SOUTH AFRICAN REVENUE SERVICE

TAXATION IN SOUTH AFRICA 2013/14

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South African Revenue Service

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Taxation in South Africa – 2013/14

Preface

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

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

This guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It should, therefore, not be used as a legal reference. It is also not a binding general ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

The information in this guide concerning income tax relates to –

- **individuals** for the 2013/14 year of assessment (tax year) which commenced on 1 March 2013 and ends on 28 February 2014;
- **trusts** for the 2013/14 tax year ending on 28 February 2014; and
- **companies** with tax years ending during the 12-month period ending on 31 March 2014.

The information in this guide concerning value added tax and other taxes, duties, levies and contributions reflect the rates applicable as at the date of publication of this guide.

This guide has been updated to include the Taxation Laws Amendment Act 31 of 2013 promulgated on 12 December 2013 and the Rate and Monetary Amounts and Amendment Revenue Laws Act 23 of 2013 promulgated on 2 December 2013.

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

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

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

Prepared by:

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
March 2014

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Glossary

In this guide unless the context indicates otherwise –

- **“ADR”** means alternative dispute resolution;
- **“BLNS”** means Botswana, Lesotho, Namibia and Swaziland;
- **“CFC”** means controlled foreign company;
- **“CGT”** means capital gains tax;
- **“Commissioner”** means Commissioner for SARS”
- **“DTA”** means an international agreement entered into between the government of South Africa and the government of a foreign country, aimed at eliminating or providing relief from international double taxation;
- **“PAYE”** means Pay-As-You-Earn (Employees’ tax);
- **“resident”** means a resident of South Africa;
- **“SACU”** means South African Customs Union;
- **“SADC”** means Southern African Development Community;
- **“SARS”** means South African Revenue Service;
- **“SBC”** means a small business corporation;
- **“Schedule”** means a Schedule to the Act;
- **“SDL”** means skills development levy;
- **“section”** means a section of the Act;
- **“STT”** means securities transfer tax;
- **“tax year”** means a year of assessment;
- **“the TA Act”** means the Tax Administration Act 28 of 2011;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the VAT Act”** means the Value-Added Tax Act 89 of 1991;
- **“VAT”** means value-added tax; and
- any word or expression bears the meaning ascribed to it in the relevant Act.

1. Introduction

1.1 Autonomous body

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

SARS's responsibilities are to –

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

1.2 SARS Act

The SARS Act mandates SARS to –

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

1.3 Overview of taxes

Taxes that are levied by the national government of South Africa under the Income Tax Act 58 of 1962[1] (the Act) are –

- normal tax also known as income tax (see **2**);
  - employees tax also known as Pay-As-You-Earn (PAYE) which forms part of income tax (see **2.4.3**);
  - provisional tax which forms part of income tax (see **2.4.4**);
  - capital gains tax which forms part of income tax (see **2.12**);
  - withholding of an amount from payments to non-resident sellers of immovable property in South Africa forms part if income tax (see **2.4.12**);
- withholding tax on foreign entertainers and sportspersons (see **2.4.11**);
- withholding tax on royalties (see **2.5**);
- donations tax (see **2.11**);
- dividends tax (see **2.4.13**); and
- turnover tax on micro businesses (see **2.10.5**).

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

- the supply of all goods or services made by any vendor in the course or furtherance of any enterprise carried on by that person;

[1] The Income Tax Act contains legislation relating to normal tax (income tax), turnover tax on micro businesses, capital gains tax, withholding tax on foreign entertainers and sportspersons, withholding tax on payments to non-residents on the sale of their immovable property in South Africa, donations tax and lastly dividends tax.

- the importation of any goods into South Africa by any person; and
- the supply of imported services by any person.

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

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

- ordinary customs duty;
- specific excise duty (see **5.1**);
- specific customs duty;
- *ad valorem* excise duty (see **5.2**)and *ad valorem* customs duty;
- environmental levy (see **4.4.3**);
- fuel levy (see **5.3**);
- ordinary levy, this is the equivalent of ordinary customs duty paid by governmental bodies in Botswana, Lesotho, Namibia and Swaziland (BLNS) for specific purposes;
- anti-dumping duty (see **4.4.4**); and
- countervailing duty (see **4.4.4**).

National government also levies –

- air passenger departure tax (see **11**); and
- estate duty (see **7**);
- mineral and petroleum resources royalties (see **12**),
- securities transfer tax (see **8**);
- skills development levy (SDL) (see **9**); and
- transfer duty (see **6**); and
- unemployment insurance fund (UIF) contributions (see **10**);

under the relevant Act as mentioned in the paragraphs indicated.

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

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

2. Income tax

2.1 Introduction

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

- A resident's worldwide taxable income is subject to income tax in South Africa.
- A foreigner's (a person that is not a resident) taxable income from sources within South Africa is subject to tax in South Africa.

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

2.1.1 Main source of government's income

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

2.1.2 Registration as a taxpayer

A person liable for income tax or liable to submit a return must register as a taxpayer at SARS within 60 days of becoming so liable.

2.1.3 Change of address

The Act requires that a taxpayer must notify SARS within 60 days of a change of address.

2.1.4 Year of assessment (tax year)

A tax year for individuals and trusts covers 12 months which commences on the first day of March of a specific year and ends on the last day of February the following year. Individuals and trusts may be allowed to draw up their financial statements in respect of their businesses to dates other than the last day of February.

For more information refer to the interpretation note[2], available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

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

2.1.5 Filing of tax returns

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

2.1.6 eFiling

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

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

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

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

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

2.1.7 Payments at banks

Over-the-counter tax payments can be made countrywide at any ABSA, FNB, Nedbank or Standard Bank branch. Over-the-counter customs payments can be made countrywide at any FNB branch.

By using the correct beneficiary ID, a person is able to make tax and customs internet payments at ABSA, Capitec Bank, FNB, Investec, Mercantile Bank, Nedbank and Standard Bank.

Visit the SARS website for more details.

2.1.8 Assessment

An assessment is the determination by the Commissioner of a taxpayer's tax liability or refund (whichever is applicable), for a specific tax year.

2.1.9 Calculation of taxable income

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

❖ **The first step**

Establish a taxpayer's "gross income" for a specific tax year or tax period, namely, in the case of –

- any person who is a resident, the total amount of income (worldwide), in cash or otherwise, received by or accrued to or in favour of that person; or
- any person who is not a resident, the total amount of income, in cash or otherwise, received by or accrued to or in favour of that person from a source within South Africa,

during such tax year or tax period, excluding receipts or accruals of a capital nature (except those referred to in section 1(1) definition of "gross income paragraphs (*a*) to (*n*). The Eighth Schedule deals with capital gains and capital losses.

❖ **The second step**

Determine "income", by deducting all amounts that are exempt from income tax under the Act from "gross income".

❖ **The third step**

Determine "taxable income" by –

- deducting all the amounts allowed to be deducted or set off under the Act from "income"; and
- adding all amounts (which includes taxable capital gains) to be included in the taxable income in terms of the Act.

2.1.10 Calculation of final income tax liability

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

❖ **The first step**

Determine the normal tax by applying the applicable rate of tax to the "taxable income".

❖ **The second step**

Deduct from normal tax the sum of the tax rebate(s) in the case of a natural person (see **2.18**) and the medical scheme fees tax credit in the case of a natural person below the age of 65 years (see **2.17**).

For more information on the medical scheme fees tax credit, refer to the guide[3] that is available on the SARS website **www.sars.gov.za** under *Legal & Policy > Legal & Policy Publications*.

❖ **The third step**

Determine the final income tax liability by –

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

2.2 A resident

2.2.1 Individuals

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

(a) Ordinarily resident test

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

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

For more information on this rule, refer to the interpretation note[4] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

(b) Physical presence test

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

For more information on this rule, refer to the interpretation note[5] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

2.2.2 Companies and other entities

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

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[3] *Tax Guide on the Determination of Medical Tax Credits and Allowances* (Issue 4) dated September 2013.

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

[5] Interpretation Note No. 4 (Issue 3) dated 8 February 2006 "Resident: Definition in relation to a Natural Person – Physical Presence Test".

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

For more information regarding the concept of “place of effective management” refer to the interpretation note[6] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

2.2.3 Residents working outside South Africa

As a result of South Africa’s residence basis of taxation, residents who derive income from countries other than South Africa are taxed in South Africa unless –

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

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

For more information refer to the interpretation note[7] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes.*

2.2.4 Agreements for the avoidance of double taxation

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

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

A list of the DTAs in force in South Africa is available on the SARS website under *Legal & Policy > International Treaties & Agreements > Double Taxation Agreements & Protocols*.

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

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6 Interpretation Note No. 6 dated 26 March 2002 “Resident – Place of Effective Management (Persons other than Natural Persons”.

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

2.2.5 Unilateral relief for foreign taxes paid

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

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

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

2.3 Not a resident

2.3.1 A person who is not a resident but working temporarily in South Africa

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

An employee who is not a resident but working in South Africa for short periods is liable for income tax in South Africa on his or her South African-source income. The normal employees' tax rules apply to the remuneration received by or accrued to that employee. Income from employment, where the employer or representative employer is a resident, will be subject to income tax by way of employees' tax (PAYE) which is to be deducted from such remuneration.

Individuals who are not ordinarily resident in South Africa should bear in mind the physical presence test (see **2.2.1(b)**).

For more information refer to the guide[8] available on the SARS website under *Legal & Policy > Legal & Policy Publications.*

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

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

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

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

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

[8] *Guide on the taxation of foreigners working in South Africa (2011/12)* dated January 2012.

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

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

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

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

2.4 Individuals

2.4.1 Requirements to submit a return of income

Natural persons, whose gross income exceeds the income tax threshold for the 2014 tax year, namely –

- R67 111 (for persons under 65 years of age);
- R104 611 (for persons who are 65 years of age or older but not yet 75 years of age); or
- R117 111 (for persons who are 75 years of age or older),

are required to submit a return of income.

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

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

they will not be required to furnish a return.

For a detailed list of persons who are required to furnish returns for the 2014 year of assessment, refer to the notice[9] that is published yearly in the *Government Gazette*, available on the SARS website under *Legal & Policy* > *Secondary Legislation* > *Public Notices*.

2.4.2 Taxation of income from employment

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

- remuneration such as salary, overtime, commission, bonus. etc.(see definition of "remuneration" in paragraph 1 of the Fourth Schedule to the Act);
- allowances (see **2.4.8** paragraph **(a)**); and

[9] It is anticipated that the notice will be titled *Tax Administration Act (28 of 2011): Income Tax 2014: Notice to furnish returns for the 2014 year of assessment*.

- taxable benefits such as the use of a motor vehicle provided by the employer or the occupation of a dwelling provided by or paid for by the employer (see **2.4.8** paragraph **(b)** and the Seventh Schedule).

2.4.3 Pay-As-You-Earn (PAYE)

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

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

See the Fourth Schedule.

(a) PAYE liability of employees

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

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

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

(b) PAYE liability of directors

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

The remuneration of directors of private companies is often only finally determined late in a tax year or in the following year. Directors in these circumstances finance their living expenditure out of their loan accounts until the remuneration is determined. In order to overcome the problem of no monthly remuneration being payable from which employees' tax is to be withheld, a formula is used to determine the director's deemed monthly remuneration from which the company must deduct employees' tax. More information on the application of the formula and relief from hardship is contained in the interpretation note[10] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

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

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

(c) PAYE liability of personal service providers

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

Should that company or trust employ three or more full-time employees (excluding shareholders or members or any persons connected to the shareholders or members) throughout the tax year and the employees are engaged in the business of the company in rendering the specific service, that company or trust will not be regarded as a personal service provider.

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

For more information refer to the guide available on the SARS website under *Types of Tax* > *Pay As You Earn* > *Statutory Rates and Tables* and the interpretation note[11] under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes* or contact a SARS office.

(d) PAYE liability of labour brokers

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

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

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

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

For more information refer to the guide available on the SARS website under *Types of Tax* > *Pay As You Earn* > *Statutory Rates and Tables* and the interpretation note[12] under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes*.

