



Legal & Policy

Taxation in South Africa 2014/2015



South African Revenue Service

Taxation in South Africa – 2014/15

Preface

This is a general guide providing an overview of the various forms of tax legislation administered in South Africa by the Commissioner for the South African Revenue Service (SARS), such as the –

- Income Tax Act
- Value-Added Tax Act
- Customs and Excise Act
- Transfer Duty Act
- Estate Duty Act
- Securities Transfer Tax Act
- Securities Transfer Tax Administration Act
- Skills Development Levies Act
- Unemployment Insurance Contributions Act

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. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

The information in this guide concerning income tax relates to –

- **natural persons, deceased estates, insolvent estates or special trusts** for the 2015 year of assessment which commenced on 1 March 2014 or ended on 28 February 2015;
- **trusts** for the 2015 year of assessment which commenced on 1 March 2014 or ended on 28 February 2015; and
- **companies** for the 2015 year of assessment with financial years which ended during the 12-month period ending on 31 March 2015.

The information in this guide concerning value-added tax and other taxes, duties, levies and contributions reflect the rates applicable as at the date of its publication. While care has been taken in the preparation of this document to ensure that the information and the rates published are correct at the date of publication, errors may occur. The rates/duties/levies recorded as “as to date” are the rates/duties/levies as at the date of publication of this guide. Should there be any doubt it would be advisable for users to verify the rates with the relevant legislation applicable to the tax concerned.

Further, the guides and interpretations notes referred to in this guide are the guides and interpretation notes available as at the date of this publication.

This guide has been updated to include the Taxation Laws Amendment Act 43 of 2014 promulgated on 20 January 2015 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act 42 of 2014 promulgated on 20 January 2015.

Should you require additional information concerning any aspect of taxation, you may –

- visit your nearest SARS branch office;
- contact the SARS National Contact Centre: –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093;
- visit the SARS website at **www.sars.gov.za**; or
- contact your own tax advisor or tax practitioner.

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

Prepared by

Legal and Policy Division

SOUTH AFRICAN REVENUE SERVICE

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Glossary

In this guide unless the context indicates otherwise –

- **“ADR”** means alternative dispute resolution;
- **“BLNS”** means Botswana, Lesotho, Namibia and Swaziland;
- **“CFC”** means controlled foreign company;
- **“CGT”** means capital gains tax;
- **“Commissioner”** means the Commissioner for SARS;
- **“DTA”** means an international agreement entered into between the government of South Africa and the government of a foreign country, aimed at eliminating or providing relief from international double taxation;
- **“non-resident”** means a person that is not a resident of South Africa;
- **“PAYE”** means Pay-As-You-Earn (Employees’ tax);
- **“resident”** means a person who is a “resident” as defined in section 1(1) and, therefore, a resident of South Africa;
- **“SACU”** means the South African Customs Union;
- **“SADC”** means the Southern African Development Community;
- **“SARS”** means the South African Revenue Service;
- **“SBC”** means a small business corporation;
- **“Schedule”** means a Schedule to the Act;
- **“SDL”** means skills development levy;
- **“section”** means a section of the Act;
- **“South Africa”** means the Republic of South Africa;
- **“STT”** means securities transfer tax;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“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.

1. Introduction

1.1 Autonomous body

The South African Revenue Service (SARS) is South Africa's tax collecting authority. Established under the South African Revenue Service Act 34 of 1997 (the SARS Act) as an autonomous agency, SARS is responsible for administering the South African tax system and customs service.

SARS's responsibilities are to –

- collect and administer all national taxes, duties and levies;
- collect revenue that may be imposed under any other legislation as agreed on between SARS and a state entity entitled to the revenue;
- provide a customs service that facilitates trade, maximises revenue collection and protects South Africa's borders from illegal importation and exportation of goods; and
- advise the Minister of Finance on all revenue matters

1.2 SARS Act

The SARS Act mandates SARS to –

- collect all revenues that are due;
- ensure maximum compliance with relevant legislation; and
- provide a customs service that will maximise revenue, facilitate trade and protect ports of entry against smuggling and other illegal trade.

1.3 Secrecy and confidentiality

In Chapter 6 of the Tax Administration Act, 28 van 2011 (the TA Act) provision is made for the confidentiality of information that may come to the knowledge of current or former SARS officials in the performance of their duties, except under specifically defined circumstances. For example, information that a serious criminal offence has been or may be committed or information of an imminent and serious public safety or environmental risk may be shared with certain organs of state. Such disclosure, however, may only be made in terms of an order issued by a judge in chambers.

The purpose of the secrecy provisions is to encourage taxpayers to make full disclosure of their financial affairs, thereby, maximising tax compliance while taxpayers have the peace of mind that their information will remain confidential. A taxpayer may agree to dispense with the secrecy provisions if so desired.

1.4 Overview of taxes

Taxes that are levied by the national government of South Africa under the Income Tax Act 58 of 1962 (the Act) are –

- normal tax also known as income tax (see **2**);

The following taxes form part of income tax:

- employees tax, also known as Pay-As-You-Earn (PAYE) (see **2.4.8**);
- provisional tax (see **2.4.9**)
- withholding of amounts from payments to non-resident sellers of immovable property (see **2.4.14**);
- capital gains tax (see **2.11**);
- taxation of foreign entertainers and sportspersons (see **3**);
- withholding tax on royalties (see **4**);

- donations tax (see **5**);
- dividends tax (see **6**); and
- turnover tax (see **7**).

Value-added tax (VAT) (see **8**) is levied by the national government under the Value-Added Tax Act 89 of 1991 (VAT Act). VAT, which is based on destination consumption, is levied at a standard rate of 14% on –

- the supply of all goods or services made by any vendor in the course or furtherance of any enterprise carried on by that person;
- the importation of any goods into South Africa by any person; and
- the supply of any “imported services” as defined in the Vat Act.

The levying of VAT is, however, subject to certain exemptions, exceptions, deductions and adjustments provided for in the VAT Act.

Duties and levies that are leviable by the national government under the Customs and Excise Act 91 of 1964 are –

- ordinary customs duty;
- environmental levy (see **9.4.3**);
- anti-dumping, countervailing and safeguard duties on imported goods (see **9.4.4**);
- specific excise duty (see **10.1**);
- specific customs duty;
- *ad valorem* excise duties (see **10.2**)
- *ad valorem* customs duty;
- general fuel levy and road accident fund levy (see **10.3**); and
- ordinary levy, this is the equivalent of ordinary customs duty paid by governmental bodies in Botswana, Lesotho, Namibia and Swaziland (BLNS) for specific purposes.

National government also levies –

- transfer duty (see **11**);
- estate duty (see **12**);
- securities transfer tax (STT) (see **13**);
- skills development levy (SDL) (see **14**);
- unemployment insurance fund (UIF) contributions (see **15**);
- air passenger departure tax (see **16**); and
- mineral and petroleum resources royalties (see **17**),

under the relevant Act as mentioned in the paragraphs indicated.

Provincial and local sphere governments do not levy any of the aforementioned taxes.

Local sphere governments levy rates on the value of fixed property to finance the cost of municipal or local services.

2. Income tax

2.1 Introduction

South Africa has a residence-based income tax system which has the effect that:

- A resident's worldwide taxable income is subject to income tax in South Africa.
- A non-resident's taxable income from sources within South Africa is subject to tax in South Africa.

The South African government has entered into agreements for the avoidance of double taxation with various countries, to prevent the same income from being taxed in both countries. Should the same income be taxed in both countries, a credit will normally be allowed in the country of residence for the tax paid in the other country.

2.1.1 Main source of government's income

Income tax is the government's main source of income and is levied in terms of the Act on the taxable income of persons such as companies, trusts and natural persons.

2.1.2 Registration as a taxpayer

A person liable for income tax or liable to submit a return must register as a taxpayer with SARS within 21 business days of becoming so liable.

2.1.3 Change of address

The TA Act requires that a taxpayer must notify SARS within 21 business days of a change of address.

2.1.4 Year of assessment

A year of assessment for natural persons, deceased estates, insolvent estates and trusts covers 12 months which commences on the first day of March of a specific year and ends on the last day of February of the following year. Natural persons and trusts may be allowed to draw up their financial statements in respect of their businesses to dates other than the last day of February.

For more information see the interpretation note¹ available on the SARS website.

Companies are permitted to have a year of assessment ending on a date that coincides with their financial year-end. The year of assessment for a company with a financial year-end of 30 June, will run from 1 July of a specific year to 30 June of the following year.

2.1.5 Filing of tax returns

Income tax returns must be submitted manually or electronically by a specific date each year. This date is published for information of the general public and is promoted by way of a filing campaign to encourage compliance in this regard.

2.1.6 eFiling

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

¹ Interpretation Note No. 19 (Issue 3) dated 9 October 2013 'Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February'.

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

- Dividends tax
- Estate duty
- Income tax
- Pay-As-You-Earn (PAYE)
- Provisional tax
- Skills development levy (SDL)
- Transfer duty
- Unemployment insurance fund (UIF) contributions
- Value-added tax (VAT)

The following should, however, be noted:

- A taxpayer must retain all supporting documents to a return for five years from the date upon which the return was received by SARS, as SARS may require it for audit purposes.
- SARS will under certain circumstances, on request, still require the submission of original documents for purposes of verification.
- SARS will do extensive 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 issue assessments electronically.

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

2.1.7 Payments at banks

Over-the-counter tax payments can be made countrywide at ABSA, Albaraka Bank Limited, Bank of Athens, Capitec Bank, FNB, HBZ Bank Ltd, Nedbank or Standard Bank. Currently air passenger tax payments can only be made at ABSA, FNB, Nedbank and Standard Bank. Over-the-counter customs payments can be made countrywide at any FNB branch.

By using the correct beneficiary ID, a person is able to make tax and customs internet payments at ABSA, Bank of Athens, Capitec Bank, FNB, HBZ Bank Ltd., HSBC Bank, Investec, Mercantile Bank, Nedbank and Standard Bank. Payments can also be made *via* eFiling which would further include Bidvest Bank, Citibank and Standard Chartered Bank.

For more information on the payment rules see the guide² available on the SARS website.

2.1.8 Assessment

An assessment is the determination of the amount of a tax liability or refund by way of self-assessment by a taxpayer or assessment by SARS and includes a determination by the Commissioner of any –

- loss ranking for set-off;
- assessed capital loss determined under paragraph 9 of the Eighth Schedule or;
- amounts to be taken into account in the determination of tax payable on income in future years.

² *External Guide: South African Revenue Service – Payment Rules.*

2.1.9 Calculation of taxable income

The Act provides for a series of steps to be followed to determine a taxpayer's "taxable income" (as defined in the Act) for any year of assessment or period of assessment.

❖ The first step

Establish a taxpayer's "gross income" as defined in section 1(1) for any year or period of assessment, namely, in the case of –

- any person who is a resident, the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of that person; or
- any person who is a non-resident, the total amount of income, in cash or otherwise, received by or accrued to or in favour of that person from a source within South Africa,

during that year or period of assessment, excluding receipts or accruals of a capital nature, but including those amounts referred to in paragraphs (a) to (n) of this definition whether of a capital nature or not. The Eighth Schedule deals with capital gains and capital losses.

❖ The second step

Determine "income", as defined in section 1(1) by deducting all amounts that are exempt from income tax under the Act from gross income.

❖ The third step

Determine "taxable income" as defined in section 1(1) by –

- deducting all amounts allowed to be deducted or set off under the Act from income; and
- adding all specified amounts to be included in income or taxable income under the Act.

2.1.10 Calculation of final income tax liability

The Act provides for a series of steps to be followed in arriving at a taxpayer's final income tax liability.

❖ The first step

Determine the normal tax payable by applying the applicable rate of tax to the taxpayer's taxable income.

❖ The second step

In the case of a natural person, deduct from normal tax payable –

- an amount equal to the sum of the normal tax rebate(s) allowable (see **2.16**);
- the amount of the medical scheme fees tax credit as calculated (see **2.14**); and
- the amount of the additional medical expense tax credit as calculated (see **2.15**).

❖ The third step

Determine the final income tax liability by –

- deducting all other tax credits, that is, PAYE, foreign tax credits on income and provisional tax payments made by the taxpayer for that year of assessment, from net normal tax payable; and
- adding any outstanding balance of account as at the date of assessment to net normal tax payable.

2.2 A resident

2.2.1 Natural persons

A natural person who complies with either of the following two tests, namely, the ordinarily resident test or the physical presence test, will be a “resident” as defined in section 1(1).

(a) Ordinarily resident test

This test is to determine whether an individual is ordinarily resident in South Africa.

The courts have interpreted the concept “ordinarily resident”, to mean the country to which an individual would naturally return from his or her wanderings. It might, therefore, be called an individual’s usual or principal residence and it would be described more aptly, in comparison to other countries, as their real home.

For more information see the interpretation note³ available on the SARS website.

(b) Physical presence test

A natural person, who is not ordinarily resident in South Africa at any time during a year of assessment but meets all three requirements of the physical presence test, will be a resident.

For more information see the interpretation note⁴ available on the SARS website.

2.2.2 Companies and other entities

Based on the definition of “resident”, a person, other than a natural person, for example, a company or a trust, will be a resident if it is incorporated, established or formed in South Africa or has its place of effective management in South Africa.

The place of effective management test for residency has been eliminated in the case of South African owned foreign subsidiaries subject to the requirements, as set out in the definition of “resident” in section 1(1), having been met.

For more information regarding the concept of “place of effective management” see the interpretation note⁵ available on the SARS website.

2.2.3 Residents working outside South Africa

As a result of South Africa’s residence basis of taxation, any income derived from countries other than South Africa (foreign income) will be subject to taxation in the hands of a resident in South Africa unless –

- there is an agreement for the avoidance of double taxation which stipulates that only the other country has a right to tax that income; or
- that income is specifically exempt from income tax in South Africa.

Remuneration which is received by or accrued to an employee during a year of assessment for services rendered by that employee in more than one year of assessment, will be taxed evenly over the period those services were rendered.

³ Interpretation Note No. 3 dated 4 February 2002 ‘Resident: Definition in relation to a Natural Person – Ordinarily Resident’.

⁴ Interpretation Note No. 4 (Issue 4) dated 12 March 2014 ‘Resident: Definition in relation to a Natural Person – Physical Presence Test’.

⁵ Interpretation Note No. 6 dated 26 March 2002 ‘Resident: Place of Effective Management (Persons other than Natural Persons)’.

For more information see the interpretation note⁶ available on the SARS website.

2.2.4 Agreements for the avoidance of double taxation

A Double Taxation Agreement (tax treaty) is an international agreement aimed at eliminating or providing relief from international double taxation. However, such agreements also enable exchange of information between tax administrations, provide for a mutual agreement procedure to assist in resolving any conflict arising out of the interpretation or application of the tax treaty and may allow for tax collection on another tax administration's behalf. The increasing interdependence and co-operation between the modern world economies and cross border trading makes it necessary for countries to enter into such agreements, thereby providing not only security for a country's residents in cross border interactions but also encouraging outside investment.

It must be emphasised, however, that a tax treaty does not impose tax. Tax is imposed in terms of a country's domestic law. Its purpose is to allocate taxing rights. Generally, a tax treaty will provide for income to be taxed solely in one country or, if it remains taxable in both countries, for a taxpayer's country of residence to be obliged to grant relief in terms of an Article on "Elimination of Double Taxation". In South Africa, should an amount qualify for relief under the said Article, relief will be granted in the form of a credit. Reduced levels of withholding taxes, in situations where double taxation is permitted, are also provided for.

A list of the tax treaties in force in South Africa is available on the SARS website.

As each tax treaty is unique, the relevant agreement must be consulted and the provisions therein adhered to. The SARS website also provides details of progress made with regard to tax treaties currently being negotiated but not yet entered into force.

2.2.5 Unilateral relief for foreign taxes paid or payable

The domestic tax legislation of each country will apply independently of each other where there is no tax treaty between the relevant countries. A resident who is liable for income tax in South Africa on income received from a foreign country and who is also liable for tax in the foreign country on that income will be allowed a credit for the foreign tax paid or payable against the South African tax liability. In order to qualify for this credit the foreign tax must have been paid or be payable to the government of any country other than South Africa, without any right of recovery of that foreign tax.

It will be necessary for a resident to submit proof of the foreign tax paid or payable. An assessment or the equivalent thereof, tax receipts or an official document will generally be accepted as proof of foreign tax paid or payable.

This rebate may be granted in substitution for and not in addition to the relief to which a resident would be entitled under a tax treaty.

2.3 Non-resident

2.3.1 A person who is a non-resident but working temporarily in South Africa

It is internationally accepted that income from employment should be subject to income tax in the source country, that is, where the services are actually rendered, as opposed to the country where an employee is a resident.

An employee who is a non-resident but working in South Africa for short periods is liable for income tax in South Africa on his or her South African-source income. The normal employees' tax rules apply to the remuneration received by or accrued to that employee.

⁶ Interpretation Note 34 dated 12 January 2006 'Exemption from Income Tax: Remuneration derived by a Person as an Officer or Crew Member of a Ship'.

Income from employment, where the employer or representative employer is a resident, will be subject to income tax by way of employees' tax (PAYE) which is to be deducted from such remuneration.

Natural persons who are not ordinarily resident in South Africa should bear in mind the physical presence test [see **2.2.1** paragraph (b)].

For more information see the guide⁷ available on the SARS website.

2.3.2 Employees working at foreign diplomatic or consular missions in South Africa

Salary and emoluments payable by a foreign diplomatic or consular mission in South Africa to an employee who has not been granted immunity under the Diplomatic Immunities and Privileges Act, 2001 are exempt from income tax if the employee –

- is stationed in South Africa for the sole purpose of holding office in South Africa as an official of a foreign government; and
- is not ordinarily resident in South Africa.

Salary and emoluments payable to an employee in the domestic or private service of the aforementioned employee is also exempt from income tax, provided such employee is not a South African citizen and is not ordinarily resident in South Africa.

Both of the abovementioned employees could become resident as a consequence of the application of the physical presence test, but their income from a foreign diplomatic or consular mission will nevertheless remain exempt.

Salary and emoluments payable by a foreign government, which carries on business activities in South Africa, to its employees, could also be taxable in South Africa. (The taxability of this income may be affected by a tax treaty.)

Amounts received by members of a diplomatic or consular mission, who have received diplomatic immunity under the Diplomatic Immunities and Privileges Act are also exempt from income tax in South Africa.

Salary and emoluments received by or accrued to an employee, who is ordinarily resident in South Africa, employed by a foreign government (that is, locally-recruited staff) are not exempt from income tax.

Employees, whose salary and emoluments are not exempt from income tax in South Africa in the above circumstances, must register as provisional taxpayers with their local SARS offices.

2.4 Natural persons

2.4.1 Requirements to submit a return of income (return)

A natural person, whose gross income exceeds the income tax threshold for that person for the 2015 year of assessment, namely –

- R70 700 (for a person below the age of 65 years);
- R110 200 (for a person aged 65 years or older but not yet 75 years); or
- R123 350 (for a person aged 75 years or older),

is required to submit a return.

⁷ Guide on the taxation of foreigners working in South Africa (2010/11) dated January 2012.

However, if the gross income of a natural person consists solely of gross income described in one or more of the following sub-paragraphs, –

- remuneration (other than an allowance or advance for travelling on business or on any accommodation, meals and other incidental costs if that person is obliged to spend at least one night away from his or her usual place of residence) paid from one single source which does not exceed R250 000 and employees' tax has been deducted in terms of the deduction tables prescribed by the Commissioner;
- interest income from a source in South Africa not exceeding –
 - R23 800 in the case of a person below the age of 65 years; or
 - R34 500 in the case of a person aged 65 years or older; and
- dividends and the person was a non-resident during the 2015 year of assessment, he/she will not be required to submit a return.

For a detailed list of persons who are required to submit their returns for the 2015 year of assessment see the notice⁸ that is published yearly in the *Government Gazette* which is available on the SARS website.

2.4.2 Taxation of income from employment

Income from employment can be divided into three broad categories, namely, –

- remuneration such as salary, overtime, commission, bonus. etc. (see definition of “remuneration” in paragraph 1 of the Fourth Schedule to the Act);
- allowances [see paragraph (a) below and section 8(1)]; and
- taxable benefits (see paragraph (b) below and the Seventh Schedule).

