EXTERNAL POLICY

PROVISIONAL TAX

1 SCOPE

- This policy describes the circumstances under which taxpayers must be registered as a provisional taxpayer.

- All references to sections in this policy relate to the Fourth Schedule to the Income Tax Act No. 58 of 1962 (the Act) and the Tax Administrative Act No. 28 of 2011.

- With most provisional taxpayers making their submissions electronically, SARS will no longer send out IRP6 returns to provisional taxpayers. The provisional tax forms can be requested, pre-populated, captured and submitted via various channels. The forms can be requested via the following channels:

  - Accessing SARS eFiling at www.sarsefiling.co.za,
  - Visit the nearest SARS Branch Office; or
  - Call the SARS Contact Centre on 0800 00 SARS (7277)

- No documentary proof of income received, employees' tax certificates or foreign tax credits should be attached to the IRP 6 return.

2 POLICY STATEMENT

- In terms of paragraph 1 of the Fourth Schedule to the Income Tax Act, a provisional taxpayer is:

  - Any person (other than a company) who derives income, other than remuneration or an allowance or advance as contemplated in section 8(1).
  - Any company
  - Any person who is notified by the Commissioner that he is a provisional taxpayer.
  - excluding
  - Approved Public Benefit Organisations and Recreational Clubs.
  - Any body corporate, share block company or association contemplated in section 10(1) (e).
  - Any person exempt from payment of provisional tax in terms of paragraph 18 of the Fourth Schedule.

- A 'person' includes an insolvent estate; the estate of a deceased person; any trust and any portfolio of a collective investment scheme other than a portfolio of a collective investment scheme in property, but do not include a foreign partnership as defined in section 1 of the Income Tax Act.

- A 'company' is also defined in section 1 as:

  - Any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed established or deemed to be formed or established by or under any such law; or
  - Any co-operative; or
  - Any association (not being an associate referred to the above or a close corporation) formed in the Republic to serve a specific purpose, beneficial to the public or a section of the public; or
  - Any portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of public (as defined section 1 of the Collective Investment Schemes Control Act, 2002) (Act 45 of 2002) are invited to or permitted to and hold a participatory interest in a portfolio though shares, units or any other form of participatory interest; or a close corporation; but does not include a foreign partnership.

- 'Income' is an amount remaining of the gross income of any person for any year or period of assessment after deducting there from any amounts exempt from normal tax under Part I of Chapter II.

- Remuneration in basic terminology but refers also to the definition of 'remuneration' in the Fourth Schedule means:

- Any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance or stipend, whether in cash or otherwise and or not in respect of services rendered including annuities and allowances.

- Paragraph 17: Payment of Provisional Tax

  - Every provisional taxpayer must make payments called provisional tax Commissioner in respect of his liability for normal tax in respect of every year of assessment.
  - In determining the amount of provisional tax to be paid in respect of any year of assessment the liability of such taxpayer for, the normal tax is required to be estimated by the taxpayer, calculated at the relevant rate as referred to in paragraph 17(4) and in respect of the taxable income estimated as per paragraph 19(1).
  - For the purpose of calculating the normal tax, as mentioned above, the relevant rate which on the date of payment of the provisional tax in question is in force or if at the said date the rate has not yet been fixed, the rate as mentioned by the Minister of Finance is his budget speech or if that rate has been fixed, the rate which is in force in respect of the latest preceding year of assessment.
  - The rebates applicable in terms of sections 6(2) and 6quat are, deducted, where applicable from the estimated normal tax.
  - The prescribed tables could also be used to determine the tax payable together with the period for which such tables shall remain in force.
  - Any person who becomes liable for the provisional tax must apply as a provisional taxpayer within 21 business days of becoming liable for provisional tax; in accordance with Chapter 3 of the Tax Administration Act.

- Paragraph 18: Exemptions

  - Any person in respect of liability for normal tax for the relevant year of assessment payments are required to be made under section thirty-three of the Income Tax Act.
  - Any natural person who on the last day of the year will be below the age of 65 years and who does not derive any income from the carrying of any businesses if:
    - The taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or
  - The taxable income of that person for the relevant year of assessment which is derived from interest, foreign dividends and rental from the letting of fixed property will not exceed R22 800
  - Where any natural person (other than a director of a private company) who on the last day of the assessment will be over 65 years, whose taxable income:
    - does not exceed R120 000;
    - will not be derived wholly or in part from the carrying on of any business; and
    - consists of only remuneration, interest, foreign dividends, or rental income from letting of fixed property.

- Paragraph 19: Estimate of Taxable Income

  - Every provisional taxpayer (other than a company) shall, submit to the Commissioner a return (should the Commissioner so require) of an estimate of the total taxable income during every period in respect of the year of assessment in respect of which the provisional tax is or may be payable by the taxpayer.
  - Every company which is a provisional taxpayer shall, during every period within which provisional tax is or may be payable by it, submit to the Commissioner (should the Commissioner so require) a return of an estimate of the total taxable income which will be derived by the company in respect of the year of assessment in respect of which provisional tax is or may be payable by the company.
  - The amount of any estimate submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21(1) (a), or by a company (as a provisional taxpayer), during a period referred to in paragraph 23(a), shall unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount. The lower amount should not less than a basic amount applicable to the estimate in question applicable estimate.