(e) PAYE liability of independent contractors

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

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

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

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

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

For more information refer to the interpretation note[13] available on the SARS website under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes* and the guide under *Types of Tax* > *Pay As You Earn* > *Statutory Rates and Tables*.

2.4.4 Provisional tax

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

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

  (therefore, any person who derives income from the carrying on of any business);
- a company; and
- any person who is notified by the Commissioner that he or she is a provisional taxpayer.

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

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

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

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

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

Public benefit organisations or recreational clubs approved by the Commissioner and bodies or associations referred to in section 10(1)(*e*), do not qualify as provisional taxpayers.

A person who qualifies as a provisional taxpayer must, within 30 days after the date of becoming a provisional taxpayer, apply to SARS for registration as a provisional taxpayer.

[13] Interpretation Note No. 17 (Issue 3) dated 31 March 2010 "Employees' Tax: Independent Contractors".

The following natural persons will be exempt from the payment of provisional tax for the relevant tax year:

(1) A person in respect of whose liability for normal tax for the relevant tax year payments are required to be made under section 33 of the Act (Assessment of owners or charters of ships or aircraft who are not residents of South Africa)

(2) A natural person who on the last day of the relevant tax year is over the age of 65 years and whose taxable income for that tax year –

- will not exceed R120 000;
- will not be derived wholly or in part from the carrying on of any business; and
- will not be derived otherwise than from remuneration, interest, foreign dividends or rental from the letting of fixed property.

(The above concession applies only to provisional tax. A natural person will still be liable for income tax if his or her taxable income for the relevant tax year exceeds the income tax threshold of that tax year.)

(3) A natural person who will be below the age of 65 years on the last day of the relevant tax year who does not derive any income from the carrying on of any business, and whose taxable income for that tax year –

- will not exceed the income tax threshold; or
- is derived from interest, foreign dividends and rental from the letting of fixed property, will not exceeding R20 000.

For more information refer to the guide available on the SARS website under *Types of Tax > Provisional Tax*, call the SARS Contact Centre on 0800 00 7277 or visit a SARS branch.

2.4.5 Income of spouses

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

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

- a salary from a third party is treated as being the income of the spouse who receives that salary;
- passive income (income from the letting of property and investment income, such as interest and dividends, originating from assets forming part of the joint estate is deemed to have accrued in equal shares to each spouse (see section 7(2A)(*b*));
- income earned from carrying on a trade jointly or where spouses are trading in partnership will accrue to each spouse according to the agreed profit-sharing ratio (see section 7(2A)(*a*)(ii)), while expenses incurred in the production of that income are deductible to the extent to which that income accrued to each spouse (see section 7(2B));
- income which does not form part of the joint estate of both spouses is taxable in the hands of the spouse who is entitled to the income (section 7(2A)(*a*)(i));
- benefits from pension, provident and retirement annuity funds are taxable in the hands of the spouse who is the member of the fund (see section 7(2C)) and in the case of contributions to the pension fund or retirement annuity fund, the contributions

are deducted in the hands of the spouse who made the contributions as a member of the fund (see sections 11(*k*) and (*n*)), while contributions to a provident fund is deducted from the lump sum received from the provident fund);

- income from patents, designs, trademarks and copyrights is deemed to be the income of the holder or owner (see section 7(2C)(*c*)); and
- medical expenses, will be deductible in the hands of the spouse who paid the expenses, even if the funds for the expenses may have come from the joint estate (see section 18(1)).

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

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

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

Income derived by a spouse (recipient) from –

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

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

2.4.6 Allowable deductions

(a) General deduction formula

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

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

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

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

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

For more information refer to the interpretation note[14] available on the SARS website under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes*.

(b) Home office expenses

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

For more information refer to the interpretation note[15] available on the SARS website under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes*.

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

- **Pension fund contributions**

Current contributions – see section 11(*k*)(i)

Limited to an amount not exceeding the greater of –

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

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

Arrear contributions – see section 11(*k*)(ii)

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

Any excess may be carried forward to the following tax year.

- **Retirement annuity fund contributions**

Current contributions – see section 11(*n*)(*aa*)

Limited to an amount not exceeding the greater of –

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

Any excess may be carried forward to the following tax year.

[14] Interpretation Note No. 13 (Issue 3) dated 15 March 2011 "Deductions: Limitation of Deductions for Employees and Office Holders".

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

Arrear contributions – see section 11(*n*)(*bb*)

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

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

- **Donations to certain organisations**

A deduction for donations made to certain organisations (such as any "public benefit organisation" as defined in the Act) carrying on certain public benefit activities as set out in Part II of the Ninth Schedule is limited to an amount as does not exceed –

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

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

  in which formula:

  A = the amount to be determined;

  B = average value of the aggregate of all of the participatory interest held by investors in the portfolio for the tax year, determined by using the aggregate value of all the participatory interests in the portfolio at the end of each day during that tax year; or

- in any other case, 10% of taxable income (excluding any retirement fund lump sum benefit and retirement lump sum withdrawal benefit) as determined before allowing any deduction for donations or medical expenses.

See section 18A.

- **Medical expenses**

Medical expenses (see section 18) consist of –

- contributions made by a taxpayer to a registered medical scheme or any registered fund for the taxpayer, his or her spouse, his or her children or any dependant of the taxpayer; and
- all qualifying medical expenses paid by a taxpayer, whether or not in consequence of any physical impairment or disability (other than amounts recoverable from medical schemes), suffered by the taxpayer, his or her spouse, his or her children or any dependant of the taxpayer.

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

Whether a taxpayer is entitled to deduct medical expenses depends on the category in which the taxpayer falls, namely –

- taxpayer aged 65 years or older;
- taxpayer, his or her spouse, his or her child is a person with a "disability" as defined in section 18(3); or
- taxpayer below the age of 65 years.

Taxpayer aged 65 years or older

A taxpayer may claim a medical deduction for all his or her contributions made to a registered medical scheme during the tax year and all qualifying medical expenses incurred and paid during that year.

Taxpayer, his or her spouse, his or her child is a person with a "disability" as defined in section 18(3)

The taxpayer may claim a medical deduction equal to his or her –

- contributions made during the tax year in excess of four times the medical scheme fees tax credit (see **2.17**) for the taxpayer, plus
- all qualifying medical expenses incurred and paid during that year

For the purposes of section 18 "disability" means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation –

- has lasted or has a prognosis of lasting more than a year; and
- is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

The list of qualifying physical impairment or disability expenditure has been prescribed by the Commissioner, and is available in the list[16] on the SARS website under *Legal & Policy > Legal & Policy Publications*.

Taxpayer below 65 years of age

The taxpayer may claim a medical deduction equal to his or her –

- contributions made during the tax year in excess of four times the medical scheme fees tax credit for the taxpayer, plus
- all qualifying medical expenses incurred and paid during that year,

that is in excess of 7,5% of the taxpayer's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing this medical deduction.

For more information refer to the guide[17] available on the SARS website under *Legal & Policy > Legal & Policy Publications*.

- **Wear-and-tear**

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

For more information refer to the interpretation note[18] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

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[16] *List of Qualifying Physical Impairment or Disability Expenditure* effective date 1 March 2012.

[17] *Guide on the Determination of Medical Tax Credits and Allowances* (Issue 4) dated September 2013.

[18] Interpretation Note No. 47 (Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation Allowance".

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

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

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

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

Note:

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

2.4.7 Prohibited deductions

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

(a) Domestic or private expenses

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

- The cost incurred in the maintenance of the taxpayer, his or her family or his or her establishment.
- Domestic or private expenses, including the rent of, repairs of, or expenses in connection with any premises not occupied for purposes of trade or of any dwelling or house used for domestic purposes, except in respect of those parts as may be occupied for the purpose of trade.

(b) Bribes, fines or penalties

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

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

For more information refer to interpretation note[19] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

(c) Other prohibited deductions

Other prohibited deductions include –

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

[19] Interpretation Note No 54 dated 26 February 2010 “Deductions – Corrupt Activities, Fines and Penalties”.

2.4.8 The taxation of taxable benefits

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

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

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

(a) Allowances

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

For more information refer to the *guide* available on the SARS website *under Types of Tax > Pay As You Earn.*

- **Travelling allowance**

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

It is compulsory to keep a logbook to claim a deduction for business travel. A logbook, which a taxpayer can use to record business and private trips, is available on the SARS website under *Types of Tax* > *Personal Income Tax* > *Travel e-log book* or from a SARS branch offices.

For more information refer to the interpretation note[20] available on the SARS website *under Legal and Policy > Interpretation & Rulings > Interpretation Notes.*

- **Subsistence allowance**

A subsistence allowance may be paid to employees to enable them to meet expenses incurred on accommodation and meals when away on business from their normal place of residence for at least one night. For each day or part of a day in the period during which an employee is absent from his or her place of residence, an amount as published in the Government Notice,[21] will be deemed to have been actually expended and will be deducted from the subsistence allowance. The amount is as follows:

- ➢ If the accommodation to which that allowance or advance relates is in South Africa, an amount equal to –
  - o R98 per day, if that allowance or advance is paid or granted to defray the incidental costs only; or
  - o R319 per day, if that allowance or advance is paid or granted to defray the cost of meals and incidental costs.

[20] Interpretation Note No. 14 (Issue 3) dated 20 March 2013 "Allowances, advances and reimbursements".

[21] See *Government Gazette* No. 36198 Notice No. 148 dated 28 February 2013.

- If the accommodation to which that allowance or advance relates is outside of South Africa, the daily amount deemed to be expended will be an amount applicable to the respective country. These amounts can be accessed on the SARS website under *Legal & Policy > Secondary Legislation > Income Tax Notices* or from a SARS office.

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

For more information, refer to the interpretation note[22] available on the SARS website *under Legal and Policy > Interpretation & Rulings > Interpretation Notes.*

- **Uniform allowance**

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

(b) Benefits in kind

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

The following provides some insight into benefits in kind but is not exhaustive. For more information refer to the guides available on the SARS website under *Types of Tax > Pay As You Earn*.

- **Residential accommodation**

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

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

- the cost borne by the employer, less any amount paid by the employee; or
- the amount calculated by using the formula laid down in the Seventh Schedule, less any amount paid by the employee (see **Annexure – Example 4**).

See paragraph 9 of the Seventh Schedule.

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

The value of a company motor vehicle made available to an employee for private use is included in gross income as a taxable benefit. It is calculated at 3,5% per month of the "determined value" (as defined in paragraph 7(1) of the Seventh Schedule). In circumstances where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25% of the determined value.

[22] Interpretation Note No. 14 (Issue 3) dated 20 March 2013 "Allowances, Advances and Reimbursements".

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

The "determined value" excludes finance charges or interest paid by the employer.

For an employee who is a "judge" or a "Constitutional Court judge" as defined in the Judges' Remuneration and Conditions of Employment Act 47 of 2001, the kilometres travelled between the judge's place of residence and the court over which the judge presides is deemed to be kilometres travelled for business purposes and not for private purposes.

See paragraph 7 of the Seventh Schedule.

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

The difference between the actual amount of interest charged and the interest charged at 6.5% (the current official rate as from 1 February 2014) is to be included in gross income (see the table[23] available on the SARS website under *Legal & Policy* > *Legal & Policy Publications* > *Tables of Interest Rates* or contact a SARS office). Prior to 1 February 2014 the official rate was 6%.

See paragraph 11 of the Seventh Schedule.

- **Share options and other rights to acquire marketable securities**

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

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

- **Equity instruments**

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

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

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

- **Broad-based employee share plans**

Any gain arising from the disposal of any qualifying equity share will not be taxed provided the shares are not disposed of within five years from the date of grant of the shares. A qualifying equity share is a share acquired in a year of assessment under a broad-based employee share plan and the market value of all equity shares acquired in that, and the four immediately preceding years of assessment in terms of that share plan, does not exceed R50 000.00 in aggregate.

[23] *Interest Rates – Table 3* updated February 2014.

