2020

Taxation in South Africa

SARS

South African Revenue Service

Taxation in South Africa

Preface

This is a general guide providing an overview of the most significant tax legislation administered in South Africa by the Commissioner for the South African Revenue Service (SARS), namely, the –

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

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

The information in this guide concerning income tax relates to –

- **natural persons, deceased estates, insolvent estates or special trusts** for the 2020 year of assessment commencing on 1 March 2019 or ending on 29 February 2020;
- **trusts** for the 2020 year of assessment commencing on 1 March 2019 or ending on 29 February 2020; and
- **companies** for the 2020 year of assessment with financial years ending during the 12-month period ending on 31 March 2020.

Care has been taken in the preparation of this document to ensure that the information and the rates published are correct at the date of publication. It is advisable for users to verify the rates with the relevant legislation pertaining to the rates, applicable to the tax, customs or excise concerned.

For income tax purposes, this guide has been updated to include the Tax Administration Laws Amendment Act 33 of 2019, the Taxation Laws Amendment Act34 of 2019 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019.

For indirect tax purposes, all information has been updated to include amendments up to the date of the publication of this guide.

All brochures, guides, interpretation notes, rulings, forms, returns and tables referred to in this guide are available on the **SARS website**. Unless indicated otherwise, the latest issues of these documents on the website should be consulted.

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

- visit your nearest SARS branch;
- contact the SARS National Contact Centre–
  - ➢ if calling locally, on 0800 00 7277; or
  - ➢ if calling from abroad, on +27 11 602 2093 (only between 8am and 5pm South African time);
- visit the SARS website at **www.sars.gov.za**; or
- contact your own tax advisor or tax practitioner.

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

Prepared by

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE

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Glossary

In this guide, unless the context indicates otherwise –

- **“ADR”** means alternative dispute resolution;
- **“CFC”** means controlled foreign company;
- **“CGT”** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **“Customs and Excise Act”** means the Customs and Excise Act 91 of 1964;
- **“ETI”** means employment tax incentive;
- **“ETI Act”** means the Employment Tax Incentive Act 26 of 2013;
- **“Eswatini”** means the Kingdom of Eswatini;
- **“MTC”** means medical scheme fees tax credit contemplated in section 6A;
- **“non-resident”** means a person that is not a resident of South Africa;
- **“OECD”** means Organisation for Economic Co-Operation and Development;
- **“PAYE”** means Pay-As-You-Earn;
- **“R&D”** means scientific or technological research and development;
- **“resident”** means a person that is a “resident” as defined in section 1(1) and, therefore, a resident of South Africa;
- **“SACU”** means the South African Customs Union;
- **“SADC”** means the Southern African Development Community;
- **“SARS Act”** means the South African Revenue Service Act 34 of 1997;
- **“SBC”** means small business corporation;
- **“Schedule”** means a Schedule to the Act;
- **“SDL”** means skills development levy;
- **“section”** means a section of the Act;
- **“South Africa”** means the Republic of South Africa;
- **“STT”** means securities transfer tax;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“tax treaty”** means an agreement for the avoidance of double taxation entered into between South Africa and another country;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“Transfer Duty Act”** means the Transfer Duty Act 40 of 1949;
- **“UIF”** means unemployment insurance fund;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the relevant Act.

1. Introduction

1.1 South African Revenue Service

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

SARS's responsibilities are to –

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

The SARS Act makes provision –

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

1.2 Secrecy and confidentiality

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

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

1.3 Overview of taxes

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

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

  The following taxes form part of normal tax:

  - PAYE (see **2.4.5**)
  - Provisional tax (see **2.4.6**)
  - Withholding of amounts from payments to non-resident sellers of immovable property (see **2.14**)
  - CGT (see **2.13**)

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

VAT (see **11**) is levied by the national government under the VAT Act. VAT is a consumption tax, so it is generally based on domestic consumption and is levied at the standard rate (currently 15%)[1] 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;
- importation of any goods into South Africa by any person; and
- supply of certain "imported services" as defined in the VAT Act.

The levying of VAT is, however, subject to certain exemptions, exceptions, deductions and adjustments provided for in the VAT Act. For example, as an exception, certain goods and services are subject to VAT at the zero rate.

Duties and levies (see **12**) that are leviable by the national government under the Customs and Excise Act 91 of 1964 are –

- ordinary customs duty;
- environmental levy;
- anti-dumping, countervailing and safeguard duties on imported goods;
- specific excise duty;
- specific customs duty;
- *ad valorem* excise duties;
- *ad valorem* customs duty;
- general fuel levy and road accident fund levy; and
- ordinary levy, this is the equivalent of ordinary customs duty paid by governmental bodies in Botswana, Lesotho, Namibia and Eswatini,[2]for specific purposes.

National government also levies the following taxes under the relevant Acts as mentioned in the paragraphs indicated:

- Transfer duty (see **15**)
- Estate duty (see **16**)
- STT (see **17**)

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1 The standard rate of VAT increased from 14% to 15% with effect from 1 April 2018.

2 The change of name from "Swaziland" to "Eswatini" came into effect on 19 20 January 2019 but the various tax Acts have not yet been amended in this regard. The names "Swaziland" and "Eswatini" are used interchangeably in this Guide.

- SDL (see **18**)
- Unemployment insurance fund (UIF) contributions (see **19**)
- Air passenger departure tax (see **20**)
- Mineral and petroleum resources royalties (see **21**)
- Diamond export levy (see **14**)
- International oil pollution compensation fund contributions levy

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

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; and
- a non-resident's taxable income from sources within South Africa is subject to tax in South Africa.

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

2.1.1 Main source of government's income

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

2.1.2 Registration as a taxpayer

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

2.1.3 Change of address

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

2.1.4 Year of assessment

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

Companies are permitted to have a year of assessment ending on a date which coincides with its financial year-end. The year of assessment for a company with a financial year-end of 30 June, will run from 1 July of a specific year to 30 June of the following year.[3]

2.1.5 Filing of tax returns

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

2.1.6 eFiling and the South African Revenue Service MobiApp

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

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

- Dividends tax
- Estate duty
- Income tax
- PAYE
- Provisional tax
- SDL
- Transfer duty
- UIF contributions
- VAT
- Withholding tax on interest

While the payment of withholding tax on royalties can be made via the eFiling platform, the Return for Withholding Tax on Royalties (WTR01) must be submitted manually. For taxpayers that deal with the Large Business Centre, this return must be submitted via email to **lbqueries@sars.gov.za** along with the proof of payment. All other taxpayers must manually submit the return at the nearest SARS branch office with the proof of payment.

SARS has also introduced the SARS MobiApp to make it simpler and more convenient for taxpayers to file an income tax return.

The following should, however, be noted:

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

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3 For more information see Interpretation Note 19 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February” and Interpretation Note 90 “Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company’s Financial Year”.

- SARS will under certain circumstances, on request, still require the submission of original documents for purposes of verification.
- SARS will do extensive checks on the data submitted to ensure its accuracy, including validations against the electronic employees' tax certificates (IRP5s) submitted by employers to SARS.
- SARS will issue assessments electronically.

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

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

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

2.1.7 Payments at banks

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

2.1.8 Electronic funds transfer

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

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

2.1.9 Assessment

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

2.1.10 Calculation of taxable income

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

❖ **The first step**

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

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

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

❖ **The second step**

Determine "income", as defined in section 1(1), by deducting from gross income all amounts which are exempt from normal tax.

❖ **The third step**

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

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

2.1.11 Calculation of final normal tax liability

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

❖ **The first step**

Determine the normal tax payable by applying the applicable rate of tax to the taxpayer's taxable income. See the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019 for the rates of normal tax to be levied on various taxpayers and different types of taxable income.

❖ **The second step**

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

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

❖ **The third step**

Determine the final normal tax liability by –

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

2.2 A resident

Persons who are exclusively resident of a country other than South Africa for purposes of applying a tax treaty are excluded from the definition of "resident".

2.2.1 Natural persons

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

(a) Ordinarily resident test

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

The courts have interpreted the concept "ordinarily resident" to mean the country where an individual has his or her usual or principal residence, that is, what may be described as that person's real home.[4]

(b) Physical presence test

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

- 91 days in aggregate during the relevant year of assessment;
- 91 days in aggregate during each of the five years of assessment preceding the relevant year of assessment; and
- 915 days in aggregate during those five preceding years of assessment.[5]

2.2.2 Companies and other persons

Based on the definition of "resident", a person, other than a natural person, for example, a company or a trust will be a resident if it is incorporated, established or formed in South Africa or has its place of effective management in South Africa.[6]

2.2.3 Residents working outside South Africa

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

- a tax treaty stipulates that only the other country has a right to tax that income; or
- that income is exempt from normal tax in South Africa.

Remuneration which is received by or accrued to an employee during a year of assessment for services rendered by that employee in more than one year of assessment will be taxed evenly over the period during which those services were rendered.[7]

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

[5] For more information see Interpretation Note 4 "Resident: Definition in relation to a Natural Person – Physical Presence Test".

[6] For information on the meaning of "place of effective management" see Interpretation Note 6 "Resident: Place of Effective Management (Companies)".

[7] For more information see Interpretation Note 16 "Exemption from Income Tax: Foreign Employment Income".

2.2.4 Tax treaties

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

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

A list of the tax treaties in force in South Africa is available on the **SARS website**. Since each tax treaty is unique, the relevant agreement must be consulted and its provisions adhered to. The **SARS website** also provides details of progress made on tax treaties currently being negotiated but not yet entered into force.

2.2.5 Unilateral relief for foreign taxes paid or payable

In the event that no tax treaty exists between two countries, the domestic tax legislation of each country will apply independently of each other. A resident that is liable for income tax in South Africa and in a foreign country will generally be allowed, depending on the source of the income, a rebate for the foreign tax paid or proved to be payable against the South African tax liability or a deduction from income. To qualify for this rebate or deduction the foreign tax must have been paid or be payable to the government of any country other than South Africa, without any right of recovery of that foreign tax, except for certain rights of recovery referred to in section 6*quat*.

It will be necessary for a resident to submit proof of the foreign tax paid or proved to be payable.[8]

8 See Interpretation Note 18 "Rebates and Deduction for Foreign Taxes and Income".

2.3 Non-resident

2.3.1 A non-resident working temporarily in South Africa

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

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

Natural persons who are not ordinarily resident in South Africa should bear in mind the physical presence test [see **2.2.1(b)**].[9]

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 a person who has not been granted immunity under the Diplomatic Immunities and Privileges Act 37 of 2001 are exempt from normal tax if the employee –

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

Salary and emoluments payable to any domestic or private servant of the person referred to above are also exempt from normal tax, provided such servant is not a South African citizen and is not ordinarily resident in South Africa.

Should any of the abovementioned persons become residents as a consequence of the application of the physical presence test, the income earned from a foreign diplomatic or consular mission will nevertheless remain exempt. However, such income will not be exempt if any of the persons become ordinarily resident in South Africa.

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

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

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

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

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

2.4 Natural persons

2.4.1 Requirements to submit an income tax return

A natural person, whose taxable income exceeds the "tax threshold" as defined in paragraph 1 of the Fourth Schedule, is required to submit a return for the 2020 year of assessment. The tax thresholds are –

- R79 000 (for a person below the age of 65 years);
- R122 300 (for a person aged 65 years or older but not yet 75 years); or
- R136 750 (for a person aged 75 years or older).

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

- remuneration (other than an allowance or advance for travelling on business or on any accommodation, meals and other incidental costs if that person is obliged to spend at least one night away from that person's usual place of residence or an allowance for expenses incurred by reason of that person's duties related to his or her office; and other than remuneration received or accrued in respect of services rendered outside South Africa) paid from one single source which does not exceed R500 000 and PAYE has been deducted in line with the deduction tables prescribed by the Commissioner;
- interest, other than interest from a tax free investment, from a source in South Africa not exceeding –
  - R23 800 for a person below the age of 65 years; or
  - R34 500 for a person aged 65 years or older;
- dividends and the person was a non-resident during the 2020 year of assessment; or
- amounts received or accrued from a tax free investment,

this person is not required to submit a return.

For a detailed list of persons who are required to submit returns for the 2020 year of assessment see the notice[10] which is published yearly in the *Government Gazette* and is available on the **SARS website**.

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

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

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

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

[10] See Government Notice 741 in *Government Gazette* 43495 of 3 July 2020.

(a) Allowances [section 8(1)]

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

Travelling allowance

Motor vehicle travelling allowances are taxable but expenses for business travel may be deducted from the allowance received.

It is compulsory to keep an accurate record 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**.[11]

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 employees are absent from their place of residence an amount, as published in Government Notices,[12] will be deemed to have been actually expended and will be deducted from the subsistence allowance.

For the year of assessment commencing on 1 March 2019, the amount is as follows:

- If the accommodation to which the allowance or advance relates is in South Africa, an amount equal to –
  - R134 per day, if that allowance or advance is paid or granted to defray incidental costs only; or
  - R435 per day, if that allowance or advance is paid or granted to defray the cost of meals and incidental costs.
- If the accommodation to which the allowance or advance relates is outside South Africa, the daily amount deemed to be expended will be an amount applicable to the respective country, specified in the Government Notice.

The full amount of a subsistence allowance that exceeds the business expenses, or the amount calculated at the above rates, as the case may be, must be included in the employee's taxable income.[13]

Uniform allowance

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

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11 For more information see Interpretation Note 14 "Allowances, Advances and Reimbursements".
12 See Government Notice 268 in *Government Gazette* 42258 of 1 March 2019.
13 For more information see Interpretation Note 14 "Allowances, Advances and Reimbursements".

(b) Taxable benefits [paragraphs 2, 7, 9 and 11 of the Seventh Schedule]

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

The employer's purpose in granting the benefit is not relevant. A taxable benefit will arise in an employee's hands if, objectively viewed, the employee receives any benefit or advantage, even if the employer derives a residual or marginal benefit as well.

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

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

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

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

Residential accommodation (paragraph 9 of the Seventh Schedule)

A taxable benefit arises when residential accommodation is provided to an employee by an employer. Residential accommodation will also include any accommodation occupied temporarily for purposes of a holiday.

The rental value of any residential accommodation supplied by an employer as a benefit, advantage or as a reward is valued at the lower of –

- the cost borne by the employer, less any amount paid by the employee; or
- the amount calculated by using the formula laid down in paragraph 9(3) of the Seventh Schedule, less any amount paid by the employee (see the example in **Annexure B**).

For accommodation occupied temporarily for purposes of a holiday, the rental value will be –

- when the accommodation is hired by the employer from an unconnected person, the rental payable and any amounts chargeable for meals, refreshments or any services relating to such accommodation; or
- in any other case, the prevailing rate per day that such accommodation could be let to any unconnected person.

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

The cash equivalent of the value of the taxable benefit of an employer-owned or -leased motor vehicle being made available to an employee for private use must be included in the employee's gross income. Such value is calculated at –

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

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

The "determined value" for purposes of calculating a taxable benefit excludes finance charges or interest paid by the employer. The determined value is –[14]

- in the case of new motor vehicles provided by motor manufacturers, importers, dealers and rental companies, the dealer-billing price of such vehicles, being the selling price the manufacturer or importer of that vehicle recommends to sell it to dealers or rental companies, including VAT;
- in the case of pre-owned motor vehicles provided by motor manufacturers, importers, dealers and rental companies, the cost of acquisition of such vehicles, or if the vehicle was acquired at no cost, the market value, including VAT and costs to repair the vehicle but excluding finance charges or interest;
- the "cash value" of the motor vehicle if the motor vehicle is or was held under a lease contemplated in paragraph (*b*) of the definition of "instalment credit agreement" in section 1(1) of the VAT Act;
- the retail market value of the motor vehicle (at the time the employer first obtained the right of use of the motor vehicle) if the motor vehicle is held under a lease (other than an operating lease) or was held under a lease (other than an operating lease) and then acquired by the employer on termination of the lease; or
- in any other case, the price of acquisition of the vehicle, including VAT, or if the vehicle was acquired for no cost, the market value.

[14] See Government Notice 362 in *Government Gazette* 38744 of 28 April 2015, read with Government Notice 37 in *Government Gazette* 42961 of 17 January 2020.

