Legal Counsel

Taxation in South Africa
2016/2017

SARS

South African Revenue Service

Taxation in South Africa – 2016/2017

Preface

This is a general guide providing an overview of the most significant tax legislation administered in South Africa by the Commissioner for the South African Revenue Service (SARS), namely, 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;
- Employment Tax Incentive Act; and
- Tax Administration 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 2017 year of assessment commencing on 1 March 2016 or ending on 28 February 2017;
- **trusts** for the 2017 year of assessment commencing on 1 March 2016 or ending on 28 February 2017; and
- **companies** for the 2017 year of assessment with financial years ending during the 12-month period ending on 31 March 2017.

The information in this guide concerning the rates of the various 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 recorded as "as to date" are the rates 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 pertaining to that rate, applicable to the tax, customs or excise concerned.

This guide has been updated to include the Tax Administration Laws Amendment Act 16 of 2016, the Taxation Laws Amendment Act 15 of 2016 and the Rates and Monetary Amounts and Amendment of Revenue Laws 13 of 2016 as well as the Budget Review of 2017.

All guides, interpretation notes, rulings, forms, returns and tables referred to in this guide are available on the SARS website.

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

- visit your nearest SARS branch;
- contact the SARS National Contact Centre –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time);
- 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 Counsel
SOUTH AFRICAN REVENUE SERVICE
5 October 2017

Contents

Glossary

In this guide, unless the context indicates otherwise –

- **“ADR”** means alternative dispute resolution;
- **“BLNS”** means Botswana, Lesotho, Namibia and Swaziland;
- **“CFC”** means a controlled foreign company;
- **“CGT”** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **“Customs and Excise Act”** means the Customs and Excise Act 91 of 1964;
- **“Estate Duty Act”** means the Estate Duty Act 45 of 1955;
- **“ETI”** means employment tax incentive;
- **“ETI Act”** means the Employment Tax Incentive Act 26 of 2013;
- **“non-resident”** means a person that is not a resident of South Africa;
- **“OECD”** means Organisation for Economic Co-Operation and Development;
- **“PAYE”** means Pay-As-You-Earn;
- **“R&D”** means scientific or technological research and development;
- **“resident”** means a person that 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 Act”** means the South African Revenue Service Act 34 of 1997;
- **“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;
- **“STT Act”** means the Securities Transfer Tax Act 25 of 2007;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“tax treaty”** means an agreement for the avoidance of double taxation entered into between South Africa and another country;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949;
- **“UIF”** means unemployment insurance fund;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the relevant Act.

1. Introduction

1.1 SARS

SARS is South Africa's tax collecting authority. Established under 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 to between SARS and a state entity entitled to the revenue;
- provide a customs service which 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.

The SARS Act makes provision –

- for the efficient and effective administration of the revenue collecting system of South Africa;
- to reorganise the South African Revenue Service;
- to establish an Advisory Board; and
- to provide for incidental matters.

1.2 Secrecy and confidentiality

In Chapter 6 of the TA Act provision is made for the confidentiality of information known by current or former SARS officials because of the performance of their duties, except under specifically defined circumstances. For example, information that a serious 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 under 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.

1.3 Overview of taxes

Taxes that are levied by the national government of South Africa under the Act are the following:

- Normal tax also known as income tax (see **2**)

  The following taxes form part of normal tax –

  - PAYE (see **2.4.5**)
  - Provisional tax (see **2.4.6**)
  - Withholding of amounts from payments to non-resident sellers of immovable property (see **2.4.11**)
  - CGT (see **2.13**)

- Taxation of foreign entertainers and sportspersons (see **3**)
- Withholding tax on royalties (see **4**)
- Withholding tax on interest (see **5**)
- Donations tax (see **6**)
- Dividends tax (see **7**)
- Turnover tax on micro businesses (see **8**)

VAT (see **11**) is levied by the national government under the VAT Act. VAT, which is based on domestic consumption, is levied at the standard rate (currently 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 certain "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 (see **12**) that are leviable by the national government under the Customs and Excise Act 91 of 1964 are –

- ordinary customs duty;
- environmental levy;
- anti-dumping, countervailing and safeguard duties on imported goods;
- specific excise duty;
- specific customs duty;
- *ad valorem* excise duties;
- *ad valorem* customs duty;
- general fuel levy and road accident fund levy; 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 the following taxes under the relevant Acts as mentioned in the paragraphs indicated:

- Transfer duty (see **14**)
- Estate duty (see **15**)
- STT (see **16**)
- SDL (see **17**)
- Unemployment insurance fund (UIF) contributions (see **18**)
- Air passenger departure tax (see **19**)
- Mineral and petroleum resources royalties (see **20**)Diamond export levy
- International Oil pollution compensation fund contributions levy

Provincial and local governments do not levy any of the aforementioned taxes. Local governments levy rates on the value of fixed property to finance the cost of municipal or local services.

1.4 Budget review of 2017

Some of the more significant budget proposals concerning the fiscal year 2017 to 2018 are the following:

- The proposals regarding individuals, employment and savings which will enjoy attention during this legislation cycle is a refinement of the retirement fund reforms. Changes are also envisaged which will affect employee share based incentive schemes.
- Some proposals relating to income tax for businesses are –
  - addressing the circumvention of anti-avoidance rules;
  - extensions of the collateral and securities lending arrangement provisions;
  - refinement of third-party-backed share provisions;
  - refining measures to prevent tax avoidance through the use of trusts;
  - amendments due to the Solvency Assessment and Management framework for long-term insurers;
  - changes in the tax treatment of banks and financial institutions; and
  - amendments to the provisions governing venture capital funding for small businesses.
- The proposals relating to international tax are –
  - changes to the tax treatment of domestic treasury management companies as the qualifying criteria are seen as overly restrictive;
  - special tax dispensations for foreign member funds;
  - relaxation of the policy relating to the acquisition of foreign intellectual property by South African multinationals; and
  - tax implications of CFC's and offshore foreign trusts.
- Proposals relating to customs and excise are –
  - reviewing and possibly amending the current legal authorisation for the sharing of trade statistics with organs of state;
  - amendments to the provisions relating to the marking, tracking and tracing of locally manufactured and imported tobacco products to account; and
  - reviewing of the diesel refund administration system for further implementation requirements.
- Some of the more important proposals relating to tax administration are –
  - amendments to legislation concerning the approval of organisations receiving tax-deductible donations;
  - clarification that the chairperson of the Tax Board has the final decision as to whether or not an accountant or commercial member must form part of the constitution of the Tax Board;

- ➢ amendments to further clarify the transitional rules for the calculation of interest on tax debts; and
- ➢ a tax on sugar sweetened beverages is to be introduced.

Some of the proposals are also mentioned further in this guide. A full version of the proposals can be obtained in Annexure C to the Budget Review of 2017.

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 tax treaties 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 under 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.

Companies are permitted to have a year of assessment ending on a date which coincides with its 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.[1]

[1] For more information see Interpretation Note 19 (Issue 4) dated 15 February 2016 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February” and Interpretation Note 90 dated 15 August 2016: “Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company’s Financial 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.

2.1.6 eFiling

SARS eFiling is an online process for the submission of tax returns and related functions. This 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.

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
- SDL
- Transfer duty
- UIF contributions
- VAT

The following should, however, be noted:

- A taxpayer must retain all supporting documents to a return for five years from the date of submission of the return or five years from the end of the relevant tax period.
- 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.

As from 1 April 2016, electronic channels are the only payment methods available to most taxpayers. SARS branches, Branch Operations and Central Processing Operations (CPO) no longer accept payments for core taxes. The CPO no longer process cheques posted or dropped off at SARS drop-boxes.

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

- At the bank
- Payments via eFiling
- Electronic Funds Transfer (EFT)

For more information **see** the *External Guide: South African Revenue Service – Payment Rules – Revision 24*.

2.1.7 Payments at banks

Over-the-counter tax payments can be made countrywide at the banks listed in the *External Guide: South African Revenue Service – Payment Rules – Revision 24*.

2.1.8 Electronic funds transfer

Payment may be made via the internet banking facilities by simply using the standard drop-down listing of pre-loaded beneficiary IDs provided by the bank. All SARS beneficiary IDs are prefixed with the naming convention "SARS- <Tax Type>". All internet payments must be correctly referenced to ensure that SARS is able to identify taxpayers' payments in addition to allocating correctly the taxpayer's account. A taxpayer will not be able to make a payment if the reference is incorrect.

See the *External Guide: South African Revenue Service – Payment Rules – Revision 24 for* the banks that support EFT payments.

2.1.9 Assessment

An "assessment" as defined in section 1 of the TA Act means the determination of the amount of a tax liability or refund by way of self-assessment by the taxpayer or assessment by SARS.

2.1.10 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 –

- 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 (see the third step).

❖ **The second step**

Determine "income", as defined in section 1(1), by deducting all amounts which are exempt from normal tax 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, for example, taxable capital gains.

2.1.11 Calculation of final normal tax liability

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

❖ **The first step**

Determine the normal tax payable by applying the applicable rate of tax to the taxpayer's taxable income. See the Rates and Monetary Amounts and Amendment of Revenue Laws Act 13 of 2016 for the rates of normal tax to be levied on various taxpayers and different types of taxable income,

❖ **The second step**

For a natural person, deduct from normal tax payable, other than normal tax in respect of any retirement fund lump sum benefit, retirement lump sum withdrawal benefit or severance benefit –

- an amount equal to the sum of the normal tax rebate(s) allowable (see **2.18**);
- the amount of the medical scheme fees tax credit as calculated (see **2.16**); and
- the amount of the additional medical expense tax credit as calculated (see **2.17**).

❖ **The third step**

Determine the final normal tax liability by –

- deducting all other tax credits, that is, PAYE, rebates for 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 that person's real home.[2]

[2] For more information see Interpretation Note 3 dated 4 February 2002 "Resident: Definition in relation to a Natural Person – Ordinarily Resident".

(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. These requirements refer to the number of days of physical presence in South Africa exceeding –

- 91 days in aggregate during the relevant year of assessment;
- 91 days in aggregate during each of the five years of assessment preceding the relevant year of assessment; and
- 915 days in aggregate during those five preceding years of assessment.[3]

2.2.2 Companies and other persons

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.[4]

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 tax in South Africa unless –

- there is a tax treaty which stipulates that only the other country has a right to tax that income; or
- that income is exempt from normal 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 during which those services were rendered.[5]

2.2.4 Tax treaties

A 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 under an Article

---

3 For more information see Interpretation Note 3 dated 4 February 2002 "Resident: Definition in relation to a Natural Person – Ordinarily Resident" and Interpretation Note 4 (Issue 4) dated 12 March 2014 "Resident: Definition in relation to a Natural Person – Physical Presence Test".

4 For information on the meaning of "place of effective management" see Interpretation Note 6 (Issue 2) dated 3 November 2015 "Resident: Place of Effective Management (Companies)".

5 For more information see Interpretation Note 16 (Issue 2) dated 2 February 2017 "Exemption from Income Tax: Foreign Employment Income".

on “Elimination of Double Taxation”. In South Africa, should an amount qualify for relief under the said Article, relief will generally be granted in the form of a credit. Reduced levels of withholding taxes, in situations that 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. Since each tax treaty is unique, the relevant agreement must be consulted and the provisions of it adhered to. The SARS website also provides details of progress made on tax treaties currently being negotiated but not yet entered into force.

2.2.5 Unilateral relief for foreign taxes paid or payable

In the event that no tax treaty exists between two countries, the domestic tax legislation of each country will apply independently of each other. A resident that is liable for income tax in South Africa on income received from a foreign country and that is also liable for tax in the foreign country on that income will be allowed a rebate for the foreign tax paid or proved to be payable against the South African tax liability or a deduction from income. In order to qualify for this rebate or deduction 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.[6]

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.

Employees who are non-resident but working in South Africa for short periods are liable for income tax in South Africa on any South African-source income. The normal employees’ tax rules apply to the remuneration received by or accrued to these employees. Income from employment, when the employer or representative employer is a resident, will be subject to income tax by way of PAYE which is to be deducted from the remuneration.

Natural persons who are not ordinarily resident in South Africa should bear in mind the physical presence test [see **2.2.1 (b)**].[7]

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 normal 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.

[6] See Interpretation Note 18 (Issue 3) dated 26 June 2015 “Rebates and Deduction for Foreign Taxes and Income”.

[7] For more information see the *Guide on the Taxation of Foreigners Working in South Africa* (2014/15).

Salary and emoluments payable to an employee in the domestic or private service of the aforementioned employee is also exempt from normal 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 residents as a consequence of the application of the physical presence test, but income earned from a foreign diplomatic or consular mission will nevertheless remain exempt.

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

Certain amounts (such as salaries and emoluments) received by members of a diplomatic or consular mission, who have received diplomatic immunity under the Diplomatic Immunities and Privileges Act 37 of 2001, are exempt from normal 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 normal tax.

Employees, whose salary and emoluments are not exempt from normal tax in South Africa in the above circumstances and who have not had PAYE deducted or withheld voluntarily by the diplomatic or consular mission must register as provisional taxpayers.

2.4 Natural persons

2.4.1 Requirements to submit a return of income (return)

A natural person, whose taxable income exceeds the "tax threshold" as defined in paragraph 1 of the Fourth Schedule, is required to submit a return for the 2016 year of assessment. The tax threshold amounts to –

- R73 650 (for a person below the age of 65 years);
- R114 800 (for a person aged 65 years or older but not yet 75 years); or
- R128 500 (for a person aged 75 years or older).

For the 2017 year of assessment the tax threshold amounts increased to –

- R75 000 (for a person below the age of 65 years);
- R116 150 (for a person aged 65 years or older but not yet 75 years); or
- R129 850 (for a person aged 75 years or older).

For the 2018 year of assessment the tax threshold amounts increased to –

- R75 750 (for a person below the age of 65 years);
- R117 300 (for a person aged 65 years or older but not yet 75 years); or
- R131 150 (for a person aged 75 years or older).

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 their usual place of residence) paid from one single source which does not exceed an amount to be specified in the notice mentioned in footnote 9 and PAYE has been deducted in line with the deduction tables prescribed by the Commissioner;

- interest income from a source in South Africa not exceeding –
  - R23 800 for a person below the age of 65 years; or
  - R34 500 for a person aged 65 years or older; and
- dividends and the person was a non-resident during the 2016 year of assessment,

this person will not be required to submit a return.

For a detailed list of persons who are required to submit returns for the 2017 year of assessment see the notice[8] which is published yearly in the *Government Gazette* which is available on the SARS website.

2.4.2 Taxation of income from employment [sections 8(1), 8A, 8B, 8C and the Fourth and Seventh Schedules]

Income from employment (see the definition of "remuneration" in paragraph 1 of the Fourth Schedule) can be divided into different categories, namely –

- salary, overtime, commission, bonus etc.;
- allowances [see section 8(1)];
- benefits (see the Seventh Schedule); and
- gains (see sections 8A, 8B and 8C).

