Tax Guide for Small Businesses

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South African Revenue Service

Tax Guide for Small Businesses

Preface

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

This guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It should, therefore, not be used as a legal reference.

It is also not a binding general ruling under section 89 of Chapter 7 of the Tax Administration Act 28 of 2011. Should an advance tax ruling be required, visit the **SARS website** at **www.sars.gov.za** for details of the application process.[1]

The information in this guide concerning income tax relates to –

- **natural persons** for the 2024 year of assessment commencing on 1 March 2023 and ending on 29 February 2024;
- **trusts** in respect of years of assessment commencing and ending during the period commencing on 1 March 2023 and ending on 29 February 2024; and
- **companies and close corporations** with years of assessment ending during the 12-month period ending on 31 March 2024.

For income tax purposes, this guide has been updated to include the Tax Administration Laws Amendment Act 18 of 2023, the Taxation Laws Amendment Act 17 of 2023 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2023 as well as the Budget Review of 2023.

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

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Service Centre (between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, preferably after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

[1] For further commentary, see the *Comprehensive Guide to Advanced Tax Rulings*.

Comments on this guide may be e-mailed to **policycomments@sars.gov.za**.

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
26 September 2024

Disclaimer

While every precaution has been taken to ensure that the information and the rates published in this guide are correct at the date of publication, it is advisable that users verify the rates with the relevant legislation pertaining to the rates, applicable to the tax, customs or excise concerned.

Contents

Glossary

In this guide, unless the context indicates otherwise –

- **"CC"** means close corporation;
- **"CGT"** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **"Companies Act"** means the Companies Act 71 of 2008;
- **"Customs and Excise Act"** means the Customs and Excise Act 91 of 1964;
- **"Eswatini"** means the Kingdom of Eswatini, previously known as Swaziland;
- **"ETI"** means employment tax incentive;
- **"ETI Act"** means the Employment Tax Incentive Act 26 of 2013;
- **"Minister"** means the Minister of Finance;
- **"MTC"** means medical scheme fees tax credit contemplated in section 6A;
- **"PAYE"** means Pay-As-You-Earn namely "employees' tax" as defined in paragraph 1 of the Fourth Schedule;
- **"PPP"** means "Public Private Partnership" as defined in section 1(1);
- **"SBC"** means small business corporation;
- **"Schedule"** means a Schedule to the Act;
- **"SDL"** means skills development levy;
- **"section"** means a section of the Act;
- **"SEZ"** means "special economic zone" as defined in section 12R(1);
- **"SMME"** means small, medium and micro enterprise;
- **"South Africa"** means the Republic of South Africa;
- **"standard rate"** means the current standard rate of VAT levied on any supply or importation of goods or services under section 7(1) of the VAT Act;
- **"STT"** means securities transfer tax;
- **"TA Act"** means the Tax Administration Act 28 of 2011;
- **"tax treaty"** means an agreement for the avoidance of double taxation entered into between South Africa and another country;
- **"the Act"** means the Income Tax Act 58 of 1962;
- **"UIF"** means unemployment insurance fund;
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the relevant Act.

All guides, interpretation notes, brochures, forms, returns, tables and Government Notices referred to in this guide are the latest versions, unless the context indicates otherwise, which are available on the **SARS website** or available on request via eFiling at **www.sarsefiling.co.za**, whichever is applicable.

1. Overview

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

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

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

2. General characteristics of different types of business

2.1 Introduction

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

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

2.1.1 Sole proprietorship

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

Some advantages of a sole proprietorship are that –

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

Some disadvantages of a sole proprietorship are as follows:

- Unlimited liability of the owner.

  The owner is legally liable for all the debts of the business. Creditors are entitled to attach both investment or business property as well as any personal and fixed property.

- Limited ability to raise capital.

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

- Limited skills.

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

2.1.2 Partnership

A partnership (or unincorporated joint venture) is the relationship existing between two or more persons who join together to carry on a trade, business or profession. A partnership is not a separate legal person or taxpayer.[2] The profits are taxed in the hands of each partner according to the relevant share of the partnership profits.[3] Each person contributes money, property, labour or skills and shares in the profits and losses of the partnership. A partnership is similar to a sole proprietorship except that a group of owners replaces the sole proprietor.

Some advantages of a partnership are that –

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

Some disadvantages of a partnership are as follows:

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

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[2] A partnership is, however, regarded as a separate person for VAT purposes as it is included in the definition of "person" in section 1(1) of the VAT Act.

[3] This is unlike the position under the VAT legislation where the partnership itself (being a "person") may be required to register for VAT and must account separately from the partners for the VAT on any taxable supplies made and received.

2.1.3 Close corporation

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

A CC may not have an interest in another CC. For income tax purposes, a CC is dealt with as if it is a company.[4]

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

2.1.4 Private company

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

Some advantages of a private company are as follows:

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

Some disadvantages of a private company are as follows:

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

Personal liability of shareholders and directors

Shareholders have limited liability, that is, they are generally not responsible for the liabilities of the company. However, a person (shareholder or director) who controls or is regularly involved in the management of a company's overall financial affairs shall under the TA Act be personally liable for any outstanding tax debt of the company including, amongst others, income tax, PAYE, VAT, additional tax, understatement penalty, administrative non-compliance penalty or interest for which the company is liable if a senior SARS official is satisfied that the person is or was negligent or fraudulent in respect of the payment of the tax debts of the company.[5]

[4] Definition of "company" in section 1(1).
[5] Section 180 of the TA Act.

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

2.1.5 Co-operative

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

2.1.6 Other types of business entities

(a) Small business corporation

This type of entity is considered in **3.2.18** under the heading **Tax relief measures for small business corporations**.

(b) Micro business (turnover tax)

This type of entity is considered in **3.2.19** under the heading **Tax relief measures for micro businesses (turnover tax)**.

(c) Personal service provider

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

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

A company that falls within the above definition of "personal service provider" will not qualify as an SBC (see **3.2.18**). However, should that company employ three or more full-time employees (excluding holders of shares or members or any persons connected to the holders of shares or members) throughout the year of assessment and the employees are engaged in the business of the company in rendering the specific service, that company will be excluded from the definition of "personal service provider" and may qualify as an SBC.

Payments made to a personal service provider are subject to the deduction of PAYE.[6] For VAT purposes, any payment made to a personal service provider who is carrying on an enterprise will be subject to VAT at the standard rate. This rule applies even if such payments have been subject to the deduction of PAYE.[7]

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

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

(d) Labour broker

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

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

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

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

[6] For more information see Interpretation Note 35 "Employees' Tax: Personal Service Providers and Labour Brokers".

[7] Paragraph (iii)(*bb*) of the proviso to the definition of "enterprise" in section 1(1) of the VAT Act.

SARS will not issue an exemption certificate if –

- more than 80% of the gross income of the labour broker during the year of assessment consists of amounts received from any one client of the labour broker or any associated institution in relation to the client, unless the labour broker employs three or more full-time employees throughout the year of assessment who are engaged in the business of the labour broker on a full-time basis of providing persons to the clients and who are not connected persons in relation to the labour broker;
- the labour broker provides to any of its clients the services of any other labour broker; or
- the labour broker is contractually obliged to provide a specified employee of the labour broker to render services to the client.[8]

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

(e) Independent contractor

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

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

Two sets of tests are applied to determine whether a person is an independent contractor for PAYE purposes. The first is referred to as the statutory tests. The statutory tests are conclusive in nature which, if they apply, means that a person is either deemed to be, or is deemed not to be, an independent contractor for purposes of determining PAYE. The second is the common law tests, used to determine whether a person is an independent contractor or an employee. Unfortunately, the common law tests as they apply in South Africa do not permit a simple "checklist" approach. There are no hard and fast rules in determining whether or not a person is an independent contractor. An "overall" or "dominant impression" of the employment relationship must be formed. Legally, the common law tests should be performed first in determining whether a person is an employee or an independent contractor. In practice, the statutory tests are considered first. If the statutory tests are not applicable in a particular situation, the common law tests are applied to finally determine whether the person is an independent contractor or an employee.[9]

For VAT purposes, an independent contractor who carries on an enterprise is liable to register as a VAT vendor if the registration threshold of R1 million is exceeded.[10]

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[8] For more information see Interpretation Note 35 "Employees' Tax: Personal Service Providers and Labour Brokers".

[9] For more information see Interpretation Note 17 "Employees' Tax: Independent Contractors".

[10] Paragraph (iii)(*bb*) of the proviso to the definition of "enterprise" in section 1(1) of the VAT Act.

(f) Small, medium and micro enterprises

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, types of business entities and requirements of registration of a business entity, can be obtained from the Department of Trade, Industry and Competition or on its website **www.thedtic.gov.za**.

3. A business and the South African Revenue Service

3.1 Introduction

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

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

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

3.2 Income tax

3.2.1 General

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

3.2.2 Registration

As soon as a person commences a business, whether as a sole proprietor, a partner in a partnership or as a company, the person is required to register as a taxpayer with the SARS service centre or on SARS eFiling[11] in order to obtain a tax reference number. The person must register within 21 business days after becoming liable for any normal tax or becoming liable to submit any return.

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

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

3.2.3 Change of address

The TA Act requires that if a person's postal, physical address or electronic address used for communication with SARS changes, the person must notify SARS of the new address within 21 business days after such change.[12]

[11] Registration on SARS eFiling can be done for income tax, VAT and PAYE.

[12] Section 23 of the TA Act.

3.2.4 Year of assessment and filing of income tax returns

The year of assessment for natural persons and trusts covers a 12-month period commencing 1 March of a specific year and ending on the last day of February of the following year.

An insolvent person must submit two returns for a year of assessment, one for the period commencing 1 March and ending on the date preceding the date of sequestration, and one commencing on the date of sequestration and ending on the last day of February. From an income tax point of view, the effect of insolvency is to terminate the tax status of the taxpayer and to substitute from the date of sequestration in that taxpayer's place the insolvent estate. In addition, the natural person receives a new taxpayer identity from the date of sequestration since that person can from that date build a new estate with, for example, the remuneration or reward for work done or for professional services rendered. The insolvent estate must submit a return from the date of sequestration. An insolvent estate is not a natural person. Accordingly, an insolvent estate does not, for example, qualify for the primary rebate as contemplated in section 6.[13]

The year of assessment of a deceased person commences 1 March and ends on the date of death. When a person dies a new entity comes into existence, namely, the deceased estate. The deceased estate must be treated as if it were a natural person.[14] The first year of assessment for the deceased estate commences on the day after the date of death and ends on the last day of February or, if earlier, on the date on which the liquidation and distribution account becomes final. For subsequent years of assessment, the executor of a deceased estate must continue to submit returns of income for each year of assessment until the liquidation and distribution account becomes final.

A natural person ceasing to be a resident should submit a return for the period commencing 1 March and ending on the day preceding the date that the person ceases to be a resident.

Persons other than companies (for example, a natural person or trust) who cannot conveniently return income from a business or profession to the last day of February may apply at a SARS service centre for permission from the Commissioner to draw up accounts to a closing date other than the last day of February. Any request of this nature is subject to conditions that the Commissioner may impose. Generally, the closing date so approved will determine in which year of assessment the results for the accounting period must be included and the dates on which provisional tax payments must be made.[15]

A company's year of assessment ends on a date that coincides with its financial year-end. The year of assessment of a company with a financial year-end of 30 June will commence 1 July and end 30 June of the following year. A company that ceases to be a resident, must submit a return for the period commencing on the first day of the year of assessment and ending on the day preceding the date that the company ceases to be a resident. Companies are occasionally required to close their financial accounts earlier or later than the last day of their financial year for various reasons. Companies are allowed to align reporting for tax purposes with the period ending on the day their financial accounts are closed. A company intending to close its financial accounts either within 10 days before or after the end of a year of assessment must submit an application to a SARS service centre for permission to draw up financial accounts to a closing date other than the end of its financial year. Approval by the

[13] See Interpretation Note 8 "Insolvent Estates of Natural Persons".
[14] Other than for the purposes of sections 6, 6A, 6B and 6C.
[15] For more information see Interpretation Note 19 "Year of Assessment of Persons other than Companies: Accounts Accepted to a Date other than the Last Day of February".

Commissioner does not result in a change in the company's financial year-end and therefore does not change its year of assessment.[16]

Income tax returns must be submitted by a specific date each year.[17] The date is published for the information of the general public and is promoted by a filing season campaign to encourage compliance in this regard. Filing can be done online (see **2.1.6**) and those taxpayers unable to do so, may file at a SARS service centre by appointment only.

SARS has made it easier for taxpayers to comply by assessing a significant number of taxpayers automatically. SARS will send the taxpayer an SMS or email if the taxpayer has been selected to be auto-assessed. The taxpayer must then log into eFiling or MobiApp (see **3.2.5**) to view the assessment. If the taxpayer agrees with the assessment there is nothing further to be done. If a refund is due, SARS will pay it to the taxpayer. If the taxpayer owes SARS any amount then payment must be made to SARS.

3.2.5 SARS eFiling and SARS MobiApp

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

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

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

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

The SARS MobiApp is a mobile channel from which taxpayers can complete and submit income tax returns. On the SARS MobiApp a person can register, complete, save and submit a return.

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[16] For more information see Interpretation Note 90 "Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company's Financial Year".

[17] For more information see Government Notice 3540 in *Government Gazette* 48788 of 14 June 2023.

The following should be noted:

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

For more information, visit the SARS eFiling website at **www.sarsefiling.gov.za**.

Taxpayers who have to make payments to SARS have the following payment options:

- At the bank (see **3.2.6**)
- Payments via SARS eFiling or through the SARS MobiApp
- Electronic Funds Transfer (EFT) (see **3.2.7**)

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

3.2.6 Payments at banks

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

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

3.2.7 Electronic funds transfer

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

Several banks support electronic funds transfer (EFT) payments. See the *External Guide: South African Revenue Service Payment Rules (GEN-PAYM-01-G01)* for more details.

3.2.8 Provisional tax (the Fourth Schedule)

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

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

The first provisional tax payment must be made within six months after the commencement of the year of assessment and the second payment not later than the last day of the year of assessment. An optional third payment is voluntary and may be made within six months after the end of the year of assessment if the year of assessment ends on a date other than the last

day of February. For a year of assessment ending on the last day of February, the optional third payment must be made within seven months after the end of the year of assessment.[18]

3.2.9 Employees' tax (Pay-As-You-Earn) (the Fourth Schedule)

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

Every employer[19] who pays or becomes liable to pay an amount of remuneration[20], or a lump sum to any person who is liable for normal tax, must register with SARS as an employer for PAYE purposes. An employer must apply for registration within 21 business days after becoming an employer or within such further period as the Commissioner may approve. This means that any business that pays remuneration to any of its employees that is above the tax threshold for the 2024 year of assessment, namely –

- R95 750 (for a natural person under the age of 65 years);
- R148 217 (for a natural person aged 65 years or older but not yet 75 years); or
- R165 689 (for a natural person aged 75 years or older),

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

Once registered, the employer must request a monthly return (EMP201) on SARS eFiling or e@syFile™ that must be submitted within seven days after the end of the month during which the PAYE was deducted (for example, PAYE deducted for the month of April should be paid by the 7th of May). If none of the employer's employees is liable for income tax, the employer is not required to register as an employer for PAYE purposes.

For more information on the deduction of PAYE and the payment thereof to SARS see the guide[21] and tables.[22]

3.2.10 How to determine net profit or loss of a business

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

Income − Expenses = Profit (Loss)

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

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[18] For more information see the *External Guide: Guide for Provisional Tax 2024 (GEN-PT-01-G01)* and Interpretation Note 1 "Provisional Tax Estimates".

[19] See definition of "employer" in paragraph 1 of the Fourth Schedule.

[20] See definition of "remuneration" in paragraph 1 of the Fourth Schedule.

[21] *External Guide: Guide for Employers in respect of Employees' Tax (2024 Tax Year) (PAYE-GEN-01-G18).*

[22] See the published *External Annexures* setting out the tax deduction tables for the 2024 tax year: *Weekly (PAYE-GEN-01-G01-A01); Fortnightly (PAYE-GEN-01-G02-A02); Monthly (PAYE-GEN-01-G01-A03); Annual (PAYE-GEN-01-G01-A04); and Other*.

The following key concepts are explained:

- *Gross sales or turnover*

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

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

- *Cost of sales*

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

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

  (Opening stock + Purchases) − Closing stock = Cost of sales

  (R800 000 + R3 million) − R500 000 = R3,3 million

- *Gross profit*

  Gross profit equals gross sales less the cost of sales.

  In this example, ABC Furniture Store had gross sales of R6 million. The cost of sales was R3,3 million. The gross profit is R2,7 million (R6 million − R3,3 million).

- *Business expenses*

  Business expenses, also referred to as operating expenses, are expenses incurred in the operation of a business. ABC Furniture Store expended R1,3 million on items such as rent, wages, telephone, electricity, stationery, travelling and other business expenses.

