



# **Legal Counsel**

## **Income Tax**

**Guide to the Urban Development Zone (UDZ)  
Allowance  
(Issue 6)**



*South African Revenue Service*

# **Guide to the Urban Development Zone (UDZ) Allowance**

## **Preface**

This guide is a general guide about the urban development zone (UDZ) allowance provided for in section 13<sup>quat</sup> of the Income Tax Act 58 of 1962 (the Act). It is not meant to deal extensively with the precise technical and legal aspects associated with the allowance, but is intended merely as a general guide for potential investors. Moreover, urban development zones should not be confused with “special economic zones” under sections 12R and 12S which became effective on 9 February 2016.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling issued under section 89 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

The guide, amongst others, provides –

- general guidance regarding the application and interpretation of the provisions of the Act that pertain to the allowance;
- an overview of the income tax consequences associated with the disposal of a building on which the allowance was previously allowed or the ceasing of a taxpayer to use such a building solely for the purposes of that person’s trade; and
- particulars of municipalities that have demarcated areas for purposes of the allowance, as well as the process of demarcation that was followed.

This guide is based on the legislation as at time of issue.

All guides and forms referred to in this guide are available on the SARS website.

Should you require additional information in this regard you may –

- visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za);
- visit your local SARS branch;
- contact your own tax advisor or tax practitioner; or
- 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).

Comments on this guide may be sent to [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za).

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## Glossary

In this guide unless the context indicates otherwise –

- “**allowance**” means the accelerated depreciation allowance provided for in section 13*quat*;
- “**building**” means a commercial or residential building which is located within a UDZ;
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**UDZ**” means urban development zone as defined in section 13*quat*(1); and
- any other word or expression bears the meaning ascribed to it in the Act.

### 1. Introduction and broad overview of the allowance

In line with many countries, South Africa has a number of urban areas that are impoverished and suffering from extensive urban decay. In order to address these concerns and maintain existing infrastructure, governments internationally have increasingly used tax measures to support efforts aimed at regenerating these urban areas.

In 2003, the Minister of Finance announced a tax incentive in the form of an accelerated depreciation allowance under section 13*quat* to promote investment in 16 designated inner cities, 15 of which now have demarcated UDZs within their boundaries. The core objectives of the allowance are to address dereliction and dilapidation in South Africa’s largest cities and to promote urban renewal and development by promoting investment by the private sector in the construction or improvement of commercial and residential buildings, including low-cost housing units situated within demarcated UDZs. The allowance is also intended to encourage investment in highly populated areas, central business districts or inner city environments and areas with existing urban transport infrastructure for trains, buses or taxis.

The allowance, when deducted, reduces the taxable income of a taxpayer. Further, it is not limited to the taxable income of a taxpayer and can create an assessed loss.

Municipalities will be given the opportunity to apply for extensions to existing designated zones and to apply for an additional demarcated UDZ in that municipal zone. Only areas which have a specific and necessary need for an extra zone will be granted UDZ status, and will be subject to Ministerial approval. This allowance is available until 31 March 2020.

## **2. Requirements that must be complied with in order to deduct the allowance [section 13*quat*(2)]**

Any person<sup>1</sup> will be eligible to deduct the allowance only if all the following requirements relating to a building or part of a building are complied with:

- Building requirement
- UDZ requirement
- Trade requirement
- Owner requirement
- Date requirement

### **2.1 Building requirement**

Before an allowance under section 13*quat* can be deducted, certain requirements relating to the building must be complied with. The term “building” is not defined in the Act. In *C/R v Le Sueur*,<sup>2</sup> the court held that a “building” is “a substantial structure, more or less of a permanent nature, consisting of walls, a roof and the necessary appurtenances thereto”.<sup>3</sup>

When deducting the allowance, only the cost of the erection, extension, addition to or improvement of the building qualifies for the allowance while the cost of the land is specifically excluded (see 3).

#### **2.1.1 Extent of the erection, extension, addition or improvement that has to be undertaken**

Under section 13*quat*(2)(c), the erection, extension, addition to or improvement of the building by the *taxpayer* or *developer*<sup>4</sup> must cover either the entire building or a floor area of at least 1 000 m<sup>2</sup> of that building. This requirement ensures that a substantial part of a building is enhanced thus aligning with the purpose of the section. Furthermore, the 1 000 m<sup>2</sup> requirement applies only to situations in which a *part* of a building is extended, added to or improved. For example, the replacement of the roof of a part of a building, must represent a floor area of at least 1 000 m<sup>2</sup> before the taxpayer can deduct an allowance on the cost of effecting the improvements. The 1 000 m<sup>2</sup> requirement does not have to be complied with if an entire building is erected, extended, added to or improved.

Section 13*quat*(2)(d) states that when a taxpayer purchases a building or part of a building from a developer on or after 8 November 2005, such developer must –

- not have previously deducted any allowances on the building or part of a building; and

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<sup>1</sup> The term “person” is defined in section 1(1) to include an insolvent estate, the estate of a deceased person, any trust and any portfolio of a collective investment scheme but excludes a foreign partnership. The inclusion of a company, close corporation and natural person in the definition must be deduced from the ordinary dictionary meaning of “person” and from the definition of the term in the Interpretation Act 33 of 1957.

<sup>2</sup> 1960 (2) SA 708 (A), 23 SATC 261 at 273.

<sup>3</sup> See *Guide to Building Allowances* in paragraph 2.1.1 for more information on the meaning of “building”.

<sup>4</sup> See 4 for more information on developers.

- in the case of the improvement of a building or part of a building in which the existing structural or exterior framework is preserved, have incurred expenditure on these improvements which is equal to at least 20% of the purchase price paid by the purchaser for the building or part of the building.

A developer that extended, added to or improved part of a building, must comply with the 1000 m<sup>2</sup> requirement before selling that building or a part of it in order for the purchaser to qualify for an allowance.

In such a case, the purchaser who acquires only a unit in an improved building, will not be precluded from deducting the allowance since the developer had already complied with the requirement in section 13*quat*(2)(c). The purchaser will therefore be allowed to deduct an allowance on the cost of the expenditure incurred by the developer which is equal to at least 20% of the purchase price, provided that all the other requirements of the section are met.

### **2.1.2 “Extensions”, “additions” and “improvements”**

Section 13*quat* also draws a distinction between an extension, an addition and an improvement. Since an “addition” and an “extension” are similar in their characteristics, dictionary definitions are useful in order to distinguish between these terms.

An “addition” is defined in the *Oxford Dictionaries* as –<sup>5</sup>

“1 the action or process of adding something to something else”.

In the context of section 13*quat*, an addition would accordingly include any development that would result in something being appended to an existing building or part which would effectively change the existing structure of such building. For example, adding additional floors or constructing a new block which attaches to an existing building might be considered to be an addition for purposes of this section.

The *Oxford Dictionaries* defines an “extension” as –<sup>6</sup>

“1 a part that is added to something to enlarge or prolong it”.

An example provided is –

“a room or rooms added to an existing building”.

Thus, it can be said that while an addition refers to those developments which are of a more substantial scale, an extension covers those erections that can be classified as structurally minor when compared to an addition. In both instances, however, the exterior framework of the building is altered in comparison to the initial framework.

The *Oxford Dictionaries* defines an “improvement” as –<sup>7</sup>

“1.2 a thing that makes something better or is better than something else”.

An improvement accordingly enhances something that is already in existence. Such enhancement can take the form of adding something to an existing part of a building or by replacing an existing part. Improvements to a building or part of the building will, for purposes of section 13*quat*, include any extension or addition to the building which is

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<sup>5</sup> <https://en.oxforddictionaries.com/definition/addition> [Accessed 15 March 2018].

<sup>6</sup> <https://en.oxforddictionaries.com/definition/extension> [Accessed 15 March 2018].

<sup>7</sup> <https://en.oxforddictionaries.com/definition/improvement> [Accessed 15 March 2018].

incidental to that improvement, and which preserves the existing structural or exterior framework of the building. The alteration of the structure of the building is regarded as an addition or extension.

## 2.2 UDZ requirement

The building or part of the building that was constructed, extended, added to or improved, or purchased from a developer, must be located within a UDZ.<sup>8</sup> Several criteria were taken into account in the demarcation of UDZ areas to ensure that the impact of the allowance was maximised in the parts of the cities that were most in need of development.

Each municipality with approved demarcated zones had to prove to the Minister that –<sup>9</sup>

- the demarcated area was located within the boundaries of one of the 15 designated municipalities;
- the area had been demarcated through formal resolution by the municipality;
- the demarcated area was prioritised in the municipality's integrated development plan as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;
- the contribution from that area was undergoing a sustained real or nominal decline, while it previously contributed a significant portion of the aggregate revenue collections of the municipality as measured in the form of property rates or assessed property values; and
- significant fiscal measures had been implemented by the municipality to support the regeneration of that area, including the appropriation of significant funds for developing the area in the annual budget of the municipality, special tariffs for categories of residential, commercial or industrial users or partnership agreements with the business community for the promotion of urban development within that area.

The above requirements are still applicable to new applications for demarcation of UDZs made to the National Treasury. Examples and the method of submitting the proof required can be found in Regulation 219.<sup>10</sup>

The particulars of the areas that have been demarcated as UDZs were published by the Minister in the following *Government Gazettes* and are available on the National Treasury website at [www.treasury.gov.za](http://www.treasury.gov.za).<sup>11</sup>

Municipality	Date of Gazette	Gazette Number	Notice Number
Buffalo City	10 December 2004	27077	1432
City of Cape Town	14 October 2004	26866	1156
City of Cape Town, Maitland	27 February 2013	36195	147

<sup>8</sup> Section 13(2)(a). See **Annexure E** for the definition of “urban development zone”.