The above income is subject to PAYE, unless the allowance or benefit is specifically exempt from normal tax or no value is placed on the benefit.

(a) Allowances [section 8(1)]

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. The most common types of allowances are travelling, subsistence and uniform allowances.

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.[9]

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

[8] See Government Notice 547 in *Government Gazette* 40898 of 9 June 2017. The notice for the 2017 year of assessment was not yet published as at the date of this publication.

[9] For more information see Interpretation Note 14 (Issue 3) dated 20 March 2013 "Allowances, Advances and Reimbursements".

employees are absent from their place of residence an amount, as published by Government Notices,[10] will be deemed to have been actually expended and will be deducted from the subsistence allowance.

For the year of assessment commencing on 1 March 2016 the amount is as follows:

- If the accommodation to which the allowance or advance relates is in South Africa, an amount equal to –
  - R115,00 per day, if that allowance or advance is paid or granted to defray incidental costs only; or
  - R372,00 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, specified in the Government Notices.

For the year of assessment commencing on 1 March 2017, the amount is as follows:

- If the accommodation to which the allowance or advance relates is in South Africa, an amount equal to –
  - R122 per day, if that allowance or advance is paid or granted to defray incidental costs only; or
  - R397 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, specified in the Government Notice.

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.[11]

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 normal tax under section 10(1)(*n*A) provided that the employee is required to wear a special uniform while on duty as a condition of the employee's employment and the uniform is clearly distinguishable from ordinary clothing.

(b) Taxable benefits [paragraphs 7, 9 and 11 of the Seventh Schedule]

A taxable benefit is deemed to have been granted by an employer to an 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.

[10] See Government Notice 191 in *Government Gazette* 39724 of 24 February 2016 and Government Notice 194 in *Government Gazette* 40660 of 3 March 2017.

[11] For more information see Interpretation Note 14 (Issue 3) dated 20 March 2013 "Allowances, Advances and Reimbursements".

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 which 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 an 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.

The following provides some insight into some examples of taxable benefits but is not exhaustive.

Residential accommodation (paragraph 9 of the Seventh Schedule)

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 paragraph 9(3) of the Seventh Schedule, less any amount paid by the employee (see the example in **Annexure B**).

Right of use of a motor vehicle (paragraph 7 of the Seventh Schedule)

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 the event that 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 who 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.

Interest-free or low-interest loans (paragraph 11 of the Seventh Schedule)

The difference between the actual amount of interest charged on an interest-free or low interest debt owed by an employee and the interest charged at the official rate of interest, is to be included in the gross income of the employee. The official rate of interest increased from 7,75% to 8% as from 1 April 2016 and decreased to 7,75% as from 1 August 2017.[12]

(c) Marketable securities, broad-based employee share plans and equity instruments [sections 8A, 8B, 8C and paragraph 11A of the Fourth Schedule]

Share options and other rights to acquire marketable securities (section 8A and paragraph 11A of the Fourth Schedule)

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 must be included in income and are subject to the deduction of PAYE.

Broad-based employee share plans (*sections 8B and 10(1)(nC) and paragraph 11A of the Fourth Schedule)*

Any gain arising from the disposal of any qualifying equity share will be exempt from normal tax but subject to CGT, 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 under the share plan, as does not exceed R50 000 in aggregate.

Equity instruments [*sections 8C and 10(1)(nD) and paragraph 11A of the Fourth Schedule]*

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 at market value 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 the *Tax Guide for Share Owners* (Issue 5) for a discussion of sections 8A, 8B and 8C.

2.4.3 Exempt benefit – Relocation costs

In the event that an employer bears the cost of certain expenditure in consequence of an employee's relocation from one place of employment to another, the appointment of the employee or the termination of the employee's employment, the benefit enjoyed by the employee relating to the expenditure incurred by the employer will be exempt from normal tax under section 10(1)(*n*B).

[12] See the Table of Interest rates under Legal Counsel / Legal Counsel Publications / Tables of Interest Rates / Table 3.

2.4.4 Income of spouses [section 7(2), (2A), (2B) and (2C)]

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

With 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 [section 7(2A)(*b*)];
- income earned from carrying on a trade jointly or if spouses are trading in partnership will accrue to each spouse according to the agreed profit-sharing ratio [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 [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 funds, pension preservation funds, provident funds, provident preservation funds, retirement annuity funds and benefit funds or any other fund of a similar nature are taxable in the hands of the spouse who is the member of the fund [section 7(2C)]. With contributions made to a pension fund or retirement annuity fund, the contributions are deducted in the hands of the spouse who made the payments as a member of the fund [section 11(*k*)], 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 [section 7(2C)(*c*)]; and
- medical scheme fees (section 6A) and additional medical expenses (section 6B) will be allowed as a medical scheme fees tax credit and additional medical expenses tax credit respectively (see **2.16** and **2.17**). Both these tax credits will be deducted from the normal tax payable by the spouse who paid the fees or expenses, even if the funds for the fees or expenses may have come from the joint estate.

The splitting of passive income mentioned above 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 relating to property and income of couples married in community of property.

There are measures to prevent income splitting (other than those mentioned above) which apply to spouses whether they are married in or out of community of property. Section 7(2) prevents income splitting between spouses in order to obtain an unfair tax advantage.

The abovementioned deemed provisions apply to donations, settlements and other dispositions between spouses, in which 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.

2.4.5 Employees' tax (PAYE) (the Fourth Schedule)

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 an amount constitutes a lump sum, is obliged to deduct PAYE, if applicable, from that amount every month. The PAYE 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.[13]

(a) Employees' tax 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 PAYE.

Employees' tax certificates (IRP5s) are issued to employees from whose remuneration PAYE has been deducted. These certificates reflect a breakdown of remuneration received, deductions made from the remuneration and PAYE deducted.

An employer must provide an employee with an IT3(a) certificate in respect of taxable benefits and remuneration from which PAYE are not to be deducted.

(b) Employees' tax liability of directors

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

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 PAYE is to be withheld, a formula is used to determine the director's deemed monthly remuneration from which the company must deduct PAYE.[14]

---

13 Published as attachments to the *Guide for Employers in Respect of Tax Deduction Tables* (2017 Tax Year).

14 For more information on the application of the formula and relief from hardship see Interpretation Note 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)". Interpretation Note 5 was withdrawn on 6 March 2017 because of the repeal of paragraph 11C of the Fourth Schedule with effect from 1 March 2017.

(c) Employees' tax liability of personal service providers

A personal service provider is any company or trust of which 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 conditions is met.[15]

Should that company or trust employ three or more full-time employees (excluding shareholders or the settlor or any beneficiary of the trust or any person that is a connected person in relation to the connected person referred to above) 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.

Payments made to a personal service provider are subject to the deduction of PAYE.

(d) Employees' tax liability of labour brokers

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

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

Remuneration paid to persons who render services to or on behalf of a labour broker is subject to the deduction of PAYE by the labour broker.[16]

(e) Employees tax 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 this person independently of the party by whom the amount is paid or payable is excluded from remuneration for PAYE 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 PAYE.[17]

2.4.6 Provisional tax (the Fourth Schedule)

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 defined in paragraph 1 of the Fourth Schedule as –

- any person (other than a company) who derives income which does not constitute –

[15] See Interpretation Note 35 (Issue 3) dated 31 March 2010 "Employees' Tax: Personal Service Providers and Labour Brokers".
[16] For more information see Interpretation Note 35 (Issue 3) dated 31 March 2010 "Employees' Tax: Personal Service Providers and Labour Brokers".
[17] For more information see Interpretation Note 17 (Issue 3) dated 31 March 2010 "Employees' Tax: Independent Contractors".

  - “remuneration” as defined in paragraph 1 of the Fourth Schedule; or
  - an allowance or advance under section 8(1);
- any company; and
- any person who the Commissioner notifies 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*);
- the owner or charterer of a ship or aircraft which is not a resident;
- any natural person who does not derive income from the carrying on of a trade if the taxable income of that person for the relevant year of assessment –
  - does not exceed the tax threshold; or
  - which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property does not exceed R30 000;
- a small business funding entity (see section 30C); and
- a deceased estate.

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

Payments are generally made by way of two payments, the first of which is made within six months from the beginning of the year of assessment and the second payment on or before the last day of the year of assessment. 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 raised. 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, the third provisional tax payment is to be made within six months after the last day of that year of assessment.

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

The estimated taxable income and provisional tax payable for the year of assessment must be declared by a provisional taxpayer on an IRP6 form.

The following persons are excluded from the definition of “provisional taxpayer” for the 2017 year of assessment:

- Any person (other than a resident) who is an owner or charterer of a ship or aircraft and whose taxable income from embarking passengers or loading livestock, mails or goods in South Africa is calculated under section 33 as 10% of the amount paid to the owner or charterer or to such person’s agent for the loading or embarking of the passengers, livestock, mails or goods.

- A natural person who does not derive any income from the carrying on of any business, if –
  - the taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or
  - the taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property, will not exceed R30 000.
- Any PBO which is a non-profit company or a trust or an association of persons incorporated, formed or established in South Africa that has been approved by the Commissioner under section 30(3). Any recreational club as defined in section 30A(1) that has been approved by the Commissioner under section 30A(2).
- Any body corporate, share block company or association of persons contemplated in section 10(1)(*e*).
- A small business funding entity.
- A deceased estate.

These exemptions apply to provisional tax only. Natural persons will still be liable for normal tax if their taxable income for the relevant year of assessment exceeds the income tax threshold for that year.[18]

2.4.7 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 such persons.

More specific expenditure or allowances have specific provisions with which they must comply in order to be deductible for income tax purposes.[19]

[18] For more information see the *External Guide: Guide for Provisional Tax 2017* – Revision 17.

[19] For more information see Interpretation Note 13 (Issue 3) dated 15 March 2011 "Deductions: Limitation of Deductions for Employees and Office Holders".

(b) Home office expenses

Subject to certain requirements and limitations, home office expenses (expenses which relate to that part of a house used for the purposes of trade) will be allowed as a deduction in determining taxable income.[20]

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

Pension, provident and retirement annuity fund contributions [section 11(*k*)]

Any amount contributed by a person to a pension, provident or retirement annuity fund will be allowed as a deduction, provided the deduction does not exceed the lesser of –

- R350 000; or
- 27,5% of the higher of the person's –
  - remuneration (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  - taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under section 11(*k*)(i).

When the employer contributes an amount for the benefit of the person to a retirement fund, that amount is a taxable benefit in the person's hands.[21] The cash equivalent of the value of taxable benefit is the actual contributions made by the employer, in the case of a defined contribution fund, or as determined by way of a formula, in the case of any other type of fund.[22]

Although a taxable benefit does arise from the employer contributions, the cash equivalent of that taxable benefit is deemed to be an amount contributed by that person, and will qualify for deduction, subject to the limitations discussed above. In other words, subject to the limitations, there will be a corresponding deduction equal to the amount of the taxable benefit.

Any amount that does not qualify for deduction under section 11(*k*)(i), or which has not been taken into consideration in the determination of the taxable portion of a lump sum benefit or as an exemption against an annuity, will be carried forward to the following year of assessment and will be deemed to be a contribution made by that person in that following year.

Once the deduction is determined, it can be offset against the amount remaining before the deduction of any qualifying donation or the inclusion of any taxable capital gain.

[20] For more information see Interpretation Note 28 (Issue 2) dated 15 March 2011 "Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office".

[21] Paragraph 2(*l*) of the Seventh Schedule.

[22] Paragraph 12D of the Seventh Schedule.

Donations to certain organisations (section 18A)

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

- for a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property that qualifies as a REIT,[23] an amount determined in accordance with the following formula:

  A = B × 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 the taxpayer's taxable income. For purposes of this calculation, taxable income –

  - excludes any retirement fund lump sum benefit, retirement lump sum withdrawal benefit and severance benefit; and
  - is determined before allowing any deduction for donations.

- Any donation made on or after 1 March 2014 in excess of the allowable deduction will be carried forward and allowed as a deduction in a subsequent year of assessment, subject to the 10% rule.[24]

*Wear-and-tear [section 11(*e*)]*

Wear-and-tear allowances may be claimed on assets not of a permanent nature which are used for purposes of trade. For example, if it is essential for a taxpayer to maintain a library, a wear-and-tear allowance of 33% of the cost to the taxpayer which is 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.

The cost of "small items" such as loose tools may be written off in full in the year of assessment in which they are acquired and brought into use. A "small item" in this context is one which normally functions in its own right, does not form part of a set and is acquired at a cost of less than R7 000 per item. The amount of R7 000 applies to any qualifying asset acquired on or after 1 March 2009.[25]

*Amount included in taxable income and refunded (Repayment of employees benefits) [section 11(nA) and (*n*B)]*

Should a person be required to refund any amount, including any voluntary award, which was previously included in taxable income for 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.

---

[23] The deductibility of donations made by a REIT and a controlled company is governed by section 25BB(2A)(*c*). See the draft Interpretation Note "Taxation of REITs and Controlled Companies".

[24] For more information see the *Basic Guide to Tax-Deductible Donations* (Issue 2).

[25] For more information see Interpretation Note 47 (Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation Allowance".

2.4.8 Prohibited deductions

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

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

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

- The cost incurred in the maintenance of the taxpayer, or the taxpayer's family or establishment.
- Domestic or private expenses, including the rent or repair of or expenses relating to any premises not occupied for purposes of trade or of any dwelling or house used for domestic purposes, except on those parts as may be occupied for the purpose of trade.

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

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.[26]

(c) Premiums paid for an insurance policy for loss of income [section 23(*r*)]

Insurance policy premiums paid for an insurance policy that covers the taxpayer against the loss of income as a result of illness, injury, disability, unemployment or death are, with effect from 1 March 2015, prohibited as deductions.

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

Other prohibited deductions include –

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

2.4.9 Pensions

(a) Pensions exempt from normal tax [section 10(1)(*g*), (*g*A), (*g*B) and (*g*C)]

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

- War veteran's pensions [section 10(1)(*g*)].
- Compensation relating to diseases contracted by persons employed in mining operations [section 10(1)(*g*)].
- Disability pensions paid under section 2 of the Social Assistance Act 59 of 1992 [section 10(1)(*g*A)].

[26] For more information see Interpretation Note 54 (Issue 2) dated 25 January 2017 "Deductions – Corrupt Activities, Fines and Penalties".