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

- **Relocation costs**

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

For more information on benefits in kind, refer to the guide available on the SARS website under *Types of Tax > Pay As You Earn* or contact a SARS office.

2.4.9 Pensions

(a) Pensions exempt from income tax

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

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

(b) Pensions that are taxable

The following pensions are taxable in South Africa:

- A pension or annuity received by a resident from a pension, provident, or retirement annuity fund, unless one of the exemptions above applies.
- A pension or annuity received from the South African government.
- Part of any pension or annuity payable to any person (whether a resident of South Africa or not) for services rendered inside and outside of South Africa is taxable in the ratio of the number of years' service inside South Africa to the total number of years' service. The taxability of the pension may be affected by a DTA. DTAs generally make provision for a pension to be taxed in the country where the pensioner resides, except in the case of government pensions which are taxable in the country paying such pension. However, the country that has the right to tax the

pension may, in its domestic tax legislation, choose to exempt the pension from income tax, for example, section 10(1)(gC).

2.4.10 Annuities

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

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

2.4.11 Withholding tax on foreign entertainers and sportspersons

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is not a resident) for his/her performance in South Africa must deduct or withhold tax at a rate of 15% from the gross payments and pay it over to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold tax and to pay it over to SARS will render the resident personally liable for the tax.

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

The 15% withholding tax is a final tax. The taxpayer or the resident, who pays the withholding tax, must submit a return together with the payment to the Commissioner.

A foreign entertainer or sportsperson who is –

- employed by an employer who is a resident; and
- physically present in South Africa for more than 183 days in aggregate in a 12-month period that commences or ends during a tax year,

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

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

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

See sections 47A to 47K.

2.4.12 Withholding of amounts from payments to non-resident sellers on the sale of their immovable property in South Africa

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

- 5% of the amount payable, if the seller is an individual;

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

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

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

No withholding amount is deductible –

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

For more information refer to the document[24] available on the SARS website under *Types of Tax > Capital Gains Tax*.

2.4.13 Dividends tax

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

For more information refer to the draft guide[25] and the information available on the SARS website under *Legal and* Policy and *Types of Tax > Dividends Tax*.

2.5 Withholding tax on royalties

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

A final withholding tax of 12% (or a lower rate determined in a relevant agreement for the avoidance of double taxation) is payable on royalties or similar payments made to a person who is not a resident for the right of, or the grant of permission to use in South Africa –

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

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

The above applies to royalties paid prior to 1 July 2013.

As from 1 July 2013 the following applies:

- The withholding tax increased to 15%.
- The liability for payment remains with the person making the payment of the royalty.

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[24] *Withholding Amounts from Payments to Non-Resident Sellers of Immovable Property in South Africa IT-PP-02-G01* effective date 1 October 2012.

[25] *Draft Comprehensive Guide to Dividends Tax.*

- The withholding of tax is triggered by the date that the royalty is paid or becomes due and payable.
- The amount of the royalty must be translated to rand at the spot rate on the day the royalty is paid or becomes payable.
- Overpayment may be refunded if the person paying the royalty lodges a claim for a refund within three years after the royalty is paid.
- A royalty payment made to a non-resident who –
  - is physically present in South Africa during the tax year for more than 183 days; or
  - has a permanent establishment in South Africa at any time during the tax year,

  is subject to normal tax and no withholding tax is to be deducted.

See sections 49A to 49G.

2.6 Rental income

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

2.7 Investment income

(a) Dividends

Dividends received by or accrued to person, whether a resident or a non-resident, from South African resident companies are generally exempt from income tax – see section 10(1)(*k*). Foreign dividends received by or accrued to residents are generally subject to income tax. Residents may claim a credit for foreign tax paid by them on the foreign dividends against their South African income tax liability

The following are some of the specific exemptions relating to foreign dividends:

- Foreign dividends declared by a listed company, which complies with the definition of "listed company" in section 1(1).
- Foreign dividends received and the resident holds at least 20% of the total equity share capital and voting rights in the company declaring the dividend.
- Foreign dividends received by or accrued to residents where a South African connection is present or a controlled foreign company (CFC) is involved.

(b) Interest

The Act makes specific provision for the exemption of interest received by or accrued to a person who is not a resident from a source within South Africa – see section 10(1)(*h*). In terms of this exemption the full amount of the interest is exempt from income tax. This exemption is not applicable in the following circumstances –

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

All interest received by or accrued to a resident from a source in South Africa is subject to income tax. For the 2013/14 tax year interest up to R23 800 a year, (if he or she is below the age of 65 years) or up to R34 500 a year, (if he or she is 65 years of age or older) is exempt from income tax – see section 10(1)(*i*). This exemption is not applicable to foreign interest.

2.8 Restraint of trade

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

2.9 Business income

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

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

2.10 Companies and businesses

2.10.1 Tax consequences of doing business in a company

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

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

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

2.10.2 Provisional tax

A company is a provisional taxpayer (see **2.4.4**).

2.10.3 Controlled foreign companies (CFCs)

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

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

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

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

2.10.4 Small business corporations (SBCs)

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

- all the shareholders or members must at all times during the tax year be natural persons (individuals);
- none of the shareholders or members should hold any shares or have any interest in the equity of any other company, other than companies as specified in the definition of "small business corporation" in section 12E(4);
- the gross income of the entity for the tax year may not exceed R20 million;
- not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all capital gains of the entity may consist collectively of investment income (as defined in section 12E(4)) and income from rendering a personal service (as defined in section 12E(4)); and
- the entity may not be a personal service provider as defined in the Fourth Schedule.

The first concession is that the entity will be taxed on the basis of a progressive rate system (see **2.16.3** paragraph **(b)**).

The second concession is the immediate write-off of all plant or machinery brought into use for the first time by the entity for purpose of its trade (other than mining or farming) and used by the entity directly in a process of manufacture or similar process in the tax year (see **2.10.6** paragraph **(k)**). Furthermore, the entity can elect to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either –

- the wear-and-tear allowance under section 12E(1A)(*a*) read with section 11(*e*) (see **2.10.6** paragraph **(i)**); or
- at an accelerated write-off allowance under section 12E(1A)(*b*) (see **2.10.6** paragraph **(k)**).

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

For more information refer to the interpretation note[26] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

2.10.5 Micro businesses (turnover tax)

This is a simplified tax system for micro businesses (see **2.16.3 (c)** for the tax rates) and serves as an alternative to the current income tax, provisional tax, capital gains tax and dividends tax. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.

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

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

[26] Interpretation Note No. 9 (Issue 5) dated 14 October 2009 "Small Business Corporations".

and the qualifying turnover of that person for the tax year does not exceed R1 million.

For more information refer to the guide[27] available on the SARS website under *Legal & Policy* > *Legal & Policy Publications* or contact a SARS office.

2.10.6 Special allowances

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

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

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

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

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

(b) Commercial buildings

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of new and unused buildings or improvements to buildings (other than the provision of residential accommodation) which were contracted for on or after 1 April 2007 and the construction, erection or installation of which commenced on or after the abovementioned date, will be granted – see section 13*quin*.

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

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

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

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

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

(c) Hotel keepers

- **Buildings and improvements**

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

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

The depreciable cost is the cost to the taxpayer of –

- the building erected by the taxpayer; or

[27] *Tax Guide for Micro Businesses 2011/12* dated July 2011.

- the improvements effected by the taxpayer.

- **Any improvements which commenced on or after 17 March 1993 which do not extend the existing exterior framework of the building**

An allowance equal to 20% (five-year straight-line basis) of the cost to a taxpayer of the erection of such improvements will be granted – see section 13*bis*.

- **Machinery, implement, utensil or article (the asset) (other than an asset for which an allowance under section 11(*e*) has been granted excluding any vehicle or equipment for offices or managers' or servants' rooms**

An allowance equal to 20% (five-year straight-line basis) of the cost to a taxpayer of such assets will be granted – see section 12C.

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

The depreciable cost of the asset is the lesser of –

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

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

(d) Aircraft or ships

An allowance equal to 20% (five-year straight-line basis) of the cost to a taxpayer to acquire such aircraft or ships will be granted – see section 12C.

The depreciable cost is the lesser of –

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

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

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

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

The depreciable cost of the stock is the lesser of –

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

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

(f) Pipelines, transmission lines and railway lines

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

The depreciable cost is the lesser of –

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

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

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

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

- **Pipelines for transportation of water used by power stations**

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

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

- **Lines or cables used for transmission of electricity**

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

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

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

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

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

- **Railway lines**

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

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

(g) Airport assets

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

Airport assets are any aircraft hangar, apron, runway or taxiway on any designated airport and any improvements to these assets (including any earthworks or supporting structures forming part of these assets).

The depreciable cost is the lesser of –

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

(h) Port assets

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

Port assets are any port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, and including any earthworks or supporting structures forming part of the aforementioned and any improvements thereto.

The depreciable cost is the lesser of –

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

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

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

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

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

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

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

For more information refer to the interpretation note[28] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

(j) Machinery or plant (manufacture or similar process) or improvements thereto

An allowance equal to 20% (5-year straight-line basis) of the cost to a taxpayer to acquire such machinery or plant will be granted – see section 12C).

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

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

- 40% of the costs to the taxpayer in the tax year during which the machinery or plant was or is so brought into use; and
- 20% of the costs to the taxpayer in each of the three succeeding tax years.

The depreciable cost is the lesser of –

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

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

[28] Interpretation Note No. 47 (Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation Allowance".

(k) Plant or machinery of SBCs

The depreciable cost is the lesser of –

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

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

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

A deduction, equal to 100% of the cost of any plant or machinery, brought into use in the tax year for the first time and used in a process of manufacture, will be granted – see section 12E.

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

An allowance equal to –

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

will be granted.

An SBC can elect to either claim the above 50:30:20 deductions or the wear-and-tear allowance under section 11(*e*) (see **2.10.4**).

(l) Invention, patent, design, trademark, copyright and knowledge

Expenditure incurred during any tax year commencing before 1 January 2004 – see section 11(*g*A)

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

- devising or developing any invention; or
- creating or producing any design, trade mark, copy right or other property which is of a similar nature; or
- obtaining or restoration of any patent or the registration of any design or trade mark; or
- acquiring any such patent, design, trade mark or copyright or any other property of a similar nature or knowledge essential to use such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

will be granted.

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

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

In the case of expenditure incurred on or after 29 October 1999, an allowance will be granted equal to –

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

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

Expenditure (other than expenditure which has qualified in whole or in part for deduction or allowance under any other provisions of section 11) – see section 11(*g*B)

Expenditure incurred in –

- obtaining the grant of any patent;
- the restoration of any patent;
- the extension of the term of any patent;
- the registration of any design;
- extension of the registration period of any design;
- the registration of any trade mark;
- renewal of the registration of any trade mark,

will be allowed as a deduction.

Expenditure incurred during any tax year commencing on or after 1 January 2004 – see section 11(*g*C)

An allowance will be granted for expenditure incurred to acquire (otherwise than by way of devising, developing or creating) –

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

The allowance will be granted, in the tax year in which the abovementioned property is brought into use for the first time by the taxpayer for purposes of the taxpayer's trade.

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

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

(m) Research and development (R&D)

R&D expenditure incurred before 1 October 2012

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

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

which is of scientific or technological nature intended to be used in the production of income – see section 11D.

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

- 50% of the cost of the asset in the first tax year it is brought into use;
- 30% in the second tax year; and
- 20% in the third tax year.

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

For more information refer to the interpretation note[29] on the SARS website under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes*.

R&D expenditure incurred on or after 1 October 2012

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

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

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

(see section 11D(3).

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

A deduction, equal to 5% of the cost to a taxpayer of any new and unused building or part thereof, and brought into use for the purpose of carrying on therein a process of R&D in the course of that taxpayer's trade, will be allowed – see section 13.

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

See section 11D as amended by section 32 of the Taxation Laws Amendment Act No. 24 of 2011 and section 1 of the Taxation Laws Second Amendment Act No. 25 of 2011.