<sup>9</sup> Section 13(6).

<sup>10</sup> GG 34113 of 11 March 2011.

<sup>11</sup> These areas are also listed in section 13(6)(a).

Municipality	Date of Gazette	Gazette Number	Notice Number
Ekurhuleni	6 June 2005	27656	535
Emalahleni	12 May 2006	28795	416
Emfuleni	10 December 2004	27077	1432
Emfuleni (additional demarcation)	17 December 2014	38345	1038
eThekwini Metro	10 December 2004	27077	1432
Johannesburg Metro	14 October 2004	26866	1156
Mangaung	10 December 2004	27077	1432
Matjhabeng	14 July 2006	29010	669
Mbombela	10 December 2004	27077	1432
Msunduzi	6 June 2005	27656	535
Nelson Mandela Bay	6 June 2005	27656	535
Polokwane	6 June 2005	27656	535
Sol Plaatje	10 December 2004	27077	1432
Tshwane Metro	10 December 2004	27077	1432

### 2.3 Trade requirement

A taxpayer will qualify for the allowance only if the relevant commercial<sup>12</sup> or residential<sup>13</sup> building or part of the building that has been erected, extended, added to or improved by the taxpayer, or purchased by the taxpayer from a developer, is situated within a UDZ and is used by the taxpayer solely for the purposes of trade.<sup>14</sup> Further, the allowance commences only once the building has been brought into use solely for the purposes of the taxpayer's trade. A building is considered to have been brought into use when it is actually used by the taxpayer for the first time in order to conduct trading activities. Activities leading up to a taxpayer earning income will also be considered to be trading activities as long as they are conducted with the intention of earning income for that particular trade; for example, advertising an unoccupied apartment for rental purposes. However, should the apartment be used for the taxpayer's own private residential purposes while advertising the property for letting purposes, the taxpayer will be regarded as having commenced carrying on a trade in relation to the apartment only once tenants have been secured and occupation has taken place. There is no one test as to when it can be said that a taxpayer has commenced

<sup>12</sup> "Commercial" is defined in the *Oxford Dictionaries* as "concerned with or engaged in commerce." <https://en.oxforddictionaries.com/definition/commercial> [Accessed 15 March 2018].

<sup>13</sup> "Residential" is defined in the *Oxford Dictionaries* as "designed for people to live in." <https://en.oxforddictionaries.com/definition/residential> [Accessed 15 March 2018].

<sup>14</sup> Sections 13quat(2),(3) and (3A).

carrying on a trade and each determination will depend on the specific facts and circumstances.

The courts have interpreted the concept “trade” to be neither exhaustive nor restrictive.<sup>15</sup> It thus includes any activity in which a person risks something with the object of making a profit. For example, the letting of commercial or residential property at market prices with the objective of making a profit will constitute the carrying on of a trade.

A taxpayer that ceases to trade will no longer be able to deduct the allowance on the property from the year following the year of assessment in which the trading activities cease.

## 2.4 Owner requirement

The building or part of the building that was erected, extended, added to or improved must be owned by the person deducting the allowance. An “owner” is not defined in the Act and therefore takes its common law meaning. Ownership in immovable property such as land and buildings is indicated and confirmed by the title deed registered in the Deeds Office. Ownership in land can be conveyed from one person to another only by a deed of transfer, executed by the registrar under the Deeds Registries Act 47 of 1937.

Thus, a person that leases a newly constructed building from another cannot deduct the allowance for any costs incurred in extending, adding to or improving the building, since the person is not the owner. There are, however, limited instances in which a lessee that erects a building or carries out improvements to an existing building owned by a qualifying party in a UDZ will be regarded as “owner” of the building or improvements and will therefore meet this requirement (see 7 for information on section 12N).

Furthermore, with regard to the purchase of a building from a “developer”, the date of commencement of ownership is regarded as being the date that the building is registered in the name of the taxpayer purchasing the building. The date on which all documents are formally and finally signed by all contracting parties must also be taken into consideration (see 2.5.1). For instance, if an agreement to purchase the building or part of the building is entered into between A and B in March 2018 but the transfer of ownership of such building occurs only in August 2018, B will be regarded as the owner only from August. In the event that improvements are made to the building by B before transfer of ownership occurs, that is, during the period March 2018 to August 2018, the costs incurred will not qualify for an allowance under section 13quat.

The allowance will cease upon the sale of a building and the taxpayer will no longer qualify for any allowance from the year following the year of assessment in which the building was sold. All allowances that were previously deducted will then be subject to the recoupment provisions contained in section 8(4)(a). In addition, such taxpayer will be subject to taxation on any capital gain made on the disposal of the building.

A subsequent purchaser that makes any extensions, additions or improvements to the newly purchased building will be able to deduct the allowance only on the costs incurred on the extensions, additions or new improvements. The purchaser will not be able to deduct an allowance on the costs incurred by the previous owner or on the cost incurred in acquiring the building, unless the building is acquired from a developer (see 3 for further details regarding the necessary requirements).

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<sup>15</sup> *Burgess v CIR*, 1993 (4) SA 161 (A), 55 SATC 185 at 197.

## Example 1 – The UDZ requirements

### Facts:

- (a) Developer A constructed a new building within a UDZ for the purpose of conducting a retail business. The cost of this new construction amounted to R200 million (including the cost incurred in demolishing an existing building). Trade commenced on 1 April 2014. On 31 March 2017 Developer A sold the building to Purchaser B for R308 million.
- (b) Purchaser B added a new roof to the entire building as the old roof was badly damaged owing to poor construction, installed moving walkways on each floor and an environmentally friendly waste-disposal system which was completed during the 2018 year of assessment. These additions were considered to form part of the structure of the building and constituted a floor area of more than 1 000 m<sup>2</sup>.

Developer A and Purchaser B have February year-ends.

### Result:

- (a) Between 1 April 2014 and 31 March 2017, Developer A deducted 44% of the costs incurred, that is, 20% ( $R200 \text{ million} \times 20\% = R40 \text{ million}$ ) in the first year and 8% ( $R200 \text{ million} \times 8\% = R16 \text{ million}$ ) in each of the following three years. In total, R88 million was deducted.

Note that no apportionment of the allowance is required if it relates to a period of less than a full year of assessment.

Upon the sale of the building for R308 million to Purchaser B, Developer A had to account for tax as follows:

	R
Selling price	308 000 000
Less: Recoupment included in gross income <sup>16</sup>	(88 000 000)
Purchase price (base cost less deductions) <sup>17</sup>	<u>(112 000 000)</u>
Capital gain	<u>108 000 000</u>
Calculation of the recouped amount	
Year 1	40 000 000
Year 2	16 000 000
Year 3	16 000 000
Year 4	<u>16 000 000</u>
	<u>88 000 000</u>

The R88 million recouped and the taxable capital gain of R86 400 000 ( $R108 \text{ million} \times 80\%$ ) had to be included in the taxable income of Developer A for the 2017 year of assessment.

<sup>16</sup> Under paragraph 35(3)(a) of the Eighth Schedule to the Act, proceeds must be reduced by any amount that was included in a person's gross income. The recoupment of R88 million was included in gross income under paragraph (n) of the definition of "gross income" in section 1(1).

<sup>17</sup> Under paragraph 20(3)(a)(i) of the Eighth Schedule to the Act, the base cost is arrived at by reducing the purchase price of R200 million by any amount which was allowable or deemed to have been allowed as a deduction (R88 million) in determining the taxable income of the taxpayer.

(b) Purchaser B could not deduct any allowances on the cost incurred by it on acquisition of the building from Developer A, as Developer A had previously deducted an allowance on this building.<sup>18</sup>

Purchaser B was, however, entitled to deduct the allowance for the 2018 year of assessment on the cost of the additions made, that is, costs incurred in relation to the new roof, the installation of the moving walkways and the new waste-disposal system.<sup>19</sup>

## 2.5 Date requirements

### 2.5.1 Commencement date requirement

The erection, extension, addition to or improvement of the building must<sup>20</sup> have commenced –

- on or after the date on which the Minister has published the particulars of the relevant demarcated area within which the building is located in the *Gazette* (see 2.2); and
- under a contract formally and finally signed by all parties on or after that date.

A taxpayer purchasing a building or a part of a building from a developer must have concluded on or after 8 November 2005.

Since the requirement is that the erection, extension, addition or improvement must have commenced “*in terms of a contract formally and finally signed by all the parties thereto*” on or after the date that the UDZ is demarcated, the relevant agreement must meet all the requirements of a valid contract. It also means that a verbal contract will not suffice. It is not required that the contract be unconditional as at the relevant date, merely that it must be a valid contract and have been signed by all the parties.

No allowance may be deducted in instances in which the erection, extension, addition to or improvement occurs before the demarcation date, since these projects would in all probability have been undertaken in any event. This means that even those costs relating to the demolition of an existing building or the excavating of the land which were incurred prior to the date of demarcation will be ineligible for an allowance under section 13quat (see 3 for a discussion on the costs deductible under this section).

### 2.5.2 Trade date requirement

The building or that part of a building must have been brought into use solely for the purposes of the taxpayer’s trade on or before 31 March 2020 (see 2.3).