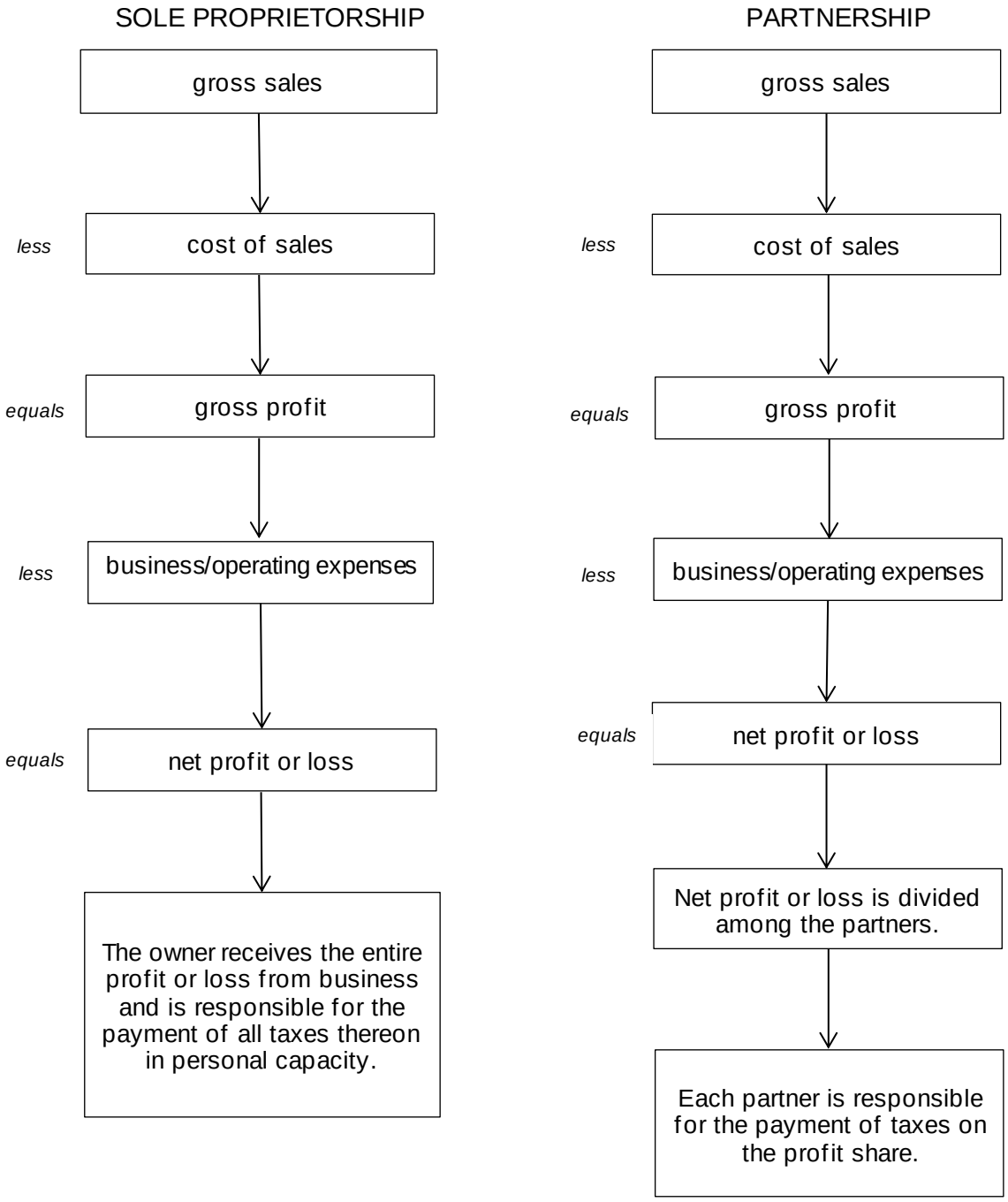
- *Net profit or loss*

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

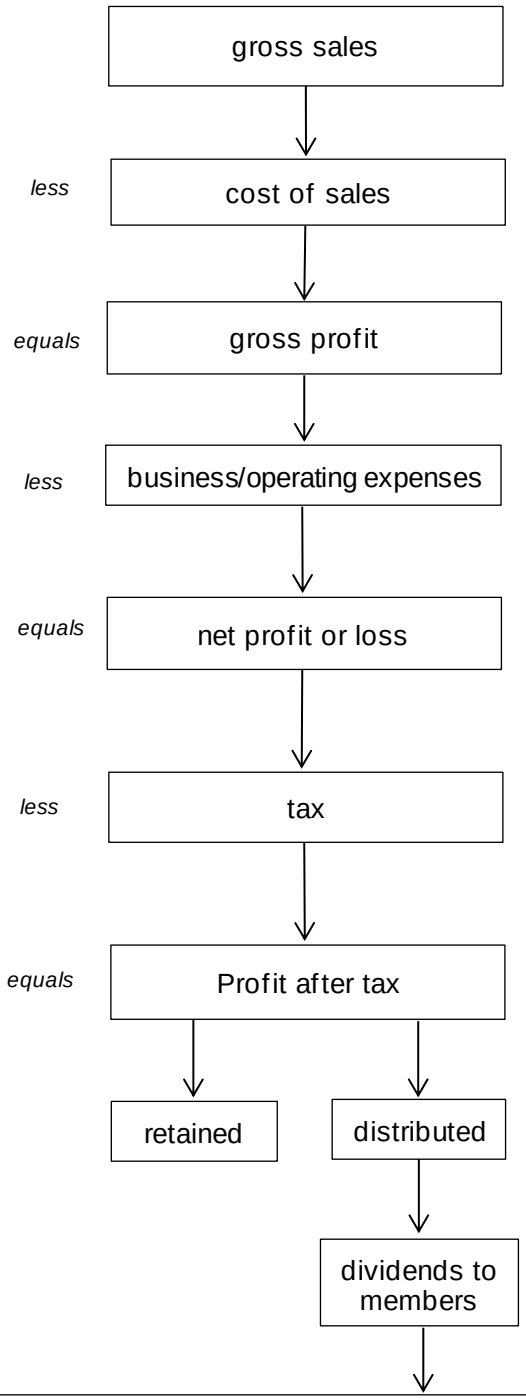
  In this example, ABC Furniture Store had a gross profit of R2,7 million and business expenses of R1,3 million, leaving ABC Furniture Store with a net profit of R1,4 million (R2,7 million – R1,3 million).

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

3.2.11 Comparative profit or loss statements

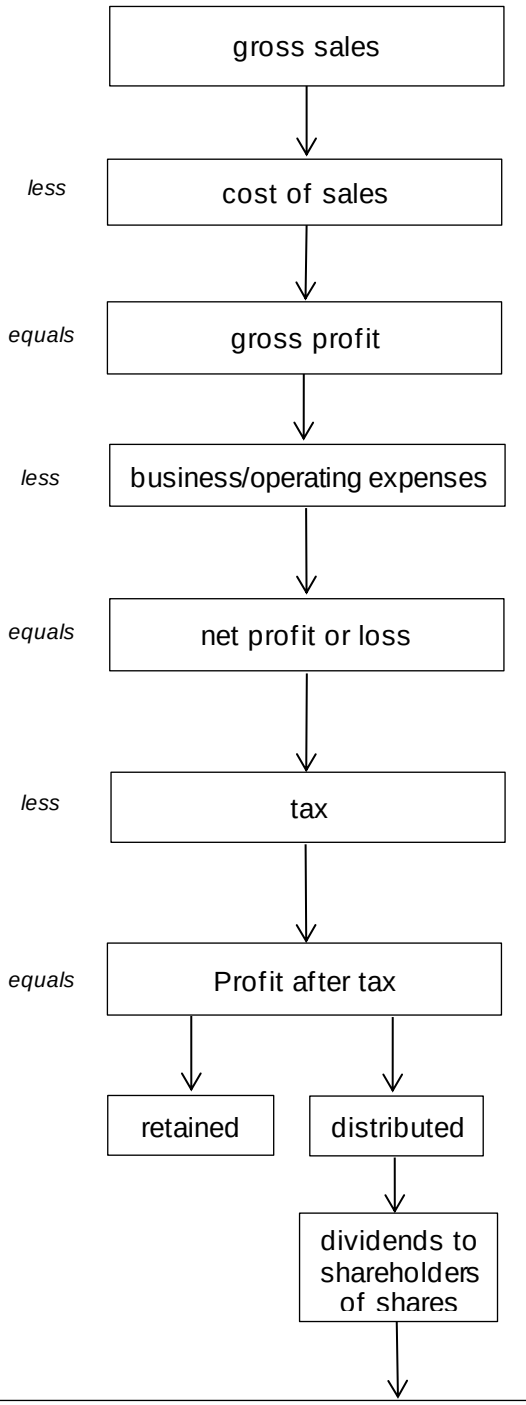


CLOSE CORPORATION



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

PRIVATE COMPANY



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

3.2.12 Connection between "net profit" and "taxable income"

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

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

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

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

3.2.13 Determination of taxable income or assessed loss

The Act provides for a series of steps to be followed in determining a person's taxable income or assessed loss.[23] The starting point is to determine the person's gross income which is, in the case of –

- any person who is a resident, the total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of the person during the year of assessment, excluding receipts or accruals of a capital nature; or
- any person who is not a resident, the total amount of income, in cash or otherwise, received by or accrued to or in favour of the person from a source[24] within South Africa during the year of assessment, excluding receipts or accruals of a capital nature.

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

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

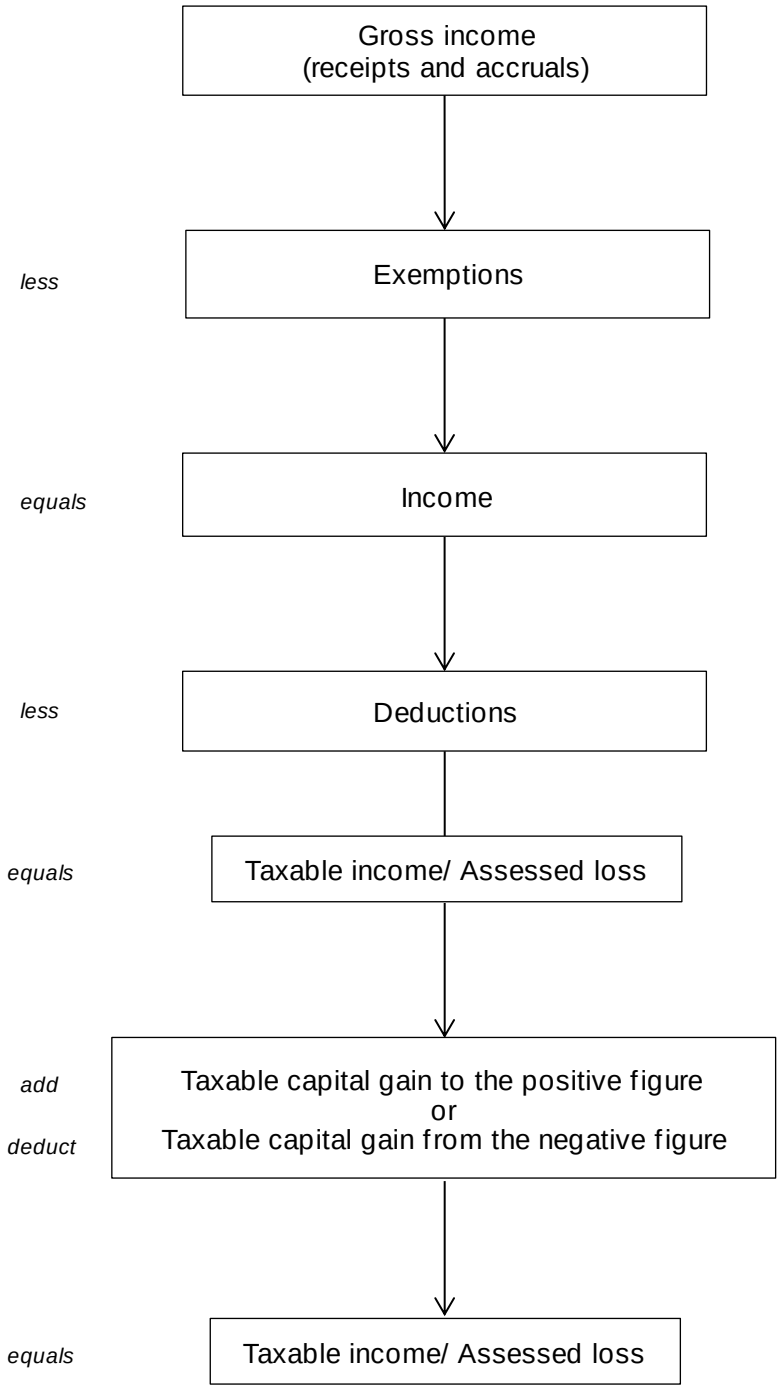
Finally, the taxable income or assessed loss of a person is arrived at by –

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

[23] Assessed loss is defined in section 20(2) as any amount by which the deductions admissible under section 11 exceeded the income for which they are so admissible.

[24] See section 9 for source of income.

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



Section 20, subject to section 20A, provides that for the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be set off against the income so derived by such person –

- that is a company, other than a company carrying on mining operations, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed the higher of R1 million and 80% of the amount of taxable income determined before taking into account the application of this section;

- that is a company carrying on mining operations, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed the higher of R1 million and 80% of the amount of taxable income determined before taking into account the application of this section and the provisions of section 36 (7C);
- that is not a company, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, provided that no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade; or
- any assessed loss incurred by a person during the same year of assessment in carrying on any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.

There shall not be set off against any amount –

- derived by any person from a source within the Republic, assessed loss incurred by such person during such year or any balance of assessed loss incurred in any previous year of assessment, in carrying on any trade outside the Republic, or
- that is a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit included in taxable income, any balance of assessed loss or assessed loss incurred in such year before taking into account that retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.

In the case of any person other than a company –

- the provisions as above shall similarly apply for the purpose of determining the taxable income derived by such person otherwise than from carrying on any trade, the reference to "taxable income derived by any person from carrying on any trade" and the reference to "the income so derived" being respectively construed as including a reference to taxable income derived by that person otherwise than from carrying on any trade and a reference to income so derived; and
- the said person shall, subject to the provisos above, not be prevented from carrying forward a balance of assessed loss merely by reason of the fact that he has not derived any income during any year of assessment.

With regard to the 80% limitation in section 20(1)(*a*)(i), reference is made to the company's taxable income without limiting it to so-called trading income. The term "taxable income" in that section refers to taxable income as defined in section 1(1). This term therefore includes taxable capital gains. As a result, in determining the total taxable income against which the 80% limitation is applied, the application of the set-off under section 20(1)(*a*)(i) must include any taxable capital gain in the taxable income before the limitation of 80% is determined.

3.2.14 General deduction formula

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

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

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

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

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

3.2.15 Tax rates and rebates

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

Year of assessment ending during the 12-month period ending on 29 February 2024

Taxable income	**Rate of tax**
R1 – R237 100	18% of taxable income
R237 101 – R370 500	R42 678 plus 26% of the amount by which taxable income exceeds R237 100
R370 501 – R512 800	R77 362 plus 31% of the amount by which taxable income exceeds R370 500
R512 801– R673 000	R121 475 plus 36% of the amount by which taxable income exceeds R512 800
R673 001 – R857 900	R179 147 plus 39% of the amount by which taxable income exceeds R673 000
R857 901 – R1 817 000	R251 258 plus 41% of the amount by which taxable income exceeds R857 900
R1 817 001 and above	R644 489 plus 45% of the amount by which taxable income exceeds R1 817 000

Normal tax rebates

Applicable to a natural person only – Year of assessment commencing on 1 March 2023 or ending on 29 February 2024

Rebate	**Amount**
Primary rebate – (Below the age of 65 years)	R17 235
Secondary rebate – (Age 65 years or older) additional to primary rebate	R9 444
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R3 145

Medical scheme fees tax credit

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

- R364 in respect of benefits to the taxpayer, or if the taxpayer is not a member of a medical scheme or fund in respect of benefits to a dependant who is a member of a medical scheme or fund or a dependant of a member of a medical scheme or fund;
- R728 in respect of benefits to the taxpayer and one dependant; or
- R728 in respect of benefits to two dependants; and
- R246 in respect of benefits for each additional dependant,

for each month in the 2024 year of assessment for which contributions are paid. The MTC reflected above will apply to qualifying taxpayers irrespective of their age and whether or not they or their dependant(s) are persons with a disability.

If the taxpayer is not a member of a registered medical scheme, but pays fees for a dependant person, and that dependant person is a member of a registered medical scheme or fund, the MTC of R364 referred to above would also be allowed in the taxpayer's hands. An example of such a case is fees paid by a taxpayer in respect of a parent that is a dependant of the taxpayer.

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

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

Any contribution or payment made by an employer for the benefit of an employee will be a taxable benefit for the employee and will be included in the employee's gross income.[25]

[25] For more information, see the *Guide on the Determination of Medical Tax Credits* and section 6A.

Additional medical expenses tax credit

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

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

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

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

The amount to be deducted is calculated as follows:[26]

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

[26] For more information see the *Guide on the Determination of Medical Tax Credits* and section 6B.

Solar energy tax credit

A tax credit was introduced under section 6C with the aim to encourage and promote renewable energy in households thereby reducing the pressure on the national electricity grid.[27]

Section 6C applies only to natural persons meeting the strict requirements and for the years of assessment commencing on 1 March 2023 and ending on 29 February 2024. Thus, the tax credit was available only for one year.

The solar tax credit applies to natural persons who are liable for personal income tax and who invest in qualifying solar photovoltaic panels. Since the intention is to encourage natural persons to invest in renewable energy, the carrying on of a trade is not a requirement to be eligible to claim this tax credit.

The solar energy tax credit applies to the cost actually incurred by the natural person –

- for the acquisition of any new and unused solar photovoltaic panels, the generation capacity of each being not less than 275W [section 6C(2)(*a*)(i)]; and
- if the solar photovoltaic panels referred to in section 6C(2)(*a*)(i) are brought into use for the first time by that person on or after 1 March 2023 and before 1 March 2024 [section 6C(2)(*a*)(ii)].

The cost relating to other components of a complete solar energy system such as inverters, batteries and supporting structures do not qualify for the tax credit.

The amount of the solar energy tax credit allowed must be 25% of the actual cost of the solar photovoltaic panels mentioned above and in aggregate be limited to an amount not exceeding R15 000.

A solar energy tax credit will be allowed only if –

- the solar photovoltaic panels are installed and mounted on or affixed to a residence mainly used for domestic purposes;
- the installation is connected to the distribution board of such residence; and
- an electrical certificate of compliance contemplated in the Electrical Installation Regulations, 2009, is issued in respect of the installation.

No deduction shall be allowed on any asset in respect of which a deduction has been allowed to the taxpayer under sections 12B [see **3.2.16(e)**] or 12BA [see **3.2.16(f)**].