- Compensation paid under the Workmen's Compensation Act 30 of 1941 or the Compensation for Occupational Injuries and Diseases Act 130 of 1993 [section 10(1)(*g*B)(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, if 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 [section 10(1)(*g*B)(ii)].
- Compensation paid by an employer in addition to the compensation mentioned in section 10(1)(*g*B)(i) 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 [section 10(1)(*g*B)(iii)].
- Any amount received by or accrued to any resident under the social security system of any other country [section 10(1)(*g*C)(i)].
- Any lump sum, pension or annuity received by or accrued to any resident from a source outside South Africa as consideration for past employment outside South Africa [section 10(1)(*g*C)(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 lump sum, pension or annuity payable to any person (whether a resident of South Africa or not) for services rendered inside and outside of South Africa It is taxable in the ratio of years of service rendered inside South Africa to the total years of service rendered. The taxability of the pension may be affected by a tax treaty. Tax treaties generally make provision for a pension to be taxed in the country where the pensioner resides, except for government pensions which are taxable in the country paying such pension. However, the country which 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)(*g*C).

2.4.10 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 normal tax under section 10A. The insurance company will issue a certificate reflecting the capital content. Annuities are subject to the deduction of PAYE when the source is from South Africa.

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

2.4.11 Withholding of amounts from payments to non-resident sellers of immovable property (section 35A)

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 normal tax liability for the year of assessment during which the property is disposed of.

No amount must be withheld –

- if the total amount payable for the immovable property does not exceed R2 million; or
- from any deposit paid by a purchaser for the purpose of securing the acquisition of the immovable property until the agreement for the disposal has 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.[27]

2.4.12 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.

2.4.13 Investment income

(a) Dividends and foreign dividends

Dividends received by or accrued to a person, whether the person is a resident or a non-resident, from South African resident companies are generally exempt from normal tax under section 10(1)(*k*)(i). A dividend which is subject to normal tax because of its inclusion in income is exempt from dividends tax under section 64F(1)(*l*). A dividend paid by a resident company is subject to dividends tax under section 64E(1). A dividend may be exempt from dividends tax under section 64F.[28]

Foreign dividends may be exempt from normal tax under section 10B. A cash foreign dividend paid by a foreign company in respect of a listed share is subject to dividends tax under section 64E(1). The dividend may be exempt from dividends tax under section 64F.[29]

A resident may claim a rebate for foreign tax paid on the foreign dividends against any South African normal tax liability or dividends tax liability, whichever is applicable.

---

[27] For more information see the *External Guide: Withholding amounts from Payments to Non-Resident Sellers of Immovable Property in South Africa* IT-PP-020G01.

[28] For more information see the *Draft Comprehensive Guide to Dividends Tax* (Issue 2).

[29] For more information see Interpretation Note 93 dated 24 November 2016 "The Taxation of Foreign Dividends" and the *Draft Comprehensive Guide to Dividends Tax* (Issue 2).

(b) Interest [section 10(1)(*h*) and (*i*)]

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 [section 10(1)(*h*)]. The full amount of the interest is exempt from normal tax. This exemption is not applicable if –

- that person is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is received or accrues by or to that person; or
- the debt from which the interest arises is effectively connected to a permanent establishment of that person in South Africa.

For the 2015, 2016 and 2017 years 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 normal tax [section 10(1)(*i*)]. This exemption is not applicable to interest from a source outside South Africa.

(c) Amounts received from tax-free investments (section 12T)

Section 12T provides for an exemption from normal tax for natural persons (or the deceased or insolvent estate of such persons) of all amounts received from a "tax free investment" as defined in that section. The capital gain or capital loss from the disposal of such investment is disregarded for CGT purposes. A dividend that is paid to a natural person relating to a tax free investment is exempt from dividends tax.

Under section 12T(4), contributions are limited to –

- an amount of R30 000 cash during a year of assessment; and
- a lifetime contribution limitation of R500 000.

2.4.14 Restraint of trade (the definition of "gross income")

A restraint of trade payment received by or accrued to a labour broker without an exemption certificate, a personal service provider, a personal service company or a personal service trust constitutes gross income under paragraph (*c*A) of the definition of "gross income" in section 1(1) and is subject to normal tax. *Bona fide* restraint of trade payments made to other companies and trusts are of a capital nature.

An amount received by or accrued to a natural person as consideration for any restraint of trade imposed on the person regarding –

- employment or the holding of any office; or
- any past or future employment or the holding of an office,
- constitutes gross income for that natural person and is subject to normal tax.

2.4.15 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.

Income derived from any business or trading activity carried on by a resident outside South Africa will be subject to normal 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 itself 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 SBC's, micro businesses, companies mining for gold and long-term insurance companies) pay tax on their taxable incomes at a flat rate of 28%. For the tax rates applicable to the companies that are not paying tax at the flat rate of 28% see **2.15.6 (b)**, **(c)**, **(d)** and **(g)**.

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

2.5.2 Provisional tax

Any company is a provisional taxpayer (see **2.4.6**).

2.5.3 Controlled foreign companies (section 9D)

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 who 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 when 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 (section 12E)

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 at a progressive rate [see **2.6.2**].

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 **2.6.11**]. 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 rate under section 12E(1A)(*a*) read with section 11(*e*) [see **2.6.10**]; or
- at an accelerated write-off allowance rate under section 12E(1A)(*b*) [see **2.6.11**].

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.[30]

2.5.5 Micro businesses (sections 48 to 48C and the Six Schedule)

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

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

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

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

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

[30] For more information see Interpretation Note 9 (Issue 6) dated 26 July 2016 "Small Business Corporations".

See **2.15.6 (c)** for the progressive tax rate applicable to micro businesses.[31]

2.5.6 Insurance companies

(a) Short-term insurance business (section 28)

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 reported but not paid and claims not reported nor paid, are allowed subject to the discretion 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.

(b) Long-term insurance business (section 29A)

Insurers hold and administer certain 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 five-fund approach. The application of this approach requires that long-term insurers allocate their assets to the five separate funds, namely, untaxed policyholder fund, individual policyholder fund, company policyholder fund, corporate fund and the risk policy fund. Each fund is taxed separately [see **2.15.6**] as if it is a separate taxpayer in accordance with the applicable tax principles.

2.5.7 Mining (sections 12N, 15(a), 36 and 37A)

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 includes, for example, expenditure on shaft sinking and mine equipment. It also includes expenditure on development, general administration and management 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. The capital expenditure of a mine cannot be set-off against non-mining income such as interest, rental, other trading activities etc. However, if 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 **2.15.6**]. 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.

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

Expenditure incurred by a taxpayer to effect obligatory improvements under section 12N on capital expenditure items contemplated in section 36(11)(*d*)(i), to (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) effects improvements on the land or to the building 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)(*c*A) or (*t*);

(iii) incurs expenditure to effect the improvements in (ii) above; and

(iv) uses or occupies the land or building for the production of income or derives income from the land or building.

2.5.8 Oil and gas companies (the Tenth Schedule)

Special rules apply to oil and gas companies regarding the calculation of taxable income and certain withholding taxes.

See **20.** regarding mineral and petroleum resources royalties.

2.5.9 Public benefit organisations

Non-profit organisations (NPOs) play a significant role in society by undertaking shared responsibility for the social and development needs of the country by alleviating the financial burden which would otherwise fall on the state. Tax benefits are designed to assist NPOs by augmenting financial resources and providing these organisations with an enabling environment in which to achieve their objectives.

The mere fact that an organisation has a non-profit motive or is established or registered as an NPO under the Nonprofit Organisations Act 71 of 1997 or is established as a non-profit company under the Companies Act 71 of 2008 does not mean that it automatically qualifies for preferential tax treatment or approval as a public benefit organisation (PBO). An organisation will only enjoy preferential tax treatment after it –

- has applied for and been granted approval as a PBO by the Tax Exemption Unit of SARS; and
- continues to comply with the relevant requirements and conditions as set out in the Act.[32]

2.6 Special allowances

The cost to a taxpayer of an asset referred to in **2.6.1**, **2.6.2**, **2.6.3**, **2.6.6**, **2.6.7**, **2.6.8**, **2.6.14**, **2.6.19** and **2.6.24**, 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).

[32] For more information see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 5), the *Basic Guide on Income Tax for Public Benefit Organisations* (Issue 2) and the *Basic Guide for Tax-Deductible Donations* (Issue 2).

2.6.1 Industrial buildings (buildings used in the process of manufacture or a process of a similar nature) (section 13)

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 or a process of a similar nature (other than mining or farming).

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

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*).[33]

2.6.2 Commercial buildings (section 13*quin*)

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 wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade (other than the provision of residential accommodation) which were contracted for on or after 1 April 2007, and the construction, erection or installation of which commenced on or after the abovementioned date.

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

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

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

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

will be deemed to be the cost incurred for that part or improvement.[34]

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

2.6.3 Buildings used by hotel keepers (section 13*bis*)

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.

---

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

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

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

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

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*).[35]

2.6.4 Aircraft and ships (section 12C)

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) from the year of assessment during which the asset is brought into use.

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser under 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*). With a replacement asset (asset acquired to replace 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 which has been recovered or recouped on the damaged or destroyed asset [section 8(4)(*e*)].

Section 8(4)(*e*) was amended with effect from 22 December 2003 and at the same time paragraphs (*e*A), (*e*B), (*e*C), (*e*D) and (*e*E) (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 (*e*B), (*e*C) and (*e*D), apportion the recoupment to each replacement asset in the same ratio as the receipts and accruals from the disposal

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

respectively expended to acquire the replacement asset bear to the total receipts and accruals expended in acquiring all those replacement assets [section 8(4)(*e*A)].

- The amount of the recoupment will be included in the taxpayer's income over the period that the replacement asset is written off for tax purposes in the same proportion as the allowance granted on the replacement asset [section 8(4)(*e*B)].
- In the year of assessment in which the taxpayer disposes of a replacement asset, any portion of the recoupment that is apportioned to the replacement asset and which has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(*e*C)].
- In the year of assessment in which the taxpayer ceases to use a replacement asset for the purposes of that person's trade, any portion of the recoupment that is apportioned to the replacement asset and which has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(*e*D)].
- In the year of assessment in which the taxpayer fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in 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 [section 8(4)(*e*E)].

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

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

2.6.5 Rolling stock (that is, trains and carriages) (section 12DA)

An allowance equal to 20% (five-year straight-line basis) will be granted on the cost actually incurred by a taxpayer on the acquisition or improvement of any rolling stock brought into use on or after 1 January 2008.

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 under 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 under section 8(4)(*a*) or (*e*)(see **2.6.4**).

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

Pipelines used for transportation of natural oil

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

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

Pipelines for transportation of water used by power stations

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

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

Lines or cables used for transmission of electricity

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

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

Lines or cables used for transmission of electronic communications

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

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

The allowance increased to 6.67% (15-year straight-line basis) for lines and cables (new or used) owned by the taxpayer and brought into use for the first time by the taxpayer. The increased allowance applies only to lines and cables acquired on or after 1 April 2015.

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.

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

Earthworks or supporting structures forming part of assets mentioned above and any improvements to these assets, will also qualify for the relevant allowance.

The depreciable cost of these assets is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*)(see **2.6.4**).

2.6.7 Airport assets (section 12F)

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

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 under section 8(4)(*a*) or (*e*)(see **2.6.4**).

2.6.8 Port assets (section 12F)

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).

The term "port asset" means any port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot (including any earthworks or supporting structures forming part of the 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 under section 8(4)(*a*) or (*e*)(see **2.6.4**).

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

An allowance equal to the amount by which the value of any machinery, plant, implements, utensils and articles, other than assets contemplated in sections 12B, 12C, 12DA, 12E(1) and 37B (see above), has diminished through wear-and-tear or depreciation, as the Commissioner may think just and reasonable.

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

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

Small items costing less than R7 000 may be written off in full in the year of assessment of acquisition.[36]

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

2.6.10 Manufacturing assets (the assets) (section 12C)

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

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

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 to the asset. The allowance in the third bullet above is only applicable for years of assessment ending on or after 1 January 2016.

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 subsequent years of assessment.

---

[36] For more information see Interpretation Note 47 (Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation 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.

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

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

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6.4**).

2.6.11 Plant or machinery of small business corporations (section 12E)

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

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 any other process which is of a similar nature, will be granted [section 12E(1)].

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

An allowance will be granted which is equal to –

- an amount as calculated in **2.6.10** [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 [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 first succeeding year of assessment; and
  - 20% in the second succeeding year of assessment.

An SBC can elect to claim either a wear-and-tear allowance under section 11(*e*) 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 under 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.

Any recoupment of the allowance –

- granted under section 11(*e*) will be included in the taxpayer's income under section 8(4)(*a*), and
- granted under section 12E(1A)(*b*) will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6.4**).

2.6.12 Machinery, plant, implements, utensils or articles or improvements made to these assets used in farming or production of renewable energy (section 12B)

A deduction is allowed under section 12B on machinery, implements, utensils, articles and improvements to these assets.

An allowance will be granted on these assets owned or acquired by the taxpayer as purchaser under 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 except on –
  - livestock;
  - any motor vehicle of which the sole primary function is the conveyance of persons;
  - any caravan;
  - any aircraft (other than an aircraft used solely or mainly for crop spraying); or
  - any office furniture or equipment);
- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for the purpose of the taxpayer's trade to generate electricity from –
  - wind power;
    - photovoltaic solar energy of more than 1 megawatt;
    - photovoltaic solar energy not exceeding 1 megawatt; or
    - concentrated solar energy;
  - hydropower to produce electricity of not more than 30 megawatts; and
  - biomass comprising organic wastes, landfill gas or plant material.

An allowance under section 12B will be granted for –

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

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

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6.4**).

2.6.13 Invention, patent, design, trade mark, copyright and knowledge [sections 11(*g*A), 11(*g*B) and 11(*g*C)]

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

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

- devising or developing any invention; 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.

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

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

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

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

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

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

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

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(*g*B)]

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

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

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

An allowance will be granted for expenditure actually 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 if used in the production of income.

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

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

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

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

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 150% of 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 [section 11D(2)].

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 deduction [section 11D(4) and (5)].

A deduction, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of any new and unused building or part of the building, and brought into use for the purpose of carrying on a process of R&D in the course of that taxpayer's trade, will be allowed (section 13).[37]

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*).

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 made to the assets 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 under section 8(4)(*a*) or (*e*) (see **2.6.4**).

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% (20-year straight-line basis) of the cost to a taxpayer of any new and unused building or part thereof, and brought into use for the purpose of carrying on

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

therein a process of R&D in the course of that taxpayer's trade, will be allowed (section 13).[38]

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 made to the assets brought into use for purposes of R&D (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 under section 8(4)(*a*) or (*e*) (see **2.6.4**).

2.6.15 Urban development zones (section 13*quat*)

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 which 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, eThekwini, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane.[39]

2.6.16 Additional deduction for learnership agreements (section 12H)

Employers are entitled to deductions in addition to deductions allowable under the Act in respect of learnership agreements.

The term "registered learnership agreement" as defined in section 12H(1) means a learnership agreement that is –

- registered in accordance with the Skills Development Act, 1998; and
- entered into between a learner and an employer before 1 April 2022.