<sup>18</sup> Section 13quat(2)(d)(ii).

<sup>19</sup> Section 13quat(3)(a).

<sup>20</sup> Section 13quat(2)(b) and (d).

## **Example 2 – Date requirements**

### *Facts:*

On 30 January 2017 Investment Company X commenced refurbishing its building in a UDZ. The particulars of the demarcation of the area were only published on 27 February 2017. The refurbishment was effected according to a contract formally and finally signed by all parties on 1 January 2017. After the completion of the refurbishment of the building, Investment Company X commenced using the building for purposes of trade on 30 September 2017.

### *Result:*

Investment Company X complied with all the requirements, except for the commencement date requirement. Since Investment Company X commenced refurbishing the building before the particulars of the demarcation of the area were published on 27 February 2017, it did not qualify for an allowance on the cost of the refurbishment of the building, despite the fact that part of the cost of the refurbishment was incurred after the demarcation date. The fact that the refurbishment contract was formally and finally signed before the demarcation date did not alter the fact that Investment Company X was not entitled to an allowance for the refurbishment, since the refurbishment commenced before the demarcation date.

Had the commencement date requirement been met, Investment Company X could have deducted the allowance from the date that the building was brought into use for the purposes of Investment Company X's trade, that is, 30 September 2017.

### **2.5.3 Treatment of the allowance not fully deducted before 1 April 2020**

In the event that the allowance is not extended beyond 31 March 2020, no new deductions of allowances will be allowed. However, taxpayers who have already started deducting the allowance in previous years will be allowed to continue deducting the allowance as provided under section 13<sup>quat</sup>. For example, Taxpayer A starts deducting the allowance under section 13<sup>quat</sup>(3)(b) in the 2018 year of assessment. This taxpayer will be allowed to continue deducting the allowance until 2023, provided that all other requirements of the section are met. However, Taxpayer B who wants to start deducting in April 2020 will be unable to do so.

## **3. Costs that are deductible under section 13<sup>quat</sup>**

For purposes of this allowance, “cost” is defined as –<sup>21</sup>

“the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building or part thereof and includes any costs incurred—

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and
- (c) in respect of structures or works directly adjoining the building or part so erected, extended, added to or improved, for purposes of providing
  - (i) water, power or parking with respect to that building or part;
  - (ii) drainage or security for that building or part;

<sup>21</sup> Section 13<sup>quat</sup>(1).

- (iii) means of waste disposal for that building or part; or
- (iv) access to that building or part, including the frontage thereof;"

The following examples are regarded as costs incurred in erecting, extending, adding to or improving a building or part of a building for the purposes of the allowance:

- Construction work
- Architect and approval fees
- Sidewalks
- Parking for the building
- Landscaping as part of the development (including earthworks, greenery and irrigation)
- Drainage
- Security (fences, cameras and surveillance equipment)

The following examples are not regarded as costs for purposes of the allowance:

- Purchase price of the land
- Transfer duty or Value Added Tax
- Borrowing or financing charges
- Agent's commission, if applicable
- Transfer and related legal costs

While it is accepted that under the law of property buildings and the land upon which they are situated are considered to be a single unit, this principle does not automatically apply under the rules of taxation. In ITC 1619,<sup>22</sup> it was stated that the word "building" should be given its ordinary meaning and that, according to this meaning, no indication existed "*that the ground upon which the building stood formed a part of it*". Further, that had the legislature intended otherwise, an inclusion would have been made to give effect to such intention by, for example, specifically referring to "land and buildings". Importantly, section 13*quat* limits the allowance to the cost incurred by the taxpayer for the erection, extension, addition to or improvement of a building, which clearly does not incorporate the cost of any land.

Therefore, since there is an absence of the word "land" in section 13*quat*, the costs incurred by the taxpayer that fall within the definition of "cost" will be confined to those **costs incurred in relation to the erection, extension, addition or improvement of the building only**.

The actual cost of a building or part of a building purchased from a developer is the price paid for the building itself (see 5). Consequently, in the event that the costs incurred by a taxpayer in acquiring an existing building from a developer are an inclusive amount for both the building and the land, an apportionment has to be made before an allowance can be deducted on the cost of the building. Under section 102 of the Tax Administration Act 28 of 2011, the onus rests on the taxpayer to prove that a reasonable basis of apportionment was

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<sup>22</sup> 59 SATC 309 (C) at 314 and 315.

used.<sup>23</sup> Therefore, before an apportionment is made, a proper examination of the facts will be required.

#### **4. The position of a developer in the context of section 13*quat***

A “developer” is defined as –<sup>24</sup>

- “a person who erects, extends, adds to or improves a building or part of a building—
- (a) with the purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and
  - (b) disposes of the building or part of a building within three years after completion of that erection, extension, addition or improvement;”

Normally, when a new building is developed or an existing property is improved by a developer, the developer will seek to immediately sell the property at a profit in order to recover the costs of erecting or improving the building. However, an immediate sale is not always possible. Thus, a developer may be compelled to retain the property and use it for the purposes of letting or for private use until such time as a contract of sale can be concluded.

As a result of the above and owing to purchasers being prevented from deducting the allowance on property which was previously let by developers, the definition of “developer” as provided under section 13*quat* was amended to make provision for the three year use or rental rule. According to the amended definition, a developer may temporarily use or let the property that was constructed or improved by the developer for a period of three years. This rule applies from 10 January 2012 and relates to contracts of sale concluded on or after that date.<sup>25</sup>

A purchaser is allowed to deduct an allowance provided the developer did not deduct any allowance under section 13*quat* on the cost of the building or part of the building within the usage or rental period. Further, the developer must have constructed the building with the purpose of immediately disposing of it, despite the fact that it may be disposed of within three years after completion. If the developer does not intend to immediately dispose of the building after completion, for example, the developer intends to hold on to the property indefinitely but then subsequently decides to dispose of the building (without having deducted the allowance), the developer will not be regarded as a “developer” as defined and the purchaser will not be entitled to deduct the allowance, since the building is not being acquired directly from a “developer” but from an owner.

In the event that the developer had used or let the property for longer than three years after completion, the subsequent purchaser may not deduct the allowance under section 13*quat* (even if the developer did not deduct an allowance) as the developer will no longer constitute a “developer”. Generally when a property is located within a UDZ, an allowance is available to the owner of the property – in this case a developer. The allowance will therefore also be available to such a developer in the capacity as owner, even if the property is used for the

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<sup>23</sup> Section 102(1)(a).

<sup>24</sup> Section 13*quat*(1).

<sup>25</sup> The previous definition of “developer” will apply to a contract of sale that was concluded before 10 January 2012 and no allowance will be available to the purchaser of the property that was previously used or leased by the developer.

purposes of trade or letting for a period longer than three years after completion of the erection, extension, addition or improvement to the building.

In the event that neither the developer nor the first purchaser deducts the allowance, the next purchaser will not be able to deduct the allowance since the property is now being purchased from an owner and not directly from a developer. For this latter purchaser to deduct an allowance, further qualifying work (extension, addition or improvement) must be carried out on the property by the purchaser.

### **Example 3 – The allowance when deducted by a developer**

#### *Facts:*

Developer X demolished an old building which was located on privately owned land and erected a new block of flats consisting of 50 units. Erection of the building was completed on 31 March 2011. The building was situated within a UDZ and construction commenced after the publication of the particulars of the demarcation of the area.

- (a) After completion, Developer X sold 47 units and concluded lease contracts with tenants for 2 units and retained the remaining unit. All sale contracts were concluded on 1 April 2011. Some of the purchasers used the units for private residential purposes while others used the units solely for the purposes of their trade.
- (b) Five-year lease agreements were concluded for units 48 and 49. Developer X chose to deduct the allowance on these units. On the expiry of the lease agreements, Developer X sold the units to Purchaser Y and Purchaser Z. Purchaser Y, who used the unit solely to operate a fashion design business, made certain additions to the unit. Purchaser Z also made certain necessary improvements to the unit in order to aid an elderly mother but did not use the unit for purposes of trade.
- (c) Unit 50 was retained by Developer X for private purposes.

#### *Result:*

- (a) The purchasers that acquired their units immediately and directly from Developer X for the purpose of carrying on a trade were entitled to deduct the allowance, since they acquired the units from a “developer”. With these units the 1 000 m<sup>2</sup> floor area requirement was inapplicable for the purchasers since the developer had already complied with the requirement (see **2.1** for more information).
- (b) Since the units were acquired by the purchasers on 31 March 2016 and Developer X had let the units for more than three years, Developer X was not regarded as a “developer” as defined under section 13*quat*, but as the owner. Consequently, the purchasers did not qualify for an allowance on these units, since they were not acquired from a “developer” but from an owner.

Purchaser Y could deduct an allowance on the costs incurred on the new additions, since the unit was used for trade purposes. Purchaser Z used the unit for private purposes (that is, not for purposes of trade), and therefore no allowance under section 13*quat* could be deducted on the improvements made by Purchaser Z.

- (c) Developer X could not deduct any allowance on unit 50, since the trade requirement was not complied with.

Developer X would have qualified for the allowance on the demolition costs as well as the development costs incurred on the units let to the tenants, since a trade of letting of property would have been conducted.