(a) Allowances

Allowances are generally paid to employees to meet expenditure incurred on behalf of an employer. Any portion of the allowance not expended for business purposes must be included in the employee's taxable income [see section 8(1)]. The most common types of allowances are travelling, subsistence and uniform allowances.

For more information see the SARS website.

• Travelling allowance

Motor vehicle travelling allowances are taxable but expenses for business travel may be set off against the allowance received.

It is compulsory to keep a logbook to claim a deduction for business travel. A logbook, which a taxpayer can use to record business and private trips, is available on the SARS website or from a SARS branch office.

For more information see the interpretation note⁹ available on the SARS website.

• Subsistence allowance

A subsistence allowance may be paid to employees to enable them to meet expenses incurred on accommodation and meals when away on business from their normal place of residence for at least one night. For each day or part of a day in the period during which an employee is absent from his or her place of residence an amount, as published by

⁸ It is anticipated that the notice will be titled in a Government Gazette: *Income Tax Act (58/1962): Notice to furnish returns for the 2015 year of assessment.*

⁹ Interpretation Note No. 14 (Issue 3) dated 20 March 2013 'Allowances, Advances and Reimbursements'.

Government Notice¹⁰, will be deemed to have been actually expended and will be deducted from the subsistence allowance. The amount is as follows:

- If the accommodation to which the allowance or advance relates is in South Africa, an amount equal to –
 - R103 per day, if that allowance or advance is paid or granted to defray incidental costs only; or
 - R335 per day, if that allowance or advance is paid or granted to defray the cost of meals and incidental costs.
- If the accommodation to which the allowance or advance relates is outside of South Africa, the daily amount deemed to be expended will be an amount applicable to the respective country. The amount that will be allowed can be accessed on the SARS website or from a SARS office.

The full amount of a subsistence allowance that exceeds the business expenses, or the amount calculated at the above rates as the case may be, must be included in the employee's taxable income.

For more information see the interpretation note¹¹ available on the SARS website.

• **Uniform allowance**

The value of a uniform, or the amount of an allowance granted by an employer to an employee *in lieu* of any such uniform, must be included in the employee's gross income. The value of the uniform or the amount of the allowance will be exempt from income tax under section 10(1)(nA) provided that the employee is required to wear a special uniform while on duty as a condition of his/her employment and the uniform is clearly distinguishable from ordinary clothing.

(b) Taxable benefits

A taxable benefit is deemed to have been granted by an employer to his employee in respect of employment with the employer if a benefit, or advantage for such employment, or reward for services rendered or to be rendered by the employee to the employer, accrues to the employee.

Certain taxable benefits are not paid in cash and a value for the benefit needs to be determined. The Seventh Schedule contains specific provisions for the calculation of the value that must be placed upon each taxable benefit that accrues to an employee. The value of certain taxable benefits, such as company-owned residential accommodation, or the use of a company motor vehicle, is calculated by way of prescribed formulas.

Any consideration given by an employee to their employer relevant to a taxable benefit will reduce the amount so determined.

Taxable benefits include, for example, the use of free or cheap accommodation, right of use of a company motor vehicle, the acquisition of an asset at a consideration below cost, free or cheap services, private use of an asset, low-interest loans, housing subsidies and redemption of loans due to third parties.

¹⁰ See *Government Gazette* No. 37333 Notice No. 114 dated 26 February 2014. For amounts applicable as from 1 March 2015 see *Government Gazette* No. 38476 Notice No. 98 dated 25 February 2015.

¹¹ Interpretation Note No. 14 (Issue 3) dated 20 March 2013 'Allowances, Advances and Reimbursements'.

The following provides some insight into some examples of taxable benefits but is not exhaustive. For more information see the SARS website.

- **Residential accommodation**

Residential accommodation includes any accommodation occupied temporarily for purposes of a holiday. A benefit arises when residential accommodation consisting of at least four rooms is provided to an employee by an employer.

Any residential accommodation supplied by an employer as a benefit, advantage or as a reward is valued at the greater of –

- the cost borne by the employer, less any amount paid by the employee; or
- the amount calculated by using the formula laid down in the Seventh Schedule, less any amount paid by the employee (see **Annexure B**).

See paragraph 9 of the Seventh Schedule.

- **Use of a company motor vehicle for private purposes**

The value of a company motor vehicle made available to an employee for private use must be included in the employee's gross income as a taxable benefit. Such value is calculated at –

- 3,5% per month of the “determined value” as defined in paragraph 7(1) of the Seventh Schedule. In circumstances where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25% of the determined value; or
- the actual cost to the employer incurred under the operational lease and the cost of fuel for that vehicle, if the vehicle is acquired by the employer under an “operational lease” as defined in section 23A(1) concluded by the parties transacting at arm's length and that are not connected persons in relation to each other.

If more than one vehicle is made available to an employee at the same time and the Commissioner is satisfied that each vehicle was used by that employee during the year of assessment primarily for business purposes, the value to be placed on private use of the said vehicles will be deemed to be the value of the private use of the vehicle having the highest value of private use.

The “determined value” for purposes of calculating a taxable benefit excludes finance charges or interest paid by the employer.

See paragraph 7 of the Seventh Schedule.

- **Interest-free or low-interest loans**

The difference between the actual amount of interest charged on an interest-free or low interest loan granted by an employer to an employee, and the interest charged at 6.75% (the current official rate as from 1 August 2014), is to be included in the gross income of the employee (see the table¹² available on the SARS website or contact a SARS office). Prior to 1 August 2014 the official rate was 6.5%.

See paragraph 11 of the Seventh Schedule.

¹² Table 3 updated September 2014.

2.4.3 Share options and other rights to acquire marketable securities

Gains made by directors of companies or employees by the exercise, cession or release of rights to acquire marketable securities such as stock, debentures and shares are regarded as income. These gains are subject to the deduction of PAYE.

See section 8A and paragraph 11A of the Fourth Schedule.

2.4.4 Broad-based employee share plans

Any gain arising from the disposal of any qualifying equity share will not be taxed provided the shares are not disposed of within five years from the date of grant of the shares. A qualifying equity share is a share acquired in a year of assessment under a broad-based employee share plan and the market value of all equity shares acquired in that, and the four immediately preceding years of assessment in terms of that share plan, as does not exceed R50 000 in aggregate.

See section 8B and paragraph 11A of the Fourth Schedule.

2.4.5 Equity instruments

Equity instruments are equity shares, member's interests, options to acquire those shares or interests and other financial instruments convertible into those shares or interests. An equity instrument vests on acquisition of an unrestricted instrument or as a general rule on the date when all restrictions which prevent the instrument to be freely disposed of cease to have effect.

Persons are taxed on any gain, or allowed to deduct from income any loss, on the vesting of an equity instrument acquired as a result of employment or holding of an office as a director. The taxable amount is the difference between the market value on the date of vesting and any consideration given for the acquisition. These gains are subject to the deduction of PAYE.

See section 8C and paragraph 11A of the Fourth Schedule.

2.4.6 Relocation costs

Any benefit an employee may have enjoyed by reason of the fact that his or her employer bore certain expenditure incurred in consequence of the employee's relocation from one place of employment to another or on the appointment of the employee or on the termination of the employee's employment is exempted from tax under section 10(1)(nB).

For more information on taxable benefits see the SARS website or contact a SARS office.

2.4.7 Income of spouses

The Act defines a "spouse" in relation to any person as a person who is a partner of such person in a marriage, customary relationship or union recognised as a marriage under the laws of South Africa or any religion. The definition also includes a same-sex or heterosexual relationship which the Commissioner is satisfied is intended to be permanent.

In the case of spouses married in community of property, under South African common law income received accrues to the joint estate and is deemed as having been received in equal shares by each spouse. However –

- a salary from a third party is treated as being the income of the spouse who receives that salary;
- passive income (income from the letting of property and investment income, such as interest and dividends) originating from assets forming part of the joint estate is deemed to have accrued in equal shares to each spouse [see section 7(2A)(b)];

- income earned from carrying on a trade jointly or where spouses are trading in partnership will accrue to each spouse according to the agreed profit-sharing ratio [see section 7(2A)(a)(ii)], while expenses incurred in the production of that income are deductible to the extent to which that income accrued to each spouse [see section 7(2B)];
- income which does not form part of the joint estate of both spouses is taxable in the hands of the spouse who is entitled to the income [section 7(2A)(a)(i)];
- benefits from pension, provident and retirement annuity funds are taxable in the hands of the spouse who is the member of the fund [see section 7(2C)]. In the case of contributions to the pension fund or retirement annuity fund the contributions are deducted in the hands of the spouse who made them as a member of the fund [see sections 11(k) and (n)], while contributions to a provident fund are deducted from the lump sum received from the provident fund;
- income from patents, designs, trademarks and copyrights is deemed to be the income of the spouse who is the holder or owner [see section 7(2C)(c)]; and
- medical scheme fees (see section 6A) and additional medical expenses (see section 6B) will be allowed as a medical scheme fees tax credit and additional medical expenses tax credit respectively (see **2.14** and **2.15**). Both these tax credits will be deducted from the normal tax payable by the spouse who paid the fees/expenses, even if the funds for the fees/expenses may have come from the joint estate.

These provisions must not be seen as favouring spouses married in community of property over spouses married out of community of property. It is rather a case of harmonising the existing rights with regard to property and income of couples married in community of property.

There are also measures to prevent income splitting (other than those mentioned above) that apply to spouses whether they are married in or out of community of property. The income of one spouse may not be treated as being the income of the other spouse. This provision prevents income splitting between spouses in order to obtain an unfair tax advantage.

These deeming provisions also apply to donations, settlements and other dispositions between spouses, where income is derived by one spouse (recipient) as a result of a donation made by the other spouse (donor) with the purpose of avoiding tax; or as a result of a transaction, operation or a scheme entered into or carried out by the donor with the sole or main purpose of reducing, postponing or avoiding the donor's liability for tax.

Should income be derived by a spouse (recipient) from –

- any trade which is connected to the trade of the other spouse (donor);
- a partnership of which the donor is a partner; or
- a company in which the donor is a principal shareholder,

and such income so earned is excessive having regard to the nature of the trade and the recipient's participation, the excessive portion will be taxed in the hands of the donor.

2.4.8 Pay-As-You-Earn (PAYE)

The purpose of PAYE is to ensure that an employee's income tax liability calculated on remuneration is settled at the same time that the remuneration is earned. The advantage of this system is that the liability for the year of assessment is settled over the course of that whole year.

Every employer who pays or becomes liable to pay an amount by way of remuneration, or if that amount constitutes a lump sum, is obliged to deduct employees' tax (PAYE, where applicable) from that amount every month. The employees' tax deducted must be paid over to SARS within seven days after the end of the month during which such deduction was made. The deduction is determined according to tax deduction tables, available on the SARS website.

For more information see the SARS website. Also see the Fourth Schedule.

(a) PAYE liability of employees

Remuneration paid or payable by employers to their employees in excess of the relevant income tax threshold mentioned in **2.4.1** is subject to the deduction of employees' tax.

Employees' tax certificates (IRP 5s) are issued to employees from whom employees' tax has been deducted. These certificates reflect a breakdown of remuneration received, deductions made from the remuneration and the employees' tax (PAYE) deducted.

An employer that has valid reasons not to deduct employees' tax must provide the employee with an IT 3(a) certificate. Information such as taxable benefits and remuneration must be reflected on the IT 3(a).

(b) PAYE liability of directors

The remuneration of directors of private companies (including individuals in close corporations performing similar functions) is subject to the deduction of employees' tax.

The remuneration of directors of private companies is often only finally determined late in a year of assessment or in the following year. Directors in these circumstances finance their living expenditure out of their loan accounts until the remuneration is determined. In order to overcome the problem of no monthly remuneration being payable from which employees' tax is to be withheld, a formula is used to determine the director's deemed monthly remuneration from which the company must deduct employees' tax. For more information on the application of the formula and relief from hardship see the interpretation note¹³ available on the SARS website.

A director is not entitled to receive an employees' tax certificate (IRP 5) for the amount of employees' tax paid by the company on the deemed remuneration if the company has not recovered the employees' tax from the director.

(c) PAYE liability of personal service providers

A personal service provider is any company or trust where any service rendered on behalf of the company or trust to a client of the company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and any one of three specific conditions, as discussed in the interpretation note mentioned below, is met.

Should that company or trust employ three or more full-time employees (excluding shareholders or members or any persons connected to the shareholders 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 or trust will not be regarded as a personal service provider.

¹³ Interpretation Note No. 5 (Issue 2) dated 23 January 2006 'Employees Tax: Directors of Private Companies (which include Persons in Close Corporations who Perform Functions Similar to Directors of Companies)'.

Payments made to a personal service provider are subject to the deduction of employees' tax.

For more information see the interpretation note¹⁴ available on the SARS website.

(d) PAYE liability of labour brokers

A labour broker is any natural person who carries on any business whereby such person, for reward, provides a client of the business with other persons to render a service or perform work for such client, but does not him- or herself provide the service or perform the work required by the client, for which service or work these other persons are remunerated by that person.

Employers are required to deduct employees' tax from all payments made to a labour broker, unless the labour broker is in possession of a valid exemption certificate issued by SARS.

Payments made to persons who render services to or on behalf of a labour broker without an exemption certificate are subject to the deduction of employees' tax.

A labour broker that is a company without an exemption certificate and a personal service provider cannot be a small business corporation.

For more information see the interpretation note¹⁵ available on the SARS website.

(e) PAYE liability of independent contractors

The concept of an independent trader or independent contractor remains one of the more contentious features of the Fourth Schedule.

An amount paid or payable for services rendered or to be rendered by a person in the course of a trade carried on by him or her independently of the person by whom the amount is paid or payable is excluded from remuneration for employees' tax purposes.

An amount paid to a person who is deemed not to carry on a trade independently will constitute "remuneration" as defined in paragraph 1 of the Fourth Schedule and will be subject to the deduction of employees' tax.

For more information see the interpretation note¹⁶ available on the SARS website.

2.4.9 Provisional tax

Provisional tax is not a separate tax but refers to payments made or to be made by a provisional taxpayer to the Commissioner in a manner provided for by the Act. A provisional taxpayer is –

- any person (other than a company) who derives income which does not constitute –
 - "remuneration" as defined in paragraph 1 the Fourth Schedule; or
 - an allowance or advance under section 8(1);
- any company; and

¹⁴ Interpretation Note No. 35 (Issue 3) dated 31 March 2010 'Employees' Tax: Personal Service Providers and Labour Brokers'.

¹⁵ Interpretation Note No. 35 (Issue 3) dated 31 March 2010 'Employees' Tax: Personal Service Providers and Labour Brokers'.

¹⁶ Interpretation Note No. 17 (Issue 3) dated 31 March 2010 'Employees' Tax: Independent Contractors'.

- any person who is notified by the Commissioner that he or she is a provisional taxpayer,

but excludes –

- any public benefit organisation and recreational club approved by the Commissioner;
- any body corporate, share block company or association of persons referred to in section 10(1)(e); and
- a person that is exempt from the payment of provisional tax under paragraph 18 of the Fourth Schedule.

Provisional tax payments are based on a taxpayer's estimated taxable income for a year of assessment. The final income tax liability for that year will be determined upon assessment.

Payments are normally made by way of two payments, the first of which is usually made on or before 31 August each year and the second payment on or before the last day of February the following year. These payments alleviate the burden of one large amount being payable on assessment as it spreads the income tax burden over the year of assessment.

An optional third payment may be made after the end of the year of assessment to prevent the accrual of interest on underpayment of provisional tax when the assessment for that year is issued. A taxpayer, whose year of assessment ends on the last day of February, must make the third provisional tax payment not later than seven months after the last day of such year of assessment. In any other case, where the year of assessment ends on any other day than the last day of February, the third provisional tax payment is to be made within six months after the last day of that year of assessment.

Failure to make such payments may result in interest being levied and a penalty being imposed upon assessment. In the case of an overpayment of provisional tax, interest is payable to the taxpayer upon assessment.

A provisional taxpayer must declare his or her estimated taxable income and provisional tax payable for the year of assessment on an IRP 6 form which must be submitted to SARS upon completion. Payment of provisional tax can be made to SARS *via* the internet bank facilities or over the counter at the banks. For more information visit the *eFiling* website (see **2.1.6**).

A person who qualifies as a provisional taxpayer must, within 21 business days after the date of becoming a provisional taxpayer, apply to SARS for registration as a provisional taxpayer.

The following persons will be exempt from the payment of provisional tax for the 2015 year of assessment:

- Any person (other than a resident) who is an owner or charterer of a ship or aircraft and their taxable income from embarking passengers or loading livestock, mails or goods in South Africa is calculated as 10% of the amount paid to him or to an agent on his behalf in respect of such activities.
- A natural person who will be below the age of 65 years on the last day of the relevant year of assessment who does not derive any income from the carrying on of any business, and whose taxable income for that year –
 - will not exceed the income tax threshold; or
 - is derived from interest, foreign dividends and rental from the letting of fixed property, which will not exceed R20 000.

- A natural person who on the last day of the relevant year of assessment is over the age of 65 years and whose taxable income for that year –
 - will not exceed R120 000;
 - will not be derived wholly or in part from the carrying on of any business; and
 - will not be derived otherwise than from remuneration, interest, foreign dividends or rental from the letting of fixed property.

(This exemption applies only to provisional tax. A natural person will still be liable for income tax if their taxable income for the relevant year of assessment exceeds the income tax threshold of that year.)

For more information see the guide¹⁷ available on the SARS website, call the SARS Contact Centre on 0800 00 7277 or visit a SARS branch.

2.4.10 Allowable deductions

(a) General deduction formula

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

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

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

Deductions of expenditure against income derived by employees and office holders from employment (remuneration) are limited. This limitation does not apply to agents and representatives whose remuneration is normally derived mainly in the form of commission based on their sales or the turnover attributable to them.

More specific expenditure or allowances have specific provisions with which they must comply in order to be deductible for income tax purposes.

For more information see the interpretation note¹⁸ available on the SARS website.

(b) Home office expenses

Subject to certain requirements and limitations, home office expenses (expenses that relate to that part of a house used for the purposes of trade) will be allowed as a deduction in determining taxable income.

For more information see the interpretation note¹⁹ available on the SARS website.

¹⁷ *External Guide: Guide for Provisional Tax 2015.*

¹⁸ Interpretation Note No. 13 (Issue 3) dated 15 March 2011 'Deductions: Limitation of Deductions for Employees and Office Holders'.

¹⁹ Interpretation Note No. 28 (Issue 2) dated 15 March 2011 'Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office'.

(c) Other limited deductions which employees and office holders may claim

• **Pension fund contributions**

Current contributions [see section 11(k)(i)]

Limited to an amount not exceeding the greater of –

- R1 750; or
- 7,5% of remuneration [being the income or part thereof referred to in the definition of “retirement-funding employment” in section 1(1)].

Any excess amount will be allowed as a deduction against a lump sum benefit when the lump sum is received or accrued.

Arrear contributions [see section 11(k)(ii)]

Arrear contributions refer to amounts in respect of past periods taken into account as pensionable service, limited to an amount not exceeding R1 800 a year.

Any excess may be carried forward to the following year of assessment.

• **Retirement annuity fund contributions**

Current contributions [see section 11(n)(aa)]

Limited to an amount not exceeding the greater of –

- 15% of the amount remaining after the deduction from income (excluding income derived from retirement-funding employment, any retirement lump sum benefit, retirement lump sum withdrawal benefit and severance benefit) of the deductions or assessed losses admissible against such income (excluding deductions for contributions to a retirement annuity fund, expenditure incurred as a lessor of land let for farming purposes, soil erosion, donations to certain organisations and certain capital development expenditure referred to in the First Schedule); or
- R3 500 less allowable current pension fund contributions; or
- R1 750.

Any excess may be carried forward to the following year of assessment.

Arrear contributions [see section 11(n)(bb)]

Arrear contributions refer to contributions made by a taxpayer under conditions prescribed in the rules of the fund whereby a member, who has discontinued his or her contributions prematurely, is entitled to be reinstated as a full member thereof and the current contributions to the fund have been paid in full.

Limited to an amount not exceeding R1 800 a year. Any excess may be carried forward to the following year of assessment.