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

Year of assessment commencing on 1 March 2023 and ending on 29 February 2024

Taxable income	**Rate of tax**
On each rand of taxable income	45%

[27] For a detailed consideration of the solar energy tax credit under section 6C, see the *Guide on the Solar Energy Tax Credit Provided under Section 6C.*

(c) Taxable income of companies

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

The rate of tax in the table below applies to years of assessment ending on or after 1 April 2023

Taxable income	Rate of tax
On each rand of taxable income	27%

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

Rates of tax applicable to any year of assessment ending between 1 April 2023 and 31 March 2024

Taxable income	Rate of tax
R1 – R95 750	0% of taxable income
R95 751 – R365 000	7% of the amount by which taxable income exceeds R95 750
R365 001 – R550 000	R18 848 plus 21% of the amount by which taxable income exceeds R365 000
R550 001 and above	R57 698 plus 27% of the amount by which taxable income exceeds R550 000

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

Year of assessment ending during the 12-month period ending on 29 February 2024

Taxable turnover	Rate of tax
R1 – R335 000	0% of taxable turnover
R335 001 – R500 000	1% of the amount by which taxable turnover exceeds R335 000
R500 001 – R750 000	R1 650 + 2% of the amount by which taxable turnover exceeds R500 000
R750 001 and above	R6 650 + 3% of the amount by which taxable turnover exceeds R750 000

3.2.16 Special allowances or deductions and recoupment

Recoupment of allowances and deductions

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

Section 8(4)(*e*), subject to sections 8(4)(*e*B), (*e*C), (*e*D) and (*e*E), applies if the taxpayer elects that paragraphs 65 or 66 of the Eighth Schedule apply to the disposal of a damaged or destroyed asset. The amount to be included in income in a year of assessment is limited to an amount apportioned to the replacement asset but in the same ratio as the deduction of the allowance is allowed for the replacement asset. The following provisions must be kept in mind:

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

Section 8(4)(*n*A) provides for a recoupment where, before 1 March 2026 a taxpayer disposes of an asset on which the enhanced section 12BA allowance has been claimed. Included in the taxpayer's income is 25% of the cost of the asset, which has been recouped during the current year of assessment, in addition to the inclusion of amounts in terms of paragraph (*a*) but limited to the total amount to be deducted in respect of that asset.

Expenditure incurred in respect of moving costs

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

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

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

Save for the provisions in paragraph 12(2) of the First Schedule, an allowance, equal to the amount by which the value of any machinery, plant, implements, utensils and articles, other than assets contemplated in sections 12B, 12BA, 12C, 12DA, 12E(1), 12U and 37B has diminished through wear-and-tear or depreciation, as the Commissioner may think just and reasonable will be allowed.

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

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

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

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

Small items costing less than R7 000 may be written off in full in the year of assessment of acquisition.[28]

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

(b) Inventions, patents, designs, trade marks, copyrights and knowledge [sections 11(*g*A), 11(*g*B) and 11(*g*C)]

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

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

- devising or developing any invention;
- creating or producing any design, trade mark, copyright, other property which is of a similar nature;
- obtaining or restoring any patent or the registration of any design or trade mark; or

[28] For more information see Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

- acquiring any such patent, design, trade mark or copyright or any other property of a similar nature or knowledge essential to use such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

may be deducted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any recoupment of an allowance granted under section 11(*g*A), (*g*B) or (*g*C) will be included in the taxpayer's income under section 8(4)(*a*).

(c) Expenditure incurred to obtain a licence [section 11(*g*D)]

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

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

A deduction, equal to 150% of the expenditure incurred directly and solely on scientific or technological research and development[29] undertaken in South Africa, will be allowed in the year of assessment in which the expenditure is incurred in the production of income and in the carrying on of any trade. Only a taxpayer who is a company may claim this deduction.

[29] See the definition of "scientific or technological research and development" in section 11D(1).

This deduction may not be allowed for expenditure incurred in respect of –

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

The scientific or technological research and development must be approved under section 11D(9) and the expenditure must be incurred within six months prior to or on or after the date of receipt of the application by the Department of Science and Innovation for approval of that scientific or technological research and development.

If a person undertakes scientific or technological research and development activities on behalf of another person (the funder), only the person responsible for determining the research methodology will be eligible to qualify for the 150% deduction. Under section 11D, no deduction shall be allowed in respect of applications received after 31 December 2033.

The Minister of Higher Education, Science and Innovation may under section 11D(10) withdraw an approval granted for scientific or technological research and development with effect from a specific date under specified circumstances. Under section 11D(19) an additional assessment for any year of assessment may be raised for a deduction for scientific or technological research and development allowed, if approval for such deduction is subsequently withdrawn under section 11D(10).

Under section 13 a deduction, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of any new and unused building or part thereof, and brought into use for the purpose of carrying on therein a process of scientific or technological research and development in the course of that taxpayer's trade, will be allowed.[30]

Under section 12C a deduction, equal to a three year write-off at a rate of 50:30:20 will be allowed for any new and unused machinery, plant, implement, utensil or article or improvement thereto brought into use for purposes of scientific or technological research and development.

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

The depreciable cost of the asset is the lesser of –

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

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

[30] For more information see the *Guide to Building Allowances*.

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

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

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

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

An allowance on –

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

may be deducted.

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

The depreciable cost of the asset is the lesser of –

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

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

(f) Machinery, plant, implements, utensils and articles used in production of renewable energy (section 12BA)

A deduction is allowed under section 12BA on any new and unused machinery, plant, implement, utensil, or articles used in the production of renewable energy if it meets all the requirements.

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

- wind power;
- photovoltaic solar energy;
- concentrated solar energy;
- hydropower; or
- biomass comprising organic wastes, landfill gas or plant material.

The asset must be brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1 March 2025, to be used by that taxpayer or the lessee of that taxpayer in the generation of electricity in the Republic from the mentioned sources.

An allowance equal to 125% of the cost incurred by the taxpayer for the acquisition of the asset may be deducted.

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

The depreciable cost of the asset is the lesser of –

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

No deduction shall be allowed on any asset brought into use after 28 February 2025.Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) and (*nA*).

(g) Aircraft and ships (section 12C)

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

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

The depreciable cost of the asset is the lesser of –

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

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

(h) Manufacturing assets (section 12C)

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

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

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

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

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

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

For any new or unused machinery or plant acquired on or after 1 January 2012, brought into use after that date and used by the taxpayer for purposes of research and development as defined in section 11D, the deduction is increased to –

- 50% of the cost to that taxpayer in the year of assessment during which the plant, machinery or improvement is or was brought into use for the first time;
- 30% of that cost in the immediate succeeding year, and
- 20% of that cost in the immediate succeeding year, that is, the third year.

The depreciable cost of the asset is the lesser of –

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

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

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

(i) Certain pipelines, transmission lines and railway lines (section 12D)

Pipelines used for transportation of natural oil

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

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

Pipelines for transportation of water used by power stations

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

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

Lines or cables used for transmission of electricity

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

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

Lines or cables used for transmission of electronic communications

An allowance, equal to 6,67% (15-year straight-line basis) of the cost incurred by a taxpayer for any new or unused lines or cables acquired on or after 1 April 2015 may be deducted.

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

The allowance increased to 10% (10-year straight-line basis) for lines and cables (new or used) owned by the taxpayer and brought into use for the first time by the taxpayer. The increased allowance applies only to lines and cables acquired on or after 1 April 2019.

Railway lines used for transportation of persons, goods or things

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

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

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

The depreciable cost of these assets is the lesser of –

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

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

(j) Rolling stock (trains and carriages) (section 12DA)

An allowance, equal to 20% (five-year straight-line basis) of the cost actually incurred by a taxpayer on the acquisition or improvement of rolling stock brought into use, on or before 28 February 2022, in the carrying on of a trade may be deducted. Taxpayers who have already started claiming the incentive before 28 February 2022 will be entitled to continue to do so for the remaining period of depreciation provided that all requirements of the section are still complied with.

The depreciable cost of the stock is the lesser of –

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

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

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

(k) Airport assets (section 12F)

An allowance equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire new and unused airport assets (including the construction, erection or installation of these assets) which have been brought into use by the taxpayer for the first time, on or before 28 February 2022, in the carrying on of a trade may be deducted. Taxpayers who have already started claiming the incentive before 28 February 2022 will be entitled to continue to do so for the remaining period of depreciation provided that all requirements of the section are still complied with.

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

The depreciable cost of an asset is the lesser of –

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

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

(l) Port assets (section 12F)

An allowance equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire new and unused port assets (including the construction, erection or installation of these assets). The assets must have been brought into use by the taxpayer for the first time, on or before 28 February 2022, in the carrying on of a trade may be deducted.

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

The depreciable cost of an asset is the lesser of –

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

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

(m) Additional deduction for learnership agreements (section 12H)

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

> "a learnership agreement that is—
>
> (*a*) registered in accordance with the Skills Development Act, 1998; and
>
> (*b*) entered into between a learner and an employer before 1 April 2024".

Effective from 1 October 2016, the amount of the allowance will depend on the NQF level held by the learner before entering into the learnership agreement. The learnership agreement must be entered into before 1 April 2024.[31]

[31] See section 14 of the Taxation Laws Amendment Act 20 of 2021.

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

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

6) If the learner mentioned above is a person with a disability at the time of entering into the learnership agreement.	R60 000 (R40 000 + R20 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement or R50 000 (R20 000 + R30 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement.

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

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

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

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

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

Additional investment allowance

In addition to any other deductions allowable under the Act, section 12I allows a company, that submitted an application for approval to the Minister of Trade and Industry not later than 31 March 2020, to deduct an amount equal to the relevant rates quoted below on the cost of any new or unused asset if such asset was acquired and contracted for on or after the date of approval and was brought into use within four years from the date of approval. The allowance must be claimed in the year of assessment during which the asset is first brought into use by the company as the owner of the asset for the furtherance of the industrial policy project carried on by that company.

The rates applicable under sections 12I(2)(*a*) and (*b*) are as follows:

"(*a*) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

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

(*b*) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or

(ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within a special economic zone,"[32]

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

The additional investment allowance may not exceed –

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

The terms, "industrial policy project", "brownfield project", "greenfield project" and "manufacturing asset" are defined in section 12I(1).

Additional training allowance

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

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

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

- R30 million for an industrial policy project with preferred status; and
- R20 million for any other industrial policy project.[33]

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

Section 12J allows a deduction from the income of a taxpayer of expenditure actually incurred in a year of assessment in acquiring venture capital shares issued to that taxpayer, if specified requirements have been met.[34] No deduction is allowed under section 12J in respect of shares acquired after 30 June 2021.

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

A claim for a deduction must be supported by a certificate issued by the approved venture capital company.[35]

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[32] Section 12I(2).

[33] For more information see Interpretation Note 86 "Additional Investment and Training Allowances for Industrial Policy Projects".

[34] No deduction shall be allowed under section 12J for shares acquired after 30 June 2021.

[35] For more information see the *Guide on Venture Capital Companies* and the *External Guide: Venture Capital Companies (GEN-REG-48-G01)*.

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

Section 12L provides for a deduction for savings derived from implementing energy-efficient methods that result from activities performed in the carrying on of any trade and in the production of income.

Section 12L became effective on 1 November 2013 and applies to years of assessment ending before 1 January 2026.

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

A deduction must be supported by a certificate issued by the South African National Energy Development Institute[36] in respect of the energy efficiency savings for that year of assessment.[37]

(r) Deduction of medical lump sum payments (section 12M)

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

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

but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant referred to above, to a medical scheme or fund contemplated in section 6A(2)(*a*)(i) or (ii).[38]

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

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

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

No deduction will be allowed if the taxpayer –

- carries on any banking, financial services or insurance business; or
- enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless –
    - the other person is a company which is a member of the same group of companies as the taxpayer;

[36] Established under section 7 of the National Energy Act 34 of 2008.
[37] For more information see Interpretation Note 95 "Deduction for Energy-Efficiency Savings".
[38] For more information see Interpretation Note 121 "Deduction of Medical Lump-Sum Payments".

- the cost of maintaining the land or building and of carrying out repairs (in consequence of normal wear-and-tear) is carried by the taxpayer; and
- the risk of destruction or loss of the land or building is not carried by that other person.

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

Section 12NA provides for a deduction if the taxpayer–

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

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

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

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

(u) Industrial buildings (buildings used in a process of manufacture, research and development or a process of a similar nature) (section 13)

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

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

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

- the actual cost of the building (or improvements) to the taxpayer (this excludes the cost of land and financing costs); or
- the actual cost of the building (or improvements) to the taxpayer; *less* any amount of an allowance recouped from a previous building (or improvements), if any.[39]

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

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

[39] For more information see the *Guide to Building Allowances*.

(v) Buildings used by hotelkeepers (section 13*bis*)

Section 13*bis* provides for an allowance on the erection of buildings or improvements to such buildings used by the taxpayer in the trade of hotel keeper, or if let, then used by the lessee in the trade of hotel keeper. The term "hotel keeper" is defined in section 1(1).

Buildings and improvements

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

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

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

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

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

- the actual cost of the building (or improvements) to the taxpayer (this excludes the cost of land and financing costs); or
- the actual cost of the building (or improvements) to the taxpayer less any amount of an allowance recouped from a previous building (or improvements), if any.[40]

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

- set off against the cost of a further building under section 13*bis*(6)(*a*) provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(*a*).[41]

(w) Urban development zones (section 13*quat*)

Taxpayers investing in one of the 16 demarcated urban development areas may claim special depreciation allowances for the construction or refurbishment of commercial and residential buildings[42] located in these areas that are used solely for trade purposes. These areas are located within the boundaries of the municipalities of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane.[43]

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[40] For more information see the *Guide to Building Allowances*.

[41] For more information see Interpretation Note 105 "Deductions in respect of Buildings used by Hotelkeepers".

[42] See **3.8.6** for the VAT treatment of expenses related to residential buildings.

[43] The allowance is available on a building or part of a building brought into use on or before 31 March 2025. For more information see the *Guide to the Urban Development Zone Allowance* and the *Draft Guide to Building Allowances*.

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

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

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

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

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

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

will be deemed to be the cost incurred for that part or improvement, as the case may be.[44]

Any recoupment of the allowance will be included in the taxpayer's income under section 8(4)(*a*).[45]

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

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

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

An additional allowance of 5% of the cost of a low-cost residential unit[46] will be granted if the allowance of 5% referred to above is allowable.

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

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

[44] For more information see the *Guide to Building Allowances*.
[45] For more information see Interpretation Note 107 "Deduction in respect of Certain Commercial Buildings".
[46] The term "low-cost residential unit" is defined in section 1(1).

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

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer (this excludes the cost of land and financing costs); or
- the arm's length cash price at the time of acquisition.[47]

Any recoupment of these allowances will be included in the taxpayer's income under section 8(4)(*a*).[48]

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

A taxpayer that disposes of a low-cost residential unit[49] to an employee (or an "associated institution" as defined in the Seventh Schedule in relation to the taxpayer) on or after 21 October 2008 may deduct an amount, in respect of any year of assessment ending on or before 28 February 2022, equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's year of assessment.[50] No such deduction will be allowed in the eleventh and subsequent years of assessment after the disposal of the unit.

No deduction will be allowed, if –

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

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

- the amount so repaid; or
- the amount allowed as a deduction under section 13*sept*(1) in the current or previous years of assessment.[51]

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47 For more information see the *Guide to Building Allowances*.

48 For more information see Interpretation Note 106 "Deduction in respect of Certain Residential Units".

49 The term "low-cost residential unit" is defined in section 1(1).

50 This provision is subject to section 36 dealing with the calculation of redemption allowances and the unredeemed balance of capital expenditure in connection with mining operations.

51 For more information see the *Guide to Building Allowances*.

(aa) Residential buildings (section 13*ter*)

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

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

If the unit is used or dealt with by the taxpayer in such a way that the unit ceases to be available for letting to a tenant or occupied by a full time employee, these two allowances are subject to recoupment as provided for under section 13*ter*(7).[52] In the year of assessment in which the taxpayer disposes of the unit, section 8(4)(*a*) will apply to the balances of these two allowances not yet recouped.

(ab) Environmental expenditure (sections 37A and 37B)

Post-trade environmental expenses (section 37A)

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

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

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

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

- the constitution of the company or the instrument establishing a trust does not comply with section 37A(5)(*a*); and

the person contemplated in section 37A(5)(*b*) does not furnish the Commissioner with a written undertaking as contemplated in that section.

[52] For more information see the *Guide to Building Allowances*.

Deductions in respect of environmental expenditure (section 37B)

Environmental treatment and recycling assets

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

An allowance may be deducted, equal to –

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

Environmental waste disposal assets

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

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

The depreciable cost of the asset is the lesser of –

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

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

(ac) Environmental conservation and maintenance expenditure (section 37C)

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

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

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

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

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

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

3.2.17 Farming (the First Schedule)

Section 26 provides that the taxable income of a person carrying on pastoral, agricultural or other farming operations shall, in so far it is derived from such operations, be determined in accordance with the Act but subject to the First Schedule.

Farming operations include, amongst other things, livestock farming, crop farming, milk production, plantation farming, sugar cane farming and game farming.

Any person carrying on farming operations is required to account for the value of livestock and produce on hand at the beginning and end of a year of assessment. The values to be placed on livestock at the beginning and end of the year of assessment are the standard values as prescribed by regulation under the Act. Produce, on the other hand, must be accounted for at cost of production or market value, whichever is the lower.

No standard values have been prescribed by regulation for game livestock, but the Commissioner accepts that game livestock may be allocated a standard value of nil. Game livestock which is acquired by donation or inheritance is included in opening stock in the year of acquisition at market value.[53]

The onus is on a game farmer to prove that the game is purchased, bred and sold on a regular basis with the intention to carry on farming operations profitably in order to qualify as a game farmer. Income relating to accommodation and catering facilities for visitors does not qualify as income from farming operations.

Allowable deductions for capital development expenditure are –

- the eradication of noxious plants and alien invasive vegetation;
- the prevention of soil erosion;
- dipping tanks;
- dams, irrigation schemes, boreholes and pumping plants;
- fences;

[53] For more information see Interpretation Note 69 “Game Farming”.

- the erection of or extension, addition or improvement (other than repairs) to buildings used in connection with farming operations, other than those used for domestic purposes;[54]
- the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibres, and the establishment of any area used for the planting of such trees, shrubs or plants;
- the building of roads and bridges used in connection with farming operations; and
- the carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with the Electricity Supply Commission under which the farmer has undertaken to bear a portion of the cost incurred by the said Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes.

The deduction for capital development expenditure (excluding expenditure incurred on the eradication of noxious plants and alien invasive vegetation or the prevention of soil erosion) may not exceed the taxable income from farming operations during a year of assessment. The balance of the amount of such expenditure which exceeds the taxable income in the year of assessment will be carried forward and deducted in the succeeding year, subject to the same limitation.

