



Guide on Income Tax and the Individual (2019/20)

Income Tax



South African Revenue Service

Guide on Income Tax and the Individual

Preface

The purpose of this guide is to inform individuals who are South African residents of their income tax commitments under the Income Tax Act 58 of 1962 (the Act).

This guide does not attempt to reflect on every scenario that could possibly exist, but does attempt to provide clarity on the majority of issues that are likely to arise in practice. Issues not specifically addressed may be taken up with the South African Revenue Service (SARS) National Contact Centre, or your nearest branch office.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 (TA Act) 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 TA Act. Should an advance tax ruling be required, visit the **SARS website** for details of the application procedure.

This guide includes the amendments effected by the Taxation Laws Amendment Act 34 of 2019 and the Tax Administration Laws Amendment Act 33 of 2019, as well as the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019, which were all promulgated on 15 January 2020. As the year of assessment of an individual ends on the last day of February, these amendments are applicable to the years of assessment commencing on or after 1 March 2019 and ending on 29 February 2020 (that is, the 2020 year of assessment).

All guides, interpretation notes and returns referred to in this guide are available on the SARS website **www.sars.gov.za** and are as at the date of this publication.

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

- visit your nearest SARS branch office;
- visit the **SARS website**;
- contact your own tax advisor or tax practitioner;
- contact the SARS Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time).

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SOUTH AFRICAN REVENUE SERVICE

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1. When is an individual liable for income tax?

Individuals who receive taxable income in excess of a specific amount (known as the “tax threshold” amount) in a year of assessment are liable for income tax. The tax threshold amount for the 2020 year of assessment is –

- R79 000 for individuals below the age of 65;
- R122 300 for individuals aged 65 years but under 75; and
- R136 750 for individuals aged 75 years and older.

Once the tax threshold has been exceeded, tax is determined according to a sliding scale (known as marginal or statutory rates). The applicable rates for the 2020 year of assessment are set out in **Annexure A**.

2. What is a year of assessment for an individual?

A year of assessment for an individual consists of 12 months beginning on the first day of March of a specific year and ending on the last day of February of the following year. The 2020 year of assessment therefore started on 1 March 2019 and ended on 29 February 2020.

3. What are some of the different kinds of income that an individual can be taxed on?

Examples of amounts an individual may receive, and from which the taxable income is determined, include –

- income from employment such as salaries, wages, bonuses, overtime, taxable benefits (fringe benefits), allowances, and certain lump sum benefits;
- income from a business or trade;
- income or profits arising from an individual being a beneficiary of a trust;
- fees from companies or close corporations for services rendered;
- investment income such as interest, foreign dividends and dividends from a Real Estate Investment Trust (REIT);
- rental income;
- income from royalties;
- annuities;
- pensions; and
- certain capital gains.

4. Do all individuals have to register as taxpayers and submit income tax returns?

4.1 Registration

An individual who becomes liable for any income tax or who must submit an income tax return must, within 21 business days of becoming liable, apply to SARS for registration as a taxpayer in the prescribed form and manner. A business day means a day which is not a Saturday, Sunday or public holiday.

SARS may require further particulars or documents from a person in order to finalise the registration.¹ A person who fails to provide all particulars and documents requested may be regarded as not having applied for registration until all the required details have been submitted. SARS is also permitted to register a person for tax if that person fails to apply for registration.

An individual who has not yet registered with SARS can do so in one of three ways:

1. Auto registration for Personal Income Tax:

When you register for SARS eFiling for the first time and you do not yet have a personal income tax number, SARS will automatically register you and issue a tax reference number. Note that you must have a valid South African ID number.

Easy steps:

1. Go to **www.sars.gov.za**
2. Select 'Register Now'
3. Follow the prompts
4. Request a Notice of Registration – it will reflect your income tax registration number

You can also register for SARS eFiling on the SARS MobiApp and follow the same steps.