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

The difference between the actual amount of interest charged on an interest-free or low interest debt owed by an employee and the interest charged at the official rate of interest, is to be included in the gross income of the employee. The official rate of interest applicable to the 2020 year of assessment was 7,75% up to 31 July 2019; 7,50% from 1 August 2019 to 31 January 2020 and 7,25% from 1 February 2020.[15]

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

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

Gains made by directors of companies or employees by the exercise, cession or release of rights to acquire marketable securities such as security, stock, debentures, options and shares must be included in income and are subject to the deduction of PAYE.

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

Any gain arising from the disposal of any qualifying equity share or right therein will be exempt from normal tax but subject to CGT, provided the shares are not disposed of within five years from the date of granting of the shares. A qualifying equity share is a share acquired in a year of assessment under a broad-based employee share plan if the market value of all equity shares acquired in that year, and the four immediately preceding years of assessment under the share plan does not exceed R50 000 in aggregate.

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

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

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

See the *Tax Guide for Share Owners* for a discussion of sections 8A, 8B and 8C.

2.4.3 Exempt benefit – Relocation costs [section 10(1)(*n*B)]

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

[15] See the Table of Interest rates under Legal Counsel / Legal Counsel Publications / Tables of Interest Rates / Table 3 on the **SARS website**.

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

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

Under South African common law, income received by spouses married in community of property, accrues to the joint estate and is deemed as having been received in equal shares by each spouse. However, the following rules apply to certain specified income:

- A salary from a third party is treated as being the income of the spouse who receives that salary.
- Passive income (income from the letting of property and investment income, such as interest and dividends) originating from assets forming part of the joint estate, is deemed to have accrued in equal shares to each spouse [section 7(2A)(*b*)].
- Income earned from carrying on a trade jointly or if spouses are trading in partnership will accrue to each spouse according to the agreed profit-sharing ratio [section 7(2A)(*a*)(ii)], while expenses incurred in the production of that income are deductible to the extent to which that income accrued to each spouse [section 7(2B)].
- Income which does not form part of the joint estate of both spouses is taxable in the hands of the spouse who is entitled to the income [section 7(2A)(*a*)(i)].
- Benefits from pension funds, pension preservation funds, provident funds, provident preservation funds, retirement annuity funds and benefit funds or any other fund of a similar nature are taxable in the hands of the spouse who is the member of the fund [section 7(2C)]. Contributions made to a pension fund or retirement annuity fund are deductible in the hands of the spouse who made the payments as a member of the fund, while contributions to a provident fund are deductible from the lump sum received from the provident fund.
- Income from patents, designs, trademarks and copyrights is deemed to be the income of the spouse who is the holder or owner [section 7(2C)(*c*)].
- The MTC (section 6A) and additional medical expenses tax credit (section 6B) will be allowed as rebates (see **2.16** and **2.17**) against the normal tax payable by the spouse who paid the fees or expenses, even if the funds for the fees or expenses originated from the joint estate.

The splitting of passive income mentioned above must not be seen as favouring spouses married in community of property over spouses married out of community of property. It is rather a case of harmonising the existing rights relating to property and income of persons married in community of property.

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

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

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

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

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

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

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

Every employer who pays or becomes liable to pay an amount by way of remuneration is obliged to deduct PAYE, if applicable, from that amount. The PAYE deducted must be paid over to SARS within seven days after the end of the month during which such deduction was made. The deduction is determined according to tax deduction tables.[16]

(a) Remuneration paid or payable to employees

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

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

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

(b) Remuneration paid or payable to directors

The remuneration of directors of companies (including individuals in close corporations performing similar functions) is subject to the deduction of PAYE. However, if the director is a non-executive director, amounts received in that capacity for services rendered as a board member are not "remuneration", and are not subject to the deduction of PAYE.[17]

(c) Payments to personal service providers

A personal service provider is any company or trust of which any service rendered on behalf of the company or trust to a client of the company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and any one of three conditions as set out in the definition of "personal service provider" in paragraph 1 of the Fourth Schedule is met.[18]

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[16] Published as attachments to the *Guide for Employers in Respect of Tax Deduction Tables*.

[17] Binding General Ruling 40 "Remuneration Paid to Non-Executive Directors". Also see Binding General Ruling 41 "VAT Treatment of Non-Executive Directors".

[18] See Interpretation Note 35 "Employees' Tax: Personal Service Providers and Labour Brokers".

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

Payments made to a personal service provider are subject to the deduction of PAYE. For VAT purposes, any payment made to a personal service provider who is carrying on an enterprise will be subject to VAT at the standard rate. This rule applies even if such payments have been subject to the deduction of PAYE[19]

(d) Payments to labour brokers

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

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

Remuneration paid to persons who render services to or on behalf of a labour broker is subject to the deduction of PAYE by the labour broker.[20] For VAT purposes, the payments made to a labour broker who is carrying on enterprise are subject to tax at standard rate (15%) and the full amount received is treated as consideration despite the PAYE being deducted on that full amount.

(e) Services rendered by independent contractors

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

An amount paid or payable for services rendered or to be rendered by a person in the course of a trade carried on by this person independently of the party by whom the amount is paid or payable or to whom the services are rendered or are to be rendered is excluded from remuneration for PAYE purposes.

An amount paid to a person who is deemed not to carry on a trade independently will constitute “remuneration” as defined in paragraph 1 of the Fourth Schedule and will be subject to the deduction of PAYE.[21]

For VAT purposes, an independent contractor who carries on enterprise is liable to register as a VAT vendor if the registration threshold of R1 million is exceeded.

[19] Section 1(1) definition of “enterprise” paragraph (*a*) proviso (iii)(*bb*).

[20] For more information see Interpretation Note 35 “Employees’ Tax: Personal Service Providers and Labour Brokers”.

[21] For more information see Interpretation Note 17 “Employees’ Tax: Independent Contractors”.

2.4.6 Provisional tax (the Fourth Schedule)

Provisional tax is not a separate tax but refers to payments made or to be made by a provisional taxpayer to the Commissioner in a manner provided for by the Act. A "provisional taxpayer" is defined in paragraph 1 of the Fourth Schedule as –

- any person (other than a company) who derives income–
  - that is remuneration from an employer that is not registered for PAYE; or
  - that does not constitute remuneration or an allowance or advance under section 8(1);
- any company; and
- any person notified by the Commissioner that such person is a provisional taxpayer,

but excludes –

- any public benefit organisation and recreational club approved by the Commissioner;
- any body corporate, share block company or association of persons referred to in section 10(1)(*e*);
- any person (other than a resident) who is an owner or charterer of a ship or aircraft and whose taxable income from embarking passengers or loading livestock, mails or goods in South Africa is calculated under section 33 as 10% of the amount paid to the owner or charterer or to such person's agent for the loading or embarking of the passengers, livestock, mails or goods;
- any natural person who does not derive income from the carrying on of a business if the taxable income of that person for the relevant year of assessment –
  - does not exceed the tax threshold; or
  - which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property and remuneration from an employer that is not registered for PAYE, does not exceed R30 000;
- a small business funding entity (section 30C); and
- a deceased estate.

The above exclusions apply to provisional tax only. Natural persons will still be liable for normal tax if their taxable income for the relevant year of assessment exceeds the income tax threshold for that year.[22]

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

Provisional tax is split into two payments, the first of which is made within six months from the beginning of the year of assessment and the second payment on or before the last day of the year of assessment. These payments alleviate the burden of one large amount being payable on assessment as it spreads the income tax burden over the year of assessment.

[22] For more information see the *External Guide: Guide for Provisional Tax 2020 – Revision 20*.

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

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

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

2.4.7 Allowable deductions

(a) General deduction formula

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

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

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

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

More specific expenditure or allowances have specific provisions with which they must comply in order to be deductible for income tax purposes.[23]

(b) Home office expenses

Subject to certain requirements and limitations, home office expenses (expenses which relate to that part of a house used regularly and exclusively for the purposes of trade) will be allowed as a deduction in determining taxable income.[24]

[23] For more information see Interpretation Note 13 "Deductions: Limitation of Deductions for Employees and Office Holders".

[24] For more information see Interpretation Note 28 "Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office".

(c) Other deductions

Pension, provident and retirement annuity fund contributions [section 11F]

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

- R350 000;
- 27,5% of the higher of the person's –
  - remuneration (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  - taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction for pension, provident and retirement annuity fund contributions[25] as well as certain foreign tax credits[26] and *bona fide* donations to approved organisations;[27] or
- the taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) before adding any taxable capital gain and before allowing the deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations.

When the employer contributes an amount for the benefit of the person to a retirement fund, that amount is a taxable benefit in the person's hands.[28] The cash equivalent of the value of taxable benefit is the actual contributions made by the employer, in the case of a defined contribution fund, or the amount paid on behalf of the employee in the case of a retirement annuity fund, or as determined by way of a formula, in the case of any other type of fund.[29]

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

Any amount that does not qualify for a deduction under section 11F(1), or which has not been taken into consideration in the determination of the taxable portion of a lump sum benefit or as an exemption against an annuity under section 10C, will be carried forward to the following year of assessment and will be deemed to be a contribution made by that person in that following year.

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25 Under section 11F.
26 Under section 6*quat* (1C).
27 Under section 18A.
28 Paragraph 2(*h*) or (*l*) of the Seventh Schedule.
29 Paragraph 12D of the Seventh Schedule.

Donations to certain organisations (section 18A)

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

- for a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property that qualifies as a Real Estate Investment Trust (REIT), an amount determined in accordance with the following formula:

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

  in which formula:

  A = the amount to be determined;

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

- in any other case, 10% of the taxpayer's taxable income. For purposes of this calculation, taxable income –

  - excludes any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit; and
  - is determined before allowing any deduction for donations[30] or certain foreign tax credits.[31]

- Any donation made on or after 1 March 2014 in excess of the allowable deduction will be carried forward and allowed as a deduction in a subsequent year of assessment, subject to the 10% limitation.[32]

- A section 18A receipt must be issued by a section 18A-approved organisation in respect of the year of assessment in which the donation is received. The taxpayer claims the deduction of donations made directly to a section 18A-approved organisation which issued a section 18A receipt, in the income tax return. Taxpayers receiving section 18A receipts issued by an organisation not formally approved by the Commissioner for purposes of section 18A will not be entitled to a deduction in determining taxable income for any donations made to that organisation.

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

Wear-and-tear allowances may be claimed on machinery, plant, implements, utensils and articles which are used for purposes of trade. For example, if it is essential for a taxpayer to maintain a library, a wear-and-tear allowance of 33% of the cost to the taxpayer which is calculated on a straight-line basis is allowable. Wear-and-tear may also be claimed as a deduction on assets such as computers, furniture and fittings and motor vehicles which are used for purposes of trade.

30 Under section 18A.
31 Under section 6*quat* (1C).
32 For more information see the *Basic Guide to Section 18A Approval*.

The cost of "small items" such as loose tools may be written off in full in the year of assessment in which they are acquired and brought into use. A "small item" in this context is one which normally functions in its own right, does not form part of a set and is acquired at a cost of less than R7 000 per item.[33]

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

Should a person be required to refund any amount, including any voluntary award, which was previously included in taxable income for services rendered or to be rendered or by virtue of any employment or the holding of any office, the amount refunded can be claimed as a deduction in the year of assessment in which the amount is repaid.[34]

Similarly, any restraint of trade payment that was included in the gross income of any person in respect of the employment or holding of an office (whether current, past or future), a labour broker or personal service provider,[35] or a personal service company or trust,[36] as is refunded by that person, can be claimed as a deduction in the year of assessment in which the amount is repaid.

2.4.8 Prohibited deductions

Prohibited deductions are listed in section 23 and include the deductions discussed below:

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

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

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

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

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

- the payment, agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act 12 of 2004; or
- the payment is a fine charged or penalty imposed as a result of carrying out an unlawful activity in South Africa or in another country where the activity would be unlawful had it been carried out in South Africa.[37]

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33 For more information see Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

34 For more information see Interpretation Note 88 "Tax Deduction for Amounts Refunded".

35 As respectively defined in paragraph 1 of the Fourth Schedule.

36 As respectively defined in paragraph 1 of the Fourth Schedule prior to their repeal by section 66 of the Revenue Laws Amendment Act 60 of 2008.

37 For more information see Interpretation Note 54 "Deductions – Corrupt Activities, Fines and Penalties".

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

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

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

Other prohibited deductions include –

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

2.4.9 Pensions

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

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

- War veteran's pensions [section 10(1)(*g*)].
- Compensation relating to diseases contracted by persons employed in mining operations [section 10(1)(*g*)].
- Disability pensions paid under section 2 of the Social Assistance Act 59 of 1992 [section 10(1)(*g*A)].
- Compensation paid under the Workmen's Compensation Act 30 of 1941 or the Compensation for Occupational Injuries and Diseases Act 130 of 1993 [section 10(1)(*g*B)(i)].
- Pension paid on death or disablement caused by any occupational injury or disease sustained or contracted by an employee before 1 March 1994 in the course of employment, if that employee would have qualified for compensation under the Compensation for Occupational Injuries and Diseases Act 30 of 1993, had that injury or disease been sustained or contracted on or after 1 March 1994 [section 10(1)(*g*B)(ii)].
- Compensation paid by an employer in addition to the compensation mentioned in section 10(1)(*g*B)(i) on the death of an employee, which arose out of and in the course of employment, to the extent that the additional compensation may not exceed R300 000 [section 10(1)(*g*B)(iii)].
- Compensation paid under section 17 of the Road Accident Fund Act 56 of 1996 [section 10(1)(*g*B)(iv)].
- Any amount received by or accrued to any resident under the social security system of any other country [section 10(1)(*g*C)(i)].
- Any lump sum, pension or annuity received by or accrued to any resident from a source outside South Africa as consideration for past employment outside South Africa or any amount transferred to a South African retirement fund or insurer from a source outside South Africa as consideration for past employment outside South Africa [section 10(1)(*g*C)(ii)].[38]

[38] For more information see Interpretation Note 104 "Exemption – Foreign Pensions and Transfers".

(b) Pensions that are taxable

The following pensions are taxable in South Africa, unless one of the exemptions above applies:

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

2.4.10 Annuities

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

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

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

The term "trade" is widely defined in section 1(1). Whether a specific activity amounts to the carrying on of a trade, is a question of law that depends on the facts and circumstances of the specific case. In considering whether or not an activity constitutes a trade, the intention of the person to carry on a trade profitably is of decisive importance, this being a subjective test.

While objective factors are not relevant to determine whether a trade is being carried on, they remain relevant in the objective testing of the taxpayer's stated intention. The intention of the person will therefore be weighed against the probabilities and inferences which can be drawn from the facts of a matter.

Ring-fencing under section 20A is a measure under which the expenditure incurred in conducting a trade is limited to the income of that trade. Any excess expenditure (assessed loss from a trade) is carried forward and set off only against any income derived from that trade in a subsequent year of assessment.

Section 20A does not replace the purpose or the function of section 11(*a*) read with section 23(*g*). An assessed loss could, notwithstanding section 20A, be disallowed in its entirety under section 11(*a*) read with section 23(*g*) if the activities undertaken by a taxpayer do not constitute the *bona fide* carrying on of a trade. Section 20A comes into operation when an allowable assessed loss from a trade already exists. It is therefore applied after the application of sections 11(*a*) and 23(*g*) and provides a structure for determining whether a trade loss should be set off against other income, thereby reducing taxable income. Apart from specific circumstances a "ring-fenced" loss is not "lost" or "disallowed", but merely carried forward to the next year of assessment and is available for set-off against any income derived from that specific trade in that year. A loss that is not utilised in that following year, is once again carried forward to a subsequent year of assessment, to be used against income generated from trade in that subsequent year.

The ring-fencing provisions apply only to an assessed loss from a trade carried on by a taxpayer who is a natural person and who meets specified criteria. Natural persons trading in a partnership may be subject to section 20A.

