



# Guide on the Taxation of Professional Sports Clubs and Players

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## 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. A discussion of any tax implications caused by the Draft Disaster Management Tax Relief Bill, does not form part of the scope of this guide.

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**. Unless indicated otherwise, the latest issue of these documents should be consulted.

For more information you may –

- visit SARS website at **www.sars.gov.za**;
- visit your nearest 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).

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## Glossary

In this guide, unless the context indicates otherwise —

- “**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;
- “**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 a fast growing industry 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 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, 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 the skills development levy and unemployment insurance fund contributions. Clubs will, in most instances, be liable to register as VAT vendors and will 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:

- **Allowances and taxable benefits** – The term "allowance" is usually used in the context of an employment relationship and means the granting of an amount additional to an ordinary salary. Allowances are generally paid to employees to meet expenditure incurred on behalf of their employers. Most allowances are fully taxable, whilst the portion of certain allowances 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 benefits granted to employees 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:
  - 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
  - any asset which is attributable to a permanent establishment of that non-resident in South Africa.
- An **“employee”** is defined in paragraph 1 of the Fourth Schedule and means, amongst other things, any person who receives remuneration (see below) 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 in return for a reward from that 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 personally to clients of the company or trust and certain other requirements are met.<sup>1</sup>
- **“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 of that Schedule from any “remuneration” (see below) paid or payable to an “employee” (see above). 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).
- **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. If no special deduction applies for a particular expense, this expense must comply with the general deduction formula before it will be deductible. The general deduction formula provides that, for an expense or loss to be deductible, it must be laid out or expended for the purposes of the taxpayer’s trade and it must –
  - be actually incurred during the year of assessment;
  - be in the production of income; and
  - not be of a capital nature.

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<sup>1</sup> Definition of “personal service provider” in paragraph 1 of the Fourth Schedule.

- **Gross income**– In calculating taxable income, a 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 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”. Having regard to the definition of “gross income” that 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.
- **Income tax** – Normal tax (also known as income tax) is imposed on the 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.
- **“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) because they receive remuneration (see below) but for the fact that the person provides services independently from the person who pays them to render the services, or to the person to whom the services are rendered – under terms usually specified in a contract. Unlike an employee, an independent contractor does not work mainly on the premises of the person paying for the services, or the recipient of the services; nor regularly under the control and supervision of an employer. Rather, an independent contractor works as and when required and retains control over schedules, numbers 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 – unless the independent contractor is a non-resident. Employees’ tax is always deductible from amounts payable to non-residents for services rendered, even if the non-resident is an independent contractor. A person is regarded as an independent contractor if that person employs three or more employees (other than connected persons to him or her) 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 “Employees’ Tax: Independent Contractors”.

- **“Provisional tax”** is paid under Part III of the Fourth Schedule by taxpayers earning taxable income other than remuneration (see below), for example, income from a business or profession or remuneration from an employer that is not registered for employees’ tax. 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 on assessment.



- **“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 by whom the amount is paid and of the person to whom the services are rendered – colloquially referred to as an **“independent contractor”** (see above).
- **“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 courts have held that the definition of “trade” is wide and not exhaustive. The question of 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.

- **“VAT”** 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.<sup>2</sup> 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,<sup>3</sup> 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 000<sup>4</sup> 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 15% 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,

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<sup>2</sup> 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.

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

<sup>4</sup> 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 R120 000 in the case of persons who supply “commercial accommodation” and not R50 000.

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* and the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

### **3. Taxation of professional sports clubs and persons**

All persons, whether a resident<sup>5</sup> or a person other than a resident (non-resident), 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, any income received will generally be of a revenue nature and therefore "gross income", which 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", even if such amounts could be considered to be of a capital nature.

Any 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) as well as any foreign taxes allowed as a deduction against income (in the case of a resident), 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), 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 which are allowed as a rebate against the normal tax due by a resident.

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 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 and clarity of a particular point, both players and clubs are dealt with together.

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<sup>5</sup> Defined in section 1(1).

## **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, television 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.

### **4.1 Transfer fees**

#### **4.1.1 Introduction**

Professional sports players are often transferred from one club to another. These transfers could be within South Africa or across international borders.

An example is the rules established by the *Fédération Internationale de Football Association* (FIFA) that provide that players who are contracted to a club can have their employment 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.

Essentially, a transfer fee is an amount paid by one club to another club which 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 cases 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 (the transferring club) to obtain the services of the player who is now being transferred, the transfer fee paid to the transferring club would be regarded as expenditure incurred in relation to the contractual rights held by the present club and would accordingly constitute a 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:*

	R
Proceeds	500 000
Less: Base cost	<u>(300 000)</u>
Capital gain	200 000

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

In the unlikely event that a club is found to be actively trading in the acquisition and disposal of 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 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 to expand its income-producing capacity. 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 can also arise that 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. In such a case, Club A must place an arm’s-length value in monetary terms on Player Y. Failing to do so, will result in SARS determining such value. This 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 which is essentially the surrendering 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 Value-added tax 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.<sup>6</sup> In either case, the selling club is required to issue a valid tax invoice to the acquiring club and the normal rules with regard to input tax and output tax for the clubs will apply.

See 5.2 for the tax consequences of transfer fees received by the players.

## **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 generally agreed on before entering into the contract, it is usually only paid 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 contract be prematurely terminated by the player.

### **4.2.2 Income tax implications**

The signing-on fee is not a restraint of trade payment as judicially considered<sup>7</sup> and accordingly is not dealt with as such under the provisions of the Act that specifically deal with restraint of trade payments.<sup>8</sup> 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

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<sup>6</sup> Section 11(2)(l) of the VAT Act.

<sup>7</sup> See ITC 1338 (1980) 43 SATC 171 (T).

<sup>8</sup> Paragraphs (cA) and (cB) of the definition of “gross income” in section 1(1), and section 11(cA).

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 under section 23H since the services rendered to the club by the player will be performed in future years of assessment.

Since 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 will be subject to employees' tax.

If a player's 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 in 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**.

#### **4.2.3 Value-added tax 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 certain non-employment activities, if the signing-on fee is to secure the player's services in terms of an employment contract, that signing-on fee will nevertheless constitute remuneration and will not be subject to VAT. In that case, the club would not be entitled to claim an input tax deduction as no VAT will have been payable on the signing-on fee.

In the case of signing-on fees paid to a player who is a vendor and that person's services are acquired as an independent contractor to the club, such fees will include VAT. In such a case, the normal VAT rules will apply insofar as input tax and output tax is concerned, and subject to the usual documentary requirements.

As regards agents, any VAT incurred on fees or commission paid to the club's agent<sup>9</sup> for securing the services of the player may be deducted as input tax, provided the agent is a vendor acting for the club and not the player. This will also be subject to the usual documentary requirements.

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<sup>9</sup> The club will not be able to deduct input tax if the agent acts for the player and not the club. Refer to 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.

## 4.3 Sponsorships

### 4.3.1 Introduction

Many professional sports clubs enter into sponsorship agreements with different sponsors. A sponsorship can take many forms, from for example, an altruistic act of donating funds, goods, assets, services or the use of assets to a charitable cause, to a formal business arrangement (commercial sponsorship) under which funds, goods, assets, services or the use of assets are provided under a sponsorship agreement to a club in return for specific advertising, branding and promotional services rendered by the club.

Commercially it is rare 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 sponsor's business objectives.

Different types of sponsorships exist such as commercial sponsorships or broadcast sponsorships. The type that is used usually depends on the sponsor's objectives. For the purposes of this guide, only the income tax and VAT implications relating to commercial sponsorships will be discussed. Sponsorships constituting a donation of goods or services are excluded from the scope of the discussion.

### 4.3.2 Income tax implications for the sponsor

From the sponsor's perspective, it is necessary to consider the particular sponsorship agreement and consider the following:

- Has anything been received by or accrued to the sponsor which must be included in gross income or, from a capital gains tax perspective, proceeds?
- Has the sponsor incurred any expenditure and, if so, is the sponsor entitled to a deduction for that expenditure?

#### **(a) Has anything been received by or accrued to the sponsor which must be included in gross income or, from a capital gains tax perspective, proceeds?**

As mentioned in 2, a resident's "gross income" includes –

“the total amount, in cash or otherwise, received by or accrued to or in favour of such resident ... excluding receipts or accruals of a capital nature ...”.