For all learnership agreements entered into on or after 1 October 2016, the deduction is allowed as follows:

1) During any year of assessment that a learner who holds a qualification with an NQF level from 1 up to and including 6 is a party to a registered learnership agreement with an employer and the agreement was entered into pursuant to a trade carried on by the employer.	R40 000

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

[39] For more information see the *Guide to the Urban Development Zone (UDZ) Tax Incentive* (Issue 5).

2) If the agreement is for less than 12 full months during the year of assessment.	R40 000 is reduced in the same ratio as the number of full months that the learner is a party to the agreement bears to 12.
3) During any year of assessment that a learner who holds a qualification with an NQF level from 7 up to and including 10 is a party to a registered learnership agreement with an employer and the agreement was entered into pursuant to a trade carried on by the employer.	R20 000
4) If the agreement is for less than 12 full months during the year of assessment.	R20 000 is reduced in the same ratio as the number of full months that the learner is a party to the agreement bears to 12.
5) During any year of assessment that a learner who holds a qualification with an NQF level from 1 up to and including 6 is a party to a registered learnership agreement with an employer for less than 24 full months, the agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R40 000 in addition to any allowable deduction.
6) During any year of assessment that a learner who holds a qualification with an NQF level from 7 up to and including 10 is a party to a registered learnership agreement with an employer for less than 24 months, the agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R20 000
7) During any year of assessment that a learner who holds a qualification with an NQF level from 1 up to and including 6 is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, which agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R40 000 multiplied by the number of consecutive 12-month periods within the duration of the agreement.

8) During any year of assessment that a learner who holds a qualification with an NQF level from 7 up to and including 10 is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, which agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R20 000 multiplied by the number of consecutive 12-month periods within the duration of the agreement.
9) If the learner who holds a qualification with an NQF level from 1 up to and including 6 is a person with a disability at the time of entering into the learnership agreement.	R40 000 is increased by R20 000.
10) If the learner who holds a qualification with an NQF level from 7 up to and including 10 is a person with a disability at the time of entering into the learnership agreement.	R20 000 is increased by R30 000.

For more information see Interpretation Note 20 (Issue 6) dated 27 November 2015 "Additional deduction for Learnership Agreements".

2.6.17 Film owners (section 12O)

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

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

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

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

Section 12O(6) provides that any grant received by or accrued to a special purpose corporate vehicle from the state under the Department of Trade and Industry incentive will be exempt from normal tax but subject to the general recoupment provision under section 8(4). In certain cases, if the grant is passed on to an investor, the investor will also qualify for the exemption. A taxpayer who receives or to whom an exempt Department of Trade and Industry incentive accrues must consider the provisions of section 12P(3) to (6) as there are consequences on the cost, deductions and allowances available to a taxpayer in respect of related expenditure.[40]

2.6.18 Environmental expenditure (sections 37A and 37B)

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

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.

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

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

The depreciable cost of the 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*).

Post-trade environmental expenses (section 37A)

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

Section 37A permits a deduction from the income of certain persons carrying on any trade, of any cash paid during any year of assessment to a company or trust whose sole object is the application of its property solely for rehabilitation. Under section 10(1)(*c*P) the receipts and accruals of a company contemplated in section 37A are exempt from normal tax.

[40] For more information see the *Guide to the Exemption from Normal Tax of Income from Films*.

2.6.19 Certain residential units (section 13*sex*)

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of a new and unused residential unit (or of new and unused improvements to a residential unit) acquired by or the erection of which commenced on or after 21 October 2008 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[41] of a taxpayer will be granted if the allowance of 5% referred to above is deducted.

In the event that 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, the percentages below will be deemed to be percentages of the costs incurred by the taxpayer –

- 55% of the acquisition price if the unit was acquired; and
- 30% of the acquisition price if the improvement was acquired.

These allowances are not applicable to any residential unit (or any improvement to it) if the cost of the residential unit qualified or will qualify for a deduction under any other provision 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.[42]

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

2.6.20 Residential buildings (section 13*ter*)

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

The deductions are as follows:

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

---

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

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

If the unit is used or dealt with by the taxpayer in such a way that the unit ceases to be available for letting to a tenant or occupied by a full time employee, these two allowances are subject to recoupment as provided for under section 13*ter*(7). Should the unit be disposed of, section 8(4)(*a*) will apply to the balances of these two allowances not yet recouped.[43]

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

Should a taxpayer dispose of a low-cost residential unit[44] 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 that no 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 for 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 which 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 [section 13*sept*(4)]. The amount deemed to be recouped by the employer will be equal to the lesser of –

- the amount so paid; or
- the amount allowed as a deduction under section 13*sept*(1) in the current or previous years of assessment.[45]

2.6.22 Environmental conservation and maintenance expenditure (section 37C)

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

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

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

[44] The term low-cost residential unit is defined in section 1(1).

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

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

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

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

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

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

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

Additional investment allowance

In addition to any other deductions allowable under the Act, 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 the owner of the asset 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.

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

Additional training allowance

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

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

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

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

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

Expenditure (not related to infrastructure) incurred to acquire a licence from certain government authorities to carry on a trade which 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 after the date that the expenditure was incurred, or 30 years, whichever is the lesser.

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

The deduction under section 12J aims to encourage investors to invest in venture capital companies (VCCs), which in turn, invest in qualifying investee companies.

A claim for a deduction must be supported by a certificate issued by the approved VCC.[46]

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

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

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

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

[46] For more information see the *External Guide: Venture Capital Companies* – Revision 6.

2.7 Owners or charterers of ships or aircraft who are not residents of South Africa (sections 10(1)(*c*G) and 33)

A non-resident owner or charterer of a ship or aircraft that 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 the owner or charterer, or to an agent on such person's behalf, irrespective of whether the amount is payable in or outside South Africa. This tax treatment will not apply if the owner or charterer renders accounts which satisfactorily disclose the actual taxable income derived from the business.

A non-resident owner or charterer is exempt from normal tax in South Africa under section 10(1)(*c*G), if the country of residence of that person grants a similar exemption or equivalent relief to South African ship or aircraft operators. Furthermore, provisions dealing with these aspects are generally contained in tax treaties (see **2.2.4**).

2.8 Farming (the First Schedule to the Act)

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

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

No standard values have been prescribed by regulation for game livestock, but the Commissioner accepts that game livestock may be allocated a standard value of nil. Game livestock which is acquired by donation or inheritance is included in opening stock in the year of acquisition at market value.[47]

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[48]

[47] For more information see Interpretation Note 69 dated 12 February 2013 "Game Farming".
[48] For more information see the *Guide to Building Allowances*.

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

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

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

Special measures in determining taxable income of farmers

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

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

The taxpayer forfeits entitlement to use the following provisions of the First Schedule to the Act if the averaging provisions have been adopted, and apply in that specific year:

- Paragraph 13(1)(*b*) (provisions related to the replacement of livestock sold as a result of the person's participation in a livestock reduction scheme organised by government);
- Paragraph 15(3) (rating formula on taxable income derived from plantations); and
- Paragraph 17 (rating formula arising as a result of abnormal receipts from the disposal of sugar cane damaged by fire).

- Relief is also given to farmers whose income for any year of assessment includes income derived from excess profits as a result of farming land acquired by the state or certain juristic persons (paragraph 20 of the First Schedule).

2.9 Deductions for expenditure and losses incurred before commencement of trade (section 11A)

A pre-trade expense qualifies as a deduction against the income from the trade to which it relates subject to the following four key requirements contained in section 11A(1):

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

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

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

- Section 11 (general deduction), excluding section 11(*x*);
- section 11B (deduction for research and development);
- section 11D (deduction for scientific or technological research and development); or
- section 24J (incurral and accrual of interest).[49]

For more information see the interpretation note[50] available on the SARS website.

2.10 Trading stock (section 22)

The acquisition cost (cost price) of trading stock is allowed as a deduction under section 11(*a*).

The Act makes provision for the tax treatment of trading stock at the beginning of the year of assessment (opening stock) and trading stock at the end of the year of assessment (closing stock). The cost price or value of opening stock is allowed as a deduction and the value of closing stock is an addition to taxable income.

The cost price of trading stock is normally the cost incurred by the taxpayer, whether in the current or any previous year of assessment in acquiring that trading stock plus any further costs. If trading stock is acquired for no consideration or for a consideration which is not

[49] For more information see Interpretation Note 51 (Issue 4) dated 5 May 2017 "Pre-Trade Expenditure and Losses".

[50] Interpretation Note 51 (Issue 4) dated 5 May 2017 "Pre-Trade Expenditure and Losses".

measurable in money, the taxpayer is deemed to have acquired the trading stock at a cost equal to the market value of the trading stock on the date on which it was acquired.[51]

The Act contains anti-avoidance provisions regarding trading stock in section 23F.

2.11 Exemption of certified emission reductions (section 12K)

Section 12K provides that any amount received by or accrued to or in favour of any 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 normal tax.

2.12 Transfer pricing and thin capitalisation (section 31)

South Africa's transfer pricing and thin capitalisation rules apply arm's length principles to transactions, operations, schemes, agreements or understandings constituting affected transactions entered into between certain connected persons resulting in any tax benefit being derived by a person that is a party to the transaction. From a compliance perspective, the burden of proof is on the taxpayer to show that the transaction, operation, scheme, agreement or understanding complied with the arm's length principle.

2.13 Capital gains tax (the Eighth Schedule)

2.13.1 Introduction

CGT was introduced in South Africa with effect from 1 October 2001 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 disregarded by specific provisions.

The Eighth Schedule contains the CGT provisions under which a capital gain or capital loss is determined. Section 26A provides that a taxable capital gain must be included in taxable income. An assessed capital loss is carried forward to the next year of assessment.

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

2.13.2 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), who had capital gains or capital losses exceeding R40 000 during a year of assessment, must register as a taxpayer and must submit a return of income for the relevant year of assessment.

2.13.3 Rates

Natural persons, deceased estates, insolvent estates or special trusts

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

---

[51] For more information see Interpretation Note 65 (Issue 3) dated 6 February 2017 "Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade".

Companies and trusts (other than special trusts)

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

Effective rate of tax

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

- **Natural persons or special trusts**

  The minimum marginal rate of income tax for natural person or special trusts is 18% and the maximum marginal rate is 41%. The effective CGT rate for natural persons and special trusts is from 0% 16,4%, depending on the marginal rate of normal tax applicable to the person.

  For purposes of the Eighth Schedule the disposal of an asset by a deceased estate or insolvent estate of a natural person is treated in the same manner as if the asset had been disposed of by that person (see paragraphs 40(3) and 83(1) of the Eighth Schedule.)

- **Trusts, other than special trusts**

  The rate of income tax for trusts is 41%. The effective rate of CGT for trusts is 32,8%.

See paragraph 3.6 of the *Comprehensive Guide to Capital Gains Tax* (Issue 5) for rates applicable to other persons.

2.13.4 Capital losses

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

2.13.5 Disposal

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

2.13.6 Exclusions

Some capital gains or capital losses (or a portion of the gains or losses) are disregarded for CGT purposes, for example, the following:

- The first R2 million of the capital gain or capital loss on the disposal of a primary residence by a natural person or special trust.
- A capital gain on disposal of the primary residence of a natural person or a special trust if the proceeds from the disposal do not exceed R2 million.
- A capital gain or capital loss on disposal of a personal use asset by a natural person or special trust. Examples are motor vehicles, including a motor vehicle for which a travel allowance was received, caravans, furniture and jewellery.
- Retirement benefits.
- An amount received for a long-term insurance policy by the original beneficial owner.

A natural person and a special trust qualify for an annual exclusion:

- R30 000 (R40 000 as from years of assessment commencing on or after 1 March 2016) of the sum of capital gains and capital losses in a year of assessment.
- R300 000 in the year of death for a natural person.

2.13.7 Base cost (paragraph 20 of the Eighth Schedule)

The base cost of an asset is the amount the taxpayer incurred for acquisition of the asset plus other expenditure 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 expenditure which may form part of the base cost of an asset are –

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

A capital gain arises when the proceeds from a disposal of an asset exceed the base cost and a capital loss arises when the base cost exceeds the proceeds. As noted above certain capital gains and capital losses are disregarded for CGT purposes.[52]

2.13.8 Small businesses (paragraph 57 of the Eighth Schedule)

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

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

Although the term "trade" is widely defined in section 1(1), the determination of whether a trade is being carried on, can be problematic in some instances. Whether a specific activity amounts to the carrying on of a trade, is a question of law that depends on the facts and circumstances of the specific case. In considering whether or not an activity constitutes a trade, the intention of the person is important and this intention is usually coupled with a

[52] For more information see the *Comprehensive Guide to Capital Gains Tax* (Issue 5), the *ABC of Capital Gains Tax for Individuals* (Issue 9), the *ABC of Capital Gains Tax for Companies* (Issue 7) and the *Guide on Valuation of Assets for Capital Gains Tax Purposes* (Issue 3).

reasonable prospect of deriving a profit from that particular trade. When an immediate profit is not attainable owing to any reason, the prospect of deriving an ultimate profit from that trade should at least be based on reasonable circumstances. The test should, therefore, be a combination of a subjective test, that is, taking into account the intention of the person and an objective test, that is, considering the facts and circumstances of the specific case.

Ring-fencing is not a new concept in South African income tax law. In essence, it is an anti-avoidance measure under which the expenditure incurred in conducting a trade is limited to the income of that trade. Any excess expenditure (assessed loss from a trade) is then carried forward and is only set off against any income derived from that trade in a subsequent year of assessment.

Section 20A does not replace the purpose or the function of section 11(*a*) read with section 23(*g*). Thus an assessed loss from a trade could be disallowed in whole under section 11(*a*) read with section 23(*g*) if the activity carried on by the taxpayer is not a *bona fide* trade, and in such event section 20A will have no role to play. Section 20A comes into operation when assessed losses from a trade were allowed in earlier years of assessment. It is therefore applied after the application of sections 11(*a*) and 23(*g*) and provides a structure for determining whether or not a trade loss should be set off against other income, thereby reducing taxable income. Apart from specific circumstances, which will be dealt with later, a "ring-fenced" loss is not "lost" or "disallowed"; but merely carried forward to the next year of assessment and is available for set-off against any income derived from that specific trade in that year.