Certain of the above capital development expenditure incurred such as the prevention of soil erosion, dams, irrigation schemes and fences to conserve and maintain land owned by the taxpayer will be deemed to be expenditure incurred in the carrying on of pastoral, agricultural or other farming operations if specified requirements are met (paragraph 12(1A) of the First Schedule).[55]

Special measures in determining taxable income of farmers

A person, deriving income from farming operations may, under paragraph 19(5) of the First Schedule, elect to be subject to tax according to the rating formula set out in section 5(10). The rating concession is applied due to the abnormal accrual of income occurring in one year of assessment in comparison with another year. Farming income may fluctuate on an annual basis because of, for example, an extended period between sowing and eventual crop yields – in other words, periods of little or no income followed by periods of inflated income.

This rating concession applies only to natural persons, deceased estates and insolvent estates. Once the option has been exercised to adopt the equalised rates, this election will be binding on the taxpayer for the current year as well as all future years of assessment, irrespective of the fact that farming operations may be terminated. No provision is made in the Act for a variation either by the farmer or by the Commissioner.

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

- Paragraph 13(1)(*b*) – Provisions relating to the replacement of livestock sold as a result of the person's participation in a livestock reduction scheme organised by government.
- Paragraph 15(3) – Rating formula on taxable income derived from plantations.

[54] For more information see the *Guide to Building Allowances*.
[55] For more information see the *Guide on the Taxation of Farming Operations*.

- Paragraph 17 – Rating formula arising as a result of abnormal receipts from the disposal of sugar cane damaged by fire.

- Paragraph 20 – Relief relating to income for any year of assessment including income derived from excess profits as a result of farming land acquired by the state or certain juristic persons.

3.2.18 Tax relief measures for small business corporations (section 12E)

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

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

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

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

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

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

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

No deduction shall be allowed for any asset of which an allowance has been granted to the taxpayer under section 12BA.

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance –

- granted under section 11(*e*) will be included in the taxpayer's income under section 8(4)(*a*), and
- granted under section 12E(1A)(*b*) will be accounted for under section 8(4)(*a*) or (*e*).

A company that is engaged in the provision of personal services will still qualify for relief provided it employs three or more full-time employees as specified in section 12E throughout the year of assessment and the service is not performed by a person who holds an interest in that company.[56]

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

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

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

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

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

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

See **3.2.15(c)(iii)** for the progressive tax rate applicable to micro businesses.[57]

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

Various incentives applicable to SEZs were developed to attract investors to the SEZs. The tax incentives are provided by Government to ensure SEZs' growth, revenue generation, creation of jobs, attraction of foreign direct investment and international competitiveness, which include income tax, VAT and customs related incentives.[58]

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[56] For more information see Interpretation Note 9 "Small Business Corporations".

[57] For more information see the *Tax Guide for Micro Businesses 2016/17.*

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

Section 12S provides that a qualifying company[59] may claim an accelerated allowance equal to 10% of the cost to the qualifying company of –

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

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

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

The depreciable cost of the asset is the lesser of –

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

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

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

If a company falls within the definition of "qualifying company" in section 12R(1), such a company, will be able to apply the reduced corporate tax rate of 15%,[60] provided all the requirements under the Act are met.

A qualifying company will also be entitled to claim ETI for qualifying employees (irrespective of their age) rendering services to that company mainly within the SEZ in which the qualifying company that is the employer carries on trade, provided that all of the requirements under the ETI Act are met (see **3.21**).[61]

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

Subject to specified requirements and limitations, home office expenses (expenses which relate to that part of a dwelling-house or domestic premises used for purposes of trade) will be allowed as a deduction in determining taxable income.[62]

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

Pre-trade expenditure and losses qualify as a deduction against the income from the trade to which they relate subject to the following requirements contained in section 11A(1):

- First, the trade, in respect of which the pre-trade expenditure or loss was incurred, must have been commenced by the taxpayer.

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59 Defined under section 12R(1).

60 Section 2(1) of the Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2023 read with paragraph 6 of Schedule 1 to that Act.

61 For more information see the *Guide to the Employment Tax Incentive*.

62 For more information see Interpretation Note 28 "Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office".

- Secondly, the pre-trade expenditure or loss must have been actually incurred before the commencement of and in preparation for carrying on that trade.
- Thirdly, had the pre-trade expenditure or loss been incurred after the commencement of the trade to which it relates, it would have been allowed as a deduction under section 11 [other than section 11(*x*)], 11D or 24J.
- Fourthly, the pre-trade expenditure or loss must not have been allowed as a deduction in that year or any previous year of assessment.

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

As indicated above, for any pre-trade expenditure and losses to qualify as a deduction under section 11A(1), they must pass a "post-trade" test under one of a number of specified sections, namely –

- section 11 (general deduction), excluding section 11(*x*);
- section 11D (deduction for R&D); or
- section 24J (incurral and accrual of interest).[63]

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

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

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

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

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

[63] For more information see Interpretation Note 51 "Pre-trade Expenditure and Losses".

The ring-fencing provisions apply only to an assessed loss from a trade carried on by a taxpayer who is a natural person and who meets specified criteria. Natural persons trading in a partnership may be subject to section 20A.[64]

3.2.24 Prohibited deductions

Specified deductions are prohibited by section 23. Some of the prohibited deductions are mentioned below:

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

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

- The cost incurred in the maintenance of the taxpayer, the taxpayer's family or establishment.
- Domestic or private expenses, including rent, cost of repairs, or expenses in connection with any premises not occupied for purposes of trade or any dwelling-house or domestic premises, except on those parts as may be occupied for the purpose of trade (see **3.2.21**).

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

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

- the payment, agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act 12 of 2004; or
- the payment is a fine charged or penalty imposed as a result of carrying out an unlawful activity in South Africa or in another country if the activity would be unlawful had it been carried out in South Africa.[65]

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

Other prohibited deductions include –

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

3.2.25 Film owners (section 12O)

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

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

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[64] For more information see the *Guide on the Ring-Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals*.

[65] For more information see Interpretation Note No 54 "Deductions – Corrupt Activities, Fines and Penalties".

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

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

Section 12O(6) provides that any grant received by or accrued to a special purpose corporate vehicle from the state under the Department of Trade, Industry and Competition incentive will be exempt from normal tax but subject to the general recoupment provision under section 8(4). In certain cases, if the grant is passed on to an investor, the investor will also qualify for the exemption. A taxpayer who receives or to whom an exempt Department of Trade, Industry and Competition grant accrues must consider the provisions of section 12P(3) to (6) as there are consequences on the cost, deductions and allowances available to a taxpayer in respect of related expenditure (see **3.2.26**).[66]

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

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

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

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

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

Effective from 1 January 2016, section 12P(2A) exempts any amount received by or accrued to a person from the government in the national, provincial or local sphere from normal tax, if the amount is granted for the performance by that person as part of that person's obligations pursuant to a PPP.[67]

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

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66 For more information see the *Guide to the Exemption from Normal Tax of Income from Films*.
67 See **3.8.5** for the VAT treatment of grants.

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

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

In the instance where a person referred to in section 12P(4) qualifies for a deduction under section 12BA in respect of an allowance asset, the aggregate amount of the deductions or allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to 125 per cent of the aggregate amount otherwise determined under section 12P(4).[68]

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

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

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

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

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

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

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

[68] Amendment introduced under section 19(1) of the Taxation Laws Amendment Act 17 of 2023 that is deemed to have come into operation on 1 March 2023 and applicable in respect of assets brought into use on or after that date.

Any interest paid by an international shipping company to any foreign person[69] in respect of debt utilised to fund the acquisition, construction or improvement of a South African ship utilised for international shipping will be exempt from withholding tax on interest.

The terms "international shipping", "international shipping company", "international shipping income" and "South African ship" are defined in section 12Q(1).[70]

3.2.28 Capital gains tax

(a) Introduction

Capital gains tax was introduced in the Act with effect from 1 October 2001 and applies to the disposal or deemed disposal by a person of an asset on or after that date. South African residents are subject to CGT on the disposal of assets not only in South Africa, but anywhere in the world. All capital gains and capital losses made on the disposal of assets are subject to CGT unless disregarded by specified provisions. Only capital gains or capital losses attributable to the period on or after 1 October 2001 must be brought to account for CGT purposes.

The Eighth Schedule provides for four key definitions (asset, disposal, proceeds and base cost) which form the basic building blocks in determining a capital gain or capital loss (see below).

The CGT provisions are mostly contained in the Eighth Schedule, although some are in the main body of the Act, such as those dealing with the death of a taxpayer (section 9HA), transactions between spouses (section 9HB), change of residence, ceasing to be a controlled foreign company or becoming a headquarter company (section 9H), government grants (section 12P), international shipping (section 12Q) and the corporate restructuring rules (sections 41 to 47). Section 26A provides that a taxable capital gain must be included in taxable income. An assessed capital loss is carried forward to the next year of assessment.

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

(b) Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. Persons who must be registered as a taxpayer and submit an income tax return for the 2024 year of assessment are, amongst others –

- any natural person who is a resident and had capital gains or capital losses exceeding R40 000;
- a company that is a resident and had capital gains or capital losses exceeding R1 000; and
- any natural person, company or trust who is a non-resident and had capital gains or capital losses from the disposal of an asset to which the Eighth Schedule applies.[71]

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[69] As defined in section 50A.

[70] For more information see Interpretation Note 131 "Exemption of Income Relating to South African Ships used in International Shipping".

[71] See Government Notice 4918 in *Government Gazette* 50741 of 31 May 2024.

(c) Rates

Natural persons, deceased estates, insolvent estates and special trusts

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

Companies and trusts (other than special trusts)

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

Effective rate of tax on a taxable capital gain

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

- Natural persons and special trusts

  The minimum marginal rate of income tax (normal tax) for natural persons and special trusts is 18% and the maximum marginal rate is 45%. The effective CGT rate for natural persons and special trusts varies from 0% (0% × 40%) to 18% (45% × 40%) depending on the marginal rate of normal tax applicable to the person.

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

- Trusts, other than special trusts

  The rate of income tax for trusts is 45% and the effective rate of CGT is 36% (45% × 80%).

- Companies

  The effective rate of CGT for most companies is generally 21,6% (27% × 80%).

  A qualifying company within an SEZ as contemplated in section 12R will have an effective rate of CGT of 12% (15% × 80%) (see **3.2.20** for commentary on tax relief for qualifying companies within an SEZ).

(d) Capital gains and capital losses

A capital gain arises when the proceeds from a disposal of an asset exceed the base cost and a capital loss arises when the base cost exceeds the proceeds.[72]

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

[72] For more information see the *Comprehensive Guide to Capital Gains Tax*, the *ABC of Capital Gains Tax for Individuals*, the *ABC of Capital Gains Tax for Companies* and the *Guide on Valuation of Assets for Capital Gains Tax Purpose*

(e) Asset

An “asset” is widely defined and includes property of whatever nature, whether movable or immovable, corporeal or incorporeal and any right to, or interest in, such property. Any currency is excluded from the definition of “asset”, but any coin made mainly from gold or platinum is included.

(f) Disposal

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

The time of disposal is an important core rule as it dictates when a capital gain or capital loss must be brought to account. It also provides the corresponding date of acquisition by the acquirer of an asset.

Paragraph 13 of the Eighth Schedule contains three categories of timing rules covering:

- disposals involving a change of ownership effected or to be effected because of an event, act, forbearance or by operation of law [paragraph 13(1)(*a*)(i) to (ix)],
- disposals arising from specific events [paragraph 13(1)(*b*) to (*g*)], and
- acquisition of assets [paragraph 13(2)].

However, not all the time of disposal rules are contained in paragraph 13 of the Eighth Schedule. Some of them are in standalone provisions in the Eighth Schedule and the main body of the Act.

(g) Proceeds

The amount received by or accrued to the seller on disposal of an asset constitutes the proceeds. Assets disposed of by donation, for a consideration not measurable in money, or to a connected person at a non-arm’s length price are treated as being disposed of for an amount received or accrued equal to the market value of the asset. The proceeds will also be equal to market value if a person dies, ceases to be a resident or is subject to a number of other deemed disposal events. Amounts included in income such as a recoupment of capital allowances are excluded from proceeds.

(h) Base cost

Broadly the determination of the base cost of an asset depends on whether the asset was acquired –

- before 1 October 2001;
- on or after 1 October 2001;
- by donation, for a consideration not measurable in money or from a connected person at a non-arm’s length price; or
- in consequence of a deemed disposal event such as death of a person, ceasing to be a resident or conversion of a capital asset to trading stock.

Assets acquired before 1 October 2001

In order to exclude the portion of the capital gain or capital loss relating to the period before 1 October 2001, a value for the asset as at that date (referred to as the "valuation date value") needs to be determined. One of the following methods may be used to determine the valuation date value of the asset:

- 20% × (proceeds less allowable expenditure incurred on or after 1 October 2001). This method would typically be used when no records have been kept and no valuation was obtained as at 1 October 2001.
- Market value of the asset as at 1 October 2001. In order to use this method the asset must have been valued on or before 30 September 2004 except in the case of certain assets whose prices were published in the *Government Gazette*, such as South African-listed shares or participatory interests in collective investment schemes.
- Time-apportionment base cost method. This is a method of calculating the value of the asset based on how long a person has owned it before, and on or after 1 October 2001.

Assets acquired on or after 1 October 2001

The base cost of an asset acquired on or after 1 October 2001 is the amount the taxpayer incurred for acquisition of the asset plus other expenditure incurred directly relating to buying, selling, or improving it. The base cost does not include any amount otherwise allowed as a deduction for income tax purposes. Some expenditure that may form part of the base cost of an asset are –

- the expenditure incurred on acquisition of the asset;
- transfer costs (including any VAT or transfer duty paid, to the extent that the amount does not qualify as an "input tax" under the VAT Act, or is otherwise not refundable under the VAT Act or the Transfer Duty Act);
- cost of effecting an improvement to or enhancement of the value of the asset;
- advertising costs to find a buyer or seller;
- cost of having the asset valued in order to determine a capital gain or capital loss;
- costs directly relating to the buying or selling of the asset, for example, fees paid to a surveyor, broker, agent or consultant for services rendered;
- cost of establishing, maintaining or defending a legal title or right in the asset;
- cost of moving the asset from one place to another upon acquisition or disposal; and
- cost of installing the asset, including the cost of foundations and supporting structures.

Assets acquired by donation, for a consideration not measurable in money or from a connected person at a non-arm's length price

An asset is deemed to be acquired at market value on the date of acquisition when it is acquired by way of donation, consideration not measurable in money, or transaction between a connected person not at an arm's length price.

(i) Exclusions

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

The following are some of the specific exclusions:

- A capital gain or capital loss on disposal of a personal use asset by a natural person or special trust. Examples are motor vehicles, including a motor vehicle for which a travel allowance was received, caravans, furniture and jewellery.
- A natural person and a special trust qualify for an annual exclusion of R40 000 of the sum of capital gains and losses in a year of assessment.
- The annual exclusion increases to R300 000 in the year of death for a natural person.
- A capital loss on disposal by a creditor of debt owed by a connected person.
- A "registered micro business" as defined under the Sixth Schedule must disregard for CGT purposes, any capital gain or capital loss on disposal of any asset used mainly for business purposes.
- A capital loss determined on the disposal relating to prizes or winnings from gambling, games or competitions.
- A donation or bequest of an asset to an approved public benefit organisation.
- Specified disposals of an interest of at least 10% in a foreign company.
- Land or the right to land donated under land reform measures.

(j) Small businesses (paragraph 57 of the Eighth Schedule)

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

3.2.29 Taxation of deceased persons and deceased estates (sections 9HA, 9HB and 25)

(a) Capital gains tax

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

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

- the interest of the deceased person in a pension, pension preservation, provident, provident preservation, retirement annuity or a similar fund, if the lump sum benefit therefrom is disregarded for CGT purposes.[73]

Assets disposed of to the spouse of the deceased in the manner indicated above result in the spouse "stepping into the shoes" of the deceased with regard to the date of acquisition of the asset, expenditure incurred by the deceased, how the asset was used by the deceased and any allowances or deductions which the deceased was allowed to claim on that asset.[74]

An asset directly transferred to an heir or legatee of the deceased person, will result in a deemed acquisition by the heir or legatee of that asset at the market value thereof at the date of death of the deceased.[75]

Should the taxable capital gain from the deemed disposal of assets on date of death of the deceased result in tax due which exceeds 50% of the net value of the deceased estate and the executor has to dispose of an asset of the deceased estate in order to settle this tax liability, the heir or legatee who would have been entitled to receive that asset may elect to receive that asset in exchange for settling that tax due within three years of the deceased estate becoming distributable. This tax is then a debt due by that heir or legatee to the deceased estate.[76]

An asset acquired by a deceased estate from the deceased, other than assets disposed of to the spouse, is deemed to be acquired at the market value of the asset at the date of death of the deceased.[77] An asset awarded to an heir or legatee is treated as being disposed of by the deceased estate for an amount received or accrued equal to the amount of expenditure incurred by the deceased estate in respect of that asset.[78] Such expenditure could comprise the deemed expenditure under section 25(2) for the asset acquired from the deceased or actual expenditure if the executor purchased more assets after the date of death. An heir or legatee is treated as having acquired an asset from the deceased estate for an amount of expenditure incurred equal to the expenditure incurred by the deceased estate in respect of that asset.[79] An asset awarded to an heir or legatee is treated as being disposed of by the deceased estate on the earlier of the date on which that asset is disposed of or on which the liquidation and distribution account becomes final, in respect of an account that is finalised on or after 1 March 2022.[80]

(b) Income tax

Income received by or accrued to the executor of a deceased estate, which would have been income in the hands of the deceased, is deemed to be income of the deceased estate and is taxable in the deceased estate.[81] The deceased estate is treated as a natural person for this purpose, although the rebates, medical scheme tax credits and solar energy tax credits [see

[73] Section 9HA applies to persons dying on or after 1 March 2016. Paragraph 40 of the Eighth Schedule applied to persons dying before 1 March 2016.
[74] Section 9HB.
[75] Section 9HA(3).
[76] Section 25(6).
[77] Section 25(2)(*a*).
[78] Section 25(3)(*a*).
[79] Section 25(3)(*b*).
[80] Section 25(3)(*c*).
[81] Section 25(1).

3.2.15(a)] are not available to it.[82] The deceased estate may be regarded as a natural person but is not seen as the same natural person as the deceased person.