2. Register through your employer via SARS eFiling:

SARS eFiling offers the SARS registration function, which allows employers to submit employee income tax registrations to SARS. For more information, see the *Tax Reference Number TRN Enquiry Services on eFiling: GEN-ENR-01-G08*.

3. Register at your nearest SARS Branch: (Please note that visits to SARS branches will be limited during the lockdown period)

Visit your nearest SARS Branch to register for Personal Income Tax. Remember to make an appointment before you visit a branch.

If you are unsure whether or not you are registered, ask your employer, or use the SARS Query function, or call the SARS Contact Centre on 0800 00 7277.

¹ The TA Act allows SARS to ask a person to provide biometric information when that person applies for registration as a taxpayer or confirms a current registration. Biometric information refers to biological data used to authenticate the identity of an individual by means of fingerprint recognition, facial recognition, vocal recognition and iris or retina recognition. Since biometric information is almost impossible to duplicate, unlike a signature for instance, it is an effective prevention against identity theft and fraud.

When registering, the individual **must have all supporting documents**, which may include proof of identity, proof of address and proof of banking details.

A person who has been registered as a taxpayer must communicate to SARS, within 21 business days, any change that relates to his or her postal address, physical address, representative taxpayer, banking particulars used for transactions with SARS, electronic address used for communication with SARS or any other details which the Commissioner may require by public notice.

4.2 Submission of income tax returns

Income tax returns must be submitted to SARS on an annual basis. This is carried out during a period known as “Tax Season”, which is the period during which current income tax returns can be obtained and submitted for assessment. The income tax return applicable to individuals is known as the ITR12 form. The Tax Season for the 2020 year of assessment opens on 1 September 2020. The period during which an income tax return must be submitted has been set out in **4.3**.

Income tax returns may be submitted –

- electronically at a SARS branch office (by appointment); or
- through eFiling or via the SARS MobiApp, provided the individual is registered for eFiling.

4.2.1 Individuals required to submit an income tax return

An individual must submit an income tax return if, during the 2020 year of assessment, he or she –

- is a resident and carried on any trade (other than solely as an employee) either in or out of South Africa;
- is not a resident and carried on any trade (other than solely as an employee) in South Africa;
- receives gross income from employment (salary, wages etc) from more than one employer and which exceeds the tax threshold (see **1** for the tax thresholds for the 2020 year of assessment);
- received any remuneration, or if any remuneration accrued to that person, in respect of services rendered outside the Republic;
- is a resident and had a capital gain or capital loss exceeding R40 000;
- is not a resident and had capital gains or capital losses from the disposal of an asset;
- receives any taxable allowance or advance (such as a travel, subsistence, public office, computer or cellular telephone allowance) and whose gross income exceeds the applicable tax threshold;
- was granted a taxable benefit in the form of a right of use of motor vehicle and whose gross income exceeds the applicable tax threshold;
- receives an income tax return from SARS or is requested to furnish an income tax return regardless of the amount of income received or accrued;
- is resident in South Africa, and who –
 - held or owned any funds in foreign currency or assets outside South Africa, if their total value exceeded R225 000 at any time during the year of assessment;

- had income or capital gains from foreign currency or assets outside South Africa that was attributed under the Act;
- held a participation right in a controlled foreign company;
- had taxable turnover.
- is a non-resident who receives or to whom interest accrues from a source in the Republic, and –
 - he or she was physically present in the Republic for a period exceeding 183 days in aggregate during the 12 month period before the date on which the interest was received or accrued; or
 - the debt from which the interest arises is connected to a permanent establishment of a person in the Republic;
- receives local interest (other than from a tax free investment) in excess of the exemption thresholds, being R23 800 if the individual is below the age of 65, and R34 500 if the individual is 65 years or older; and
- income received from a REIT.