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

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

A deduction, equal to 150% of the expenditure incurred directly and solely on R&D undertaken in South Africa, will be allowed if that expenditure is incurred in the production of income; and in the carrying on of any trade.

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

See section 11D as amended by section 29 of the Taxation Laws Amendment Act No. 31 of 2013.

(n) Urban development zones (UDZs)

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

For more information refer to the guide[30] available on the SARS website under *Legal & Policy > Legal & Policy Publications*.

(o) Plant or machinery (including improvements) used for storing or packing farming products by any agricultural co-operative

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

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

(p) Additional deduction for learnership agreements

With effect from 1 January 2013 the definition of learnership agreement has been amended to read as follows, namely:

"a learnership agreement that is –

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

The deduction is allowed as follows:

1) During any tax year that a learner is a party to a registered learnership agreement with an employer; and that agreement was entered into pursuant to a trade carried on by that employer.	R30 000
2) If that agreement is for less than 12 full months during the tax year.	R30 000 is reduced in the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

30 *Guide to the Urban Development Zone Tax Incentive* dated September 2009.

3) During any tax year that a learner is a party to a registered learnership agreement with an employer for less than 24 months, that agreement was entered into pursuant to a trade carried on by that employer and that learner successfully completes that learnership during that tax year.	R30 000 in addition to the amounts mentioned in (1) and (2) above.
4) During any tax year that a learner is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, that agreement was entered into pursuant to a trade carried on by that employer and that learner successfully completes that learnership during that tax year.	R30 0000 multiplied by the number of consecutive 12-month periods within the duration of that agreement in addition to the amounts mentioned in (1) and (2) above.
5) If the learner contemplated in (1), (2), (3) or (4) above is a person with a disability at the time of entering into the learnership agreement.	R30 000 is increased to R50 000

For more information refer to the guide[31] available on the SARS website under *Legal & Policy* > *Legal & Policy Publications* and the interpretation note[32] available on the SARS website under *Legal & Policy* > *Interpretation & Rulings* > *Interpretation Notes*.

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

- **Farming**

An allowance will be granted for assets owned by a taxpayer or acquired by the taxpayer as purchaser in terms of an "instalment credit agreement" as defined in the VAT Act, and brought into use for the first time by the taxpayer in the carrying on of farming operations, equal to –

- 50% of the cost of the asset to the taxpayer in the tax year (first tax year) in which the asset is so brought into use;
- 30% of such cost in the second tax year; and
- 20% of such cost in the third tax year.

See section 12B.

- **Production of bio-fuels**

An allowance will be granted for assets owned by a taxpayer or acquired by the taxpayer as purchaser in terms of an "instalment credit agreement" as defined in the VAT Act, and brought into use for the first time by the taxpayer for the purpose of trade to be used for the production of bio-diesel or bio-ethanol, equal to –

- 50% of the cost of the asset to the taxpayer in the tax year (first tax year) in which the asset is so brought into use;
- 30% of such cost in the second tax year; and

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

32 Interpretation Note No. 20 (Issue 4) dated 10 June 2011 "Additional deduction for learnership agreements".

- 20% of such cost in the third tax year.

See section 12B.

- **Generation of electricity**

An allowance will be granted for assets brought into use in the generation of electricity from wind, sunlight, gravitational water forces (producing no more than 30 megawatts) and biomass (comprising organic wastes, landfill gas or plants), equal to –

- 50% of the cost to the taxpayer of the asset in the tax year (first tax year) in which the asset is so brought into use;
- 30% of such cost in the second tax year; and
- 20% of such cost in the third tax year.

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

See section 12B.

(r) Film owners

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

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

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

For more information, refer to the guide[33] available on the SARS website under *Legal & Policy > Legal & Policy Publications*.

As from 1 January 2012 the accelerated write-off is removed and replaced by an exemption. More specifically, income for exploitation rights allocable to initial investors (from qualifying films) will be exempt from tax provided the requirements of section 12O are met. However, taxpayers will be entitled to claim a limited net loss for expenditure incurred, after a two-year period. Taxpayers claiming this net loss will lose the benefit of the exemption going forward.

(s) Environmental expenditure

- **Environmental treatment and recycling asset**

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

An allowance will be granted, equal to –

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

See section 37B.

[33] *Guide on the Taxation of Film Owners* dated February 2008.

- **Environmental waste disposal asset**

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

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

See section 37B.

- **Post-trade environmental expenses**

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

See section 37A.

(t) Residential

- **Certain residential units**

An allowance equal to 5% of the cost to a taxpayer of a new and unused residential unit (or of new and unused improvement to a residential unit) owned by the taxpayer will be granted if –

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

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

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

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

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

See section 13*sex*.

- **Residential buildings**

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

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

(ii) A residential building *annual allowance* equal to 2% of the cost to the taxpayer of the unit in the year in which the residential building initial allowance is deducted and each succeeding tax year.

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

Should a taxpayer dispose of a low-cost residential unit to an employee, a deduction, equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's tax year, will be allowed, provided no such deduction will be allowed in the eleventh and subsequent tax years after the disposal of the unit. No deduction will be allowed, if –

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

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

- (i) the amount so paid; or
- (ii) the amount allowed as a deduction in the current or previous tax years.

See section 13*sept*.

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

(v) Environmental conservation and maintenance expenditure

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

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

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

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

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

See section 37C.

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

Additional investment allowance

A company may deduct an amount equal to –

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

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

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

(ii) 75% of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within an industrial development zone,

in the tax year during which the asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that asset was acquired and contracted for on or after the date of approval and was brought into use within four years from the date of approval.

The deduction referred to in (a)(ii) and (b)(ii) above is only applicable to projects approved on or after 1 January 2012.

The additional investment allowance may not exceed –

(i) R900 million for a greenfield project with preferred status, or R550 million for any other greenfield project from the date of approval;

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

Additional training allowance

A company may also deduct an amount equal to the cost of training provided to employees in the tax year during which the cost of training is incurred for the furtherance of the industrial policy project.

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

This training allowance may not exceed –

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

See section 12I

(x) Expenditure incurred to obtain a licence

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

See section 11(*g*D).

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

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

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

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

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

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

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

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

For more details refer to the guide available on the SARS website under *Businesses and Employers* > *Venture Capital Companies*.

(z) Deduction of medical lump sum payments

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

(i) to any former employee of the taxpayer who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity or to a dependant of that former employee; or

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

but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant , to any medical scheme or fund contemplated in section 18(1)(*a*)(i) or (ii).

See section 12M.

2.10.7 Insurance companies

(a) Short-term insurance business

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

See section 28.

(b) Long-term insurance business

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

These companies are liable for income tax according to a four-fund approach – (see section 29). The application of this approach requires that long-term insurers allocate their assets to separate funds representative of the various policyholders. Each fund, as listed below, is taxed separately as if it is a separate taxpayer in accordance with the applicable taxation principles:

Type of fund	**Rate of tax**
Untaxed policy holder fund	Exempt from income tax under the provisions of section 10
Individual policy holder fund	30% of taxable income
Company policy holder fund	28% of taxable income
Corporate fund	28% of taxable income

2.10.8 Mining

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

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

The taxable income of a company derived from mining for gold is taxed in accordance with a special formula (see **2.16.3** paragraph **(d)**). A company which derives taxable income from other mining operations is taxed at the same rate (28%) as is applicable to other companies.

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

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

Section 12N deems the taxpayer to be the owner of the improvement to any land on which such improvements have been effected if the taxpayer –

- (i) holds a right of use or occupation of the land or building;
- (ii) incurs an obligation to effect improvements on the land under a public private partnership or a long-term lease on land belonging to the government of the Republic or an exempt entity listed under section 10(1)(*c*A) or (*t*);
- (iii) incurs expenditure to effect the improvements in (ii) above;
- (iv) completes the improvement in (ii) above; and
- (v) uses or occupies the land or building for the production of income or derives income from the land or building.

Oil and gas companies

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

See **12** regarding mineral and petroleum resources royalties.

2.10.9 Owners or charters of ships or aircraft who are not residents of South Africa

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

The owner or charterer who is not a resident of South Africa is exempt from taxation in South Africa, if a similar exemption or equivalent relief is granted by the foreign country of which that owner or charterer is a resident, to any resident of South Africa in respect of any tax imposed in that foreign country on income which may be derived by a resident of South Africa from carrying on in that foreign country any business as any ship or aircraft owner or charterer. Furthermore, provisions dealing with these aspects are generally contained in agreements for the avoidance of double taxation (see **2.2.4**).

2.10.10 Farming

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

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

Game is also regarded as livestock, but is excluded from opening and closing stock due to practical difficulties that can be encountered in establishing the actual numbers of game on hand at any given time. For more information refer to the interpretation note[34] on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

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

Allowable deductions for capital development expenditure are –

- the eradication of noxious plants and alien invasive vegetation;
- the prevention of soil erosion;
- dipping tanks;
- dams, irrigation schemes, boreholes, pumping plants;
- fences;
- the erection of or extensions, additions or improvement (other than repairs) to buildings used in connection with farming operations other than those used for domestic purposes;
- the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibre, and the establishment of any area used for the planting of such trees, shrubs or plants;
- the building of roads and bridges used in connection with farming operations; and
- the carrying of electric power from the main transmission lines to farm apparatus or under an agreement concluded with the Electricity Supply Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes.

The deduction for capital development expenditure may not exceed the taxable income from farming operations during the tax year. The balance of the amount of such expenditure that exceeds the taxable income in the year will be carried forward and deducted in the succeeding tax year, subject to the same limitation.

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

Special measures in determining taxable income of farmers

Since a farmer's income can fluctuate considerably from year to year, the Act contains provisions whereby the farmer may be taxed on the basis of his or her annual average taxable income from farming in the current and previous four tax years. For more information refer to the interpretation note[35] on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

[34] Interpretation Note No. 69 dated 12 February 2013 "Game Farming".

[35] Interpretation Note No. 29 (Issue 2) dated 19 February 2013 "Farming Operations: Equalised Rates of Tax.

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

- the disposal of plantation and forest produce;
- the abnormal disposal of sugar cane as a consequence of damage to cane fields by fire;
- the disposal of livestock sold on account of drought; or
- excess profits as a result of farming land acquired by the state or certain juristic persons.

See the First Schedule.

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

Taxpayers are entitled to a deduction for pre-trade costs incurred before the commencement of trade.

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

For more information refer to the interpretation note[36] available on the SARS website under *Legal & Policy > Interpretation & Rulings > Interpretation Notes*.

2.10.12 Exemption of certified emission reductions

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

2.11 Donations tax

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

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

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

- Casual gifts made by a donor other than a natural person, not exceeding R10 000 during a tax year. If the period of assessment is less than 12 months or exceeds 12 months the R10 000 must be adjusted accordingly – see section 56(2)(*a*).
- Donations by a donor that is a natural person, not exceeding R100 000 during a tax year – see section 56(2)(*b*).
- The sum of all *bona fide* contributions made by a donor for the maintenance of any person as the Commissioner considers to be reasonable – see section 56(2)(*c*).

[36] Interpretation Note No. 51 (Issue 2) dated 4 February 2014 "Pre-Trade Expenditure and Losses".

If two individuals draw up a joint will, and the survivor accepted (adiated) the conditions of the joint will, at the death of the first dying the difference in value between the survivor's property, which falls into the massed estate, and the benefit derived from that estate, is regarded as a donation.

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

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

If a donor fails to pay the donations tax within the prescribed period (within three months or longer period as the Commissioner may allow from the date upon which the donation took effect), the donor and the donee (whether a resident or not) are jointly and severally liable for this tax.

2.12 Capital gains tax (CGT)

2.12.1 Introduction

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

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

Since CGT forms part of the income tax system the capital gains and capital losses must be declared in the annual income tax return. If the sum of the capital gains and capital losses exceed the annual exclusion, which is R30 000, and the taxpayer is not registered for income tax purposes, it will be necessary for the taxpayer to register as a taxpayer for the tax year in which the taxpayer disposed of the assets and to complete an income tax return for that year.

