Seventh Schedule, such a benefit is exempt from tax in certain circumstances.⁸² A transfer that does not result in a change of residence does not fall within the ambit of the exemption.

In the event that the club has borne the expense of transporting the player, members of this player's household and personal goods and possessions from a previous place of residence to a new place of residence, the benefit is exempt from tax.⁸³

The value of any residential accommodation (whether provided in a hotel or elsewhere) provided by the club to the player as result of a transfer or relocation will be exempt from income tax, provided that the player is not granted residential accommodation for more than 183 days. As soon as the benefit has been provided for more than 183 days, a taxable benefit arises.⁸⁴

The following items are exempt from income tax if the club reimburses the player for the actual expenditure incurred:

- Bond registration and legal fees paid for a new residence that has been purchased;
- Transfer duty paid on the new residence;
- Cancellation fees paid of the cancellation of bond on the previous residence; and
- Agents commission on sale of previous residence.⁸⁵

SARS may allow certain settling-in costs, which include expenditure incurred on new school uniforms, the replacement of curtains, motor vehicle registration fees, telephone, and water and electricity connection, to be paid by an employer without any fringe benefit accruing to the player. To simplify administration, a club may pay an amount equal to one month's basic salary to a player to cover settling-in costs.⁸⁶ Additionally, the expenditure that is exempt from tax must be reflected under code 3714 on the player's IRP5 certificate. In cases in which the costs incurred by the club are taxable in the hands of the player, the amount must be reflected under code 3713 on the IRP5 certificate.

(c) VAT implications

While the club will have provided the player with a benefit under the Seventh Schedule if it bears the cost of relocating the player, as the benefit is exempt from tax under section 10(1)(nB), the club will not be deemed to have provided the player with a "taxable benefit" as defined in the Seventh Schedule.⁸⁷ The club will accordingly not be treated as having made a deemed taxable supply to the player in these circumstances and the club will not be liable to account for any output tax thereon.

⁸² Section 10(1)(nB).

⁸³ Section 10(1)(nB)(i).

⁸⁴ Section 10(1)(nB)(iii).

⁸⁵ Section 10(1)(nB)(ii), read with paragraph 19.2 of the *Guide for Employers in respect of Employees' Tax* (PAYE-GEN-01-GO4).

⁸⁶ Section 10(1)(nB)(iii), read with paragraph 19.2 of the *Guide for Employers in respect of Employees' Tax* (PAYE-GEN-01-GO4).

⁸⁷ Paragraph (a) of the definition of "taxable benefit" in paragraph 1 of the Seventh Schedule.

5.10.10 Uniforms

(a) Introduction

The duties of sports players, especially in team-orientated sports, are of such a nature that they are normally required to wear a uniform whilst competing. In professional sport, the clubs would normally provide the uniform or clothing to the players. Uniforms would include items such as kit worn during matches, formal jackets, training gear, etc.

(b) Income tax implications

The provision of uniforms by the club would constitute the granting of a taxable fringe benefit under the Seventh Schedule. Similarly, should the club provide the players with a uniform allowance, the allowance would be fully taxable in their hands.

However, the value of a uniform or a reasonable uniform allowance is exempt from tax⁸⁸ if –

- the uniform (kit) is a special uniform;
- the player is, as a condition of employment, required to wear the uniform (kit) while on duty; and
- the uniform (kit) is clearly distinguishable from ordinary clothing.

Unless **all** of the above conditions are satisfied, the value of the uniforms provided to players is taxable and employees' tax must be deducted from the player's remuneration, or from the allowance, if an allowance is paid. The value of the uniform or the allowance amount must be reflected under code 3709 on the player's IRP5 certificate.

(c) VAT implications

A club is deemed to make a taxable supply of a fringe benefit to players only if the provision of uniforms to employees is not exempt from income tax (see **5.10.10(b)**). If the benefit is exempt from income tax because the requirements of section 10(1)(nA) have been met, the club will not be liable to account for any output tax in relation to the fringe benefit. In such circumstances the club is not regarded as having provided the player with a taxable benefit, and consequently, no deemed taxable supply arises for VAT purposes.