4.2.2 Individuals not required to submit an income tax return

An individual is **not** required to submit an income tax return for the 2020 year of assessment (even when that individual's gross income exceeds the applicable tax threshold at which income tax becomes payable) if the gross income of that individual consisted solely of one or more of the following:

- Remuneration payable from a single source and which did not exceed R500 000 for the year of assessment, and employees' tax was correctly withheld in terms of the deduction tables prescribed by the Commissioner for SARS (the Commissioner) on this remuneration;
- Local interest (other than from a tax free investment) not exceeding R23 800 if the individual is below the age of 65, or R34 500 if the individual is 65 years or older.
- Exempt dividends, and the individual was not a resident throughout the 2020 year of assessment.
- Amounts received or accrued from a tax-free investment.

An individual who is unsure as to whether an income tax return must be submitted, may consult the **SARS website**, which contains an interactive set of questions designed to assist in deciding whether an income tax return is required. Alternately, call the SARS Contact Centre on 0800 00 7277 or visit the nearest SARS branch (by appointment) for assistance.

4.3 Filing an income tax return

Every year, the Commissioner announces by way of a public notice in the *Government Gazette*² who is required to furnish an income tax return for the assessment of tax. The notice will also prescribe the period within which the income tax return must be furnished for the years of assessment specified in that notice.

² Government Notice 741 of 2020.

In order to use eFiling to complete and submit an income tax return electronically, an individual must register as an eFiler. Alternatively, a SARS employee can assist any individual in completing and submitting the income tax return electronically at any SARS branch office (by appointment only).

Please note that the closing date for electronic submissions of the 2020 income tax return is:

- 22 October 2020 for taxpayers who cannot file electronically and who do so at a SARS branch by appointment;
- 16 November 2020 for non-provisional taxpayers who file electronically via eFiling or the SARS MobiApp;
- 29 January 2021 for provisional taxpayers who file electronically via eFiling or the SARS MobiApp.

Certain administrative penalties may be levied under Chapter 15 of the TA Act where an income tax return is submitted after the closing date. The amount of the penalties varies depending on the amount of taxable income of the individual concerned. These penalties increase by the same amount on a monthly basis so it is crucial that the closing dates are adhered to. See 11 for more information.

4.3.1 Auto-assessment process

In August 2020, SARS will assess a significant number of taxpayers automatically. An individual who accepts the outcome, does not have to complete an income tax return because SARS would have done so.

An individual who is auto-assessed, will be notified by SMS in August – so there will be no need for the individual to call SARS or to visit a branch. The SMS will direct the individual to eFiling or the SARS MobiApp to either “Accept” or “Edit” the return.

Some individuals may receive communication before 1 August 2020 indicating why they will not be auto-assessed, or alerting them to their 2019 income tax return submission findings. This will assist them in submitting any outstanding income tax returns. Please adhere to the communication and submit any outstanding income tax returns as soon as possible, to avoid delays in filing the 2020 income tax return, and to ensure a seamless experience this year.

4.3.2 How to obtain an income tax return

SARS promotes the electronic submission of income tax returns, as it allows for –

- the quick generation and submission of income tax returns;
- easy payments; and
- interaction with SARS in a secure online environment.

An individual, who wishes to file electronically or make use of a tax practitioner to do so, may obtain the income tax return, which can be personalised to suit the individual’s unique tax requirements, from the SARS eFiling website www.sarsefiling.co.za. This is carried out by way of completing an online tax “wizard”. Once obtained, the income tax return can then be completed and submitted online through SARS eFiling.

Once an individual is registered for eFiling, that individual also has the option of filing the income tax return by making use of the SARS MobiApp, after which he or she will be able to file the income tax return quickly and easily making use of certain iOS and Android devices, such as cellular phones or tablets.

For more information on how to file an income tax return electronically, please refer to the **SARS website**, or request assistance from any SARS branch office by appointment or the SARS Contact Centre.