The monetary value of a receipt or accrual in a form other than money constitutes an “amount” that must be included in gross income in the year of assessment in which the amount is received by or accrues to the taxpayer, provided the other requirements of the definition are met. The monetary value of a receipt or accrual in a form other than money must be determined objectively. The ability to turn a receipt or accrual (that is, what the other party is giving the sponsor, for example, advertising and promotional services) into money is not a critical factor, but merely one of the factors that would be taken into account in determining the value of the receipt or accrual “in kind”.<sup>10</sup>

Paragraph 35(1) of the Eighth Schedule describes “proceeds from the disposal of an asset” as –

“the amount received by or accrued to, or which is treated as having been received by, or accrued to or in favour of, that person in respect of that disposal, and includes ...”.

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<sup>10</sup> See *C: SARS v Brummeria Renaissance (Pty) Ltd and others* 2007 (6) SA 601 (SCA), 69 SATC 205.

Paragraph 35(3) requires that proceeds as defined must be reduced by, amongst others, any amount of proceeds which must be or was included in the gross income of the person concerned.

The detail in the particular sponsorship agreement must always be considered.

In the case of commercial sponsorships, the goods or services that the sponsor provides to the other party often results in the receipt or accrual for those goods or services being of a revenue nature and meeting the requirements of the definition of “gross income”. For example, a sponsor that receives advertising and promotional services from a club in exchange for the sponsorship of sports kit, that constitutes trading stock for the sponsor, has received an amount in kind which is of a revenue nature and accordingly constitutes gross income. It does not matter that the receipt is not in the form of money.

Stated differently, the advertising and promotional services provided by the club to the sponsor under the sponsorship agreement in return for trading stock constitutes the receipt or accrual of an amount otherwise than in cash which is not of a capital nature and meets the requirements of the definition of gross income. The sponsor must therefore include the value of the advertising and promotional services provided to it by the club in gross income.

In the 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 –<sup>11</sup>

“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”.

A principle apparent from this case that can usefully be applied in a sponsorship context is that when goods or services are provided by a sponsor to a club in exchange for, for example, advertising and promotional services to be rendered by the club, the value of the sponsored goods or services and the advertising and promotional services will be the same and the value that the sponsor and the other party agreed on will be a reliable indicator of value, “in the absence of any contrary indication”.

If, under the sponsorship agreement, the sponsor provides assets which are of a capital nature to the other party, the amount of the receipt or accrual established using the same principles discussed above will not constitute gross income but will constitute proceeds on the disposal of an asset. The sponsor will therefore need to determine whether a capital gain or loss arises under the Eighth Schedule. In addition, the facts of the particular case may result in a recoupment under section 8(4)(a) which must be included in gross income or a deduction under section 11(o).

A sponsor may, for example, provide a club with computers which it no longer needs for its business operations in return for promotional services to be rendered by the club. The sponsoring of the computers will constitute a disposal of a capital asset since the sponsor is not in the business of trading with computers. In such a case, the value of the promotional services received from the club will be of a capital nature and will not be included in gross income. The value of the promotional services received from the club will, however, constitute

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<sup>11</sup> 2015 (6) SA 78 (WCC), 77 SATC 254 at 260/261.



proceeds on the disposal of an asset. The disposal of the computers may give rise to a recoupment under section 8(4)(a) and a capital gain or capital loss under the Eighth Schedule.

An amount that must be included in gross income must be included on the earlier of receipt or accrual of that amount and, if applicable, the capital gain or loss must be determined on disposal of the relevant asset. The terms of the sponsorship agreement will determine if there is an upfront receipt or accrual or whether the receipt or accrual happens over time as well as the time of any disposal. This is particularly relevant when the sponsorship agreement extends over more than one year of assessment.

**(b) Has the sponsor incurred any expenditure and, if so, is the sponsor entitled to a deduction for that expenditure?**

The specific sponsorship agreement and the facts of the case must be considered in determining if the sponsor has incurred any expenditure in fulfilling the sponsor's obligations under that agreement and, if so, whether that expenditure qualifies for a deduction or allowance under one of the sections of the Act. The appropriate section which may apply will depend on the facts of the particular case. All of the possible sections will not be discussed in this guide.

If a sponsor receives advertising and promotional services from a club in exchange for the sponsorship of sports kit and assuming the sponsor purchased the raw materials, manufactured the sports kit and provided it to the club during the current year of assessment, the sponsor will have incurred –

- expenditure to purchase the raw materials and manufacture the sports kit which was provided under the sponsorship agreement to the club; and
- expenditure relating to advertising and promotional services that the club will provide to the sponsor under the sponsorship agreement. The amount of this expenditure will generally be equal to the value<sup>12</sup> of the sports kit provided to the club.

The facts in the example show that the sponsor's business was the sale of sports kit and equipment for profit and the purpose of incurring the advertising and promotional expenditure was to maintain, increase and maximise sales revenue from the sale of sports kit and equipment to customers. In this scenario, section 11(a) applies for both items of expenditure. For expenses or losses to be deductible from a sponsor's income under section 11(a), they must meet the requirements of the general deduction formula as discussed in 2.

If a sponsor has actually incurred expenditure, as in the case of the current example, factors to consider in assessing whether the trade and in production of income requirements have been met include whether –

- the sponsor is conducting a trade;
- that trade produces income (or to what extent it produces income); and
- the expenditure was incurred in connection with the sponsor's trade and is linked to the sponsor's income-producing activities.

The extent to which the "in the production of income" requirement is met will depend on whether the activities conducted by the sponsor produces "income" as defined in section 1(1) and whether the expenditure incurred is sufficiently closely linked to an activity that produces income so as to be regarded as having been incurred in the production of income. Expenditure

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<sup>12</sup> See 4.3.2(a) for a discussion on the determination of value in the context of sponsorships.

incurred with a dual purpose may be apportioned. In the current example, these questions can be answered in the affirmative.

The courts have developed a number of tests for distinguishing whether expenditure is of a capital or revenue nature.

In *New State Areas Ltd v CIR*, Watermeyer CJ, after reviewing a number of decisions of the courts in the United Kingdom, said:<sup>13</sup>

“The conclusion to be drawn from all of these cases seems to be that the true nature of each transaction must be enquired into in order to determine whether the expenditure attached to it is capital or revenue expenditure. Its true nature is a matter of fact and the purpose of the expenditure is an important factor; if it is incurred for the purpose of acquiring a capital asset for the business it is capital expenditure even if it is paid in annual instalments; if, on the other hand it is in truth no more than part of the cost incidental to the performance of the income producing operations, as distinguished from the equipment of the income producing machine, then it is a revenue expenditure even if it is paid in a lump sum.”

In the current example, the sponsor did not intend to and did not acquire a capital asset which formed part of its income-earning structure. The one item of expenditure related to the acquisition of the sports kit which constituted trading stock for the sponsor and the other item of expenditure related to advertising and promoting the business which is part of the business operations. The expenditure did not result in an enduring benefit and are accordingly of a revenue nature.

This does not mean that all expenditure incurred in relation to a sponsorship agreement will necessarily be of a revenue nature. Although it may not be common in commercial sponsorships, it is not impossible that expenditure could be of a capital nature. Whether a particular item of expenditure is of a capital or revenue nature must be determined on a case-by-case basis.<sup>14</sup>

A sponsor that provided capital assets it no longer used in its business instead of sporting equipment, the expenditure previously incurred by the sponsor when purchasing the capital asset would not become revenue in nature and qualify for a deduction under section 11(a) but would generally form part of base cost in calculating the capital gain or loss on disposal of the asset. Similarly, it is possible that the expenditure incurred in acquiring what the club provides the sponsor under the sponsorship agreement could, depending on the facts, give the sponsor an enduring benefit to be used over an extended period of time and accordingly be of a capital nature.

The terms of the sponsorship agreement and the facts of the case will determine if there is an upfront incurral of expenditure or whether the incurral of the expenditure happens over time. This is particularly relevant when the sponsorship agreement extends over more than one year of assessment.