## 5. Purchases from developers and deemed costs [section 13*quat*(3B)]

A taxpayer may deduct an allowance on the “purchase price” paid to a developer for the acquisition of a building or part of a building. Under section 13*quat*(1), “purchase price” in relation to any building or part of the building that is purchased by a taxpayer from a developer means the **lesser of** –

- “(a) the actual cost to the taxpayer to purchase that building or part; or
- “(b) the cost which a person would have incurred had that person purchased that building or part under a cash transaction concluded at arm’s length on the date on which that taxpayer purchased that building or part;”

In the event of a purchase of a building or part of a building from a developer –

- 55% of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by the developer; and
- 30% of the purchase price of that building or part of a building, in the case of a building improved by the developer,

will be deemed to be costs incurred by the person for the erection, extension, addition to or improvement of the building or part of the building.

These “deemed costs” will be regarded as costs for purposes of the allowance and no further adjustments will have to be made in this regard. The purchaser of a building or part of a building will thus qualify for an allowance on the “deemed costs” pertaining to such a building or part of a building.

### Example 4 – Deemed costs upon the part-purchase of a building from a developer

*Facts:*

Investor X purchased a new sectional title unit in a security complex from a developer on 2 January 2018 and immediately after the purchase brought it into use for purposes of trade. The purchase price was R1,2 million and consisted of the costs of land and the building.

*Result:*

55% of the purchase price is deemed to be the cost incurred by the investor for purposes of the determination of the allowance. Accordingly, provided all the other requirements of section 13*quat* were complied with, the investor would be able to deduct the allowance on 55% of R1,2 million less the cost of the land. As mentioned under 3, when the costs incurred relate to both the building and the land, an apportionment must be made to determine the portion attributable to the building only.

## **6. Amount of the allowance that may be deducted from income under section 13<sup>quat</sup>**

Depending on the type of development involved, that is, new, improved or low-cost, the allowance is calculated at a different rate. Furthermore, in the process of deducting the allowance, no apportionment is necessary if the period to which the allowance relates is less than a full year of assessment.

### **6.1 The erection of a new building or the extension of or addition to any building [section 13<sup>quat</sup>(3)(a)]**

The allowance will be calculated as follows in the event of a new construction, extension or addition:

- An amount equal to 20% of the cost pertaining to the **erection or extension of or addition to** the building in the year of assessment during which the building or part of the building is brought into use by the taxpayer solely for the purposes of that person's trade. When land is purchased on which a building is erected, the allowance is determined only on the cost of the erection (excluding the cost of the land). Importantly, the allowance can be deducted only from the year of assessment in which the building or part of the building is brought into use by the taxpayer, not the year of assessment in which the expenditure is incurred or when the building or part of the building is complete.
- An amount equal to 8% of the cost in each of the 10 succeeding years of assessment.

#### **Example 5 – Costs deductible on a new construction**

*Facts:*

Investor X constructed a new commercial building within a UDZ in order to conduct a retail business after having purchased vacant land for R5 million. The cost of the new construction was R100 million. The commercial building was erected in 2017, but brought into use for the purposes of Investor X's trade only in 2018.

*Result:*

Provided all other requirements were complied with, Investor X is able to deduct 20% of the construction costs in the 2018 year of assessment (that is,  $R100 \text{ million} \times 20\% = R20 \text{ million}$ ) when the building was brought into use for purposes of Investor X's trade. Investor X will, after having brought the building into use for purposes of trade, be able to deduct 8% of the R100 million for each of the next 10 years of assessment (that is, R8 million a year over the next 10 years). The R5 million relating to the purchase price of the land was disregarded for the purposes of calculating the allowance. If Investor X had failed to commence deducting the allowance in the 2018 year of assessment, Investor X may request SARS to issue a reduced assessment for the years of assessment in which the allowances should properly have been deducted, provided of course that the applicable prescription periods<sup>26</sup> have not expired. Investor X would be allowed to complete deducting the allowance for years of assessment after the allowance has ended (see 2.5.3).

<sup>26</sup> See section 99 of the Tax Administration Act, 2011.

### **Example 6 – Purchase of a new building from a developer**

#### *Facts:*

Investor X purchased a new commercial building directly from a developer in order to conduct a retail business. The cost of the commercial building including the land was R100 million. The contract between the developer and Investor X did not specify the cost of the land separately (compare Example 4).

#### *Result:*

Investor X purchased the building from a developer. In this instance, the costs incurred by Investor X are deemed to be 55% of the total purchase price paid by Investor X (see 5.). The purchase price of the building needs to be apportioned between the cost of the land and the cost of the building. The method of apportionment adopted has to be fair and reasonable.

Assuming the purchase price of R100 million was correctly apportioned, that is, R80 million for the building and R20 million for the land, and provided all other requirements are complied with, Investor X is able to deduct a total of R44 million ( $R80 \text{ million} \times 55\%$ ) over 11 years. Investor X is able to deduct 20% of the “deemed” construction costs in the first year of assessment ( $R44 \text{ million} \times 20\% = R8,8 \text{ million}$ ) when the building was brought into use for purposes of trade. Thereafter, Investor X can deduct 8% of the “deemed costs” for each of the next 10 years of assessment ( $R44 \text{ million} \times 8\% = R3,52 \text{ million a year over the next 10 years}$ ).

## **6.2 Improvements to an existing building or part of a building [section 13quat(3)(b)]**

The allowance on an improvement to an existing building or part of a building which preserves the existing structural or exterior framework is calculated as follows:

- An amount equal to 20% of the cost pertaining to the **improvement** of the *building in the year of assessment during which the part of the building so improved is brought into use* by the taxpayer solely for the purposes of trade. No apportionment is required when the building is brought into use during a year of assessment.
- An amount equal to 20% of the cost in each of the four succeeding years of assessment.

Improvements to a building or part of the building will include any extension or addition to the building which is incidental to that improvement, and which preserves the existing structural or exterior framework of the building. The alteration of the structure of the building will be regarded as a new erection, addition or extension. In such cases, the deduction of an allowance may be allowed in accordance with the rates mentioned in 6.1. The improvement should cover the entire building or a floor area of at least 1 000m<sup>2</sup> in order to qualify for an allowance [section 13quat(2)(c)].

### **Example 7 – Improvement costs**

#### *Facts:*

The owner of a 13-storey commercial building located within the boundary of a UDZ decided to improve the building by installing integrated energy-efficient technology at a cost of R1,2 million. In order to install the energy-efficient technology, a part of the building's roof had to be extensively extended. The cost of the extension was R1,6 million. For purposes of this example, it is assumed that the 1 000 m<sup>2</sup> floor area requirement in section 13quat(2)(c) has been complied with.

#### *Result:*

The owner is able to deduct the cost of installing the energy-efficient technology in equal instalments over five years (that is, R1,2 million × 20% = R240 000 a year over a 5-year period) commencing in the year of assessment in which the technology was brought into use for purposes of the owner's trade. The owner would have also qualified for an allowance over five years on the cost of extending the building, since the extension was incidental to that improvement (R1,6 million × 20% = R320 000 a year). Total allowances per year therefore amount to R560 000 (R240 000 + R320 000).

### **6.3 The erection of a new building or the extension of or addition to any building to the extent that it relates to a low-cost residential unit [section 13quat(3A)(a)]**

A “low-cost residential unit” is defined as –<sup>27</sup>

- “(a) an apartment qualifying as a residential unit in a building located within the Republic, where—
  - (i) the cost of the apartment does not exceed R350 000; and
  - (ii) the owner of the apartment does not charge a monthly rental in respect of that apartment that exceeds one per cent of the cost; or
- “(b) a building qualifying as a residential unit located within the Republic, where—
  - (i) the cost of the building does not exceed R300 000; and
  - (ii) the owner of the building does not charge a monthly rental in respect of that building that exceeds one per cent of the cost contemplated in subparagraph (i) plus a proportionate share of the cost of the land and the bulk infrastructure;

Provided that for the purposes of paragraphs (a)(ii) and (b)(ii), the cost is deemed to be increased by 10 per cent in each year succeeding the year in which the apartment or building is first brought into use.”

The deemed increase of 10% in the cost of the low-cost residential unit allows for the apartment or building to remain within the parameters of being considered “low-cost” despite the increase in rental charged. This ensures that as the cost is deemed to increase, an allowance under section 13quat(3A)(a) or (b) will normally still be permissible since the unit will continue to be classified as a “low-cost residential unit”.

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<sup>27</sup> Section 1(1).

The allowance for low-cost residential units is determined on the following basis:

- An amount equal to 25% of the cost pertaining to the **erection or extension of or addition** to a low-cost residential unit *in the year of assessment during which the unit so erected, extended or added to is brought into use* by the taxpayer.
- An amount equal to 13% of that cost in each of the five succeeding years of assessment.
- An amount equal to 10% of that cost in the seventh year of assessment.

#### **6.4 Improvements to an existing building or part of a building, to the extent that it relates to a low-cost residential unit [section 13quat(3A)(b)]**

The allowance for **improvements** to low-cost residential units is determined on the following basis:

- An amount equal to 25% of the cost pertaining to the improvement of the low-cost residential unit *in the year of assessment during which the part of the unit so improved is brought into use* by the taxpayer.
- An amount equal to 25% of that cost in each of the three succeeding years of assessment.

#### **Example 8 – Deducting the allowance on low-cost residential units located within a UDZ boundary**

*Facts:*

Taxpayer A owned four residential units which were used as rental apartments. All these units were located within a UDZ. Details of the costs and rental income associated with these units were as follows:

- Unit A: new unit erected by Taxpayer A, total costs exceeded R350 000, rent – R2 300 per month.
- Unit B: new unit erected by Taxpayer A, total costs – R230 000, rent – R2 100 per month.
- Unit C: purchase of an existing unit by Taxpayer A, acquisition cost – R140 000. Improvements made to Unit C are equal to R45 000. Rent – R1 300 per month.