4.3.3 Pre-populated income tax return

Once a request has been made for an income tax return, SARS will –

- customise the income tax return according to the complexity of the individual's tax affairs (that is, an income tax return will only contain the relevant fields for the completion of the return to suit the individual's specific needs);
- pre-populate the income tax return with the individual's personal information, as well as with the information contained in any IRP5/IT3(a) certificate(s) (for example, employment income, pension fund contributions, employees' tax deducted); and
- pre-populate the ITR12 with certain information available from third party data.

On receipt of the pre-populated income tax return, the individual must –

- verify the pre-populated information on the income tax return against any IRP5/IT3(a) certificate(s) and any other relevant tax certificates, such as those issued by a medical scheme or retirement annuity fund;
- make changes to (or include) personal information which is new or which may have changed;
- complete the remaining relevant fields (for example, additional income and deductions);
- request a revised income tax return either via eFiling, by visiting a local SARS branch office by appointment, or by contacting the SARS Contact Centre if the income tax return does not make provision for all the fields required; and
- submit the income tax return –
 - electronically to SARS via eFiling or through the SARS MobiApp; or
 - online at one of the SARS branch offices, by appointment only.

Note:

- (1) The income tax return must be signed by the individual. A signature may also comprise an electronic signature, which includes a user ID and access code for electronic submission platforms such as SARS eFiling. Failure to do so could result in administrative penalties being levied.
- (2) When completing the income tax return, the following documentation will be required in order to verify the existing, pre-populated information that appears in the income tax return, as well as to complete any remaining portions of the income tax return:
 - IRP5/IT3(a) certificate(s).
 - Banking details.
 - Certificates received for investment income received or accrued.

- Any other documentation relating to income received or accrued, such as remuneration that may not have been pre-populated, trade income, investment income, foreign income.
- Details of medical expenses paid and medical scheme contributions made.
- Completed Confirmation of Diagnosis of Disability (ITR-DD) form, where applicable.
- The relevant certificates reflecting retirement annuity fund contributions made.
- A logbook and other documents in support of business travel expenses (if in receipt of a travel allowance).
- Any other documentation relating to the allowable deductions the individual wishes to claim.
- Approved Voluntary Disclosure Programme (VDP) Agreement between the individual and SARS for years before 17 February 2010, where applicable.
- All information relating to capital gains tax transactions (local and foreign).
- All information relating to the letting of assets.

An individual is required to retain **ALL** relevant records, books of account or documents for a period of five years from the date of the submission of the income tax return, or, if no income tax return was required, for five years from the end of the relevant tax period. These records may be kept in “an acceptable electronic form”.³ The individual must produce them should that income tax return be subject to verification or audit.

The TA Act imposes a duty on a person to retain records, books of account or documents needed to comply with the Act. The duty to retain records does not rest only on individuals who are registered and who have filed an income tax return, but is extended to include those individuals who ought to, but have not filed an income tax return, and those individuals who would have been obliged to file an income tax return if not for an exemption or threshold. Failure or neglect to retain records as required under the TA Act is a criminal offence.

For further information on registration or income tax return submission, please see the “Tax Season 2020” web page on the **SARS website**.

5. To whom is the income tax payable?

The income tax is payable to SARS, which acts as the administrator responsible for collecting revenue on behalf of the South African Government. SARS also makes use of withholding agents such as employers, that withhold employees’ tax (on SARS’s behalf) from remuneration paid to employees, and pay this to SARS on a monthly basis.

6. When is income tax payable?

The final income tax payable by an individual can only be calculated once the total taxable income earned by the individual for the full year of assessment has been determined. This is normally only carried out after the end of the year of assessment when the income tax return has been processed and an assessment has been issued.

³ As set out in *Government Gazette* 35733, dated 1 October 2012.