• **Donations to certain organisations**

A deduction for donations made to certain organisations is limited to an amount as does not exceed –

- in the case of a taxpayer that is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0,005$$

in which formula:

A = the amount to be determined;

- B = the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all the participatory interests in the portfolio at the end of each day during that year; or
- in any other case, 10% of taxable income (excluding any retirement fund lump sum benefit, retirement lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction for donations. Any donations made on or after 1 March 2014 in excess of 10% will be carried forward and allowed as a deduction in a subsequent year of assessment (but subject to the 10% rule).

See section 18A.

- **Wear-and-tear**

Wear-and-tear may be claimed on assets not of a permanent nature that are used for purposes of trade. For example, where it is essential for a taxpayer to maintain a library, a wear-and-tear allowance of 33% calculated on a straight line basis is allowable. Wear-and-tear may also be claimed as a deduction on assets such as computers, furniture and fittings, motor vehicles, etc. used for purposes of trade. Assets costing less than R7 000 may be written off in full in the year of assessment in which they are acquired.

For more information see the interpretation note²⁰ available on the SARS website.

- **Premiums paid in respect of an insurance policy for loss of income**

The deduction of insurance policy premiums is limited to insurance policies to the extent that it covers a taxpayer against the loss of income as a result of illness, injury, disability or unemployment and to the extent that the amounts payable in terms of that policy constitute or will constitute “income” as defined in the Act.

- **Amount included in taxable income and refunded (Repayment of employees benefits)**

Should a person be required to refund any amount, including any voluntary award, that was previously included in taxable income in respect of services rendered or to be rendered or by virtue of any employment or the holding of any office, the amount refunded can be claimed as a deduction in the year of assessment in which the amount is repaid [see section 11(nA) and (nB)].

Note:

Home office expenses (see **(b)** above) and deductions mentioned in **(c)** above may also be claimed by taxpayers as deductions against income other than remuneration, such as from business, rent or interest.

2.4.11 Prohibited deductions

Prohibited deductions are listed in section 23 and include the following:

(a) Domestic or private expenses

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

- The cost incurred in the maintenance of the taxpayer, his or her family or his or her establishment.
- Domestic or private expenses, including the rent of, repairs of, or expenses in connection with any premises not occupied for purposes of trade or of any dwelling

²⁰ Interpretation Note No. 47 (Issue 3) dated 2 November 2012 ‘Wear-and-Tear or Depreciation Allowance’.

or house used for domestic purposes, except in respect of those parts as may be occupied for the purpose of trade.

(b) Bribes, fines or penalties

A payment for 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 where the activity would be unlawful had it been carried out in South Africa.

For more information see the interpretation note²¹ available on the SARS website.

(c) Other prohibited deductions

Other prohibited deductions include –

- income carried to a reserve fund or capitalised in any way;
- moneys not expended for purposes of trade; and
- taxes, duties, levies, interest or penalties payable under Acts administered by the Commissioner and certain other Acts.

2.4.12 Pensions

(a) Pensions exempt from income tax

The following pensions are exempt from income tax in South Africa:

- War veteran's pensions [see section 10(1)(g)].
- Compensation in respect of diseases contracted by persons employed in mining operations [see section 10(1)(g)].
- Disability pensions paid under section 2 of the Social Assistance Act 59 of 1992 [see section 10(1)(gA)].
- Compensation paid in terms of the Workmen's Compensation Act 30 of 1941 or the Compensation for Occupational Injuries and Diseases Act 130 of 1993 [see section 10(1)(gB)(i)].
- Pension paid on death or disablement caused by any occupational injury or disease sustained or contracted by an employee before 1 March 1994 in the course of employment, where that employee would have qualified for compensation under the Compensation for Occupational Injuries and Diseases Act 30 of 1993, had that injury or disease been sustained or contracted on or after 1 March 1994 [see section 10(1)(gB)(ii)].
- Compensation paid by an employer in addition to the compensation mentioned in the fourth bullet above on the death of an employee, which arose out of and in the course of employment, to the extent that the additional compensation may not exceed R300 000 [see section 10(1)(gB)(iii)].
- Any amount received by or accrued to any resident under the social security system of any other country [see section 10(1)(gC)(i)].

²¹ Interpretation Note No 54 dated 26 February 2010 'Deductions – Corrupt Activities, Fines and Penalties'.

- Any pension received by or accrued to any resident from a source outside South Africa as consideration for past employment outside South Africa [see section 10(1)(gC)(ii)].

(b) Pensions that are taxable

The following pensions are taxable in South Africa:

- A pension or annuity received by a resident from a pension, provident, or retirement annuity fund, unless one of the exemptions above applies.
- A pension or annuity received from the South African government.
- Any pension or annuity payable to any person (whether a resident of South Africa or not) for services rendered inside and outside of South Africa is taxable in the ratio of years service rendered inside South Africa to the total years service rendered. The taxability of the pension may be affected by a tax treaty. Treaties generally make provision for a pension to be taxed in the country where the pensioner resides, except in the case of government pensions which are taxable in the country paying such pension. However, the country that has the right to tax the pension may, in its domestic tax legislation, choose to exempt the pension from income tax, for example, section 10(1)(gC).

2.4.13 Annuities

Annuities which are normally received from retirement annuity funds, insurance companies, trusts and estates are taxable. The capital content of a purchased annuity is exempt from income tax under section 10A. The insurance company will issue a certificate reflecting the capital content. Annuities are subject to the deduction of PAYE where the source is from South Africa.

Annuities received by residents from abroad (that is, from a source outside South Africa) are also taxable in South Africa. (The taxability of the annuity may be affected by a tax treaty.)

2.4.14 Withholding of amounts from payments to non-resident sellers of immovable property

A withholding amount is due upon 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 –

- 5% of the amount payable, if the seller is an individual;
- 7,5% of the amount payable, if the seller is a company; or
- 10% of the amount payable, if the seller is a trust.

The seller may apply for a directive 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 income tax liability for the year of assessment, during which the property is disposed of.

No withholding amount is deductible –

- 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 been entered into, in which case the withholding amount is to be withheld from the first following payments made by the purchaser for that disposal.

For more information see the document²² available on the SARS website.

2.4.15 Rental income

Rental income is taxable. A description of the asset or physical address of the property must be furnished upon request. Expenses such as bond interest, rates and taxes, insurance and repairs may be claimed as deductions, subject to certain conditions.

2.4.16 Investment income

(a) Dividends

Dividends received by or accrued to a person, whether he or she is a resident or a non-resident, from South African resident companies are generally exempt from income tax under section 10(1)(k)(i). Foreign dividends received by or accrued to a resident are generally exempt from income tax under section 10B(2).

A resident may claim a credit for foreign tax paid by him or her on the foreign dividends against their South African income tax liability or dividend tax liability, whichever is applicable.

(b) Interest

The Act makes specific provision for the exemption of interest received by or accrued to any person that is a non-resident from a source within South Africa [see section 10(1)(h)]. The full amount of the interest is exempt from income tax. This exemption is not applicable in the following circumstances:

- In the case of a natural person –
 - if that person was physically present in South Africa for a period exceeding 183 days in aggregate during a year of assessment; or
 - if that person at any time during the year of assessment carried on a business through a permanent establishment in South Africa.
- In the case of a person, other than a natural person, such as a company –
 - if that person at any time during the year of assessment carried on a business through a permanent establishment in South Africa.

All interest received by or accrued to a resident is subject to income tax. For the 2015 year of assessment interest from a source in South Africa up to R23 800, (if the resident is a natural person who is below the age of 65 years) or up to R34 500, (if the resident is a natural person who is 65 years of age or older) is exempt from income tax [see section 10(1)(i)]. This exemption is not applicable to foreign interest.

2.4.17 Restraint of trade

A restraint of trade payment made to any individual, labour broker without an exemption certificate, personal service provider, personal service company or personal service trust is regarded as gross income and is subject to income tax in the hands of the recipient. *Bona fide* restraint of trade payments made to other companies or trusts are of a capital nature.

2.4.18 Business income

Business income received by or accrued to a non-resident from carrying on a trade or business within South Africa is taxable in South Africa. The taxability of the income may be affected by a tax treaty.

²² *Withholding amounts from Payments to Non-Resident Sellers of Immovable Property in South Africa IT-PP-020G01* effective date 1 October 2012.

Income derived from any business or trading activity carried on by a resident outside South Africa will be subject to income tax in South Africa. However, this may have the effect that income derived by the resident may be subject to income tax in South Africa and in the country where the trading activities are carried on (the source country). This situation will normally be resolved through the application of a tax treaty concluded between the two countries. Normally, profits will be taxed in the country of residence unless the business is carried on in the other country through a permanent establishment. The term “permanent establishment” will be defined in the tax treaty and generally means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2.5 Companies and businesses

2.5.1 Tax consequences of doing business in a company

The holder of shares in a company and the company are separate taxable entities. In addition, ownership of the company (ownership of the shares), and management of the day-to-day activities of the company are usually separate.

Companies (other than gold-mining companies, small business corporations or micro businesses) pay tax on their taxable incomes at a flat rate of 28%.

A company which is not a “resident” as defined in the Act, carrying on a trade within South Africa, pays tax at a rate of 28% on income derived from a source within South Africa.

2.5.2 Provisional tax

A company is a provisional taxpayer (see 2.4.9).

2.5.3 Controlled foreign companies (CFCs)

A CFC is any foreign company of which more than 50% of the total participation rights in that foreign company are held, or more than 50% of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents of South Africa, other than headquarter companies.

Residents are liable for income tax on their proportional share of the net income of a CFC under section 9D except where a resident (together with any connected person in relation to that resident), holds less than 10% of the participation rights in aggregate and may not exercise at least 10% of the voting rights in that CFC.

The ratio of the net income to be determined for any one resident is the proportion that the resident's participation rights bears to all the participation rights in the CFC.

The net income calculation is performed in a CFC's currency of financial reporting and the end result must be translated to rand by applying the average exchange rate for the year of assessment during which the net income is included in the resident's income.

2.5.4 Small business corporations (SBCs)

The SBC tax legislation provides for two major concessions to entities (private companies, close corporations and co-operatives) which comply with all of the following requirements –

- the holders of shares in the company or members of the close corporation or co-operative must at all times during the year of assessment be natural persons;
- no holder 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 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); and
- the entity may not be a “personal service provider” as defined in the Fourth Schedule.

The first concession is that the entity will be taxed on the basis of a progressive rate [see **2.13.3** paragraph **(b)**].

The second concession is the immediate write-off of all plant or machinery brought into use for the first time by the entity for purpose of its trade (other than mining or farming) and used by the entity directly in a process of manufacture or similar process in the year of assessment [see **2.6** paragraph **(k)**]. Furthermore, the entity can elect to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either –

- the wear-and-tear allowance under section 12E(1A)(a) read with section 11(e) [see **2.6** paragraph **(k)** read with paragraph **(i)**]; or
- at an accelerated write-off allowance under section 12E(1A)(b) [see **2.6** paragraph **(k)**].

An entity which is engaged in the provision of personal services will still qualify for the relief provided it employs three or more full-time employees as specified throughout the year of assessment and the service must not be performed by a person who holds an interest in that entity.

For more information see the interpretation note²³ available on the SARS website.

2.5.5 Micro businesses

This is a simplified tax system for micro businesses (see **2.13.3** paragraph **(c)** for the progressive tax rate) and serves as an alternative to the current income tax, provisional tax, capital gains tax and dividends tax. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.

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 that 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 an amount of R1 million.

For more information see the SARS website.

2.5.6 Insurance companies

(a) Short-term insurance business

The ordinary rules for the determination of taxable income also apply to a short-term insurer. Short-term insurers are allowed to deduct expenditure incurred in respect of their business of insurance, premiums on reinsurance and the actual amount of a liability incurred for any claims, less any claims recovered. In addition, allowances for unexpired risks, claims intimated but not paid and claims not intimated nor paid, are allowed subject to the discretion

²³ Interpretation Note No. 9 (Issue 5) dated 14 October 2009 ‘Small Business Corporations’.

of the Commissioner. Such allowances claimed as a deduction in a year of assessment must be included as income in the succeeding year of assessment.

See section 28.

(b) Long-term insurance business

The taxation of long-term insurance companies is based on the trustee principle and the recognition that insurers hold and administer certain of their assets on behalf of various categories of policyholders, while the balance of the assets represents the shareholders' interests.

These companies are liable for income tax according to a four-fund approach – (see section 29). The application of this approach requires that long-term insurers allocate their assets to the four separate policyholder funds. Each fund is taxed separately [see **2.13.3** paragraph (g)] as if it is a separate taxpayer in accordance with the applicable taxation principles.

2.5.7 Mining

Mining entities are allowed to deduct capital expenditure incurred from taxable income derived from mining operations, subject to certain limitations as discussed in the paragraph below. Capital expenditure, for example, includes expenditure on shaft sinking and mining equipment. It also includes expenditure on development and general administration before the commencement of production or during a period of non-production.

The deduction of capital expenditure incurred on a particular mine is restricted to the taxable income derived from that mine only. Any excess (unredeemed) capital expenditure will be carried forward and deemed to be capital expenditure incurred during the next year of assessment of the mine to which the capital expenditure relates. Furthermore, the capital expenditure of a mine cannot be set-off against non-mining income such as interest, rental, other trading activities, etc. However, where a new mine commenced mining operations after 14 March 1990, its excess (unredeemed) capital expenditure may also be deducted from the total taxable income derived from mining of other mines operated by the taxpayer, as does not exceed 25% of such total taxable income derived from its other mines.

The taxable income of a company derived from mining for gold is taxed in accordance with a special formula [see **2.13.3** paragraph (d)]. A company which derives taxable income from other mining operations is taxed at the same rate (28%) as is applicable to other companies.

Taxpayers conducting mining operations are required to rehabilitate areas where mining has taken place. These taxpayers are, therefore, required to make provision for rehabilitation expenses during the life of the mine. Amounts paid in cash to rehabilitation funds are allowed as a deduction for income tax purposes.

Expenditure incurred by a taxpayer to effect obligatory improvements under section 12N on capital expenditure items contemplated in section 36(11)(d)(i), (ii), (iii), (iv) and (v) shall be deemed to be expenditure for the purpose of section 36.

Section 12N deems a taxpayer to be the owner of improvements effected on land or to any building if the taxpayer –

- (i) holds a right of use or occupation of the land or building;
- (ii) incurs an obligation to effect improvements on the land under a public private partnership or a long-term lease on land belonging to the government of South Africa or an exempt entity listed under section 10(1)(cA) or (t);
- (iii) incurs expenditure to effect the improvements in (ii) above;

- (iv) completes the improvement in (ii) above; and
- (v) uses or occupies the land or building for the production of income or derives income from the land or building.

Oil and gas companies

Special rules apply to oil and gas companies regarding their income tax rates, exploration or production or capital expenditures, losses etc. For more information see the Tenth Schedule.

See **17** regarding mineral and petroleum resources royalties.

2.6 Special allowances

The cost to a taxpayer of an asset referred to in paragraphs (a), (b), (c), (f), (g), (h), (n), (s), and (w) below, on which an allowance may be claimed, can include expenditure to effect obligatory improvements on property owned by public private partnerships, the three spheres of government (national, provincial or local sphere) or certain exempt entities (see section 12N).

(a) Industrial buildings (buildings used in the process of manufacture)

An allowance equal to 2% (50-year straight-line basis) will be granted on the cost to a taxpayer of buildings, or of improvements to existing buildings used in a process of manufacture (other than mining or farming) (see section 13).

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

The allowance was further increased to 10% if the erection of the buildings commenced during the period 1 July 1996 to 30 September 1999 or improvements to a building commenced during that period and such building or improvements were brought into use on or before 31 March 2000.

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

- the actual cost of the building (or improvements) to the taxpayer; 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.

The 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).

For more information see the guide²⁴ available on the SARS website.

(b) Commercial buildings

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost to a taxpayer of new and unused buildings or improvements to buildings (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 (see section 13quin).

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

- the actual cost to the taxpayer; or

²⁴ *Guide to Building Allowances* dated 13 November 2014.

- the arm's length cash price of the building or improvement at the time of acquisition.

To the extent 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.

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

For more information see the guide²⁵ available on the SARS website.

(c) Buildings used by hotel keepers

• Buildings and improvements

An allowance equal to 2% (50-year straight-line basis) will be granted on the cost to a taxpayer of the erection of buildings and improvements (see section 13*bis*).

The allowance increases 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) will be granted on the cost to a taxpayer of the erection of such improvements (see section 13*bis*).

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

- the actual cost of the building (or improvements) to the taxpayer; 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.

The 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*bis*(6)(a) provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(a).

For more information see the guide²⁶ available on the SARS website.

(d) Aircraft or ships

An allowance equal to 20% (five-year straight-line basis) will be granted on the cost to a taxpayer to acquire an aircraft or ship (the asset) (see section 12C).

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an "instalment credit agreement" as defined in 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). In the case of a replacement asset (asset acquired to replace

²⁵ Guide to Building Allowances dated 13 November 2014.

²⁶ Guide to Building Allowances dated 13 November 2014.

a damaged or destroyed asset) the recoupment will not be included in the taxpayer's income but the cost of the replacement asset must be reduced by the amount that has been recovered or recouped in respect of the damaged or destroyed asset [see section 8(4)(e)].

Section 8(4)(e) was amended with effect from 22 December 2003 and at the same time sub-sections 8(4)(eA), (eB), (eC), (eD) and (eE) (the new recoupment provisions) were introduced. This amendment, read with the new recoupment provisions, will only apply if the taxpayer opts for paragraph 65 or 66 of the Eighth Schedule to apply to the disposal of the damaged or destroyed asset. It follows that 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, which has the effect that the cost of the replacement asset is not reduced. Rather:

- If a taxpayer acquires more than one replacement asset that taxpayer must, in applying paragraphs (eB), (eC) and (eD), apportion the recoupment to each replacement asset in the same ratio as the receipts and accruals from the disposal respectively expended to acquire the replacement asset bear to the total receipts and accruals expended in acquiring all those replacement assets [see section 8(4)(eA)].
- 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 [see section 8(4)(eB)].
- 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 [see section 8(4)(eC)].
- In the year of assessment in which the taxpayer ceases to use 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 [see section 8(4)(eD)].
- 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 paragraph 65 or 66 of the Eighth Schedule, section 8(4)(e) will not apply and the recoupment will be deemed to be recouped under section 8(4)(a) on the date on which the relevant period ends [see section 8(4)(eE)].

Expenditure incurred by a taxpayer during any year in moving an asset, for which an allowance was deducted or is deductible, from one location to another, 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 will be allowed in equal instalments in each year of assessment in which the allowance is deductible; or
- in any other case, the expenditure will be allowed in that year of assessment.

(e) Rolling stock (that is, trains and carriages)

An allowance equal to 20% (five-year straight-line basis) will be granted on the cost incurred by a taxpayer on rolling stock brought into use on or after 1 January 2008 (see section 12DA).

The depreciable cost of the rolling 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 by the taxpayer or acquired by the taxpayer as purchaser in terms of an “instalment credit agreement” as defined in 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 in exactly the same manner as mentioned in **(d)** above.

(f) Certain pipelines, transmission lines and railway lines

- **Pipelines used for transportation of natural oil**

An allowance equal to 10% (10-year straight-line basis) will be granted on the cost incurred by a taxpayer to acquire any new or unused pipelines (see section 12D).

The pipeline must be owned by the taxpayer and brought into use for the first time by the taxpayer and used directly by the taxpayer 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) will be granted on the cost incurred by a taxpayer to acquire any new or unused pipelines (see section 12D).

The pipeline must be owned by the taxpayer and brought into use for the first time by the taxpayer and used directly by the taxpayer 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) will be granted on the cost incurred by a taxpayer to acquire any new or unused lines or cables (see section 12D).

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

- **Lines or cables used for transmission of electronic communications**

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost incurred by a taxpayer to acquire new or unused lines or cables (see section 12D).

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

- **Railway lines used for transportation of persons, goods or things**

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost incurred by a taxpayer to acquire new or unused railway lines (see section 12D).

The railway line must be owned by the taxpayer and brought into use for the first time by the taxpayer and used directly by the taxpayer 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 in exactly the same manner as mentioned in **(d)** above.