Should the provision of uniforms to employees not be exempt from income tax and a taxable fringe benefit arises for income tax purposes, the club will be required to account for output tax on the cash equivalent of the value thereof. The output tax is calculated by applying the tax fraction (14 × 114) to the cash equivalent of the value of the taxable benefit. As the club is deemed to make a taxable supply of the taxable benefit to the player, the club will be entitled to deduct input tax on any goods or services acquired by the club in order to supply the uniforms.

5.10.11 Medical expenses

(a) Introduction

Medical scheme contributions and medical expenditure could be paid for by either the club or the player.

(b) Income tax implications

Medical scheme contributions and medical expenditure could be paid by either the club or the player. If the club pays the medical scheme contribution in respect of or on behalf of the

⁸⁸ Section 10(1)(nA).

player or the player's dependants, the payment will be included in the player's income as a taxable benefit. In addition, for the purposes of calculating the medical scheme fees tax credit (**MTC**) and additional medical expenses tax credit (**AMTC**), the player is deemed to have paid the expense.

Any contributions paid by the club to a foreign medical aid scheme (that is, any fund which is registered under similar provisions to South African registered medical schemes contained in the laws of the foreign country where the medical scheme is registered) will also be treated as a taxable fringe benefit in the hands of the player. For purposes of any deduction the player is entitled to, the player is deemed to have paid the expenses.

The income tax treatment of medical scheme contributions and medical expenditure incurred by a player (or which are deemed to have been incurred by a player in the circumstances mentioned above) is set out in the *Guide on the Determination of Medical Tax Credits and Allowances (Issue 5)*, which is available on the SARS website.

(c) VAT implications

Although medical benefit schemes may qualify to register for VAT in relation to certain taxable supplies which they make, they do not have to account for any VAT on any subscriptions for providing medical benefits to their members as the services rendered in return for these subscriptions or contributions are exempt. No input tax may therefore be deducted by the club if it pays a subscription to a medical benefit scheme for the benefit of a player. Similarly, a player who is a vendor will not be entitled to any input tax deduction for any subscriptions paid by the player to a medical benefit fund as no VAT will have been payable on the subscriptions.

Any medical expenses or fees for hospitalisation paid by the club, or which are provided by the club to any players who are injured on duty (whether provided at the club's medical facility or at a private facility), are treated as a taxable benefit under the Seventh Schedule. However, a nil value (and accordingly a nil consideration for VAT purposes) may apply in certain circumstances. The club would in these circumstances not be liable to account for output tax on the taxable benefit.

The club will, however, be entitled to deduct any VAT charged or included in the cost of providing medical services to its players as input tax if the expense is incurred in the ordinary course or furtherance of the club's enterprise (that is, conducting the sporting activity).

In the event that a player is a vendor and incurs medical expenses as a consequence of any illness or injury related to the player's activities as player, the player is entitled to deduct input tax (subject to the usual documentary requirements) as such expenses would have been incurred in the course or furtherance of the player's enterprise.

5.10.12 Payment or release of a debt

(a) Introduction

A club may undertake to pay a personal debt owed by the player to a third party, for example, the membership fees that the player is obliged to pay to a professional body of which the player is required to be a member. The club may also release the player from an obligation to pay a debt owing by the player to the club.

(b) Income tax implications

Should a club, whether directly or indirectly, pay a personal debt of a player or forgive any debt owed by the player to the club, the club is regarded as having provided the player with a taxable fringe benefit under the Seventh Schedule⁸⁹. The cash equivalent of the value of the fringe benefit is the amount of the debt paid or foregone. Importantly, however, the relevant value of the fringe benefit is deemed to be nil if the club has paid the membership fees due by the player to a professional body if membership of the professional body is a condition of the player's employment with the club⁹⁰.

(c) VAT implications

The payment by the club of a debt on behalf of a player, or releasing the player from paying a debt owing to the club, triggers a taxable fringe benefit for income tax purposes. The club is, however, not deemed to have made a supply to the player under section 18(3) of the VAT Act since the mere payment or forgiveness of an employee debt does not constitute a supply of services in its own right.⁹¹ The fringe benefit in these circumstances will accordingly not be subject to VAT.