The government makes use of, amongst other things, income tax in order to fund social services such as education, health, security and welfare – with the funding thereof taking place primarily through SARS's administration of revenue collection. There are currently two main methods used by SARS to collect income tax, and these are –

- the withholding of employees' tax by an employer on remuneration paid to an employee; this is subsequently paid to SARS on a monthly basis; and
- the payment of provisional tax (by selected individuals), which is collected by SARS on a six-monthly basis.

Employees' tax and provisional tax are in existence to help relieve the tax burden that would exist on assessment, by spreading the payments over multiple periods instead of one lump sum payable at year-end. Provisional tax is covered in more detail in **9** of this guide, while employees' tax is discussed in **7**.

7. What is employees' tax?

Employees' tax is the tax that employers are required to deduct or withhold from the remuneration of employees (for example, salaries, wages and bonuses etc) and pay over to SARS on a monthly basis. Employees' tax is also referred to ordinarily as "Pay As You Earn" (PAYE). The tax is withheld when remuneration is paid or becomes payable to an employee, for example, on a daily, weekly, fortnightly or monthly basis.

Employees' tax is therefore a withholding tax on employment income and will be offset against the employee's final income tax liability for the applicable year of assessment.

The following amounts **may be deducted from remuneration** before employees' tax is calculated:

- Pension or provident fund contributions
- Retirement annuity fund contributions
- So much of any *bona fide* donation made by the employer on behalf of the employee as does not exceed 5% of that remuneration after taking into account the above allowable deductions.

In addition, the employees' tax that is calculated must further be reduced by the amount of any medical scheme fees tax credit or additional medical expenses tax credit that may apply in respect of that employee.

Commission, travel allowances and non-standard employment (part-time employment) income are subject to employees' tax irrespective of the amount received. Part-time employment normally refers to employment whereby a person works for an employer for less than 22 hours in a full week.

In instances where any of an employee's employment income is subject to employees' tax, the employee's final tax liability is assessed when SARS processes the income tax return that has been submitted by the employee for that applicable year of assessment.

For a more detailed discussion on employees' tax and the calculation thereof, please refer to the *Guide for Employers in respect of Employees' Tax (2020 tax year): PAYE-GEN-01-G14*.

8. What proof does an employee have of employees' tax deducted from his or her earnings?

An employer must issue an employee with a receipt known as an employees' tax certificate (also known as an IRP5) where employees' tax was deducted or withheld from the employee's earnings. This IRP5 discloses, amongst other things, the total employment income earned for the year of assessment and the employees' tax that was deducted or withheld by the employer and paid over to SARS.

9. What is provisional tax?

An individual who derives income that does not constitute remuneration (for example, taxable interest, rental or business income) must pay what is known as "provisional tax". Provisional tax is a method of paying income tax on an on-going basis as opposed to paying a large amount once a year, on assessment, namely, twice a year (or on a six-monthly basis). A third or "top-up" payment can be made to avoid interest (see 9.2). The provisional tax paid (as occurs in the case of employees' tax) will be offset against the final income tax that the individual is required to pay for the year of assessment.

9.1 Who qualifies to be a provisional taxpayer?

A provisional taxpayer includes –

- any individual who earns taxable investment income, business income or farming income (that is, any income other than remuneration);
- any individual who earns remuneration from an employer that is not registered for employees' tax purposes; or
- any person who is notified by the Commissioner that he or she is a provisional taxpayer.

An individual will not be regarded as a provisional taxpayer if that individual's taxable income for the 2020 year of assessment is not derived from the carrying on of any business, and if such taxable income –

- does not exceed the applicable annual tax threshold;⁴ or
- is derived solely from interest, dividends, foreign dividends, rental from the letting of fixed property and any remuneration from an employer that is not registered for employees' tax purposes, and will not exceed R30 000.

9.2 When is provisional tax due?

Provisional tax for an individual is due as follows:

- *First payment* – six months after the beginning of the particular year of assessment. If the last day of August falls on a Saturday, Sunday or public holiday, the payment must be made no later than the last business day before the Saturday, Sunday or public holiday. For the 2020 year of assessment, the first payment was due on or before 30 August 2019.