The deceased estate's tax residency follows the residency of the deceased person at the date of death. If the deceased person was a resident at the date of death, the deceased estate will also be regarded as a resident.[83] Similarly if the deceased person was a non-resident at the date of death, the deceased estate will also be regarded as a non-resident.[84]

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

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

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

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

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

No amount must be withheld –

- if the total amount payable for the immovable property does not exceed R2 million; or
- from any deposit paid by a purchaser for the purpose of securing the acquisition of the immovable property until the agreement for the disposal has become unconditional, in which case the withholding amount is to be withheld from the first following payments made by the purchaser for that disposal.[85]

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

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

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

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

- the non-resident was physically present in South Africa for more than 183 days in aggregate during the twelve-month period preceding the date on which the amount is received by or accrued to that person; or

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82 Section 25(5)(*a*).
83 Section 25(5)(*b*)(i).
84 Section 25(5)(*b*)(ii)
85 For more information see the *External Guide: Amounts to be Withheld when a Non-Resident Sells Immovable Property in South Africa IT-PP-02-G01* Revision 3.

- the intellectual property, knowledge or information for which the royalty is paid is effectively connected with a permanent establishment of the non-resident in South Africa.

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

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

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

A foreign person may be exempt from withholding tax on royalties if the requirements of section 49D are met.[86]

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

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

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

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

A foreign entertainer or sportsperson who is –

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

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

[86] For more information see Interpretation Note 116 "Withholding Tax on Royalties".

Any person who is primarily responsible for founding, organising or facilitating a performance in South Africa and who will be rewarded for such, must notify SARS of the performance within 14 days of concluding an agreement with a performer.[87]

For more information contact the special team dealing with visiting artists at **nres@sars.gov.za**.

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

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

The withholding tax on interest is a final tax.

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

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

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

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

Interest received by or accrued to a non-resident may be subject to either normal tax or withholding tax on interest.[88]

3.6 Donations tax (sections 54 to 64)

Donations tax is payable by any resident (the donor) who makes a donation to another person (the donee). A donation is defined in section 55(1) as any gratuitous disposal of property including the gratuitous waiver or renunciation of a right. A donation is deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with. Donations tax is calculated at a rate of 20% on the cumulative value of property disposed of not exceeding R30 million, and at a rate of 25% on the cumulative value of property disposed of exceeding R30 million.[89]

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

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87 For more information see the *Guide on the Taxation of Professional Sports Clubs and Players*.
88 For more information see Interpretation Note 115 "Withholding Tax on Interest".
89 Section 64.

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

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

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

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

3.7 Dividends tax (sections 64D to 64N)

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

Dividends tax is levied at the rate of 20% of the amount of the dividend paid. Certain dividends paid by oil and gas companies and international shipping companies are subject to dividends tax at the rate of 0%. Dividends paid to non-residents may be subject to a reduced rate of tax under a tax treaty.[90]

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

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

[90] For more information see the *Comprehensive Guide to Dividends Tax*.

3.8 Value-added tax

3.8.1 Introduction

Value-added tax is an indirect tax levied under the VAT Act and is based on the consumption of goods and services in the economy. Value-added tax must be included in the selling price of every taxable supply[91] of goods or services made by certain traders (vendors) that carry on an enterprise in South Africa. A "vendor" is a person that is registered or required to be registered for VAT. Value-added tax is a destination-based tax which means that it is payable on most goods or services supplied for consumption in South Africa as well as on the importation of goods into the country. The importation of services is also subject to VAT if the recipient is a resident and the services are acquired for exempt, private or other non-taxable purposes.

Special rules apply with effect from 1 July 2022 under the Domestic Reverse Charge Regulations (DRC Regulations)[92] in respect of supplies of "valuable metal"[93] between certain VAT-registered vendors in South Africa. Under the DRC Regulations the responsibility to account for the output tax on the supply of valuable metal is shifted from the supplier to the recipient. In doing so, the DRC Regulations place certain responsibilities and obligations on both the VAT registered supplier and the recipient of valuable metal.

3.8.2 Tax rates

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

There is a difference between zero-rated supplies and exempt supplies even though no VAT is collected from the customer on either supply.. In the case of zero-rated supplies a person is allowed to register as a vendor and deduct any VAT incurred in order to make taxable supplies as input tax. A person that makes only exempt supplies may not register as a VAT vendor as exempt supplies are specifically excluded from the definition of enterprise. Consequently, no input tax may be claimed in respect of exempt supplies. If a vendor makes taxable supplies as well as exempt supplies, then input tax can only be claimed to the extent that taxable supplies are made. See **3.8.5** and **3.8.6** for some examples of zero-rated and exempt supplies. See also **3.8.12** for details on output tax and input tax and how a vendor must calculate the VAT payable or refundable in respect of a tax period.

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91 The term "taxable supply" includes both standard rated and zero-rated supplies.

92 See Notice No 2140 in *Government Gazette* 46512 of 8 June 2022. The VAT Domestic Reverse Charge webpage on the **SARS website** contains a full package of information in this regard. See also VAT Connect 14 (August 2022) and VAT Connect 16 (August 2023) for further information in this regard. Various changes to the DRC Regulations have recently been proposed in draft amendments to the Regulations on the DRC. The draft amendments as well as an accompanying Explanatory Memorandum were issued for public comment on 31 July 2023. See the **SARS website** for more details.

93 "Valuable metal" is defined in the DRC Regulations. In short, the term refers to gold or goods containing gold and includes certain ancillary goods and services supplied together with the valuable metal.

3.8.3 Collection and payment of value-added tax

The mechanics of the VAT system are based on a subtractive or credit-input method which allows the vendor to deduct the tax incurred on expenses in the furtherance of the enterprise activity (input tax)[94] and other permissible deductions from the tax collected on the supplies made by the vendor (output tax). The effect is that even though VAT is ultimately borne by the final consumer of goods and services, it is collected and paid over to SARS by registered VAT vendors.

At the end of every tax period (see **3.8.11**) a vendor must declare the VAT to SARS by submitting a VAT 201 return which will indicate the input tax and other deductions which have been offset against the output tax collected for the tax period. In a tax period, the resultant net liability is the VAT amount that must be paid to SARS if the output tax exceeds the input tax. However, if the input tax exceeds the output tax in a tax period, SARS will refund the difference to the vendor.

Should VAT be payable on imported services (see **3.8.4**) by a registered vendor, the VAT amount that is payable on imported services[95] must be declared in Field 12 of the VAT 201 return and paid together with any other VAT which may be due to SARS for the tax period concerned. Non-vendors must obtain form VAT 215 from the **SARS website** which must be completed and retained for recordkeeping purposes. Payment must be made on SARS eFiling in respect of any VAT on imported services within 30 days of importation. Non-vendors that encounter problems when making payments on SARS eFiling must contact SARS via the **importedservices@sars.gov.za** email address, for assistance. For more information on the completion of VAT 215 form and payment of VAT on imported services see *External Guide – Manage Value-Added Tax on Imported Services.*

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

3.8.4 Application of value-added tax to supplies and imports

Most supplies of goods or services by vendors are subject to VAT at the standard rate which is the default if the supply is not exempt or zero-rated.

The same applies to most goods imported into South Africa. The standard rate applies as a default in these circumstances if the importation in question does not qualify for an exemption. Value-added tax is payable only on imported services if the services are acquired for private, exempt, or other non-taxable purposes. A vendor may not charge VAT on any exempt supplies.

Value-added tax is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor. Any price charged by a vendor will also be deemed to include VAT at the standard rate if it was a taxable supply and VAT was not included in the price. Therefore, even if a vendor claims that VAT was not actually charged on a supply, that vendor will still be obliged to account for the VAT if the supply was taxable.

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[94] Input tax may not be deducted in full if the goods or services are acquired for both taxable and non-taxable purposes.

[95] The VAT is calculated by applying the standard rate to the value of the imported services or the open market value thereof (whichever is greater).

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

See **3.8.5** and **3.8.6** for some examples of zero-rated and exempt supplies of goods and services.

Also see **3.12** and the *Customs guide Value-added tax levied on the importation of goods into South Africa* for more information regarding VAT and the importation of goods into South Africa.

3.8.5 Zero-rated supplies

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

- Goods exported[96] from South Africa (see also **3.8.16)**
- Certain goods supplied to customs-controlled area enterprises, SEZ enterprises, or SEZ operators situated in any customs-controlled area[97]
- Petrol, diesel and illuminating paraffin
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services
- Certain services supplied from South Africa to non-residents, if the services are for consumption outside of South Africa
- Services physically rendered outside South Africa
- Services which are deemed to be supplied by a grant recipient in certain cases[98]
- Goods consisting of sanitary towels (pads), subject to specific conditions in Part C of Schedule 2 to the VAT Act
- Certain basic foodstuffs supplied for human consumption, such as –
    - brown bread
    - certain types of maize meal
    - samp
    - mealie rice
    - dried mealies
    - dried beans
    - rice

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96 The application of the zero rate is subject to certain documentary and other requirements being met. See Interpretation Note 30 "The Supply of Movable Goods as Contemplated in Section 11(1)(*a*)(i) read with Paragraph (*a*) of the Definition of "Exported" and the Corresponding Documentary Proof" (IN 30) regarding direct exports and Regulation 316 published in *Government Gazette* 37580 of 2 May 2014 (Regulation 316) regarding indirect exports.

97 The terms "customs controlled area enterprise", "SEZ enterprise", "SEZ operator" and "customs controlled area" are all defined in section 1(1) of the VAT Act.

98 The term "grant" is defined in section 1(1) of the VAT Act.

- lentils
- fresh fruit and vegetables
- tinned pilchards or sardinella
- milk, cultured milk and milk powder
- vegetable cooking oil (excluding olive oil)
- hen's eggs
- edible legumes and pulse of leguminous plants
- certain dairy powder blends
- cake wheat flour and white bread wheat flour

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

Certain agricultural products such as animal feed, seedlings and fertilisers which are for use in farming enterprises are also currently zero-rated when supplied to VAT registered farmers. The VAT Act has, however, been amended to remove this zero rating with effect from a future date to be determined by the Minister by way of a notice in the *Government Gazette*.[99]

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

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

3.8.6 Exempt supplies

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

- Financial services[100] (such as the provision of credit, the supply of cryptocurrency, life insurance, the services of benefit funds such as medical schemes, provident, pension and retirement annuity funds), provided that the consideration payable in respect of such financial services is not a fee, commission or similar charge.[101]
- Services provided to members in the course of managing body corporates, share block companies, housing development schemes for retired persons, and home-owners associations which supplies are paid for out of levy contributions by such members.
- Public transport of fare-paying passengers and their personal effects by road and rail.
- The supply of residential accommodation (that is, a dwelling[102]) under a lease agreement.
- Certain educational services provided by recognised educational institutions such as primary and secondary schools, public and private colleges and universities.

[99] As at the time of updating this guide, the notice had not yet been issued by the Minister.
[100] Although financial services are generally exempt, certain financial services supplied to non-residents may qualify to be zero-rated.
[101] See *C: SARS v Tourvest Financial Services (Pty) Ltd* (Case No. 435/2020) [2021] ZASCA 61 (25 May 2021).
[102] A place used (or intended to be used) predominantly as a place of residence or abode by a natural person, but excludes commercial accommodation.

- Certain supplies of goods or services made by an employee organisation, bargaining council or political party to any of its members, subject to certain conditions.
- Childcare services provided at crèches and after-school care centres.

Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply and therefore, a person that only makes exempt supplies cannot register for VAT. It follows that a supplier of exempt goods or services does not levy VAT (output tax), and any VAT incurred in the course of making those exempt supplies is not deductible as input tax. Any VAT incurred by a vendor on expenses which are for both taxable and exempt (or other non-taxable) purposes must be apportioned in accordance with section 17(1) of the VAT Act, to determine the extent to which the VAT incurred may be deducted as input tax.

3.8.7 Registration

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

(a) Compulsory registration

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

With effect from 1 June 2014, non-resident suppliers of any "electronic services" prescribed in the Electronic Services Regulation,[103] are considered to be carrying on an enterprise in South Africa for VAT if at least two out of the following three circumstances are present:

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

These non-resident suppliers that meet the above enterprise requirements are required to register for VAT in South Africa at the end of any month in which the total value of taxable supplies has exceeded R1 million.[104]

[103] See Regulation 429 in *Government Gazette 42316* of 18 March 2019 which came into effect from 1 April 2019. Between 1 June 2014 and 30 March 2019, only a limited list supplies made by electronic means by non-residents for a consideration to South African customers were subject to VAT as "electronic services".

[104] The compulsory registration threshold for non-resident suppliers of electronic services before 1 April 2019 was R50 000. The threshold was increased to R1 million with effect from 1 April 2019.

With effect from 5 January 2023, a foreign electronic services provider is not required to register as a vendor if the total value of taxable supplies of R1 million in any consecutive 12-month period has been exceeded solely as a consequence of abnormal circumstances of a temporary nature.

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

(b) Voluntary registration

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

- The person is carrying on an enterprise and the value of taxable supplies made has exceeded the minimum threshold of R50 000 in the past 12-month period.[105]
- The person supplies "commercial accommodation",[106] provided that the threshold of R120 000 which applies to such enterprises is met.
- The person intends to carry on an enterprise from a specified date as a consequence of acquiring a going concern that has made taxable supplies exceeding R50 000 in the preceding period of 12 months.
- The person carries on certain activities specified in a regulation where taxable supplies can only be expected to be made after a certain period of time. In these cases, the person would have either not made any taxable supplies yet, or the value of taxable supplies has not yet exceeded the R50 000 minimum threshold due to the nature of the activity but can reasonably be expected to exceed that threshold within a period of 12 months. In these special cases, registration will only be permitted under the conditions prescribed by regulations.[107]

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

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

3.8.8 Refusal of application for voluntary registration

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

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

- Keeps proper accounting records.
- Has a fixed place of business or abode in South Africa.

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[105] Section 23(3)(*b*)(i) of the VAT Act.

[106] Refers to "commercial accommodation" envisaged in paragraph (*a*) of the definition of "commercial accommodation" in section 1(1) of the VAT Act.

[107] See the regulations issued under section 23(3)(*b*)(ii) and 23(3)(*d*) of the VAT Act in Government Notices R446 and 447 respectively, which were published in *Government Gazette* 38836 of 29 May 2015.

- Has a South African bank account.
- Has not previously been registered as a vendor under VAT or General Sales Tax (GST) and failed to perform the duties of a vendor.

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

3.8.9 How to register

Application for registration as a vendor must be made on form VAT101 with supporting documents at a SARS service centre (via virtual, audio or walk in appointment made via the **SARS website**) or on SARS eFiling, within 21 business days of becoming liable to register. The reference guide, which is available on the **SARS website**, will assist in completing the VAT101 form. See the *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide.*

A vendor that has several enterprises/branches/divisions which will generally operate under one VAT registration number should register in the area where the main enterprise/branch/division is located.

A non-resident supplier of electronic services must complete form VAT 101 and email it to **eCommerceRegistration@sars.gov.za** together with the supporting documents (see *VAT-REG-02-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services*). Once successfully registered for VAT, proceed to register on SARS eFiling, which will enable the electronic submission of returns and the ability to make VAT payments from outside South Africa.

Once registered for VAT a Notice of Registration will be issued. A VAT Notice of Registration can be requested and obtained on SARS eFiling by registered e-Filers. A taxpayer can also confirm if their registration has been processed by entering their details under "VAT vendor search" on the **SARS website**.

Allow at least 21 business days for processing of the application. If no risk is identified SARS will issue the VAT number immediately. If the vendor is registered on SARS eFiling the Notice of Registration is issued on SARS eFiling or sent to the email address provided on registration or posted to the postal address provided on registration. The SARS service centre can be contacted for a copy of the Notice of Registration.

An authorised registered tax practitioner may make the application on behalf of the applicant. In such cases, the application must be accompanied by the power of attorney.

3.8.10 Accounting basis

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

(a) Invoice basis

Under this method of accounting, a vendor must generally account for the full amount of VAT included in the price of goods or services in the tax period in which the time of supply has occurred. The time of supply is generally the earlier of the time that an invoice for a supply is issued or when any payment of the consideration for the supply is received.[108] This time of supply rule applies to the output tax liability on cash and credit sales as well as the input tax that may be deducted on cash and credit purchases.

Vendors must therefore account for the full amount of output tax on any supplies made in the tax period when an invoice is issued, even if payment has not yet been received from the recipient. Similarly, the full amount of input tax may be deducted on supplies received in the tax period the invoice is received, even if payment has not yet been made. A tax invoice or other documentary proof as prescribed in the VAT Act must, however, be held by the vendor at the time the deduction is made.[109] If a vendor fails to make payment for a supply within 12 months after the end of the tax period in which input tax was deducted, that vendor must make an output tax adjustment to the extent that payment has not yet been made. This rule is subject to certain exceptions.

(b) Payments basis

The payments basis (or cash basis) allows certain vendors to account for VAT on actual payments made and received in respect of taxable supplies during the tax period, subject to certain requirements.[110] Although the payments basis works according to payments made and received, for audit and record-keeping purposes the vendor must still be in possession of a valid tax invoice issued by the supplier or other documentary proof as prescribed in the VAT Act when making any input tax deduction.

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

- Natural persons (or partnerships consisting of natural persons only) whose total taxable supplies at the end of a tax period have not exceeded R2,5 million in the previous 12 months, and are not likely to exceed R2,5 million in the next 12 months.
- Public authorities, water boards, municipalities, certain municipal entities, associations not for gain and welfare organisations – regardless of the value of taxable supplies.
- Non-resident suppliers and intermediaries that supply certain "electronic services" to customers in South Africa.
- Certain vendors that have been allowed by the Commissioner to register in accordance with the regulations governing voluntary registration under section 23(3)(*b*)(ii) of the VAT Act must account for VAT on the payments basis until the R50 000 threshold is met.[111] Thereafter the invoice basis will apply.

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[108] Fixed property transactions are, however, treated on the payment basis even if the vendor normally accounts for VAT on the invoice basis for all other supplies.

[109] Further details in relation to tax invoices or other documentary proof to be held by a vendor may also be contained in official publications such as Interpretation Notes or be prescribed by regulation.

[110] Supplies made under an instalment credit agreement and supplies with a consideration of R100 000 or more must, however, be treated as if the vendor is registered on the invoice basis, even if that person normally accounts for VAT on the payments basis.

[111] These vendors are automatically registered on the payments basis without having to apply to SARS for approval (Section 15(2B) of the VAT Act).