In the case of an upfront incurral of expenditure section 23H, which effectively spreads the deduction for goods and services over a period of time, must be considered. For example, if under a sponsorship agreement the expenditure relating to advertising and promotional services is incurred by the sponsor in the 2020 year of assessment but the other party (the club) will provide the services to sponsor in the sponsor’s 2020 and 2021 years of assessment,

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<sup>13</sup> 1946 AD 610, 14 SATC 155 at 170.

<sup>14</sup> See **4.3.2(a)** for a discussion of sponsorships of a capital nature.

the amount allowed as a deduction in a particular year of assessment is determined under section 23H on a pro-rata basis based on the full period that the advertising and promotional services are to be rendered by the club.

### **Example 2 – Sponsorships: the income tax implications for the sponsor**

*Facts:*

A clothing manufacturer (X) performed marketing research studies to determine in which geographical areas in South Africa its customer base was strong and in which areas it was weak. It devised a strategy to grow its sales base in the areas that performance was weak but had the potential to yield significant sales. Part of the strategy involved forming business relationships with professional sports teams and local sports teams in the identified areas.

As part of implementing its strategy, X entered into a two-year sponsorship agreement with a professional soccer club (Club Y). X and Club Y are not connected persons. Under the sponsorship agreement, X would supply Club Y with branded sports uniform valued at R2 million in year one and in exchange Club Y would provide specified advertising and promotional services valued at R2 million to X over a two-year period. The advertising and promotional services included the team wearing the branded sports uniform, team members making public appearances on behalf of X from time to time, advertising X at match venues etc. The branded sports uniform cost X R800 000 to manufacture.

X also entered into a sponsorship agreement with a local soccer club (Goals Galore) under which X would give Goals Galore R100 000 per year for two years in return for which Goals Galore would promote X at press media briefings, match days, training camps etc. A schedule to the sponsorship agreement specified in detail what Goals Galore would do in promoting X at these events. X and Goals Galore agreed that the promotional services to be provided each year by Goals Galore were valued at R100 000.

X also received general business income of R1 million in year 1 and R500 000 in year 2.

Ignore VAT for purposes of this example.

*Result:*

*Year 1*

	R
General business income	1 000 000
Value of services (note 1)	<u>2 000 000</u>
Gross income	3 000 000
<i>Less:</i>	
Costs incurred to manufacture the trading stock [section 11(a)]	(800 000)
Advertising and promotional services [sections 11(a) and 23H] (note 2)	(1 000 000)
Promotional services[section 11(a)]	<u>(100 000)</u>
<b>Taxable income/(loss)</b>	<b><u>1 100 000</u></b>

**Notes:**

- 1) X provided trading stock in the form of the branded sports uniform to Club Y in return for specific advertising and promotional services. The value of these services represents an amount of a revenue nature which accrued to X during the year of assessment and must therefore be included in gross income.

- 2) X incurred deductible expenditure of R2 million in acquiring the advertising and promotional services from Club Y. However, since the advertising and promotional services are to be provided by Club Y over two years of assessment, the amount of the expenditure which may be deducted in year one must be determined on a pro-rata basis over the two years of assessment under section 23H.

Year 2

	R
General business income	<u>500 000</u>
Gross income	500 000
Less: Advertising and promotional services [sections 11(a) and 23H] <sup>15</sup>	(1 000 000)
Promotional services [section 11(a)]	<u>(100 000)</u>
<b>Taxable income/(loss)</b>	<b><u>(600 000)</u></b>

**Notes:**

- 1) The net taxable loss from the sponsorship agreements, ignoring other income and expenses, over the two years is R1 000 000 [R2 000 000 – (800 000 + 1 000 000 + 100 000 + 1 000 000 + 100 000)]. This equals X's cash outflow for the sponsorships (R800 000 to manufacture the branded sports kit given to Club Y and the R200 000 given to Goals Galore over the two years).

See 4.3.3 for the tax implications for the club.

### 4.3.3 Income tax implications for the club

From the club's perspective it is necessary to consider the particular sponsorship agreement and consider the following:

- Has anything been received by or accrued to the club which must be included in gross income or, from a capital gains tax perspective, proceeds?
- Has the club incurred any expenditure and, if so, is the club entitled to a deduction for that expenditure?

**(a) Has anything been received by or accrued to the club which must be included in gross income or, from a capital gains tax perspective, proceeds?**

Subject to the specific sponsorship agreement and the facts of the case commercial sponsorships of cash, goods or services that the club receives will often constitute gross income for the club. The principles discussed in 4.3.2(a) will apply when determining whether the accrual or receipt must be included in gross income. The principles discussed in relation to "proceeds" in 4.3.2(a) could potentially apply to a club. However, it is anticipated that in the context of commercial sponsorships this is unlikely to occur.

If, for example, a club receives cash and goods and services in exchange for providing advertising and promotional services to the sponsor, both the cash and the value of the goods and services will be amounts of a revenue nature received by the club and will therefore constitute gross income.

<sup>15</sup> See note 2 above.

An amount which must be included in gross income must be included on the earlier of receipt or accrual of that amount and, if applicable, the capital gain or loss must be determined on disposal of the relevant asset. The terms of the sponsorship agreement will determine if there is an upfront receipt or an accrual and the time of any disposal. This is particularly relevant when the sponsorship agreement extends over more than one year of assessment.

**(b) Has the club incurred any expenditure and, if so, is the club entitled to a deduction for that expenditure?**

The sponsorship agreement and the facts of the case must be considered in determining if the club has incurred any expenditure in fulfilling the club's obligations under that agreement and, if so, whether that expenditure qualifies for a deduction or allowance under any section of the Act. The appropriate section which may apply will depend on the facts of the particular case. All of the possible sections will not be discussed in this guide.

With reference to the example in **4.3.3(a)** in which a club must provide advertising and promotional services in exchange for the sponsorship of sports kit, the club may incur expenditure in providing the advertising and promotional services. For instance, the club may need to buy signage boards with the sponsor's name or may have to spray paint the sponsor's name on the pitch during a particular weekend tournament and incurs costs in obtaining a stencil and the paint to do so. No deduction will be available for "notional costs" if the club for example has to provide the sponsor with 5 tickets for all matches played at the club's grounds. If those tickets are worth R100 each if sold to a fan, the club will not have incurred expenditure of R500 and will not be entitled to a deduction of this amount.

The club may also incur expenditure in relation to, for example, acquiring the sports kit which the sponsor will provide to the club under the sponsorship agreement. The amount of the sports kit expenditure will generally be equal to the value of the advertising and promotional services provided to the sponsor.

The club will need to consider which section, if any, is applicable in relation to a particular item of expenditure when assessing if a deduction or allowance is available. The requirements of a general deduction in section 11(a) are discussed in **2** and must be applied to the club's facts and circumstances. In the context of sponsorships, the "in production of income" and the "not of a capital nature" requirements will often be met but this is not necessarily always the case and the facts of each case must be considered.

If a club acquires goods from a sponsor which constitutes "trading stock" as defined<sup>16</sup> such as branded kit which is "consumable stores",<sup>17</sup> sections 22 and 23F must also be considered. For instance, the cost price (see above – this will generally be equal to the value of, for example, the advertising and promotional services rendered by the club) of goods that constitute trading stock 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.<sup>18</sup>

Having regard to the facts of the case SARS may under section 22(1)(a) allow the cost price of sponsored goods included in closing stock to be reduced by such amount as the Commissioner may think just and reasonable as representing the decline in the value of the trading stock below the cost price.<sup>19</sup> Under section 22(2) the value of closing stock must,

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<sup>16</sup> Section 1(1).

<sup>17</sup> Paragraph (a)(iii) of the definition of "trading stock" in section 1(1).

<sup>18</sup> Section 22(1)(a).

<sup>19</sup> See section 22(1)(a) and Practice Note 36 dated 13 January 1995.

amongst others, be included in opening and closing stock in the determination of the club's taxable income.<sup>20</sup> If the goods acquired do not constitute trading, section 23H may apply.

The terms of the sponsorship agreement and the facts of the case will determine if there is an upfront incurral of expenditure or whether the incurral of the expenditure happens over time. This is particularly relevant to sponsorship agreements extending over more than one year of assessment. In the case of an upfront incurral of expenditure section 23H, which effectively spreads the deduction for goods and services over a period of time, must be considered.