2.12.2 Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. A person who is not a resident, whose sole source of taxable income comprises a taxable capital gain needs to register as a taxpayer at a SARS branch office. For example, this may occur when a person who is not a resident of South Africa, and has no South African-source income disposes of immovable property in South Africa.

2.12.3 Rates

- **Individuals and special trusts**

For individuals and special trusts, 33,3% of the net capital gain is included in his or her or its taxable income and is subject to income tax at the marginal rate of tax of the individual and special trust.

- **Companies and trusts (other than special trusts)**

For companies and trusts that are not special trusts, 66,6% of the net capital gain is included in its taxable income and subject to income tax at the company rate of 28%, or in the case of a trust (other than a special trust), 40%.

- **Effective rate of tax**

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

- Individuals and special trusts: 40% × 33,3% = 13.32% (assuming that the top marginal rate of income tax applies)
- Companies 28% × 66,6% = 18,65%
- Trusts that are not special trusts: 40% × 66,6% = 26,64%

2.12.4 Capital losses

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

2.12.5 Disposal

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

2.12.6 Exclusions

Some capital gains or losses (or a portion thereof) is excluded for CGT purposes.

The following are some of the specific exclusions:

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

2.12.7 Base cost

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

- the price the taxpayer originally paid to buy the asset;
- transfer costs (including any VAT or transfer duty paid, to the extent that the amount does not qualify as an “input tax” under the VAT Act, or is otherwise not refundable under the VAT Act or the Transfer Duty Act);
- cost of improvements to the asset;

- advertising costs to find a buyer or seller;
- the cost of having the asset valued in order to determine a capital gain or loss;
- costs directly relating to the buying or selling of the asset, for example, fees paid to a surveyor, broker, agent or consultant for services rendered;
- cost of establishing, maintaining or defending a legal title or right in the asset;
- cost of moving the asset from one place to another upon acquisition or disposal; and
- cost of installing the asset, including the cost of foundations and supporting structures.

Only the difference between the proceeds and the base cost plus annual exclusion is subject to CGT.

2.12.8 Annual exclusion

Individuals and special trusts are entitled to an annual exclusion of R30 000. This is the amount of an individual's or special trust's aggregate capital gain or aggregate capital loss that is disregarded for CGT purposes. The annual exclusion is increased to R300 000 where an individual dies during a tax year.

Companies and trusts (other than special trusts) are not entitled to the annual exclusion.

2.12.9 Small businesses

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

See paragraph 57 of the Eighth Schedule.

For more information on CGT refer to the guides[37] available on the SARS website under *Legal & Policy > Legal & Policy Publications*.

2.13 Ring-fencing of assessed losses of certain trades

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

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

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

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[37] *Comprehensive Guide to Capital Gains Tax* (Issue 4) dated 22 December 2011; *ABC of Capital Gains Tax for Individuals* (Issue 7) dated April 2013; *ABC of Capital Gains Tax for Companies* (Issue 5) dated April 2013 and *Guide for Valuations of Assets for Capital Gains Tax Purposes* dated February 2006.

For more information refer to the guide[38] available on the SARS website under *Legal & Policy > Legal & Policy Publications*.

2.14 Dispute resolution

Dispute resolution processes are available to a taxpayer that believes the assessment, decision or determination received from SARS is incorrect – see Chapter 9 of the Tax Administration Act 28 of 2011 (the TA Act). These processes are in terms of the legislation that SARS administers. As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process has been supplemented by an alternative dispute resolution (ADR) process. The formal dispute resolution process need not be followed if the difference is clearly the result of an administrative error. However, the taxpayer may still find it useful to record the details and the nature of the error in writing as it reduces the likelihood of misunderstanding and provides a document that may be referred to in future if the error is not corrected or only partially corrected.

2.14.1 Request for Correction or Objection

(a) Personal income tax – Individuals

The procedure for a taxpayer who is not satisfied with an assessment, decision or determination received from SARS is to either –

- submit a request for correction; or
- lodge an objection, stating fully, and in detail, the grounds on which the objection is lodged.

The dispute resolution process commences either when a request for correction has been submitted or an objection has been lodged. The request or objection must be in the prescribed form, namely –

- Request for Correction; or
- Notice of Objection (NOO),

which must be submitted within 30 business days from the date of the assessment, decision or determination to the SARS office where the taxpayer is registered. This form must be completed as comprehensively as possible. These forms are available from a SARS office or call 0800 00 7277 or can be completed and submitted via eFiling.

The request or objection must be signed by the taxpayer if it is not submitted electronically. If the taxpayer is unable to personally sign the request or objection, the person signing on behalf of the taxpayer must state in an annexure to the request or objection –

- the reason why the taxpayer is unable to sign the request or objection;
- that he or she has the necessary power of attorney to sign the request or objection on behalf of the taxpayer; and
- that the taxpayer is aware of the request or objection and agrees to the grounds thereof.

These forms are available from a SARS office, the SARS Contact Centre on 0800 00 7277 or can be accessed via eFiling. The NOO form for individuals can unfortunately not be downloaded from SARS's website.

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

(b) Income tax (excluding Personal income tax – Individuals), VAT, PAYE and other tax types

The objection must be in writing on an *ADR1 – Notice of Objection* form and must be signed by the representative taxpayer in the case of a company, trust etc. The ADR1 must be submitted within 30 business days from the date of assessment, decision or determination to the SARS office where the taxpayer is registered. This form must be completed as comprehensively as possible, stating fully and in detail the grounds on which the objection is lodged. This form is available from a SARS office or by calling the SARS Contact Centre on 0800 00 7277. This form cannot be submitted through eFiling.

For more information refer to the guide available on the SARS website under *Legal & Policy* > *Legal & Policy Publications*.

2.14.2 Appeals

(a) Personal income tax – Individuals

If the objection that is disallowed, wholly or in part, the taxpayer may appeal (by completing a Notice of Appeal (NOA) and submit it within 30 business days, after the date of the notice informing the taxpayer of the decision of the Commissioner) to a specially constituted Tax Board or to the Tax Court for hearing appeals. The taxpayer must indicate on the NOA if they want to follow the ADR process. The matter will be referred for ADR if the Commissioner agrees thereto. The NOA must be signed by the taxpayer if it is not submitted electronically.

(b) Income tax (excluding Personal income tax – Individuals), VAT, PAYE and other tax types

The appeal must be in writing on an *ADR2 – Notice of Appeal* form and must be signed by the representative taxpayer in the case of a company, trust etc. The ADR2 must be submitted within 30 business days from the date of the notice informing the taxpayer of the decision of the Commissioner to a specially constituted Tax Board or to the Tax Court for hearing appeals.

2.14.3 Rules regarding objections and appeals

Rules prescribing the procedures for lodging an objection and noting an appeal against an assessment have been formulated and promulgated as provided for in section 107A. These rules include the procedures for conducting and hearing an appeal before a tax court and alternative dispute resolution procedures. Section 107A was repealed by paragraph 73 of Schedule 1 to the TA Act, but will apply until such time as new rules are finalised and published under section 103(1) of the TA Act.

These rules make provision for alternative dispute resolution.

2.14.4 Alternative dispute resolution (ADR)

ADR is a form of dispute resolution other than litigation or adjudication through the courts. It is a less formal, less cumbersome and less adversarial procedure which is cost effective and is also a speedier process of resolving a dispute with SARS.

A dispute that is resolved between SARS and the taxpayer must be recorded and signed by the taxpayer and the SARS representative. SARS will, if necessary, issue a revised assessment to give effect to the agreement reached.

A taxpayer may, if the dispute is not resolved, continue on appeal to either the Tax Board if the tax in question does not exceed R500 000, or the Tax Court if the tax in question is more than R500 000.

However, instead of going to the Tax Board or Tax Court, the ADR process can be used if the Commissioner decides that it is appropriate.

ADR applies to taxes such as –

- donations tax
- estate duty
- income tax (including PAYE and CGT)
- skills development levies
- transfer duty
- Unemployment Insurance Fund contributions
- VAT

The Customs and Excise Act No 91 of 1964, contains its own provisions relating to dispute resolution.

2.15 Secrecy and confidentiality

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

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

2.16 Tax rates

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

Any tax year commencing on 1 March 2013 (2013/14)

Taxable income	Rate of tax
Not exceeding R165 600	18% of taxable income
Exceeding R165 600 but not exceeding R258 750	R29 808 plus 25% of the amount by which taxable income exceeds R165 600
Exceeding R258 750 but not exceeding R358 110	R53 096 plus 30% of the amount by which taxable income exceeds R258 750
Exceeding R358 110 but not exceeding R500 940	R82 904 plus 35% of the amount by which taxable income exceeds R358 110
Exceeding R500 940 but not exceeding R638 600	R132 894 plus 38% of the amount by which taxable income exceeds R500 940
Exceeding R638 600	R185 205 plus 40% of the amount by which taxable income exceeds

	R638 600

Income tax thresholds (natural persons only)	Amount
Below the age of 65 years	R67 111
65 years or older	R104 611
75 years or older	R117 111

(a) Lump sums benefits from retirement funds

There are two categories of lump sum benefits –

(i) retirement fund lump sum withdrawal benefits; and

(ii) retirement fund lump sum benefits.

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

(i) retirement or death; or

(ii) termination or loss of employment due to redundancy or an employer ceasing trade.

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

The amounts of R22 500 and R315 000 in the two tables below, that is, where the lump sum payments become taxable, are only availably once for a taxpayer. Lump sum benefits must be aggregated to ensure that this is achieved – since 1 October 2007 for retirement fund lump sum benefits, and since 1 March 2009 for retirement fund lump sum withdrawal benefits.

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

(i) Retirement fund lump sum withdrawal benefit: Tax year commencing on or after 1 March 2013

Taxable income from lump sum benefits	Rate of tax
Not exceeding R22 500	0% of taxable income
Exceeding R22 500 but not exceeding R600 000	18% of taxable income exceeding R22 500
Exceeding R600 000 but not exceeding R900 000	R103 950 plus 27% of taxable income exceeding R600 000
Exceeding R900 000	R184 950 plus 36% of taxable income exceeding R900 000

(ii) Retirement fund lump sum benefit: Tax year commencing on or after 1 March 2013

Taxable income from lump sum benefits	Rate of tax
Not exceeding R315 000	0% of taxable income
Exceeding R315 000 but not exceeding R630 000	18% of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27% of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36% of taxable income exceeding R945 000

(b) Severance benefit: Tax year commencing on or after 1 March 2013

Taxable income from lump sum benefits	Rate of tax
Not exceeding R315 000	0% of taxable income
Exceeding 315 000 but not exceeding R630 000	18% of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27% of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36% of taxable income exceeding R945 000

2.16.2 Taxable income of trusts (other than special trusts)

Any tax year commencing on 1 March 2013 or ending on 28 February 2014 (2013/14)

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

2.16.3 Taxable income of corporates

(a) Companies (standard) or close corporations

Any tax year ending during the 12-month period ending on 31 March 2014

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

(b) Small business corporations (SBCs)

Any tax year ending during the 12-month period ending on 31 March 2014

Taxable income	Rate of tax
Not exceeding R67 111	0% of taxable income
Exceeding R67 111 but not exceeding R365 000	7% of the amount by which taxable income exceeds R67 111
Exceeding R365 000 but not exceeding R550 000	R20 582 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 702 plus 28% of the amount by which taxable income exceeds R550 000

(c) Micro businesses (turnover tax)

Any tax year ending during the 12-month period ending on 31 March 2014

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

(d) Mining companies

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

Any tax year ending during the 12-month period ending on 31 March 2014

$$y = 34 - 170/x$$

Where:

y = rate of tax to be levied

x = the ratio expressed as a percentage

$$\frac{\text{Taxable income from gold mining}}{\text{Total revenue (turnover) from gold mining}}$$

(e) Oil and gas companies

The rate of tax on taxable income derived from oil and gas income by any oil and gas company will not exceed 28% on each rand of taxable income for the tax year ending during the 12-month period ending on 31 March 2014.

For more information see paragraph 2 of the Tenth Schedule.