- The basic amount applicable to any estimate submitted by a provisional taxpayer shall be deemed to be:
  - The taxpayer's (other than a company) taxable income as assessed for the latest preceding year of assessment less:
    - any taxable capital gain if included in terms of section 26A;
    - any amount contemplated in paragraph (d) of the definition of 'gross income' in section 1; and
    - any amount contemplated in paragraph (e) of the definition of 'gross income'.
- If an estimate must be made in respect of a period that ends more than one year after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined shall be increased by an amount equal to eight per cent per annum of that amount; from the end of such year to the end of assessment in respect of which the estimate is made.
- If any provisional taxpayer fails to submit any estimate as required, the Commissioner may estimate the taxable income.
- The Commissioner may call upon any provisional taxpayer to justify any estimate made by him, and if the Commissioner is dissatisfied with the said estimate, he may increase the amount thereof to such amount he considers reasonable, and the estimate as increased.
- Any estimate made by the Commissioner shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax, or within any extension of such period granted.

- Paragraph 20: Penalty the event of Taxable Income being underestimated

- Provisional taxpayers with a taxable income up to R1 million

  - An estimated taxable income for the second period must be equal to the lesser of the basic amount or 90% of the actual taxable income for the year.
  - Penalty of 20% will be imposed on assessment on an under-estimated taxable income in respect of the second period of the difference between the amount of normal tax in respect of such estimate and the lesser of the following:
    - The amount of normal tax disclosed for provisional tax purposes in respect of a taxable income equal to 90% of the actual taxable income; and
    - The amount of normal tax disclosed for provisional tax purposes in respect of a taxable income equal to a basic amount at the applicable rates.
- Provisional taxpayers with a taxable income above R1 million
  - An estimated taxable income for the second period must be equal to 80% of the actual taxable income for the year.
  - Penalty of 20% will be imposed on assessment on an under-estimated taxable income in respect of the second period.
  - The penalty will be imposed on the difference between the normal tax in respect of such estimate as disclosed for provisional tax purposes and the amount of normal tax on 80% of the actual taxable income.

- Paragraph 20A: Penalty for the failure to submit an Estimate Timorously

  - Where any provisional taxpayer who is liable for the payment of normal tax and the estimate of his taxable income (in respect of the 2^{nd} provisional tax only) for that year was not submitted on before the last day of that year, penalty equal to 20 per cent of the normal tax on such taxable income, which exceeds the sum of any provisional tax paid and any amounts of employees tax deducted, in respect of such year, will be chargeable.

- Paragraph 21: Provisional Tax Payment (other than Companies)

  - First period: Within six months from the commencement of the year of assessment in question, one half of the total estimated liability less the total amount of employees tax deducted that period and any foreign tax credit allowable in terms of section 6quat.
  - Second period: No later than the last day of the year of assessment in question, an amount to the total estimated liability less the sum of the employees tax deducted during such year and the amount paid for the first period and any foreign tax credit allowable in term of section 6quat.

- If the Commissioner has agreed to accept financial accounts drawn to a date falling after the end of such year (after the February) and has approved an application from the taxpayer for the payment of provisional tax in line with such date,
  - The first period, within six moths, reckoned from such the Commissioner approved, and for the second period, the last day of such year of assessment will be deemed to be the day preceding the anniversary of the said date (the approved accounting date).

- Paragraph 23: Provisional Payment by Companies

  - First period, within six months after the commencement of the year of assessment in question, one half of the amount equal to the total estimated liability; and
  - Second period, ending on the last day of that year of assessment, an amount equal to the total estimated liability less the amount paid for the first period.
  - Less the total amount of:
    - Any employees' tax deducted by the taxpayers' employer's remuneration during the relevant period; and
    - Any tax proved to be payable to the government of any country which will qualify as a rebate under section 6*quat*.

- Paragraph 23A: Additional Provisional Tax Payments

  - Any provisional taxpayer may for the purpose of avoiding or reducing his liability for any interest which may become payable by him in respect of any year of assessment under section 89quat, elect to make additional payment on provisional tax in respect of such year.
    - According to Chapter 12 of the Tax Administration Act, these payments must be made by the 'effective' date.
    - The effective date would be the date that the tax is payable under the Income Tax Act; and it applies for the first and second provisional tax payments; and
      - If tax is not paid by that date, interest will accrue from that date until the tax is paid.
      - If the refund is due, interest on the amount refundable is calculated from the later of the effective date or the date that the excess was received by SARS to the date the refunded tax is paid.
    - The third provisional tax payment can be made anytime between the second payment and the date of assessment.

- Paragraph 24: First period of Provisional tax

  - The Commissioner may absolve any provisional tax payment of any amount of provisional tax payment for the first period, if he is satisfied that the taxable income for the year in question cannot be estimated on the facts available at the time when the payment has to be made.