Often a contract provides for the payment of an amount upfront and the provision of services over more than one year of assessment. In these circumstances, the club may be entitled to an allowance under section 24C subject to all the requirements being met.<sup>21</sup>

### **Example 3 – Sponsorships: the income tax implications for the club**

#### *Facts:*

A clothing manufacturer (X) entered into a two-year sponsorship agreement with a professional soccer club (Club Y) (X and Club Y are not connected persons). Under the sponsorship agreement, X would supply Club Y with branded sports uniform valued at R2 million in year one and in exchange Club Y would provide specified advertising and promotional services valued at R2 million to X over a two-year period. The advertising and promotional services include the team wearing the branded sports uniform, team members making public appearances on behalf of X from time to time, advertising X at match venues etc.

25% of the branded sports uniform was held and not disposed of by Club Y at the end of the year of assessment in which it was received (year one). At the end of year two, Club Y no longer held any of the branded sports uniform.

Club Y incurred expenditure of R325 000 in year one and R325 000 in year two in providing the advertising and promotional services to X.

Club Y also entered into a sponsorship agreement with Extreme Equipment, a sports equipment manufacturer, under which Extreme Equipment would give Club Y R100 000 per year for two years in return for which Club Y would promote Extreme Equipment at press media briefings, match days, training camps etc. A schedule to the sponsorship agreement specified in detail what Club Y would do in promoting Extreme Equipment at these events. Club Y and Extreme Equipment agreed that the promotional services to be provided each year by Club Y were valued at R100 000. Club Y incurred expenditure of R75 000 in year one and R50 000 in year two in providing the advertising and promotional services to Extreme Equipment.

Club Y also received R800 000 in year one and R1 million in year two from the sale of match tickets.

Ignore VAT for purposes of this example.

<sup>20</sup> Section 22(2).

<sup>21</sup> See Interpretation Note 78 "Allowance for Future Expenditure on Contracts" for more information on section 24C.

*Result:*

*Year 1*

	R
Sale of match tickets	800 000
Advertising and promotional services income (note 1)	2 000 000
Advertising and promotional services income	100 000
Closing stock [section 22(1), 25% x R2 million] (note 2)	<u>500 000</u>
Gross income	3 400 000

Section 11(a):

Expenditure incurred to obtain branded sports uniform from X (note 3)	(2 000 000)
Expenditure incurred in providing promotional services to X	(325 000)
Expenditure incurred in providing promotional services to Extreme Equipment	(75 000)
Future expenditure to be incurred in providing promotional services to X [section 24C(2)]	<u>(325 000)</u>
<b>Taxable income/(loss)</b>	<u><b>675 000</b></u>

**Notes:**

- 1) X provided trading stock (the branded sports uniform) to Club Y in return for Club Y rendering specific advertising and promotional services. X and Club Y are trading at arm's length and are not connected persons. The value of the trading stock represents an amount of a revenue nature which accrued to Club Y during the year of assessment and must therefore be included in gross income.
- (2) Since the branded sports uniform acquired from X constitutes trading stock (being "consumable stores" as contemplated in paragraph (a)(iii) of the definition of "trading stock") in Club Y's hands, the cost price (agreed value) of any of the branded sports uniform held and not disposed of at the end of the club's year of assessment must be taken into account in the determination of Club Y's taxable income under section 22(1).
- (3) Club Y incurred expenditure of R2 million in acquiring the branded sports uniform and is entitled to claim a deduction. The amount of expenditure is equal to the value of the promotional services provided by Club Y to X in exchange for the sponsored uniform.

*Year 2*

	R
Sale of match tickets	1 000 000
Advertising and promotional services income	100 000
Reversal of future expenditure to be incurred in providing promotional services to X [section 24C(3)]	<u>325 000</u>
Gross income	1 425 000
Opening stock [section 22(2)]	(500 000)
Section 11(a):	
Expenditure incurred in providing promotional services to X	(325 000)
Expenditure incurred in providing promotional services to Extreme Equipment	<u>(50 000)</u>
<b>Taxable income/(loss)</b>	<u><b>550 000</b></u>

**Notes:**

- 1) The net taxable loss from the sponsorship agreements, ignoring other income and expenses, over the two years is R575 000[(2 000 000 + 100 000 + 500 000 + 100 000 + 325 000) – (2 000 000 + 325 000 + 75 000 + 325 000 + 500 000 + 325 000 + 50 000)]. This amount equals Club Y's cash outflow from the sponsorship agreements (R200 000 cash sponsorship less expenses of R650 000 and R125 000 incurred over two years in providing the advertising and promotional services to X and Extreme Equipment respectively).

See 4.3.2 for the tax implications for the sponsor.

#### 4.3.4 Value-added tax 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.

Sponsorships 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.<sup>22</sup> 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.<sup>23</sup> On the basis of the decision in the *South Atlantic Jazz Festival (Pty) Ltd v C: SARS* case,<sup>24</sup> 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 services 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

<sup>22</sup> Section 10(3)(b) of the VAT Act.

<sup>23</sup> Section 3 of the VAT Act.

<sup>24</sup> 2015 (6) SA 78 (WCC), 77 SATC 254. See also BGR 12 and VAT 420 – *Guide for Motor Dealers*.



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;
- 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”.<sup>25</sup>

The term “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*.

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) entered into an agreement with a professional soccer team (Club Y) under which Club Y was supplied with the right to use 10 passenger motor cars manufactured by Manufacturer X for 12 months. In return, Club Y was obliged to participate in all of Manufacturer X’s advertising campaigns, and the vehicles had to bear the branding and logos of Manufacturer X.

Manufacturer X and Club Y agreed 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 Club Y was R65 550 (R57 000 plus VAT of R8 550) per month.

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<sup>25</sup> Section 17 of the VAT Act.

*Result:*

Since the parties were trading at arm's length and were 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 Club Y were of equal value, being the agreed monthly open market value of R65 550.

*Manufacturer X*

Manufacturer X had granted the right of use of the motor cars to Club Y in return for the performance of specific advertising and promotional services that were supplied by Club Y. Manufacturer X was 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 was equal to the open market value of the advertising and promotional service supplied to it by Club Y. Manufacturer X had to therefore declare output tax of R8 550 a month ( $R65\,550 \times 15 / 115$ ) for the duration of the contract. Manufacturer X was also entitled to deduct input tax of R8 550 a month ( $R65\,550 \times 15 / 115$ ) since this was the consideration paid by it for the supply of the advertising and promotional services acquired from Club Y. The input tax deduction was subject to the usual requirements, for example, Manufacturer X had to be in possession of a valid tax invoice issued by Club Y.

*Club Y*

Similarly, Club Y supplied advertising and promotional services to Manufacturer X in return for the use of the motor cars. Club Y had to 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. Club Y had to, therefore, declare output tax of R8 550 a month ( $R65\,550 \times 15 / 115$ ) for the duration of the contract. However, Club Y also acquired the right of use of a "motor car" as defined for VAT purposes<sup>26</sup> and had incurred VAT on such acquisition. Club Y was not, however, 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 was denied under section 17(2)(c) of the VAT Act. Under that provision, a vendor is denied an input tax deduction for VAT paid on the supply of any "motor car" as defined and applies in these circumstances since the club was not in the business of continuously or regularly supplying motor cars.

If the right to use the vehicles was supplied by Club Y to any of the players in the team (being employees) for their personal use, it would have constituted a taxable fringe benefit for employees' tax purposes and would have also resulted 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*. Club Y was accordingly 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.<sup>27</sup>

<sup>26</sup> Section 1(1) of the VAT Act.

<sup>27</sup> Section 18(3) read with section 10(13) of the VAT Act and Government Notice No: 2835 of 22 November 1991.

See **5.10.3(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) or winning a particular sports competition. This prize is provided by the person sponsoring the competition, that is, the event holder. Successful clubs or players will receive different amounts or prizes in the form of 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 income<sup>28</sup> and will be fully taxable. The general principle applying 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.<sup>29</sup>

Should the club subsequently distribute part of the prize to the players, 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.

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 Value-added tax implications**

As a general principle, 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"<sup>30</sup> is very broad and encompasses the participation by the club in the competition. "Services", in turn, are defined<sup>31</sup> 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

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<sup>28</sup> 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)].