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

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

(c) Special cases

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

The VAT Act provides for certain other deductions to be made when calculating the net amount of VAT payable for a tax period. For example, when an insurer makes an indemnity payment to a person who is insured under a taxable short-term insurance policy, the insurer may deduct an amount equal to the tax fraction (currently 15/115) of the indemnity payment. The rules for making such other deductions are the same regardless of the basis of accounting used by the vendor for VAT purposes.

3.8.11 Tax periods

A tax period refers to a predetermined period of time in respect of which a vendor is required to calculate the VAT liability or refund and submit a VAT return. There are five different categories of tax periods.[112]

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

[112] See section 27 of the VAT Act for more details regarding the requirements.

3.8.12 Calculation of value-added tax

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

Output tax

Output tax is the VAT charged at the standard rate on a taxable supply of goods or services by a vendor. The VAT Act also contains deeming provisions which both widen the range of transactions subject to VAT and clarify the instances when certain transactions will be deemed to be in the course or furtherance of an enterprise or not. There are a number of instances where a deemed supply may result in a vendor having to declare output tax at the standard rate even though no actual supply has been made. Deemed supplies may attract VAT at the standard rate or at the zero rate in different situations. In certain instances a supply is deemed not to be a taxable supply, in which case, no output tax will arise.

Examples of deemed supplies on which a vendor must account for output tax at the standard rate include –

- trading stock taken out of the business for private use;
- certain fringe benefits provided to staff;
- assets retained upon ceasing to carry on an enterprise;
- betting and other gambling transactions;[113]
- change in use adjustments; and
- short-term insurance payments received for loss or damage to business assets which are applied for "enterprise" purposes.

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

Input tax and other deductions

As considered in **3.8.3**, a vendor is allowed to deduct input tax and to make certain other deductions when calculating the net amount of VAT payable or refundable for a tax period. Input tax is the VAT charged on the supply of goods or services at the standard rate and paid by a vendor on the acquisition of such goods or services for purposes of making taxable supplies.[114] In certain other cases, the vendor may also claim a deemed or notional input tax deduction on "second-hand goods"[115] acquired under a non-taxable supply, or on goods repossessed or surrendered under an instalment credit agreement, when such goods are acquired for the purpose of making taxable supplies.[116]

Examples of other specified deductions that a vendor may claim when calculating the net VAT liability or refund include –

- indemnity payments made by the insurer to an insured person under a contract of insurance;

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[113] See Interpretation Note 41 "Application of the VAT Act to the Gambling Industry".

[114] Such deductions are, however, limited to a 5-year prescription period.

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

[116] The amount of input tax that is deductible is the tax fraction of the purchase price.

- amounts paid as a prize or winnings under betting transactions; or
- change in use adjustments.

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

In some cases, input tax is specifically denied under the VAT Act. The following are some examples:

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

The VAT incurred on any goods or services acquired by a vendor may be deducted to the extent that it constitutes "input tax". This means that the VAT so incurred must be used by a vendor wholly for consumption, use or supply in the course of making its taxable supplies if a full deduction is to be allowed. Any VAT incurred on expenses which relate to both taxable and non-taxable purposes must be apportioned in accordance with section 17(1) of the VAT Act. The method of apportionment generally prescribed for vendors under this provision can be found in Binding General Ruling 16: "Standard Apportionment Method". A vendor may, however, apply for a ruling to use an alternative method of apportionment if the prescribed method in BGR 16 proves to be unfair or unreasonable in the vendor's circumstances.[117] An approved alternative method of apportionment can only be given from a future date or from a date falling within the year of assessment for income tax purposes during which the vendor applied for a ruling. [118]

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

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

Calculation of VAT for the tax period

In determining the VAT liability or refund for a particular tax period, the vendor has to subtract the allowable input tax and other deductions from the output tax declared in the VAT 201 return. The vendor has to pay the difference to SARS if the output tax exceeds the input tax and other deductions or the vendor will be entitled to a refund from SARS if the input tax and other deductions exceed the output tax declared. However, any refund will be offset against amounts owing by the vendor on any taxes administered by SARS before refunding any remaining balance.

Vendors that trade in gold or goods containing gold (that is, "valuable metal) as envisaged in the DRC Regulations must calculate and account for VAT as prescribed in the DRC Regulations. Vendors that are liable under the DRC Regulations should therefore make sure that they are fully aware of their responsibilities in this regard. The VAT Domestic Reverse Charge webpage on the **SARS website** contains a full package of information in this regard.

[117] See Chapter 7 of the TA Act and section 41B of the VAT Act.
[118] See *Mukuru Africa (Pty) Ltd v C: SARS* (Case 520/2020) [2021] ZASCA 116 (16 September 2021).

Late payments of VAT attract a penalty of 10% of the outstanding amount.[119] Interest is also payable at the prescribed rate on any outstanding amounts of VAT which have not been paid on time. The interest accrues from the first day of the month following the period allowed for payment to be made.

Interest will also be paid by SARS at the prescribed rate if, after 21 business days of submitting the correctly completed VAT 201 return, a vendor has not yet received any refund which was due and payable for the tax period concerned. However, the payment of interest may be suspended or reduced in relation to the period during which the vendor has not complied with certain requirements.[120] For example, if the vendor has –

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

3.8.13 Documentation

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

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

- The words “Tax Invoice”, “VAT invoice” or “Invoice”.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number of the tax invoice and the date upon which the tax invoice is issued.
- A full and proper description of the goods or services supplied (indicating, if applicable, that the goods are second-hand goods).
- The quantity or volume of the goods or services supplied.
- Either –
    - the value of the supply, the amount of tax charged and the consideration for the supply; or

[119] Depending on the circumstances, an understatement penalty may also be imposed if there is a substantial understatement of tax or non-compliant behaviour by the vendor.

[120] For more information see paragraph 12.5 of the *Short Guide to the Tax Administration Act, 2011 (Act 28 of 2011)* and section 45(1) and (2) of the VAT Act.

- if the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax is charged.

An abridged tax invoice may be issued when the consideration for the supply does not exceed R5 000. An abridged tax invoice contains the same information as a tax invoice, except that the quantity or volume of the goods or services supplied and recipient's particulars need not appear on the document.

The VAT Act identifies different transactions that each requires different types of tax invoices:

(a) If the consideration for the supply is more than R5 000 (including tax), a full tax invoice must be issued.

(b) If the consideration for the supply is less than R5 000 (including tax), an abridged tax invoice may be issued, except when that supply is a zero rated supply.

(c) If the consideration for the supply is less than R50, a tax invoice does not have to be issued.

(d) If the Commissioner is satisfied that it is impractical to issue a full tax invoice in respect of a particular transaction and that there are sufficient other records available, the Commissioner may direct that a tax invoice does not need to be issued or certain particulars need not be reflected on the tax invoice.

In some instances, the consideration for a supply is determined by the recipient of the goods or services rather than by the supplier. For example, if a farmer (the supplier) takes produce to a co-operative which will only be sold at a later stage once the quality and quantity of the produce has been determined. Since the price that will eventually be obtained for the goods depends on factors outside the farmer's control, the farmer is not in a position to issue an invoice or tax invoice for the produce when it is delivered for sale.

In such cases, SARS may permit the co-operative (recipient) to issue the tax invoices and any debit and credit notes relating to supplies instead of the supplier. This is referred to as "recipient-created invoicing" or "self-invoicing".

See Binding General Ruling (VAT) 28 "Electronic Services" and GN 1594 in *GG* 45324 dated 10 December 2021 for further information on the invoicing requirements for non-resident suppliers of electronic services.

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

3.8.14 Submission of value-added tax returns

One of SARS's objectives is to promote the use of technology to ensure voluntary compliance, including the submission of returns and payments. As a result, vendors who have the capability to digitally connect with SARS are encouraged to submit their VAT 201 returns and to make payment electronically via SARS eFiling.

Vendors that use SARS eFiling must ensure that the VAT 201 return and the payment for the tax period concerned are received by no later than the last business day of the month following the end of the vendor's tax period. Category C vendors must file VAT returns on SARS eFiling and make VAT payments electronically on SARS eFiling or by EFT through internet banking.

Although SARS eFiling is now the preferred platform for submitting returns and payments, manual submission of returns can still be made in exceptional circumstances. A vendor that chooses to manually submit a VAT 201 return to SARS must ensure that it is received by the 25th of the month following the end of the vendor's tax period. Payment, if applicable, must also be made on or before the 25th day of that month. In the event that the 25th of the month falls over a weekend or on a public holiday, the vendor must ensure that the submission of the VAT 201 return and the payment are made to SARS no later than the last business day before such 25th day. Vendors must ensure that the payment is received in the SARS bank account on the due date concerned to avoid the levying of penalty and interest for late payment.

In order to manually submit a VAT return, the vendor will be required to call at a SARS service centre for assistance in completing the return online, since SARS no longer accepts physical VAT 201 returns for capturing. Manual returns are also no longer issued to vendors.

As South African banks ceased accepting cheque payments with effect from 1 January 2021, SARS may also not accept cheque payments. SARS service centres, in fact, do not accept any form of physical VAT payment, nor is physical mail handled anymore. Value-added tax payments in respect of "manual" submissions of returns as explained above must be made electronically by EFT through internet banking or over the counter at the bank.

All interactions with SARS must be done either on SARS eFiling, through email or other approved electronic channels provided by SARS on the **SARS website**.

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

3.8.15 Duties of a vendor

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

- Providing correct and accurate information to SARS.
- Collecting VAT and submitting VAT returns and payments on time.
- Including VAT in all prices on advertisements and quotes.
- Keeping accurate accounting records.
- Producing relevant documents when required by SARS.
- Notifying SARS about any changes affecting the business, for example, any change of the representative vendor; the business address; trading name; the names of partners, or members; or changes in bank details.
- Issuing tax invoices, debit and credit notes in connection with any taxable supplies made.

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

3.8.16 Exports to foreign countries

A vendor may apply the zero rate when supplying movable goods to other countries. In this regard there are two kinds of exports, namely direct exports and indirect exports.

Direct exports refer to the situation where the vendor consigns the goods to a recipient at an address in an export county. In these circumstances the vendor must comply with specific conditions relating to certain modes of transport as set out in Interpretation Note 30 'The supply of movable goods as contemplated in section 11(1)(*a*)(i) read with paragraph *(a)* of the definition of "exported" and the corresponding documentary proof', subject to the vendor exporting the goods within a specified period and retaining the proof of export as required.

Indirect exports refer to the situation in which a non-resident or a foreign enterprise purchases goods in South Africa and subsequently exports the goods. In this instance the vendor may charge VAT at the standard rate and the VAT may be refunded to the non-resident by the VAT Refund Administrator (VRA), subject to complying with the export regulations issued in Government Notice 316 in *Government Gazette* 37580 of 2 May 2014 (the Export Regulations). In certain circumstances, a vendor may elect to apply the zero rate subject to specific conditions, such as the retention of certain documentation, relating to certain modes of transport as set out in Part 2 of the Export Regulation.

For more information on the VAT treatment of supplies, including exports, see the *VAT 404 – Guide for Vendors,* Interpretation Note 30 "The Supply of Movable Goods as Contemplated in Section 11(1)(*a*)(i) read with Paragraph (a) of the Definition of "Exported" and the Corresponding Documentary Proof" and the Export Regulations.

3.9 Estate duty

3.9.1 Introduction

The estate of a deceased person who was ordinarily resident in South Africa at the time of death will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies). However, property physically situated outside South Africa will be excluded from the deceased's estate if the deceased was not ordinarily resident in South Africa at the time of death.

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

The Estate Duty Act does not define "resident" and refers to persons who are "ordinarily resident" or not "ordinarily resident". It follows, therefore, that any natural person, who was not ordinarily resident in South Africa but who may have become a resident of South Africa under the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.[121]

Certain admissible deductions[122] are made from the total value of the estate including the following:

- The value of property in the estate that accrues to the surviving spouse (section 4(*q*) of the Estate Duty Act).

[121] For further information on "ordinarily resident" see Interpretation Note 3 "Resident: Definition in relation to a Natural Person – Ordinarily Resident".

[122] Section 4(*a*) to (*q*) of the Estate Duty Act.

- The value of property that accrues to an approved public benefit organisation (section 4(*h*) of the Estate Duty Act).
- All debts due by the deceased if the relevant requirements are met. This includes the deceased's final income tax assessment up to the date of death (section 4(*b*) of the Estate Duty Act).

A deduction against the gross value of an estate will also be allowed on the value of property situated outside South Africa which was acquired before the deceased person became ordinarily resident in South Africa for the first time, or after that person became ordinarily resident in South Africa for the first time and had acquired such property under a donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The deduction also applies to property situated outside South Africa which was acquired by the deceased out of profits and proceeds of any such property.[123]

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

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

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

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

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

The duty is calculated on the dutiable amount of the estate. There are specific deductions that may be allowed against the duty payable, provided the requirements are met, in respect of transfer duty, foreign duties paid and the rapid succession rebate.

[123] Section 4(*e*) of the Estate Duty Act.

3.9.2 Rate of estate duty

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

Example 1 – Estate duty calculation

Y passed away on 1 March 2023 with an estate with a net value of R3,6 million. Y did not have a previously deceased spouse at the date of death.

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

Example 2 – Estate duty calculation[124]

X passed away and bequeathed her estate to Z. X had a previously deceased spouse, Y. The amount previously allowed under section 4A in Y's deceased estate was R2 million.

	R
Net value of X's estate	7 100 000
Less: General deduction – section 4A(2) of the Estate Duty Act [(2 × R3,5 million) less R2 million (section 4A allowed in Y's estate)]	(5 000 000)
Dutiable amount	2 100 000
Estate duty payable on R2,1 million at 20%	420 000

Example 3 – Estate duty calculation

Z passed away on 2 April 2023 with an estate with a net value of R45 million. Z did not have a previously deceased spouse at the date of death.

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

Estate duty is due within one year from the date of death or 30 days from the date of assessment if the assessment is issued within one year from the date of death. Interest at 6% per year is charged on unpaid estate duty under section 10 of the Estate Duty Act.

[124] Death on or after 1 January 2010.

The South African government has entered into agreements with Botswana, Lesotho, Swaziland,[125] Zimbabwe, the United Kingdom and the United States of America to eliminate double taxation relating to death duties. These agreements are available on the **SARS website**.

3.10 Securities transfer tax

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

For purposes of this tax, "security" means –

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

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

The STT rate is 0,25% of the taxable amount in respect of any transfer of a security which is the higher of the consideration paid for or the market value of the security.

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

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

Securities transfer tax on the transfer of securities must be paid as follows:

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

Payment of STT must be made electronically through the SARS e-STT system. If any tax remains unpaid after the due date, a penalty of 10% of the unpaid tax is imposed.

[125] The change of name from "the Kingdom of Swaziland" to "the Kingdom of Eswatini" came into effect on 19 April 2018 but not all the tax acts have yet been amended in this regard. The name "Swaziland" and "Eswatini" is used interchangeably in this guide.

The Commissioner may, however, remit the penalty (or any portion thereof) in accordance with Chapter 15 of the TA Act.[126]

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

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

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

3.11 Transfer duty

3.11.1 Introduction

Transfer duty is a tax payable on transactions "property" as defined in section 1(1) of the Transfer Duty Act 40 of 1949 subject to certain exemptions and exceptions.

Transfer duty is levied on –

- the value of the property acquired by any person under a transaction or in any other manner; and
- the value by which the property is enhanced by the renunciation of an interest in or restriction upon the use or disposal of that property.

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

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

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

The definition of "property" also specifically includes –

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

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

[126] Section 6A of the Securities Transfer Tax Administration Act 26 of 2007.

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

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

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

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. The most common date of acquisition for a normal sale of property is the date of the last signature to the agreement. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[127] calculated for each completed month during which the transfer duty remains unpaid.[128]

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

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

3.11.2 Transfer duty rates

Transfer duty is levied on a progressive sliding scale. This means the higher the value of the property, the higher the rate of tax that will apply.[129] The rates are also based on the date of acquisition which applies to the transaction concerned.

[127] Interest will be charged at the "prescribed rate" under the TA Act from the effective date that the Presidential Proclamation on interest comes into effect for all taxes.

[128] Currently, the rate of 10% is prescribed in the Transfer Duty Act. Once the interest provisions in the TA Act become effective, the "prescribed rate" as defined in that Act will apply. At the date of publication of this guide, the Proclamation had not yet come into effect.

[129] It is important to note that when only a portion of a property is acquired, section 2(5) of the Transfer Duty Act is applicable. The effect is that transfer duty is calculated on the full property and then transfer duty is only paid on the extent (proportion) of the property acquired. The provision is explained in detail in the *Transfer Duty Guide.*

The following rates are applicable from 1 March 2020 to 28 February 2023:

Fair market value or consideration	Rate of duty
Not exceeding R1 000 000	0%
Between R1 000 00 and R1 375 000	3% of the value exceeding R1 000 000
Between R1 375 000 and R1 925 000	R11 250 + 6% of the value above R1 375 000
Between R1 925 000 and R2 475 000	R44 250 + 8% of the value above R1 925 000
Between R2 475 000 and R11 000 000	R88 250 +11% of the value above R2 475 000
Exceeding R 11 000 000	R1 026 000 + 13% of the value exceeding R11 000 000

The following rates are applicable from 1 March 2023:

Fair market value or consideration	Rate of duty
Not exceeding R1 100 000	0%
Between R1 100 00 and R1 512 500	3% of the value exceeding R1 100 000
Between R1 512 500 and R2 117 500	R12 375 + 6% of the value above R1 512 500
Between R2 117 500 and R2 722 500	R44 250 + 8% of the value above R2 117 500
Between R2 722 500 and R12 100 000	R88 250 +11% of the value above R2 722 500
Exceeding R12 100 000	R1 026 000 + 13% of the value exceeding R12 100 000

The above rates apply to all persons, regardless of whether the person acquiring the property is a natural person, trust, company or other juristic person. See the *Transfer Duty Guide* for the rates that apply when the date of acquisition of the property is before 1 March 2020.