As regards the payment by a club of the membership fees due by the player to a professional body that the player is required to be a member of because it is a condition of the player's employment with the club, as the cash equivalent value of the fringe benefit is deemed to be nil for income tax purposes, the consideration for the deemed taxable supply is similarly deemed to be nil. Importantly, the club is not entitled to any input tax deduction of any VAT paid to such a professional body as the relevant supply by the professional body is made to the player and not the club.

5.11 Pension fund contributions

5.11.1 Current contributions

A player's contribution to a pension fund is permitted as a deduction in determining such player's taxable income. This is normally done on a monthly basis when determining the player's employees' tax liability. The deduction is limited to the greater of R1 750 or 7,5% of the pensionable salary (that is, the portion of a player's income on which the player's pension fund contribution is based).

The contribution to the pension fund must also be claimed as a deduction in the annual income tax return. The information relating to the player's contribution is reflected under code 4001 on the player's IRP5 certificate and the club's contribution must be reflected under code 4472. Any pension fund contributions not allowed as a deduction (that is, contributions in excess of 7,5% of the player's pensionable salary), and which have rolled over to subsequent years of assessment will be taken into account when the player exits the fund (for example: upon withdrawal, resignation, retirement or death).

Any current contributions made by a club or player to a pension fund are exempt from VAT.⁹²

⁸⁹ Paragraph 2(h) of the Seventh Schedule.

⁹⁰ Paragraph 13(2)(b) of the Seventh Schedule.

⁹¹ Not only must the benefit granted by the employer constitute a taxable fringe benefit for income tax purposes, but in order to fall within the ambit of section 18(3) of the VAT Act the taxable fringe benefit must consist of a supply of goods or services in its own right.

⁹² Section 2(1)(j) of the VAT Act.

5.11.2 Arrear pension

Contributions for arrear pension are permitted as a deduction in determining the player's taxable income. The arrear contributions paid are limited to a maximum of R1 800 for a year of assessment. The arrear contributions are reflected under code 4007 on the IRP5 certificate.

Any arrear contributions made by a club or player to a pension fund are exempt from VAT⁹³.

5.12 Retirement annuity fund (RAF) contributions

RAF contributions are also permitted as a deduction in determining the player's taxable income. In cases in which it is requested by the player and permitted by the club, the RAF contributions may be taken into account on a monthly basis when determining the player's employees' tax liability. The deduction is limited to the greater of –

- 15% of non-pensionable income; or
- R3 500 less pension fund contributions allowed; or
- R1 750.

Non-pensionable income refers to a player's taxable income that is not taken into account when determining contributions to a pension fund or provident fund. Should a club make payments to an RAF for the benefit of a player, that player is taxable on the contributions as a fringe benefit. The player is then deemed to have actually made the contribution. The deduction will be subject to the limitations set out above.

The RAF contributions can also be claimed as a deduction in the annual income tax return, and declared under code 4006 of the player's IRP5 certificate. The total RAF contributions made by the player during a year of assessment are reflected on a tax certificate or statement issued by the applicable retirement annuity fund or insurer. Such a certificate can be obtained from the fund administrator.

Any contributions made by a club or player to a retirement annuity fund are exempt from VAT.⁹⁴

5.13 Other deductions for players

5.13.1 Introduction

Employees who do not earn mainly commission (in other words those who earn mainly salary, allowances and benefits) may only take into account limited deductions against their income. Section 23(m) provides that only the expenses listed below are permitted as deductions.

5.13.2 Repayment of employment income

Clubs may sometimes make payments to players that are subject to certain conditions. The payments are fully taxable (and are subject to employees' tax) at the time they are paid to the player. Players may thereafter be required to repay the amounts initially received as a result of their failure to remain with the club as required, or for having failed to meet the conditions that applied.

⁹³ Section 2(1)(j) of the VAT Act.

⁹⁴ Section 2(1)(j) of the VAT Act.