2.4.12 Rental income

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

2.4.13 Investment income

(a) Dividends and foreign dividends

Dividends received by or accrued to a person, whether the person is a resident or a non-resident, from South African resident companies are generally exempt from normal tax under section 10(1)(*k*)(i). A dividend which is subject to normal tax because of its inclusion in income is exempt from dividends tax under section 64F(1)(*l*). A dividend paid by a resident company is subject to dividends tax under section 64E(1). A dividend may be exempt from dividends tax under sections 64F or 64FA(1).[39]

Foreign dividends may be exempt from normal tax under section 10B(2) or partially exempt under section 10B(3). A cash foreign dividend paid by a foreign company in respect of a listed share is subject to dividends tax under section 64E(1). The foreign dividend may be exempt from dividends tax under section 64F.[40]

A resident may claim a rebate for foreign tax paid on foreign dividends against South African normal tax, if the dividend is subject to normal tax, or dividends tax if the dividend is subject to dividends tax.

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

The Act makes provision for the exemption of interest received by or accrued to any non-resident from a source within South Africa [section 10(1)(*h*)]. The full amount of the interest is exempt from normal tax. This exemption is not applicable if –

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

[39] For more information see the *Comprehensive Guide to Dividends Tax*.

[40] For more information see Interpretation Note 93 "The Taxation of Foreign Dividends" and the *Comprehensive Guide to Dividends Tax.*

For the 2020 year of assessment interest from a source in South Africa up to R23 800, (if the person is below the age of 65 years) or up to R34 500, (if the person is 65 years of age or older) is exempt from normal tax [section 10(1)(*i*)]. This exemption is not applicable to interest from a source outside South Africa.

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

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

Under section 12T(4), contributions to a tax-free investment are limited to –

- an amount of R33 000[41] during a year of assessment; and
- a lifetime contribution limitation of R500 000.

2.4.14 Restraint of trade [the definition of "gross income" – paragraph (*c*A)]

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

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

- employment or the holding of any office; or
- any past or future employment or the holding of an office,

constitutes gross income for that natural person and is subject to normal tax.

2.4.15 Business income

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

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

41 This amount increased to R36 000 with effect from years of assessment commencing on or after 1 March 2020.

2.5 Companies and businesses

2.5.1 Tax consequences of doing business in a company

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

Companies (other than SBCs, micro businesses, companies mining for gold and long-term insurance companies) pay tax on their taxable income at a flat rate of 28%. For the tax rates applicable to the companies that are not paying tax at the flat rate of 28% see **2.15.6** and **2.15.6**.

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

2.5.2 Provisional tax

A "company" as defined in section 1(1) is a provisional taxpayer (see **2.4.6**), unless it is specifically excluded from the definition of "provisional taxpayer" in paragraph 1 of the Fourth Schedule.

2.5.3 Controlled foreign companies (section 9D)

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

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

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

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

2.5.4 Small business corporations (section 12E)

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

- The holders of shares in the company or members of the close corporation or co-operative must at all times during the year of assessment be natural persons.
- No holder of shares or member should hold any shares or have any interest in the equity of any other company, other than companies as specified in the definition of "small business corporation" in section 12E(4).
- The gross income of the entity for the year of assessment may not exceed R20 million.

- Not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all capital gains of the entity may consist collectively of "investment income" as defined in section 12E(4) and income from rendering a "personal service" as defined in section 12E(4).
- The entity may not be a "personal service provider" as defined in the Fourth Schedule.

The first concession is that the entity will be taxed at a progressive rate [see **2.15.5 (b)**].

The second concession is the immediate write-off of all plant or machinery brought into use for the first time by the entity for purpose of its trade (other than mining or farming) and used by the entity directly in a process of manufacture or similar process in the year of assessment (see **2.6.11)**. Furthermore, the entity can elect to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either –

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

An entity which is engaged in the provision of personal services will qualify for the relief provided it employs three or more full-time employees (as specified in section 12E) throughout the year of assessment and the service is not performed by a person who holds an interest in that entity.[42]

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

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

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

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

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

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

See **2.15.6(c)** for the progressive tax rate applicable to micro businesses.[43]

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42 For more information see Interpretation Note 9 "Small Business Corporations". See also the *Tax Guide for Small Businesses 2019/2020.*

43 For more information see the *Tax Guide for Micro Businesses* 2016/17.

2.5.6 Insurance companies

(a) Short-term insurance (section 28)

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

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

Insurers hold and administer certain assets on behalf of various categories of policyholders, while the balance of the assets represents the shareholders' interests.

These companies are liable for income tax according to a five-fund approach. The application of this approach requires that long-term insurers allocate their assets to the five separate funds, namely, untaxed policyholder fund, individual policyholder fund, company policyholder fund, corporate fund and the risk policy fund. The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund, its corporate fund and its risk policy fund must be determined separately in accordance with the provisions of the Act as if each fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund, corporate fund and its risk policy fund shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of certain provisions of the Act.

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

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

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

The taxable income of a company derived from mining for gold is taxed in accordance with a special formula (see **2.15.5**). 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)to (v) shall be deemed to be expenditure for the purpose of section 36.

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

- holds a right of use or occupation of the land or building;
- effects improvements on the land or to the building under a public private partnership or a long-term lease on land belonging to the government of South Africa or an exempt entity listed under section 10(1)(*c*A) or (*t*);
- incurs expenditure to effect the improvements referred to in bullet two; and
- uses or occupies the land or building for the production of income or derives income from the land or building.

2.5.8 Oil and gas companies (the Tenth Schedule)

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

See **21** for information on mineral and petroleum resources royalties.

2.5.9 Public benefit organisations

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

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

- has applied for and been granted approval as a PBO by the Tax Exemption Unit of SARS; and
- continues to comply with the relevant requirements and conditions as set out in the Act.[44]

2.5.10 Headquarter companies

A headquarter company is subject to tax in the same way as any other resident company. However, it is entitled to certain relief from income tax, CGT and dividends tax which is not available to resident companies that are not headquarter companies. As a consequence of the special relief granted to headquarter companies, they are also subject to special anti-avoidance rules.

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44 For more information see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*, the *Basic Guide on Income Tax for Public Benefit Organisations* and the *Basic Guide to Section 18A Approval*.

Under section 9I(2), a resident company must meet three requirements in order to be eligible to elect to be a headquarter company for any year of assessment, namely, –

- the "10% shareholding and voting rights" requirement;
- the "80% or more of the cost of total assets in, to or by a qualifying foreign company" requirement; and
- the "50% or more of gross income" requirement.[45]

2.5.11 Real estate investment trusts

Real estate investment trusts (REITs) were introduced in South Africa with effect from 1 April 2013. South African REITs own several kinds of commercial property such as shopping centres, office buildings, factories, warehouses, hotels, hospitals and, to a lesser extent, residential property, in South Africa. Some REITs also invest in property in other countries.

The objective of a REIT is to provide investors with steady rental income and capital growth in the underlying properties. A REIT may be a company as commonly understood or may be deemed to be a company for taxation purposes. A portfolio of a collective investment scheme in property that qualifies as a REIT is deemed to be a "company".

A REIT, and a "controlled company" as defined, is subject to a specific tax regime under section 25BB. In essence, a REIT and a controlled company are treated as conduits for the income they derive, with the REIT or controlled company being granted a deduction, subject to various limitations, for distributions made by it. A resident investor is subject to normal tax on distributions derived from a REIT or controlled company. By contrast, a non-resident investor is liable for dividends tax (as opposed to normal tax) on such distributions.

A REIT and a controlled company must also consider dividends tax, transfer duty, securities transfer tax and VAT.[46]

2.6 Special allowances or deductions and recoupment

Improvements not owned by a taxpayer (section 12N)

The cost to a taxpayer of an asset referred to in **2.6.1**, **2.6.2**, **2.6.3**, **2.6.6**, **2.6.7**, **2.6.8**, **2.6.14**, **2.6.19** and **2.6.24**, on which an allowance may be claimed, can include expenditure to effect obligatory improvements on property owned by public private partnerships, the three spheres of government (national, provincial or local sphere) or certain exempt entities.

Recoupment of allowances and deductions

The full amount of any recoupment of an allowance will be included in the taxpayer's income under section 8(4)(*a*). With regard to a replacement asset (asset acquired to replace a damaged or destroyed asset), section 8(4)(*e*) will be applicable if the taxpayer opts for paragraph 65 or 66 of the Eighth Schedule to apply to the disposal of the damaged or destroyed asset. The amount to be included in income in a year of assessment is limited to an amount apportioned to the replacement asset but in the same ratio as the deduction of the allowance is allowed for the replacement asset, which has the effect that the cost of the replacement asset is not reduced. Section 8(4)(*e*A) to (*e*E) stipulates as follows:

- If a taxpayer acquires more than one replacement asset the taxpayer must, in applying paragraphs (*e*B), (*e*C) and (*e*D), apportion the recoupment to each replacement asset

[45] For more information see Interpretation Note 87 "Headquarter Companies".

[46] For more information see Interpretation Note 97 "Taxation of REITs and Controlled Companies".

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

- The amount of the recoupment will be included in the taxpayer's income over the period that the replacement asset is written off for tax purposes in the same proportion as the allowance granted on the replacement asset [section 8(4)(*e*B)].
- In the year of assessment in which the taxpayer disposes of a replacement asset, any portion of the recoupment that is apportioned to the replacement asset and which has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(*e*C)].
- In the year of assessment in which the taxpayer ceases to use a replacement asset for the purposes of that person's trade, any portion of the recoupment that is apportioned to the replacement asset and which has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(*e*D)].
- In the year of assessment in which the taxpayer fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraph 65 or 66 of the Eighth Schedule, section 8(4)(*e*) will not apply and the amount recovered or recouped as a result of the disposal of the asset will be deemed to be recouped under section 8(4)(*a*) on the date on which the relevant period ends [section 8(4)(*e*E)].

Expenditure incurred in respect of moving costs

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

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

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

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

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

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

- the actual cost of the building (or improvements) to the taxpayer; or
- the actual cost of the building (or improvements) to the taxpayer less any amount of an allowance recouped from a previous building (or improvements), if any.

The recoupment of the allowance can at the option of the taxpayer, either be –

- set off against the cost of a further building under section 13(3), provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(*a*).[47]

2.6.2 Commercial buildings (section 13*quin*)

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

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

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

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

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

will be deemed to be the cost incurred for that part or improvement.[48]

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

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

Buildings and improvements

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

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

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

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

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

- the actual cost of the building (or improvements) to the taxpayer; or
- the actual cost of the building (or improvements) to the taxpayer less any amount of an allowance recouped from a previous building (or improvements), if any.

47 For more information see the *Guide to Building Allowances*.
48 For more information see the *Guide to Building Allowances*.

The recoupment of the allowance can at the option of the taxpayer either be –

- set off against the cost of a further building under section 13*bis*(6)(*a*) provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(*a*).[49]

2.6.4 Aircraft and ships (section 12C)

An allowance equal to 20% (five-year straight-line basis) of the cost to a taxpayer to acquire an aircraft or ship (the asset) will be granted from the year of assessment during which the asset is brought into use.

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

The depreciable cost of the asset is the lesser of –

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

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

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

The depreciable cost of the rolling stock is the lesser of –

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

The rolling stock must be owned by the taxpayer or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act and must be used directly by the taxpayer wholly or mainly for the transportation of persons, goods or things.

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

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

Pipelines used for transportation of natural oil

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

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

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[49] For more information see the *Guide to Building Allowances* and Interpretation Note 105 "Deductions in respect of Buildings Used by Hotelkeepers".

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.

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

Lines or cables used for transmission of electricity

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

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

Lines or cables used for transmission of electronic communications

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

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

The allowance increased to 10% (10-year straight-line basis) for lines and cables (new or used) owned by the taxpayer and brought into use for the first time by the taxpayer. The increased allowance applies only to lines and cables acquired on or after 1 April 2019 and is applicable in respect of assets acquired on or after this date.

Railway lines used for transportation of persons, goods or things

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.

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

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

The depreciable cost of these assets is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

2.6.7 Airport assets (section 12F)

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

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

The depreciable cost of an asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

2.6.8 Port assets (section 12F)

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.

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

The depreciable cost of an asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

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

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

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

The depreciable cost of the asset is the direct cost under a cash transaction concluded at arm's length including the direct cost of the installation or erection of the asset. The value of the asset will be increased by the amount of any expenditure incurred by a taxpayer during any year in moving the asset from one location to another.

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

Small items costing less than R7 000 may be written off in full in the year of assessment of acquisition.[50]

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

[50] For more information see Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

2.6.10 Manufacturing assets (section 12C)

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

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

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

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

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

- 40% of the cost to the taxpayer in the year of assessment during which the asset was or is so brought into use; and
- 20% of the cost to the taxpayer in each of the three subsequent years of assessment.

The depreciable cost of the asset is the lesser of –

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

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

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

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

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

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

An allowance will be granted which is equal to –

- an amount as calculated in **2.6.10** [section 12E(1A)(*a*) read with section 11(*e*)]; or
- an accelerated allowance for the assets, acquired by an SBC on or after 1 April 2005 [section 12E(1A)(*b*)], at –
  - 50% of the cost of the asset in the year of assessment during which it is first brought into use;
  - 30% in the first succeeding year of assessment; and
  - 20% in the second succeeding year of assessment.

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

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

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance –

- granted under section 11(*e*) will be included in the taxpayer's income under section 8(4)(*a*), and
- granted under section 12E(1A)(*b*) will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

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

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

An allowance will be granted on these assets owned or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act, and brought into use for the first time by the taxpayer –

- in the carrying on of farming operations except on –
  - livestock;
  - any motor vehicle of which the sole primary function is the conveyance of persons;
  - any caravan;

- any aircraft (other than an aircraft used solely or mainly for crop spraying); or
- any office furniture or equipment;

- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for the purpose of the taxpayer's trade to generate electricity from –
  - wind power:
    - photovoltaic solar energy of more than 1 megawatt;
    - photovoltaic solar energy not exceeding 1 megawatt; or
    - concentrated solar energy;
  - hydropower to produce electricity of not more than 30 megawatts; and
  - biomass comprising organic wastes, landfill gas or plant material.

An allowance under section 12Bwill be granted for –

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

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

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

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

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

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

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

- acquiring any such patent, design, trade mark or copyright or any other property of a similar nature or knowledge essential to use such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted.

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

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

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

An allowance in respect of expenditure exceeding R5 000 and incurred on or after 29 October 1999 will not exceed an amount equal to –

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

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

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

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

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

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

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

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

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

The allowance will be granted in the year of assessment in which the abovementioned property is brought into use for the first time by the taxpayer for purposes of the taxpayer's trade if used in the production of income.

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

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

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

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

A deduction, equal to 150% of the expenditure incurred directly and solely on R&D undertaken in South Africa, will be allowed in the year of assessment in which the expenditure is incurred in the production of income and in the carrying on of any trade. This deduction may not be allowed for expenditure incurred in respect of –

- immovable property, machinery, plant, implements, utensils or articles excluding any prototype or pilot plant created solely for the purpose of the process of R&D and that prototype or pilot plant is not intended to be utilised or is not utilised for production purposes after that R&D is completed; and
- financing, administration, compliance and similar costs.

The R&D must be approved under section 11D(9) and the expenditure must be incurred on or after the date of receipt of the application by the Department of Science and Innovation for approval of that R&D.

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

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

A deduction, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of any new and unused building or part of the building, and brought into use for the purpose of carrying on a process of R&D in the course of that taxpayer's trade in that building, will be allowed (section 13).[51]

A deduction, equal to a threeyear write-off at a rate of 50:30:20 will be allowed for any new and unused machinery, plant, implement, utensils or article (assets) or improvements made to the assets brought into use for purposes of R&D (section 12C).

Any foundation or supporting structure to which the asset, acquired under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012, is mounted or affixed, forms part of the asset and qualifies for the allowance.

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **2.6**).

2.6.15 Urban development zones (section *13quat*)

Taxpayers investing in one of the 16 demarcated urban development areas may claim special depreciation allowances for construction or refurbishment of commercial and residential buildings[52] located in these areas which are used solely for trade purposes.[53] The allowance also relates to low-cost residential buildings which are within an urban development zone.

These areas are located within the boundaries of the municipalities of Buffalo City, City of Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane.[54]

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51 For more information see the *Guide to Building Allowances*.

52 See paragraph 11.6 for the VAT treatment of expenses related to residential buildings.

53 The urban development zone incentive has a sunset clause of 31 March 2020. Taxpayers who have already started claiming the incentive prior to the sunset clause will be entitled to continue to do so even after 31 March 2020 provided that all requirements are still complied with.