3.11.3 Transfer duty or value-added tax payable

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

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

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

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

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

3.12 Importation of goods and payment of customs and excise duties

3.12.1 Introduction

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

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

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

In addition, VAT at the standard rate is also payable on goods imported and entered for home consumption unless exempted under section 13(3) of the VAT Act, read with Schedule 1 to the VAT Act. See **3.8.4** and the *Customs guide Value-added tax levied on the importation of goods into South Africa.*

3.12.2 Registration as an importer

Under section 59A and the corresponding rules of the Customs and Excise Act, importers of goods to South Africa for commercial purposes must register with SARS for that purpose. The following persons are excluded from formal registration requirements and may make use of registration code 70707070:

- A person, including a traveller, who imports goods other than goods referred to in Part 6 of Schedule No. 1, of which the total value required to be declared is less than R150 000 during any calendar year, whether such goods are imported in one or more consignments.
- A person who imports goods classifiable under tariff subheading 9999.00.10 or 9999.00.20 as contemplated in the notes to Chapter 99 of Schedule 1 of the Customs and Excise Act.

3.12.3 Goods imported through designated places of entry

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

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

3.12.4 Import declarations

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

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

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

3.12.5 Tariff classification

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

3.12.6 Customs value

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

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

3.12.7 Duties and levies

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

(a) Customs duty

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

(b) Excise duty

Specific excise duty, *ad valorem* excise duty, fuel and RAF levies, environmental levies, and health promotion levy are levied on certain locally-manufactured goods and on imported goods of the same class or kind. The duties on imports are levied at the same rate as for locally manufactured goods and are payable in addition to the ordinary customs duty of Part 1 of Schedule 1 to the Customs and Excise Act.

(c) Anti-dumping, countervailing and safeguard duties on imported goods

Anti-dumping, countervailing and safeguard duties are trade remedies used to protect local industries against goods imported at dumped prices, subsidised imports or disruptive competition (in a form of sudden surge in imports).

3.12.8 Value-added tax on the importation of goods

Value-added tax is levied at the standard rate on the importation of goods from export countries, including Botswana, Lesotho, Namibia and Eswatini.

For VAT purposes the value to be placed on the importation of goods into South Africa is deemed to be the value of the goods for customs duty purposes, plus any duty levied under the Customs and Excise Act on the importation of those goods, plus a further 10% of the said customs value for goods not originating from Botswana, Lesotho, Namibia and Eswatini. The value of any goods which have their origin in Botswana, Lesotho, Namibia and Eswatini which are imported into South Africa from any of those countries is not increased by the factor of 10% as is the case for imports from other countries.

See also the *Customs guide Value-added tax levied on the importation of goods into South Africa.*

3.12.9 Deferment, suspension and rebate of duties

Participation in the SARS deferment scheme allows an importer to defer duty and VAT for up to 30 days after clearance of goods imported for home consumption. At the conclusion of the period of deferment the client is allowed a further seven days to settle the account. A requirement for participation in the deferment scheme is the furnishing of adequate security to cover the amount of duty and VAT deferred.

The payment of duty and VAT is suspended for up to two years when goods are entered into a licensed customs and excise storage warehouse for storage. Duty and VAT must be brought to account when the goods are entered for home consumption.

3.13 Exportation of goods

3.13.1 Introduction

Goods exported from South Africa may be exported only through designated places of exit. Any exporter of any goods must within the prescribed period declare such goods for export. The goods may also be subject to export control being either totally prohibited from export or subject to the production of a permit from the issuing authority at the time of clearance.

3.13.2 Registration as an exporter

Under section 59A and the corresponding rules of the Customs and Excise Act, exporters of goods from South Africa for commercial purposes must register with SARS for that purpose. The following persons are excluded from formal registration requirements and may make use of registration code 70707070:

- A person, including a traveller, who exports goods other than goods referred to in Part 6 of Schedule No. 1, of which the total value required to be declared is less than R150 000 during any calendar year, whether such goods are exported in one or more consignments.
- A person who exports goods classifiable under tariff subheading 9999.00.10 or 9999.00.20 as contemplated in the notes to Chapter 99 of Schedule 1 of the Customs and Excise Act.
- A person who is not a South African citizen who exports a motor vehicle registered in South Africa to a non-SACU country of destination for personal use.

3.13.3 Export declarations

Any exporter of any goods must, before such goods are exported from South Africa deliver to the Controller a prescribed clearance declaration. Declarations may be submitted either manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Provision exists for the imposition of penalties, in addition to seizure of the goods if goods have been dealt with irregularly or false declarations have been made. In instances of fraud, offenders may also be prosecuted criminally.

3.14 Free trade agreements and preferential arrangements with other countries

A number of agreements have been concluded or are in the process of being negotiated with other countries and trading blocs, which provide for preferential market access into South Africa as well as for South African products into other markets. These are listed below.

3.14.1 Bi-lateral Agreements (non-reciprocal)

This includes trade agreements between the governments of South Africa and the Republic of Malawi, providing for preferential access of specific products into South Africa subject to specific origin requirements and quota permits.

3.14.2 Preferential dispensation for goods entering South Africa (non-reciprocal)

These include goods produced or manufactured in Mozambique (Rebate Item 412.25), providing for free or reduced duties subject to specific origin requirements.

3.14.3 Free or preferential trade agreements (reciprocal)

These include –

- SACU – The Southern African Customs Union consists of South Africa, Botswana, Lesotho, Namibia and Eswatini. Its aim is to facilitate the cross-border movement of goods between member countries.
- SADC – EPA – Economic Partnership Agreement between the SADC Economic Partnership Agreement states, on the one part, and the European Union and its member states on the other part which was implemented on 10 October 2016.
- MERCOSUR – SACU – Common Market of the South (MERCOSUR) comprising of Argentina, Brazil, Paraguay and Uruguay and the Southern African Customs Union (SACU) comprising of Botswana, Lesotho, Namibia, South Africa and the Kingdom of Eswatini which was implemented on 1 April 2016.
- SADC – Agreement of the Southern African Development Community, which was implemented on 12 September 2000.
- EFTA – SACU – European Free Trade Association Agreement between Ireland, Liechtenstein, Norway and Switzerland on the one part and SACU on the other part, which was implemented on 1 May 2008.
- Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, on the one part, and The United Kingdom of Great Britain and Northern Ireland, on the other part (SACUM-EPA) which was implemented on 1 January 2021.
- Agreement Establishing the African Continental Free Trade Area and its Protocols, Annexes and Appendices which shall form an integral part thereof (AfCFTA) which was implemented on 1 January 2021.

3.14.4 Generalised Systems of Preference (non-reciprocal)

These include –

- AGOA – Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from South Africa as contemplated in the African Growth and Opportunity Act.
- Norway – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Kingdom of Norway.
- Russia, Belarus and Kazakhstan – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by Russia, Belarus and Kazakhstan.
- Turkey – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Republic of Turkey.

3.15 Environmental levy

An environmental levy is collected on specific products to encourage more environmentally sustainable business and consumer practices.

3.15.1 Plastic bags (Part 3A of Schedule 1 of the Customs and Excise Act)

A levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as "grocery bags" or "shopping bags").

Local manufacturers of such bags must license their premises as manufacturing warehouses with their local Customs and Excise Office and submit quarterly excise accounts.

Payment of this levy is additional to any customs or excise duty payable under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. On 1 April 2013 this levy was increased from 4 cents per bag to 6 cents per bag. On 1 April 2016 the levy was increased from 6 cents to 8 cents per bag. On 1 April 2018 the levy was increased to 12 cents per bag. On 1 April 2020 the levy was increased to 25 cents per bag. On 6 April 2022 the levy was increased to 28 cents per bag. On 1 April 2024 the levy was increased to 32 cents per bag.

Plastic bags used for immediate wrapping or packing, zip-lock bags and household bags including refuse bags and refuse bin liners are excluded from paying this levy.

3.15.2 Non-renewable electricity generated in South Africa (Part 3B of Schedule 1 of the Customs and Excise Act)

Non-renewable electricity generated at an electricity generation plant is liable to a levy calculated on the quantity generated at the time such generation of electricity takes place and any losses incurred subsequent to the electricity generation process or electricity exported shall not be deducted or set off from the total quantity of electricity accounted for on the monthly environmental levy account.

Electricity must be generated in a licensed customs and excise manufacturing warehouse in accordance with the provisions of Chapter VA and the Rules contained in the Customs and Excise Act.

Renewable electricity generated under specific circumstances as outlined in Note 2 in Part 3B of Schedule 1 to the Customs and Excise Act will not be liable for this levy.

On 1 July 2012 the levy was increased from 2,5 cents per kWh to 3,5 cents per kWh.

3.15.3 Electrical filament lamps (Part 3C of Schedule 1 of the Customs and Excise Act)

A levy is charged on electrical filament lamps to promote energy efficiency and to reduce the demand on electricity.

This levy is additional to any customs or excise duty payable under Parts 1 or 2 of Schedule 1 to the Customs and Excise Act and on 6 April 2022 the levy was increased from R10 per lamp to R15 per lamp. On 1 April 2024 the levy was increased to R20 per lamp.

3.15.4 Carbon dioxide (CO_2) vehicle emissions levy (Part 3D of Schedule 1 of the Customs and Excise Act)

A CO_2 emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this levy is to influence the composition of South Africa's vehicle fleet to become more energy-efficient and environmentally friendly.

The emissions levy is in addition to the current *ad valorem* luxury tax on new vehicles. The levy is based on certification provided by the vehicle manufacturer, or in the absence thereof according to the set methods of calculation as described in Note 5 in Part 3D of Schedule 1 to the Customs and Excise Act. The tax is included in the price of the vehicle before calculating the VAT payable on the sale of the vehicle.

On 6 April 2022 the levy for passenger vehicles increased to R132 per g/km CO_2 and the levy for double cab vehicles increased to R176 per g/km CO_2. On 1 April 2024 the levy for passenger vehicles increased to R146 per g/km CO_2 on emissions exceeding the threshold of 95g/km and the levy for double cab vehicles increased to R195 per g/km CO_2 on emissions exceeding the threshold of 175g/km.

Example 4 –Carbon dioxide (CO_2) vehicle emissions levy

If the certified CO_2 emissions of a new vehicle (transport of persons) bought since 1 April 2024 are 140 g/km CO_2, the tax payable will be calculated as follows:

(140 g/km CO_2 − 95g/km CO_2) × R146

= 45g/km CO_2 × R146

= R6 570

In this example, R6 570 will be added to the price of the vehicle before calculating the VAT inclusive price.

Guides on environmental levy (such as on emissions tax and plastic bags) are available on the **SARS website**.

3.15.5 Tyre environmental levy (Part 3E of Schedule 1 of the Customs and Excise Act)

An environmental levy on new tyres is applicable since 1 February 2017 on those pneumatic tyres listed in Part 3E to Schedule 1 of the Customs and Excise Act at a rate of R2,30 per kilogram of the nett mass of the tyre.

The tyre levy rules define "nett mass" as the design mass in respect of any tyre that has been verified and specified in writing by the tyre manufacturer to its customer. The term "design mass" is defined as the weight in respect of a certain size, type or class of tyre that forms part of the design specifications for that particular category of tyre.

The tyre levy rules also provide a proxy formula to calculate the net mass for tyre levy purposes when the actual nett mass is unknown. In such instances, proof of the design mass of a similar size, type and class of tyre must be obtained in writing and then increased by 10 per cent to account for typical variances in tyre weights.

Domestic manufacturers of tyres must licence manufacturing warehouses and submit quarterly tyre levy accounts and payments. Vehicle manufacturers may utilise their special manufacturing warehouse licences for tyre levy accounting purposes.

The tyre levy is payable in addition to any customs duty of Part 1 of Schedule 1 of the Customs and Excise Act.

3.15.6 Carbon emissions (Part 3F of Schedule 1 of the Customs and Excise Act)

A carbon tax on greenhouse gas emissions generated domestically was implemented with effect from 1 June 2019 under the Carbon Tax Act 15 of 2019.

The carbon tax is administered as an environmental levy under the Customs and Excise Act.

The policy objective is to influence industry practices and consumer choices in support of South Africa's international commitments to reduce its greenhouse gas emissions under the Paris Agreement under the United Nations Framework Convention on Climate Change.

Carbon taxpayers who conduct taxable activities that result in greenhouse gas emissions must licence the combination of those emissions facilities over which they have operational control as their manufacturing warehouses for environmental levy purposes.

Licensees must submit their annual carbon tax accounts and payments in July of the year following the annual tax periods. The rate on 1 January 2023 was R159 per tonne of carbon dioxide equivalent and increased to R190 per tonne from 1 January 2024.

A separate carbon fuel levy under the Customs and Excise Act was implemented with effect from 5 June 2019. The carbon fuel levy and general fuel levy have since formed the two constituent components of the fuel levy. See details below in section **3.16** on the fuel levy.

3.16 Fuel levy and Road Accident Fund levy (Parts 5A and 5B of Schedule 1 to the Customs and Excise Act)

These levies are imposed on distillate fuel (diesel), aviation kerosene, illuminating kerosene, petrol and hydrocarbon solvents manufactured in or imported into South Africa.

The following are some of the fuel levy products and their respective levy rates with effect from 3 April 2024:

Fuel levy products	**Rate of levy**
Petrol (leaded and unleaded)	396c/li
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	384c/li
Distillate fuel (diesel)	384c/li

Fuel levy products	Rate of levy
Road Accident Fund levy on petrol and diesel	218c/li

The fuel levy comprises of the general fuel levy plus the carbon fuel levy. The rates thereof on petrol versus diesel, unmarked kerosene and unmarked hydrocarbon solvents with effect from 3 April 2024 are:

- The general fuel levy at a rate of 385c/l and 370c/l respectively.
- The carbon fuel levy at a rate of 11c/l and 14c/l respectively.

3.17 Air passenger departure tax (section 47(B) of the Customs and Excise Act)

From 1 October 2011 to date –

- passengers departing to Botswana, Lesotho, Namibia and Eswatini pay R100 per passenger.
- passengers departing to other international destinations pay R190 per passenger.

3.18 Health promotion levy

3.18.1 Sugary beverages levy (Part 7A of Schedule 1 of the Customs and Excise Act)

The sugary beverages levy applies to specific sugary drinks, as well as preparations and concentrates used in the manufacture of sugary drinks. The policy objective with the levy is to combat obesity and promote healthier consumer beverage choices.

With effect from 1 April 2019, the levy rate is 2.21 cents per gram of the sugar content of the finally mixed beverage that exceeds 4 grams per 100 millilitres and applies to locally manufactured and imported products that are consumed locally. Local manufacturers of sugary beverages levy goods must license their premises as manufacturing warehouses with their local Customs and Excise Office and submit monthly excise accounts.

3.19 Skills development levy

SARS administers the collection of SDL. SDL is levied on payrolls in order to finance the development of skills and thus enhance productivity.

An employer must pay SDL if the employer pays salaries, wages and other remuneration in excess of R500 000 per annum. Employers with an anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12-month period are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees will generally receive grants from the Sector Education and Training Authorities (SETAs) under this initiative, to be used for, amongst other things, developing the skills of the South African workforce. The Minister of Higher Education and Training in conjunction with the various SETAs is responsible for the administration of the Skills Development Act 97 of 1998. Any enquiries regarding the levy grant scheme must therefore be referred to the relevant SETA or the Minister of Higher Education and Training.

The application form to register for SDL is the same form that is used to register for PAYE (EMP101e). The monthly return for SDL is combined with the monthly return for PAYE (EMP201) which means that the same provisions apply for submission and payment.[130]

3.20 Unemployment insurance fund contributions

The UIF gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

SARS administers the collection of the bulk of UIF contributions. Unemployment insurance fund contributions, which are equal to 2% of the remuneration (subject to specified exclusions) paid or payable by an employer to its employees, are collected from employers on a monthly basis. The total amount of contributions so collected consist of –

- the sum of the contribution made by each employee equal to 1% of the employee's remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the PAYE) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating PAYE) paid or payable by the employer to its employees during any month.

Unemployment insurance fund contributions are calculated on so much of the remuneration paid or payable by the employer to its employee as does not exceed –

- R17 712 per month (R212 544 a year); or
- R4 087,38 per week.

Employers must pay the total contribution of 2% to SARS within seven days after the end of the month in respect of which the contributions are payable.[131]

3.21 Employment tax incentive

The ETI is an incentive that may be claimed by eligible employers as encouragement to employ –

- employees between the ages of 18 and 29 years;
- employees of any age employed by an employer that is a "qualifying company" as contemplated in section 12R and renders services to that employer mainly within the SEZ[132] in which the qualifying company that is the employer carries on trade*;* or
- employees of any age in any industry identified by the Minister by notice in the *Government Gazette*.

[130] For more information see the *External Guide: Guide for Employers in respect of Skills Development Levy (SDL-GEN-01-G01)* Revision 5.

[131] For more information see the *External Guide: Guide for Employers in respect of the Unemployment Insurance Fund* (*UIF-GEN-01-GO1)* Revision 9 and refer to **www.labour.gov.za** or **www.ufiling.co.za**.

[132] As defined in section 12R(1).

Payment of the incentive is effected by eligible employers reducing the PAYE due by the amount of the ETI that may be claimed, provided that the requirements of the ETI Act are met. The ETI is administered by SARS through the PAYE system. PAYE is deducted and withheld from the remuneration of the employees and accounted for to SARS (usually monthly) via the PAYE system.

The ETI commenced on 1 January 2014 and will end on 28 February 2029.[133] During this period the employer may claim the ETI for a maximum of 24 individual months per qualifying employee. The ETI is subject to continuous review of its effectiveness and impact in order to determine the extent to which its core objective of reducing youth unemployment is achieved. It applies to qualifying employees employed on or after 1 October 2013 by eligible employers.

The employer is required to perform a monthly calculation to determine the amount of the ETI which may be claimed per qualifying employee. The calculation takes into account –

- the monthly remuneration paid to the qualifying employee;
- the period for which the qualifying employee is employed; and
- the amount or percentage which may be claimed.

With effect from 1 August 2019, the ETI Act was amended to align the minimum wage provisions to that of the National Minimum Wage Act 9 of 2018.[134]

The table below illustrates how the ETI is calculated in relation to the remuneration received by a qualifying employee.

Monthly remuneration	**ETI per month during the first 12 months in which the employee qualified**	**ETI per month during the next 12 months in which the employee qualified**
R0 – R1 999	75% of monthly remuneration	37,5% of monthly remuneration
R2 000 – R4 499	R1 500	R750
R4 500 – R6 499	Formula: R1 500 − [0,75 × (monthly remuneration − R4 500)]	Formula: R750 − [0,375 × (monthly remuneration − R4 500)]

The employer must add any amounts rolled over from previous months to the amount of the ETI for the current month.[135] Any excess ETI contemplated under section 9(2) and (3)[136] of the ETI Act will be deemed to be nil on the day following the end of the period for which the employer is required to render a reconciliation return (namely 1 September and 1 March respectively).