*Result:*

Based on the above facts, Taxpayer A qualifies for an allowance on all the units within the UDZ. However, Taxpayer A has to deduct the allowance at different rates, as illustrated below:

##### *Unit A*

This unit did not qualify as a low-cost residential unit as the cost exceeded the prescribed limit of R350 000. Thus, the more advantageous rates pertaining to low-cost residential units did not apply. Taxpayer A is, however, able to deduct an allowance under section 13quat(3)(a) on the unit, namely, 20% of the cost in the first year of assessment (that is, R50 000) and 8% (that is, R20 000) of the cost in the succeeding 10 years of assessment.

#### *Unit B*

This unit qualifies as a low-cost residential unit as the cost did not exceed R350 000 and the rental charged did not exceed 1% of the cost ( $R230\ 000 \times 1\% = R2\ 100$ ). Taxpayer A is able to deduct 25% of the cost of the unit in the first year of assessment (that is, R57 500) when the building was brought into use. Thereafter, Taxpayer A could deduct 13% of the cost for each of the next 5 succeeding years of assessment (that is, R29 900 a year for the next 5 years) and 10% of the cost in the 7<sup>th</sup> year of assessment (that is, R23 000).

#### *Unit C*

This unit qualifies as a low-cost residential unit, since the costs did not exceed R350 000 and the rental charged did not exceed 1% of the cost ( $R140\ 000 \times 1\% = R1300$ ). Taxpayer A is able to deduct 25% of the improvement costs in the year of assessment in which the unit was brought into use (that is,  $R45\ 000 \times 25\% = R11\ 250$ ). Taxpayer A can then deduct 25% of the costs for the next 3 succeeding years of assessment (that is, R11 250 a year for the next 3 years of assessment).

If the rent had amounted to more than 1% of the cost, the unit would not have been considered to be a low-cost residential unit and thus the rates under section 13*quat*(3)(b) would have applied.<sup>28</sup>

## **7. Construction of and improvements to buildings located on qualifying third party-owned land**

The letting of government-owned land or buildings is often a necessary consideration as the three spheres of government sometimes lack the funds to undertake the essential improvements required to keep the property in a suitable condition. In an attempt at upgrading infrastructure as well as retaining ownership, the property is let to the public who then effect improvements to the buildings. A similar situation may arise if the land owner is an exempt entity.

When the land or buildings fall within a UDZ, an allowance would only have been available to the taxpayer carrying out the improvements if the taxpayer was the owner of the property and all the other requirements of section 13*quat* are complied with. However, if the property is owned by a third party the “owner requirement” (see **2.4**) of section 13*quat*(2) prevents the lessee from deducting the costs incurred on the improvements effected.

As a result of the introduction of section 12N,<sup>29</sup> depreciation rules now apply to lessees that hold rights of use or occupation of government-owned property, property owned by certain specified exempt entities or property owned by parties to a Public Private Partnership or Independent Power Producer Procurement Programme. Under this section, lessees that make improvements to property owned by qualifying third parties are deemed to be the owners of the property. Consequently, these lessees will be eligible for the specific depreciation allowances provided for under applicable provisions of the Act (including section 13*quat*) as if the lessees owned the property directly. The allowances may be deducted by the lessees if the requirements of section 12N and the specific allowance

<sup>28</sup> See **6.2**.

<sup>29</sup> See **Annexure F**.

section are met and the lessees are not specifically excluded by section 12N(3) for example, the lessee is a person carrying on banking, financial services or insurance business.<sup>30</sup>

Importantly, while it is not a requirement of section 12N that the taxpayer must be *obliged* under the relevant contractual arrangement to effect the improvements, it is evident that as the improvements must be effected under a Public-Private Partnership, an agreement with the relevant sphere of government or exempt entity or Independent Power Producer Procurement Programme, the improvements must be mandated by the relevant contractual arrangement. This means, in effect, that if the taxpayer is not mandated under the relevant contractual arrangement to effect the improvements, but nevertheless voluntarily decides to effect the improvements, the taxpayer would not fall within the ambit of section 12N.

In the context of section 13*quat*, section 12N has the effect that a lessee effecting improvements to a building which is owned by a party contemplated in section 12N, will, as the deemed owner, be able to deduct an allowance on the costs incurred, provided all the requirements of both sections are met.

Expenditure incurred by a taxpayer in completing an improvement on property owned by a qualifying third party is deemed to be the cost of the erection, extension, addition or improvement for purposes of section 13*quat*(2).<sup>31</sup>

#### **Example 9 – Improvements on a government-owned building and new erections on government-owned land**

*Facts:*

- (a) In 2018, Investor Q entered into a lease agreement with a municipality for the hire of a municipality-owned building situated within a UDZ which was let to Investor Q for a period of 10 years in order for Investor Q to conduct business-related activities. According to the terms of the lease agreement, Investor Q is entitled, but not obliged, to make improvements to the building at own cost. Investor Q effected improvements to the municipality-owned property at a cost of R200 000.
- (b) Under a Public Private Partnership contract, Bank A acquired the use of state-owned land located within a UDZ for a predetermined period. Bank A then erected an office block on the land with the intention of using it for its banking business.
- (c) Investor Z entered into an agreement with a provincial government in which Investor Z undertook to erect a multi-purpose building in a UDZ for the use of the public for a minimum value of R20 million. Investor Z was entitled to 90% of the rentals paid by the public for the use of the building for a period of 10 years. However, owing to cost escalations the building cost R22 million on completion.

<sup>30</sup> See Annexure F for all requirements that must be complied with as well as all exclusions.

<sup>31</sup> Section 13*quat*(2A).

*Result:*

- (a) In order for Investor Q to deduct an allowance under section 13*quat*, Investor Q must first meet all the requirements of the section, particularly that the taxpayer deducting the allowance has to be the owner of the building. From the facts of the case, it is clear that the municipality is the owner of the building and not Investor Q. In normal circumstances, the failure to meet this requirement would have immediately disqualified Investor Q from deducting the allowance. However, owing to section 12N, Investor Q is deemed to be the owner of the building, provided all the requirements of section 12N are met. As such, Investor Q can deduct an allowance of 20% a year for a total of five years on the cost of the improvements of R200 000.
- (b) Although section 12N deems Bank A to have been the owner of the land, this section does not apply to a taxpayer carrying on any banking, financial services or insurance business. Thus, Bank A is unable to deduct an allowance, since the deeming provisions of section 12N were inapplicable to Bank A.
- (c) Although Investor Z was obliged to erect a building for R20 million, since the actual cost was R22 million, Investor Z is entitled to deduct the allowance on R22 million.

## **8. Qualification for the deduction of other allowances on a building situated in a UDZ**

The allowance has been introduced in the form of an accelerated depreciation allowance and does not constitute an additional tax allowance. A taxpayer that deducted an allowance under section 13*quat* on a building or part of a building may not deduct any other allowance on that building or part of the building.

## **9. Necessary documentation**

Section 13*quat*(4) makes it necessary for the person deducting the allowance to be in possession of certain documentation. As a result of the introduction of the e-Filing system, it is no longer necessary for the mentioned documentation to be submitted with the relevant return of income in which the allowance is deducted.

However, the documentation must be retained for audit purposes for a period of five years from the date of submission of the return.<sup>32</sup> An allowance which has been allowed will be added back in the taxpayer's taxable income should the relevant supporting documentation not be provided upon request.

### **9.1 Documentation in relation to new or improved buildings or purchases from developers**

A UDZ 1 form must be completed for each building or part of a building for which an allowance is deducted by the taxpayer that erected, extended, added to or improved a building or part of a building. This form is not required for the purchase of a building or part of a building from a developer.

A UDZ 2 form must be completed for a purchase of a building or part of a building from a developer.

<sup>32</sup> Section 29 of the Tax Administration Act.

A UDZ 3 certificate is a certificate confirming the particulars mentioned in **2.1**. This certificate must accompany the UDZ 2 form. The purchase price that must be inserted in the UDZ 3 certificate must align with the definition of “purchase price” as provided for under section 13<sup>quat(1)</sup>. The cost of improvements to a building must be equal to at least 20% of the purchase price paid by the taxpayer for the building or part of the building [section 13<sup>quat(2)(d)(iii)</sup>]. Therefore, the cost must be based on the “purchase price” as defined.

The onus is on the person deducting the allowance to ensure that the information on the UDZ 3 certificate is correct. If the Commissioner has reason to believe that the information provided in the UDZ 3 certificate by the developer is not correct, the Commissioner must disallow the allowance deducted by the person on the building or part of the building purchased from the developer, unless sufficient information is provided which can prove that the information contained in that certificate is correct.

A UDZ 4 form must be completed by developers for each building of which the cost is likely to exceed R5 million (see **10.3**). This form must be submitted to **udz4@sars.gov.za**.

## **9.2 Documentation that must be obtained from the municipality**

Taxpayers must obtain a location certificate, issued by the municipality, confirming that the building or part of a building that was constructed, improved or purchased from a developer is located within a UDZ within the boundaries of that municipality.