54 For more information see the *Guide to the Urban Development Zone (UDZ) Tax Incentive*.

2.6.16 Additional deduction for learnership agreements (section 12H)

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

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

- registered in accordance with the Skills Development Act 97 of 1998; and
- entered into between a learner and an employer before 1 April 2022.

The deduction for learnership agreements entered into on or after 1 October 2016 is allowed as follows:

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

6) During any year of assessment that a learner who holds a qualification with an NQF level from 7 up to and including 10 is a party to a registered learnership agreement with an employer for less than 24 months, the agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R20 000 in addition to any allowable deduction.
7) During any year of assessment that a learner who holds a qualification with an NQF level from 1 up to and including 6 is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, which agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R40 000 multiplied by the number of consecutive 12-month periods within the duration of the agreement.
8) During any year of assessment that a learner who holds a qualification with an NQF level from 7 up to and including 10 is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, which agreement was entered into pursuant to a trade carried on by the employer and the learner successfully completes the learnership during that year of assessment.	R20 000 multiplied by the number of consecutive 12-month periods within the duration of the agreement.
9) If the learner who holds a qualification with an NQF level from 1 up to and including 6 is a person with a disability at the time of entering into the learnership agreement.	R60 000 (R40 000 is increased by R20 000).
10) If the learner who holds a qualification with an NQF level from 7 up to and including 10 is a person with a disability at the time of entering into the learnership agreement.	R50 000 (R20 000 is increased by R30 000).

For more information see Interpretation Note 20 "Additional Deduction for Learnership Agreements".

2.6.17 Film owners (section 12O)

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

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

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

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

Section 12O(6) provides that any grant received by or accrued to a special purpose corporate vehicle from the state under the Department of Trade and Industry incentive will be exempt from normal tax but subject to recoupment under section 8(4). In certain cases, if the grant is passed on to an investor, the investor will also qualify for the exemption. A taxpayer who receives or to whom an exempt Department of Trade and Industry incentive accrues must consider the provisions of section 12P(3) to (6), as there are consequences on the cost, deductions and allowances available to a taxpayer in respect of related expenditure.[55]

2.6.18 Environmental expenditure (sections 37A and 37B)

Post-trade environmental expenses (section 37A)

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

Section 37A permits a deduction from the income of certain persons carrying on any trade, of any cash paid during any year of assessment to a company or trust whose sole object is the application of its property solely for rehabilitation. If a rehabilitation company or trust holds a financial instrument or investment other that those allowable under section 37A(2), a penalty is imposed under section 37A(6). Similarly, if a distribution is made for any other purpose than rehabilitation, a penalty is imposed under section 37A(7).

Under section 10(1)(*c*P) the receipts and accruals of a company contemplated in section 37A are exempt from normal tax.

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

Section 37B(2)

An environmental treatment and recycling asset means –

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

An allowance will be granted, equal to –

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

An environmental waste disposal asset means –

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

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

The depreciable cost of the abovementioned assets is the lesser of –

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

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

2.6.19 Certain residential units (section 13*sex*)

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

- the unit or improvement is used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;
- the unit is situated within South Africa; and

- the taxpayer owns at least five residential units within South Africa, which are used by the taxpayer for the purposes of a trade carried on by the taxpayer.

An additional allowance of 5% of the cost of a low-cost residential unit[56] of a taxpayer will be granted if the allowance of 5% referred to above is deducted.

In the event that the taxpayer acquires a residential unit (or improvement to a residential unit) representing only a part of a building, without erecting or constructing the unit or improvement, the percentages below will be deemed to be percentages of the costs incurred by the taxpayer:

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

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

The depreciable cost of the residential unit is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.[57]

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

2.6.20 Residential buildings (section 13*ter*)

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

The deductions are allowed as follows:

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

If the unit is used or dealt with by the taxpayer in such a way that the unit ceases to be available for letting to a tenant or occupied by a full time employee, these two allowances are subject to recoupment under section 13*ter*(7). Should the unit be disposed of, section 8(4)(*a*) will apply to the balances of these two allowances not yet recouped.[58]

56 The term "low-cost residential unit" is defined in section 1(1).
57 For more information see the *Guide to Building Allowances*.
58 For more information see the *Guide to Building Allowances*.

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

Should a taxpayer dispose of a low-cost residential unit[59] to an employee on or after 21 October 2008, a deduction, equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's year of assessment, will be allowed. This will apply provided that no deduction will be allowed in the eleventh and subsequent years of assessment after the disposal of the unit.

No deduction will be allowed, if –

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

All repayments of the amount owing on the loan trigger a potential deemed recoupment [section 13*sept*(4)]. The amount deemed to be recouped by the employer will be equal to the lesser of –

- the amount so paid; or
- the amount allowed as a deduction under section 13*sept*(1) in the current or previous years of assessment.[60]

2.6.22 Environmental conservation and maintenance expenditure (section 37C)

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

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

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

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

60 For more information see the *Guide to Building Allowances*.

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

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

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

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

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

Additional investment allowance

In addition to any other deductions allowable under the Act, a company may deduct under section 12I(2) an amount equal to –

> “(*a*) (i) 55% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
>
> (ii) 100% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within an industrial development zone; or
>
> (*b*) (i) 35% of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or
>
> (ii) 75% of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within an industrial development zone,”

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

The deduction referred to in section 12I(2)(*a*)(ii) and (*b*)(ii) above is only applicable to projects approved on or after 1 January 2012.

The additional investment allowance may not exceed –

- R900 million for a greenfield project with preferred status, or R550 million for any other greenfield project from the date of approval; or
- R550 million for a brownfield project with preferred status, or R350 million for any other brownfield project from the date of approval.

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

Additional training allowance

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

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

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

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

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

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

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

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

A claim for a deduction must be supported by a certificate issued by the approved VCC.[61]

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

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

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

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

61 For more information see the *External Guide: Venture Capital Companies*. Also see the *Guide on Venture Capital Companies* for an in-depth explanation of section 12J.

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

A non-resident owner or charterer of a ship or aircraft that embarks passengers, or loads livestock, mails or goods in South Africa will be deemed to have derived taxable income equal to 10% of the amount payable to the owner or charterer, or to an agent on such person's behalf, irrespective of whether the amount is payable in or outside South Africa. This tax treatment will not apply if the owner or charterer renders accounts which satisfactorily disclose the actual taxable income derived from the business.

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

2.8 Farming (the First Schedule)

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

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

No standard values have been prescribed by regulation for game livestock, but the Commissioner accepts that game livestock may be allocated a standard value of nil. Game livestock which is acquired by donation or inheritance is included in opening stock in the year of acquisition at market value.[62]

Game farmers must prove that the game is purchased, bred and sold on a regular basis with the 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.

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 and pumping plants;
- fences;
- the erection of or extension, addition or improvement (other than repairs) to buildings used in connection with farming operations, other than those used for domestic purposes;[63]

62 For more information see Interpretation Note 69 "Game Farming".

63 For more information see the *Guide to Building Allowances*.

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

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

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

Special measures in determining taxable income of farmers

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

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

If an election was made under paragraph 19(5) of the First Schedule, a taxpayer may not apply the following paragraphs:

- Paragraph 13(1)(*b*) – Provisions relating to the replacement of livestock sold as a result of the person's participation in a livestock reduction scheme organised by government.
- Paragraph 15(3) – Rating formula on taxable income derived from plantations.
- Paragraph 17 – Rating formula arising as a result of abnormal receipts from the disposal of sugar cane damaged by fire.
- Paragraph 20 – Relief relating to income for any year of assessment including income derived from excess profits as a result of farming land acquired by the state or certain juristic persons.

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

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

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

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

For any pre-trade expenditure and losses to qualify as a deduction under section 11A(1), a pre-trade expense must pass a "post-trade" test under one of the following sections:

- Section 11 (general deduction), excluding section 11(*x*)
- Section 11D (deduction for R&D)
- Section 24J (incurral and accrual of interest)

For more information see Interpretation Note 51 "Pre-Trade Expenditure and Losses".

2.10 Trading stock (section 22)

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

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

The cost price of trading stock is normally the cost incurred by the taxpayer, whether in the current or any previous year of assessment in acquiring that trading stock plus any further costs. If trading stock is acquired for no consideration or for a consideration which is not measurable in money, the taxpayer is deemed to have acquired the trading stock at a cost equal to the market value of the trading stock on the date on which it was acquired.[64]

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

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[64] For more information see Interpretation Note 65 "Trading Stock – Inclusion in Income when Applied, Distributed or Disposed of Otherwise than in the Ordinary Course of Trade".

2.11 Exemption of certified emission reductions (section 12K)

Section 12K provides that any amount received by or accrued to or in favour of any person on the disposal of any certified emission reductions derived by the person in the furtherance of a qualifying clean development mechanism project carried on by the person will be exempt from normal tax.

2.12 Transfer pricing and thin capitalisation (section 31)

South Africa's transfer pricing and thin capitalisation rules apply arm's length principles to transactions, operations, schemes, agreements or understandings constituting affected transactions entered into between certain connected persons resulting in any tax benefit being derived by a person that is a party to the transaction.

From a compliance perspective, the burden of proof is on the taxpayer to show that the transaction, operation, scheme, agreement or understanding complied with the arm's length principle.

2.13 Capital gains tax (the Eighth Schedule)

2.13.1 Introduction

CGT was introduced in South Africa with effect from 1 October 2001 and applies to the disposal by a person of an asset on or after that date. Capital gains and capital losses made on the disposal of assets are subject to CGT unless disregarded by specific provisions.

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

Since CGT forms part of the income tax system the capital gains and capital losses must be declared in a person's income tax return.

2.13.2 Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. A natural person who is a resident and had capital gains or capital losses exceeding R40 000 during the 2020 year of assessment, or who is a non-resident and had capital gains or capital losses from the disposal of an asset to which the Eighth Schedule applies must ensure that they are registered as a taxpayer and submit an income tax return for the 2020 year of assessment.[65]

2.13.3 Rates

Natural persons, deceased estates, insolvent estates or special trusts

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

Companies and trusts (other than special trusts)

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

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[65] See Government Notice 342 in *Government Gazette* 42545 of 28 June 2019.

Effective rate of tax

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

- **Natural persons or special trusts**

  The minimum marginal rate of income tax (normal tax) for natural person or special trusts is 18% and the maximum marginal rate is 45%. The effective CGT rate for natural persons and special trusts is from 0% to 18%, depending on the marginal rate of normal tax applicable to the person.

  For purposes of the Eighth Schedule the disposal of an asset by a deceased estate or insolvent estate of a natural person is treated in the same manner as if the asset had been disposed of by that person (see paragraphs 40(3) and 83(1) of the Eighth Schedule.) Under section 25(5) a deceased estate must, other than for purposes of sections 6, 6A and 6B, be treated as if it were a natural person.

- **Trusts, other than special trusts**

  The rate of income tax for trusts is 45% and the effective rate 36%.

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

2.13.4 Capital gains and capital losses

A capital gain arises when the proceeds from the disposal of an asset exceed the base cost and a capital loss arises when the base cost exceeds the proceeds.[66]

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

2.13.5 Disposal

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

2.13.6 Exclusions

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

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

[66] For more information see the *Comprehensive Guide to Capital Gains Tax*, the *ABC of Capital Gains Tax for Individuals*, the *ABC of Capital Gains Tax for Companies* and the *Guide on Valuation of Assets for Capital Gains Tax Purposes*.

- Retirement benefits.
- An amount received for a long-term insurance policy by the original beneficial owner.
- A natural person and a special trust qualify for an annual exclusion of R40 000 of the sum of capital gains and capital losses in a year of assessment.
- When a person dies during a year of assessment the annual exclusion for that year is R300 000.

2.13.7 Base cost (paragraph 20 of the Eighth Schedule)

The base cost of an asset is the amount the taxpayer incurred for acquisition of the asset plus other expenditure incurred directly related to buying, selling or improving it. The base cost does not include any amount otherwise allowed as a deduction for income tax purposes. Some of the expenditure which may form part of the base cost of an asset are the following:

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

2.13.8 Small businesses (paragraph 57 of the Eighth Schedule)

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

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

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

- 7,5% of the amount payable, if the seller is a natural person;
- 10% of the amount payable, if the seller is a company; or
- 15% of the amount payable, if the seller is a trust.

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

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

No amount must be withheld –

- if the total amount payable for the immovable property does not exceed R2 million; or
- from any deposit paid by a purchaser for the purpose of securing the acquisition of the immovable property until the agreement for the disposal has been entered into, in which case the amount is to be withheld from the first following payments made by the purchaser for that disposal.[67]

2.15 Tax rates

2.15.1 Rate of tax to be levied on taxable income (excluding any retirement lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust

Year of assessment ending during the 12 months ending on 29 February 2020

Taxable income	Rate of tax
Not exceeding R195 850	18% of taxable income
Exceeding R195 850 but not exceeding R305 850	R35 253 plus 26% of the amount by which taxable income exceeds R195 850
Exceeding R305 850 but not exceeding R423 300	R63 853 plus 31% of the amount by which taxable income exceeds R305 850
Exceeding R423 300 but not exceeding R555 600	R100 263 plus 36% of the amount by which taxable income exceeds R423 300
Exceeding R555 600 but not exceeding R708 310	R147 891 plus 39% of the amount by which taxable income exceeds R555 600
Exceeding R708 310 but not exceeding R1 500 000	R207 448 plus 41% of the amount by which taxable income exceeds R708 310
Exceeding R1 500 000	R532 041 plus 45% of the amount by which taxable income exceeds R1 500 000

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

Income tax thresholds for the year of assessment commencing on 1 March 2019 and ending on 29 February 2020

Income tax thresholds (natural persons only)	Amount
Below the age of 65 years	R79 000
Age 65 years and over	R122 300
Age 75 years and over	R136 750

Lump sum benefits and severance benefits

There are three types of lump sums:

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

A **retirement fund lump sum benefit** refers to an amount received by way of a lump sum from a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund upon either –

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

less any deduction permitted under paragraph 5 or 6 of the Second Schedule.

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

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

- other than an amount received by or accrued to that person by way of a lump sum benefit, an amount assigned under a divorce order referred to above or an amount transferred for the benefit of that person referred to above, received by or accrued to that person by way of a lump sum benefit from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,

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

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

The first R25 000 and R500 000, as indicated in the tables in **2.15.2** and **2.15.3**, will not be subject to tax, depending on the category of lump sum received and whether or not lump sums of this nature were received in the past.

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

2.15.2 Taxable income from retirement fund lump sum withdrawal benefits:

The rates of tax in the table below apply to a year of assessment commencing on or after 1 March 2019

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

2.15.3 Taxable income from retirement fund lump sum benefits:

The rates of tax in the table below apply to a year of assessment commencing on or after 1 March 2019

Taxable income from lump sum benefits	Rate of tax
Not exceeding R500 000	0% of taxable income
Exceeding R500 000 but not exceeding R700 000	18% of taxable income exceeding R500 000

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

2.15.4 Taxable income from severance benefits:

The rates of tax in the table below apply to a year of assessment commencing on or after 1 March 2019

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

2.15.5 Taxable income of trusts (other than special trusts or public benefit organisations, recreational trusts or small business funding entities that are trusts):

The rate of tax in the table below apply to a year of assessment commencing on 1 March 2019 and ending on 29 February 2020

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

2.15.6 Taxable income of companies

(a) Companies (other than public benefit organisations, recreational clubs or small business funding entities approved by the Commissioner, small business corporations, mining companies and long-term insurers)

The rate of tax in the table below apply to any year of assessment ending during the 12-month period ending on 31 March 2020

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

(b) Small business corporations

Rates of tax applicable to any year of assessment ending during the 12-month period ending on 31 March 2020

Taxable income	**Rate of tax**
Not exceeding R79 000	0% of taxable income
Exceeding R79 000 but not exceeding R365 000	7% of the amount by which taxable income exceeds R79 000
Exceeding R365 000 but not exceeding R550 000	R20 020 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R58 870 plus 28% of the amount by which taxable income exceeds R550 000

(c) Registered micro businesses (turnover tax)

The rates of tax in the table below apply to any year of assessment ending during the 12-month period ending on 29 February 2020

Taxable turnover	**Rate of tax**
Not exceeding R335 000	0% of taxable turnover
Exceeding R335 000 but not exceeding R500 000	1% of the amount by which taxable turnover exceeds R335 000
Exceeding R500 000 but not exceeding R750 000	R1 650 plus 2% of the amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R6 650 plus 3% of the amount by which taxable turnover exceeds R750 000

(d) Mining companies

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

The rates of tax below apply to any year of assessment ending during the 12-month period ending on 31 March 2020

$$y = 34 - 170/x$$

Where:

y = rate of tax to be levied

x = the ratio expressed as a percentage to –

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

See the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019 for the detailed formula and rates of tax applicable to taxable income derived from mining for gold.