[133] The incentive was extended until 28 February 2029 by section 102 of the Taxation Laws Amendment Act 23 of 2018.

[134] Section 79(1) of the Taxation Laws Amendment Act 34 of 2019.

[135] This may be subject to a limitation as the rollover amounts under section 9(2) and (3) of the ETI Act are subject to a limitation under section 9(4) of the ETI Act.

[136] Section 9(4) of the ETI Act was amended by section 70 of the Taxation Laws Amendment Act 23 of 2020 to include section 9(3) of the ETI Act and was deemed to have come into operation on 31 July 2020.

Any excess ETI rolled over that has not been deducted at the end of the period for which a return must be submitted under paragraph 14(3)(*a*) of the Fourth Schedule (these reconciliation returns are normally submitted for the six-month periods ending August and February), may be claimed from SARS. The refund claimed from SARS will however not be made if an employer has any outstanding tax returns or an outstanding tax debt.[137]

In an attempt to curb apparent abuse of the ETI, the definition of "employee" in section 1(1) was amended to specify that the individual works for another person and in any other manner directly or indirectly assists in carrying on or conducting the business of that other person and must be documented in the records of that other person as envisaged in the record keeping provisions under the Basic Conditions of Employment Act 75 of 1997.[138] The definition of "monthly remuneration" was also amended to stipulate that an amount other than in cash must be disregarded in determining the remuneration paid or payable. A proviso was also included to section 6 of the ETI Act to deny ETI if the employee is mainly involved in the activity of studying unless a learnership agreement as defined in the Skills Development Act is entered into. These amendments are all effective 1 March 2022.

4. A business and other authorities

4.1 Introduction

Before commencing with business activities it may be necessary to register a business with certain other authorities to comply with certain laws or regulations. Some of the authorities that may require registration of a business are mentioned below.

4.2 Municipalities

Municipalities will provide information with regard to the rules or regulations laid down for businesses in their respective areas.

4.3 Unemployment Insurance Commissioner

Those employers who are not liable to register with SARS for PAYE and SDL purposes, but are liable for the payment of UIF contributions must pay such contributions for all its employees to the Unemployment Insurance Commissioner at the Department of Employment and Labour (See **3.20**).

4.4 South African Reserve Bank – Exchange control

Exchange control regulations restrict the in-and-out flow of capital from South Africa.

The administration of exchange control is performed by the South African Reserve Bank. The Reserve Bank has delegated some of its powers to deal with exchange control related matters to commercial banks. These banks are known as "authorised dealers" in foreign exchange.

Residents of South Africa wishing to remit, invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

[137] For more information see the *Guide to the Employment Tax Incentive*.
[138] Section 58(1)(*a*) of the Taxation Laws Amendment Act 20 of 2021.

A person in good standing and over the age of 18 years, can invest up to R10 million outside the Common Monetary Area (CMA – Lesotho, Eswatini and Namibia), per calendar year. A Tax Clearance Certificate (TCC) or a Tax Compliance Status (TCS) pin (in respect of foreign investments) must be obtained.[139] These funds may not be reinvested into the CMA countries thereby creating a loop structure or be re-introduced as a loan to a CMA resident. In addition, up to R1 million, within the single discretionary allowance facility, can be transferred abroad per calendar year, without the requirement to obtain a TCC or TCS.[140]

South African companies (excluding CCs) can make *bona fide* new outward foreign direct investments into companies outside the CMA up to R1 billion per company per calendar year through any bank.[141]

4.5 Department of Trade, Industry and Competition

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, type of business entities and requirements of registration of a business entity can be obtained from the Department of Trade, Industry and Competition or on its website **www.thedtic.gov.za**.

4.6 Broad-Based Black Economic Empowerment Act 53 of 2003

This Act provides a legislative framework for the promotion of black economic empowerment and for the issuing of the codes of good practice. For more information contact the Department of Trade, Industry and Competition or visit its website **www.thedtic.gov.za**.

4.7 Environmental legislation

Various Acts exist with regard to the control and management of pollution which are administered by different government departments. Persons conducting businesses which may cause harm to the environment should approach the relevant department to ensure that they comply with the relevant environmental standards. Acts in this regard include, amongst others, the following:

- National Environmental Management Act 107 of 1998 (management of pollution in general)
- National Environmental Management: Air Quality Act 39 of 2004 (management of air pollution)
- National Water Act 36 of 1998 (management of water resources)
- Mineral and Petroleum Resources Development Act 28 of 2002 (rehabilitation of mining areas)
- Hazardous Substances Act 15 of 1973

[139] The issuing of the printed TCC was stopped from 2 November 2019. All TCCs currently in circulation will be cancelled and taxpayers will be required to use the TCS pin.

[140] See **www.sars.gov.za/individuals/manage-your-tax-compliance-status/how-to-access-my-compliance-profile/** for more information on TCS [Accessed 26 September 2024].

[141] For more information visit **www.resbank.co.za**.

4.8 Safety and security

Below is a list of some legislation relating to safety, security and health issues, which will enable businesses to ensure that their work places are safe and secure environments to work in:

- Explosives Act 15 of 2003
- National Nuclear Regulator Act 47 of 1999
- Nuclear Energy Act 46 of 1999
- Occupational Health and Safety Act 85 of 1993
- Tobacco Products Control Act 83 of 1993

4.9 Employment and Labour

Various Acts, administered by the Department of Employment and Labour, govern the relationship between employers and employees. These Acts include the following:

- Basic Conditions of Employment Act 75 of 1997
- Labour Relations Act 66 of 1995
- Employment Equity Act 55 of 1998
- Skills Development Act 97 of 1998
- National Minimum Wage Act 9 of 2018
- Compensation for Occupational Injuries and Diseases Act 130 of 1993

Employers are required to make contributions calculated on a certain percentage of their employees' earnings to the Compensation Fund, from which compensation is paid for injuries or diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries or diseases. For more information visit the Department of Employment and Labour's website **www.labour.gov.za**.

4.10 Promotion of Access to Information Act 2 of 2000

Section 32 of the Constitution of South Africa, 1996 guarantees everyone the right of access to –

- any information held by the state; and
- any information that is held by another person and that is required for the exercise or protection of any rights.

The Promotion of Access to Information Act gives effect to the above rights. Under this Act, government departments, public and private companies, including registered CCs and businesses are required to compile and publish manuals containing, amongst other things, a description of the entity's structure and functions and a description of the records held. The Department of Justice and Constitutional Development's website **www.justice.gov.za** has more information in this regard. See the *South African Revenue Service Manual on the Promotion of Access to Information Act, 2000*.

4.11 Protection of Personal Information Act 4 of 2013

This Act aims, amongst others –

- to promote the protection of personal information processed by public and private bodies;
- to introduce certain conditions so as to establish minimum requirements for the processing of personal information;
- to provide for the establishment of an Information Regulator to exercise certain powers and to perform certain duties and functions;
- to provide for the issuing of codes of conduct;
- to provide for the rights of persons regarding unsolicited electronic communications and automated decision making;
- to regulate the flow of personal information across the borders of South Africa; and
- to provide for matters connected therewith.

From 1 July 2021 compliance with the Protection of Personal Information Act is mandatory for most organisations. The Act establishes minimum requirements for the processing of personal information and provides for the establishment of an Information Regulator to exercise certain powers and perform certain duties and functions under this Act and the Promotion of Access to Information Act.

4.12 Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002

The purpose of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA), in broad terms, is to regulate or control the interception of electronic and other communications.

4.13 Electronic Communications and Transactions Act 25 of 2002

The Electronic Communications and Transactions Act regulates the electronic communications, including digital signatures, electronic agreements and storage requirements. All persons making use of electronic communications are affected by this legislation.

4.14 Prevention of Organised Crime Act 121 of 1998

The purpose of the Prevention of Organised Crime Act is to combat organised crime activities such as racketeering and money laundering. Under section 7A of this Act, businesses must report any unlawful activities. Failure to do so is an offence.

4.15 Financial Intelligence Centre Act 38 of 2001

The Financial Intelligence Centre Act (FICA) sets up a regulatory anti-money laundering regime which is intended to break the cycle used by organised criminal groups to benefit from illegitimate profits. This Act aims to maintain the integrity of the financial system. Apart from the regulatory regime this Act also creates the Financial Intelligence Centre.

The regulatory regime of FICA imposes “know your client”, record-keeping and reporting obligations on accountable institutions. It also requires accountable institutions to develop and implement internal rules to facilitate compliance with these obligations.

FICA imposes a duty on accountable institutions to establish and verify the identity of clients. Detailed records of clients and the transactions entered into by clients must be kept. Records obtained by an accountable institution must be kept for at least five years after a transaction was concluded and for a minimum of five years after the date which a business relationship was terminated. These records must be kept in electronic form.

For further information on FICA see **www.fic.gov.za**.

4.16 Financial Advisory and Intermediary Services Act 37 of 2002

The Financial Advisory and Intermediary Services Act has been enacted to regulate the provision of a wide range of financial and intermediary services to clients. This Act seeks to protect the public from unscrupulous and unprofessional investment advisors, intermediaries and representatives. It outlines areas such as codes of conduct, licensing requirements, the appointment of external auditors, reporting and retention obligations of financial advisors, and the declaration of "undesirable practices".

4.17 Prevention and Combating of Corrupt Activities Act 12 of 2004

The Prevention and Combating of Corrupt Activities Act aims to prevent and combat corruption and corrupt activities and lays out the offences relating to those activities. This Act requires that a person who holds a position of authority, who knows or ought to reasonably have known or suspected that any other person has committed a specified act of corruption or the offence of fraud, theft, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion.

4.18 Companies Act 71 of 2008

The Companies Act aims, amongst others, to –

- provide for the incorporation, registration, organisation and management of companies, the capitalisation of profit companies, and the registration of offices of foreign companies carrying on business within South Africa;
- define the relationships between companies and their respective shareholders or members and directors;
- provide for equitable and efficient amalgamations, mergers and takeovers of companies;
- provide for efficient rescue of financially distressed companies; and
- provide appropriate legal redress for investors and third parties with respect to companies.

A company is a separate legal entity as from the date of incorporation and continues in existence until it is deregistered or liquidated, irrespective of whether there is a change in shareholding.

The Companies Act requires that companies must, among others, submit annual returns to the Companies and Intellectual Property Commission (CIPC) which include information such as confirmation that the company is still in business. For more information, visit **www.cipc.co.za**.

4.19 National Small Enterprise Act 102 of 1996

This Act provides for the establishment of an Advisory Body and the Small Enterprise Development Agency to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Small Enterprise Development Agency and to provide guidelines for organs of state to promote small enterprises in South Africa. The Ntsika Enterprise Promotion Agency is an agency of the Department of Trade, Industry and Competition that facilitates non-financial support and business development services to SMMEs through a broad range of intermediary organisations.

4.20 Lotteries Act 57 of 1997

Regulations under the Lotteries Act provide the extent to which one may lawfully hold a lottery or other competition to promote the sale or use of any goods or services.

4.21 Promotion of Administrative Justice Act 3 of 2000

Under section 33 of the Constitution of South Africa, 1996 everyone has the right to administrative action that is lawful, reasonable and procedurally fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. The Promotion of Administrative Justice Act gives effect to this right.

4.22 Protected Disclosures Act 26 of 2000

This Act provides for procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees and for the protection of employees making that disclosure.

4.23 National Credit Act 34 of 2005

The purposes of this Act are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless granting of credit, assists people who are heavily in debt and regulates credit information. For more information see the National Credit Regulator's website **www.ncr.org.za**.

4.24 Consumer Protection Act 68 of 2008

The aim of this Act, which came into operation on 31 March 2011, is to protect consumers against unfair market practices and unsafe products. For more information see the Department of Trade, Industry and Competition's website **www.thedtic.gov.za**.

5. Duty to keep records, retention period in case of audit, objection or appeal and records

A person (taxpayer or vendor) is required to keep records[142] (such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists and registers), books of accounts, data in electronic form and records or documents for five years from the date of submission of a return or if a person is not required to submit a return, for five years from the end of a relative tax period.

[142] Section 29 of the TA Act.

However, if an objection or appeal[143] has been lodged against an assessment, all records,[144] books of account or documents relevant to the objection or appeal must be retained until the assessment or decision becomes final.

6. Appointment of auditor or accounting officer

A company is generally required by law to appoint an auditor who will audit and sign an audit report in respect of its financial statements. Similarly, a CC is required to appoint an accounting officer.

7. Representative taxpayer

Any company or CC which conducts business or has an office in South Africa must, within one month from the commencement of business operations or acquisition of an office for the purposes of section 246 of the TA Act, appoint an individual residing in South Africa as the public officer of the company or CC. The representative must be approved by SARS.

8. Tax clearance certificates and Tax Compliance Status

Exchange controls have been relaxed since 1 July 1997, allowing South African residents to invest funds abroad, or to hold funds in foreign currencies at local banks (see **4.4**).

Investors are required to apply for a tax clearance certificate (TCC)[145] or a tax compliance status (TCS) pin from SARS.[146] The TCS pin can be used instead of or in place of a TCC by authorised third parties to verify a compliance status online of a person via SARS eFiling.

9. Non-compliance with legislation

Taxes are collected to enable the government to provide essential services such as education, health, security and welfare to the people of South Africa. Additional tax, penalties and interest may be levied when taxpayers ignore their tax obligations such as failing to register or to submit tax returns.

10. Interest, penalties and additional tax

The TA Act provides for, amongst other things –

- the imposition of interest (Chapter 12 of the TA Act);[147]
- the imposing of penalties (fixed amount penalties and percentage-based penalty) (Chapter 15 of the TA Act); and
- the imposing of understatement penalties up to 200% for failure to submit a return, an omission from a return, an incorrect statement in a return, if no return is required, the failure to pay the correct amount of tax, or an impermissible avoidance arrangement (Chapter 16 of the TA Act).

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143 Section 32 of the TA Act.
144 Section 55 of the VAT Act.
145 The issuing of the printed TCC was stopped from 2 November 2019. All TCCs currently in circulation will be cancelled and taxpayers will be required to use the TCS pin.
146 For more information see the **SARS website**.
147 See Interpretation Note 68 "Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation 51 in *Government Gazette* 35687".

The above provisions exclude customs and excise legislation.[148] A person may also be liable on conviction of criminal offences relating to non-compliance with tax Acts to a fine or to imprisonment on matters such as non-payment of taxes, failure to submit tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which that person is not entitled (Chapter 17 of the TA Act).

11. Request for correction

A taxpayer, who makes an error in the return submitted, and wishes to correct this mistake, may submit a Request for Correction (RFC) which is available through SARS eFiling or at a SARS service centre. This action allows the taxpayer to correct a previously submitted return or declaration for income tax and in certain circumstances for VAT. If the RFC function is not available to the taxpayer through SARS eFiling an objection may be lodged.[149]

12. Objection against assessment or decision

A taxpayer, who is –

- not able to submit an RFC (see above); or
- not satisfied with an assessment, decision or determination received from SARS,

may lodge an objection in writing stating fully, and in detail the grounds on which the objection is lodged.

The objection must be submitted within 80 business days from –

- the date of the assessment; or
- the date that written reasons (decision or determination) for the assessment were provided by SARS.

If the taxpayer's objection has been disallowed (in part or in full), the taxpayer has the right to note an appeal (see **13**).[150]

13. Dispute resolution

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an alternative dispute resolution (ADR) process. A dispute which is subject to ADR may be resolved by agreement whereby the taxpayer or SARS accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.[151]

The Customs and Excise Act contains its own provisions relating to dispute resolution.

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148 See Chapter XI of the Customs and Excise Act which contains provisions dealing with penalties.

149 For more information see the **SARS website**.

150 For more information see Interpretation Note 15 "Exercise of Discretion in Case of Late Objection or Appeal" and the Rules Promulgated under section 103 of the TA Act.

151 For more information see Interpretation Note 15 "Exercise of Discretion in Case of Late Objection or Appeal", *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of section 103 of the Tax Administration Act, 2011 (Rules under s. 103)* and *Alternative Dispute Resolution: Quick Guide*.

14. Complaint Management Office

The Complaint Management Office (CMO), also referred to as the Office of the Tax Ombud, is a special office operating independently of SARS service centres. The CMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS service centres through the normal channels.

A complaint can be lodged in the following ways:

- Via SARS eFiling.[152]
- By visiting a SARS service centre.
- By calling the CMO on 0800 12 12 16.

15. Voluntary Disclosure Programme

The Voluntary Disclosure Programme (VDP) was introduced as a permanent measure to increase voluntary compliance in the interest of enhanced tax compliance, good management of the tax system and the best use of the SARS resources.[153] The VDP is intended to encourage taxpayers to voluntarily disclose tax defaults. The VDP is administered under Part B of Chapter 16 of the TA Act and contains the requirements for a valid voluntary disclosure and available relief.[154]

The VDP is applicable to all taxes[155] administered by SARS except for the customs and excise legislation.[156] Taxpayers qualifying for the VDP will (on the conclusion of a valid voluntary disclosure agreement) be granted relief on applicable understatement penalties, qualifying administrative penalties, criminal prosecution in relation to a valid voluntary disclosure, and the conclusion of the voluntary disclosure agreement.[157]

16. Further information

Further information about the different taxes administered by SARS is available on the **SARS website**.

[152] For more information see the *Guide to the Complaints Functionality on Efiling*.
[153] See the Memorandum on the Objects of the Tax Administration Bill, 2011.
[154] Section 225 to 233 of the TA Act.
[155] Section 1 defines "tax", for purposes of administration of the TA Act, to include "a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act".
[156] See definition of "tax Act" in section 1. The provisions of the TA Act apply to the customs and excise legislation in specified scenarios only. Chapter 16 does not specifically specify that it applies to the customs and excise legislation. Section 1 defines "customs and excise legislation" to mean "the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Customs Duty Act, 2014 (Act No. 30 of 2014), or the Customs Control Act, 2014 (Act No. 31 of 2014)".
[157] For more information on the VDP, see the *Guide to the Voluntary Disclosure Programme*.