With effect from 21 October 2008, it is no longer a pre-requisite for a certificate of occupancy to be issued by the municipality. The absence of this requirement means that all erections, extensions, additions or improvements that commenced or purchases that took place on or after that date do not require an occupancy certificate. However, if one can be provided, it should be retained by the developer for future purposes. A certificate has to be retained for those constructions, improvements and purchases that took place before 21 October 2008.

# **10. Reporting requirements**

The Act requires the Commissioner, municipalities and developers to report regularly on specific aspects relating to the allowance.

## **10.1 By municipalities [section 13<sup>quat(9)</sup>]**

Any municipality that has demarcated an area within its boundaries has to provide an annual report to the Minister and the Commissioner with regard to the allowance granted. In order to enable a municipality to provide this information annually, it will be required from any person that applies for a location certificate at a municipality to provide certain information to that municipality.<sup>33</sup>

The following information has to be provided by the municipalities to the Minister and the Commissioner on an annual basis:<sup>33</sup>

a) *Reporting requirements for buildings in UDZs:*

- i) On certificates confirming that a building is located within a demarcated UDZ –
  - the name of every person to which the municipality issued such a certificate;

<sup>33</sup> Regulation 219 of GG 34113 of 11 March 2011.

- the total number of certificates issued to taxpayers by the respective municipality; and
  - the extent to which a building for which a certificate was issued is used for commercial purposes, residential purposes, low-cost residential units or industrial purposes.
- ii) On building plans to erect, extend, add to or improve a building or part of a building in each UDZ within a municipality –
- the number of building plans approved; and
  - the estimated total cost of the erections, extensions, additions or improvements for which such plans were approved.

*b) Reporting requirements for the regeneration of UDZs:*

Every municipality must report on the significant fiscal measures that have been implemented by the municipality to support regeneration of each UDZ with such municipality, including –

- the appropriation of significant funds for developing the area in the annual budget of the municipality;
- any other fiscal measures for such development; and
- any non-monetary measures implemented in order to stimulate the regeneration of each zone within the municipality.

This information must be provided for each financial year of a municipality ending –

- on or before 30 June, or by 28 September of that particular financial year, in other words, within three months after the end of such financial year.

The above dates are published annually in the *Gazette* by the Minister and can be found on the National Treasury website. Further, all information provided must correspond with Form A that is annexed to Regulation 219.<sup>34</sup>

In the event that a municipality –

- fails to provide such an annual report to the Minister and to the Commissioner; and
- corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice in which the particulars of an area demarcated by a municipality were published in the *Gazette*.

The effect of a withdrawal will be that the area which was demarcated by the municipality will no longer constitute a UDZ and a taxpayer will, therefore, not be able to deduct an allowance on the cost of any building that was constructed or improved within that area. In the event that a demarcation is withdrawn after a taxpayer had already started deducting the allowance under section 13<sup>34</sup> and would have been eligible to further allowances under this section had it not been for the withdrawal, such taxpayer will not be able to deduct any more allowances on that building. No recoupment will take place at that point owing to the

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<sup>34</sup> GG 34113 of 11 March 2011.

withdrawal. The normal recoulement principles will, however, apply when the taxpayer disposes of the building.

However, a withdrawal will not take place if the municipality takes corrective steps (that is, submit the annual report or withdraw the incorrect location certificates) within a period specified by the Minister.

## **10.2 By developers [section 13~~quat~~(10A)]**

In addition to the certificate discussed in **9.1**, any developer that erects, extends, adds to or improves a building within an UDZ of which the estimated cost of the erection, extension, addition or improvement is likely to exceed R5 million must –

- inform the Commissioner within 30 days after the commencement of that erection, addition or improvement of the estimated costs of the erection, extension, addition or improvements to the building or part(s) of the building which the developer intends to sell and the estimated selling price of the building or those parts; and
- inform the Commissioner within 30 days after the sale of the building or all anticipated sales of any parts of the building have been concluded of the actual costs incurred on that building or parts of that building and the actual selling price of that building or parts of the building.

## **10.3 By the Commissioner [section 13~~quat~~(11)]**

The Commissioner must submit an annual report to the Minister relating to the –

- number of taxpayers that have claimed the allowance during a specific year;
- total amount of allowances allowed; and
- total amount of costs which are or will be allowable as a deduction under section 13~~quat~~.

# **11. Objections to the disallowance of an allowance**

A person that deducted an allowance and is not satisfied with an assessment issued, for example, when an adjustment has been made by the Commissioner to the allowance deducted in the person's return of income, may object to such an assessment.

The objection must –

- be in the prescribed form and manner;
- state the grounds on which the objection is lodged; and
- reach the Commissioner within a period of 30 business days after the date of the assessment.

Further information regarding the objection and appeal procedure is set out in the *Guide on Tax Dispute Resolution*.

# **12. Interpretational issues relating to section 13~~quat~~**

Queries relating to the interpretation of section 13~~quat~~ may be forwarded to **policycomments@sars.gov.za**. All other operational issues must be directed to the relevant SARS branch office.

## **13. Conclusion**

In summary:

- Section 13*quat* provides for an accelerated depreciation allowance on the cost of the erection, extension, addition or improvement of any commercial or residential building or a part of a building.
  - There are a number of requirements that must be met before the allowance is granted.
  - A taxpayer that purchases a building or part of a building directly from a developer will be able to deduct an allowance provided the developer did not deduct any allowance on the cost of the building or part of the building within the usage or rental period. If the developer had used or let the property for longer than three years after completion, the subsequent purchaser may not deduct the allowance (even if the developer did not deduct an allowance) as the developer will no longer constitute a "developer" as defined.
  - In the event of a purchase of a building or part of a building from a developer –
    - 55% of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by the developer; and
    - 30% of the purchase price of that building or part of a building, in the case of a building improved by the developer,
- will be deemed to be costs incurred by the person for the erection, extension, addition to or improvement of the building or part of the building.
- Depending on the type of development involved, that is, new, improved or low-cost, the allowance is calculated at different rates.
  - A lessee that effects improvements to a building that is owned by a party contemplated in section 12N, will, as the deemed owner, be able to deduct an allowance on the costs incurred in erecting, adding to, extending or improving such building.
  - Taxpayers deducting the allowance must be in possession of the necessary UDZ forms, a location certificate and, if applicable, a certificate of occupation.
  - Attention must be paid to all the reporting requirements provided under section 13*quat*.

## Annexure A – UDZ 1



INCOME TAX

**UDZ 1**

### Deduction claimed in terms of section 13<sup>quat</sup>: Erection or extension of or addition to or improvement of a building/part of a building within an Urban Development Zone

#### Notes:

- This form must be completed in respect of the erection or extension of, addition to or improvement of any building/part of a building in respect of which a deduction is claimed in terms of section 13<sup>quat</sup> of the Income Tax Act, 1962. It should, however, not be completed in respect of the purchase of a building/part of a building in respect of which a deduction is claimed in terms of this section of the Act. A UDZ2 form must be completed in this regard.
- This form must, together with the following documentation, be retained for audit purposes and must not be submitted with the relevant return of income on which the UDZ allowance is claimed:
  - A location certificate obtained from the relevant municipality;
  - A certificate of occupancy obtained from the relevant municipality.
 No UDZ allowance would be allowed if this documentation cannot be provided to the Commissioner of SARS.

#### Particulars of taxpayer

Name

Income tax reference no.

Year of assessment

#### Particulars of building/part of building

Number of location certificate issued by municipality

Relevant municipality in which boundaries building is located

Total cost of:

- (a) Erection, extension or addition to building/part of building      R
- (b) Improvement of building/part of building      R

Has a certificate of occupancy been issued by the municipality in respect of this building/part of the building?

YES    NO

Date when you became the owner of the building/part of the building

C C Y Y - M M - D D

Date of commencement of erection, extension, addition to or improvement of building/part of building

C C Y Y - M M - D D

Date when contract pertaining to erection, extension, addition to or improvement of building/part of building was formally and finally signed by all parties

C C Y Y - M M - D D

#### Particulars relating to deduction claimed

##### Erection or extension of or addition to building/part of building

##### Improvement of building/part of building

Deduction(s) claimed during current year of assessment      R

R

Deduction(s) claimed during previous year(s) of assessment      R

R

Deduction(s) that can be claimed in future year(s) of assessment      R

R

Total costs (Total of above 3 amounts)      R

R

Date when building/part of building was brought into use solely for purposes of trade

C C Y Y - M M - D D

Period used solely for purposes of trade:

From

C C Y Y - M M - D D

to      C C Y Y - M M - D D

If the building/part of the building was not used solely for purposes of trade during the entire year of assessment, please provide the reason(s) therefor

Main business for which building/part of building was used during year of assessment

#### Declaration

I, [redacted], hereby certify that the particulars stated are true and correct to the best of my knowledge and belief.

Signed at

on this

day of

20

## Annexure B – UDZ 2



INCOME TAX

**UDZ 2**

### Deduction claimed in terms of section 13<sup>quat</sup>: Purchase of a building/part of a building within an Urban Development Zone

#### Notes:

- This form must be completed in respect of the purchase of a building/part of a building erected, extended, added to or improved by a developer in respect of which a deduction is claimed in terms of section 13<sup>quat</sup> of the Income Tax Act, 1962.
- This form must, together with the following documentation, be retained for audit purposes and must not be submitted with the relevant return of income on which the UDZ allowance is claimed:
  - A location certificate obtained from the relevant municipality;
  - A certificate of occupancy obtained from the relevant municipality;
  - A completed UDZ3.
 No UDZ allowance would be allowed if this documentation cannot be provided to the Commissioner of SARS.