In circumstances in which a player is required to repay an amount to the club, and that amount was previously included in that player's taxable income, the amount repaid may be claimed as a deduction in the year of assessment in which it is repaid.⁹⁵ A deduction is claimable only on submission of the annual income tax return.

For example, if a player is paid a retainer of R10 000 in Year 1, on condition that the player remains in the employ of the club for two years, but then leaves the club before the two year period has been completed, the player may be required to repay the R10 000 to the club. In these circumstances the player is entitled to a deduction of R10 000 in the year of assessment during which the amount is actually repaid to the club.

The repayment by the player of the amount previously paid by the club to the player does not give rise to any VAT implications as the repayment of the amount does not constitute consideration for any supply made by the club to the player.

5.13.3 Agent's commission or fees

Agents assist players in securing public appearances, marketing of their image use rights, and promotion of certain products or services, amongst others. The agents, in return, are paid commissions by the players for securing these income streams. A player who is not earning income from employment (that is, a so called independent contractor) will be entitled to deduct this expense under section 11(a). Players in employment are not permitted to deduct these fees against their employment income, because of the prohibition provided for in section 23(m).

The deduction of agent's fees incurred by a player who is an employee in the production of the player's income that is not from employment (for example, if an agent secures a sponsorship deal for the player which is not connected with the player's employment), is not prohibited by section 23(m).

A player, who is an independent contractor and who is registered as a vendor for VAT purposes, will be entitled to claim as an input tax deduction any VAT charged by the agent as the services provided by the agent will have been acquired by the player for the purpose of making taxable supplies. A player who is in the employment of a club will not be entitled to claim any input tax deduction on any VAT paid to an agent as the player will in these circumstances not have acquired the services of the agent for the purpose of making taxable supplies.

6. Skills development levy (SDL)

The SDL scheme is a statutory compulsory levy scheme for the purpose of funding education and training needs in South Africa as envisaged in the Skills Development Act. It became payable with effect from 1 April 2000. This levy is paid by employers to SARS and is remitted to Government bodies known as sector education training authorities (SETAs) responsible for organising education and training programmes within a specific sector.

SARS is responsible for administering the SDL in so far as it relates to the collection and payment of the levy by employers. The leviable amount is the total amount of remuneration paid by an employer (club) to its employees (players) during any month and 1% of the leviable amount is payable to SARS by the employer (club).

⁹⁵ Section 11(nA).

Amounts paid to players below the income tax threshold (that is, in those cases in which no employees' tax is deducted) must also be included in the aggregate player's remuneration when determining the leviable amount. Small businesses with an annual payroll of less than R500 000 do not need to pay these levies. The SDL is paid with the employees' tax on a monthly basis.

At the time when the SDL was first introduced, the amount payable was regarded as being VAT-inclusive at the standard rate. However, with effect from 1 April 2005, SDL payments are no longer VAT-inclusive, and employers may no longer deduct input tax on such payments. SETAs will also, with effect from 1 April 2005, no longer need to declare output tax on SDL payments received, as they are regarded as public authorities and are no longer liable to register for VAT. Grants that are paid by SETAs to sports clubs that are employers for the purposes of training their employees are subject to VAT at the zero rate.

7. Unemployment Insurance Fund (UIF) contributions

UIF contributions are based on a player's remuneration, as determined for employees' tax purposes, before the deduction of allowable pension fund, retirement annuity fund and, if applicable, medical fund contributions. There are exceptions, such as commissions, pensions and annuities, amounts paid to labour brokers and personal service providers, retirement fund lump sums, and others.

The rate of contribution is 1% by the club and 1% by the player on such player's remuneration, and the club is obliged to withhold the player's contribution and pay both amounts to SARS. If any player earns more than R14 872 per month (R178 464 annually), the total contribution is payable only on the first R14 872 of remuneration. The maximum contribution is therefore R297,44 per month.

Unemployment benefits paid under the Unemployment Insurance Act 63 of 2001 are exempt from tax. The benefits are paid in the following circumstances:

- Ordinary unemployment benefits to unemployed contributors who are capable of and available for work.
- Illness allowance to contributors who are unemployed owing to illness.
- Maternity benefits to female contributors who are unemployed during the pregnancy.
- The spouse or minor child of someone who has died, if the deceased contributed to the fund.