The ring-fencing provisions only apply to an assessed loss from a trade carried on by a taxpayer who is a natural person. Natural persons trading in a partnership are thus included.[53]

2.15 Tax rates

2.15.1 Rate of tax to be levied on 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

Year of assessment commencing on 1 March 2015 or ending on 29 February 2016

Taxable income	Rate of tax
Not exceeding R181 900	18% of taxable income
Exceeding R181 900 but not exceeding R284 100	R32 742 plus 26% of the amount by which taxable income exceeds R181 900
Exceeding R284 100 but not exceeding R393 200	R59 314 plus 31% of the amount by which taxable income exceeds R284 100
Exceeding R393 200 but not exceeding R550 100	R93 135 plus 36% of the amount by which taxable income exceeds R393 200
Exceeding R550 100 but not exceeding R701 300	R149 619 plus 39% of the amount by which taxable income exceeds R550 100

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

Exceeding R701 300	R208 587 plus 41% of the amount by which taxable income exceeds R701 300

Income tax threshold for the year of assessment commencing on 1 March 2015 or ending on 29 February 2016

Income tax thresholds (natural persons only)	Amount
Below the age of 65 years	R73 650
Age 65 years and over	R114 800
Age 75 years and over	R128 500

Year of assessment commencing on 1 March 2016 or ending on 28 February 2017

Taxable income	Rate of tax
Not exceeding R188 000	18% of taxable income
Exceeding R188 000 but not exceeding R293 600	R33 840 plus 26% of the amount by which taxable income exceeds R188 000
Exceeding R293 600 but not exceeding R406 400	R61 296 plus 31% of the amount by which taxable income exceeds R293 600
Exceeding R406 400 but not exceeding R550 100	R96 264 plus 36% of the amount by which taxable income exceeds R406 400
Exceeding R550 100 but not exceeding R701 300	R147 996 plus 39% of the amount by which taxable income exceeds R550 100
Exceeding R701 300	R206 964 plus 41% of the amount by which taxable income exceeds R701 300

Income tax threshold for the year of assessment commencing on 1 March 2016 or ending on 28 February 2017

Income tax thresholds (natural persons only)	Amount
Below the age of 65 years	R75 000
Age 65 years and over	R116 150
Age 75 years and over	R129 850

Year of assessment commencing on 1 March 2017 or ending on 28 February 2018

Taxable income	Rate of tax
Not exceeding R189 880	18% of taxable income
Exceeding R189 880 but not exceeding R296 540	R34 178 plus 26% of the amount by which taxable income exceeds R189 880
Exceeding R296 540 but not exceeding R410 460	R61 910 plus 31% of the amount by which taxable income exceeds R296 540
Exceeding R410 460 but not exceeding R555 600	R97 225 plus 36% of the amount by which taxable income exceeds R410 460
Exceeding R555 600 but not exceeding R708 310	R149 475 plus 39% of the amount by which taxable income exceeds R555 600
Exceeding R708 310 but not exceeding R1 500 000	R209 032 plus 41% of the amount by which taxable income exceeds R708 310
Exceeding R1 500 000	R533 625 plus 45% of the amount by which taxable income exceeds R1 500 000

Income tax threshold for the year of assessment commencing on 1 March 2017 or ending on 28 February 2018

Income tax thresholds (natural persons only)	Amount
Below the age of 65 years	R75 750
Age 65 years and over	R117 300
Age 75 years and over	R131 150

Lump sum benefits

There are three categories of lump sum benefits:

- Retirement fund lump sum withdrawal benefit
- Retirement fund lump sum benefit
- Severance benefit

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

- retirement or death;
- termination or loss of employment owing to redundancy or an employer ceasing trade; or
- the commutation of an annuity or portion of an annuity.

A **retirement fund lump sum withdrawal benefit** is any amount –

- assigned under a divorce order granted on or after 13 September 2007 under section 7(8)(*a*) of the Divorce Act 70 of 1979, to the extent that the amount so assigned –
    - constitutes a part of a pension interest, as defined in section 1 of the Divorce Act of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and
    - is due and payable on or after 1 March 2012 to a person who is the former spouse of that member by that pension fund, pension preservation fund, provident fund or provident preservation fund or retirement annuity fund;
- that is transferred for the benefit of that person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund of which that person is or previously was a member; and
- other than an amount received by or accrued to that person by way of a lump sum benefit referred to above, an amount assigned under a divorce order referred to above or an amount transferred for the benefit of that person referred to above, received by or accrued to that person by way of a lump sum benefit from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,

less any deduction permitted under paragraph 6 of the Second Schedule.

A **severance benefit** refers to a lump sum from or by arrangement with a person's employer or an associated institution in relation to that employer for the relinquishment, termination loss, repudiation, cancellation or variation of the person's office or employment or of the person's appointment to any office or employment if certain requirements are met.

A person qualifies for a life-time exemption of R25 000 and R500 000, as indicated in the three tables below.

Once the respective lump sum benefits or severance benefits are aggregated, the tax due is calculated in accordance with the respective tables below. Tax payable on previous lump sum benefits or severance benefits is deducted from the tax payable to arrive at the tax payable on the lump sum benefit or severance benefit that accrued during the relevant year of assessment.

2.15.2 Taxable income from retirement fund lump sum withdrawal benefits:

The rates of tax in the table below apply to a year of assessment –

- commencing on or after 1 March 2016; or
- commencing on or after 1 March 2017.

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

2.15.3 Taxable income from retirement fund lump sum benefits:

The rates of tax in the table below apply to a year of assessment –

- commencing on or after 1 March 2016; or
- commencing on or after 1 March 2017.

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

2.15.4 Taxable income from severance benefits:

The rates of tax in the table below apply to a year of assessment –

- commencing on or after 1 March 2016; or
- commencing on or after 1 March 2017.

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

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

The rates of tax in the table below apply to a year of assessment –

- commencing on 1 March 2015 or ending on 29 February 2016; or
- commencing on 1 March 2016 or ending on 28 February 2017.

Taxable income	**Rate of tax**
On each rand of taxable income	41%

The rates of tax in the table below apply to a year of assessment –

- commencing on 1 March 2017 or ending on 28 February 2018.

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

2.15.6 Taxable income of companies

(a) Companies (other than PBO's or recreational clubs approved by the Commissioner, SBC's, mining companies and long-term insurers)

The rates of tax in the table below apply to any year of assessment –

- ending during the 12 months ending on 31 March 2017; or
- ending during the 12-month period ending on 31 March 2018.

Taxable income	**Rate of tax**
On each rand of taxable income	28%

(b) Small business corporations

Rates of tax applicable to any year of assessment ending during the 12-month period ending on 31 March 2016

Taxable income	**Rate of tax**
Not exceeding R73 650	0% of taxable income
Exceeding R73 650 but not exceeding R365 000	7% of the amount by which taxable income exceeds R73 650
Exceeding R365 000 but not exceeding	R20 395 plus 21% of the amount by

R550 000	which taxable income exceeds R365 000
Exceeding R550 000	R59 245 plus 28% of the amount by which taxable income exceeds R550 000

Rates of tax applicable to any year of assessment ending during the 12-month period ending on 31 March 2017

Taxable income	**Rate of tax**
Not exceeding R75 000	0% of taxable income
Exceeding R75 000 but not exceeding R365 000	7% of the amount by which taxable income exceeds R75 000
Exceeding R365 000 but not exceeding R550 000	R20 300 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 150 plus 28% of the amount by which taxable income exceeds R550 000

Rates of tax applicable to any year of assessment ending during the 12-month period ending on 28 February 2018

Taxable income	**Rate of tax**
Not exceeding R75 750	0% of taxable income
Exceeding R75 750 but not exceeding R365 000	7% of the amount by which taxable income exceeds R75 750
Exceeding R365 000 but not exceeding R550 000	R20 248 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 098 plus 28% of the amount by which taxable income exceeds R550 000

(c) Registered micro businesses (turnover tax)

The rates of tax in the table below apply to any year of assessment –

- ending during the 12-month period ending on 28 February 2017; or
- ending during the 12-month period ending on 28 February 2018.

Taxable turnover	**Rate of tax**
Not exceeding R335 000	0% of taxable turnover
Exceeding R335 000 but not exceeding R500 000	1% of the amount by which taxable turnover exceeds R335 000
Exceeding R500 000 but not exceeding	R1 650 plus 2% of the amount by which

R750 000	taxable turnover exceeds R500 000
Exceeding R750 000	R6 650 plus 3% 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")**

The rates of tax below apply to any year of assessment –

- ending during the 12-month period ending on 31 March 2017; or
- ending during the 12-month period ending on 31 March 2018.

$y = 34 - 170/x$

Where:

y = rate of tax to be levied

x = the ratio expressed as a percentage to –

$$\frac{\text{Taxable income from gold mining (excluding taxable income determined to be attributable to the disposal of certain assets)}}{\text{Total revenue (turnover) from gold mining}}$$

See the Rates and Monetary Amounts and Amendment of Revenue Laws Act 13 of 2016 for the detailed formula and rates of tax applicable to taxable income derived from mining for gold.

(e) Oil and gas companies

Under paragraph 2 of the Tenth Schedule the rate of tax on taxable income attributable to oil and gas income by any oil and gas company will not exceed 28% on each rand of taxable income for any year of assessment –

- ending during the 12-month period ending on 31 March 2017; or
- ending during the 12-month period ending on 31 March 2018.

(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 2017; or
- ending during the 12-month period ending on 31 March 2018.

(g) Insurance companies

Long-term insurance companies

The rates of tax in the table below apply to any year of assessment –

- ending during the 12-month period ending on 31 March 2017; or
- ending during the 12-month period ending on 31 March 2018.

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:	0% of taxable income
Risk policyholder fund (With effect from years of assessment commencing on or after 1 January 2016.)	28% 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 2017; or
- ending during the 12-month period ending on 31 March 2018.

2.15.7 Taxable income of public benefit organisations 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 and a recreational club are partially taxable on its trading receipts

(a) A public benefit organisation or recreational club that is a company

The rates of tax in the table below apply to any year of assessment –

- ending during the 12-month period ending on 31 March 2017; or
- ending during the 12-month period ending on 31 March 2018.

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

(b) A public benefit organisation that is a trust

The rate of tax in the table below apply to any year of assessment –

- commencing on 1 March 2015 or ended on 29 February 2017; or
- commencing on 1 March 2016 or ending on 29 February 2018.

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

2.16 Medical scheme fees tax credit (section 6A)

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

- R286 (R303 as from 1 March 2017) for benefits to the person;
- R572 (R606 as from 1 March 2017) for benefits to the person and one dependant; or
- R572 (R606 as from 1 March 2017) for benefits to the person and one dependant, plus R192 (R204 as from 1 March 2017) for each additional dependant,

for each month in the year of assessment for 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 gross income [paragraph 2(i) of the Seventh Schedule read with paragraph (i) of the definition of "gross income" in section 1(1).[54]

2.17 Additional medical expenses tax credit (section 6B)

A percentage of qualifying medical expenses paid by a person is allowed as a rebate which is deducted from the normal tax payable by that 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 gross income [paragraph 2(*j*) of the Seventh Schedule read with paragraph (i) of the definition of "gross income" in section 1(1).

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

- a person aged 65 years or older;
- a person, such person's spouse or child being a person with a "disability" as defined in section 6B(1); or
- any other case.

The amount to be deducted is calculated as follows:[55]

Category	Amount
A 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

[54] For more information see the *Guide on the Determination of Medical Tax Credit and Allowances* (Issue 8).

[55] See the *Guide on the Determination of Medical Tax Credit and Allowances* (Issue 8).

Category	Amount
	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.
A person, this person's spouse or child being 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.
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.

2.18 Normal tax rebates (section 6)

The amounts of the normal tax rebates (for the year of assessment commencing on 1 March 2015 or ending on 29 February 2016) 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)	R13 257
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 407
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 466

For the year of assessment commencing on 1 March 2016 or ended on 28 February 2017, normal tax rebates are as follows:

Rebates (natural persons only)	**Amount**
Primary rebate – (Below the age of 65 years)	R13 500
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 407

Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 466

For the year of assessment commencing on 1 March 2017 or ended on 28 February 2018, normal tax rebates are as follows:

Rebates (natural persons only)	**Amount**
Primary rebate – (Below the age of 65 years)	R13 635
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 479
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 493

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

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is a non-resident) relating to the non-resident's performance in South Africa, must deduct or withhold tax at a rate of 15% of the gross payments. 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. Either the foreign entertainer or sportsperson, 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 be liable for the tax which must be paid to SARS within 30 days after the amount is received by or accrued to such person.

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

A foreign entertainer or sportsperson who is –

- employed by an employer who is a resident; and
- physically present in South Africa for more than 183 days in aggregate in a 12-month period which 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 a return of income.

Any person who is primarily responsible and who will be rewarded for founding, organising or facilitating a performance in South Africa 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 **nres@sars.gov.za**.

4. Withholding tax on royalties (sections 49A to 49H)

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

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

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

- the non-resident was physically present in South Africa for more than 183 days in aggregate during the twelve-month period preceding the date on which the amount is received by or accrued to that person; or
- the intellectual property, knowledge or information for which the royalty is paid is effectively connected with a permanent establishment of the non-resident in South Africa if that non-resident is registered as a taxpayer for purposes of the Act.

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

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

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

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

5. Withholding tax on interest (sections 50A to 50H)

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

The withholding tax on interest is a final tax.

The liability for the withholding of withholding tax on interest is that of the person paying the interest. The tax is triggered by the earlier of the date on which the interest is paid or becomes due and payable. The withholding tax on interest must be paid to SARS by the last day of the month following the month during which the interest is paid.

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

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

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

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

6. Donations tax (sections 54 to 64)

Donations tax is payable by any resident (the donor) who makes a donation to another person (the donee). 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 under section 56.

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

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

Any property that has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration is treated as having been disposed of under a donation (section 58).

If a donor fails to pay the donations tax within the prescribed period (by the end of the month following the month during which a donation takes effect or 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.

7. Dividends tax (sections 64D to 64N)

Dividends tax is a classical method of taxing dividends. The company pays normal tax on its profits. A company or regulated intermediary withholds a further amount of dividends tax on behalf of the beneficial owners who are entitled to the benefit of the dividend attaching to the shares when a cash dividend is paid. The company is liable for dividends tax on any dividend *in specie* paid by it.

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

Dividends tax is levied at the rate of 15%[56] of the amount of the dividend paid. Certain dividends paid by oil and gas companies and international shipping companies are subject to dividends tax at the rate of 0%. Dividends paid to non-residents may be subject to a reduced rate of tax under a tax treaty.[57]

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

8. Turnover tax (sections 48 to 48C and the Sixth Schedule)

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. Turnover tax is available to micro businesses of sole proprietors, partnerships and companies.

The turnover tax system is essentially an alternative to the current tax regime provided for in the Act. A qualifying micro business may choose to register for VAT and turnover tax, provided that all the conditions for voluntarily VAT registration are met.

A person qualifies as a micro business if that person is –

- a natural person (or the deceased or insolvent estate of a natural person which was a registered micro business at the time of death of insolvency) or company; and
- the qualifying turnover of that person for the year of assessment does not exceed R1 million.

Turnover tax is a single tax in the place of normal tax and CGT.