#### Particulars of taxpayer

Name

Income tax reference no.

Year of assessment

#### Particulars of building/part of building

Number of location certificate issued by municipality

Relevant municipality in which boundaries building is located

Total cost (purchase price) of:

(a) Building purchased directly from developer that erected, extended or added to the building

R [ ]

(b) Building purchased directly from developer that improved the building

R [ ]

Has a certificate of occupancy been issued by the municipality to the developer in respect of this building/part of the building?

YES      NO

Deemed costs for purposes of the deduction in respect of the erection or extension of or addition to the building/part of building (55% of the cost in (a) above)

R [ ]

Deemed costs for purposes of the deduction in respect of the improvement of the building/part of building (30% of the cost in (b) above)

R [ ]

Date when agreement to purchase the building/part of building was concluded

C C Y Y - M M - D D

#### Particulars relating to deduction claimed

##### Erection or extension of or addition to building/part of building

##### Improvement of building/part of building

Deduction(s) claimed during current year of assessment

R [ ]

Deduction(s) claimed during previous year(s) of assessment

R [ ]

Deduction(s) that can be claimed in future year(s) of assessment

R [ ]

Total "deemed costs" (Total of above 3 amounts)

R [ ]

Date when building was brought into use solely for purposes of trade

C C Y Y - M M - D D

Period building was used solely for purposes of trade: From C C Y Y - M M - D D to C C Y Y - M M - D D

If the building was not used solely for purposes of trade during the entire year of assessment, please provide the reason(s) therefor

Main business or trade for which property was used during year of assessment

#### Declaration

I, [ ], hereby certify that the

particulars stated are true and correct to the best of my knowledge and belief.

Signed at [ ] on this [ ] day of [ ] 20[ ]

1-1

## Annexure C – UDZ 3

		INCOME TAX	UDZ 3																																																							
<b>Developer Certificate</b>																																																										
<b>Notes:</b> 1. This certificate is a declaration of compliance with the requirements of section 13(4)(d)(iii) of the Income Tax Act, 1962 and must be completed by the developer. 2. This form must, together with the following documentation, be retained for audit purposes and must not be submitted with the relevant return of income on which the UDZ allowance is claimed: - A location certificate obtained from the relevant municipality; - A certificate of occupancy obtained from the relevant municipality. - A completed UDZ2 No UDZ allowance would be allowed if this documentation cannot be provided to the Commissioner of SARS.																																																										
<b>Particulars of taxpayer</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Name</td> <td colspan="4"></td> </tr> <tr> <td>Income tax reference no.</td> <td colspan="4"></td> </tr> </table>				Name					Income tax reference no.																																																	
Name																																																										
Income tax reference no.																																																										
<b>Particulars of building/part of building</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Description of building/part of building as per title deed</td> <td colspan="4"></td> </tr> <tr> <td>Physical address</td> <td colspan="4"></td> </tr> <tr> <td></td> <td colspan="4" style="text-align: right;">Postal code</td> </tr> <tr> <td>Purchase price R</td> <td colspan="4"></td> </tr> <tr> <td>Date when agreement to purchase was concluded</td> <td colspan="4" style="text-align: right;">C C Y Y - M M - D D</td> </tr> <tr> <td>If not entire building, which part of building was sold to the taxpayer?</td> <td colspan="4"></td> </tr> <tr> <td>Date of commencement of erection, extension, addition or improvement of building/part of building</td> <td colspan="4" style="text-align: right;">C C Y Y - M M - D D</td> </tr> <tr> <td>Did the erection, extension, addition or improvement cover the:</td> <td colspan="4"></td> </tr> <tr> <td><input checked="" type="checkbox"/> A Entire building</td> <td><input type="checkbox"/> B If not the entire building, a floor area of at least 1 000m<sup>2</sup></td> <td colspan="3"><input type="checkbox"/> C Neither (A) nor (B)</td> </tr> <tr> <td>Date when occupancy certificate was issued in respect of the building/part of building</td> <td colspan="4" style="text-align: right;">C C Y Y - M M - D D</td> </tr> <tr> <td>If the building/part of the building was improved, was the expenditure incurred by you (the developer) in respect of that improvement equal to at least 20% of the purchase price paid by the above-mentioned taxpayer in respect of the building/part of the building?</td> <td colspan="4" style="text-align: right;">YES NO</td> </tr> </table>				Description of building/part of building as per title deed					Physical address						Postal code				Purchase price R					Date when agreement to purchase was concluded	C C Y Y - M M - D D				If not entire building, which part of building was sold to the taxpayer?					Date of commencement of erection, extension, addition or improvement of building/part of building	C C Y Y - M M - D D				Did the erection, extension, addition or improvement cover the:					<input checked="" type="checkbox"/> A Entire building	<input type="checkbox"/> B If not the entire building, a floor area of at least 1 000m <sup>2</sup>	<input type="checkbox"/> C Neither (A) nor (B)			Date when occupancy certificate was issued in respect of the building/part of building	C C Y Y - M M - D D				If the building/part of the building was improved, was the expenditure incurred by you (the developer) in respect of that improvement equal to at least 20% of the purchase price paid by the above-mentioned taxpayer in respect of the building/part of the building?	YES NO			
Description of building/part of building as per title deed																																																										
Physical address																																																										
	Postal code																																																									
Purchase price R																																																										
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If the building/part of the building was improved, was the expenditure incurred by you (the developer) in respect of that improvement equal to at least 20% of the purchase price paid by the above-mentioned taxpayer in respect of the building/part of the building?	YES NO																																																									
<b>Particulars of developer</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Name</td> <td colspan="4"></td> </tr> <tr> <td>Income tax reference no.</td> <td colspan="4"></td> </tr> <tr> <td>Postal address</td> <td colspan="4"></td> </tr> <tr> <td></td> <td colspan="4" style="text-align: right;">Postal code</td> </tr> <tr> <td>Work telephone number</td> <td>C O D E - N U M B E R</td> <td>Cellphone number</td> <td>N U M B E R</td> <td></td> </tr> <tr> <td>If the cost of the erection, extension, addition or improvement exceeded R5 million, was a UDZ4 completed and submitted to SARS in respect of the above-mentioned building?</td> <td colspan="4" style="text-align: right;">YES NO</td> </tr> <tr> <td>Have you claimed any allowance under section 13(4) in respect of this building/part of the building?</td> <td colspan="4" style="text-align: right;">YES NO</td> </tr> </table>				Name					Income tax reference no.					Postal address						Postal code				Work telephone number	C O D E - N U M B E R	Cellphone number	N U M B E R		If the cost of the erection, extension, addition or improvement exceeded R5 million, was a UDZ4 completed and submitted to SARS in respect of the above-mentioned building?	YES NO				Have you claimed any allowance under section 13(4) in respect of this building/part of the building?	YES NO																							
Name																																																										
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Postal address																																																										
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Work telephone number	C O D E - N U M B E R	Cellphone number	N U M B E R																																																							
If the cost of the erection, extension, addition or improvement exceeded R5 million, was a UDZ4 completed and submitted to SARS in respect of the above-mentioned building?	YES NO																																																									
Have you claimed any allowance under section 13(4) in respect of this building/part of the building?	YES NO																																																									
<b>Declaration by developer</b> <p>I, [Signature], the developer (in the case of a company the public officer of the company), hereby confirm that the above-mentioned particulars are true and correct to the best of my knowledge and belief.</p>																																																										
Signed at	on this	day of	20																																																							

## Annexure D – UDZ 4



INCOME TAX  
Developer information

**UDZ 4**

**Notes:**

1. This form must be completed by a developer to comply with the reporting obligations as per section 13(1)(a) of the Income Tax Act, 1962.
2. This form must be completed with regard to each building in respect of which the cost is likely to exceed R5 million.
3. Part A of this form must be completed and the form submitted to SARS within 30 days after the commencement of the erection or extension of or addition to or improvement of the building or the parts which the developer intends to sell.
4. Part B of this form must be completed and the form submitted to SARS within 30 days after the sale of the building or all anticipated sales of any parts of the building.
5. Forms must be submitted to: Legislative Policy, Private Bag X923, Pretoria, 0001 or sent via e-mail to [udz4@sars.gov.za](mailto:udz4@sars.gov.za)

**Particulars of developer**

Name											
Income tax reference no.											
Postal address											
Work telephone number	C O D E	-	N U M B E R	Postal code						N U M B E R	

**Particulars of building/part of building**

Description of building										
Physical address										
Total number of units in the case of a building/part of a building subdivided into units										

**Part A**

Estimated costs of erection or extension of or addition to building or part(s) intended for sale	R												
Estimated costs of improvement in respect of the building or part(s) intended for sale	R												
Estimated selling price of building or part(s) intended for sale	R												
Date of commencement of erection, extension, addition or improvement	C C Y Y	-	M M	-	D D								

**Part B**

Actual costs incurred in respect of the building or part(s) of the building that was sold	R												
Actual selling price of building or parts of building that was sold	R												
Date when occupancy certificate was issued by the municipality	C C Y Y	-	M M	-	D D								
Date of sale of building/last part(s) of building intended for sale	C C Y Y	-	M M	-	D D								
In the case of units sold, total number of units sold													

## Annexure E – Section 13<sup>quat</sup>

**13<sup>quat</sup>. Deductions in respect of erection or improvement of buildings in urban development zones.**—(1) For the purposes of this section—

“certificate of occupancy” . . . . .