(e) Oil and gas companies

Under paragraph 2 of the Tenth Schedule the rate of tax on taxable income attributable to oil and gas income by any oil and gas company will not exceed 28% on each rand of taxable income for any year of assessment ending during the 12-month period ending on 31 March 2020.

(f) Other mining companies

The rates applicable to ordinary companies, namely, 28% also apply to all mining companies, other than companies mining for gold for the year of assessment ending during the 12-month period ending on 31 March 2020.

(g) Insurance companies

Long-term insurance companies

The rates of tax in the table below apply to any year of assessment ending during the 12-month period ending on 31 March 2020

Funds	**Rate of tax**
Corporate fund	28% of taxable income
Individual policyholder fund	30% of taxable income
Company policyholder fund	28% of taxable income
Untaxed policyholder fund	0% of taxable income
Risk policy fund (With effect from years of assessment commencing on or after 1 January 2016.)	28% of taxable income

Short-term insurance companies

Companies carrying on a short-term insurance business are taxed at the same rate as is applicable to standard companies, namely, 28% for the year of assessment ending during the 12-month period ending on 31 March 2020.

(h) Special economic zones

The special Economic zones (SEZ) tax incentive was introduced to promote investment, growth and job creation in the South African manufacturing sector as well as development in designated regions. In the event that a taxpayer's business or enterprise is located in a customs controlled area within a designated SEZ, the taxpayer may claim certain VAT and customs relief,[68] provided that such taxpayer is registered with SARS for VAT and customs purposes.

In addition, if the taxpayer is a qualifying company as defined under section 12R(1), the following income tax incentives are available if the necessary requirements are met:

- A reduced corporate income tax rate of 15% instead of the current rate of 28% for companies.
- An accelerated depreciation allowance of 10% under section 12S on the cost of any new and unused building or improvement owned by the qualifying company.

Consideration must be given to the types of activities being carried on which may prohibit a qualifying company from claiming the income tax incentives under section 12R(4).

Furthermore, an employer who operates through a fixed place of business located within a designated SEZ, may claim the employment tax incentive allowed for under the ETI Act for an employee rendering services to the employer mainly within that SEZ (see **9.**).[69] Note that there are other requirements under the ETI Act that should be met in order for an employer to claim the incentive.[70]

2.15.7 Taxable income of public benefit organisations, recreational clubs or small business funding entities

The tax rates below are applicable to a PBO which is approved under section 30(3), a recreational club which is approved under section 30A(2) or a small business funding entity which is approved under section 30C(1).

A PBO,[71] recreational club[72] and small business funding entity are partially taxable on its trading receipts.

(a) A public benefit organisation, recreational club or small business funding entity that is a company

The rates of tax in the table below apply to any year of assessment ending during the 12-month period ending on 31 March 2020

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

[68] The VAT relief for a vendor operating in the SEZ comes in the form of an exemption upon importation of certain goods. Certain goods or services may also be acquired by that vendor at the zero rate of VAT.

[69] For more information on SEZs, see the *Brochure on the Special Economic Zone Incentive*.

[70] See *Guide to the Employment Tax Incentive*.

[71] For more information on PBOs see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* and the *Basic Guide on Income Tax for Public Benefit Organisations*.

[72] For more information on recreational clubs see the *Tax Guide for Recreational Clubs*.

(b) A public benefit organisation or small business funding entity that is a trust

The rate of tax in the table below apply to any year of assessment commencing on 1 March 2019 and ending on 29 February 2020

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

2.16 Medical scheme fees tax credit (section 6A)

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

- R310 for benefits to the taxpayer, or if the taxpayer is not a member of a medical scheme or fund for benefits to a dependant who is a member of a medical scheme or fund or a dependant of a member of a medical scheme or fund;
- R620 for benefits to the person and one dependant; or
- R610 for benefits to two dependants; and
- R209for benefits relating to each additional dependant,

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

The MTC reflected above will apply to qualifying taxpayers irrespective of their age and whether or not they or their dependant(s) are persons with a disability.

In cases ~~where~~ in which the taxpayer is *not* a member of a registered medical scheme, but pays fees for a dependant, and that dependant *is* a member of a registered medical scheme or fund, the MTC of R310 referred to in the first bullet would also be allowed in the taxpayer's hands. An example is a taxpayer who pays fees for a parent who is a dependant of such taxpayer.

Any amount paid by an employer on behalf of an employee as a contribution or payment to a benefit fund (such as a medical scheme) is a taxable benefit for the employee and must be included in the employee's gross income [paragraphs 2(*i*) and 12A of the Seventh Schedule, read with paragraph (*i*) of the definition of "gross income" in section 1(1)].[73] The amount included in the employee's income as a taxable benefit is, however, deemed to be a fee paid by the employee for purposes of the MTC rebate.

2.17 Additional medical expenses tax credit (section 6B)

A percentage of qualifying medical expenses paid by a person is allowed as a rebate which is deducted from the normal tax payable by that natural person.

Any amount incurred by an employer on behalf of the employee for any medical, dental and similar services, hospital services, nursing services or medicines, will be a taxable benefit in the hands of the employee and will be included in the employee's gross income [paragraphs 2(*j*) and 12B of the Seventh Schedule, read with paragraph (*i*) of the definition of "gross income" in section 1(1)]. The amount included in the employee's income as a taxable

[73] For more information see the *Guide on the Determination of Medical Tax Credits*.

benefit is, however, deemed to be a qualifying medical expense paid by the employee for purposes of this rebate.

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

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

The amount to be deducted is calculated as follows:[74]

Category	Amount
A person aged 65 years or older	The aggregate of – (i) 33,3% of so much of the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(*a*) as exceeds three times the amount of the MTC to which that person is entitled under section 6A(2)(*b*); and (ii) 33,3% of the amount of qualifying medical expenses paid by that person.
A person, such person's spouse or child being a person with a disability as defined in section 6B(1)	The aggregate of – (i) 33,3% of so much of the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(*a*) as exceeds three times the amount of the MTC to which that person is entitled under section 6A(2)(*b*); and (ii) 33,3% of the amount of qualifying medical expenses paid by that person.
Any other case	If the aggregate of – (i) the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(*a*) as exceeds four times the amount of the MTC to which that person is entitled under section 6A(2)(*b*); and (ii) the amount of qualifying medical expenses paid by that person, exceeds 7,5% of the person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), 25% of the excess.

74 See the *Guide on the Determination of Medical Tax Credit*.

2.18 Normal tax rebates (section 6)

The amounts of the normal tax rebates (for the year of assessment commencing on 1 March 2019 and ending on 29 February 2020) which are deductible from normal tax payable by a natural person, other than normal tax payable on any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, are as follows:

Rebates (natural persons only)	Amount
Primary rebate – (Below the age of 65 years)	R14 220
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 794
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 601

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

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is a non-resident) relating to the non-resident's performance in South Africa, must deduct or withhold tax at a rate of 15% of the gross payments. The resident must pay the amount deducted or withheld over to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold tax and to pay it over to SARS will render the resident personally liable for the tax. Either the foreign entertainer or sportsperson, or the resident who pays the withholding tax must submit a return together with the payment to the Commissioner.

If it is not possible for the tax to be withheld (for example, if the payer is a non-resident), the foreign entertainer or sportsperson will be liable for the tax which must be paid to SARS within 30 days after the amount is received by or accrued to such person.

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

A foreign entertainer or sportsperson who is –

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

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

Any person who is primarily responsible and who will be rewarded for founding, organising or facilitating a performance in South Africa must notify SARS of the performance within 14 days of concluding an agreement with a performer.[75]

[75] For more information contact the special team dealing with visiting artists at **nres@sars.gov.za**.

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

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

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

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

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

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

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

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

A foreign person may be exempt from withholding tax on royalties if the requirements of section 49D are met.[76]

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

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

For more information on resident sports persons, see the *Guide on the Taxation of Professional Sports Clubs and Players*.

76 See the Draft Interpretation Note "Withholding Tax on Royalties" for more information.

The liability to withhold withholding tax on interest is that of the person paying the interest. The tax is triggered on the earlier of the date on which the interest is paid or becomes due and payable. The withholding tax on interest must be paid to SARS by the last day of the month following the month during which the interest is paid. A foreign person to which an amount of interest is paid is liable for the tax, even though it is withheld by the person paying the interest.

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

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

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

Interest received by or accrued to a non-resident may be subject to either normal tax or withholding tax on interest.[77]

6. Donations tax (sections 54 to 64)

Donations tax is payable by any resident (the donor) who makes a donation to another person (the donee). Donations tax is calculated at a rate of 20% on the cumulative value of property disposed of not exceeding R30 million, and at a rate of 25% on the cumulative value of property disposed of exceeding R30 million.

The Act provides for specific donations to be exempt from donations tax under section 56.

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

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

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

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

[77] See the Draft Interpretation Note "Withholding Tax on Interest" for more information

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

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

Dividends tax is levied at the rate of 20% of the amount of the dividend paid. Certain dividends paid by oil and gas companies and international shipping companies are subject to dividends tax at the rate of 0%. Dividends paid to non-residents may be subject to a reduced rate of tax under a tax treaty.[78]

A company or regulated intermediary must withhold dividends tax on behalf of the beneficial owners when a cash dividend is paid. The company is liable for dividends tax on any dividend *in specie* paid by it.

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

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

As part of government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, a presumptive tax was introduced to reduce the tax compliance burden on micro businesses. Turnover tax is available to micro businesses of sole proprietors, partnerships and companies.

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

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

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

Turnover tax is a single tax, replacing normal tax and CGT.

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

Unlike the income tax system that makes use of comprehensive inclusion rules and a reduction process, turnover tax is calculated by simply applying the tax rate to the taxable turnover of the micro business [see **2.15.6(c)**]. The taxable turnover will basically consist of the turnover of the micro business with a few specific inclusions and exclusions.[79]

[78] For more information see the *Comprehensive Guide to Dividends Tax*.

[79] For more information see the *Tax Guide for Micro Businesses* 2016/2017.

9. Employment tax incentive

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

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

- young employees between the ages of 18 and 29 years;
- employees of any age employed by an employer that is a qualifying company as contemplated in section 12R and renders services to that employer mainly within the special economic zone[80] in which the qualifying company that is the employer carries on trade; or
- employees of any age in any industry identified by the Minister of Finance by notice in the *Government Gazette*.

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

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

The ETI is a temporary programme which commenced on 1 January 2014 and will end on 28 February 2029.[81] During this period, the employer may claim the ETI for a maximum of 24 individual months per qualifying employee. The ETI is subject to continuous review of its effectiveness and impact to determine the extent to which its core objective of reducing youth unemployment is achieved.

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

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

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

Monthly remuneration	**ETI per month during the first 12 months in which the employee qualified**	**ETI per month during the next 12 months in which the employee qualified**
R0 – R1 999	50% of monthly remuneration	25% of monthly remuneration
R2 000 – R4 499	R1 000	R500

80 As defined in section 12R(1).

81 The incentive was extended until 28 February 2029 by section 102 of the Taxation Laws Amendment Act 23 of 2018.

Monthly remuneration	ETI per month during the first 12 months in which the employee qualified	ETI per month during the next 12 months in which the employee qualified
R4 500 – R6 499	Formula: R1 000 – [0,5 × (monthly remuneration – R4 500)]	Formula: R500 – [0,25 × (monthly remuneration – R4 500)]

The employer must add any amounts rolled over from previous months to the amount of the ETI for the current month.[82] From 1 March 2017, any excess ETI contemplated under section 9(2) will be deemed to be nil on the day following the end of the period for which the employer is required to render a reconciliation return (that is, 1 September and 1 March respectively).

Any excess ETI rolled over that has not been deducted at the end of the period for which a return must be submitted under paragraph 14(3)(*a*) of the Fourth Schedule (these reconciliation returns are normally submitted for the six-month periods ending August and February), may be claimed from SARS. The reimbursement claimed from SARS will, however, not be made if an employer has any outstanding tax returns or an outstanding tax debt.[83]

10. General anti-avoidance rule (sections 80A to 80L)

The general anti-avoidance rule is contained in sections 80A to 80L.

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

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

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

83 For more information see the *Guide to the Employment Tax Incentive*.

11. Value-added tax

11.1 Introduction

VAT is an indirect tax levied under the VAT Act. VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor's enterprise. A "vendor" is a person who is registered, or required to register for VAT. VAT is a destination-based tax (resulting in exports being zero rated) payable on most goods or services supplied in South Africa as well as on the importation of goods into the country. "Imported services", as defined in section 1(1) of the VAT Act are also subject to VAT if the recipient is a resident and the services are acquired for exempt, private or other non-taxable purposes.[84]

11.2 Rates

VAT is levied at the standard rate (currently15%)[85] on most supplies and importations but there is a limited range of goods and services which are exempt or subject to VAT at the zero rate. For example, exports and certain basic foodstuffs are taxed at the zero rate of VAT. Certain goods are also exempt when supplied in, or imported into South Africa.

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

11.3 Registration, collection and payment of value-added tax

A person can register for VAT only if that person is carrying on an enterprise. The term "enterprise" basically includes any activity carried on continuously or regularly by any person in South Africa or partly in South Africa which involves the supply of goods or services for a "consideration" to another person, whether or not that enterprise or activity is carried on for profit.

Any person who carries on an enterprise and the total value of taxable supplies (taxable turnover) has exceeded the compulsory VAT registration threshold of R1 million in any consecutive 12-month period, must register for VAT. In addition, a person must register when entering into a written contractual commitment to make taxable supplies which will exceed the R1 million threshold within the next 12 month period.[86] An application to register in these cases must be submitted within 21 business days reckoned from the first day of the month after the threshold was exceeded, or the contract was entered into (as the case may be). Most vendors account for VAT on a monthly or bi-monthly basis, although other tax periods for the payment of VAT are available to certain vendors, provided certain conditions are met.

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84 Note that all information pertaining to indirect tax has been updated to include amendments up to the date of the publication of this guide.

85 The standard rate of VAT increased from 14% to 15% with effect from 1 April 2018.

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

Non-resident suppliers of certain "electronic services" as prescribed in The Electronic Services Regulation[87] are also currently required to register and account for VAT in South Africa if the total value of such taxable supplies exceeds R1 million.[88] With effect from 1 June 2014, such non-resident suppliers are required to register for VAT if at least two out of the following three circumstances are present:

1. Electronic services are supplied to recipients who are South African residents.
2. Payment for the electronic services originates from a South African bank account.
3. The recipient of the electronic services has a business address, residential address or postal address in South Africa to which the invoice for such services will be sent.

For more information on "electronic services", refer to the *Frequently Asked Questions: Supplies of Electronic Services* on the SARS website.

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.[89] 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 activity which will lead to taxable supplies being made only after a period of 12 months owing to the nature of the activity. However, registration of these special cases will only be permitted under certain conditions prescribed by Regulation.[90]

VAT is levied on all supplies made by a vendor in the course or furtherance of its enterprise and only a vendor may levy VAT. A vendor may not charge VAT on any exempt supplies nor deduct any VAT as input tax if an expense is incurred to make exempt supplies or for any other non-taxable purpose.

The VAT incurred on any goods or services acquired by a vendor may be deducted to the extent that it constitutes "input tax". This means that the VAT so incurred must be used by a vendor wholly for consumption, use or supply in the course of making its taxable supplies or it will have to be apportioned accordingly. VAT incurred on expenses which are for both taxable and non-taxable purposes must be apportioned in accordance with section 17(1). The method of apportionment generally prescribed for vendors under this provision is given in Binding

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87 See Regulation 429 (*Government Gazette 42316* dated 18 March 2019) which came into effect from 1 April 2019. Between 1 June 2014 and 30 March 2019, only a limited list of things supplied by way of the internet by non-residents for a consideration to South African customers were subject to VAT as "electronic services". From 1 April 2019 any "electronic services" (subject to a few exceptions) supplied by a non-resident by way of the internet or electronic agent are subject to VAT in South Africa if certain conditions are met. This rule applies whether the non-resident makes the supplies directly to the South African customer or through an intermediary or platform. See the **SARS website** to view the Regulations.