(f) Other mining companies

The rates applicable to ordinary companies, namely, 28% also apply to all mining companies, other than companies mining for gold for the tax year ending during the 12-month period ending on 31 March 2014.

(g) Insurance companies

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

Any tax year ending during the 12-month period ending on 31 March 2014

Four funds	**Rate of tax**
Corporate fund	28% of taxable income
Individual policyholder fund	30% of taxable income
Company policyholder fund	28% of taxable income
Untaxed policyholder fund: ■ Retirement fund business ■ Other	 (abolished from 1 March 2007) 0% of taxable income

- **Short-term insurance companies**

Companies carrying on a short-term insurance business are taxed at the same rate as is applicable to standard companies, namely, 28% for the tax year ending during the 12-month period ending on 31 March 2014.

(h) Tax holiday companies

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

Any tax year ending during the 12-month period ending on 31 March 2014

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

2.16.4 Public benefit organisations (PBOs) or recreational clubs

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

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

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

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

Any tax year ending during the 12-month period ending on 31 March 2014

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

(b) If the PBO is a trust

Any tax year ending during the 12-month period ending on 31 March 2014

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

2.17 Medical scheme fees tax credit

The amount of the medical scheme fees tax credit to be allowed as a rebate arising from fees (contributions) paid by a taxpayer to a medical scheme registered under the Medical Schemes Act 131 of 1998, or a fund which is registered under any similar provisions contained in the laws of any other country where the medical scheme is registered, and which is to be deducted from normal tax payable by a taxpayer, is calculated as follows –

- R242 in respect of benefits to the taxpayer;
- R484 in respect of benefits to the taxpayer and one dependant; or
- R484 in respect of benefits to the taxpayer and one dependant, plus R162 for every additional dependant,

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

This rebate is deductible from normal tax payable by a taxpayer who is a natural person, unless the taxpayer is entitled to the secondary rebate referred to below – see **2.18**.

2.18 Normal tax rebate

The amount of the normal tax rebate, which will be deducted from normal tax payable by a natural person, (other than normal tax payable on any retirement fund lump sum benefit, retirement lump sum withdrawal benefit or severance benefit) is as follows:

Rebates (natural persons only)	**Amount**
Primary rebate – (Below the age of 65 years)	R12 080
Secondary rebate – (Age 65 years or older) additional to primary	R6 750
Tertiary rebate – (Age 75 years or older) additional to primary and secondary	R2 250

2.19 Interest, penalties and additional tax for non-compliance with legislation

The TA Act also provides for –

- the imposition of interest – see Chapter 12;
- the imposition of penalties (fixed amount penalties and percentage based penalty) – see Chapter 15; and
- the imposition of understatement penalty up to 200% for a default in rendering a return, an omission from a return, an incorrect statement in a return, or if no return is required, the failure to pay the correct amount of tax – see Chapter 16.

A person may also be liable on conviction to a fine or to imprisonment on matters such as non-payment of taxes, failure to complete tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which he or she is not entitled.

Taxpayers who have not complied with tax legislation such as to not register or the omission of income and who voluntarily approach SARS to meet their tax obligations will be received sympathetically.

3. Value-added tax (VAT)

3.1 Introduction

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

3.2 Rates

VAT is presently levied at the standard rate of 14% on most supplies and importations but there is a limited range of goods and services which are subject to VAT at the zero rate. For example, exports and certain basic foodstuffs are taxed at the zero rate of VAT. Certain goods are also exempt when supplied or imported into South Africa.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor.

3.3 Registration, collection and payment of VAT

Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) has exceeded the compulsory VAT registration threshold of R1 million in any consecutive 12 month period, must register for VAT from the first day of the month after the threshold was exceeded. In addition, a person must register within 21 days of entering into a written contractual commitment to make taxable supplies exceeding R1 million within the next 12 month period.[39] Non-resident suppliers of certain “electronic services”[40] to South African customers are also required to register for VAT if the value of taxable supplies exceeds R50 000.

A person making taxable supplies with a value of less than R1 million may choose to apply to the Commissioner for voluntary registration if certain conditions are met. This applies when the value of taxable supplies has already exceeded the minimum voluntary threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to make taxable supplies exceeding R50 000 within the next 12 month period.[41] A person may also qualify to register voluntarily if the R50 000 threshold has not yet been reached, or if that person carries on certain types of activities which will only lead to taxable supplies being made after a period of 12 months due to the nature of the activity. However, registration in respect of these special cases will only be permitted under certain conditions prescribed by Regulation.[42]

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

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

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

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

[40] The different types of electronic services will be set out in a Regulation. At the time of publishing this guide, the Regulations were still in draft form. Refer to the SARS website to view the draft Regulations.

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

[42] See sections 23(3)(*b*) and 23(3)(*d*) of the VAT Act. At the date of publication of this guide, the Regulations concerned had not yet been issued.

For more information on VAT registration and the collection and payment of VAT, refer to the guide[43] available on the SARS website under *Legal & Policy* > *Legal & Policy Publications* > *Find a Guide.*

3.4 Turnover tax – an alternative to VAT registration

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

3.5 Application of VAT to supplies and imports

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

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

See **3.6** and **3.7** for some examples of zero-rated and exempt supplies of goods and services and exempt imports.

See also to **4.5** for more information regarding the importation of goods into South Africa.

3.6 Zero-rated supplies

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

- Goods exported from South Africa where the vendor is liable for the transport of the goods to the foreign country;
- Brown bread;
- Brown wheaten meal;
- Maize meal;
- Samp;
- Mealie rice;
- Dried mealies;
- Dried beans;
- Rice;
- Lentils;
- Fruit and vegetables;
- Pilchards and sardinella in tins or cans;

[43] *VAT 404 – Guide for Vendors.*

- Milk, cultured milk and milk powder;
- Vegetable cooking oil;
- Eggs;
- Edible legumes and pulse of leguminous plants;
- Dairy powder blends;
- Petrol, diesel and illuminating paraffin;
- Certain agricultural inputs supplied to VAT registered farmers;
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services; and
- Services physically rendered outside South Africa.

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

3.7 Exempt supplies

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

- Financial services
- Public transport of fare-paying passengers by road and rail
- The supply of residential accommodation under a lease agreement
- Certain educational services, for example, in primary and secondary schools, universities and universities of technology (formerly known as technikons)
- Medical services and medicines supplied by government (provincial hospitals), but excluding municipal medical facilities
- Goods or services supplied by an employee organisation, bargaining council or political party to any of its members to the extent that the supplies are funded from membership contributions
- Child minding services in crèches and after-school centres.

Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply. This means that the supplier of exempt goods or services does not levy VAT (output tax) and any VAT incurred in the course of making those exempt supplies is not deductible as input tax.

3.8 Tourists, diplomats and exports to foreign countries

3.8.1 Tourists

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

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

Contact details for the VRA are as follows:

Postal address The VAT Refund Administrator PO Box 107 OR Tambo (Johannesburg) International Airport South Africa 1627 **Physical address** Plot 206/1 High Road Bredell, Kempton Park 1619 **E-mail addresses** General info@taxrefunds.co.za Botswana botswana@taxrefunds.co.za Swaziland swaziland@taxrefunds.co.za Namibia namibia@taxrefunds.co.za Other countries generalqueries@taxrefunds.co.za **Website** www.taxrefunds.co.za **Telephone** +27 11 979 0055 **Email** info@taxrefunds.co.za	**Refund claims may also be lodged at the following regional offices:** VAT Refund Administrator (Pty) Ltd Suite 11 Equity Building Botswana Road. Plot 1155 Gaborone Botswana VAT Refund Administrator (Pty) Ltd 4th Floor Old Sanlam Building Dr Frans Indongo Street Windhoek Namibia VAT Refund Administrator (Pty) Ltd Emafini Business Centre Along Emalangweni Hill Mbabane Swaziland

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

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

For more information on the documentary requirements and the procedures involved in obtaining a refund, refer to the VRA pamphlet which is available from all of South Africa's International Airports or the VRA's website **www.taxrefunds.co.za**. . Further information can also be found on the SARS website under *Types of Tax > Value Added Tax > VAT Refund on Exported Goods.*

3.8.2 Diplomats

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

VAT refunds on any goods purchased by diplomats whilst in South Africa which are subsequently exported are dealt with by the VRA as described in **3.8.1**.

3.8.3 Exports to foreign countries

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

The VAT on goods purchased in South Africa by a non-resident or a foreign enterprise may be refunded by the VRA if the goods are subsequently exported. In certain circumstances the vendor may elect to apply the zero rate of VAT under Part 2 of the VAT Export Incentive Scheme[44] in the case of certain indirect exports provided the vendor making the supply obtains and retains the proof of export as required.

For more information on exports, refer to Chapter 12 of the guide[45] available on the SARS website under *Legal & Policy* > *Legal & Policy Publications* > *Find a Guide*.

4. Customs

4.1 Introduction

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

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

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

South Africa is a signatory to the Southern African Customs Union (SACU) agreement together with Botswana, Lesotho, Namibia and Swaziland. The five member countries of

[44] A new Draft Export Regulation which is intended to replace the VAT Export Incentive Scheme was published for public comment during December 2012. It proposes, amongst other things, to extend the current rules which apply to the optional zero-rating for indirect exports by sea and air to include certain situations where road and rail are used as the mode of transport. At the date of publication of this guide, the new rules as proposed in the draft Regulation had not yet come into effect.

[45] *VAT 404 – Guide for Vendors.*

SACU apply similar customs and excise legislation and the same rates of customs and excise duties on imported and locally manufactured goods. The uniform application of tariffs and the harmonisation of procedures simplify trade within the SACU common customs area in that there is free movement of goods for customs purposes. However, all other national restrictive measures such as import and export control, sanitary and phyto-sanitary requirements and domestic taxes apply to goods moved between member states.

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

4.2 The Southern African Customs Union (SACU)

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

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

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

4.3 Free trade agreements and preferential arrangements with other countries

A number of agreements have been concluded or are in the process of being negotiated with other countries and trading blocks, which provides for preferential market access into South Africa as well as for South African products into other markets. These are:

4.3.1 Bi-lateral agreements (non-reciprocal)

These include trade agreements between the governments of –

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

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

4.3.2 Preferential dispensation for goods entering South Africa (non-reciprocal)

These include goods produced or manufactured in Mozambique (Rebate Item 412.25), providing for free or reduced duties subject specific origin requirements.

4.3.3 Free or preferential trade agreements (FTAs or PTAs) (reciprocal)

These include –

- SACU – The Southern African Customs Union consists of South Africa, Botswana, Lesotho, Namibia and Swaziland. Its aim is to facilitate the cross-border movement of goods between member countries.
- TDCA – Trade, Development and Cooperation Agreement between the European Community and its member states on the one part and South Africa on the other part, which was implemented on 1 January 2000.
- SADC – Agreement of the Southern African Development Community (SADC), which was implemented on 1 September 2000.
- EFTA – European Free Trade Association Agreement between Ireland, Liechtenstein, Norway and Switzerland on the one part and SACU on the other part, which was implemented on 1 May 2008.

4.3.4 Generalised system of preferences (GSPs) (non-reciprocal)

These include –

- AGOA

  Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from South Africa as contemplated in the African Growth and Opportunity Act (AGOA).

- EU

  Non-reciprocal preferential tariff treatment under the generalised system of preferences granted to developing countries by the European Community

- Norway

  Non-reciprocal preferential tariff treatment under the generalised system of preferences granted to developing countries by the Kingdom of Norway

- Switzerland

  Non-reciprocal preferential tariff treatment under the generalised system of preferences granted to developing countries by the Swiss Confederation

- Russia

  Non-reciprocal preferential tariff treatment under the generalised system of preferences granted to developing countries by the Russian Federation

- Turkey

  Non-reciprocal preferential tariff treatment under the generalised system of preferences granted to developing countries by the Republic of Turkey

4.4 Duties

4.4.1 Customs duty

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

This duty, if expressed as a percentage (*ad valorem*), is always calculated as a percentage of the value of the goods. However, in the case of certain agricultural products the duty is expressed as a specific rate, for example, cents per kilogram, cents per litre etc based on the volume of the goods.