<sup>29</sup> See *CIR v Witwatersrand Association of Racing Clubs* 1960 (3) SA 291 (A); 23 SATC 380 at 383.

<sup>30</sup> Section 1(1) of the VAT Act.

<sup>31</sup> Section 1(1) of the VAT Act.

output tax at the standard rate on the receipt of the prize money by applying the tax fraction (15 / 115) 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 services, then the consideration is deemed to be the “open market value”<sup>32</sup> 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,<sup>33</sup> 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) of the VAT Act 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) of the VAT Act applies.

Should cash 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 placed.<sup>34</sup> 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, 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” as defined, 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

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<sup>32</sup> “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.

<sup>33</sup> Section 16(2)(a) read with sections 16(3)(a) or 16(3)(b) of the VAT Act (as the case may be).

<sup>34</sup> See Interpretation Note 84 “The Value-Added Tax Treatment of Bets”.

rendered by the club, which would be expected to equal the open market value of the prize provided to the club).

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 in **5.6**.

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

### **4.5.1 Introduction**

Ticket sales, the sale of merchandise and programmes and other sundry items are important sources of income for the hosting club. In hosting the event, the club will usually incur expenses such as security, gate control, catering and, if applicable in the event that the sporting venue is leased by the club, ground rental fees.

### **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 Value-added tax 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.<sup>35</sup>

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. In these circumstances the event takes place outside of South Africa and hence the associated services are also performed outside of 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. The supplies are therefore regarded as being made at the earlier of the time that an invoice<sup>36</sup> 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

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<sup>35</sup> See *South African Football Union v CIR* [1999] 4 All SA 444 (A), 61 SATC 406.

<sup>36</sup> An "invoice" for VAT purposes is any "document notifying an obligation to make payment" [section 1(1) of the VAT Act].

the club issues invoices for sundry items supplied prior to payment, the issue of the 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.<sup>37</sup> 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 decision that –

- any of the particulars prescribed by section 20(4) or (5) of the VAT Act not be reflected in the tax invoice;
- a tax invoice need not be issued; or
- the particulars prescribed in section 20(4) or (5) of the VAT Act be furnished in any other manner.<sup>38</sup>

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 (15 / 115) 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.

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<sup>37</sup> Section 20(6) of the VAT Act.

<sup>38</sup> Section 20(7) of the VAT Act.

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 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**

Accidents or injuries to sports players could result in severe adverse financial implications for the player, especially if sport is the 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. An injury to a player or the destruction of sporting premises owned by the club could have dire consequences for both the club and the players. A prudent club would therefore 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 profits<sup>39</sup> of the club. If the insurance claim is received to fill a hole in the capital assets<sup>40</sup> 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 insurance company may result in a recoupment under section 8(4)(a) of any deductions or allowances previously claimed under the Act.<sup>41</sup> In such cases, the compensation amount would be included in the club's gross income and accordingly excluded from "proceeds" for CGT purposes.

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<sup>39</sup> *Bos v Commissioner for the South African Revenue Service* (2008) ZAGPHC 208, 70 SATC 187.

<sup>40</sup> *Burmah Steamship Co Ltd v IRC* 1931 SC 156, 16 TC 67.

<sup>41</sup> *Moorreesburg Produce Co Ltd v CIR* 1945 CPD 289, 13 SATC 245.

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.

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 Value-added tax 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, since 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.<sup>42</sup>

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.<sup>43</sup>

## **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

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<sup>42</sup> See section 8(8) of the VAT Act.

<sup>43</sup> See the *VAT 421 – Guide for Short-Term Insurance* and Binding General Ruling 14 for more information on insurance and VAT.



is included in the player's remuneration and is also subject to the deduction or withholding of employees' tax.

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 employer<sup>44</sup> to an employee;<sup>45</sup>
- have been granted as a benefit or advantage or, or by virtue of, employment, or as a reward for services rendered or to be rendered;
- 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 value of the taxable benefit as determined under 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, including the use of residential or holiday accommodation or the right of use of a motor vehicle;
- low-interest or interest-free debt (such as a loan);
- 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;
- contributions made by the employer to certain retirement funds for the benefit of the player; and
- the settlement or forgiveness of a player's debt by the employer.

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<sup>44</sup> An "employer" as defined in paragraph 1 of the Seventh Schedule is essentially any "employer" for employee's tax purposes.

<sup>45</sup> An "employee" as defined in paragraph 1 of the Seventh Schedule is essentially any "employee" in relation to an "employer" for employees' tax purposes.

**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;
- on debts owed to the employer by the player as do not exceed R3 000 in total;
- on debts granted for study purposes;
- on the private use of the club's asset if it is incidental to its business use;
- on services rendered by the employer to employees at their place of work for the better performance of their duties, or a place of recreation provided by the employer for use of employees in general;
- if the asset consists of a telecommunication device or computer equipment which the employee uses mainly for business 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 must 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 Seventh Schedule. In most instances, the cash equivalent of the value of the taxable benefit is based either on the cost to the club or the market value of an 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 **5.10.2**.

#### **4.7.3 Value-added tax 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.<sup>46</sup> 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 rules<sup>47</sup> – 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.

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<sup>46</sup> Section 18(3) of the VAT Act.

<sup>47</sup> Section 10(13) of the VAT Act.

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.

The deemed supply may, however, itself be exempt or zero-rated for VAT purposes.<sup>48</sup> In addition, no deemed supply is triggered if the relevant fringe benefit is granted by the club in the course of making exempt supplies.<sup>49</sup>

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**

Although there are many types of receipts and accruals relevant to sportspersons, only the 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 decide which events or games they will enter and also the frequency of entering events.

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<sup>48</sup> First proviso to section 18(3) of the VAT Act.

<sup>49</sup> Second proviso to section 18(3) of the VAT Act.

### 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. Since 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 the deducted amount over to SARS within the prescribed period.

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

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

In the case of an independent sportsperson, 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) is 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 sportsperson 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 sportsperson.

For more information on independent contractors, see Interpretation Note 17 “Employees’ Tax: Independent Contractors”.

By contrast, a sportsperson 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 is prohibited from claiming any deductions against the remuneration earned by the employee, apart from any—

- qualifying contributions to a pension fund, provident fund or retirement annuity fund;
- allowance or expense allowed as a deduction under section 11(c) – legal expenses and section 11(e) – wear and tear allowance, section 11(i) – bad debts, and section 11(j) – doubtful debts;
- deduction allowed under section 11(nA) – amounts included in taxable income in the hands of the sportsperson, received or accrued by virtue of employment, that are subsequently refunded by such sportsperson to the club; and section 11(nB) – any restraint of trade paid to the sportsperson that is subsequently refunded by the sportsperson; and
- rental of, or cost of repairs to, any dwelling house or domestic premises that is deductible under sections 11(a) or (d) respectively, provided that the expense does not constitute domestic or private expenditure that is prohibited under section 23(b).

### **5.1.3 Value-added tax 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 or required to be 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-rated.<sup>50</sup> In both instances the player must provide the club with a tax invoice for the services rendered. The club may deduct the VAT charged by the player as input tax on the local supplies, but there will be no input tax in the case of services rendered outside of South Africa.

## **5.2 Transfer fees**

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 in the form of a transfer fee to the club "selling" its player. Essentially, with this type of transaction 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 Value-added tax 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 new club, or to the player's old club as part of the transfer fee paid by the 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 be 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.

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<sup>50</sup> Section 11(2)(k) of the VAT Act.

The club that paid the signing-on fee to the player must give the player an employees' tax certificate (IRP5) 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 certificate.

### **5.3.3 Value-added tax implications**

See 4.2.3.

From the player's perspective any signing-on fees received as an employee of the club will constitute "remuneration" for employees' tax purposes and will not include any VAT. In the case of a player that is an employee of the club, but at the same time is registered for VAT in respect of other taxable activities, the signing-on fee paid in order to secure the services of that player as an employee of the club will similarly not attract VAT.

In the case of signing-on fees paid to a player who is a vendor and that person's services are acquired as an independent contractor to the club, such fees will include VAT. In such a case, the normal VAT rules will apply insofar as input tax and output tax is concerned, and subject to the usual documentary requirements.