(g) Airport assets

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost incurred by a taxpayer to acquire airport assets (see section 12F).

Airport assets are 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 in exactly the same manner as mentioned in **(d)** above.

(h) Port assets

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost incurred by a taxpayer of new and unused port assets (including the construction, erection or installation thereof) (see section 12F).

Port assets are 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 aforementioned and any improvements thereto).

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 in exactly the same manner as mentioned in **(d)** above.

(i) Machinery, plant, implements, utensils and articles (the asset) (other than rolling stock or an asset for farming, manufacturing, agricultural co-operatives or an SBC)

An allowance equal to the amount which the Commissioner may think just and reasonable by which the value of the asset has diminished through wear-and-tear or depreciation will be granted [see section 11(e)].

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 in terms of an "instalment credit agreement" as defined in the VAT Act.

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

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

For more information see the interpretation note²⁷ available on the SARS website.

(j) Machinery or plant or improvements thereto used by manufacturers or machinery, implements, utensils or articles [other than those referred to in paragraph (i) above – section 11(e)] or improvements thereto used by hotelkeepers and machinery or plant used by any agricultural co-operative for storing or packing farming products (the asset)

An allowance equal to 20% (5-year straight-line basis) will be granted on the cost to a taxpayer to acquire the asset or improvements effected thereto (see section 12C).

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 a 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.

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.

Expenditure incurred by a taxpayer during any year in moving an asset for which an allowance was deducted or is deductible, from one location to another, 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 will be allowed in equal instalments in each year of assessment in which the allowance is deductible; or
- in any other case, the expenditure will be allowed in that year of assessment.

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an "instalment credit agreement" as defined in the VAT Act.

Any recoupment of the allowance granted will be accounted for in exactly the same manner as mentioned in **(d)** above.

(k) Plant or machinery of SBCs

- *Plant and machinery (used in a process of manufacturing or similar process)*

A deduction, equal to 100% of the cost of any plant or machinery, brought into use in a year of assessment for the first time and used in a process of manufacture or similar process, will be granted [see section 12E(1)].

²⁷ Interpretation Note No. 47 (Issue 3) dated 2 November 2012 'Wear-and-Tear or Depreciation Allowance'.

- *Machinery, plant, implement, utensil, article, aircraft or ship (other than plant or machinery used in a process of manufacturing or similar process)*

An allowance equal to –

- an amount as calculated in paragraph **(i)** above [see section 12E(1A)(a) read with section 11(e)]; or
- an accelerated allowance for the assets, acquired by an SBC on or after 1 April 2005 [see section 12E(1A)(b)], at –
 - 50% of the cost of the asset in the year of assessment during which it is first brought into use;
 - 30% in the second year of assessment; and
 - 20% in the third year of assessment,

will be granted.

An SBC can elect to either claim a wear-and-tear allowance under section 11(e) (see **2.5.4**) or the accelerated allowance (50:30:20 deductions) under section 12E(1A)(b).

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an “instalment credit agreement” as defined in the VAT Act.

The depreciable cost of plant or machinery (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 in exactly the same manner as mentioned in **(d)** above.

(l) Machinery, plant, implements, utensils or articles or improvements thereto (the asset) used in farming or production of renewable energy

An allowance will be granted for assets owned by a taxpayer or acquired by the taxpayer as purchaser in terms of an “instalment credit agreement” as defined in the VAT Act, and brought into use for the first time by the taxpayer –

- in the carrying on of farming operations;
- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for the purpose of his trade to generate electricity from –
 - wind power;
 - solar energy;
 - hydropower to produce electricity of not more than 30 megawatts; and
 - biomass comprising organic wastes, landfill gas or plants material.

An allowance 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,

will be granted (see section 12B).

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 in exactly the same manner as mentioned in **(d)** above.

(m) Invention, patent, design, trade mark, copyright and knowledge

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

An allowance for expenditure exceeding R5 000 (other than expenditure which has qualified in whole or part for deduction or allowance), in –

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

will be granted.

In the case of expenditure incurred before 29 October 1999, an allowance will be granted equal to the amount which is the greater of –

- the expenditure divided by the number of years which in the opinion of the Commissioner represents the probable duration of use; or
- 4% of the said amount.

In the case of expenditure incurred on or after 29 October 1999, an allowance will be granted 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
- 10% of the expenditure of any design or other property of a similar nature or any knowledge essential to the use thereof.

No allowance will be granted for expenditure incurred on or after 29 October 1999 for the acquisition of a trade mark or knowledge essential to the use of such trade mark.

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

Expenditure (other than expenditure which has qualified in whole or in part for deduction or allowance under any other provision of section 11) [see section 11(gB)]

Expenditure incurred in –

- 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,

will be allowed as a deduction.

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

An allowance will be granted for expenditure incurred to acquire (otherwise than by way of 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 will be granted 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.

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

- 5% of the expenditure in respect of 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(gA), (gB) or (gC) will be included in the taxpayer's income under section 8(4)(a).

(n) Scientific or technological research and development (R&D)

R&D expenditure incurred before 1 October 2012

A deduction will be allowed in the year of assessment in which the expenditure is incurred at a rate of 150% of expenditure incurred on activities undertaken in South Africa directly for purposes of –

- the discovery of novel, practical and non-obvious information; or
- the devising, developing or creation of any invention, design, computer program or knowledge essential to the use of that invention, design or computer program,

that is of a scientific or technological nature intended to be used in the production of income (see section 11D).

A deduction will be allowed for any new and unused building, part thereof, machinery, plant, implement, utensils or article (assets), or improvements thereto, brought into use for the first time by the taxpayer for R&D purposes, at the rate of –

- 50% of the cost of the asset in the first year of assessment it is brought into use;
- 30% in the second year of assessment; and

- 20% in the third year of assessment.

The cost of the building will be reduced where the building is also used for purposes other than R&D.

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 recoupment of the allowance is, at the option of the taxpayer, either –

- 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).

For more information see the guide²⁸ and the interpretation note²⁹ available on the SARS website.

R&D expenditure incurred on or after 1 October 2012

A deduction will be allowed in the year of assessment that expenditure is incurred, equal to the expenditure (whether income or capital in nature) directly and solely incurred on R&D undertaken in South Africa, if that expenditure is incurred in the production of income and in the carrying on of any trade [see section 11D(2)].

In addition to the deduction allowed above, a taxpayer that is a company may deduct an amount equal to 50% of the R&D expenditure if –

- the R&D is approved by the Minister of Science and Technology;
- the expenditure is incurred for R&D carried on by the taxpayer; and
- the expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that R&D.

See section 11D(3).

If one party undertakes R&D activities on behalf of another (the funder), only one party (the one responsible for determining the research methodology) will be eligible to qualify for the 50% deduction [see section 11D(4) and (5)].

A deduction, equal to 5% 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 R&D in the course of that taxpayer's trade, will be allowed (see section 13).

For more information see the guide³⁰ available on the SARS website.

The 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).

²⁸ *Guide to Building Allowances* dated 13 November 2014.

²⁹ Interpretation Note No. 50 dated 28 August 2009 'Deduction for Scientific or Technological Research and Development'.

³⁰ *Guide to Building Allowances* dated 13 November 2014.

A deduction, equal to a four year write-off at a rate of 40:20:20:20 will be allowed for any new and unused machinery, plant, implement, utensil or article or improvements thereto brought into use for purposes of R&D (see section 12C).

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 in exactly the same manner as mentioned in **(d)** above.

R&D expenditure incurred on or after 1 January 2014 but before 1 October 2022

A deduction, equal to 150% of the expenditure incurred directly and solely on R&D 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.

If one party undertakes R&D activities on behalf of another (the funder), only one party (the one responsible for determining the research methodology) will qualify for the 150% deduction.

The Minister of Science and Technology may withdraw an approval granted for research and development with effect from a specific date. Under section 11D(19) an additional assessment may be raised for any year of assessment in which a deduction for research and development was allowed, if approval for such a deduction is subsequently withdrawn.

A deduction, equal to 5% 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 R&D in the course of that taxpayer's trade, will be allowed (see section 13).

For more information see the guide³¹ available on the SARS website.

A deduction, equal to a four year write-off at a rate of 40:20:20:20 will be allowed for any new and unused machinery, plant, implement, utensils or article (assets) or improvements thereto brought into use for purposes of R&D (see section 12C).

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 in exactly the same manner as mentioned in **(d)** above.

(o) Urban development zones (UDZs)

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

³¹ *Guide to Building Allowances* dated 13 November 2014.

For more information see the guides³² available on the SARS website.

(p) Additional deduction for learnership agreements

With effect from 1 January 2013 the definition of “registered learnership agreement” in section 12H(1) has been amended to read as follows, namely:

“means a learnership agreement that is –

- registered in accordance with the Skill Development Act, 1998; and
- entered into between a learner and an employer before 1 October 2016.”

The deduction is allowed 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. | R30 000 |
| 2) If that agreement is for less than 12 full months during the year of assessment. | R30 000 is reduced in 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 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. | R30 000 in addition to any allowable deduction. |
| 4) 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. | R30 000 multiplied by the number of consecutive 12-month periods within the duration of that agreement in addition to any allowable deduction. |
| 5) If the learner mentioned above is a person with a disability at the time of entering into the learnership agreement. | R30 000 is increased to R50 000 |

For more information see the guide³³ and interpretation note³⁴ available on the SARS website.

³² *Guide to the Urban Development Zone Tax Incentive* (Issue 4) dated September 2014 and *Guide to Building Allowances* dated 13 November 2014.

³³ *Guide on the Tax Incentive for Learnership Agreements* dated October 2009.

³⁴ Interpretation Note No. 20 (Issue 5) dated 30 January 2015 ‘Additional deduction for Learnership Agreements’.

(q) Film owners

Special deductions are allowed in the determination of taxable income derived by a film owner. These special deductions (accelerated write-off) were contained in section 24F which was repealed by section 67 of the Tax Administration Laws Amendment Act of 2013.

As from 1 January 2012 no deduction will be allowed on any expenditure incurred in respect of –

- any film, the principal photography of which commenced on or after 1 January 2012; or
- any film after 31 December 2012.

For more information see the guide³⁵ available on the SARS website.

As from 1 January 2012 income derived from the exploitation rights of qualifying films is, subject to the requirements as set out in section 12O being met, exempt from income tax. However, taxpayers will be entitled to claim a limited net loss for expenditure incurred after a two-year period. Taxpayers claiming this net loss will lose the benefit of the exemption going forward.

For more information see the guide³⁶ available on the SARS website.

(r) Environmental expenditure

• Environmental treatment and recycling asset

This includes any air, water and solid waste treatment and recycling plant or pollution control and monitoring equipment (and improvements to the plant or equipment).

An allowance will be granted, equal to –

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

See section 37B.

• Environmental waste disposal asset

This includes any air, water and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto.

An allowance equal to 5% (20-year straight-line basis) will be granted on the cost to a taxpayer to acquire the asset.

See section 37B.

The depreciable cost of the abovementioned 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 these allowances will be included in the taxpayer's income under section 8(4)(a).

³⁵ *Guide on the Taxation of Film Owners* dated February 2008.

³⁶ *Draft Guide to the Exemption from Normal Tax of Income from Films.*

- **Post-trade environmental expenses**

A deduction equal to 100% of the expenditure or loss incurred in respect of certain decommissioning, remediation or restoration will be allowed.

See section 37A.

(s) Certain residential units

An allowance, equal to 5% 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 by the taxpayer, 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 by the taxpayer for the purposes of a trade carried on by the taxpayer.

An additional allowance of 5% of the cost of a low-cost residential unit of a taxpayer will be granted if the allowance of 5% referred to above is deducted.

The percentages below will be deemed to be the costs incurred by the taxpayer on a residential unit where the taxpayer acquires a residential unit (or improvement 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; and
- 30% of the acquisition price, in the case of the improvement being acquired.

These allowances are not applicable to any 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 residential unit 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).

For more information see the guide³⁷ available on the SARS website. Also see section 13sex.

(t) Residential buildings

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. Both terms "residential unit" and "housing project" are defined in section 13ter(1). The deductions are as follows:

- (i) 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.

³⁷ *Guide to Building Allowances* dated 13 November 2014.

- (ii) A residential building *annual allowance* equal to 2% of the cost to the taxpayer of the unit in the year of assessment in which the residential building initial allowance is deducted and each succeeding years 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 13ter(7). Should the unit be disposed of, section 8(4)(a) will apply to the balances of these two allowances not yet recouped.

For more information see the guide³⁸ available on the SARS website.

(u) Sale of low-cost residential units on loan account

Should a taxpayer dispose of a low-cost residential unit to an employee on or after 21 October 2008, a deduction, 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, will be allowed, provided 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 [see section 13sept(4)]. The amount deemed recouped by the employer will equal the lesser of –

- the amount so paid; or
- the amount allowed as a deduction in the current or previous years of assessment.

For more information see the guide³⁹ available on the SARS website. Also see section 13sept.

Mining employers engaging in the same form of disposal fall under the special capital expenditure regime for mining. Mining has been kept separate because this deduction needs to be part of the capital expenditure rules associated with mining (see section 36).

(v) Environmental conservation and maintenance expenditure

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

- (i) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years entered into by the taxpayer in terms of the National Environmental Management: Biodiversity Act 10 of 2004; and

³⁸ Guide to Building Allowances dated 13 November 2014.

³⁹ Guide to Building Allowances dated 13 November 2014.

- (ii) 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 contemplated in (i) above.

The above expenditure will be limited to the income of the taxpayer derived from the trade carried on by the taxpayer on the land used as contemplated in (ii) above. The excess amount will be carried forward and deemed to be a deduction in the next year of assessment.

Expenditure incurred by a taxpayer 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 in terms of a declaration that has a duration of at least 30 years in terms of 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.

See section 37C.

(w) Additional investment and training allowances for industrial policy projects

Additional investment allowance

A company may deduct an amount equal to –

- (a)(i) 55% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
- (ii) 100% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within an industrial development zone; or
- (b)(i) 35% 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% 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 an industrial development zone,

in the year of assessment during which the asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that 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 deduction referred to in (a)(ii) and (b)(ii) above is only applicable to projects approved on or after 1 January 2012.

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

All three terms, “industrial policy project”, “brownfield project” and “greenfield project” are defined in section 12I.

Additional training allowance

A company may also 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.

The cost of the training must be incurred within six years from the date of approval of the project and the additional training allowance may not exceed R36 000 per employee.

This training allowance may not exceed –

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

See section 12I

(x) Expenditure incurred to obtain a licence

Expenditure (not in respect of infrastructure) incurred to acquire a licence from certain government authorities to carry on a trade that constitutes the provision of telecommunication services, 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, or 30 years, whichever is the lesser.

See section 11(gD).

(y) Deduction for expenditure incurred in exchange for issue of venture capital company shares

The deduction under section 12J aims to encourage investors to invest in venture capital companies (VCCs), which in turn, invest in qualifying investee companies (that is, small and medium-sized businesses and junior mining companies).

The deduction for expenditure incurred to acquire shares issued by an approved VCC will be allowable to individuals and listed companies, including section 41 group company members.

Deductions allowable to investors for expenditure incurred were originally as follows:

- Individuals (natural persons)
 - Annual deduction limited to R750 000
 - Cumulative lifetime deduction limited to (adjusted for recoupments) R2,25 million
- Listed companies (and their group subsidiaries)
 - A listed company is entitled to a 100% deduction of amounts invested in a VCC to the extent that its investments, including the investments of its group companies, do not exceed 40% of the equity shares of the VCC

Unlisted entities (unlisted companies and trusts) were not entitled to this deduction when investing in VCC shares.

As from years of assessment commencing on 1 January 2012 the said deduction for expenditure is available to any taxpayer and the limitation of the amount to be deducted has also been removed.

A claim for a deduction must be supported by a certificate issued by the approved VCC.

For more information see the guide⁴⁰ available on the SARS website.

(z) Deduction of medical lump sum payments

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

- (i) 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
- (ii) under a policy of insurance taken out with an insurer solely for one or more former employees or dependants mentioned in (i) above,

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

See section 12M.

2.7 Owners or charterers of ships or aircraft who are not residents of South Africa

An owner or charterer of a ship or aircraft who is a non-resident and who embarks passengers, or loads livestock, mails or goods in South Africa will be deemed to have derived taxable income equal to 10% of the amount payable to him, or to an agent on his behalf, no matter whether the amount is payable in or outside of South Africa (see section 33). Such owner or charterer will be assessed accordingly. However, this will not apply if the owner or charterer renders accounts that satisfactorily disclose the actual taxable income derived from the business.

The owner or charterer who is a non-resident is exempt from taxation in South Africa, if a similar exemption or equivalent relief is granted by the foreign country of which that owner or charterer is a resident, to any resident of South Africa in respect of any tax imposed in that foreign country on income which may be derived by a resident of South Africa from carrying on in that foreign country any business as any ship or aircraft owner or charterer. Furthermore, provisions dealing with these aspects are generally contained in tax treaties for the avoidance of double taxation (see **2.2.4**).

2.8 Farming

Farming operations include 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 in that person's income tax return. 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 in the Act. Produce, on the other hand, must be accounted for at cost of production or market value, whichever is the lower.

Game is also regarded as livestock, but is excluded from opening and closing stock due to practical difficulties that can be encountered in establishing the actual numbers of game on hand at any given time. For more information see the interpretation note⁴¹ available on the SARS website.

⁴⁰ *Venture Capital Companies - External Guide.*

⁴¹ Interpretation Note No. 69 dated 12 February 2013 'Game Farming'.

Game farmers must prove that the game is purchased, bred and sold on a regular basis with a genuine intention to carry on farming operations profitably in order to qualify as game farmers. Income relating to accommodation and catering facilities for visitors does not qualify as income from farming operations and separate financial statements must be drawn up for such income.

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, pumping plants;
- fences;
- the erection of or extensions, additions or improvement (other than repairs) to buildings used in connection with farming operations other than those used for domestic purposes (for more information see the guide⁴² available on the SARS website);
- the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibre, 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 farm apparatus or under an agreement concluded with the Electricity Supply 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 may not exceed the taxable income from farming operations during a year of assessment. The balance of the amount of such expenditure that 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 certain requirements are met (see paragraph 12(1A) of the First Schedule).

Special measures in determining taxable income of farmers

Since a farmer's income can fluctuate considerably from year to year, the Act contains provisions whereby the farmer may be taxed on the basis of his or her annual average taxable income from farming in the current and previous four years of assessment. For more information see the interpretation note⁴³ available on the SARS website.

Relief is also given to farmers whose income for any year of assessment includes income derived from –

- the disposal of plantation and forest produce;
- the abnormal disposal of sugar cane as a consequence of damage to cane fields by fire;

⁴² *Guide to Building Allowances* dated 13 November 2014.

⁴³ Interpretation Note No. 29 (Issue 2) dated 19 February 2013 'Farming Operations: Equalised Rates of Tax'.

- the disposal of livestock sold on account of drought; or
- excess profits as a result of farming land acquired by the state or certain juristic persons.

See the First Schedule.

2.9 Deductions in respect of expenditure and losses incurred before commencement of trade (pre-trade costs)

Taxpayers are entitled to a deduction for pre-trade costs incurred before the commencement of and in preparation for carrying on a trade.

“Pre-trade costs” are not defined but they would include costs such as advertising and marketing promotion, insurance, accounting and legal fees, rent, telephone, licences and permits, market research and feasibility studies, but exclude costs such as the purchase of buildings and motor vehicles, and pre-trade research and development expenses. Pre-trade costs incurred before the commencement of trade can only be set off against income from that trade.

In order for these expenses and losses to be deductible during a year of assessment, the requirements as set out in section 11A must be met.

For more information see the interpretation note⁴⁴ available on the SARS website.

2.10 Exemption of certified emission reductions

Section 12K provides that any amount received by or accrued to a person on the disposal of any certified emission reductions derived by the person in the furtherance of a qualifying clean development mechanism project carried on by the person will be exempt from income tax. This exemption came into operation on 11 February 2009 and applies to disposals on or after that date.

2.11 Capital gains tax (CGT)

2.11.1 Introduction

CGT was introduced in South Africa with effect from 1 October 2001 (referred to as the “valuation date”) and applies to the disposal by a person of an asset on or after that date. All capital gains and capital losses made on the disposal of assets are subject to CGT unless excluded by specific provisions.