4.4.2 Excise duty and excise levy

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

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

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

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

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

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

4.4.3 Environmental levy

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

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

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

Local manufacturers of such bags must license their premises as manufacturing warehouses with their local Controller of Customs and Excise at the SARS Branch Office and quarterly excise accounts to such Controller.

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

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

(b) Electricity generated in the Republic from non-renewable resources (Part 3B of Schedule 1 to the Customs and Excise Act, 1964)

Electricity generated at an electricity generation plant is liable to a levy calculated on the quantity generated at the time such generation of electricity takes place and any losses incurred subsequent to the electricity generation process or electricity exported shall not be deducted or set off from the total quantity of electricity accounted for on a monthly environmental levy account.

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

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

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

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

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

(d) Carbon dioxide (CO_2) vehicle emissions levy

A CO_2 emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this tax is to influence the composition of South Africa's vehicle fleet to become more energy-efficient and environmentally-friendly.

The emissions levy is in addition to the current *ad valorem* luxury tax on new vehicles. In the case of passenger vehicles the rate of the levy is R75 per g/km on emissions exceeding the threshold of 120g/km and in the case of double-cab vehicles the rate of the levy is R100 per g/km on emissions exceeding the threshold at 175g/km. On 1 April 2013 the levy increased to R90 per g/km and R125 per g/km respectively.

Example: If the certified CO_2 emissions of a new vehicle (transport of persons) bought on 1 June 2013 are 140 g/km, the tax payable will be calculated as follows:

(140 g/km – 120 g/km) × R90
= 20g/km × R90
= R1 800

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

4.4.4 Anti-dumping, countervailing and safeguard duties on imported goods

Anti-dumping, countervailing and safeguard duties are trade remedies used to protect local industries against goods imported at dumped prices, subsidised imports or disruptive competition.

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

4.5 Importation of goods

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

For VAT purposes the value to be placed on the importation of goods into South Africa is the value of the goods for customs duty purposes, plus any duty levied in terms of the Customs and Excise Act, 1964 in respect of the importation of those goods, plus a further 10% of the said customs value. The value of any goods which have their origin in any of the BLNS countries and which are imported into South Africa from any of those countries is not increased by the factor of 10% as is the case for imports from other countries.

4.6 Customs value

The customs value of any commodity is established in terms of the General Agreement on Tariffs and Trade (GATT) valuation code, through the use of either one of six valuation methods. The majority of goods are valued by using method 1, which is the actual price paid or payable by the buyer of the goods. The Free on Board (FOB) price forms the basis for the calculation of duties, levies and taxes, allowing for certain deductions (for example, interest charged on extended payment terms) and additions (for example, certain royalties) to be effected.

In determining the customs value, SARS pays particular attention to the relationship between the buyer and seller, payments outside of the normal transactions, for example, royalties and licence fees and restrictions that have been placed on the buyer. These aspects can result in the price paid for the goods being increased for the purpose of determining a customs value and thus directly affecting the customs duty payable.

4.7 Customs declarations

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

Importers and exporters of goods for commercial purposes to and from South Africa must register with SARS for that purpose. Importers and exporters of non-commercial goods are, however, excluded from registration, provided that this is limited to three importations per year and each consignment is less than R20 000.

4.7.1 Rebates allowed on importation of goods

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

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

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

4.8 Persons entering South Africa

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

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

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

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

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

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

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

(b) By persons who are residents of South Africa

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

(c) Limits in respect of certain goods

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

Wine	2 litres per person
Spirits and other alcoholic	1 litre per person

beverages	
Cigarettes	200 per person
Cigars	20 per person
Cigarette or pipe tobacco	250g per person
Perfume	50ml per person
Eau de toilette	250ml per person

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

In addition to the abovementioned goods, new or used goods up to the value of R3 000 per person (included in accompanied passengers' baggage), may be imported without the payment of duty and VAT.

The duty-free allowance for such goods (new or used) imported for personal use remains applicable for any such goods up to a value of R5 000, notwithstanding the fact that the total of such goods may exceed that amount.

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

(d) Children under 18 years of age

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

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

(e) Flat-rate assessment

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

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

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

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

(f) Crew members

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

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

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

Guide to the approval of international airports

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

4.8.2 Customs clearance procedures for travellers

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

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

The customs officer in the red channel will ascertain –

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

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

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

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

4.9 Declarations on single administrative document (SAD)

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

As a result thereof, the Trans Kalahari Corridor (TKC) pilot programme was initiated during August 2003 and gradually extended to different border posts. In August 2004 the Single Administrative Document (SAD) was permanently introduced as the document to be used for the clearance of goods removed through the border posts.

International best practice, culminating in the rationalisation of customs information requirements in the World Customs Organisation's (WCO) Data Model, is the key driving force for a single clearance document. The adoption of the SAD is moreover in line with

SARS's Service Charter, to make customs clearance easier and more convenient for importers, exporters and cross-border traders.

The full national implementation of the SAD was effected from 1 October 2006.[46]

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

4.10 Goods accepted at appointed places of entry

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

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

4.11 Cargo entering South Africa

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

4.12 State warehouses

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

4.13 Importation of household effects by immigrants or returning residents

Bona fide household effects may be imported, free of duty and exempt from the VAT normally levied on importation, provided that the importer changes his or her residence to South Africa on a permanent or temporary basis. Importers such as contract workers and students may also import their *bona fide* household effects under rebate of duty and exempt from VAT (a deposit may be called for to cover the VAT on importation either in part or in full, which is refundable when such goods are exported). The requirement would, however, be that they re-export their household effects at conclusion of the work contract or studies, or they may dispose of it locally, provided they have not sold, lent, hired or disposed of it in any manner whatsoever within six months since importation. Importers taking up temporary residence in South Africa on a continual basis, for example, people with holiday homes, do not qualify for this rebate.

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

4.14 Motor vehicles

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

4.15 Motor vehicles imported on a temporary basis

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

5. Excise duties – Rates

5.1 Specific excise duties

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

The following are some of the excisable products and their respective specific duty rates which are applicable with effect from 27 February 2013:

Alcoholic Beverages	**Rate of duty**
Malt beer	R63.81/l of absolute alcohol
Traditional African beer	7.82 c/l
Spirits and spirituous beverages	R122.80/l of absolute alcohol

Alcohol	**Rate of duty**
Sparkling wine	R8.28/l
Fortified wine	R4.85/l
Unfortified wine	R2.70/l
Traditional African beer powder	34.7 c/kg

Tobacco	**Rate of duty**
Cigarettes	R5.46/10 cigarettes
Pipe tobacco	R141.60/kg net
Cigarette tobacco	R243.20/kg
Cigars	R2 467.83/kg net

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

Alcoholic Beverages	**Rate of duty**
Malt beer	R68.92/l of absolute alcohol

Traditional African beer	7.82 c/l
Spirits and spirituous beverages	R137.54/l of absolute alcohol

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

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

5.2 *Ad valorem* excise duties

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

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

***Ad valorem* products**

Products	**Rate of duty**
Perfumes and toilet waters	7%
Beauty or make-up preparations and preparations for care of the skin	5%
Fireworks	7%
Apparel or clothing accessories of fur skin or artificial fur skin	7%
Air conditioning machines for buildings	7%
Refrigerators or freezers	7%
Line telephones with cordless handsets, loudspeakers and amplifiers, sound and video recording or reproducing apparatus and cellular telephones	7%
Cellular telephones, still image video cameras, other video camera recorders and digital cameras	7%
Domestic radio-broadcast receivers, reception apparatus for television, video monitors and video projectors	7%

Motor vehicles (sliding scale)	Max 25%
Motorcycles (200 – 800cc)	Max 25%
Motorcycles exceeding 800cc	Max 25%
Water scooters	7%
Firearms	7%
Golf balls	7%

Note: The list is not exhaustive.

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

5.3 General fuel levy and road accident fund levy

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

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

The following are some of the fuel levy products and their respective levy rates as published by the Minister of Finance on 4 April 2012:

General fuel levy products	**Rate of levy**
Petrol (leaded and unleaded)	197.5c/l
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	182.5c/l
Distillate fuel (diesel)	182.5c/l
Road accident fund levy on petrol or diesel	88c/l

These levies were increased with effect from 3 April 2013:

General fuel levy products	**Rate of levy**
Petrol (leaded and unleaded)	201.5c/l
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	197.5c/l
Distillate fuel (diesel)	197.5c/l
Road accident fund levy on petrol or diesel	96c/l

6. Transfer duty

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

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

- physical property such as land and any fixtures thereon, including sectional title units;
- real rights in land but excluding rights under mortgage bonds or leases (other than the leases mentioned below); and
- rights to minerals or rights to mine for minerals (including any sub-lease of such a right).

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

The definition of the term "property" also includes –

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

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

Transfer duty is based on the fair value of the property. In a transaction between unrelated persons transacting at arm's length, the fair value is usually equal to the consideration paid or payable for the property. In cases where property is acquired for no consideration, or where the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property - whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[47] calculated for each completed month during which the transfer duty remains unpaid.

The general rule is that transfer duty is payable on the acquisition of all forms of property unless –

- the transaction is subject to VAT and qualifies for exemption under section 9(15) of the Transfer Duty Act; or
- the transaction is exempt under any other specific exemption provided under section 9 of the Transfer Duty Act; or
- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration (or the fair value of the property) is R600 000 or less.

Transfer duty rates (from 23 February 2011 to date)

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

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

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

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty if the supply is subject to VAT. The provisions of the VAT Act will therefore normally take precedence over the Transfer Duty Act where the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

In the case of a sale of immovable property which is part of the supply of an entire enterprise to another VAT vendor, which meets the requirements of a going concern, VAT will be charged at the zero rate on all the enterprise assets (including the fixed property).

All payments of transfer duty and any TDC01 returns which may be required for the processing of transactions must be submitted to SARS via eFiling as the manual submission of forms or payments is no longer accepted. SARS issues a transfer duty receipt on payment of the tax, or an exemption receipt is issued if the transaction is exempt from transfer duty.

In most cases, the property transaction will have to be lodged in the Deeds Registry to effect transfer of the property into the transferee's name. In these cases, the receipt or exemption receipt must be lodged together with the transfer documents prepared by the conveyancer attending to the transfer. In cases involving the acquisition of shares, rights and other interests in entities that own residential property, no transfer of property is registered in the Deeds Registry. However, any changes to the membership of a close corporation or changes in a trust deed which are necessary as a result of the transaction will need to be submitted to the Companies and Intellectual Property Commission (CIPC) or the office of the Master of the High Court (as the case may be).

For more information on transfer duty, refer to the *Transfer Duty Guide* and the *Transfer Duty eFiling Guide* which can be accessed on the SARS website under *Types of Tax > Transfer Duty*.

7. Estate duty

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

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

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

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. Two important deductions are (1) the value of property in the estate that accrues to the surviving spouse of the deceased and (2) all debts due by the deceased. The net value of the estate is reduced by a R3,5 million general deduction (specified amount) to arrive at the dutiable amount of the estate.

Note:

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

- If a person was a spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate an amount equal to –
  - the specified amount multiplied by two (that equals R7 million) less so much of the specified amount already allowed as a deduction from the net value of the estate of any one of the previously deceased persons.
- If a person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to the sum of –
  - the current specified amount, which is R3,5 million; and
  - an amount calculated as follows:

    (specified amount, which is R3,5 million, reduced by so much of the specified amount already allowed as a deduction from the net value of the estate of the previously deceased person) divided by the number of spouses of that previously deceased person.

Rate of estate duty

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

Estate duty calculation	
	R
Net value of estate	3 600 000
Less: General deduction	(3 500 000)
Dutiable amount	100 000
Duty payable on R100 000 at 20%	**20 000**

Estate duty calculation (death on or after 01/01/2010)	
The whole estate was bequeath to the spouse	
Net value of the estate of spouse	7 100 000
Less: Deduction (2 × R3,5 m)	(7 000 000)
Dutiable amount	100 000
Duty payable on R100 000 at 20%	**20 000**

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

The South African government has agreements to avoid double death duties with Botswana, Lesotho, Swaziland, Zimbabwe, the United Kingdom, and the United States of America. These agreements are available on the SARS website under *Legal % Policy > International Treaties & Agreements > Estate Duty Agreements*.