88 The compulsory registration threshold for non-resident suppliers of electronic services before 1 April 2019 was R50 000, which was increased to R1 million with effect from 1 April 2019. Foreign suppliers of electronic services who no longer meet the compulsory registration threshold may choose to deregister. See Binding General Ruling 51: "Cancellation of Registration of a Foreign Electronic Services Supplier".

89 Persons supplying "commercial accommodation" are currently subject to a specific minimum threshold for voluntary registration of R120 000 and not R50 000.

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

General Ruling 16 "Standard Apportionment Method" (BGR 16). A vendor may, however, apply by way of ruling application to use a special method of apportionment if the prescribed method in BGR 16 proves to be unfair or unreasonable in the vendor's circumstances.[91]

The vendor is, therefore, required to directly attribute the VAT on goods or services acquired according to the intended purpose for which the goods or services will be consumed, used or supplied, prior to applying the apportionment method to mixed expenses.

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.

A recipient of imported services is liable to declare and pay the VAT to SARS only if the services are acquired from a non-resident for non-taxable purposes. If the recipient is registered for VAT, 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 by that vendor for the tax period concerned. Non-vendors must complete and submit form VAT 215 on eFiling and make payment of any VAT on imported services within 30 days of importation.

For more information on VAT registration and the collection and payment of VAT see *VAT 404 – Guide for Vendors.*

11.4 Application of value-added tax to supplies and imports

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

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

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

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

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[91] See Chapter 7 of the Tax Administration Act 28 of 2011 (the TA Act) and section 41B of the VAT Act.

11.5 Zero-rated supplies

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

- Goods exported[92] from South Africa
- Certain goods supplied to customs controlled area enterprises, SEZ enterprises, or SEZ operators situated in any customs controlled area
- Petrol, diesel and illuminating paraffin
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services
- Services physically rendered outside South Africa
- Goods consisting of sanitary towels (pads)[93], subject to specific conditions in Part C of Schedule 2 to the VAT Act.
- Certain basic foodstuffs supplied for human consumption, such as:
  - Brown bread
  - Certain types of maize meal
  - Samp
  - Mealie rice
  - Dried mealies
  - Dried beans
  - Rice
  - Lentils
  - Fruit and vegetables
  - Tinned pilchards or sardinella
  - Milk, cultured milk and milk powder
  - Vegetable cooking oil excluding olive oil
  - Hen's eggs
  - Edible legumes and pulse of leguminous plants
  - Certain dairy powder blends
  - Cake wheat flour and white bread wheat flour.[94]

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

93 The zero rate applies with effect from 1 April 2019.

94 As defined in Regulation 1 of the Regulations in terms of Government Notice R.405 (see *Government Gazette* 40828 of 5 May 2017).The zero rate applies with effect from 1 April 2019.

Some of the basic food items above are subject to specific conditions as set out in the relevant item descriptions in Part B of Schedule 2 to the VAT Act.

Certain agricultural products such as animal feed, seedlings and fertilisers which are for use in farming enterprises are also currently zero rated when supplied to VAT registered farmers. The VAT Act has, however, been amended to remove this zero rating with effect from a future date determined by the Minister by notice in the *Gazette*.[95]

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.

For more information on zero rated supplies see the *VAT 404 – Guide for Vendors*.

11.6 Exempt supplies

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

- Financial services(such as the provision of credit, the supply of cryptocurrency, life insurance, the services of benefit funds such as medical schemes, provident, pension and retirement annuity funds).
- The supply of cryptocurrency.
- Services provided to members in the course of managing body corporates, share block companies, housing development schemes for retired persons, and home-owners associations which supplies are paid for out of levy contributions by such members.
- Public transport of fare-paying passengers by road and rail.
- The supply of residential accommodation (that is, a dwelling)[96] under a lease agreement.
- Certain educational services provided by recognised educational institutions such as primary and secondary schools and universities.
- Certain supplies of goods or services made by an employee organisation, bargaining council or political party to any of its members, subject to certain conditions.
- Childcare services provided at crèches and after-school care 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.

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

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

11.7 Tourists, diplomats and exports to foreign countries

11.7.1 Tourists

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

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

Contact details for the VRA are as follows:

<table>
<tr>
<td>
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
Eswatini 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
</td>
<td>
Refund claims may also be lodged at the following regional offices:

VAT Refund Administrator (Pty) Ltd
Suite 11 Equity Building
Botswana Road. Plot 1155
Gaborone
Botswana

VAT Refund Administrator (Pty) Ltd
Office 206, BPI House
Independence Avenue
Windhoek
Namibia

VAT Refund Administrator (Pty) Ltd
Emafini Business Centre
Along Emalangweni Hill
Mbabane
Eswatini
</td>
</tr>
</table>

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

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

- The goods must be exported through one of the 43 designated commercial ports by the qualifying purchaser or the qualifying purchaser's cartage contractor.

For more information on the documentary requirements and the procedures involved in obtaining a refund, see the Export Regulations[97] and the Tax Refund Information pamphlet which is issued by the VRA and is available from all of South Africa's International Airports or the VRA's website **www.taxrefunds.co.za**.

For more information on the export timeframes, see Binding General Ruling 52 "Timeframe for the Export of Goods by Vendors and Qualifying Purchasers Affected by the Global COVID-19 Pandemic."

11.7.2 Diplomats

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

VAT refunds on any goods purchased by diplomats whilst in South Africa which are subsequently exported are dealt with by the VRA as described in **11.7.1**.

11.7.3 Exports to foreign countries

A vendor may apply the zero rate of VAT when supplying movable goods which are consigned to a recipient at an address in an export county.

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

For more information on VAT, see *VAT 404 – Guide for Vendors*.

12. Customs

12.1 Introduction

In South Africa goods are classified according to the Harmonised System on Tariffs and Trade (in short, HS or Harmonised Tariff System), an international classification system that has its origin in Brussels, Belgium, on importation into South Africa 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 under the authority of the Department of Trade, Industry and Competition.

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97 Regulation 316 (*Government Gazette* 37580 of 2 May 2014).

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

Additional specific and *ad valorem* excise duties, environmental levies, fuel levies and health promotion levies are imposed on imports of goods for local consumption that are equivalent to domestically manufactured goods which are subject to these taxes. These excise duties and levies are imposed in terms of the Act with the aim of raising revenue and to promote desirable socio-economic outcomes.[98]

Indirect taxes imposed on imported goods

Four kinds of indirect (consumption) taxes are imposed on imported goods:

- Customs duties
- Excise duties and levies
- Anti-dumping and countervailing duties
- VAT (which is also collected on goods imported and cleared for home consumption)

Anti-dumping, safeguard and countervailing duty

Anti-dumping and countervailing duties are levied under section 55 of the Customs and Excise Act on –

- goods considered to be "dumped" in South Africa;
- instances in which there has been a surge of imports causing injury; and
- subsidised imported goods.

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

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

- The value of the goods in terms of section 65 of the Customs and Excise Act (the customs value)
- The volume or quantity of the goods
- The tariff classification of the goods (the tariff heading) in terms of the Harmonised Tariff System

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

The SACU Agreement which is currently in place was published in Notice R.800 in *Government Gazette* 26537 of 2 July2004 and came into operation from 15 July 2004.

[98] See the External Standard - Ad Valorem Excise Duty.

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

This Common Customs Area also has a Common Revenue Pool,[99] in which all customs and excise duties collected by the different member states, are paid within three months of the end of the quarter of a particular financial year.[100] SACU Member States are then paid from this pool and the share of each member state is calculated from the different components according to a specific formula. Country-specific levies such as South Africa's environmental levies, fuel levies and health promotion levies do not form part of these SACU revenue sharing arrangements.

A trade agreement providing for preferential rates of customs duty is applied between SACU and other Member States of the Southern African Development Community (SADC). 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 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 from other Customs Administrations.

12.2 Trade agreements

SARS administers a number of trade agreements or protocols or other parts or provisions thereof it, and other international instruments, according to sections 46, 46A and 49 the Customs and Excise Act, which are enacted into law when published by Notice in the *Gazette*.

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

- Treaty of the Southern African Development Community and Protocols concluded under the provisions of Article 22 of the Treaty **(SADC Treaty & Protocols)**
- Agreement between the Government of South Africa and the Government of the United States of America regarding Mutual Assistance between their Customs Administrations **(AGOA)**
- Southern African Customs Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, South Africa and Eswatini **(SACU)**
- Memorandum of Understanding between the Government of South Africa and the Government of the People's Republic of China on promoting Bilateral Trade and Economic Co-operation **(MOU with People's Republic of China)**
- Free Trade Agreement between the European Free Trade Association (EFTA) States and the SACU States **(EFTA)**

[99] See Article 19 of the 1969 Agreement.
[100] See Articles 32 and 33 of the current Agreement.

- Common Market of the South (MERCOSUR) comprising of Argentina, Brazil, Paraguay and Uruguay and the South African Customs Union (SACU) comprising of Botswana, Lesotho, Namibia, South Africa and Eswatini **(MERCOSUR – SACU)**
- Economic Partnership Agreement between the SADC Economic Partnership Agreement states, of the one part, and the European Union and its member states of the other part **(SADC – EPA)**

Other trade agreements which are not part of Schedule 10 to the Act include the following:

- Agreement between the Governments of South Africa and Malawi.
- Non-reciprocal preferential tariff treatment under the Generalized System of Preferences (GSP) to developing countries Norway, the Republic of Turkey and the Russian Federation.

12.3 Duties

12.3.1 Customs duty

Customs duty is levied on imported goods under section 47 of the Customs and Excise Act. The Customs division provides the interface between the domestic and broader global economy and has a key role to play in facilitating legitimate trade and protecting the economy and society by clamping down on illegal and unfair trade practices.

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

12.3.2 Excise duties and levies

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

These specific and *ad valorem* excise duties, environmental levies, fuel levies and health promotion levies are imposed with the aim of raising revenue and to promote desirable socio-economic outcomes. For example, *ad valorem* excise duties enhance the progressivity of the indirect (consumption) taxes, while specific excise duties and the various levies discourage both the production and consumption of products that cause harm to health or the environment. These excise duties and levies are generally rebated or refunded when such goods are applied in further manufacture or exported. For example, the fuel levy on diesel is partly refunded to primary producers in farming, forestry and mining subject to strict conditions.

The revenue generated by these excise duties and levies contribute approximately 10% to the total revenue received by SARS.

Excise duties are payable by manufacturers and importers of the following products for local consumption and are levied throughout SACU:

- Alcohol and tobacco products
    - Malt beer
    - Traditional African beer
    - Spirituous products

    - Wine, vermouth and other fermented beverages
    - Tobacco products
- Petroleum products
- Ad Valorem products

The levies do not form part of SACU tax harmonisation and revenue sharing and are unique to each SACU member state. South Africa imposes levies on the following products:

- Fuel levy and Road Accident Fund (RAF) levy on fuel and petroleum products
- Environmental levy products (plastic bags, non-renewable electricity generation, incandescent light bulbs, motor vehicle CO2 emissions, and tyres)
- Health promotion levy products (sugary beverages and preparations and concentrates for the making of sugary beverages)
- Domestic greenhouse gas emissions subject to carbon taxation

Manufacturers of these products in South Africa must register and licence with SARS for Excise purposes before they commence manufacture.

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

12.4 Value-added tax on imported goods

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

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

12.5 Customs value

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

In determining the customs value, SARS pays particular attention to the relationship between the buyer and seller, payments outside of the normal transactions, for example, royalties and licence fees and restrictions which have been placed on the buyer. These aspects can result in the price paid for the goods being increased for the purpose of determining a customs value and thus directly affecting the customs duty payable. In determining the value customs for customs purposes, the provisions of sections 65, 66 and 67 of the Customs and Excise Act must be considered.

12.6 Clearance declarations

Declarations made at the time of importation and exportation must be accurate and correct.[101] 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.[102] In the event that errors are detected or false declarations are made, the Customs and Excise Act provides for the forfeiture of the goods as well as for penalties of up to three times the value of the goods, whether duties were payable or not.[103] In instances of fraud, or general criminality, offenders may be prosecuted.

Under section 59 of the Customs and Excise Act, importers and exporters of goods to and from South Africa for commercial purposes must register with SARS for that purpose. Importers and exporters of non-commercial goods are, however, excluded from registration, provided that this is limited to three importations per year and each consignment is R50 000 or less.

12.6.1 Rebates allowed on importation of goods

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

Schedule 1 to the VAT Act provides for an exemption of the payment of VAT on the importation of certain goods.

Other examples of general rebates are –

- rebates of customs duties on the importation of goods by handicapped persons;
- diplomats, as passengers' baggage; and
- personal and household goods on change of residence.

12.7 Persons entering South Africa

Section 15 of the Customs and Excise Act states that upon a traveller's arrival in South Africa and if there is something to declare to Customs, such person must complete a traveller card (TC-01 form) before proceeding to Immigration. After reporting to Immigration, all baggage may be collected and the traveller can proceed to Customs' red or green channel (or to the Customs counter if there is no red or green channel).

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

- In the event that a traveller has any prohibited or restricted goods or goods which fall outside the duty-free allowance in his or her possession or if there is uncertainty on whether any goods falls within these categories, this person must proceed to the red channel.
- If the traveller does not have any prohibited or restricted goods, any commercial goods (imported for trade purposes) or gifts that are carried on behalf of others in his or her possession or if the goods fall within the duty-free allowance, the traveller may proceed

[101] Section 38 of the Customs and Excise Act.
[102] Section 101 of the Customs and Excise Act.
[103] Section 91 of the Customs and Excise Act.

to the green channel, unless instructed otherwise by a Customs Official. A Customs Official may stop, question or search a traveller at any time while in the red or green channel.

If travellers have something to declare, traveller cards and passports will be scanned and verbal declarations will have to be made which will be captured on the system by a Customs officer. This information will form the basis of the travellers' declaration form (TRD1). TheTRD1 will also be used as temporary imports permit (TIP) and temporary exports permit (TXP).

If the traveller is satisfied with the information on the TRD1, an electronic signature pad will have to be signed and the traveller's signature will be captured on the system. The signed TRD1 will then be printed and given to the traveller.

Prohibited goods under section 113 of the Customs and Excise Act and the Prohibited and Restricted goods list

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

- Narcotic and habit-forming drugs in any form
- Fully automatic, military and unnumbered weapons
- Explosives and fireworks
- Poison and other toxic substances
- Cigarettes with a mass of more than 2kg per 1 000
- Goods to which a trade description or trademark is applied in contravention of any Act (for example, counterfeit goods)
- Unlawful reproductions of any works subject to copyright
- Penitentiary or prison-made goods

Restricted goods under section 113 of the Customs and Excise Act and the Prohibited and Restricted goods list

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

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

Personal medication under the duty-free allowance

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

Handmade articles for commercial purposes

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

Flat-rate assessment

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

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

Should the value of the additional goods in question exceed R20 000 or should the traveller decide not to make use of this facility, the flat-rate assessment falls away and the appropriate rates of duty and VAT must be assessed and paid on each individual item. It should be kept in mind that in certain cases goods may be liable to rates of customs duty in excess of 20%; others could be subject to lower rates, while some goods may be free of duty. In addition, VAT at the standard rate (currently 15%) will be payable on goods assessed by tariff.

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

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

Currency

Currency brought into or taken from South Africa is subject to the Reserve Bank Exchange Control Regulations. South African currency exceeding R25 000 or any foreign currency must be declared by the traveller.

Payments

Customs duties and taxes are payable in South African Rand. Payment can be made in cash, by credit card or by means of traveller's cheques.[104]

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

Temporary imports

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

[104] Section 120 of the Customs and Excise Act.

the refund is ready. The office number can be found on the documents which were given upon payment of the deposit.