The Eighth Schedule contains the CGT provisions which determine a taxable capital gain or assessed capital loss. Section 26A of the Act provides that a taxable capital gain must be included in taxable income.

Since CGT forms part of the income tax system the capital gains and capital losses must be declared in the annual income tax return.

2.11.2 Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. Any natural person (whether a resident or non-resident), whose sole source of taxable income comprises a capital gain or a capital loss that exceeds the annual exclusion of R30 000, needs to register as a taxpayer at a SARS branch office and must complete and submit an income tax return for that year of assessment.

⁴⁴ Interpretation Note No. 51 (Issue 3) dated 22 July 2014 ‘Pre-Trade Expenditure and Losses’.

2.11.3 Rates

- **Natural persons, deceased estates, insolvent estates or special trusts**

For natural persons, deceased estates, insolvent estates or special trusts, 33,3% of the net capital gain is included in his or her or its 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 that are not special trusts, 66,6% of the net capital gain is included in its taxable income and subject to income tax at the company rate of 28%, or in the case of a trust (other than a special trust), 40%.

- **Effective rate of tax**

The effective rate of tax on a capital gain (ignoring the annual exclusion which is only applicable to natural persons and special trusts and any assessed capital loss brought forward from the previous year of assessment) is as follows:

- Natural persons, deceased estates, insolvent estate and special trusts: $40\% \times 33,3 = 13,32\%$ (assuming that the top marginal rate of income tax applies)
- Companies: $28\% \times 66,6 = 18,65\%$
- Trusts that are not special trusts: $40\% \times 66,6 = 26,64\%$

2.11.4 Capital losses

Capital losses may only be set off against capital gains. Any capital loss that is not used in a current year of assessment is carried forward to the next year of assessment as an assessed capital loss and may be set off against any capital gain in that year of assessment.

2.11.5 Disposal

CGT is triggered by the disposal of an asset. The word “disposal” is described very widely (see paragraph 11 of the Eighth Schedule). Events that trigger a disposal include a sale, donation, exchange, loss, death and cessation of residence in South Africa.

2.11.6 Exclusions

Some capital gains or losses (or a portion of them) are excluded for CGT purposes.

The following are some of the specific exclusions:

- In the case of a natural person, or special trust, the first R2 million of the capital gain or loss on the disposal of a primary residence.
- Most personal belongings which are not used for the carrying on of a trade. Examples include motor vehicles, caravans, furniture and jewellery.
- Any gain or loss on disposal of a motor vehicle for which a travel allowance was received.
- Retirement benefits.
- An amount received for a long-term insurance policy by the original owner.
- In the case of a natural person and a special trust only, the first R30 000 of the sum of capital gains and losses in a year of assessment (known as the annual exclusion).
- The annual exclusion increases to R300 000 in the year of death.

2.11.7 Base cost

The base cost of an asset is the amount the taxpayer paid for the asset plus whatever other costs were incurred directly related to buying, selling or improving it. The base cost does not include any amount otherwise allowed as a deduction for income tax purposes. Some of the main costs that may form part of the base cost of an asset are –

- the price the taxpayer originally paid to buy 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 improvements to the asset;
- advertising costs to find a buyer or seller;
- the cost of having the asset valued in order to determine a capital gain or 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.

A capital gain arises when the proceeds from a disposal of an asset exceed the base cost and a capital loss when the base cost exceeds the proceeds. As noted above certain capital gains and capital losses are excluded for CGT purposes.

For more information on CGT see the guides⁴⁵ available on the SARS website.

2.11.8 Small businesses

A person who operates a small business as sole proprietor, partner or owner of an interest in a company or close corporation is, subject to certain conditions, entitled to a concession which excludes capital gains of up to R1,8 million (during the person’s lifetime) on the disposal of active business assets when the person attains the age of 55 years or the disposal is in consequence of ill-health, other infirmity, superannuation or death.

See paragraph 57 of the Eighth Schedule.

2.12 Ring-fencing of assessed losses of certain trades

Section 11 currently lays down the general requirements for deducting expenditure and losses to the extent that a person derives income from carrying on any trade. Not every activity is a trade, even if intended or labelled by a taxpayer as such. Whether or not an activity is a trade, is a question of law that depends on the “facts and circumstances” of each case. These “facts and circumstances” are deliberately left open to accommodate the wide range of trading activities existing in a modern world.

However, more often than not, private consumption (that is, a hobby) can be disguised as a trade so that a natural person can set off these expenditure and losses against other income such as salary or business income.

⁴⁵ *Draft Comprehensive Guide to Capital Gains Tax* (Issue 5) dated 23 December 2014; *ABC of Capital Gains Tax for Individuals* (Issue 7) dated April 2013; *ABC of Capital Gains Tax for Companies* (Issue 5) dated April 2013 and *Guide on Valuation of Assets for Capital Gains Tax Purposes* dated February 2006.

Due to the above, section 20A was added to the Act to prevent expenditure and losses normally associated with suspect activities (that is, disguised hobbies) from being deducted from income. This deduction limitation applies only to natural persons.

For more information see the guide⁴⁶ available on the SARS website.

2.13 Tax rates

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

Any year of assessment commencing on 1 March 2014 or ending on 28 February 2015

| Taxable income | Rate of tax |
|---|--|
| Not exceeding R174 550 | 18% of taxable income |
| Exceeding R174 550 but not exceeding R272 700 | R31 419 plus 25% of the amount by which taxable income exceeds R174 550 |
| Exceeding R272 700 but not exceeding R377 450 | R55 957 plus 30% of the amount by which taxable income exceeds R272 700 |
| Exceeding R377 450 but not exceeding R528 000 | R87 382 plus 35% of the amount by which taxable income exceeds R377 450 |
| Exceeding R528 000 but not exceeding R673 100 | R140 074 plus 38% of the amount by which taxable income exceeds R528 000 |
| Exceeding R673 100 | R195 212 plus 40% of the amount by which taxable income exceeds R673 100 |

| Income tax thresholds (natural persons only) | Amount |
|--|----------|
| Below the age of 65 years | R70 700 |
| Age 65 years or older | R110 200 |
| Age 75 years or older | R123 350 |

(a) Lump sum benefits from retirement funds

There are two categories of lump sum benefits –

- (i) retirement fund lump sum withdrawal benefits; and
- (ii) retirement fund lump sum benefits.

A **retirement fund lump sum benefit** refers to a lump sum from a pension, pension preservation, provident, provident preservation or retirement annuity fund upon either –

- (i) retirement or death; or
- (ii) termination or loss of employment due to redundancy or an employer ceasing trade.

⁴⁶ *Guide on the Ring-Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals* dated 8 October 2010.

A **retirement fund lump sum withdrawal benefit** is any other lump sum from any fund mentioned above.

The amounts of R25 000 and R500 000 in the two tables below, that is, where the lump sum payments become taxable, are only available once for a taxpayer. Lump sum benefits must be aggregated to ensure that this is achieved – since 1 October 2007 for retirement fund lump sum benefits, and since 1 March 2009 for retirement fund lump sum withdrawal benefits.

Once all lump sum benefits are aggregated, the tax due is calculated in accordance with the respective tables below. Tax payable on previous lump sums is deducted from the total tax payable to arrive at the tax payable on the current lump sum.

(i) Taxable income from retirement fund lump sum withdrawal benefit that accrues to a person in any year of assessment commencing on or after 1 March 2014

| Taxable income from lump sum benefits | Rate of tax |
|---|--|
| Not exceeding R25 000 | 0% of taxable income |
| Exceeding R25 000 but not exceeding R660 000 | 18% of taxable income exceeding R25 000 |
| Exceeding R660 000 but not exceeding R990 000 | R114 300 plus 27% of taxable income exceeding R660 000 |
| Exceeding R990 000 | R203 400 plus 36% of taxable income exceeding R990 000 |

(ii) Taxable income from retirement fund lump sum benefit that accrues to a person in any year of assessment commencing on or after 1 March 2014

| Taxable income from lump sum benefits | Rate of tax |
|---|--|
| Not exceeding R500 000 | 0% of taxable income |
| Exceeding R500 000 but not exceeding R700 000 | 18% of taxable income exceeding R500 000 |
| Exceeding R700 000 but not exceeding R1 050 000 | R36 000 plus 27% of taxable income exceeding R700 000 |
| Exceeding R1 050 000 | R130 500 plus 36% of taxable income exceeding R1 050 000 |

(iii) Taxable income from severance benefit that accrues to a person in any year of assessment commencing on or after 1 March 2014

| Taxable income from lump sum benefits | Rate of tax |
|---|--|
| Not exceeding R500 000 | 0% of taxable income |
| Exceeding R500 000 but not exceeding R700 000 | 18% of taxable income exceeding R500 000 |
| Exceeding R700 000 but not exceeding R1 050 000 | R36 000 plus 27% of taxable income exceeding R700 000 |
| Exceeding R1 050 000 | R130 500 plus 36% of taxable income exceeding R1 050 000 |

2.13.2 Taxable income of trusts (other than special trusts or public benefit organisations that are trusts)

Any year of assessment commencing on 1 March 2014 or ending on 28 February 2015

| Taxable income | Rate of tax |
|--------------------------------|-------------|
| On each rand of taxable income | 40% |

2.13.3 Taxable income of corporates

(a) Companies (standard) or close corporations

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Taxable income | Rate of tax |
|--------------------------------|-------------|
| On each rand of taxable income | 28% |

(b) Small business corporations (SBCs)

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Taxable income | Rate of tax |
|---|---|
| Not exceeding R70 700 | 0% of taxable income |
| Exceeding R70 700 but not exceeding R365 000 | 7% of the amount by which taxable income exceeds R70 700 |
| Exceeding R365 000 but not exceeding R550 000 | R20 601 plus 21% of the amount by which taxable income exceeds R365 000 |
| Exceeding R550 000 | R59 451 plus 28% of the amount by which taxable income exceeds R550 000 |

(c) Micro businesses (turnover tax)

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Taxable turnover | Rate of tax |
|---|--|
| Not exceeding R150 000 | 0% of taxable turnover |
| Exceeding R150 000 but not exceeding R300 000 | 1% of the amount by which taxable turnover exceeds R150 000 |
| Exceeding R300 000 but not exceeding R500 000 | R1 500 plus 2% of the amount by which taxable turnover exceeds R300 000 |
| Exceeding R500 000 but not exceeding R750 000 | R5 500 plus 4% of the amount by which taxable turnover exceeds R500 000 |
| Exceeding R750 000 | R15 500 plus 6% of the amount by which taxable turnover exceeds R750 000 |

(d) Mining companies

Companies mining for gold (taxed according to the following formula “gold mining tax formula”)

Any year of assessment ending during the 12-month period ending on 31 March 2015

$$y = 34 - 170/x$$

Where:

$$\begin{aligned} y &= \text{rate of tax to be levied} \\ x &= \frac{\text{Taxable income from gold mining}}{\text{Total revenue (turnover) from gold mining}} \end{aligned}$$

(e) Oil and gas companies

The rate of tax on taxable income derived from oil and gas income by any oil and gas company will not exceed 28% on each rand of taxable income for the year of assessment ending during the 12-month period ending on 31 March 2015.

For more information see paragraph 2 of the Tenth Schedule.

(f) Other mining companies

The rates applicable to ordinary companies, namely, 28% also apply to all mining companies, other than companies mining for gold for the year of assessment ending during the 12-month period ending on 31 March 2015.

(g) Insurance companies

- **Long-term insurance companies – Four fund basis**

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Four funds | Rate of tax |
|---|---|
| Corporate fund | 28% of taxable income |
| Individual policyholder fund | 30% of taxable income |
| Company policyholder fund | 28% of taxable income |
| Untaxed policyholder fund: <ul style="list-style-type: none">■ Retirement fund business■ Other | (abolished from 1 March 2007) 0% of taxable income |

- **Short-term insurance companies**

Companies carrying on a short-term insurance business are taxed at the same rate as is applicable to standard companies, namely, 28% for the year of assessment ending during the 12-month period ending on 31 March 2015.

(h) Tax holiday companies

A tax holiday company is a company which qualified for a “tax holiday status” under section 37H. Companies could only apply for approval, for tax holiday status, until 30 September 1999.

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Taxable income | Rate of tax |
|--------------------------------|--------------------|
| On each rand of taxable income | 0% |

2.13.4 Taxable income of public benefit organisations (PBOs) or recreational clubs

The tax rates below are applicable to a PBO which is approved under section 30(3), or recreational club which is approved under section 30A(2).

A PBO is partially taxable on its trading receipts as from its first tax year commencing on or after 1 April 2006.

A recreational club is partially taxable on its trading receipts as from its first tax year commencing on or after 1 April 2007.

(a) If the PBO or recreational club is a company

Any year of assessment ending during the 12-month period ending on 31 March 2015

| Taxable income | Rate of tax |
|--------------------------------|--------------------|
| On each rand of taxable income | 28% |

(b) If the PBO is a trust

Any year of assessment commencing on 1 March 2014 or ending on 28 February 2015

| Taxable income | Rate of tax |
|--------------------------------|--------------------|
| On each rand of taxable income | 28% |

2.14 Medical scheme fees tax credit

The amount of the medical scheme fees tax credit arising from fees paid by a natural person to a medical scheme registered under the Medical Schemes Act, 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 medical scheme fees tax credit is deducted from normal tax payable by the natural person and is calculated as follows –

- R257 in respect of benefits to the person;
- R514 in respect of benefits to the person and one dependant; or
- R514 in respect of benefits to the person and one dependant, plus R172 for every additional dependant,

for each month in the year of assessment in respect of which those fees were paid.

Any amount paid by an employer on behalf of an employee will be a taxable benefit for the employee and will be included in the employee's income.

For more information see the guide⁴⁷ available on the SARS website. Also see section 6A.

⁴⁷ *Guide on the Determination of Medical Tax Credit and Allowances (Issue 5)* dated 14 November 2014.

2.15 Additional medical expenses tax credit

The Act was amended with effect from 1 March 2014 to no longer allow “qualifying medical expenses” as a deduction from income, but as a rebate that is deducted from the normal tax payable by a natural person.

Any expense paid by an employer on behalf of the employee will be a taxable benefit for the employee and will be included in the employee’s income.

Whether a person is entitled to the additional medical expenses tax credit depends on the category in which the person falls, namely –

- the person is aged 65 years or older;
- the person, his or her spouse or his or her child is a person with a “disability” as defined in section 6B(1); or
- in any other case.

The amount to be deducted is calculated as follows:

| Category | Amount |
|---|--|
| The person 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 medical scheme fees tax credit 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, his or her spouse or his or her 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 medical scheme fees tax credit 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. |
| In any other case | 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 medical scheme fees tax credit 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. |

Check the SARS website for more information that will be made available in due course. Also see section 6B.

2.16 Normal tax rebates

The amounts of the normal tax rebates, which are deductible from normal tax payable by a natural person, other than normal tax payable on any retirement fund lump sum benefit, retirement lump sum withdrawal benefit or severance benefit, are as follows:

| Rebates (natural persons only) | Amount |
|---|---------------|
| Primary rebate – (Below the age of 65 years) | R12 726 |
| Secondary rebate – (Age 65 years or older) additional to primary rebate | R7 110 |
| Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates | R2 367 |

3. Taxation of foreign entertainers and sportspersons

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is a non-resident) for his/her performance in South Africa, must deduct or withhold tax at a rate of 15% of the gross payments to the foreign entertainer or sportsperson. The resident must pay the amount so deducted or withheld over 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. The taxpayer or the resident who pays the withholding tax must submit a return together with the payment to the Commissioner.

If it is not possible for the tax to be withheld (for example, the payer is a non-resident), the foreign entertainer or sportsperson will personally be held liable for the 15% withholding tax which must be paid over to SARS within 30 days after the amount is received by or accrued to them.

The 15% withholding tax is a final tax. The amount received by or accrued to a person who is a non-resident is exempt from income tax under section 10(1)(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 that commences or ends 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 requires the submission of an income tax return.

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

For more information contact the special team dealing with visiting artists at the SARS office, Megawatt Park, Gauteng: e-mail at **nres@sars.gov.za**.

See sections 47A to 47K.

4. 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 specifically included in the definition of “gross income”, and are taxable.

A final withholding tax of 12% (or a lower rate determined in accordance with a relevant tax treaty) is payable on royalties or similar payments made to a person who is a non-resident for the right of, or the grant of permission to use in South Africa –

- patents, designs, trademarks, copyright, models, patterns, plans, formulas or processes or any property or right of a similar nature; or
- any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc.

The withholding tax must be paid over to SARS within 14 days after the end of the month during which the liability to pay the royalty was incurred or the said payment was made.

The above applies to royalties paid prior to 1 January 2015.

As from 1 January 2015 the following applies:

- The withholding tax increases to 15%.
- The liability for payment remains with the person making the payment of the royalty.
- The withholding of tax is triggered by the date that the royalty is paid or becomes due and payable.
- The amount of the royalty must be translated to rand at the spot rate on the day the royalty is paid or becomes payable.
- Overpayment may be refunded if the person paying the royalty lodges a claim for a refund within three years after the royalty is paid.

The amount received by or accrued to a person who is a non-resident is exempt from income tax under section 10(1)(l) if that amount is subject to withholding tax on royalties. This exemption is not applicable if that person –

- is physically present in South Africa during the year of assessment for more than 183 days; or
- has a permanent establishment in South Africa at any time during the year of assessment.

See sections 49A to 49G.

See the SARS website for more information.

5. Donations tax

Donations tax is payable by any resident (the donor) who makes a donation to another person (the donee). Donations tax is calculated at a rate of 20% on the value of the property disposed of.

The Act provides for specific donations to be exempt from donations tax [see section 56(1)].

Furthermore, the Act also makes provision for the exemption of:

- Casual gifts made by a donor other than a natural person, not exceeding R10 000 during a year of assessment. If the period of assessment is less than 12 months or exceeds 12 months the R10 000 must be adjusted accordingly [see section 56(2)(a)].

- Donations by a donor that is a natural person, not exceeding R100 000 during a year of assessment [see section 56(2)(b)].
- The sum of all *bona fide* contributions made by a donor for the maintenance of any person as the Commissioner considers to be reasonable [see section 56(2)(c)].

If two natural persons drew up a joint will, at the death of the first dying, and subject to the survivor accepting the benefits and devolution of assets under that will, the positive difference in value between the survivor's property (which falls into the massed estate) and the benefit derived by the survivor from that estate, if any, will be regarded as a donation.

If two natural persons are married in community of property and property is donated by one of the spouses, that donation will be deemed to have been made in equal shares if that property falls within the joint estate of the spouses. If that property is excluded from the joint estate of the spouses, that donation will be treated as having been made solely by the spouse making the donation.

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

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

See the SARS website for more information.

6. Dividends tax

Dividends tax applies to any dividend declared and paid by any company other than a headquarter company. Although dividends tax is part of the Act, it is a separate tax from income tax.

For more information see the guide⁴⁸ available on the SARS website. Also see sections 64D to 64N.

7. Turnover tax

This is a simplified tax system for micro businesses [see **2.5.5** and **2.13.3** paragraph (c)] and serves as an alternative to the current income tax, provisional tax, capital gains tax, dividends tax and value added tax. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.

For more information see the SARS website. Also see sections 48 to 48C and the Sixth Schedule.

⁴⁸ *Comprehensive Guide to Dividends Tax* dated 23 February 2015.

8. Value-added tax (VAT)

8.1 Introduction

VAT is an indirect tax levied in terms of the VAT Act. VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor's enterprise. A vendor is a person who is registered, or required to register for VAT. As VAT is a destination-based tax, only the consumption of goods and services in South Africa is taxed. This means that VAT is payable on most goods or services supplied in South Africa as well as on the importation of goods into the country. "Imported services", as defined in section 1(1) of the VAT Act are also subject to VAT if the recipient is a resident and the services are acquired for exempt, private or other non-taxable purposes.

8.2 Rates

VAT is presently levied at the standard rate of 14% 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. Certain goods are also exempt when supplied in, or imported into South Africa.

VAT 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.