A person may generally elect to be registered as a micro-business before the beginning of a year of assessment. It is important to thoroughly review the operations of a business before deciding on whether to elect to be a micro-business for a specific year of assessment. Factors such as the overhead costs of the micro business, its expected tax liability and tax compliance costs should be taken into account in making the decision.

Unlike the income tax system that makes use of comprehensive inclusion rules and a reduction process, turnover tax is calculated by simply applying the tax rate to the taxable turnover of the micro business [see **2.15.6 (c)**]. The taxable turnover will basically consist of the turnover of the micro business with a few specific inclusions and exclusions.[58]

56 It was proposed in clause 11(1) of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill of 2017 that the rate of dividends tax be increased from 15% to 20% with effect from 22 February 2017.
57 For more information see the *Draft Comprehensive Guide to Dividends Tax* (Issue 2).
58 For more information see the *Tax Guide for Micro Businesses* 2016/2017.

9. Employment tax incentive (the Employment Tax Incentive Act)

The (ETI was introduced by the ETI Act and is administered by SARS through the PAYE system.

The ETI is a temporary tax incentive that may be claimed by eligible employers as encouragement to employ –

- young employees between the ages of 18 and 29 years;
- employees of any age in special economic zones identified by the Minister of Finance by notice in the *Government Gazette*; or
- employees of any age in any industry identified by the Minister of Finance by notice in the *Government Gazette*.

The ETI applies to qualifying employees employed on or after 1 October 2013 by eligible employers.

Payment of the incentive is effected by eligible employers being able to reduce the PAYE due by the amount of the ETI that may be claimed, provided that the requirements of the ETI Act are met. PAYE is deducted and withheld from the remuneration of employees and paid to SARS (usually monthly) via the PAYE system.

The ETI is a temporary programme which commenced on 1 January 2014 and will end on 28 February 2019.[59] During this period, the employer may claim the ETI for a maximum of 24 months per qualifying employee. The ETI will be subject to continuous review of its effectiveness and impact in order to determine the extent to which its core objective of reducing youth unemployment is achieved.

The employer is required to perform a monthly calculation to determine the amount of the ETI which may be claimed per qualifying employee. The calculation takes into account –

- the monthly remuneration paid to the qualifying employee;
- the period for which the qualifying employee is employed; and
- the amount or percentage which may be claimed.

The table below illustrates how the ETI will be calculated in relation to the remuneration received by a qualifying employee.

Monthly remuneration	**ETI per month during the first 12 months in which the employee qualified**	**ETI per month during the next 12 months in which the employee qualified**
R0 – R1 999	50% of monthly remuneration	25% of monthly remuneration
R2 000 – R3 999	R1 000	R500
R4 000 – R5 999	Formula: R1 000 – [0,5 × (monthly remuneration – R4 000)]	Formula: R500 – [0,25 × (monthly remuneration – R4 000)]

59 The incentive was extended until 28 February 2019 by section 97(1) of the Taxation Laws Amendment Act 15 of 2016.

The employer must add any amounts rolled over from previous months to the amount of the ETI for the current month.[60] Any excess ETI rolled over that has not been deducted at the end of the period for which a return must be submitted under paragraph 14(3)(*a*) of the Fourth Schedule (these reconciliation returns are normally submitted for the six-month periods ending August and February), may be claimed from SARS. The reimbursement claimed from SARS will, however, not be made if an employer has any outstanding tax returns or an outstanding tax debt.[61]

10. General Anti-Avoidance Rule (sections 80A to 80L)

The General Anti-Avoidance Rule (GAAR) is contained in sections 80A to 80L.

The application of the GAAR rule is based on the definition of an "impermissible avoidance arrangement" in section 80A. The Commissioner may make adjustments if it is found that an impermissible avoidance arrangement was entered into with the sole or main purpose to obtain a tax benefit and –

- in the context of business—
  - ➢ it was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than obtaining a tax benefit; or
  - ➢ it lacks commercial substance, in whole or in part, taking into account the provisions of section 80C;
- in a context other than business, it was entered into or carried out by means or in a manner which would not normally be employed for a *bona fide* purpose, other than obtaining a tax benefit; or
- in any context—
  - ➢ it has created rights or obligations that would not normally be created between persons dealing at arm's length; or
  - ➢ it would result directly or indirectly in the misuse or abuse of the provisions of the Act.

11. Value-added tax

11.1 Introduction

VAT is an indirect tax levied under 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. VAT is a destination-based tax (resulting in exports being zero rated) 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.

---

[60] This may be subject to a limitation as the rollover amounts under section 9(2) are subject to a limitation under section 9(4).

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

11.2 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.

11.3 Registration, collection and payment of value-added tax

Any person who carries on an enterprise and 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.[62] 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 Regulation[63] 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 make taxable supplies exceeding R50 000 within the next 12 month period.[64] 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 owing to the nature of the activity. However, registration of

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

[63] Regulation 221 (*Government Gazette* 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. See the SARS website to view the Regulations.

[64] Persons supplying "commercial accommodation" are currently subject to a minimum threshold for voluntary registration of R60 000 and not R50 000. The R60 000 threshold will increase to R120 000 with effect from 1 April 2016.

these special cases will only be permitted under certain conditions prescribed by Regulation.[65]

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 on any exempt supplies nor deduct any VAT as input tax if an 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.

With 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 guide[66] available on the SARS website.

11.4 Application of value-added tax to supplies and imports

Most supplies of goods or services by vendors are subject to the standard rate of VAT (currently 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 which qualify for exemption on importation into South Africa.

See **11.5** and **11.6** for some examples of zero-rated and exempt supplies of goods and services and exempt imports.

Also see **12.4 0** for more information regarding the importation of goods into South Africa.

---

65 See the regulations issued under section 23(3)(*b*)(ii) and 23(3)(*d*) in Government Notices R446 and R447 respectively, which were published in *Government Gazette* 38836 dated 29 May 2015.

66 *VAT 404 – Guide for Vendors*.

11.5 Zero-rated supplies

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

- Goods exported[67] 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
- 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.

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*.[68]

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

[67] The zero-rating is subject to the parties meeting the relevant requirements set out in Interpretation Note 30 (Issue 3) dated 5 May 2017 "The Supply of Movable Goods as Contemplated in Section 11(1)(*a*)(i) read with Paragraph (*a*) of the Definition of 'Exported' and the Corresponding Documentary Proof" with regard to direct exports and Regulation 316 published in *Government Gazette* 37580 on 2 May 2014 with regard to indirect exports.

[68] Farmers were given a period of at least 12 months from the time that the law was amended (20 January 2015) to prepare for this change. As at the time of updating this guide, the notice had not yet been issued by the Minister.

may generally be deducted as input tax, subject to the required documents such as valid tax invoices being held.

11.6 Exempt supplies

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

- Financial services;
- Public transport of fare-paying passengers by road and rail;
- The supply of a dwelling[69] 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; and
- 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.

11.7 Tourists, diplomats and exports to foreign countries

11.7.1 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 as well as by the VRA if the VRA is present at the point of exit. The qualifying purchaser must 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.

[69] 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:

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

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; and
- 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 Regulations[70] 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.

11.7.2 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.

[70] Regulation 316 (*Government Gazette* 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 **11.7.1**.

11.7.3 Exports to foreign countries

A vendor may apply the zero rate of VAT when supplying movable goods which are consigned 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 on 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 guide[71] available on the SARS website.

12. Customs

12.1 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.

Customs duties are imposed by the Customs and Excise Act. The duties are levied on imported goods with the aim of raising revenue and protecting the local market. The duties are usually calculated as a percentage of the value of the goods (set in the Schedules to the Customs and Excise Act). However, meat, fish, tea, certain textile products and certain firearms attract rates of duty calculated either as a percentage of the value or as cents per unit (for example, per kilogram or metre).

Additional *ad valorem* excise duties are levied on a wide range of luxury or non-essential items such as perfumes, firearms and arcade games. See the External Standard - Ad Valorem Excise Duty.

Duties levied on imported goods

Three kinds of duties are levied on imported goods:

- Customs duties (including additional ad valorem duties on certain luxury or non-essential items)
- Anti-dumping and countervailing duties
- VAT (which is also collected on goods imported and cleared for home consumption)

71 *VAT 404 – Guide for Vendors*.

Anti-dumping and countervailing duty

Anti-dumping and countervailing duties are levied on –

- goods considered to be "dumped" in South Africa; and
- subsidised imported goods.

These goods are the subject of investigations into pricing and export incentives in the country of origin. The rate imposed will depend on the result of the investigations. These duties are either levied on an *ad valorem* basis (as a percentage of the value of the goods) or as a specific duty (as cents per unit).

The amount and type of duty imposed on a product is determined by the following main criteria:

- The value of the goods (the customs value)
- The volume or quantity of the goods
- The tariff classification of the goods (the tariff heading)

South Africa is a signatory to the South African Customs Union (SACU). SACU consists of the Governments of the Republic of Botswana, the Kingdom of Lesotho, Republic of Namibia, South Africa and the Kingdom of Swaziland.

The SACU Agreement which is currently in place was published in Notice R.800 in *Government Gazette* 26537 of 2 July 2004 and came into operation from 15 July 2004.

The effect of the SACU Agreement is that a Common Customs Area has been created within which goods that are grown, produced or manufactured, on importation from one of the member states to another, shall be free of customs duties and quantitative restrictions (see Article 18.1). It does not include that the restrictions on imports or exports in accordance with any national laws for the protection of the local industries or products in the relevant member state are not being enforced.

This Common Customs Area also has a Common Revenue Pool (see Article 19 of the 1969 Agreement), in which all customs, excise and additional duties collected by the different member states, are paid into this pool within three months of the end of the quarter of a particular financial year (see Articles 32 and 33 of the current Agreement). SACU Member States are then paid from this pool and the share of each member state is calculated from the different components according to a specific formula.

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.

12.2 Trade agreements

SARS administers a number of trade agreements or protocols or other parts or provisions of it, and other international instruments, according to the Customs and Excise Act, which are enacted into law when published by notice in the *Gazette*.

The full texts of these types of agreements are contained in Schedule 10 to the Customs and Excise Act, and contain the following:

-
- Treaty of the Southern African Development Community and Protocols concluded under the provisions of Article 22 of the Treaty **(SADC Treaty & Protocols)**
- Agreement between the Government of South Africa and the Government of the United States of America regarding Mutual Assistance between their Customs Administrations **(AGOA)**
- Southern African Customs Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, South Africa and the Kingdom of Swaziland **(SACU)**
- Memorandum of Understanding between the Government of South Africa and the Government of the People's Republic of China on promoting Bilateral Trade and Economic Co-operation **(MOU with People's Republic of China)**
- Free Trade Agreement between the European Free Trade Association (EFTA) States and the SACU States **(EFTA)**
- Common Market of the South (MERCOSUR) comprising of Argentina, Brazil, Paraguay and Uruguay and the South African Customs Union (SACU) comprising of Botswana, Lesotho, Namibia, South Africa and Swaziland which was implemented on 1 April 2016 **(MERCOSUR – SACU)**
- Economic Partnership Agreement between the SADC Economic Partnership Agreement states, of the one part, and the European Union and its member states of the other part which was implemented on 10 October 2016 **(SADC – EPA)**
-

Other trade agreements, such as the trade agreement between the Governments of South Africa and the Republic of Southern Rhodesia (Zimbabwe), as well as the trade agreement between the Governments of South Africa and Malawi, although they are not included in Schedule 10, have been added to this collection for ease of reference.

12.3 Duties

12.3.1 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, with 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.

12.3.2 Excise duty and excise levy

Excise duties and levies are imposed mostly on high-volume daily consumable products (that is, petroleum and alcohol and tobacco products) as well as certain non-essential or luxury items (that is, electronic equipment and cosmetics).

The primary function of these duties and levies is to ensure a constant stream of revenue for the State, with a secondary function of discouraging consumption of certain harmful products; that is, harmful to human health or to the environment. In addition to duties and levies, there is also the diesel refund system for qualifying entities.

The revenue generated by these duties and levies amount to approximately ten per cent of the total revenue received by SARS.

Excise duties are payable by manufacturers of the following products and are levied throughout SACU:

- Alcohol and tobacco products
  - Malt beer
  - Traditional African beer
  - Spirits/liquor products
  - Wine, vermouth and other fermented beverages
  - Tobacco products
- Fuel/petroleum products
- *Ad Valorem* products

Excise levies are or may be levied separately and uniquely on different products by each individual SACU member state. South Africa currently imposes excise duties on the following products:

- Fuel levy and Road Accident Fund (RAF) levy on fuel/petroleum products
- Environmental levy products
- Certain types of plastic bags
- Electricity generation, using non-renewable or environmentally hazardous fuels (for example coal, gas, nuclear)
- Non energy-saving light bulbs
- Motor vehicle carbon dioxide (CO_2) emission levels

Relevant entities in South Africa must license with SARS Excise before they start to manufacture or otherwise deal in any of these products on which the applicable excise duty or levy has not yet been paid.

These duties and levies are self-assessed by the client per periodic excise return and, depending on the product, paid to SARS on either a monthly or quarterly basis.

12.3.3 Environmental levy

An environmental levy is collected on specific products to encourage more environmentally sustainable business and consumer practices.

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

A levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as "grocery bags" or "shopping bags").

Local manufacturers of such bags must license their premises as manufacturing warehouses with their local 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 under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. On 1 April 2013 this levy was increased from 4 cents per bag to 6 cents per bag. With effect from 1 April 2016, the levy increased from 6 cents to 8 cents per bag.

Plastic bags used for immediate wrapping or packaging, zip-lock bags and household bags including 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)

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 excise manufacturing warehouse in accordance with the provisions of Chapter VA and the rules to the Customs and Excise Act.

Electricity generated under certain circumstances as outlined in Note 2 in Schedule 1 Part 3B to the Customs and Excise Act 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)

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 under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act and was increased from R3 per lamp to R4 per lamp on 1 April 2013. The levy has been increased from R4 to R6 per globe with effect from 1 April 2016.

(d) Carbon dioxide (CO_2) emissions of motor vehicles (Part 3D of Schedule 1 to the Customs and Excise Act)

A CO_2 emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this 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.

On 1 April 2013 the levy on passenger vehicles was increased to R90 per g/km on emissions exceeding the threshold of 120g/km and on double-cab vehicles the rate was increased to R125 per g/km on emissions exceeding the threshold at 175g/km. On 1 April 2016 the levies of R90 and R125 were increased to R100 and R140, 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 CO_2 emissions of a new vehicle (transport of persons) bought on 1 June 2016 are 140 g/km, the tax payable will be calculated as follows:

(140 g/km – 120 g/km) × R100

= 20g/km × R100

= R2 000

In this example, R2 000 will be added to the price of the vehicle before calculating the VAT inclusive price.