- Paragraph 25: Extension of time for the payment of Provisional Tax

  - If after the end of any period within which provisional tax is payable, the Commissioner has increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, be payable within such period as the Commissioner may determine.

- Paragraph 27: Penalty on the late payment of Provisional Tax

  - If any provisional taxpayer fails to pay any amount of provisional tax for which he is liable within the period allowed for the payment thereof, the Commissioner must under Chapter 15 of the Tax Administrative Act impose a penalty equal to ten percent of the amount not paid.

- Paragraph 28: Provisional Tax to be set off against Tax liability

  - There shall be set off against the liability of the taxpayer in respect of any taxes due to by the taxpayer, for which the taxpayer's liability for normal tax which has been assessed by the Commissioner, the amounts of employees tax deducted or withheld by the taxpayer's employer

during any year of assessment and the amounts of provisional tax paid by the taxpayer in respect of such year.
- o Any excess shall be refunded to the taxpayer;
- o Where the total liability exceeds the employees tax and provisional tax paid, the excess liability is payable by the taxpayer.

- Paragraph 28A: Payments by way of Employees' tax and Provisional tax
  - ▫ Payments by way of employees' tax and provisional tax must, for the purpose of this Act and subject to the provisions of paragraph 28, be regarded as having made in respect of the taxpayer's liability for tax whether or not the liability has been ascertained or determined at the date of any payment.

- Paragraph 29: No refunds of Provisional Tax
  - ▫ No refund of any amount of provisional tax shall be made to the taxpayer otherwise than a provided in paragraph 11B or 28 or in such circumstances as may be determined by the Commissioner in any deduction tables prescribed by him under paragraph 9.

- Section 89bis: Interest on overdue Provisional Tax payments
  - ▫ If any amount of provisional tax is not paid in full within the relevant period, interest shall be paid by the taxpayer, at the prescribed rate on the amount of provisional tax that remains unpaid.

- Section 89ter: Recovery proceeding
  - ▫ As penalties and interest owing by a taxpayer do not bear interest if they remain unpaid, the taxpayers could pay only the tax outstanding and leave the penalties and interest unpaid. In terms of section 89ter (1A) of the Act, payments made by a taxpayer are deemed to be made firstly in respect of penalties owing, thereafter interest and finally tax.
  - ▫ Therefore where an amount of penalty and / or interest is levied, any payment made in respect of such tax will be deemed to be made:
    - o In respect of such penalty;
    - o To the extend to which such payment exceeds the amount of such penalty, in respect of such interest; and
    - o To the extend to which such payment exceeds the sum of the amounts of such penalty and interest in respect of such tax or additional tax.

- Section 89sex: Determining of day and time for the payment of tax
  - ▫ Where any day specified for any payment to be made under the provisions of this act, or the last day of any period within which payments under any provisions of this act shall be made, falls on a Saturday, Sunday or public holiday.
  - ▫ The Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.

- Section 89quat: Interest on underpayments and overpayments of Provisional Tax
  - ▫ The "effective" date in relation to any year of assessment, is:
    - o Where the provisional taxpayer is a company or a person who has not been granted permission to submit financial accounts to a date other than the last day in February, seven months after such date (30 September).
    - o In any other case, the date falling six months after the last day of the approved financial year end date.
  - ▫ If the taxable income of a provisional taxpayer as finally determined for any year of assessment exceeds:
    - o R20 000 in the case of a company; or
    - o R50 000 in the case of any person other than a company.

And the normal tax exceeds the credit amount (this being the sum of any employees tax and provisional tax paid), interest shall be payable on the amount by which such normal tax exceeds the credit amount.

- If the case of any provisional taxpayer the credit amount exceeds the normal tax payable as finally determined for that year and
  - The amount of the excess exceeds R10 000; or
  - The taxable income exceeds R20 000 in the case of a company or R50 000 in the case of any person, other than the company, interest will be payable to the taxpayer on the difference between the credit amount and such normal tax, calculated from the effective date in relation to the said year until refunded to the taxpayer.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	**Income Tax Act No. 58 of 1962:** Section 1, 6, 6quat, 7, 10, 11, 89bis, 89*quat*, 89*ter*; 89*sex*. **Fourth Schedule**: Paragraphs 1, 17(8), 19, 20, 20A, 21, 23, 23A, 24,25,27, 28,29,31 Eight Schedule. **Tax Administration Act No. 28 of 2011**
Other Legislation:	**None**
International Instruments:	**None**

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
IT-PT-AE-01-G01	Reference guide – Provisional Tax	All
IT-PT-AE-02-POL01	Provisional Tax – Internal Policy	All

4 DEFINITIONS AND ACRONYMS

IRP6	Return for Payment of Provisional Tax
Paragraphs	Paragraphs in the Fourth Schedule to the Income Tax Act of No. 58 of 1962
Republic	Republic of South Africa
SARS	South African Revenue Service
Sections	Sections of the Income Tax Act
The Act	Income Tax Act No 58 of 1962
TAA	Tax Administrative Act No. 28 of 2011

5 DOCUMENT MANAGEMENT

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Author:	Magdeline Makhushe
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