8.3 Registration, collection and payment of VAT

Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) has exceeded the compulsory VAT registration threshold of R1 million in any consecutive 12 month period, must register for VAT. In addition, a person must register when entering into a written contractual commitment to make taxable supplies which will exceed the R1 million threshold within the next 12 month period.⁴⁹ 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 contract was entered into (as the case may be). Most vendors account for VAT on a monthly or bi-monthly basis, although other tax periods for the payment of VAT are available to certain vendors, provided certain conditions are met.

Non-resident suppliers of certain "electronic services" as prescribed in The Electronic Services Regulation⁵⁰ are also currently required to register and account for VAT in South Africa if the total value of such taxable supplies exceeds R50 000. With effect from 1 April 2015, such non-resident suppliers will be required to register for VAT if at least two out of the following three circumstances are present –

- electronic services are supplied to recipients who are South African residents;
- payment for the electronic services originates from a South African bank account; or
- 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.

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. This applies when the value of taxable supplies has already exceeded the minimum voluntary threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to

⁴⁹ Compulsory registration is dealt with in section 23(1) of the VAT Act.

⁵⁰ Regulation 221 (GG 37580 dated 2 May 2014) which came into operation on 1 June 2014. The different types of electronic services include educational services, games and games of chance, internet-based auction services, subscription services and the supply of e-books, audio visual content, still images and music. Refer to the SARS website to view the Regulations.

make taxable supplies exceeding R50 000 within the next 12 month period.⁵¹ A person may also qualify to register voluntarily if the R50 000 threshold has not yet been reached, or if that person carries on certain types of activities which will only lead to taxable supplies being made after a period of 12 months due to the nature of the activity. However, registration in respect of these special cases will only be permitted under certain conditions prescribed by Regulation.⁵²

VAT is levied on all supplies made by a vendor in the course or furtherance of its enterprise and only a vendor may levy VAT. A vendor may not charge VAT and may not deduct any VAT if the expense is incurred to make exempt supplies or for any other non-taxable purpose.

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 enterprise inputs (input tax) from the tax collected on the supplies made by the enterprise (output tax). The effect is that VAT is ultimately borne by the final consumer of goods and services, but it is collected and paid over to SARS by registered VAT vendors. The difference between the input tax and output tax in a tax period is the VAT that must be paid to SARS, or if the input tax exceeds the output tax in a tax period, SARS will refund the difference to the vendor.

In the case of imported services, the recipient is liable to declare and pay the VAT to SARS. A registered vendor will only declare and pay VAT on imported services if the services are acquired from a non-resident for non-taxable purposes. In such a case the taxable amount of any imported services must be declared in Block 12 of the VAT 201 return and paid together with any other VAT which may be due for the tax period concerned. Non-vendors must complete and submit form VAT 215 on eFiling and make payment of any VAT on imported services within 30 days of importation.

For more information on VAT registration and the collection and payment of VAT see the guide⁵³ available on the SARS website.

8.4 Turnover tax – an alternative to VAT registration

As part of government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, a presumptive tax was introduced to reduce the tax compliance burden on micro businesses with a turnover of up to R1 million a year. Turnover tax is available to sole proprietors, partnerships, close corporations, companies and co-operatives with effect from 1 March 2009. The simplified tax system is essentially an alternative to the current tax regime provided for in the Income Tax Act. With effect from 1 March 2012 a qualifying micro business may choose to register for VAT as well as turnover tax, provided that all the conditions for voluntarily VAT registration are met.

See SARS website for more information.

⁵¹ Persons supplying "commercial accommodation" are subject to a minimum threshold for voluntary registration of R60 000 and not R50 000.

⁵² See section 23(3)(b) and (d) of the VAT Act. The draft regulation was published for public comment and is available on the SARS website. At the date of publication of this guide, the Regulations concerned had not yet been issued as final.

⁵³ VAT 404 – Guide for Vendors.

8.5 Application of VAT to supplies and imports

Most supplies of goods or services by vendors are subject to VAT at the standard rate of 14%. The standard rate also applies to most imports of goods into South Africa and any services which fall into the definition of “imported services.” The standard rate applies as a default if there is no exemption or zero-rating provision which covers the supply or the importation in question.

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 rebate item numbers for goods that qualify for exemption on importation into South Africa.

See **8.6** and **8.7** for some examples of zero-rated and exempt supplies of goods and services and exempt imports.

See also to **9.5** for more information regarding the importation of goods into South Africa.

8.6 Zero-rated supplies

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

- Goods exported⁵⁴ from South Africa;
- Petrol, diesel and illuminating paraffin;
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands;
- International transport and related services;
- Services physically rendered outside South Africa; and
- Certain basic foodstuffs supplied for human consumption, such as:
 - Brown bread;
 - Brown wheaten meal;
 - Maize meal;
 - Samp;
 - Mealie rice;
 - Dried mealies;
 - Dried beans;
 - Rice;
 - Lentils;
 - Fruit and vegetables;
 - Tinned pilchards or sardinella;
 - Milk, cultured milk and milk powder;
 - Vegetable cooking oil;
 - Eggs;
 - Edible legumes and pulse of leguminous plants; and
- Dairy powder blends.

⁵⁴ The zero-rating is subject to the parties meeting the relevant requirements set out in Interpretation Note 30 with regard to direct exports and Regulation 316 published in GG 37580 on 2 May 2014 with regard to indirect exports.

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 determined by the Minister by notice in the *Gazette*.⁵⁵

The effect of applying the zero rate of VAT means that the purchaser does not pay any VAT to the vendor making the supply. However, as zero-rated supplies are regarded as taxable supplies, it means that the VAT incurred by the vendor to make those zero-rated supplies may generally be deducted as input tax, subject to the required documents such as valid tax invoices being held.

8.7 Exempt supplies

The following are some examples of goods and services that are exempt from VAT:

- Financial services
- Public transport of fare-paying passengers by road and rail
- The supply of a dwelling⁵⁶ under a lease agreement
- Certain educational services, for example, in primary and secondary schools, universities and universities of technology (formerly known as technikons)
- 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
- Child minding services in crèches and after-school centres.

Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply. This means that the 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.

8.8 Tourists, diplomats and exports to foreign countries

8.8.1 Tourists

Goods consumed and services rendered in South Africa, do not qualify for a VAT refund. However, any qualifying purchaser (including a foreign tourist) may obtain a refund of the VAT paid for any goods purchased whilst in South Africa from the VAT Refund Administrator (VRA). In order to obtain a refund, the qualifying purchaser must remove (export) the goods when departing from South Africa and must have the goods available for inspection by Customs at the point of departure. The goods must also be made available for inspection by the VRA at those points of exit where the VRA is present. The qualifying purchaser must also be in possession of a valid tax invoice issued by a registered VAT vendor relating to the goods removed. An administration fee is levied by the VRA for processing the refund. This fee may change from time-to-time. For more details in this regard, see the VRA details provided below.

The VRA will process the refund if you exit South Africa via any of the international airports situated in Johannesburg (OR Tambo), Durban (King Shaka) and Cape Town (Cape Town International). However, if you exit the country via any other designated commercial port you will need to send your refund application to the VRA after leaving the country.

⁵⁵ The notice will not be published earlier than 20 January 2016. Farmers will therefore have a period of at least 12 months from the time that the law was amended (20 January 2015) to prepare for this change.

⁵⁶ A place used (or intended to be used) predominantly as a place of residence or abode by a natural person, but excludes commercial accommodation.

Contact details for the VRA are as follows:

| | |
|---|---|
| <p>Postal address</p> <p>The VAT Refund Administrator PO Box 107 OR Tambo (Johannesburg) International Airport South Africa 1627</p> <p>Physical address</p> <p>Plot 206/1 High Road Bredell, Kempton Park 1619</p> <p>E-mail addresses</p> <p>General info@taxrefunds.co.za Botswana botswana@taxrefunds.co.za Swaziland swaziland@taxrefunds.co.za Namibia namibia@taxrefunds.co.za Other countries generalqueries@taxrefunds.co.za</p> <p>Website www.taxrefunds.co.za Telephone +27 11 979 0055 Email info@taxrefunds.co.za</p> | <p>Refund claims may also be lodged at the following regional offices:</p> <p>VAT Refund Administrator (Pty) Ltd Suite 11 Equity Building Botswana Road. Plot 1155 Gaborone Botswana</p> <p>VAT Refund Administrator (Pty) Ltd Office 206, BPI House Independence Avenue Windhoek Namibia</p> <p>VAT Refund Administrator (Pty) Ltd Emafini Business Centre Along Emalangweni Hill Mbabane Swaziland</p> |
|---|---|

A VAT refund will only be considered when all of the following requirements are met:

- The purchaser must be a qualifying purchaser.
- The goods must be exported within 90 days from the date of the tax invoice.
- The VAT-inclusive total of all purchases exported at one time must exceed the minimum of R250.
- The request for a refund, together with the relevant documentation, must be received by the VRA within three months of the date of export.
- The goods must be exported through one of the 43 designated commercial ports by the qualifying purchaser or the qualifying purchaser's cartage contractor.

For more information on the documentary requirements and the procedures involved in obtaining a refund, see the Export Regulations⁵⁷ and the Tax Refund Information pamphlet which is issued by the VRA and is available from all of South Africa's International Airports or the VRA's website **www.taxrefunds.co.za**.

See the SARS website for more information.

8.8.2 Diplomats

Relief from VAT incurred in South Africa is granted to certain persons who are accredited with diplomatic status if the expenses meet certain requirements. Typically, these would be expenses incurred for official diplomatic purposes. The relief is granted in the form of a periodic refund and is effected by way of registration for VAT and the submission of returns on which the refundable amount for the period is indicated. This procedure applies to diplomatic missions, consular posts, international organisations accredited to the South African government, heads of state, and special envoys and transferred representatives.

⁵⁷ Regulation 316 (GG 37580 of 2 May 2014).

VAT refunds on any goods purchased by diplomats whilst in South Africa which are subsequently exported are dealt with by the VRA as described in **8.8.1**.

8.8.3 Exports to foreign countries

A vendor may apply the zero rate when supplying movable goods and consigning them to a recipient at an address in an export county.

The VAT on goods purchased in South Africa by a non-resident or a foreign enterprise may be refunded by the VRA if the goods are subsequently exported. In certain circumstances the vendor may elect to apply the zero rate of VAT under Part 2 of the VAT Export Regulation in the case of certain indirect exports provided the vendor making the supply obtains and retains the proof of export as required.

For more information on VAT, see the guide⁵⁸ available on the SARS website.

9. Customs

9.1 Introduction

In South Africa goods are classified according to the Harmonised System on Tariffs and Trade (in short, HS or Harmonised Tariff System), an international classification system that has its origin in Brussels, Belgium, on importation into the Republic or when locally-manufactured. The specific classification will determine what the rate of duty is for a specific commodity and whether it will attract additional duties or levies.

The policy on tariffs applicable on importation into the Republic is set by the International Trade Administration Commission (ITAC) under the authority of the Department of Trade and Industry.

The duties levied on imported goods can be separated mainly into customs duties, which include additional customs duties (*ad valorem*) on certain luxury or non-essential items, and anti-dumping and countervailing measures. VAT is also collected on goods imported and cleared for home consumption and certain other levies are imposed on specific products.

South Africa is a signatory to the Southern African Customs Union (SACU) agreement together with Botswana, Lesotho, Namibia and Swaziland. The five member countries of SACU apply similar customs and excise legislation and the same rates of customs and excise duties on imported and locally manufactured goods. The uniform application of tariffs and the harmonisation of procedures simplify trade within the SACU common customs area in that there is free movement of goods for customs purposes. However, all other national restrictive measures such as import and export control, sanitary and phyto-sanitary requirements and domestic taxes apply to goods moved between member states.

A free trade agreement providing for preferential rates of customs duties is applied between SACU and other member states of the Southern African Development Community (SADC). South Africa has also entered into a free trade agreement with the European Union. A number of non-reciprocal preferential arrangements are applied to products exported from the region to developed countries. South Africa has also entered into agreements on mutual administrative assistance with a number of other countries. These agreements cover all aspects of assistance in the prevention and combating of customs fraud, including the exchange of information, technical assistance, surveillance, investigations and visits by officials.

⁵⁸ VAT 404 – Guide for Vendors.

9.2 The Southern African Customs Union (SACU)

The Southern African Customs Union came into existence on 11 December 1969 with the signature of the Customs Union Agreement between South Africa, Botswana, Lesotho, Namibia and Swaziland. It entered into force on the 1 March 1970, thereby replacing the Customs Union Agreement of 1910. A more comprehensive agreement was agreed to in 2002 which was implemented on 1 July 2004. The new agreement provides for the establishment of the SACU Secretariat in Windhoek, Namibia and a number of committees responsible for the effective running of SACU activities. SACU is the oldest Customs Union in the world.

The Council of Ministers, comprising the Ministers of Trade of the BLNS countries is responsible for the agreement and meets regularly to take decisions and discuss matters related to the agreement. In addition the agreement provides for the establishment of a Customs Union Commission, the Secretariat, the Tariff Board, Technical Liaison Committees and an *ad hoc* tribunal. Technical liaison committees provided for are on agriculture, customs, trade and industry and transport. The committees meet on a quarterly basis.

The aim of the agreement is to maintain the free interchange of goods between member countries. All customs, excise and additional duties collected in the common customs area are paid into a common revenue pool which is managed by South Africa for a transitional period. The revenue is shared among members according to a revenue-sharing formula as described in the agreement which is based on a customs component calculated on the basis of intra-SACU trade, an excise component which is calculated on the basis of its GDP as a percentage of the total SACU GDP and a developmental component which is set at 15% of the excise component.

9.3 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 blocks, which provide for preferential market access into South Africa as well as for South African products into other markets. These are:

9.3.1 Bi-lateral Agreements (non-reciprocal)

These include trade agreements between the governments of –

- South Africa and Southern Rhodesia (Zimbabwe); and
- South Africa and the Republic of Malawi,

providing for preferential access of specific products subject to specific origin requirements and quota permits.

9.3.2 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.

9.3.3 Free or Preferential Trade Agreements (FTAs or PTAs) (reciprocal)

These include –

- SACU – The Southern African Customs Union consists of South Africa, Botswana, Lesotho, Namibia and Swaziland. Its aim is to facilitate the cross-border movement of goods between member countries.

- TDCA – Trade, Development and Cooperation Agreement between the European Community and its member states on the one part and South Africa on the other part, which was implemented on 1 January 2000.
- SADC – Agreement of the Southern African Development Community, which was implemented on 1 September 2000.
- EFTA – 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.

9.3.4 Generalised System of Preferences (GSPs) (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 (AGOA).

- EU

Non-reciprocal preferential tariff treatment under the Generalised System of Preferences granted to developing countries by the European Community

- Norway

Non-reciprocal preferential tariff treatment under the Generalised System of Preferences granted to developing countries by the Kingdom of Norway

- Switzerland

Non-reciprocal preferential tariff treatment under the Generalised System of Preferences granted to developing countries by the Swiss Confederation

- Russia

Non-reciprocal preferential tariff treatment under the Generalised System of Preferences granted to developing countries by the Russian Federation

- Turkey

Non-reciprocal preferential tariff treatment under the Generalised System of Preferences granted to developing countries by the Republic of Turkey

9.4 Duties

9.4.1 Customs duty

Customs duty is levied on imported goods. The Customs division provides the interface between the domestic and broader global economy, and has a key role to play in facilitating legal trade and in protecting the economy and society by clamping down on illegal and unfair trade practices.

This duty, if expressed as a percentage (*ad valorem*), is always calculated as a percentage of the value of the goods. However, in the case of certain agricultural 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.

9.4.2 Excise duty and excise levy

Excise duty, fuel levy and environmental levy are forms of indirect taxation used by government to primarily contribute to the fiscus, but also in certain instances to influence consumer behaviour. The total collection for these duties and levies currently amounts to approximately 10% of all SARS revenue.

Liability for the payment of excise duty is based on consumption of excisable products within the local country borders and the SACU. Relief from this liability to pay excise duty, in the form of a full rebate, is therefore granted when excisable products are exported to countries beyond the borders of SACU.

As it is not the intention of the legislator to tax the manufacture of local products unnecessarily, relief (in the form of full or partial rebates) is also granted when excisable products are used in the manufacture of other non-excisable products and for the industrial use of these excisable products, for example, spirits used in the manufacture of medicines, paints, adhesives, etc and petroleum products used for farming, fishing and forestry purposes.

During the 2002/2003 financial year, a “Duty at Source” (DAS) assessment and accounting system for excisable products was implemented in SACU. This system provides for the assessing of specific excise duties and accounting for excisable products (excluding wine) “at source”; that is, as near as possible to the manufacturing point. This system reduces the cost of compliance for clients and the cost of collection and risk to revenue for SARS whilst maintaining cash neutrality (in relation to the previous assessment system) for both industry and SARS.

Excise duty, fuel, Road Accident Fund (RAF) and environmental levies, are levied on certain locally-manufactured goods.

A specific customs duty (provided in Part 2A of Schedule 1), equal to the rate of the duty on locally-manufactured goods, is levied on imported goods of the same class or kind. This specific customs duty is payable in addition to the ordinary customs duty payable under Part 1 of Schedule 1 to the Customs and Excise Act, 1964.

9.4.3 Environmental levy

An environmental levy is collected on specific products and used for the clean-up and protection of the environment.

(a) Plastic bags (Part 3A of Schedule 1 to the Customs and Excise Act, 1964)

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 Controller of Customs and Excise at a SARS Branch Office and submit quarterly excise accounts to such Controller.

Payment of this levy is additional to any customs or excise duty payable in terms of Part 1 or Part 2 of Schedule 1. On 1 April 2013 this levy was increased from 4 cents per bag to 6 cents per bag.

Exclusion: Plastic bags used for immediate wrapping or packaging, refuse bags and refuse bin liners are excluded from paying this levy.

(b) Electricity generated in the South Africa (Part 3B of Schedule 1 to the Customs and Excise Act, 1964)

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 a monthly environmental levy account.

Electricity must be generated in a licensed customs and manufacturing warehouse in accordance with the provisions of Chapter VA and the rules to the Customs and Excise Act, 1964.

Electricity generated under certain circumstances as outlined in Note 2 in Schedule 1 Part 3B to the Customs and Excise Act, 1964 will not be liable for this levy.

On 1 July 2012 the levy was increased from 2,5 cent per kWh to 3,5 cents per kWh.

(c) Electric filament lamps (Part 3C of Schedule 1 to the Customs and Excise Act, 1964)

A levy is charged on electric filament lamps to promote energy efficiency and to reduce the demand on electricity.

This levy is additional to any customs or excise duty payable in terms of Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act, 1964 and was increased from R3 per lamp to R4 per lamp on 1 April 2013.

(d) Carbon dioxide (CO₂) vehicle emissions levy

A CO₂ emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this tax 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 Schedule 1 Part 3D to the Customs and Excise Act, 1964.

In the case of passenger vehicles the rate of the levy is R75 per g/km on emissions exceeding the threshold of 120g/km and in the case of double-cab vehicles the rate of the levy is R100 per g/km on emissions exceeding the threshold at 175g/km. On 1 April 2013 the levy increased to R90 per g/km and R125 per g/km respectively. The tax is included in the price of the vehicle before calculating the VAT payable on the sale of the vehicle.

Example: If the certified CO₂ emissions of a new vehicle (transport of persons) bought on 1 June 2013 are 140 g/km, the tax payable will be calculated as follows:

$$\begin{aligned} & (140 \text{ g/km} - 120 \text{ g/km}) \times \text{R90} \\ &= 20 \text{ g/km} \times \text{R90} \\ &= \text{R1 800} \end{aligned}$$

In this example, R1 800 will be added to the price of the vehicle before calculating the VAT inclusive price.

Note: Guides on environmental levy (such as on emissions tax and plastic bags) are available on the SARS website.

9.4.4 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.

These are additional duties levied on goods imported from a supplier or originating in a country as specified in legislation, and which is dumped (per definition) in South Africa.

9.5 Importation of goods

VAT is levied at the rate of 14% on the importation of goods into South Africa from export countries, including Botswana, Lesotho, Namibia and Swaziland (the BLNS countries). However, certain goods which are listed in Schedule 1 to the VAT Act are exempt from VAT upon importation into South Africa.

For VAT purposes the value to be placed on the importation of goods into South Africa is the value of the goods for customs duty purposes, plus any duty levied in terms of the Customs and Excise Act, 1964 in respect of the importation of those goods, plus a further 10% of the said customs value. The value of any goods which have their origin in any of the BLNS countries and 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.