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

(e) Tyre environmental levy (Part 3E of Schedule 1 of the Customs and Excise Act)

An environmental levy on tyres is applicable since 1 February 2017 on those pneumatic tyres listed in Part 3E to Schedule 1 of the Customs and Excise Act at a rate of R2.30 per kilogram of the nett mass of the tyre.

The tyre levy rules define “nett mass” as the design mass in respect of any tyre that has been verified and specified in writing by the tyre manufacturer to its customer. “Design mass” is defined as the weight in respect of a certain size, type or class of tyre that forms part of the design specifications for that particular category of tyre.

The tyre levy rules also provide a proxy formula to calculate the net mass for tyre levy purposes when the actual nett mass is unknown. In such instances, proof of the design mass of a similar size, type and class of tyre must be obtained in writing and then increased by 10 per cent to account for typical variances in tyre weights.

Domestic manufacturers of tyres must licence manufacturing warehouses and submit quarterly tyre levy accounts and payments. Vehicle manufacturers may utilise their special manufacturing warehouse licences for tyre levy accounting purposes.

The tyre levy is payable in addition to any customs duty of Part 1 of Schedule 1 of the Customs and Excise Act.

12.4 Value-added tax on imported goods

VAT is levied at the standard rate (currently 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 under the Customs and Excise Act on 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.

12.5 Customs value

The customs value of any commodity is established under 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 which 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.

12.6 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. In the event that errors are detected or false declarations are made, the Customs and Excise Act 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.

12.6.1 Rebates allowed on importation of goods

Schedule 3 to the Customs and Excise Act 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 the importation of certain goods.

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.

12.7 Persons entering South Africa

Upon a traveller's arrival in South Africa and if there is something to declare to Customs, such person must complete a traveller card (also called a TC-01 form) before proceeding to Immigration. After reporting to Immigration, all baggage may be collected and the traveller can proceed to Customs' red or green channel (or to the Customs counter if there is no red or green channel).

The following Customs channels must be followed, depending on the circumstances:

- In the event that a traveller has any prohibited or restricted goods or goods which fall outside the duty-free allowance in their possession or if there is uncertainty on whether any goods falls within these categories, this person must proceed to the red channel.
- If travellers have something to declare, traveller cards and passports will be scanned and verbal declarations will have to be made which will be captured on the system by a Customs officer. This information will form the basis of the travellers' declaration form (TRD1). The TRD1 will also be used as temporary imports permit (TIP) and temporary exports permit (TXP).
- If the traveller is satisfied with the information on the TRD1, an electronic signature pad will have to be signed and the traveller's signature will be captured on the system. The signed TRD1 will then be printed and given to the traveller.
- If the traveller does not have any prohibited or restricted goods, any commercial goods (imported for trade purposes) or gifts that are carried on behalf of others in their possession or if the goods fall within the duty-free allowance, the traveller may proceed to the green channel, unless instructed otherwise by a Customs Official. A Customs Official may stop, question or search a traveller at any time while in the red or green channel.

Prohibited goods

The importation of the following goods into South Africa is strictly prohibited –

- narcotic and habit-forming drugs in any form;
- fully automatic, military and unnumbered weapons;
- explosives and fireworks;
- poison and other toxic substances;
- cigarettes with a mass of more than 2kg per 1 000;
- goods to which a trade description or trademark is applied in contravention of any Act (for example, counterfeit goods);
- unlawful reproductions of any works subject to copyright; and
- penitentiary or prison-made goods.

Restricted goods

Certain goods may only be imported if you are in possession of the necessary authority or permit. Examples are:

- Firearms or Weapons
- Gold coins
- Unprocessed minerals (for example, gold, diamonds etc)
- Animals, plants and their products (for example, animal skins, dairy products, honey)
- Medicine (excluding sufficient quantities for three months for own personal treatment accompanied by a letter or certified prescription from a registered physician)
- Herbal products (Department of Health permit required)

Personal medication under the duty-free allowance

Travellers may import their personal medicaments provided it is a stock for not more than three months' use. This must be accompanied by a prescription issued by a medical doctor.

Handmade articles for commercial purposes

Travellers from SACU or the Southern African Development Community (SADC) member states are allowed to bring into South Africa handmade articles of leather, wood, plastic, or glass if the goods do not exceed 25kg in total, without the payment of duties and taxes.

Flat-rate assessment

Over and above the duty-free allowance, a traveller may choose to pay Customs duty at a flat-rate of 20% on goods acquired abroad or in any duty-free shop.

The total value of these additional goods, new or used, may not exceed R20 000 per person or R2 000 for crew members. Flat-rate goods are also exempted from payment of VAT.

Should the value of the additional goods in question exceed R20 000 or should the traveller decide not to make use of this facility, the flat-rate assessment falls away and the appropriate rates of duty and VAT must be assessed and paid on each individual item. It should be kept in mind that in certain cases goods may be liable to rates of customs duty in excess of 20%; others could be subject to lower rates, while some goods may be free of duty. In addition, VAT at the standard rate (currently 14%) will be payable on goods assessed by tariff.

It must, however, be noted that the application of this provision is subject to the total value of goods declared under the entire rebate item not exceeding R25 000. In other words, all consumables, the duty-free allowance of R5 000 and the items to be assessed on the flat rate must in value not exceed R25 000.

The flat rate allowance will be granted an unlimited number of times during the 30 day cycle after an absence of 48 hours or more from the country provided the goods do not exceed R20 000.

Currency

Currency brought into or taken from South Africa is monitored by law. South African currency exceeding R25 000 or foreign currency exceeding $10 000 (or equivalent) must be declared by the traveller.

Payments

Customs duties and taxes are payable in South African Rand. Payment can be made in cash, by credit card or by means of traveller's cheques.

Should a traveller have any questions on or uncertainty about the amount of duty or tax paid or payable or on any other matter relating to interactions with a Customs official, the traveller may approach the senior Customs officer in charge. The receipt obtained from Customs must be given to the officer dealing with the enquiry.

Temporary imports

Travellers may be required to lodge a cash deposit to cover the potential duty or tax on expensive articles being brought into the country on a temporary basis. Upon departure from the country, the deposit will be refunded to the traveller after a Customs officer has physically inspected the items and verified that the goods are being re-exported. Visitors must notify the Customs office where the deposit was lodged at least two days before leaving to ensure that the refund is ready. The office number can be found on the documents which were given upon payment of the deposit.

In the event that a traveller leaves from a port other than the port at which the deposit was lodged, the inspection report confirming the re-exportation of the items will be forwarded to the latter office and a cheque will be posted to the address provided by the traveller.

Media/sportsmen

A journalist or sportsman bringing goods into the country, such as photographic or sports equipment, must declare these items in the Customs red channel after arriving in South Africa.

Unaccompanied baggage must be cleared under Rebate Item 480.15 or through the ATA Carnet system.

Conference organisers

A traveller who brings goods into the country for a conference, such as pamphlets, brochures and banners needs to comply with the following requirements:

- If these goods are accompanying the traveller, the same process followed by normal travellers must be followed.
- If the goods constitute unaccompanied baggage, the traveller must declare the items on a DA 306 form. This form must be completed before arrival in South Africa must be submitted to the nearest Customs office upon arrival in the country. This is a simplified clearance procedure for goods with no commercial value, that is, goods which will not be sold in the country.

12.7.1 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 on 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 the passenger is a resident or not), 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 on the rates applicable and VAT will be payable on such items.

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.

The traveller will be entitled to these allowances once per person during a period of 30 days after an absence of 48 hours from South Africa.

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) 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. With 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.

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 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).

12.8 Declarations on single administrative document

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

As a result of the MOU, 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.[72]

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.

12.9 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.

12.10 Cargo entering South Africa

When cargo is landed in South Africa, a cargo manifest relating to 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.

[72] See *Government Gazette* 29257, Notice R961 dated 29 September 2006.

12.11 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. 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 of the goods 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 relating to those goods.

12.12 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's residence is changed to South Africa 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 household effects are re-exported or sold locally at conclusion of the work contract or studies, provided that the household effects have not been 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.

12.13 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. This person 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.

12.14 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.

13. Excise duties – Rates

13.1 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 with effect from 24 February 2016:[73]

Alcoholic Beverages	Rate of duty
Malt beer	R79.26/l of absolute alcohol
Traditional African beer	7.82 c/l
Spirits and spirituous beverages	R161.47/l of absolute alcohol

Alcohol	Rate of duty
Sparkling wine	R10.53/l
Fortified wine	R5.82/l
Unfortified wine	R3.31/l
Traditional African beer powder	34.7 c/kg

Tobacco	Rate of duty
Cigarettes	R6.62/10 cigarettes
Pipe tobacco	R166.40/kg
Cigarette tobacco	R297.60/kg
Cigars	R3012.17/kg

The following are some of the excisable products and their respective specific duty rates with effect from 22 February 2017:

Alcoholic Beverages	Rate of duty
Malt beer	R86.39/l of absolute alcohol
Traditional African beer	7.82 c/l
Spirits and spirituous beverages	R175.19/l of absolute alcohol

Alcohol	Rate of duty
Sparkling wine	R11.46/l
Fortified wine	R6.17/l

[73] See *Guide for Tax Rates/Duties/Levies* (Issue 12) for previous duty rates.

Unfortified wine	R3.61/l
Traditional African beer powder	34.7 c/kg

Tobacco	**Rate of duty**
Cigarettes	R7.15/10 cigarettes
Pipe tobacco	R182.24/kg
Cigarette tobacco	R321.45/kg
Cigars	R3298.56/kg

13.2 *Ad valorem* excise duties (Part 2B of Schedule 1 to the Customs and Excise Act)

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 to date.

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%
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%

Products	Rate of duty
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.

13.3 General fuel levy and road accident fund levy (Parts 5A and 5B of Schedule 1 to the Customs and Excise Act)

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 with effect from 6 April 2016:[74]

General fuel levy products	Rate of levy
Petrol (leaded and unleaded)	285c/l
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	270c/l
Distillate fuel (diesel)	270c/l
Road accident fund levy on petrol or diesel	154c/l

[74] See *Guide for Tax Rates/Duties/Levies* (Issue 12) for previous levy rates.

The following are some of the fuel levy products and their respective levy rates with effect from 5 April 2017:

General fuel levy products	**Rate of levy**
Petrol (leaded and unleaded)	315c/l
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	300c/l
Distillate fuel (diesel)	300c/l
Road accident fund levy on petrol or diesel	163c/l

13.4 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 15 of 2007 and the Diamond Export Levy (Administration) Act 14 of 2007 is to –

- promote the development of the local economy by encouraging the local diamond industry to process diamonds 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 –

a) for a natural person –
   (i) begins on 1 March and ends on 31 August; and
   (ii) begins on 1 September and ends on the last day of February; and

b) for any other person –
   (i) begins on the first day of the financial year for which financial accounts are prepared and ends six calendar months after that day; and
   (ii) begins on the day immediately after the period described in subparagraph (a) and ends on the last day of that financial year.

14. Transfer duty (the Transfer Duty Act)

Transfer duty is payable on transactions constituting "property" as defined in section 1(1) of the Transfer Duty Act, subject to certain exemptions and exceptions.

Transfer duty is levied on –

- the value of any property acquired by any person by way of a transaction or in any other manner; and
- the amount by which the value of any property is enhanced by the renunciation of an interest in or restriction upon the use or disposal of that property.

The most common forms of property on which transfer duty is levied include –

- physical property such as land and any fixtures on this land, 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 lease or sub-lease of such a right).

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 the event that property is acquired for no consideration, or if the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property - whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[75] calculated for each completed month during which the transfer duty remains unpaid.[76]

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

[75] Interest will be charged at the "prescribed rate" under the TA Act from the effective date that the Presidential Proclamation on interest comes into effect for all taxes.

[76] 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.

- 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 R750 000 or less (R600 000 before 1 March 2015).

Transfer duty rates (from 1 March 2016 to 28 February 2017)

Fair market value or consideration	**Rate of duty**
Not exceeding R750 000	0%
Exceeding R750 000 but not R1 250 000	3% of the value exceeding R750 000
Exceeding R1 250 000 but not R1 750 000	R15 000 + 6% of the value exceeding R1 250 000
Exceeding R1 750 000 but not R2 250 000	R45 000 + 8% of the value exceeding R1 750 000
Exceeding R2 250 000 but not R10 000 000	R85 000 + 11% of the value exceeding R2 250 000
Exceeding R10 000 000	R937 500 + 13% of the value exceeding R10 000 000

Transfer duty rates (from 1 March 2017 to 28 February 2018)

Fair market value or consideration	**Rate of duty**
Not exceeding R900 000	0%
Exceeding R900 000 but not R1 250 000	3% of the value exceeding R900 000
Exceeding R1 250 000 but not R1 750 000	R10 500 + 6% of the value exceeding R1 250 000
Exceeding R1 750 000 but not R2 250 000	R40 500 + 8% of the value exceeding R1 750 000
Exceeding R2 250 000 but not R10 000 000	R80 500 + 11% of the value exceeding R2 250 000
Exceeding R10 000 000	R933 000 + 13% of the value exceeding R10 000 000

The above rates apply to all persons.[77]

[77] See **http://www.sars.gov.za/TaxTypes/TransferDuty/Pages/Transfer-Duty-Payment-Rates.aspx** for previous transfer duty rates [Accessed 14 September 2017].

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 if the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

Upon the 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 guides[78] available on the SARS website.

15. 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. However, property physically situated outside South Africa will be excluded from the deceased's estate if the deceased was not ordinarily resident at the time of his or her death. A deduction against the net value of an estate will also be allowed on the value of the property situated outside South Africa which was acquired before the deceased person became ordinarily resident in South Africa for the first time, or after this person became ordinarily resident in South Africa for the first time and had acquired the 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 deduction also applies to property situated outside South Africa which was acquired by the deceased out of profits and proceeds of any such property.

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.

78 *Transfer Duty Guide*, *Guide for Transfer Duty via eFiling*, and *VAT409: Guide for Fixed Property and Construction*.

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 may have become a resident of South Africa because 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 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 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 (which 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	(3 500 000)
Dutiable amount	100 000
Duty payable on R100 000 at 20%	**20 000**

Estate duty calculation (death on or after 01/01/2010)	
X passed away and bequeathed her estate to Z. X was previously the spouse at the time of death of a previously deceased person, Y. No amount was previously allowed as a deduction against the net value of Y's estate.	
Net value of X's estate	7 100 000
Less: Deduction (2 × R3,5 million)	(7 000 000)
Dutiable amount	100 000
Duty payable on R100 000 at 20%	**20 000**

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

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

16. Securities transfer tax (the Securities Transfer Tax Act 25 of 2007)

STT is a tax levied under the Securities Transfer Tax Act and is payable on the transfer of any security[79] 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"[80] 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), if securities are transferred; or
- the company or close corporation cancelling or redeeming the share, if 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.

[79] From 1 January 2013 this includes the reallocation of securities between different stock accounts of, for example, a stockbroker.