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

Media/sportsmen

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

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

Conference organisers

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

- If these goods are accompanying the traveller, the same process followed by normal travellers must be followed.
- If the goods constitute unaccompanied baggage, the traveller must declare the items on a DA 306 form. This form must be completed before arrival in South Africa and must be submitted to the nearest Customs office upon arrival in the country. This is a simplified clearance procedure for goods with no commercial value, that is, goods which will not be sold in the country.[105]

12.7.1 Goods imported without the payment of customs duty and which are exempt from value-added tax

(a) Goods imported 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) Goods imported by persons who are residents of South Africa

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

(c) Limits on certain goods

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

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

[105] See Traveller’s Guide - Customs Requirements when Entering and Leaving South Africa for more information.

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

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

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

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

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

Visitors may be required to pay a cash deposit to cover the duty and the VAT on expensive articles, for example, digital cameras temporarily imported into 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 the goods are for their personal use.

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

(e) Crew members

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

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

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

12.8 Declarations on single administrative document

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

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.

12.9 Goods accepted at appointed places of entry

Goods imported into South Africa are accepted at places of entry under section 6 of the Customs and Excise Act, which include –

- customs-appointed airports under rule 200.04 of the Customs and Excise Act;
- customs-appointed border posts under rule 120A.03(*b*)(i) of the Customs and Excise Act;
- customs-appointed harbours under rule 120A.03(*b*)(iv) of the Customs and Excise Act; and
- the postal service under section 13 of the Customs and Excise Act.

12.10 Cargo entering South Africa

Under section 8 of the Customs and Excise Act, a cargo manifest relating to those goods must be produced when cargo enters South Africa. These manifests reflect all the goods imported. All the goods must be accounted for by means of bills of entry. If importers or owners of imported goods fail to enter their cargo for customs purposes the goods may be detained and removed to the state warehouse.

12.11 State warehouses

State warehouses are regulated by section 17 of the Customs and Excise Act for the security of goods. The main purpose of the state warehouses is to protect duty and VAT which may be due. The reason for such safekeeping may include goods not entered for customs purposes, abandoned goods, seized goods or goods detained provisionally for specific reasons subject to compliance with requirements for import or export. When the importer or owner of goods has complied with all customs or other requirements, release of the goods may be granted upon payment of the applicable state warehouse rent. Unclaimed goods may be sold on public auction after a prescribed period from the date on which the goods were taken up in the state warehouse and the proceeds are applied in discharge of any duties, VAT or other expenses relating to those goods.

12.12 Importation of household effects by immigrants or returning residents

Bona fide household effects may be imported, free of duty and exempt from the VAT normally levied on importation, provided that the importer's residence is changed to South Africa on a permanent or temporary basis. Importers such as contract workers and students may also import their *bona fide* household effects under rebate of duty and exempt from VAT (a deposit may be called for to cover the VAT on importation either in part or in full, which is refundable when such goods are exported).

The requirement would, however, be that household effects are re-exported or sold locally at conclusion of the work contract or studies. This is subject to the household effects not been sold, lent, hired or disposed of in any manner within six months since importation. Importers taking up temporary residence in South Africa on a continual basis, for example, people with holiday homes, do not qualify for this rebate.

12.13 Motor vehicles

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

12.14 Motor vehicles imported on a temporary basis

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

13. Excise duties and levies

13.1 Specific excise duties (Part 2A of Schedule 1 to the Customs and Excise Act)

Specific excise duties are levied on certain locally-manufactured products and their imported equivalents consumed locally. The duties are assessed on the specific quantity or volume of excisable products as manufactured or imported. Such products include alcoholic beverages, tobacco products and petroleum products.

The following are some of the excisable products and their respective specific duty rates with effect from 26 February 2020:[106]

Alcoholic Beverages	**Rate of duty**
Malt beer	R106.56/li of absolute alcohol

Alcohol	**Rate of duty**
Traditional African beer	7.82 c/l
Spirits and spirituous beverages	R213.13/li of absolute alcohol

[106] See *Guide for Tax Rates/ Duties/ Levies for previous duty rates*.

Alcohol	Rate of duty
Sparkling wine	R14.36/li
Fortified wine	R 7.34/li
Unfortified wine	R 4.39/li
Traditional African beer powder	34.7 c/kg

Tobacco	Rate of duty
Cigarettes	R8.70/10 cigarettes
Pipe tobacco	R231.69/kg net
Cigarette tobacco	R391.06/kg
Cigars	R4193.62/kg net
Heated tobacco products	R815.63/kg

13.2 *Ad valorem* excise duties (Part 2B of Schedule1 to the Customs and Excise Act)

Ad valorem excise duties are levied on certain locally manufactured non-essential or luxury products and imported goods of the same class or kind that are consumed locally. The duty is assessed on the value of such excisable products upon manufacture or importation. 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 April 2019 to date.

Ad valorem products

Products	Rate of duty
Perfumes and toilet waters	9%
Beauty or make-up preparations and preparations for care of the skin	7%
Fireworks	9%
Apparel or clothing accessories of fur skin or artificial fur skin	9%
Air conditioning machines for buildings	9%
Line telephones with cordless handsets, loudspeakers and amplifiers, sound and video recording or reproducing apparatus and cellular telephones	9%

Products	Rate of duty
Cellular telephones, still image video cameras, other video camera recorders and digital cameras	9%
Domestic radio-broadcast receivers, reception apparatus for television, video monitors and video projectors	9%
Motor vehicles (sliding scale)	Max 30%
Motorcycles (200 – 800cc)	7%
Motorcycles exceeding 800cc	9%
Water scooters	9%
Firearms	9%
Golf balls	9%

Note: The list is not exhaustive.

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

13.3 Fuel levy and Road Accident Fund levy (Parts 5A and 5B of Schedule 1 to the Customs and Excise Act)

These levies are imposed on distillate fuel (diesel), aviation kerosene, illuminating kerosene, petrol and hydrocarbon solvents manufactured in or imported into South Africa.

In SACU, the fuel levy and the Road Accident Fund levy are charged only in South Africa and are over and above the specific excise duty charged on certain fuel products.

The following are some of the fuel levy products and their respective levy rates with effect from 1 April 2020:[107]

General fuel levy products	Rate of levy
Petrol (leaded and unleaded)	377c/li
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	363c/li
Distillate fuel (diesel)	363c/li
Road accident fund levy on petrol and diesel	207c/li

[107] See *Guide for Tax Rates/ Duties/ Levies for previous levy rates*.

The fuel levy comprises of the general fuel levy plus the carbon fuel levy. The rates thereof on petrol versus diesel, unmarked kerosene and unmarked hydrocarbon solvents with effect from 1 April 2020 are:

- The general fuel levy at a rate of 370c/l and 355 c/l respectively
- The carbon fuel levy at a rate of 7c/l and 8c/l respectively.

13.4 Environmental levy

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

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

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

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

Payment of this levy is additional to any customs or excise duty payable under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. The current levy is 25 cents per bag.

Plastic bags used for immediate wrapping or packaging, zip-lock bags and household bags including refuse bags and refuse bin liners are excluded from paying this levy.

(b) Non-renewable electricity generation (Part 3B of Schedule 1 to the Customs and Excise Act)

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

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

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

The current levy is 3,5 cents per kWh.

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

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

This levy is additional to any customs or excise duty payable under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. The current levy is R10 per globe.

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

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

The emissions levy is in addition to the current *ad valorem* luxury tax on new vehicles. The levy is based on certification provided by the vehicle manufacturer, or in the absence thereof according to the set methods of calculation as described in Note 5 in Part 3D of Schedule 1 to the Customs and Excise Act.

The current levy on passenger vehicles is R120 per gCO2km on emissions exceeding the threshold of 95gCO2/km and the levy on double-cab vehicles is R160 per gCO2/km on emissions exceeding the threshold of 175gCO2/km. The tax is included in the price of the vehicle before calculating the VAT payable on the sale of the vehicle.

Example: If the certified CO_2 emissions of a new passenger vehicle bought on 1 April 2020 are 140gCO2/km, the tax payable will be calculated as follows:

(140gCO2/km – 95gCO2/km) ×R120

= 45gCO2/km ×R120

= R5 400

In this example, R5 400 will be added to the price of the vehicle before calculating the VAT-inclusive price.

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

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

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

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

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

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

The tyre levy is payable in addition to any customs duty of Part 1 of Schedule 1 of the Customs and Excise Act.[108]

(f) Carbon emissions (Part 3F of Schedule 1 to the Customs and Excise Act)

A carbon tax on greenhouse gas emissions generated domestically was implemented with effect from 1 June 2019 in terms of the Carbon Tax Act, 2019. The carbon tax is administered as an environmental levy under the Customs and Excise Act.

The rate on 1 June 2019 was R120 per tonne of carbon dioxide equivalent. The rate increased from 1 January 2020 to R127 per tonne of carbon dioxide equivalent.

A separate carbon fuel levy in terms of the Customs and Excise Act was implemented with effect from 5 June 2019 at a rate of 7c per litre on petrol and 8c per litre on diesel. The carbon fuel levy and general fuel levy form the two constituent components of the fuel levy since 5 June 2019. See **13.3** for more information on the fuel levy.

13.5 Health promotion levy

13.5.1 Sugary beverages levy (Part 7A of Schedule 1 of the Customs and Excise Act)

The sugary beverages levy applies to specific sugary drinks, as well as preparations and concentrates used in the manufacture of sugary drinks. The policy objective with the levy is to combat obesity and promote healthier consumer beverage choices.

The levy rate as of 1 April 2019 is 2.21 cents per gram of the sugar content of the finally mixed beverage that exceeds 4 grams per 100 millilitres and applies to locally manufactured and imported products that are consumed locally.

Local manufacturers of sugary beverages levy goods must license their premises as manufacturing warehouses with their local Customs and Excise Office and submit monthly excise accounts.

14. Diamond export levy

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

The aim of the diamond export levy as imposed in the Diamond Export Levy Act 15 of 2007 and the Diamond Export Levy (Administration) Act 14 of 2007 is to –

- promote the development of the local economy by encouraging the local diamond industry to process diamonds locally;
- develop skills; and
- create employment.

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

[108] See External Standard – Environmental Levy on Tyres for more information.

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

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

15. Transfer duty

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

Transfer duty is levied on –

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

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

- physical property such as land and any fixtures on this land, including sectional title units;
- real rights in land but excluding rights under mortgage bonds or leases (other than the leases mentioned below); and
- rights to minerals or rights to mine for minerals (including any lease or sub-lease of such a right).

The definition of "property" also specifically 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 specific 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 persons transacting at arm's length, the fair value is usually equal to the consideration paid or payable for the property. In the event that property is acquired for no consideration, or if the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property, whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[109] 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;
- the transaction is exempt under any other specific exemption provided under section 9 of the Transfer Duty Act;
- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration or the fair value of the property is R1 million or less.(R900 000 or less before 1 March 2020).

Transfer duty is levied on a progressive sliding scale. This means that the higher the value of the property, the higher the rate of tax that will apply. The rates are also based on the date of acquisition which applies to the transaction concerned.

The following rates are applicable from 1 March 2017 to 29 February 2020:

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

[109] Interest is currently charged at 10% per month or part thereof. However, interest will be charged at the “prescribed rate” under the TA Act from a future date once the effective date of a Presidential Proclamation on interest for all taxes comes into effect. As at the date of publication of this guide, the Proclamation had not yet come into effect.

The following rates are applicable from 1 March 2020:

Fair market value or consideration	Rate of duty
Not exceeding R1 000 000	0%
Exceeding R1 000 00 but not R1 375 000	3% of the value exceeding R1 000 000
Exceeding R1 375 000 but not R1 925 000	R11 250 + 6% of the value above R 1 375 000
Exceeding R1 925 000 but not R2 475 000	R44 250 + 8% of the value above R 1 925 000
Exceeding R2 475 000 but not R11 000 000	R88 250 +11% of the value above R2 475 000
Exceeding R 11 000 000	R1 026 000 + 13% of the value exceeding R11 000 000

The above rates apply to all persons regardless of whether the person acquiring the property is a natural person, trust, company or other juristic person.[110]

To ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty if the supply is subject to VAT. The provisions of the VAT Act will, therefore, normally take precedence over the Transfer Duty Act if the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

Upon the sale of fixed property which is part of the supply of an entire enterprise to another VAT vendor, which meets the requirements of a going concern under section 11(1)(*e*) of the VAT Act, VAT will be charged at the zero rate on all the enterprise assets (including the fixed property). In this case, no transfer duty will be payable on the property.

All payments of transfer duty and any TDC01 returns which may be required for the processing of transactions must be submitted to SARS via eFiling as the manual submission of forms or payments is no longer accepted. SARS issues a transfer duty receipt on payment of the tax, or an exemption receipt is issued if the transaction is exempt from transfer duty. Note, however, that a transaction falling under the threshold does not mean it is exempt from transfer duty. It simply means that the receipt will be issued at 0% and no transfer duty will be charged.

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

[110] See the *Transfer Duty Guide* for the rates that apply when the date of acquisition of the property is before 1 March 2017.

in entities that own residential property, no transfer of property is registered in the Deeds Registry. However, any changes to the shareholding of a company or to the membership of a close corporation or changes in a trust deed which are necessary as a result of the transaction will need to be submitted to the Companies and Intellectual Property Commission (CIPC) or the office of the Master of the High Court (as the case may be).

For more information see the *Transfer Duty Guide*, *Guide for Transfer Duty via eFiling* and the *VAT 409: Guide for Fixed Property and Construction*.

16. Estate duty

The estate of a deceased person who was ordinarily resident in South Africa, will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies). However, property physically situated outside South Africa will be excluded from the deceased's estate if the deceased was not ordinarily resident in South Africa at the time of death. A deduction against the net value of an estate will also be allowed on the value of the property situated outside South Africa which was acquired before the deceased person became ordinarily resident in South Africa for the first time, or after this person became ordinarily resident in South Africa for the first time and had acquired the property by way of donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The deduction also applies to property situated outside South Africa which was acquired by the deceased out of profits and proceeds of any such property.

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

The Estate Duty Act 45 of 1955, unlike the Act, does not define "resident" and only refers to persons who are "ordinarily resident" or "not ordinarily resident". It follows, therefore, that any natural person, who was not ordinarily resident in South Africa but who may have become a resident of South Africa because of the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate, including the following:

- The value of property in the estate that accrues to the surviving spouse.
- All debts due by the deceased if the relevant requirements are met.

The net value of the estate is reduced by a R3,5 million general deduction to arrive at the dutiable amount of the estate (section 4A(1) of the Estate Duty Act).

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 R3,5 million multiplied by two which equals R7 million, less so much already allowed as a deduction from the net value of the estate of any one of the previously deceased persons (Section 4A(2) of the Estate Duty Act).

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 –

- R3,5 million; and
- [(R3,5 million, reduced by so much 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] (section 4A(3) of the Estate Duty Act).

Rates of estate duty

Estate duty is charged at a rate of 20% on the first R30 million of the dutiable amount of the estate and 25% on any dutiable amount of the estate exceeding R30 million. This applies in respect of the estate of a person who dies on or after 1 March 2018. An estate duty of 20% on the dutiable amounts for persons who died before 1 March 2018 remains irrespective of the dutiable amount.

Example – Estate duty calculation

a) The estate of X who passed away was bequeathed to Z. X was previously the spouse at the time of death of a previously deceased person, Y. No amount was previously allowed as a deduction against the net value of Y's estate.

	R
Net value of X's estate	7 100 000
Less: General deduction – section 4A(2) (2 × R3,5 million)	(7 000 000)
Dutiable amount	100 000
Duty payable on R100 000 at 20%	20 000

b) Z passed away on 1 April 2019 with an estate with a net value of R45 million. Z did not have a spouse at the date of death.

	R
Net value of Z's estate	45 000 000
Less: General deduction – section 4A(1)	(3 500 000)
Dutiable amount	41 500 000
Estate duty payable:	
First R30 000 000 of dutiable amount @ 20%	6 000 000
Amount exceeding R30 000 000: R41 500 000 – R30 000 000 = R11 500 000 @ 25%	2 875 000
Total estate duty payable	8 875 000

Interest at 6% per year is charged on unpaid estate duty under section 10 of the Estate Duty Act.

The South African government has entered into agreements with Botswana, Lesotho, Eswatini, Zimbabwe, the United Kingdom and the United States of America to eliminate double taxation relating to death duties. These agreements are available on the **SARS website**.