## **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.<sup>51</sup> 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."<sup>52</sup>

The Tax Court was called upon in ITC 1735<sup>53</sup> 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 held that:<sup>54</sup>

"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

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<sup>51</sup> R Cloete "The Taxation of Image Rights: A Comparative Analysis" (2012)45(3) *De Jure*557.

<sup>52</sup> R Cloete "The Taxation of Image Rights: A Comparative Analysis" (2012)45(3) *De Jure*559.

<sup>53</sup> 64 SATC 455.

<sup>54</sup> At 10,2.

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 therefore clear 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.

Should such a payment be made to a sportsperson by the club to whom the sportsperson is contracted, these payments will constitute “remuneration” for employees’ tax purposes. Since 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 Value-added tax implications**

The amount paid directly by the employer 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.

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, provided the sportsperson is a vendor and 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 such as 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,<sup>55</sup> the sponsor will not be required to withhold employees’ tax as the amount paid to the player is not remuneration.

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<sup>55</sup> 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.

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 sponsor has sponsored the club or employer of the sports person 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 as it is received by virtue of the player's employment. 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 were both employed by Club A, which had entered into a sponsorship agreement with Swiss Watches Limited in terms of which each player of the club received a free watch worth R5 000. In addition, Player C had, independently of Club A, entered into an agreement with Magic Motor Manufacturers (MMM), in terms of which Player C was 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.

#### *Result:*

As the watches were 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 was regarded as having provided them with a taxable benefit under the Seventh Schedule. The market value of the watches (R5 000) was accordingly both gross income and remuneration in Player B and Player C's hands. Club A was obliged to deduct or withhold employees' tax from such remuneration. While the sponsorship received by the players was not in cash, Club A had to still deduct or withhold the relevant employees' tax from any other cash remuneration derived by the players. In the event that the aggregate amount of employees' tax to be deducted or withheld was greater than the cash remuneration derived by the players, Club A had to notify SARS immediately.

The market value of the use of motor vehicle sponsorship received by Player C from MMM was also gross income in Player C's hands and was subject to income tax. However, in this instance the amount received was not remuneration as Player C had not received the sponsorship by virtue of their employment with Club A. Club A therefore did not have to deduct or withhold any employees' tax for the vehicle sponsorship enjoyed by Player C. The sponsor MMM may, however, have an obligation to deduct employees' tax, depending on the terms of the sponsorship agreement and if the relationship between MMM and Player C amounts to an employer-employee relationship.

### **5.5.3 Value-added tax 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.<sup>56</sup>

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.<sup>57</sup> 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 same.<sup>58</sup>

### **Example 7–Sponsorships**

#### *Facts:*

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

While both Player X and Player Y have received R50 000 worth of branded casual clothing, Player Y had, independently of Club Hockey, entered into an agreement with Beach Motors in terms of which Player Y was being granted the right to use a motor vehicle of the type usually sold by Beach Motors for a period of 3 years, and in exchange the motor vehicle had to have Player Y's name as well as Beach Motors' logo painted on the vehicle. The reciprocal supplies were 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.

#### *Result:*

Since the branded clothing was 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 was regarded as having granted the players a taxable benefit for income tax purposes. The market value of the clothing was accordingly both gross income and remuneration in Player X's and Player Y's hands. As the sponsorship constitutes remuneration in Player X's and Player Y's hands, the sponsorship did not give rise to any VAT implications for either player, regardless of the fact that Player Y was a vendor in relation to her non-employment related activities.

<sup>56</sup> Section 11(2)(k) of the VAT Act.

<sup>57</sup> 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.

<sup>58</sup> 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).

Although the market value of the use of the sponsored motor vehicle enjoyed by Player Y was also gross income in Player Y's hands, the sponsorship was not remuneration as Player Y and Beach Motors were not in an employment relationship. Player Y would have accordingly needed to account for output tax on the consideration received for the supply of branding and advertising services, which was equal to the monthly open market value (R5 000) of the right of use of the vehicle.

## **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. The prize, whether paid in cash or in kind, will form part of the sportsperson's gross income and 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. If the sportsperson is not in an employment relationship with the awarder of the prize, no employees' tax would need to be deducted or withheld from the value of such prize, but the value of the prize must be declared in the sportsperson's annual tax return.

In the unlikely event that the 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 are, in these circumstances, not in an employee-employer relationship for employees' tax purposes. The independent contractor must declare the prize money in the income tax return.

*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.

*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 the players are contractually entitled to it, 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.<sup>59</sup>

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, since it cannot be said that 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).

The player is required to disclose the prize in the income tax return.

### **5.6.3 Value-added tax implications**

*The sportsperson receives the prize directly*

A player that is an employee, or an independent person which is not registered or liable to register as a vendor, does 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 owing 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 event that the player is independent and 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 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.

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<sup>59</sup> See *CIR v Witwatersrand Association of Racing Clubs* 1960 (3) SA 291(A), 23 SATC 380.

*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 since 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**

Often serious injuries occur to sportspeople by, amongst other things, foul or negligent play, unexpected violence or 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.

A sum of money in the form of compensation is sometimes paid to an 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 be paid by the club to the player only when it is under a legal obligation to make the payment, and by the offending player when that player is ordered by a court to do so or because of a settlement.

### **5.7.2 Income tax implications**

In determining whether an amount of compensation which is not paid under a contract of insurance (see below) is taxable or not, it needs to be considered whether the money was paid to compensate the player for loss of earnings that the player might have received had the injury not occurred. In this case, the money will be regarded as part of the player's gross income since 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.<sup>60</sup>

Should a player receive compensation that is not regarded as being revenue in nature, being compensation for damage to the player's income-earning structure (the player's body), the compensation could constitute proceeds derived by the player for the disposal of a capital asset, as the right to claim compensation is an asset in the hands of the player. However, under paragraph 59 of the Eighth Schedule a natural person must disregard a capital gain or a capital loss on a disposal which 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 intended to restore the person who has suffered harm to the position he or she was in before the injury, illness or defamation."<sup>61</sup>

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<sup>60</sup> See footnote 35.

<sup>61</sup> *Comprehensive Guide to Capital Gains Tax* in paragraph 12.8.

### **Example 8 – Amounts received for personal injury**

#### *Facts:*

Magic Striker was seriously injured while playing in the semi-finals of the National Cup and was expected to be out of active football for a period of 6 months. Magic Striker was awarded an amount of R250 000 by the club as compensation for not being entitled to match fees for the period that Magic Striker was injured and was not 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 was 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, fell outside paragraph(c) and was excluded from CGT under paragraph 59 of the Eighth Schedule.

From 1 March 2015 the premiums paid on income protection policies are no longer deductible in the determination of a person's taxable income, but any compensation paid under these policies are exempt from normal tax.<sup>62</sup> Similarly, the premiums paid on capital protection policies (long-term policies) are not deductible in the determination of taxable income since they do not produce income, while the compensation payable under these policies may be excluded from gross income if they are capital in nature and may also be excluded from CGT if certain requirements are met.<sup>63</sup>

The merits of each case should be considered when deciding whether an amount of compensation constitutes a receipt of a revenue or capital nature in the player's hands.

### **5.7.3 Value-added tax 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 player<sup>64</sup> 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"<sup>65</sup> 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.<sup>66</sup> As a general rule, therefore, a player who is a vendor and 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

<sup>62</sup> 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.

<sup>63</sup> Paragraph 55 of the Eighth Schedule.

<sup>64</sup> Section 8(8) of the VAT Act.

<sup>65</sup> Section 1(1) of the VAT Act. See also the *VAT 421 – Guide for Short-term Insurance* for more details in this regard.

<sup>66</sup> Section 2(2) of the VAT Act.

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 money 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 money as a result of a benefit activity is not using their skills for the purpose of commercial exploitation. The activities by the club are a means of recognising the personal attributes of and showing gratitude to the player for their 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.<sup>67</sup> 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 the income is 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 maybe 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". 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 the 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 therefrom 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 received 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.

### **5.8.3 Value-added tax 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 since the

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<sup>67</sup> Paragraphs (c) and (d) of the definition of "gross income" in section 1(1).