[80] Before 1 April 2012 the definition of "security" also included any right or entitlement to receive any distribution from a company or close corporation.

- 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 of it) under Chapter 15 of the TA Act.[81]

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 who acquire securities through an inheritance; or
- certain share transactions which are subject to transfer duty or VAT such as the acquisition of shares in a share-block company.

For more information see the guide[82] available on the SARS website.

17. Skills development levy (the Skills Development Levies Act 9 of 1999)

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 anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12 month period are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees will generally receive grants from the Sector Education and Training Authorities (SETAs) under this initiative, to be used for, amongst other things, developing the skills of the South African workforce. The Minister of Higher Education and Training in conjunction with the various SETAs is responsible for the administration of the Skills Development Act 97 of 1998. Any enquiries regarding the levy grant scheme must therefore be referred to the relevant SETA or the Minister of Higher Education and Training.

The application form to register for SDL is the same form that is used to register for PAYE (EMP101). The monthly return for SDL is combined with the monthly return for PAYE (EMP201) which means that the same provisions apply for submission and payment.[83]

For more information see the guide[84] available on the SARS website.

---

81 Section 6A of the Securities Transfer Administration Act 26 of 2007.

82 Securities Transfer Tax.

83 For more information see the *External Guide: Guide for Employers in respect of Skill Development Levy* – Revision 3.

84 *External Guide: Guide for Employers in respect of Skill Development Levy* – Revision 3.

18. Unemployment insurance fund contributions (Unemployment Insurance Contributions Act 4 of 2002 and Unemployment Insurance Act 63 of 2001)

The UIF gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

SARS administers the collection of the bulk of UIF contributions. 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 remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the PAYE) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating PAYE) paid or payable by the employer to its employees during any month.

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[85] (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.[86]

19. Air passenger tax (section 47(B) of Customs and Excise Act)

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.

20. 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, when 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.

[85] See Government Notice 783 in *Government Gazette* 35715 of 26 September 2012.

[86] For more information see the *Guide for Employers in respect of the Unemployment Insurance Fund* – Revision 5 and refer to **www.uif.gov.za**.

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 under 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 relating to who is required to register for purposes of paying this royalty. Under this section, 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 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.

21. Interest, penalties and additional tax for non-compliance with legislation (excluding customs and excise legislation)

The TA Act provides for, amongst other things, –

- the imposition of interest (Chapter 12 of the TA Act);
- the imposition of penalties, that is, fixed amount penalties and percentage based penalties (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 (Chapter 16 of the TA Act).

A person may also be liable upon conviction of criminal offences relating to non-compliance with Tax Acts to a fine or to imprisonment on matters such as non-payment of taxes, failure to submit tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which the person is not entitled (Chapter 17 of the TA Act).

22. Request for correction

A taxpayer who makes an error in a return submitted and wishes to correct this mistake, must submit a Request for correction (RFC) which is available through eFiling or at a SARS branch. This allows the taxpayer to correct a previously submitted return or declaration for income tax and in certain circumstances for VAT. If the RFC function is not available to the taxpayer through eFiling an objection is to be lodged.[87]

See the SARS website for more information.

[87] See the SARS website for more information.

23. Objection against assessment or decision

A taxpayer, who is not –

- able to submit an RFC; or
- satisfied with an assessment, decision or determination received from SARS,
- may lodge an objection in writing stating fully, and in detail the grounds on which the objection is lodged.

The objection must be submitted within 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.

If the taxpayer's objection is disallowed (in part or in full), the taxpayer has the right to note an appeal (see **24**).[88]

24. Dispute resolution

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an ADR process. A dispute which is subject to ADR may be resolved by agreement whereby the taxpayer or SARS accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.[89]

The Customs and Excise Act, contains its own provisions relating to dispute resolution.

25. Advanced tax rulings (Chapter 7 of the TA Act)

There are three types of advance rulings, namely, binding class rulings (BCRs), binding private rulings (BPRs) and binding general rulings (BGRs).

Advance rulings promote clarity, consistency and certainty regarding the interpretation and application of a tax Act. SARS may make an advance ruling on any provision of a tax Act. Generally, a BPR and a BCR apply to proposed transactions.

SARS may issue a BCR or a BPR upon application by a person in accordance with section 79 of the TA Act.

BCRs and BPRs are not designed to provide answers to taxpayers' general tax queries regarding their current tax affairs or general questions about tax laws, for example administrative or procedural matters.

If an advance ruling applies to a person in accordance with section 83 of the TA Act, SARS must interpret or apply the applicable tax Act to the person in accordance with the ruling. A

[88] For more information see Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in Case of Late Objection or Appeal" and the Rules Promulgated under section 103 of the TA Act in Government Notice 550 in *Government Gazette* 37819 of 11 July 2014.

[89] For more information see Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in Case of Late Objection or Appeal", *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of section 103 of the Tax Administration Act, 2011 (Rules under s. 103)* and *Alternative Dispute Resolution: Quick Guide*.

BPR or BCR applies to a person only if, amongst other things, the person's set of facts or transaction are the same as the particular set of facts or transaction specified in the ruling.

All applications for advance rulings must be filed online on **www.sarsefiling.co.za**. The eFiling system can also be accessed via the SARS website **www.sars.gov.za**.[90]

26. South African Reserve Bank – Exchange control

Exchange control regulations, restricting the in and out flow of capital in South Africa, exist.

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.

A person in good standing and over the age of 18 years, can invest up to R10 million outside the Common Monetary Area (Lesotho, Swaziland and Namibia), per calendar year. A Tax Clearance Certificate (in respect of foreign investments) must be obtained. These funds may not be reinvested into the CMA countries thereby creating a loop structure or be re-introduced as a loan to a CMA resident. In addition, up to R1 million, within the single discretionary allowance facility, can be transferred abroad, without the requirement to obtain a Tax Clearance Certificate.

South African companies (excluding Close Corporations) can make *bona fide* new outward foreign direct investments into companies outside the Common Monetary Area up to R1 billion per company per calendar year through any bank.[91]

Further information is available on the Reserve Bank website at **www.reservebank.co.za**.

27. Automatic exchange of information

Automatic exchange of information (AEOI) involves the systematic and periodic transmission of bulk taxpayer information by the source country to the residence country. An effective model for AEOI requires a common standard on the information to be reported by financial institutions and exchanged with residence jurisdictions to establish a global approach to combatting offshore tax evasion.

Specific statutory obligations are placed on South African Financial Institutions under the Agreement between South Africa and the Government of the United States of America. This Agreement came into force on 28 October 2014.

The US Foreign Account Tax Compliance Act applies to an entity which is a "Financial Institution", as defined in Article 1(1) of that Act, which maintains financial accounts of account holders who are specified US persons or passive entities with controlling persons

[90] For more information see the *Comprehensive Guide to Advance Tax Rulings*.
[91] For more information visit **www.resbank.co.za**.

who are specified US persons. An entity is defined in the agreement as a legal person or a legal arrangement such as a trust, partnership or an association.[92]

[92] For more information see the *Guide on the U.S. Foreign Account Tax Compliance Act (FATCA)* (Issue 2).

Annexure A – Examples of the calculation of income tax for the 2017 year of assessment

Example 1 – Taxpayer X is single and under 65 years of age

Facts:

	R
Salary income (remuneration)	450 000
Pension fund contributions	34 000
Qualifying medical expenses not recoverable by X	25 550
Medical scheme fees (R1 900 per month for 12 months)	22 800
Retirement annuity fund contributions	6 000
PAYE	80 624,00

Determine:

The normal tax liability of X for the 2017 year of assessment.

Result:

	R
Total income (remuneration)	450 000
Less: Retirement fund contributions (R34 000 + R6 000 = R40 000)	

Limited to the *lesser of* –

- R350 000; or
- 27,5% of the *higher of* the person's –
  - (i) remuneration (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  - (ii) taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under section 11(*k*)(*i*)

In this example, X's remuneration will be the same as the taxable income before allowing any deduction under section 11(*k*)(*i*), therefore the limitation will be:

The lesser of –

	R
- R350 000; or	
- 27,5% of R450 000 = R123 750, limited to actual contributions	(40 000)
Taxable income	**410 000**

	R	R
Normal tax on R410 000 [R96 264 + (36% x R3 600)]		97 560,00
Less: Primary rebate		(13 500,00)
		84 060,00
Less: Rebate for medical scheme fees tax credit = (R286 × 12)		(3 432,00)
		80 628,00
Less: Additional medical expenses tax credit = (25% × R3 872)		(968,00)
Medical Scheme Fees	22 800,00	
Less: 4 × Medical scheme fees tax credit (4 × R3 432)	(13 728,00)	
	9 072,00	
Add: Qualifying medical expenses	25 550,00	
	34 622,00	
Less: 7,5% × R410 000	(30 750,00)	

	3 872,00	
		79 660,00
Less: PAYE		(80 624,00)
Normal tax refundable by SARS		**(964,00)**

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 Y's spouse is 59 years of age.

Income	**Y**	**Spouse**
	R	R
Remuneration	120 000	Nil
Taxable income from business R100 000[(1)]	40 000	60 000
Net rental income R8 000[(2)] + R12 000[(3)]	12 000	8 000
Gross interest R24 000[(4)]	12 000	12 000
Deductions		
Qualifying medical expenses - not a member of a medical scheme	13 800	Nil
Retirement annuity fund contributions	Nil	8 000
PAYE	705,00	Nil
Provisional tax	4 700,00	Nil

(1) The spouses carry on a trade in partnership. According to the agreement the profit-sharing ratio is 40:60 – Y 40%, Y's spouse 60%. Total taxable income from business was R100 000.

(2) Y's spouse owns a property inherited from a parent. The parent's will stipulates that the income derived from the property of R8 000 may not form part of Y's estate.

(3) Y's rental income of R12 000 forms part of the joint estate.

(4) The total interest of R24 000 forms part of the joint estate.

Determine:

The normal tax liability of each of spouse for the 2017 year of assessment.

Result:

Tax position – Y (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
Taxable interest [(R24 000 × 50%)[(4)] – R12 000 exemption]	nil
Taxable income	**166 000**

(1) According to the agreement the profit-sharing ratio is 40:60 – Y 40% and Y's spouse 60%.

(2) The parent's will stipulates that the income derived from the property may not form part of Y'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 the spouses since 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 each spouse since they are married in community of property. Both spouses are each entitled to an exemption against gross interest income. Y, who is over 65 years of age, qualifies for an interest exemption of up to R34 500 which is limited to the actual interest of R12 000.

Determination of normal tax liability of Y on taxable income of R166 000:

			R
Normal tax on R166 000 at 18%			29 880,00
Less:	Primary rebate	13 500,00	
	Secondary rebate (age 65 years and older)	7 407,00	(20 907,00)
			8973,00
Less:	Additional medical expenses tax credit (33,3% x R13 800)		(4 595,40)
			4 377,60
Less: Income tax			(5 405,00)
	PAYE	(705,00)	
	Provisional tax	(4 700,00)	
Normal tax refundable by SARS			**(1 027,40)**

Tax position – Spouse (Aged 59 years)

Determination of taxable income:

Income		
Business income (R100 000 × 60%)(1)		60 000
Net rental income [R8 000(2) + (R12 000 × 50%)(3)]		14 000
Taxable interest [(R24 000 × 50%)(4) – R12 000 exemption]		nil
		74 000
Less:	**Allowable deductions**	
	Retirement fund contributions of R8 000	

Limited to the *lesser* of –

- R350 000; or
- 27,5% of the *higher* of the person's –
  (i) remuneration (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  (ii) taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under section 11(k)(*i*).

In this example, Y's spouse does not have remuneration and the taxable income before allowing any deduction under section 11(k)(*i*) is R74 000. The limitation will thus be:

The lesser of –	
- R350 000; or	
- 27,5% of R74 000 = R20 350, limited to actual contributions	(8 000)
Taxable income	**66 000**

[(1)] According to the agreement the profit-sharing ratio is 40:60 – Y 40% and Y's spouse 60%.

[(2)] The parent's will stipulates that the income derived from the property may not form part of Y's estate, therefore the full amount of R8 000 is included in Y's spouses' taxable income.

[(3)] The rental income of the joint estate is split equally between the spouses since 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 each spouse since they are married in community of property. Both spouses are each entitled to an exemption against gross interest income. Y's spouse is under 65 years of age and thus qualifies for an interest exemption of up to R23 800 which is limited to the actual interest of R12 000.

Determination of normal tax liability of Y's spouse on R66 000:

	R
Normal tax on R66 000 × 18%	11 880,00
Less: Primary rebate	(13 500.00)
Normal tax payable to SARS	**Nil**

Example 3 – Taxpayer aged 77 years

Facts:

Z, who is a widow is 77 years of age. Z has qualifying medical expenses amounting to R3 800 and was not a member of a medical scheme.

	R
Income	
Pension	150 000
Interest	85 000
PAYE	3 616
Provisional tax	9 500

Determine:

The normal tax liability of Z for the 2017 year of assessment.

Result:

Determination of taxable income:

	R	R
Pension		150 000
Interest	85 000	
Less: Interest exemption	(34 500)	50 500
Taxable income		**200 500**

	R
Normal tax on R200 500 [R33 840 + (26% × R12 500)]	37 090,00
Less: Rebates	(23 373,00)

	Primary rebate	13 500,00	
	Secondary rebate (65 years or older)	7 407,00	
	Tertiary rebate (75 years or older)	2 466,00	
			13 717,00
Less:	Additional medical expenses tax credit (33,3% × R3 800)		(1 265,40)
			12 451,60
Less: Income tax			(13 116,00)
	PAYE	(3 616,00)	
	Provisional tax	(9 500,00)	
Income tax refundable by SARS			**(664,40)**

Annexure B – Example of the determination of the monthly value of a taxable benefit regarding accommodation and a company car

Facts:

An employee receives from the employer, for the first eight months of the 2017 year of assessment, residential accommodation in the form of a three room house, and for the full year of assessment, the right of use of a motor vehicle with a determined value of R180 000. The vehicle did not have a maintenance plan when it was acquired by the employer. The employee's remuneration proxy for the preceding tax year amounts to R350 000. The employee pays:

- R3 000 per month towards the use of the accommodation; and
- R2 500 per month towards the use of the motor vehicle.

Determine:

The cash equivalent of the value of each taxable benefit for the 2017 year of assessment.

Result:

Residential Accommodation

= (A – B) x (C/100 × D/12)
= [(R350 000 – R75 000) × 17/100 × 8/12] – (R3 000 × 8)
= R31 167 – R24 000
= R7 167

Right of use of motor vehicle

= [(R180 000 × 3,5%) – R2 500] x 12
= [R6 300 – R2 500] x 12
= R3 800 x 12
= R45 600

The total value of the taxable benefits for the 2017 year of assessment amounts to R52 767 (R7 167 + R45 600)