9.6 Customs value

The customs value of any commodity is established in terms of the General Agreement on Tariffs and Trade (GATT) valuation code, through the use of either one of six valuation methods. The majority of goods are valued by 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 calculation of duties, levies and taxes, 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.

9.7 Customs declarations

Declarations made at the time of importation and exportation must be accurate and correct. The acceptance of such declarations must not be construed as acceptance of the information provided as being correct. Declarations and related documents must normally be retained for five years. Where errors are detected or false declarations are made, the Customs and Excise Act, 1964 provides for the forfeiture of the goods as well as for penalties of up to three times the value of the goods, whether duties were payable or not. In instances of fraud, offenders may be prosecuted.

Importers and exporters of goods to and from South Africa for commercial purposes must register with SARS for that purpose. Importers and exporters of non-commercial goods are, however, excluded from registration, provided that this is limited to three importations per year and each consignment is less than R50 000.

9.7.1 Rebates allowed on importation of goods

Schedule 3 of the Customs and Excise Act, 1964 provides for industrial rebates and Schedule 4 provides for general rebates on the payment of customs duty payable on importation under very specific conditions, such as on the re-importation of imported or locally-manufactured goods that were sent abroad for processing, finishing, repairs, etc.

Schedule 1 to the VAT Act provides for an exemption of the payment of VAT on goods imported under rebate item 470.03 in Schedule 4 to the Customs and Excise Act, 1964.

Other examples of general rebates are: rebates of customs duties on the importation of goods by handicapped persons, diplomats, as passengers' baggage, personal and household goods on change of residence.

9.8 Persons entering South Africa

Persons may enter South Africa at certain appointed places of entry. All goods brought into South Africa must be declared to a customs official at the port of entry. Customs duties and VAT must be paid on all goods imported into South Africa.

Travellers are, however, granted a duty-free allowance and an exemption from VAT on new or used goods of a non-commercial nature brought with them into South Africa as accompanied or unaccompanied baggage up to a value of R5 000. In addition, allowances are made for a full rebate of customs duty and VAT on consumable goods such as perfumes, toilet water, cigarettes, cigars, pipe tobacco, wine and liquor, subject to quantitative restrictions.

Over and above the duty-free allowance of R5 000 and the allowance for consumables, travellers who have acquired additional goods abroad may elect to pay customs duty at a flat rate of 20% on any additional goods, up to a total value not exceeding R20 000. By electing to use the 20% flat-rate, the passenger is exempt from the payment of VAT on such goods. However, to qualify for the 20% flat-rate assessment the combined value of all the consumables, the R5 000 duty free allowance and any additional goods imported may not exceed R25 000.

In the event that the total value of all goods (excluding the consumables) exceed R25 000 the traveller will need to indicate which items are to be assessed in terms of the traveller allowance, that is, duty free and flat rate allowance and which goods must be assessed according the relevant rates of duty (tariff) and VAT.

9.8.1 Goods imported without the payment of customs duty and which are exempt from VAT

(a) By persons who are not residents of South Africa

Personal effects and sporting and recreational equipment, new or used, imported either as accompanied or unaccompanied passenger's baggage, for own use during the stay in South Africa.

(b) By persons who are residents of South Africa

Personal effects and sporting and recreational equipment, new or used, exported by residents of South Africa for their own use while abroad and subsequently re-imported either as accompanied or unaccompanied passenger's baggage.

(c) Limits in respect of certain goods

Certain consumable goods may be imported as accompanied passenger's baggage without the payment of customs duties and VAT by a person (whether he or she is a resident or not a resident), but *not exceeding* the following limits:

| | |
|---------------------------------------|---------------------|
| Wine | 2 litres per person |
| Spirits and other alcoholic beverages | 1 litre per person |
| Cigarettes | 200 per person |
| Cigars | 20 per person |
| Cigarette or pipe tobacco | 250g per person |
| Perfume | 50ml per person |
| Eau de toilette | 250ml per person |

Consumables imported in excess of the quantities stipulated above will be assessed for customs duty in terms of the rates applicable and VAT will be payable thereon.

In addition to the abovementioned goods, new or used goods up to the value of R5 000 per person (included in accompanied passengers' baggage), may be imported without the payment of duty and VAT.

The duty-free allowance for such goods (new or used) imported for personal use remains applicable for any such goods up to a value of R20 000, notwithstanding the fact that the total of such goods may exceed that amount.

Note: Visitors may be required to pay a cash deposit to cover the duty and the VAT on expensive articles, for example, video cameras temporarily imported to South Africa. The deposit on the goods is refunded on departure from South Africa. Allowances may not be pooled or transferred to other persons.

(d) Children under 18 years of age

Children under 18 years may also claim duty-free allowances and exemption from VAT (referred to above) on goods imported by them with the exception of alcohol and tobacco products, whether or not they are accompanied by their parents or guardians and provided that it is for their personal use.

Parents or guardians may make customs declarations on behalf of minors.

(e) Flat-rate assessment

In addition to the duty-free allowance, a passenger may elect to pay customs duty at a flat-rate of 20% on goods which have been acquired abroad or in any duty-free shop, including such goods bought duty-free on an aircraft or ship and which have been brought with the passenger as accompanied baggage.

These additional goods, new or used, with a total value not exceeding R20 000 per person fall within this allowance.

Over and above the allowance for consumables and the duty-free allowance of R5 000, passengers may elect to pay Customs duty at a flat rate of 20% on any additional goods which they have acquired abroad of a total value not exceeding R20 000. However, to qualify for the 20% flat-rate assessment the combined value of all the consumables, the R5 000 duty free allowance and any additional goods imported may not exceed R25 000.

In the event that the total value of all goods (excluding the consumables) exceed R25 000 the traveller will need to indicate which items are to be assessed in terms of the traveller allowance, that is, duty free and flat rate allowance and which goods must be assessed according the relevant rates of duty (tariff) and VAT.

(f) Crew members

A member of the crew of a ship or aircraft (including the master or pilot) is entitled to a rebate of duty and exemption from VAT if such member returns to South Africa permanently and provided the total value of new or used goods declared for personal use does not exceed R700. In the case of additional goods, new or used, the rebate of duty and exemption from VAT applies provided the total value of such goods declared for personal use does not exceed R2 000.

Note: The allowances in paragraphs (c), (d) and (e) may only be claimed at the time of entry into South Africa, thus at the place where those persons disembark or enter the country, and under the conditions prescribed.

The allowances will also only be allowed once per person during a period of 30 days and shall not apply to goods imported by persons returning after an absence of less than 48 hours.

Guide to the approval of international airports

A guide on the approval of international airports is available on the SARS website. All facilities constructed or acquired must be approved for control purposes to ensure that the requirements of the Customs and Excise Act, 1964 and those set out in other relevant documents are met, for example, the revised Kyoto Convention and the SAFE Framework of standards (to secure and facilitate global trade) etc.

9.8.2 Customs clearance procedures for travellers

Travellers may select to enter the red or the green channel upon arrival in South Africa.

By selecting the red channel, a traveller indicates that he or she has goods to declare in excess of the duty-free allowances on which customs duties must be paid.

The customs officer in the red channel will ascertain –

- the value of the goods declared;
- duties and VAT payable by the traveller; and
- if it falls within the passenger's duty-free allowances.

By selecting the green channel, a traveller indicates that he or she has no goods to declare, in other words –

- he or she has no prohibited or restricted goods; or
- goods in excess of his or her duty-free allowances.

Random searches of travellers' baggage in the green channel are conducted.

9.9 Declarations on single administrative document (SAD)

During 2003, Namibia, Botswana and South Africa entered into a Memorandum of Understanding (MOU), the key objective of which was the fostering of trade facilitation with a pivotal component being the rationalisation of procedures and forms by the three customs administrations.

As a result thereof, the Trans Kalahari Corridor (TKC) pilot programme was initiated during August 2003 and gradually extended to different border posts. In August 2004 the Single

Administrative Document (SAD) was permanently introduced as the document to be used for the clearance of goods removed through the border posts.

International best practice, culminating in the rationalisation of customs information requirements in the World Customs Organisation's (WCO) Data Model, is the key driving force for a single clearance document. The adoption of the SAD is moreover in line with SARS's Service Charter, to make customs clearance easier and more convenient for importers, exporters and cross-border traders.

The full national implementation of the SAD was effected from 1 October 2006.⁵⁹

The implementation has the effect that the SAD is being used nationally instead of the forms: DA 500, DA 501, DA 504, DA 510, DA 514, DA 550, DA 551, DA 554, DA 600, DA 601, DA 604, DA 610, DA 611, DA 614 and CCA1.

9.10 Goods accepted at appointed places of entry

Goods imported into South Africa are accepted at designated commercial ports, which include –

- customs-appointed airports;
- customs-appointed border posts;
- customs-appointed harbours; and
- the postal service.

9.11 Cargo entering South Africa

When cargo is landed in South Africa, a cargo manifest in respect of those goods must be produced. These manifests reflect all the goods imported. All the goods must be accounted for by means of bills of entry. If importers or owners of imported goods fail to enter their cargo for customs purposes the goods may be detained and removed to the state warehouse.

9.12 State warehouses

State warehouses are provided for the safekeeping of goods. The main purpose of such warehouses is to protect duty and VAT which may be due thereon. The reason for such safekeeping may include goods not entered for customs purposes, abandoned goods, seized goods or goods detained provisionally for specific reasons subject to compliance with requirements for import or export. When the importer or owner of goods has complied with all customs or other requirements, release thereof may be granted upon payment of the applicable state warehouse rent. Unclaimed goods may be sold on public auction after a prescribed period from the date on which the goods were taken up in the state warehouse and the proceeds are applied in discharge of any duties, VAT or other expenses in respect of those goods.

9.13 Importation of household effects by immigrants or returning residents

Bona fide household effects may be imported, free of duty and exempt from the VAT normally levied on importation, provided that the importer *changes his or her residence* to South Africa be it on a permanent or temporary basis. Importers such as contract workers and students may also import their *bona fide* household effects under rebate of duty and exempt from VAT (a deposit may be called for to cover the VAT on importation either in part or in full, which is refundable when such goods are exported). The requirement would, however, be that they re-export their household effects at conclusion of the work contract or

⁵⁹ See *Government Gazette* 29257, Notice R961 dated 29 September 2006.

studies, or they may dispose of it locally, provided they have not sold, lent, hired or disposed of it in any manner whatsoever within six months since importation. Importers taking up temporary residence in South Africa on a continual basis, for example, people with holiday homes, do not qualify for this rebate.

9.14 Motor vehicles

Natural persons changing their residence on a permanent basis to South Africa may import one motor vehicle into South Africa, free of duty and exempt from VAT. Here they would be required to qualify as a permanent resident sanctioned by the Department of Home Affairs. South Africans working or studying abroad do not qualify for this rebate item.

9.15 Motor vehicles imported on a temporary basis

Motor vehicles used in South Africa by tourists may be imported under rebate of duty and exempt from VAT for three months which may be extended to six months. A deposit may be called for to cover the VAT on importation either in part or in full, which is refundable when such goods are exported. After six months the motor vehicles must be re-exported.

10. Excise duties – Rates

10.1 Specific excise duties

Specific excise duties are levied on certain locally-manufactured, non-essential products consumed locally and a counter-veiling customs duty, equal to the amount of the specific excise duty, is levied on their imported counterparts. The duty is assessed on the specific quantity or volume of excisable products consumed locally. Such products include tobacco products, liquor products, petroleum products and hydro-carbons.

The following are some of the excisable products and their respective specific duty rates increased with effect from 26 February 2014:

| Alcoholic Beverages | Rate of duty |
|----------------------------------|-------------------------------|
| Malt beer | R68.92/l of absolute alcohol |
| Traditional African beer | 7.82 c/l |
| Spirits and spirituous beverages | R137.54/l of absolute alcohol |

| Alcohol | Rate of duty |
|---------------------------------|---------------------|
| Sparkling wine | R9.11/l |
| Fortified wine | R5.21/l |
| Unfortified wine | R2.87/l |
| Traditional African beer powder | 34.7 c/kg |

| Tobacco | Rate of duty |
|-------------------|---------------------|
| Cigarettes | R5.80/10 cigarettes |
| Pipe tobacco | R145.20/kg net |
| Cigarette tobacco | R260.60/kg |
| Cigars | R2 690.00/kg net |

With effect from 14:59 on 25 February 2015 the above rates are increased to:

| Alcoholic Beverages | Rate of duty |
|----------------------------------|-------------------------------|
| Malt beer | R73.05/l of absolute alcohol |
| Alcoholic Beverages | Rate of duty |
| Traditional African beer | 7.82 c/l |
| Spirits and spirituous beverages | R149.23/l of absolute alcohol |

| Alcohol | Rate of duty |
|---------------------------------|---------------------|
| Sparkling wine | R9.75/l |
| Fortified wine | R5.46/l |
| Unfortified wine | R3.07/l |
| Traditional African beer powder | 34.7 c/kg |

| Tobacco | Rate of duty |
|-------------------|---------------------|
| Cigarettes | R6.21/10 cigarettes |
| Pipe tobacco | R155.54/kg net |
| Cigarette tobacco | R278.82/kg |
| Cigars | R2 824.55/kg net |

10.2 *Ad valorem* excise duties

Ad valorem excise duties are levied on certain other locally manufactured non-essential or luxury products with a corresponding *ad valorem* customs duty (at the same rate of duty) on imported goods of the same class or kind. The duty is assessed on the value of such excisable products consumed locally. Such products include, amongst others, motor vehicles, cell phones, gaming and vending machines, cosmetics and television receivers.

The following are some of the excisable products and their respective *ad valorem* duty rates with effect from 1 January 2011.

***Ad valorem* products**

| Products | Rate of duty |
|---|---------------------|
| Perfumes and toilet waters | 7% |
| Beauty or make-up preparations and preparations for care of the skin | 5% |
| Fireworks | 7% |
| Apparel or clothing accessories of fur skin or artificial fur skin | 7% |
| Air conditioning machines for buildings | 7% |
| Refrigerators or freezers | 7% |
| Line telephones with cordless handsets, loudspeakers and amplifiers, sound and video recording or reproducing apparatus and cellular telephones | 7% |

| Products | Rate of duty |
|---|---------------------|
| Cellular telephones, still image video cameras, other video camera recorders and digital cameras | 7% |
| Domestic radio-broadcast receivers, reception apparatus for television, video monitors and video projectors | 7% |
| Motor vehicles (sliding scale) | Max 25% |
| Motorcycles (200 – 800cc) | Max 25% |
| Motorcycles exceeding 800cc | Max 25% |
| Water scooters | 7% |
| Firearms | 7% |
| Golf balls | 7% |

Note: The list is not exhaustive.

Manufacturers and holders of both these specific excise duty and *ad valorem* excise duty products, on which duty has not yet been assessed or paid, must license warehouses with the local controller of customs and excise before the start of such manufacturing or holding.

10.3 General fuel levy and road accident fund levy

This is a levy on distillate fuels (diesel), aviation or illuminating kerosene and petrol, manufactured in or imported into South Africa.

In SACU, the general fuel levy and the road accident fund levy are charged only in South Africa and are over and above the specific excise duty charged on certain fuel products.

The following are some of the fuel levy products and their respective levy rates increased with effect from 3 April 2013:

| General fuel levy products | Rate of levy |
|---|---------------------|
| Petrol (leaded and unleaded) | 212.5c/l |
| Aviation kerosene | Free |
| Illuminating kerosene (marked) | Free |
| Illuminating kerosene (unmarked) | 197.5c/l |
| Distillate fuel (diesel) | 197.5c/l |
| Road accident fund levy on petrol or diesel | 96c/l |

The above levy rates were increased with effect from 2 April 2014:

| General fuel levy products | Rate of levy |
|---|---------------------|
| Petrol (leaded and unleaded) | 224.5c/l |
| Aviation kerosene | Free |
| Illuminating kerosene (marked) | Free |
| Illuminating kerosene (unmarked) | 209.5c/l |
| Distillate fuel (diesel) | 209.5c/l |
| Road accident fund levy on petrol or diesel | 104c/l |

10.4 Diamond export levy

A diamond export levy on unpolished diamonds exported from South Africa was introduced, effective from 1 November 2008 at a rate of 5% of the value of such diamonds.

The aim of the diamond export levy as imposed in the Diamond Export Levy Act No. 15 of 2007 and the Diamond Export Levy (Administration) Act No. 14 of 2007 is to –

- promote the development of the local economy by encouraging the local diamond industry to process (cut, polish etc.) diamond(s) locally;
- develop skills; and
- create employment.

A person who is a producer, dealer, diamond beneficiator or holder of a permit to export unpolished diamonds must register as such.

A registered person must submit a return and payment within a period of 30 days after the ending date of each assessment period, which –

- in the case of a natural person –
 - a) begins on 1 March and ends on 31 August; and
 - b) begins on 1 September and ends on the last day of February; and
- in the case of any other person –
 - a) begins on the first day of the financial year for which financial accounts are prepared and ends six calendar months after that day; and
 - b) begins on the day immediately after the period described in subparagraph (a) and ends on the last day of that financial year.

11. Transfer duty

Transfer duty is payable on the acquisition of any “property” as defined in section 1(1) of the Transfer Duty Act 40 of 1949 (Transfer Duty Act) and is levied on the value of the property acquired, or the value by which the property is enhanced by the renunciation of an interest in; or restriction upon the use or disposal of 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 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).

The transfer of this type of property must be recorded in a Deeds Registry.

The definition of “property” also includes –

- certain shares, contingent rights and other interests in entities such as companies, close corporations and discretionary trusts that own residential property;
- fractional ownership timeshare schemes; and
- shares in a share block company.

Transfers of these rights and interests in property are not recorded in a Deeds Registry.

Transfer duty is based on the fair value of the property. In a transaction between unrelated persons transacting at arm's length, the fair value is usually equal to the consideration paid

or payable for the property. In cases where property is acquired for no consideration, or where 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. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,⁶⁰ calculated for each completed month during which the transfer duty remains unpaid.⁶¹

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; or
- the transaction is exempt under any other specific exemption provided under section 9 of the Transfer Duty Act; or
- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration (or the fair value of the property) is R600 000 (R750 000 as from 1 March 2015) or less.

11.1 Transfer duty rates (from 23 February 2011 to 28 February 2015)

| Fair market value or consideration | Rate of duty |
|--|--------------|
| On the first R600 000 | 0% |
| On the amount that exceeds R600 000 but not R1 000 000 | 3% |
| On the amount that exceeds R1 000 000 but not R1 500 000 | 5% |
| On the amount that exceeds R1 500 000 | 8% |

11.2 Transfer duty rates (from 1 March 2015)

| Fair market value or consideration | Rate of duty |
|--|--------------|
| On the first R750 000 | 0% |
| On the amount that exceeds R750 000 but not R1 250 000 | 3% |
| On the amount that exceeds R1 250 000 but not R1,750 000 | 6% |
| On the amount that exceeds R1,750 000 but not R2 250 000 | 8% |
| On the amount that exceeds R2 250 000 | 11% |

The above rates apply to all persons. No distinction is made between natural persons and legal persons as was the case before 23 February 2011.

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 if the supply is subject to VAT. The provisions of the VAT Act will, therefore, normally take precedence over the Transfer Duty Act where the supplier is a vendor. Sometimes the supply of fixed property

⁶⁰ Interest will be charged at the “prescribed rate” in terms of the Tax Administration Act 22 of 2011 from the effective date that the Presidential Proclamation on interest comes into effect for all taxes.

⁶¹ 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.

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 as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

In the case of a sale of fixed property which 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 eFiling as 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.

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 membership of a close corporation 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 guides⁶² available on the SARS website.

12. Estate duty

The estate of a deceased person who was ordinarily resident in South Africa, will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies and payments from pension funds). However, property situated outside South Africa will be excluded from the deceased's estate if such property was acquired by him or her before he or she became ordinarily resident in South Africa for the first time, or after he or she became ordinarily resident in South Africa and acquired such property by way of donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The exclusion also applies to property situated outside South Africa, acquired out of profits or proceeds of any such property acquired in the above circumstances.