UIF payments do not include any VAT and employers may not deduct input tax on such payments. Any player that receives unemployment benefits will not be regarded as having received consideration for services rendered and no VAT implications will arise in the player's hands, regardless of whether the player is a vendor or not.

8. Donations received by clubs and players

8.1 Introduction

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. 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.

8.2 Income tax implications

Donations received by a club or a player will not be taxable because it is regarded as a capital receipt. However, as the donation does not entail a disposal of any asset by the donee, no CGT implications arise in consequence of such a donation in the hands of the donee.

A donation [whether in money (cash) or in kind] will qualify as a deduction if made to an organisation which has been approved under section 30 as a public benefit organisation and must actually be paid or transferred during the year of assessment.⁹⁶

For more information on donations tax, see *The Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 4) which contains information regarding donations and public benefit organisations (PBOs) which can also be found on the SARS website.

8.3 VAT implications

“Consideration” for VAT purposes is defined⁹⁷ as including any payment, “whether or not voluntary”. It follows that any donation made to a club or player, if vendors, will constitute consideration received by such club or player. However, specifically excluded from the definition of “consideration” is any donation made to an “association not for gain”. The term “donation” is defined in section 1(1) of the VAT Act and essentially means a voluntary payment to an association not for gain that is not paid for any identifiable direct valuable benefit in the form of a supply of goods or services by the association not for gain to the donor or any connected person in relation to the donor. An association not for gain includes a non-profit sports club (amongst other entities), and does not necessarily have to be a PBO which has been approved under section 30 of the Income Tax Act.

A donation made to a professional club that is given completely gratuitously will not constitute “consideration” as defined unless it is paid in relation to a supply of goods or services by the club to the donor or any other person. Stated differently, if a donation is paid “in respect of, in response to, or for the inducement of, the supply of goods or services” by the club, it will be regarded as “consideration” for the taxable supply of goods or services by the club. However, given that the supply relating to the donation need not be made directly by the club to the donor, but can be made to any other person, in the event that the sporting organisation receiving the payment is not an association not for gain a donation (voluntary payment) will usually constitute consideration received by the club for a taxable supply of goods or services and will be subject to VAT at the standard rate. The donation in these circumstances will then constitute a voluntary payment made in respect of a taxable supply by the club, albeit for the benefit of a third party.

Generally, the donor will not be entitled to deduct any input tax on any goods, services, or cash donated to an association not for gain. Similarly, the association not for gain will generally not be required to declare any output tax on cash donations received, or on any subsequent supply of goods or services which it received as a donation.

For further information regarding donations, see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

⁹⁶ Section 18A.

⁹⁷ Section 1(1) of the VAT Act.

9. Taxation of foreign income

South Africa moved from a source-based income tax system to a residence-based income tax system in 2001. Taxpayers who are residents of South Africa are (subject to certain exclusions) taxed on their worldwide income, irrespective of where the income is earned. Natural persons (individuals) are regarded as resident in South Africa for tax purposes if they are ordinarily resident in South Africa, or they meet the physical presence test. A person other than a natural person (which would include clubs that constitute a “person” as defined for tax purposes)⁹⁸ is considered to be resident in South Africa if it is incorporated, established, formed or effectively managed in South Africa.⁹⁹

Over the years, South Africa has entered into a number of tax treaties concerning the avoidance of double taxation with various countries which are aimed at regulating the taxation of income which is earned in one country but which is subject to tax in both the country where the player is a tax resident and where the player renders his or her services. The main objective of a tax treaty is to avoid double taxation.

Section 6quat provides for the claiming of foreign taxes paid by a taxpayer as a credit against the taxpayer’s South African tax liability. Importantly, the rebate is available only when the relevant foreign taxes are imposed on income earned from a source outside South Africa that is also subject to tax in South Africa. Additionally, section 6quat also provides for a deduction from taxable income of foreign taxes which do not qualify for a tax rebate. Note that the section 6quat rebate or deduction is granted in substitution for the relief to which a resident would be entitled to under a tax treaty, and not in addition to such relief.