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 their 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.<sup>68</sup>

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 purposes of the employer's trade, and the employer requires proof of the expenditure from the employee.<sup>69</sup>

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.<sup>70</sup> 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 greater than the true anticipated business expense. This excess portion is regarded as normal remuneration for 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 are exempt from income tax, provided it meets the conditions specified in the particular exemption provision.

For more information on allowances, reimbursements and advances see Interpretation Note 14 "Allowances, Advances and Reimbursements".

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<sup>68</sup> Section 8(1)(a)(i).

<sup>69</sup> Section 8(1)(a)(ii).

<sup>70</sup> Section 8(1)(c).

## **(b) Value-added tax 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, 80% of the allowance is generally subject to the deduction of employees' tax on a monthly basis. However, if 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 the deduction of 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 purposes, the player is required to keep accurate records of business travel (which may be in the form of 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.<sup>71</sup>
- Actual business expenditure, that is, actual business kilometres travelled during the year of assessment multiplied by actual expenditure incurred divided by total kilometres travelled in that year. The player must be able to provide accurate information to substantiate the expenses, which information may be in the form of keeping a logbook.

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<sup>71</sup> The deemed rates per kilometre are published annually in the *SARS Electronic Travel Logbook*, available on the SARS website.



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 the business travel, 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 the place of employment) 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 “Allowances, Advances and Reimbursements” for additional guidance on the calculation of the travel deduction (including examples) if required.

### **(c) Value-added tax implications**

To the extent that the travel allowance is treated as remuneration, the allowance will fall outside the scope of VAT.<sup>72</sup> 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 is paid to a player who is an independent contractor, that amount is consideration for a supply of services by the player. In the unlikely event that a 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 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,<sup>73</sup> while fuel is zero-rated and no input tax deduction is similarly available on this expenditure item.

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<sup>72</sup> Paragraph (iii)(aa) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act.

<sup>73</sup> Section 1(1) of the VAT Act.

### 5.9.3 Reimbursements

#### (a) Introduction

Sometimes 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), 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, 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.<sup>74</sup> 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 not constitute remuneration<sup>75</sup> to the extent that they do not exceed the limits referred to above,<sup>76</sup> and the club will only 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 that exceeds 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.

#### (c) Value-added tax 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, 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

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<sup>74</sup> Section 8(1)(a).

<sup>75</sup> Paragraph (cA) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule, read with section 8(1)(b)(iii).

<sup>76</sup> Paragraph (cC) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule.

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 taxable<sup>77</sup> but the player will be entitled to a deduction<sup>78</sup> against the allowance received when the player is required to spend *at least one night away* from his or her usual place of residence in the Republic. 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 relating to 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 allowance<sup>79</sup> (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*.<sup>80</sup> For the years of assessment commencing on or after 1 March 2019, the amount deemed to have been expended for meals and incidentals for travel in the Republic is R435 per day while for incidentals only, the rate is R134 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**.

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

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<sup>77</sup> Section 8(1)(a)(i)(bb).

<sup>78</sup> 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.

<sup>79</sup> Section 8(1)(c)(i).

<sup>80</sup> Section 8(1)(c)(ii).

### **(c) Value-added tax implications**

This type of allowance is treated the same as any other allowance, advance or reimbursement constituting remuneration.<sup>81</sup> Any allowance granted to a player to cover the cost of accommodation, meals and other incidentals 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 because it is paid to an independent contractor, 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**

Clubs often provide fringe benefits to players – see **4.7.1**. The cash equivalent of the value of the taxable benefit, if any, is gross income and remuneration in the player's hands and the club as employer is required to deduct employees' tax from such remuneration. The most common fringe benefits provided by a club to its players are dealt with in detail in **5.10.2** to **5.10.10**.

From a VAT perspective, the club, if a vendor, is deemed to have made a supply of the taxable benefit to the player concerned and may be required to account for output tax at the standard rate on the deemed consideration for that supply. The consideration for such a supply is deemed to be the cash equivalent value of the 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).

The VAT implications that arise in consequence of the grant by a club of specific taxable fringe benefits are dealt with in detail under **5.10.2** to **5.10.10**.

### **5.10.2 Residential accommodation**

#### **(a) Introduction**

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

#### **(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 rental consideration the player pays to the club for the benefit.

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<sup>81</sup> Paragraph (iii)(aa) of the proviso to the definition of "enterprise" in section 1(1) of the VAT Act.

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 lower of the cost to the employer of the accommodation (if rented by the employer from a person who is not a connected person to the employer) or the amount calculated in terms of the following formula, if the property is owned by the club:

$$\text{Annual rental value} = (\text{Remuneration in previous year of assessment} - \text{R79 000}) \times 17\%^{82} \times (\text{number of completed months during which the employee is entitled to occupation of the accommodation} / 12).$$

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 formula above – it would be based on the cost incurred by the employer or a market related rental per day 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) Value-added tax 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.

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<sup>82</sup> A rate of 18% will apply if the accommodation consists of at least 4 rooms and 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.

### **5.10.3 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 acquired by the employer 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 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 of the 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 "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 record, which may be in the form of a 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 IRP 5 certificate.

### **(c) Value-added tax 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 4**.

## **5.10.4 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 players may have sole use of these assets or only intermittent use.

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

A player is deemed 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, less any consideration paid by the player to the club for that use. 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 employer's business. The term "mainly" has been interpreted by our courts to mean usage in excess of 50%.

See Interpretation Note 77 “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) Value-added tax 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 (15 / 115) to the cash equivalent value of the taxable benefit. If the taxable benefit has a nil value for income tax purposes as explained in **5.10.4(b)**, the employer will not be liable to account for any output tax on the benefit.

## **5.10.5 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 tax implications arise.

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

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

- any service has been rendered to the player at the club’s expense (whether by the club or by some other person);
- 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 “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) Value-added tax 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 (15 / 115) 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 **5.10.5(b)**, then the employer will not be liable to account for any output tax.

### **5.10.6 Employer owned insurance policies**

#### **(a) Introduction**

A club may make payments to an insurer under an insurance policy that directly or indirectly benefits the employee, the employee's spouse, child, dependent or nominee, for example 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.

From 1 March 2015 the premiums paid on income protection policies will no longer be deductible, but any compensation paid under the policy will be exempt from normal tax.<sup>83</sup> Premiums paid on capital protection policies (long-term policies) are likewise not deductible. Any compensation payable is excluded from gross income if it is capital in nature and may be excluded from CGT if the provisions of paragraph 55 are met.

#### **(c) Value-added tax implications**

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

### **5.10.7 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;
- the appointment of the player; or

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<sup>83</sup> 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.

- termination of the player's employment.

**(b) Income tax implications**

While the club will in the above circumstances have provided the player with a taxable benefit under the Seventh Schedule, such a benefit is exempt from tax in certain circumstances.<sup>84</sup> A transfer that does not result in a change of residence as well as a change from one place of employment to another, 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.<sup>85</sup>

The value of any residential accommodation (whether provided in a hotel or elsewhere) provided temporarily, while the player obtains permanent accommodation, by the club to the player as a 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.<sup>86</sup>

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;
- Agents commission on sale of previous residence;
- New school uniforms;
- Replacement of curtains;
- Motor vehicle registration fees; and
- Telephone, water and electricity connection.<sup>87</sup>

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) Value-added tax 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, since 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.<sup>88</sup> 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.

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<sup>84</sup> Section 10(1)(nB).

<sup>85</sup> Section 10(1)(nB)(i).

<sup>86</sup> Section 10(1)(nB)(iii).

<sup>87</sup> Section 10(1)(nB)(ii), read with paragraph 16.2 of the *Guide for Employers in respect of Employees' Tax* (PAYE-GEN-01-G14).

<sup>88</sup> Paragraph (a) of the definition of "taxable benefit" in paragraph 1 of the Seventh Schedule.

## 5.10.8 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 tax<sup>89</sup> 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) Value-added tax implications

A club is deemed to make a taxable supply of a fringe benefit to players for income tax purposes only if the provision of uniforms to employees is not exempt from income tax [see **5.10.8(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 (15 / 115) to the cash equivalent of the value of the taxable benefit. Since 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.

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<sup>89</sup> Section 10(1)(nA).

## **5.10.9 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**

If the club pays the medical scheme contribution in respect of or on behalf of the 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 contributions.