17. Securities transfer tax

STT is a tax levied under the Securities Transfer Tax Act 25 of 2007 and is 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.

For purposes of STT a "security" means –

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

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

STT is payable by –

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

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

STT on the transfer of securities must be paid as follows:

- Listed securities – by the 14th day of the month following the month during which transfer of the securities occurred.
- Unlisted securities – within two months from the end of the month during which the transfer of the securities occurred.

Payment of STT must be made electronically through the SARS e-STT system. If any tax remains unpaid after the due date, a penalty of 10% of the unpaid tax will be imposed. The Commissioner may, however, remit the penalty (or any portion of it) under Chapter 15 of the TA Act.[111]

The transfer of securities to certain entities and certain types of transactions are exempt from STT, for example –

- transfers to any sphere of the government of South Africa or to any sphere of the government of any other country;
- transfers to certain public benefit organisations (PBOs);
- heirs or legatees that acquire securities through an inheritance; or
- certain share transactions which are subject to transfer duty such as the acquisition of shares in a share block company.

For more information see the *External Reference Guide: Securities Transfer Tax.*

[111] Section 6A of the Securities Transfer Administration Act 26 of 2007.

18. Skills development levy

SARS administers the collection of SDL under the Skills Development Levies Act 9 of 1999. SDL is levied on payrolls to finance the development of skills and thus enhance productivity.

An employer must pay SDL if it anticipates, on reasonable grounds, that its total payroll (salaries, wages and other remuneration) over the next 12 months will exceed R500 000. Employers with an anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12 month period are exempt from the payment of this levy.

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

The application form to register for SDL is the same form that is used to register for PAYE (EMP101). The monthly return for SDL is combined with the monthly return for PAYE (EMP201) which means that the same provisions apply for submission and payment.[112]

19. Unemployment Insurance Fund contributions

The Unemployment Insurance Fund (UIF) gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave or illness. It also provides relief to the dependants of a deceased contributor. UIF is regulated by the Unemployment Insurance Contributions Act 4 of 2002 and Unemployment Insurance Act 63 of 2001.

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

[112] For more information see the *External Guide: Guide for Employers in respect of Skill Development Levy*.

UIF contributions are calculated on so much of the remuneration paid or payable by the employer to an employee as does not exceed –

- R14 872 per month[113] (R178 464 a year); or
- R3 432 per week.

Employers must pay the total UIF contribution of 2% over to SARS within seven days after the end of the month following the month during which the amount was deducted from the remuneration of its employees.[114]

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

From 1 October 2011 to date –

- passengers departing to Botswana, Lesotho, Namibia and Eswatini
- pay R100 per passenger; and
- passengers departing to other international destinations pay R190 per passenger.

21. Mineral and petroleum resources royalties

Section 3(2)(*b*) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) states that the State, as the custodian of the nation's mineral and petroleum resources, may prescribe and levy any fee payable under the MPRDA.

The subsequent enactment of the Mineral and Petroleum Resources Royalty Act 28 of 2008 and the Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008 (the Administration Act) means that the exploitation of all mineral and petroleum resources in South Africa will require the payment of a consideration in the form of a mineral and petroleum royalty, payable to the State through SARS.

Section 2(1) of the Administration Act prescribes the criteria relating to the entities that must register for purposes of paying this royalty. Any person required to register must do so within 60 days after meeting such criteria.

More information, and the application form to register (*MPR 1*), is available on the **SARS website**.

22. Interest, administrative non-compliance and understatement penalties and criminal offences for non-compliance with tax legislation (excluding customs and excise legislation)

The TA Act provides for, amongst other things, –

- the imposition of interest (Chapter 12 of the TA Act);
- the imposition of non-compliance administrative penalties, that is, fixed amount penalties and percentage based penalties (Chapter 15 of the TA Act); and

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113 See Government Notice 783 in *Government Gazette* 35715 of 26 September 2012.

114 For more information see the *Guide for Employers in respect of the Unemployment Insurance Fund* and refer to **www.uif.gov.za**.

- the imposition of an understatement penalty in the case of prejudice to SARS or the *fiscus* as a result of the failure to submit a tax return required under a tax Act or by the Commissioner, 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, or an 'impermissible avoidance arrangement' (Chapter 16 of the TA Act).

A person may also be liable upon conviction of criminal offences relating to non-compliance with tax Acts, to a fine or to imprisonment for a period not exceeding two years, due to matters such as non-payment of taxes, failure to submit tax returns, failure to disclose income, false statements, assisting any person to evade tax or claiming a refund to which the person is not entitled. The criminal offences mentioned here are not exhaustive (Chapter 17 of the TA Act).

23. Request for correction

A taxpayer who makes an error in a return submitted and wishes to correct this mistake, must submit a request for correction which is available through eFiling or at a SARS branch. This allows the taxpayer to correct a previously submitted return or declaration for income tax and in certain circumstances for VAT. If the request for correction function is not available to the taxpayer through eFiling an objection is to be lodged.[115]

24. Objection against an assessment or decision

A taxpayer, who is not –

- able to submit a request for correction; or
- satisfied with an assessment, decision or determination received from SARS,

may lodge an objection in writing stating fully, and in detail the grounds on which the objection is lodged.

The objection must be submitted within 30 business days from –

- the date of the assessment; or
- the date that written reasons (decision or determination) for the assessment were provided by SARS.

If the taxpayer's objection is disallowed (in part or in full), the taxpayer has the right to note an appeal (see **25**).[116]

[115] See the **SARS website** for more information.

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

25. Alternative dispute resolution

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an alternative dispute resolution (ADR) process. A dispute which is subject to ADR may be resolved by agreement whereby the taxpayer or SARS accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.[117]

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

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

Under section 75 of the TA Act, there are three types of advance ruling, namely –

- binding class rulings (BCRs);
- binding private rulings (BPRs); and
- binding general rulings (BGRs).

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

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

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

If an advance ruling applies to a person in accordance with section 83 of the TA Act, SARS must interpret or apply the applicable tax Act to the person in accordance with the ruling. A BPR or BCR applies to a person only if, amongst other things, the person's set of facts or transaction is the same as the particular set of facts or transaction specified in the ruling.

All applications for advance rulings must be filed online on **www.sarsefiling.co.za** which can also be accessed via the **SARS website**.[118]

27. South African Reserve Bank – Exchange control

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

The administration of exchange control is performed by the South African Reserve Bank. The Reserve Bank has delegated some of its powers to deal with exchange control related matters to commercial banks. These banks are known as "authorised dealers" in foreign exchange.

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

[118] For more information see the *Comprehensive Guide to Advance Tax Rulings*.

Residents of South Africa wishing to remit, invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

A person in good standing and over the age of 18 years can invest up to R10 million outside the Common Monetary Area (Lesotho, Eswatini and Namibia) per calendar year. A Tax Clearance Certificate (TCC) or a Tax Compliance Status (TCS) must be obtained in respect of foreign investments. These funds may not be reinvested into the Common Monetary Area countries thereby creating a loop structure or be re-introduced as a loan to a resident of these countries. In addition, up to R1 million within the single discretionary allowance facility can be transferred abroad per calendar year without the requirement to obtain a T CC or a TCS. As of the end of 2019, TCCs are no longer issued by SARS. Instead, taxpayers must request their TCS online via eFiling or at a SARS branch office. Once the request has been approved, taxpayers will be issued with an overall tax compliance status and a PIN. When this PIN is used by a third party, it effectively grants such person access to the taxpayer's TCS.[119]

South African companies (excluding Close Corporations) can make *bona fide* new outward foreign direct investments into companies outside the Common Monetary Area up to R1 billion per company per calendar year through any bank.[120]

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

28. Automatic exchange of information

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

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

The US Foreign Account Tax Compliance Act applies to an entity which is a "financial institution", as defined in Article 1(1) of that Act, which maintains financial accounts of account holders who are specified US persons or passive entities with controlling persons who are specified US persons. An entity is defined in the agreement as a legal person or a legal arrangement such as a trust, partnership or an association.[121]

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[119] See **https://www.sars.gov.za/CLIENTSEGMENTS/INDIVIDUALS/TCS/Pages/default.aspx** for more information on TCS.

[120] For more information visit **www.resbank.co.za**.

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

Annexure A – Examples of the calculation of income tax for natural persons for the 2020 year of assessment

Example 1 – Natural person under 65 years of age

Facts:

X is 60 years of age on 29 February 2020. X's income and expenses were as follows for the 2020 year of assessment:

	R
Salary income (remuneration)	450 000
Pension fund contributions	34 000
Retirement annuity fund contributions	6 000
Qualifying medical expenses not recovered from the medical fund	25 550
Medical scheme fees (R1 900 per month for 1 person for 12 months)	22 800
PAYE	80 056

Result:

Determination of taxable income

Total income (remuneration) 450 000

Less: Retirement fund contributions (R34 000 + R6 000 = R40 000)

<u>Limited</u> to the *lesser of* –

- R350 000; or
- 27,5% of the *higher of* the person's –
  - (i) remuneration (other than any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  - (ii) taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations; or
- taxable income (other than for any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), before the addition of any taxable capital gain and before any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations.

X's remuneration is the same as the taxable income before allowing any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations. Therefore the limitation is as follows:

	R
The *lesser* of –	
- R350 000;	
- 27,5% of R450 000 = R123 750; or	
- taxable income = R450 000, limited to actual contributions	(<u>40 000</u>)
Taxable income	**<u>410 000</u>**

Determination of normal tax

		R	R
Normal tax on R410 000 [R63 853+ (31% x R104 150)]			96 139,50
Less: Primary rebate			(14 220,00)
			81919,50
Less: Rebate for medical scheme fees tax credit = (R310 × 12)			(3 720,00)
			78 199,50
Less: Additional medical expenses tax credit = (25% × R2 720)			(680,00)
	Medical Scheme Fees	22 800,00	
	Less: 4 × Medical scheme fees tax credit (4 × R3 720)	(14 880,00)	
		7 920,00	
	Add: Qualifying medical expenses	25 550,00	
		33 470,00	
	Less: 7,5% × R410 000	(30 750,00)	
		2 720,00	
			77 519,50
Less: PAYE			(80 056,00)
Normal tax refundable by SARS			**(2 536,50)**

Example 2 – Natural persons aged 66 years and 59 years respectively

Facts:

Y is married in community of property. Y is 66 years of age and Y's spouse (Z) is 59 years of age. The following income was received by or accrued to Y and Z and they incurred the following expenses during the 2020 year of assessment:

Income	**Y**	**Spouse (Z)**
	R	R
Remuneration	140 000	Nil
Net income from business R100 000[(1)]	40 000	60 000
Net rental income R12 000[(3)] + R8 000[(2)]	12 000	8 000
Gross interest R24 000[(4)]	12 000	12 000
Expenses		
Qualifying medical expenses - not a member of a medical scheme	13 800	Nil
Retirement annuity fund contributions	Nil	8 000
PAYE	3 175,00	Nil
Provisional tax	4 700,00	Nil

Notes:

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

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

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

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

Result:

Determination of taxable income and normal tax payable by Y

Determination of taxable income

Income	R
Remuneration	140 000
Taxable income from business (R100 000× 40%)[1]	40 000
Net rental income [Nil[2] + (R12 000 × 50%)[3]]	6 000
Taxable interest [(R24 000 × 50%)[4]– R12 000 exemption]	nil
Taxable income	**186 000**

Notes:

(1) The profit-sharing ratio is 40:60 – Y 40% and Z 60%.

(2) The parent's will stipulates that the income derived from the property may not form part of Y's estate, therefore, no portion of the R8 000 is included in Y's taxable income.

(3) The rental income of the joint estate is split equally between the spouses since they are married in community of property.

(4) The total interest of R24 000 is part of the joint estate and is split equally between each spouse since they are married in community of property. Both spouses are each entitled to an exemption against gross interest income. Y, who is over 65 years of age, qualifies for an interest exemption of up to R34 500 which is limited to the actual interest of R12 000.

Determination of normal tax liability

		R	R
Normal tax on R186 000 at 18%			33 480,00
Less:	Primary rebate	14 220,00	
	Secondary rebate (age 65 years and older)	7 794,00	(22 014,00)
			11 466,00
Less:	Additional medical expenses tax credit (33,3% x R13 800)		(4 595,40)
			6 870,60
Less: Income tax			(7 875,00)
	PAYE	(3 175,00)	
	Provisional tax	(4 700,00)	
Normal tax refundable by SARS			**(1 004,40)**

Determination of taxable income and normal tax payable by Z

Determination of taxable income:

Income	
Business income (R100 000× 60%)[1]	60 000
Net rental income [R8 000[2] + (R12 000 × 50%)[3]]	14 000
Taxable interest [(R24 000 × 50%)[4] – R12 000 exemption]	nil
	74 000

Less: **Allowable deductions**
Retirement fund contributions of R8 000

Limited to the *lesser* of –
- R350 000; or
- 27,5% of the *higher* of the person's –
  (i) remuneration (other than any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit); or
  (ii) taxable income (other than any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations; or
- the taxable income (other than any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), before the addition of any taxable capital gain and before any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations.

Z does not have remuneration. The taxable income before allowing any deduction for pension, provident and retirement annuity fund contributions as well as certain foreign tax credits and *bona fide* donations to approved organisations, is R74 000. The limitation is as follows:

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

Notes:

(1) The profit-sharing ratio is 40:60 – Y 40% and Z 60%.

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

(3) The rental income of the joint estate is split equally between the spouses since they are married in community of property.

(4) The total interest of R24 000 is part of the joint estate and is split equally between each spouse since they are married in community of property. Both spouses are each entitled to an exemption against gross interest income. Z is under 65 years of age and thus qualifies for an interest exemption of up to R23 800 which is limited to the actual interest of R12 000.

Determination of normal tax liability

	R
Normal tax on R66 000 × 18%	11 880,00
Less: Primary rebate (R14 220, limited to normal tax of R11 880)	(11 880,00)
Normal tax payable to SARS	**Nil**

Example 3 – Natural person over the age of 75 years

Facts:

Z, who is a widow is 77 years of age. Z has qualifying medical expenses amounting to R3 800 and was not a member of a medical scheme during the 2020 year of assessment. Income and expenses were as follows:

	R
Income	
Pension	150 000
Interest	85 000
PAYE	2 374,00
Provisional tax	9 500,00

Result:

Determination of taxable income:

	R	R
Pension		150 000
Interest	85 000	
Less: Interest exemption	(34 500)	50 500
Taxable income		**200 500**

Determination of normal tax liability

		R
Normal tax on R200 500 [R35 253,00 + (26% × R4 650)]		36 462,00
Less: Rebates		(24 615,00)
Primary rebate	14 220,00	
Secondary rebate (65 years or older)	7 794,00	
Tertiary rebate (75 years or older)	2 601,00	
		11 847,00
Less: Additional medical expenses tax credit (33,3% × R3 800)		(1 265,40)
		10 581,60
Less: Income tax		(11 874,00)
PAYE	(2 374,00)	
Provisional tax	(9 500,00)	
Income tax refundable by SARS		**(1 292,40)**

Annexure B – Example of the determination of the monthly value of a taxable benefit regarding accommodation and a company car

Example – Determination of the value of taxable benefits of an employee

Facts:

An employee receives from the employer, for the first eight months of the 2020 year of assessment, residential accommodation in the form of a three room house, and for the full year of assessment, the right of use of a motor vehicle with a determined value of R180 000. The vehicle did not have a maintenance plan when it was acquired by the employer. The employee's remuneration proxy for the preceding year of assessment amounts to R350 000. The employee pays –

- R3 000 per month for the use of the accommodation; and
- R2 500 per month for the use of the motor vehicle.

Result:

Residential Accommodation – paragraph 9(3) of the Seventh Schedule

= (A – B) x C/100 × D/12
= [(R350 000 – R78 150) × 17/100 × 8/12] – (R3 000 × 8)
= R30 810 – R24 000
= R6 810

Right of use of motor vehicle – paragraph 7(1) of the Seventh Schedule

= [(R180 000 × 3,5%) – R2 500] x 12
= [R6 300 – R2 500] x 12
= R3 800x 12
= R45 600

The total value of the taxable benefits for the 2020 year of assessment amounts to R52 410 (R6 810 + R45 600)