“cost” means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building or part thereof and includes any costs incurred—

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and
- (c) in respect of structures or works directly adjoining the building or part so erected, extended, added to or improved, for purposes of providing—
  - (i) water, power or parking with respect to that building or part;
  - (ii) drainage or security for that building or part;
  - (iii) means of waste disposal for that building or part; or
  - (iv) access to that building or part, including the frontage thereof;

“developer” means a person who erects, extends, adds to or improves a building or part of a building—

- (a) with the purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and
- (b) disposes of the building or part of a building within three years after completion of that erection, extension, addition or improvement;

“purchase price” in relation to any building or part of a building purchased by the taxpayer means the lesser of—

- (a) the actual cost to the taxpayer to purchase that building or part; or
- (b) the cost which a person would have incurred had that person purchased that building or part under a cash transaction concluded at arm’s length on the date on which that taxpayer purchased that building or part;

“urban development zone” means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the *Gazette* in terms of subsection (8);

(2) There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3) or (3A), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is used solely for purposes of that taxpayer’s trade, if—

- (a) that building is situated within an urban development zone;
- (b) the erection, extension, addition or improvement was commenced by the taxpayer or the developer, as the case may be, on or after the date of publication of the notice contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date;
- (c) the erection, extension, addition to or improvement by the taxpayer or developer covers either the entire building or a floor area of at least 1 000 m<sup>2</sup> of that building; and

- (d) in the case where the taxpayer purchased that building or part from a developer—
    - (i) the agreement to purchase was concluded on or after 8 November 2005;
    - (ii) that developer has not claimed any allowance under this section in respect of that building or part; and
    - (iii) if the developer improved the building or part as contemplated in subsection (3)(b) or (3A)(b), that developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of that building or part; and
  - (e) .....
- (2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of the erection, extension, addition or improvement contemplated in subsection (2).
- (3) The amount of the allowance contemplated in subsection (2)—
- (a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to—
    - (i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer's trade; and
    - (ii) eight per cent of that cost in each of the 10 succeeding years of assessment;
  - (b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—
    - (i) 20 percent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and
    - (ii) 20 per cent of that cost in each of the four succeeding years of assessment.
- (3A) The amount of the allowance contemplated in subsection (2)—
- (a) in the case of the erection of any new building or the extension of or addition to any building, to the extent that it relates to a low-cost residential unit, (other than any improvement in respect of which paragraph (b) applies) is equal to—
    - (i) 25 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer;
    - (ii) 13 per cent of that cost in each of the five succeeding years of assessment; and
    - (iii) 10 per cent of that cost in the year of assessment following the last year contemplated in subparagraph (ii);
  - (b) in the case of the improvement of any existing building or part of a building, to the extent that it relates to a low-cost residential unit, (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—
    - (i) 25 per cent of the cost to the taxpayer of the improvement, which is deductible in the year of assessment during which the part of the building so improved, is brought into use by the taxpayer; and
    - (ii) 25 per cent of that cost in each of the three succeeding years of assessment.

(3B) For purposes of subsection (3) or (3A), where the taxpayer purchased a building or part of a building from a developer—

- (a) 55 per cent of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3)(a) or (3A)(a); and
- (b) 30 per cent of the purchase price of that building or part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b),

is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part of a building.

(4) No deduction shall be allowed under this section, unless the taxpayer has obtained or determined the following for submission to the Commissioner in such form and within such time as may be prescribed by the Commissioner—

- (a) a certificate issued by the municipality to the taxpayer confirming that the building is located within an urban development zone within that municipality;
- (b) the total amount of the costs to the taxpayer (other than a taxpayer contemplated in paragraph (d)) of the erection, extension, addition or improvement and the extent that those costs relate to any portion of a building;
- (c) particulars as to whether the costs referred to paragraph (b) were incurred in respect of the erection or extension of or addition to a building as contemplated in subsection (3)(a) or the improvement of a building as contemplated in subsection (3)(b); and
- (d) in the case of a taxpayer who purchased the building or part of a building from a developer—
  - (i) the purchase price of that building or part;
  - (ii) the amount of the purchase price deemed to be a cost incurred by the taxpayer in terms of subsection (3A); and
  - (iii) a certificate from the developer in the form prescribed by the Commissioner confirming that the requirements in subsection (2)(b), (c) and (d) have been met.

(5) No deduction shall be allowed under this section in respect of any building or part of a building—

- (a) where that taxpayer ceased to use that building, or part solely for purposes of that taxpayer's trade during any previous year of assessment in or prior to which an allowance contemplated in subsection (2) was claimed;
- (b) which has been disposed of by the taxpayer during any previous year of assessment; or
- (c) which is brought into use by the taxpayer after 31 March 2020.

(6) For the purposes of this section, one area may be demarcated by a municipality where—

- (a) (i) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;
- (ii) that area is demarcated through formal resolution by the relevant municipal council;
- (iii) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;

- (iv) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—
    - (aa) property rates; or
    - (bb) assessed property values,
 and where the contribution from that area is undergoing a sustained real or nominal decline; and
  - (v) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—
    - (aa) the appropriation of significant funds for developing the area in the annual budget of the municipality;
    - (bb) special tariffs for categories of residential, commercial or industrial users; or
    - (cc) partnership arrangements with the business community for the promotion of urban development within that area; or
- (b) that area is approved by the Minister by notice in the *Gazette*, after application by a Municipality in the form and manner and at the place and time that the Minister prescribes, if the area complies with criteria as the Minister must prescribe by Regulation.
- (7)(a) Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed—
- (i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or
  - (ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population.
- (b) Where that municipality has a population of 1 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6): Provided that—
- (i) the two areas do not in total exceed the one area contemplated in paragraph (a)(ii); and
  - (ii) each area otherwise satisfies the requirements of subsection (6).
- (bA) Where a municipality has a population of less than 1 million persons the Minister may by notice in the *Gazette* approve that municipality for the purposes of paragraph (b) in terms of subsection (6)(c).
- (c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2011 and the total population of that municipality must be rounded to the nearest multiple of 100 000.
- (d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph (a) where—
- (i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph (a);
  - (ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area; and
  - (iii) .....
  - (iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.

(8) The Minister must publish by notice in the *Gazette* particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).

(9) Every municipality must provide a report annually to the Commissioner and the Minister in respect of each urban development zone located within that municipality containing such information, within such time and in such manner as is prescribed by the Minister.

(10) Where—

- (a) a municipality does not provide an annual report as contemplated in subsection (9) or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4)(a) in respect of a building that is located outside an urban development zone; and
- (b) corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.

(10A) Every developer who erects, extends, adds to or improves any building within an urban development zone must, if the estimated cost of that erection, extension, addition or improvement is likely to exceed R5 million—

- (a) inform the Commissioner within 30 days after commencement of the erection, extension, addition or improvement of the estimated costs thereof in respect of the building or the parts which the developer intends to sell and the estimated selling price of that building or those parts; and
- (b) inform the Commissioner within 30 days after sale of the building or all anticipated sales of any parts of the building have been concluded of the actual costs incurred in respect of that building or parts and the actual selling price of that building or parts thereof.

(10B) If the Commissioner has reason to believe that the information provided in the certificate by a developer as contemplated in subsection (4)(d)(iii) is not correct, the Commissioner must disallow any deduction claimed under this section, unless sufficient information is provided to the Commissioner to prove that the information contained in that certificate is correct.

(11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—

- (a) the number of taxpayers which have during the relevant year claimed an allowance in terms of this section;
- (b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and
- (c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.

## Annexure F – Section 12N

- 12N. Deductions in respect of improvements not owned by taxpayer.**—(1) If a taxpayer—
- (a) holds a right of use or occupation of land or a building;
  - (b) effects an improvement on the land or to the building in terms of—
    - (i) a Public Private Partnership;
    - (ii) an agreement in terms of which the right of use or occupation is granted, if the land or building is owned by—
      - (aa) the government of the Republic in the national, provincial or local sphere; or
      - (bb) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t); or ...
    - (iii) the Independent Power Producer Procurement Programme administered by the Department of Energy;
  - (c) incurs expenditure to effect the improvement contemplated in paragraph (b); and
  - (d) .....
  - (e) uses or occupies the land or building for the production of income or derives income from the land or building,

the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.

(2) (a) When the right of use or occupation terminates, the taxpayer must be deemed to have disposed of the improvement to the owner of the land or building on the later of the date when—

- (i) the right of use or occupation terminated; or
- (ii) the use or occupation ended.

(b) If the right of use or occupation terminates and the taxpayer—

- (i) continues to use or occupy the land or building; or
- (ii) renews the right of use or occupation,

the renewed right of use or occupation must be deemed to be the same right of use or occupation as the right of use or occupation previously held by the taxpayer.

(3) This section does not apply if the taxpayer—

- (a) is a person carrying on any banking, financial services or insurance business; or
- (b) enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless—
  - (i) the land or building is occupied by that other person and that other person is a company that is a member of the same group of companies as that taxpayer in terms of such an agreement;
  - (ii) the cost of maintaining the land or building and of carrying out repairs thereto required in consequence of normal wear and tear is borne by the taxpayer; and
  - (iii) subject to any claim that the taxpayer may have against the other person by reason of the other person's failure to take proper care of the land or building, the risk of destruction or loss of or other disadvantage to the land or building is not assumed by that other person.