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 determining the MTC or AMTC available to the player for medical contributions, the player is deemed to have paid the contributions.

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*.

### **(c) Value-added tax implications**

Although medical benefit schemes may qualify to register for VAT in relation to certain taxable supplies which they make, they do not account for 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 to a medical benefit fund as no VAT is included in 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 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). Should the club pay medical expenses of any of the players' family, those expenses are not regarded as being incurred in the course or furtherance of the club's enterprise and therefore no input tax in respect thereof would be allowed.

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) since such expenses would have been incurred in the course or furtherance of the player's enterprise.

### **5.10.10 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 Schedule.<sup>90</sup> The cash equivalent of the value of the fringe benefit is the amount which was owed by the player, being 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 that professional body is a condition of the player's employment with the club.<sup>91</sup>

#### **(c) Value-added tax 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.<sup>92</sup> 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 to which the player is required to be a member as a condition of the player's employment, 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 for VAT purposes. 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 Retirement fund contributions**

A taxable benefit will arise if a club makes any contribution to a retirement fund (a pension fund or provident fund) for the benefit of a player or a player's dependent. The value of the benefit will depend on the nature of the fund. For a defined contribution fund, the amount of the benefit is equal to the total amount paid by the club to that fund. For a defined benefit fund, the amount of the benefit is calculated under a formula based on information that the retirement fund submits to the club. Any payment made by club to a player's retirement annuity fund is the payment of a player's debt, and will be a taxable benefit, the valuation of which is discussed in **5.10.10**.

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<sup>90</sup> Paragraph 2(h) of the Seventh Schedule.

<sup>91</sup> Paragraph 13(2)(b) of the Seventh Schedule.

<sup>92</sup> 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.

A player will be entitled to claim a deduction of the club's contribution, subject to the limits discussed below.<sup>93</sup> A player will also be permitted to claim contributions to a retirement annuity fund subject to the limits listed below, regardless of whether that player is in employment or not.<sup>94</sup>

The contributions (including arrear retirement fund contributions) that will be allowed as a deduction in the year of assessment are limited to the lesser of the following:<sup>95</sup>

- R350 000;
- 27,5% of the higher of remuneration or taxable income; or
- Taxable income before the player's taxable capital gain is included.

The remuneration referred to is remuneration for employees' tax purposes, but excluding retirement lump sums<sup>96</sup> and severance benefits. The taxable income referred to excludes retirement lump sums and severance benefits, and before the deduction of qualifying retirement fund contributions, certain foreign tax credits and permissible donations. Contributions made in prior years that were not allowed as a deduction due to the limitations discussed above in those years, will be carried forward to the next year of assessment unless they had been deducted from a retirement lump sum, or set off against a compulsory annuity.<sup>97</sup>

The limits apply to the sum of all contributions made to pension funds, provident funds and retirement annuity funds. The deduction may be set off against any income of the player, including interest.<sup>98</sup>

Proof of retirement annuity fund contributions must be available on request.

## **5.12 Other deductions for players**

### **5.12.1 Introduction**

Employees who earn mainly salary, allowances and benefits may only take into account limited deductions against their income. Section 23(m) provides that only certain expenses are permitted as deductions. (See 5.1.2)

### **5.12.2 Repayment of employment income**

Clubs may sometimes make payments to players that are subject to certain conditions. These 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.

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.<sup>99</sup> A deduction is claimable only on submission of the annual income tax return.

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<sup>93</sup> Section 11F(4).

<sup>94</sup> Section 11F(1).

<sup>95</sup> Section 11F(2).

<sup>96</sup> These include retirement fund lump sum benefits and retirement fund lump sum withdrawal benefits.

<sup>97</sup> Section 11F(3).

<sup>98</sup> Section 11F(1).

<sup>99</sup> Section 11(nA).

If a player is, for example, paid a retainer of R10 000 in Year 1, which is included in the player's taxable income in that year, on condition that the player remains in the employ of the club for two years, but the player 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.

### **5.12.3 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 commission 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 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 since 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**

The skills development levy (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).

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 players' remuneration when determining the leviable amount for the club. Small businesses who anticipate that their total payroll for the forthcoming 12 months will be less than R500 000, do not need to pay these levies. The SDL is paid with the employees' tax on a monthly basis.

SDL payments are not VAT-inclusive and employers may not deduct input tax on such payments.

SETAs are regarded as public authorities and are not 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 contributions**

Unemployment Insurance Fund (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 exclusions from this remuneration, 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, representing the total contribution by both the club and the player.

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.

Unemployment Insurance Fund 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.



Any donation (of money or other property) received by a player in recognition of any performance connected with his or her employment or with services rendered as a player, is not excluded from gross income and will be taxable in the player's hands. This will include situations where the donor considers the payment to be made out of liberality or generosity. Paragraph (c) of gross income and the definition of "taxable benefit" in paragraph 1 of the Seventh Schedule both include "voluntary awards", which is wide enough to include such donations.

Donations tax is payable by the donor on the value of any property disposed of under any donation by any resident<sup>100</sup> unless an exemption applies.<sup>101</sup> If the donor fails to pay the donations tax by the end of the month following the month during which a donation takes effect, or a longer period as allowed by the Commissioner, the donor and the donee become jointly and severally liable for the tax.<sup>102</sup>

A donation (whether in money or in kind) made to an organisation which has been approved under section 30 as a public benefit organisation will qualify as a deduction, but must actually be paid or transferred during the year of assessment.<sup>103</sup>

For more information on donations tax, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*, which contains information regarding donations and public benefit organisations (PBOs).

### **8.3 Value-added tax implications**

"Consideration" for VAT purposes is defined<sup>104</sup> 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.

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.

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<sup>100</sup> Section 54.

<sup>101</sup> Section 56.

<sup>102</sup> Section 59, read with section 60.

<sup>103</sup> Section 18A.

<sup>104</sup> Section 1(1) of the VAT Act.

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*.

## 9. Taxation of foreign income

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 meet the requirements of the physical presence test. A person other than a natural person (which would include clubs that constitute a “person” as defined for tax purposes)<sup>105</sup> is considered to be resident in South Africa if it is incorporated, established, formed or effectively managed in South Africa.<sup>106</sup>

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 their services. The main objective of a tax treaty is to avoid double taxation on the same income. Most tax treaties specifically regulate the allocation of taxing rights in respect of sportspersons.

Section 6quat provides for the claiming of foreign taxes paid by a resident as a credit against the resident’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, derived by a resident from carrying on a trade, 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 provided for a rebate for foreign taxes paid on income derived by a resident from services rendered in South Africa, but has since been repealed. Certain recoupment provisions may still, however, be applicable.

For more information on the deduction of foreign taxes, see Interpretation Note 18 “Rebates and Deduction for Foreign Taxes on Income”.

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<sup>105</sup> 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”.

<sup>106</sup> 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, legislation was introduced which seeks to tax the earnings of foreign entertainers and sportspersons which are derived from any “specified activity”<sup>107</sup> 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 via email at [nres@sars.gov.za](mailto:nres@sars.gov.za). A list of contact persons is also available on the **SARS website**.<sup>108</sup>

### 10.2 Income tax implications

Under sections 47A to 47K, amounts paid to foreign sportspersons for specified activities exercised 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 an amount 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 deduct or withhold this tax, alternatively withholding or deducting this tax but failing to pay that amount to SARS, 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, in which the specified activity is exercised. 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 and to provide SARS with any details related thereto which may be requested.

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

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<sup>107</sup> “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”.

<sup>108</sup> [www.sars.gov.za/Contact/Head-Office/Pages/Contact-for-non-resident-entertainers-and-sports-persons.aspx](http://www.sars.gov.za/Contact/Head-Office/Pages/Contact-for-non-resident-entertainers-and-sports-persons.aspx) [Accessed 7 February 2019].

### **10.3 Value-added tax 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 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.

## **11. Conclusion**

This guide is meant to provide clarity on some of the issues and situations experienced by sports clubs and sportspersons in South Africa. Since not every situation can be addressed, the guide seeks to provide guidance on those matters most commonly experienced. Note that each case has to be considered independently and on its particular facts when deciding on the taxability of a specific activity or income source.

Further information can be obtained from the **SARS website** and from SARS offices nationwide.