8. Securities transfer tax

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

For purposes of this tax a "security" means –

(a) any share or depository receipt in a company;

(b) any member's interest in a close corporation; or

(c) any right or entitlement to receive any distribution from a company or close corporation.

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

STT is payable by –

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

STT on the transfer of securities must be paid as follows:

- Listed securities – by the 14^{th} day of the month following the month during which transfer of the securities occurred.
- Unlisted securities – within two months from the end of the month during which the transfer of the securities occurred.

Payment of STT must be made electronically through the SARS e-STT system.

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

- the government of South Africa or the government of any other country;
- certain PBOs;
- heirs or legatees that acquire securities through an inheritance; or
- if the transaction is regarded as the acquisition of property, that is, subject to transfer duty.

For more information on securities transfer tax, refer to the SARS website under *Types of Tax > Securities Transfer Tax.*

9. Skills development levy (SDL)

SARS administers the collection of SDL. SDL is levied on payrolls in order to finance the development of skills and thus enhance productivity.

An employer must pay SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees' tax purposes with SARS or not) are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees receive grants from Sector Education and Training Authorities (SETAs) in terms of this initiative.

The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.

For more information on skills development levy, refer to the guide available at SARS offices and on the SARS website under *Types of Tax > Skills Development Levy (SDL)*.

10. Unemployment insurance fund (UIF) contributions

South Africa has an unemployment insurance fund which insures employees against the loss of earnings due to termination of employment, illness and maternity leave.

SARS administers the collection of the bulk of UIF contributions. UIF contributions, which are equal to 2% of the remuneration (subject to specified exclusions) paid or payable by an employer to its employees, are collected from employers on a monthly basis. The total amount of contributions so collected consists of –

- the sum of the contribution made by each employee equal to 1% of the employee's gross remuneration (before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions) paid or payable by the employer to its employees during any month.

UIF contributions are only calculated on so much of the remuneration paid or payable by the employer to its employee as does not exceed –

- R14 872 per month (R178 464 a year); or
- R3 432 per week.

Employers must pay the total contribution of 2% over to SARS within seven days after the end of the month during which the amount was deducted from the remuneration of its employees.

For more information on unemployment insurance fund contributions, refer to the guide available on the SARS website under *Types of Tax > Unemployment Insurance Fund*.

The Department of Labour's website, **www.uif.gov.za** also has useful information in this regard.

11. Air passenger departure tax

From 1 October 2011 to date –

- passengers departing to Botswana, Lesotho, Namibia and Swaziland pay R100 per passenger; and
- passengers departing to other international destinations pay R190 per passenger.

12. Mineral and petroleum resources royalties

In the past minerals and petroleum resources were privately owned. As a result consideration for the extraction of minerals and resources was payable to the state only under certain circumstances such as where mining was conducted on state-owned land.

To bring South Africa in line with the prevailing international norms, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) was promulgated.

Section 3(2)(*b*) of the MPRDA states that the state as the custodian of the nation's mineral and petroleum resources may, determine and levy, any fee or consideration payable.

The enactment of the MPRRA means that the exploitation of all minerals and petroleum resources in South Africa will require the payment of a consideration in the form of a mineral and petroleum royalty payable to the state through SARS.

Entities liable for registration must do so from 1 November 2009 for existing right holders or within 60 days after qualifying for registration for new right holders. More information and the application form (*MPR 1*) are available on the SARS website under *Types of Tax > Mineral and Petroleum Resource Royalty*.

13. South African Reserve Bank – Exchange control

Exchange control regulations, restricting the in and out flow of capital in South Africa, still exist. For example, investments into South Africa must be reported and prior approval must be obtained if loan capital is invested in South Africa.

The administration of exchange control is performed by the South African Reserve Bank. The Reserve Bank has delegated some of its powers to deal with exchange control related matters to commercial banks. These banks are known as "authorised dealers" in foreign exchange.

Residents of South Africa wishing to remit or invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

Individuals older than 18 years and in good standing with their tax affairs may invest a total of R4 million a year outside South Africa. This foreign investment allowance of R4 million is available for residents with a valid bar-coded South African identity document. However, individuals are also able to invest, without restriction, in foreign companies that are inward listed on South African security exchanges. In addition individuals are allowed a total single discretionary allowance of R1 million a year for purposes of travel, donations, gifts and maintenance.

Companies may use unlimited South African funds for new approved foreign-direct investments (strictly true investments in factories or businesses and not for portfolio investments). Companies are allowed to retain foreign dividends offshore, and dividends repatriated to South Africa after 26 October 2004 may be transferred offshore again for the financing of approved foreign direct investments or approved foreign expansion.

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

14. Conclusion

It is trusted that this guide has contributed to greater clarity regarding the application and provisions of the relevant Acts pertaining to taxation in South Africa.

Further information about the different taxes administered by SARS is available on the SARS website **www.sars.gov.za** or from any SARS office.

Annexure A – Examples of how income tax is calculated for 2013/14

Example 1 – Taxpayer under 65 years of age

Facts:

	R
X is single and under 65 years of age	
Salary income (remuneration)	146 700
Pension fund contributions	11 002
Medical expenses not recoverable by X	10 550
Medical scheme contributions (1 month)	1 500
Retirement annuity fund contributions	1 750
PAYE	12 353

Determine:

The taxable income of X and the income tax payable to or refundable by SARS

Result:

			R	R
Total income (remuneration)				146 700
Less:	Pension fund contributions		11 002	
	Retirement annuity fund contributions		1 750	(12 752)
				133 948
Medical expenses				(1 036)
	Contributions		1 500	
	Less:	4 × Medical scheme fees tax credit		
		4 × R242	(968)	
			532	
	Add:	Medical expenses	10 550	
			11 082	
	Less:	7,5% × R133 948 = R10 046	(10 046)	
			1 036	
Taxable income				**132 912**

Tax on R132 912 × 18%	23 924,16
Less: Primary rebate	(12 080,00)
	11 844,16
Less: Rebate for medical scheme fees tax credit	(242,00)
	11 602.16
Less: PAYE	(12 353,00)
Income tax refundable by SARS	750,84

Example 2 – Taxpayers aged 66 and 59 respectively

Facts:

Y is married in community of property (see **2.4.5**). Y is 66 years of age and his wife is 59 years of age.

Income	**Y**	**Wife**
	R	R
Remuneration	120 000	
Taxable income from business R100 000[(1)]		
Net rental income R8 000[(2)] + R12 000[(3)]		
Gross interest R24 000[(4)]		
Deductions		
Medical expenses - not members of medical fund	1 000	6 500
Pension fund contributions	9 000	-
Retirement annuity fund contributions		8 000
PAYE	973	

(1) The spouses carry on a trade jointly. According to the agreement the profit-sharing ratio is 40:60 – Y 40%, wife 60%.

(2) Wife owns a property she inherited from her father. Her father's will stipulate that the income of R8 000 derived from the property may not form part of Y's estate.

(3) The rental income of R12 000 of Y is part of the joint estate.

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

Determine:

The taxable income of Y and his wife and the income tax payable to SARS.

Result:

Tax position – husband (Aged 66 years)

Determination of taxable income:

Income	R	R
Remuneration		120 000
Taxable income from business (R100 000 × 40%)[(1)]		40 000
Net rental income Nil[(2)] + (R12 000 × 50%)[(3)]		6 000
Gross interest (R24 000 × 50%)[(4)] – R12 000 exemption		nil
		166 000
Less: **Allowable deductions**		
Pension fund contributions (7,5% × R120 000)		(9 000)
		157 000
Less: Medical expenses (own) – 66 years old, no limit		(1 000)
Taxable income		**156 000**

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

(2) Her father's will stipulate that the income derived from the property may not form part of her husband's estate, therefore no portion of the R8 000 is included in Y's taxable income.

(3) The rental income of the joint estate is split equally between spouses due to the fact that they are married in community of property, therefore, rental income is split 50% Y and 50% wife.

(4) The total interest of R24 000 is part of the joint estate and is split equally between spouse due to the fact that they are married in community of property, therefore, interest of R24 000 is split 50% Y and 50% wife. Both spouses are each entitled to the exemption of interest income. Y over 65 years of age, therefore, the R34 500 interest exemption is limited to R12 000.

Determination of income tax of Y on R156 000 payable to SARS:

		R	R
Tax on R156 000 at 18%			28 080,00
Less:	Primary rebate	12 080	
	Additional rebate (age 65 years and older)	6 750	(18 830,00)
			9 250,00
Less: PAYE			(973,00)
Income tax payable to SARS			**8 273,00**

Tax position – wife (Aged 59 years)
Determination of taxable income:

Income		
Business income (R100 000 × 60%)(1)		60 000
Net rental income R8 000(2) + (R12 000 × 50%)(3)		14 000
Gross interest (R24 000 × 50%)(4) – R12 000 exemption		nil
		74 000
Less:	**Allowable deductions**	
	Retirement annuity fund contributions (15% × R74 000 = R11 100) limited to actual contributions	(8 000)
		66 000
	Medical expenses (own) 7,5% × R66 000 = R4 950 Therefore R6 500 – R4 950 = R1 550	(1 550)
Taxable income		**64 450**

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

(2) Her father's will stipulate that the income derived from the property may not form part of her husband's estate, therefore the full amount of R8 000 is included in her taxable income.

(3) The rental income of the joint estate is split equally between spouses due to the fact that they are married in community of property, therefore, rental income is split 50% Y and 50% wife.

(4) The total interest of R24 000 is part of the joint estate and is split equally between spouse due to the fact that they are married in community of property, therefore, interest of R24 000 is split 50% Y and 50% wife. Both spouses are each entitled to the exemption of interest income. She is under 65 years of age, therefore, the R23 800 interest exemption is limited to R12 000.

Determination of income tax of wife on R64 450 payable to SARS:

	R
Tax on R64 450 × 18%	11 601,00
Less: Primary rebate	(12 080,00)
Income tax payable to SARS	**Nil**

Example 3 – Taxpayers aged 77 years

Facts:

Widow, 77 years of age. Medical expenses R3 800 not recoverable by widow

	R
Income	
Pension	78 500
Interest	55 800
Foreign dividends (no foreign tax paid)	4 500
Gross income	**138 800**

Determine:

The taxable income of the widow and the income tax payable to SARS

Result:

Determination of taxable income:

	R	R
Pension		78 500
Foreign dividends		4 500
Interest	55 800	
Less: Exempt portion	(34 500)	21 300
		104 300
Less: Medical expenses		(3 800)
Taxable income		**100 500**

Determination of normal tax payable on R100 500:

Tax on R100 5000 × 18%		18 090
Less: Primary rebate	12 080	
Secondary rebate (65 years or older)	6 750	
Tertiary rebate (75 years or older)	2 250	(21 080)
Income tax payable to SARS		**Nil**

Example 4 – Taxable benefits

Facts:

An employee receives cheap accommodation in the 17% category and a company car with a purchase price of R180 000 (excluding VAT, interest and finance charges). The employee's remuneration for the preceding tax year was R300 000. He pays:

- R1 100 per month towards the use of the accommodation; and
- R2 500 per month towards the use of the motor vehicle.

Determine:

The value of the respective taxable benefits per month

Result:

The monthly values of the taxable benefits are calculated as follows:

Accommodation

= [(R300 000 – R63 556) × 17 / 100 × 1 / 12] – R500
= R3 349,62 – R1 100,00
= R2 249,62 per month

Company motor vehicle

= (R180 000 × 3,5%) – R2 500
= R6 300 – R2 500
= R3 800 per month

The taxable benefits of R2 249,62 and R3 800 must be added to the employee's monthly remuneration in order to determine the amount on which employees' tax is to be deducted.