Section 6quin provides for a rebate for foreign taxes paid on income derived by a taxpayer from services rendered in South Africa. A distinction is drawn between tax imposed by jurisdictions with which South Africa has a tax treaty, and those that have not yet entered into such a treaty.

The rebate that may be claimed in the case of foreign tax imposed by a jurisdiction with which South Africa has a double taxation agreement, the rebate is the lesser of –

- the amount of income tax attributable to the relevant income; and
- the amount of foreign tax levied and withheld.

In the case of foreign tax imposed by a jurisdiction with which South Africa does not yet have a double taxation agreement, the rebate is the lesser of –

- the amount of income tax attributable to the relevant income; and
- the amount of foreign tax imposed.

For more information on the deduction of foreign taxes, see Interpretation Note 18 (Issue 3) dated 26 June 2015 “Rebates and Deduction for Foreign Taxes on Income”.

⁹⁸ A “person” is defined in section 1(1) as including, amongst other things, a trust. Under the Interpretation Act 33 of 1957, a “person” includes “any body of persons corporate or unincorporate”.

⁹⁹ Paragraph (b) of the definition of “resident” in section 1(1).

10. Taxation of foreign sportspersons

10.1 Introduction

As more and more international entertainers and sportspeople travel to South Africa to perform, new legislation has been introduced which seeks to tax the earnings of foreign entertainers and sportspersons which are derived from any “specified activity”¹⁰⁰ exercised or to be exercised by the foreign entertainers or sportspersons in South Africa.

The tax implications for foreign entertainers and sportspersons are briefly discussed below. For more information contact the Office of Non-Resident Entertainers and Sportspersons at (011) 602 4503 or (011) 602 2967.

10.2 Income tax implications

Under sections 47A to 47K, amounts paid to foreign sportspersons for specified activities in South Africa are subject to a withholding tax at a flat rate of 15%. The tax is a final tax. While the liability for the tax rests on the foreign sportsperson, the Act requires that any resident who is liable to pay a foreign sportsperson for carrying on such specified activities must withhold the tax from that payment and remit it to SARS before the end of the month following the month during which that amount was deducted or withheld. Such resident must submit a return together with the payment of the amount deducted. Failure to comply with this requirement could result in the resident being held personally liable for the payment of the tax.

However, the withholding tax does not apply to players who are employees of a resident South African employer (such as non-resident players contracted to play for a South African club for a period of time), or to players physically present in South Africa for more than 183 days in aggregate in any 12 month period commencing or ending during the year of assessment. These players will be subject to normal tax on any income derived by them from a source in South Africa.

There is also an obligation on any resident who is primarily responsible for founding, organising or facilitating a specified activity in South Africa to notify SARS of such activities.

For more information on residence and source, see Interpretation Note 3 dated 4 February 2002 “Resident: Definition in relation to a Natural Person – Ordinarily Resident”; Interpretation Note 4 (Issue-4) dated 12 March 2014 “Resident: Definition in relation to a Natural Person – Physical Presence Test” and Interpretation Note 6 dated 26 March 2002 “Resident: Place of Effective Management (Persons Other Than Natural Persons)”.

10.3 VAT implications

As mentioned in the beginning of this guide, VAT is levied at the standard rate on the taxable supply of goods and services in South Africa. A non-resident person (for example, a foreign sports club or a foreign independent sportsperson) who carries on an enterprise or activity in South Africa continuously or regularly must register and charge VAT for supplies made in South Africa when the value of taxable supplies made by the non-resident in any 12-month period exceeds the compulsory VAT registration threshold (currently R1 million). However, as mentioned, this will apply only if the non-resident sports club or independent sportsperson carries on the enterprise activity continuously or regularly in South Africa or partly in South

¹⁰⁰ “Specified activity” is defined in section 47A(b) as “any personal activity exercised in the Republic or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons”.

Africa, and provided that the person is not an employee which is paid remuneration by the club. Whether the activities of the person or club in South Africa are of a continuous or regular nature will depend on the facts and circumstances of each case.