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

The Estate Duty Act, unlike the Act, does not define "resident" and only 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 became a resident of South Africa in terms of the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. Two important deductions are (1) the value of property in the estate that accrues to the surviving spouse of the deceased and (2) all debts

⁶² *Transfer Duty Guide* dated 13 March 2013 and the *Guide for Transfer Duty via eFiling*.

due by the deceased. The net value of the estate is reduced by a R3,5 million general deduction (specified amount) to arrive at the dutiable amount of the estate.

Note:

With effect from 1 January 2010, the following will apply to the estate of a person who dies on or after that date:

- 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 multiplied by two (that equals R7 million) less so much of the specified amount already allowed as a deduction from the net value of the estate of any one of the previously deceased persons.
- If a 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 current specified amount, which is R3,5 million; and
 - an amount calculated as follows:
 specified amount, which is 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.

Rate of estate duty

Estate duty is charged at a rate of 20% of the dutiable amount of the estate.

Estate duty calculation

| | R |
|--|----------------------|
| Net value of estate | 3 600 000 |
| Less: General deduction | <u>(3 500 000)</u> |
| Dutiable amount | <u>100 000</u> |
| Duty payable on R100 000 at 20% | <u>20 000</u> |

Estate duty calculation (death on or after 01/01/2010)

The whole estate was bequeathed to the spouse

| | |
|--|----------------------|
| Net value of the estate of spouse | 7 100 000 |
| Less: Deduction (2 × R3,5 m) | <u>(7 000 000)</u> |
| Dutiable amount | <u>100 000</u> |
| Duty payable on R100 000 at 20% | <u>20 000</u> |

Interest at 6% a year is charged on unpaid estate duty.

The South African government has agreements to avoid double death duties with Botswana, Lesotho, Swaziland, Zimbabwe, the United Kingdom, and the United States of America. These agreements are available on the SARS website.

13. Securities transfer tax (STT)

STT is a tax payable on the transfer of any security⁶³ issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on the South African stock exchange. STT applies with effect from 1 July 2008.

For purposes of STT a “security”⁶⁴ means –

- any share or depository receipt in a company; or
- any member’s interest in a close corporation.

The STT rate is 0.25% of the taxable amount on any transfer of a security which in effect is the higher of the consideration paid for or the market value of the security concerned.

STT is payable by –

- the transferee (purchaser), where securities are transferred; or
- the company or close corporation cancelling or redeeming the share, where the securities are cancelled or redeemed.

The person who is liable to pay the STT may, however, recover the tax from the person to whom the securities are transferred.

STT 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 will be imposed. The Commissioner may however remit the penalty (or any portion thereof) in accordance with Chapter 15 of the TA Act.⁶⁵

Certain entities and types of transactions are exempt from STT, for example –

- the government of South Africa or the government of any other country;
- certain 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 guide⁶⁶ available on the SARS website.

⁶³ From 1 January 2013 this includes the reallocation of securities between different stock accounts of, for example, a stockbroker.

⁶⁴ Before 1 April 2012 the definition of “security” also included any right or entitlement to receive any distribution from a company or close corporation.

⁶⁵ Section 6A of the Securities Transfer Administration Act, 2007.

⁶⁶ *Securities Transfer Tax*.

14. Skills development levy (SDL)

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 annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees' tax purposes with SARS or not) 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 receive grants from Sector Education and Training Authorities (SETAs) in terms of this initiative.

The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.

For more information see the guide⁶⁷ available on the SARS website.

15. Unemployment insurance fund (UIF) contributions

South Africa has an unemployment insurance fund which insures employees against loss of earnings due to termination of employment, illness and maternity or adoption leave.

SARS administers the collection of the bulk of UIF contributions. UIF 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 consists of –

- the sum of the contribution made by each employee equal to 1% of an employee's gross remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the employee's tax) 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 an employee's tax) paid or payable by the employer to its employees during any month.

UIF contributions are only calculated on so much of the remuneration paid or payable by the employer to an employee as does not exceed –

- R14 872 per month (R178 464 a year); or
- R3 432 per week.

Employers must pay the total UIF contribution of 2% over to SARS within seven days after the end of the month during which the amount was deducted from the remuneration of its employees.

For more information see the guide⁶⁸ available on the SARS website.

The Department of Labour's website, www.uif.gov.za also has useful information in this regard.

⁶⁷ *Guide for Employers in respect of Skill Development Levy.*

⁶⁸ *Guide for Employers in respect of the Unemployment Insurance Fund.*

16. Air passenger departure tax

From 1 October 2011 to date –

- passengers departing to Botswana, Lesotho, Namibia and Swaziland pay R100 per passenger; and
- passengers departing to other international destinations pay R190 per passenger.

17. Mineral and petroleum resources royalties

In the past mineral and petroleum resources were predominantly privately owned with minimal benefit to the State flowing from the extraction of such resources. Only under certain circumstances such as where mining was conducted on state-owned land did any consideration accrue to the State.

To bring South Africa in line with the prevailing international norms, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) was promulgated. Section 3(2)(b) of the MPRDA states that the State, as the custodian of the nation's mineral and petroleum resources, may prescribe and levy, any fee payable in terms of the MPRDA.

The subsequent enactment of the Mineral and Petroleum Resources Royalty Act 28 of 2008 and the Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008 (the Administration Act) means that the exploitation of all mineral and petroleum resources in South Africa will require the payment of a consideration in the form of a mineral and petroleum royalty, payable to the State through SARS.

Section 2(1) of the Administration Act prescribes the criteria as to who is required to register for purposes of paying this royalty. In terms thereof entities who were existing right holders on 1 November 2009 were required to register by 28 February 2010. After 1 November 2009 any person required to register in terms of the set criteria must do so within 60 days after meeting such criteria.

More information, and the application form to register (*MPR 1*), is available on the SARS website.

18. Interest, penalties and additional tax for non-compliance with legislation

The TA Act provides for –

- the imposition of interest (see Chapter 12 of the TA Act);
- the imposition of penalties (fixed amount penalty and percentage based penalty) (see Chapter 15 of the TA Act); and
- the imposition of understatement penalty up to 200% for a default in rendering a return, an omission from a return, an incorrect statement in a return, or if no return is required, the failure to pay the correct amount of tax (see Chapter 16 of the TA Act).

A person may also be liable on conviction to a fine or to imprisonment on matters such as non-payment of taxes, failure to complete tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which he or she is not entitled.

Taxpayers who have not complied with tax legislation such as to not register or the omission of income and who voluntarily approach SARS to meet their tax obligations, will be received sympathetically.

19. Request for correction (RFC)

A taxpayer, who makes a mistake in a return submitted, and wishes to correct this mistake, is to submit an RFC which is available through eFiling or contact a SARS branch. This allows the taxpayer to correct a previously submitted return/declaration for income tax and in certain circumstances for value-added tax. If the RFC function is not available to the taxpayer through eFiling an objection is to be lodged.

See the SARS website for more information.

20. Notice of objection (NOO)

A taxpayer, who is not –

- able to submit an RFC (see the next paragraph); or
- satisfied with an assessment, decision or determination received from SARS,

must lodge an objection in writing, together with a filled in and signed NOO form stating fully, and in detail the grounds on which the objection is lodged.

An RFC will not be available in the following circumstances:

- In the case of an on-going audit, an RFC for a particular year of assessment has already been submitted or the relevant material (supporting documents) has already been sent, the taxpayer will need to wait for the outcome.
- An audit case was completed or a revised declaration was done by a SARS user.
- In the case of income tax (personal, corporate or trusts) three years after the assessment or where the decision was not allowed.
- For any VAT period more than five years after the assessment and for Diesel any tax period more than two years.

The NOO must be submitted within 30 business days from –

- the date of the assessment; or
- the date that written reasons (decision or determination) for the assessment were provided by SARS,

to the SARS office as specified on the assessment.

If the taxpayer's objection is disallowed (in part or fully), the taxpayer has the right to note an appeal (see 21).

For more information see the interpretation note⁶⁹ available on the SARS website.

21. Dispute resolution

Dispute resolution processes are available to a taxpayer if an objection is disallowed (in part or fully), and the taxpayer believes the assessment, decision or determination received from SARS is still incorrect (see Chapter 9 of the TA Act). These processes are in terms of the legislation that SARS administers.

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. The formal dispute resolution process need not be followed if the difference is clearly the result of an administrative error. However, the taxpayer may still find it useful to record the details and the nature of the error in writing as it

⁶⁹ Interpretation Note No. 15 (Issue 4) dated 20 November 2014 '*Exercise of Discretion in Case of Late Objection or Appeal*'.

reduces the likelihood of any misunderstanding and provides a document that may be referred to in future for record purposes.

Rules prescribing the procedures for lodging an objection and noting an appeal against an assessment were originally formulated and promulgated as provided for in section 107A. These rules included the procedures for the conducting and hearing of an appeal before a Tax Court; or a Tax Board.

Section 107A was repealed by paragraph 73 of Schedule 1 to the TA Act, but applied until new rules were promulgated under section 103 of the TA Act (see Government Notice No. 550 dated 11 July 2014 published in Government Gazette No. 37819 dated 11 July 2014.).

These rules make provision for a dispute resolution process and an alternative dispute resolution process.

For more information see the interpretation⁷⁰ note, and a number of guides⁷¹ that are available on the SARS website.

The Customs and Excise Act 91 of 1964, contains its own provisions relating to dispute resolution.

22. South African Reserve Bank – Exchange control

Exchange control regulations, restricting the in and out flow of capital in South Africa, still exist. For example, investments into South Africa must be reported and prior approval must be obtained if loan capital is invested in 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 or invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

Individuals older than 18 years and in good standing with their tax affairs may invest a total of R4 million a year outside South Africa. This foreign investment allowance of R4 million is available for residents with a valid bar-coded South African identity document. However, individuals are also able to invest, without restriction, in foreign companies that are inward listed on South African security exchanges. In addition individuals are allowed a total single discretionary allowance of R1 million a year for purposes of travel, donations, gifts and maintenance.

Companies are not limited in their use of South African funds for new approved foreign-direct investments (strictly true investments in factories or businesses and not for portfolio investments). Companies are allowed to retain foreign dividends offshore, and dividends repatriated to South Africa after 26 October 2004 may be transferred offshore again for the financing of approved foreign direct investments or approved foreign expansion.

⁷⁰ Interpretation Note No. 15 (Issue 4) dated 20 November 2014 ‘*Exercise of Discretion in Case of Late Objection or Appeal*’.

⁷¹ *Dispute Resolution Guide (Rules under s. 103)* dated 28 October 2014; *Quick Guide on Alternative Dispute Resolution* dated 31 October 2014 and *What do You do if you Dispute your Tax Assessment* dated 31 October 2014.

Further information is available on the Reserve Bank website at **www.reservebank.co.za**.

23. Conclusion

It is trusted that this guide has contributed to greater clarity regarding the application and provisions of the relevant Acts pertaining to taxation in South Africa.

Further information about the different taxes administered by SARS is available on the SARS website **www.sars.gov.za** or from any SARS office.

Annexure A – Examples of how income tax is calculated for the tax year ended 28 February 2015

Example 1 – Taxpayer X is single and under 65 years of age

Facts:

| | R |
|---|---------|
| Salary income (remuneration) | 450 000 |
| Pension fund contributions | 34 000 |
| Medical expenses not recoverable by X | 25 550 |
| Medical scheme contributions (R1 500 per month for 12 months) | 18 000 |
| Retirement annuity fund contributions | 6 000 |
| PAYE | 88 320 |

Determine:

The taxable income of X and the income tax payable to or refundable by SARS.

Result:

| | R | R |
|--|-----------------|--------------------------|
| Total income (remuneration) | | 450 000 |
| Less: Pension fund contributions | | |
| Greater of: R1 750; or | | |
| $7,5\% \times R450\,000 = R33\,750$ | (33 750) | |
| Retirement annuity fund contributions | | |
| Greater of: 15% x Rnil; or | | |
| $R3\,500 - R33\,750 = Rnil$; or | | |
| R1 750 | (1 750) | <u>(35 500)</u> |
| Taxable income | | <u>414 500</u> |
| | | R c |
| Tax on R414 500 | | 101 461.00 |
| $R87\,382.00 + (38\% \times R37\,050)$ | | |
| Less: Primary rebate | | <u>(12 726.00)</u> |
| | | 88 735.00 |
| Less: Rebate for medical scheme fees tax credit = $(R257 \times 12)$ | | <u>(3 084.00)</u> |
| | | 85 651.00 |
| Less: Additional medical expenses tax credit = $(25\% \times R127)$ | | <u>(31.75)</u> |
| Contributions | 18 000 | |
| Less: 4 x Medical scheme fees tax credit | | |
| $(4 \times R3\,084.00)$ | (12 336) | |
| | 5 664 | |
| Add: Medical expenses | <u>25 550</u> | |
| | 31 214 | |
| Less: $7,5\% \times R414\,500$ | <u>(31 087)</u> | |
| | 127 | |
| | | 85 619.25 |
| Less: PAYE | | <u>(88 320.00)</u> |
| Income tax refundable by SARS | | <u>(2 700.75)</u> |

Example 2 – Taxpayers aged 66 years and 59 years respectively**Facts:**

Y is married in community of property (see 2.4.5). Y is 66 years of age and his wife is 59 years of age.

| Income | Y R | Wife R |
|--|----------------|-------------------|
| Remuneration | 120 000 | |
| Taxable income from business R100 000 ⁽¹⁾ | | |
| Net rental income R8 000 ⁽²⁾ + R12 000 ⁽³⁾ | | |
| Gross interest R24 000 ⁽⁴⁾ | | |
| Deductions | | |
| Medical expenses - not members of medical fund | 13 800 | |
| Retirement annuity fund contributions | | 8 000 |
| | R c | |
| PAYE | 1776-00 | |
| Provisional tax | 3 700 | |

⁽¹⁾ The spouses carry on a trade jointly. According to the agreement the profit-sharing ratio is 40:60 – Y 40%, wife 60%.

⁽²⁾ Wife owns a property she inherited from her father. Her father's will stipulate that the income derived from the property may not form part of Y's estate.

⁽³⁾ The rental income of R12 000 of Y is part of the joint estate.

⁽⁴⁾ The total interest of R24 000 is part of the joint estate.

Determine:

The taxable income of Y and his wife and the income tax payable by each of them to SARS or refunded by SARS.

Result:**Tax position – husband (Aged 66 years)**

Determination of taxable income:

| Income | R |
|--|-----------------------|
| Remuneration | 120 000 |
| Taxable income from business (R100 000 × 40%) ⁽¹⁾ | 40 000 |
| Net rental income [Nil ⁽²⁾ + (R12 000 × 50%) ⁽³⁾] | 6 000 |
| Gross interest [(R24 000 × 50%) ⁽⁴⁾ – R12 000 exemption] | <u>nil</u> |
| Taxable income | <u>166 000</u> |

⁽¹⁾ According to the agreement the profit-sharing ratio is 40:60 – Y 40% and wife 60%.

⁽²⁾ Her father's will stipulate that the income derived from the property may not form part of her husband's estate, therefore, no portion of the R8 000 is included in Y's taxable income.

⁽³⁾ The rental income of the joint estate is split equally between spouses due to the fact that they are married in community of property.

⁽⁴⁾ The total interest of R24 000 is part of the joint estate and is split equally between spouse due to the fact that they are married in community of property. Both spouses are each entitled to the exemption of interest income. Y over 65 years of age, therefore, the R34 500 interest exemption is limited to R12 000.

Determination of income tax liability of Y on R166 000:

| | | R | c |
|--|-------------------|-------------|----------------|
| Tax on R166 000 at 18% | | 29 880.00 | |
| Less: Primary rebate | 12 726 | | |
| Additional rebate (age 65 years and older) | <u>7 110</u> | (19 836.00) | |
| | | 10 044.00 | |
| Less: Additional medical expenses tax credit (33,3% x R13 800) | | (4 595.40) | |
| | | 5 448.60 | |
| Less: Income tax | | (5 466.00) | |
| PAYE | (1 766.00) | | |
| Provisional tax | <u>(3 700.00)</u> | | |
| Income tax refundable by SARS | | | (17.40) |

Tax position – wife (Aged 59 years)

Determination of taxable income:

Income

| | |
|---|------------|
| Business income (R100 000 x 60%) ⁽¹⁾ | 60 000 |
| Net rental income [R8 000 ⁽²⁾ + (R12 000 x 50%) ⁽³⁾] | 14 000 |
| Gross interest [(R24 000 x 50%) ⁽⁴⁾ – R12 000 exemption] | <u>nil</u> |
| | 74 000 |

Less: Allowable deductions

| | |
|---|----------------|
| Retirement annuity fund contributions | |
| (15% x R74 000 = R11 100) limited to actual contributions | <u>(8 000)</u> |

Taxable income **66 000**

- (1) According to the agreement the profit-sharing ratio is 40:60 – Y 40% and wife 60%.
- (2) Her father's will stipulate that the income derived from the property may not form part of her husband's estate, therefore the full amount of R8 000 is included in her taxable income.
- (3) The rental income of the joint estate is split equally between spouses due to the fact that they are married in community of property.
- (4) The total interest of R24 000 is part of the joint estate and is split equally between spouse due to the fact that they are married in community of property. Both spouses are each entitled to the exemption of interest income. She is under 65 years of age, therefore, the R23 800 interest exemption is limited to R12 000.

Determination of income tax liability of wife on R66 000:

| | R | c |
|-----------------------------------|--------------------|-------------------|
| Tax on R66 000 x 18% | 11 880.00 | |
| Less: Primary rebate | <u>(12 726.00)</u> | |
| Income tax payable to SARS | | <u>Nil</u> |

Example 3 – Taxpayers aged 77 years

Facts:

Widow, 77 years of age. Medical expenses R3 800 not recoverable by widow

| | |
|------------------------|---------|
| | R |
| Income | |
| Pension | 128 000 |
| Interest | 85 000 |
| PAYE | 840 |
| Provisional tax | 8 050 |

Determine:

The taxable income of the widow and the income tax payable to SARS

Result:

Determination of taxable income:

| | | |
|-----------------------|----------|-----------------------|
| | R | R |
| Pension | | 128 000 |
| Interest | 85 000 | |
| Less: Exempt portion | (34 500) | <u>50 500</u> |
| Taxable income | | <u>178 500</u> |

| | | | |
|---|-------------------|---------------------|---|
| | | R | c |
| Determination of normal tax payable on R178 500 | | 32 406.50 | |
| Tax on R174 550 | 31 419.00 | | |
| Plus: 25% x (R178 500 – R174 550) | <u>987.50</u> | | |
| Less: Rebates | | (22 203.00) | |
| Primary rebate | 12 726.00 | | |
| Secondary rebate (65 years or older) | 7 110.00 | | |
| Tertiary rebate (75 years or older) | <u>2 367.00</u> | | |
| | | 10 203.50 | |
| Less: Additional medical expenses tax credit (33,3% x R3 800) | | (1 265.40) | |
| | | 8 938.10 | |
| Less: Income tax | | (8 890.00) | |
| PAYE | (840.00) | | |
| Provisional tax | <u>(8 050.00)</u> | | |
| Income tax payable to SARS | | <u>48.10</u> | |

Annexure B – Examples of how to determine the monthly value of a taxable benefit regarding accommodation and a company car

Facts:

An employee receives cheap accommodation in the 17% category and a company car with a purchase price of R180 000 (excluding VAT, interest and finance charges). The employee's remuneration for the preceding tax year was R300 000. He pays:

- R1 100 per month towards the use of the accommodation; and
- R2 500 per month towards the use of the motor vehicle.

Determine:

The value of the respective taxable benefits per month

Result:

The monthly values of the taxable benefits are calculated as follows:

Accommodation

$$\begin{aligned} &= [(R300\,000 - R70\,700) \times 17 / 100 \times 1/12] - R1\,100.00 \\ &= R3\,248.41 - R1\,100.00 \\ &= R2\,148.41 \text{ per month} \end{aligned}$$

Company motor vehicle

$$\begin{aligned} &= (R180\,000 \times 3,5\%) - R2\,500 \\ &= R6\,300 - R2\,500 \\ &= R3\,800 \text{ per month} \end{aligned}$$

The amounts of taxable benefits (R2 148.41 and R3 800) must be added to the employee's monthly remuneration in order to determine the amount on which employees' tax is to be deducted.