⁴ The term "tax threshold" means the maximum amount of taxable income of a person during a year of assessment that would result in no tax being payable by that person taking into account the applicable normal rates of tax and the rebates available in section 6. The tax thresholds change annually and differ for persons under the age of 65, persons 65 years of age and older and persons 75 years of age and older.

- *Second payment* – on or before the last day of the year of assessment. As noted above, the payment must be made on the last business day of the month. For the 2020 year of assessment, the second payment was due on or before 28 February 2020.
- *A voluntary third or “top-up” payment* – seven months after the end of the year of assessment. As noted above, the payment must be made on the last business day of the month. For the 2020 year of assessment, this payment is due on or before 30 September 2020. Payment can be made to avoid liability to pay interest that will arise due to the final income tax not being settled within seven months after the end of the year of assessment.

Certain penalties may be imposed on provisional taxpayers. A provisional taxpayer who pays the first or second provisional payment after the due date for payment, is liable to pay a penalty of 10% of the amount unpaid by the due date.

A provisional taxpayer who underestimates taxable income for the second provisional tax payment may be liable for a penalty for underpayment of provisional tax due to underestimation (the underestimation penalty).

A provisional taxpayer who fails to submit the second estimate of taxable income by the end of the fourth month after the end of the year of assessment, is deemed to have submitted an estimate of Rnil, and the underestimation penalty will be calculated accordingly.

Individuals may apply to the Commissioner to draw up accounts for their business income to a date other than the last day of February. Refer to Interpretation Note 19 “Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February”. The date for submission of the abovementioned provisional tax returns will change depending on the date so approved.

9.3 How much provisional tax must be paid?

A provisional tax return (IRP6) must be completed by estimating the individual’s total taxable income (which includes, amongst others, employment income, business income, taxable capital gains, interest and rentals) for the year of assessment and determining the income tax payable on the estimated taxable income.

The tax payable for the first payment must be half of the total estimated tax liability.

The estimate may not be lower than the individual’s taxable income (as assessed by SARS) for the previous year of assessment, known as the basic amount, unless permission is obtained from SARS. An individual who has no assessed taxable income for a previous year of assessment must estimate his or her taxable income for the current year of assessment as accurately as possible. SARS may request the individual to justify any estimate submitted and may increase the estimated amount if the individual is unable to justify the estimate.

The estimate for the second payment must be equal to the total liability for the year of assessment. Should an individual underestimate his or her tax liability, an understatement penalty may be levied (refer to Interpretation Note 1 “Provisional Tax Estimates” for further detail).

The tax payable on the estimated taxable income for the year of assessment must be determined by applying the rate of income tax applicable to that amount of taxable income by making use of the statutory rates or by using the tax tables that are available in the *IT-PT-AE-01-G01 Guide for Provisional Tax 2020*. Employees' tax, any **foreign taxes** paid or proved to be payable by the provisional taxpayer to the government of another country, and any provisional tax already paid during that year of assessment, can be deducted from the estimated provisional tax that is payable for the relevant provisional tax period.

For more information on provisional tax estimates, please see Interpretation Note 1.

10. What happens on assessment?

All income tax returns that are completed and submitted to SARS are processed, and an assessment is issued. The assessment⁵ shows the final income tax liability on all of the taxable income (including, but not limited to, employment income, business income, taxable capital gains, interest and rental income) earned by the individual for the year of assessment.

Processing includes the following steps:

- All income received by or accrued to a South African resident from all over the world is added together to arrive at “gross income”. Amounts that are capital are not included in gross income.
- Amounts that are exempt from income tax are excluded from gross income.
- Allowable tax deductions such as current contributions to a retirement annuity fund, donations to approved public benefit organisations and for which a section 18A certificate has been issued, and wear-and-tear allowances are taken into account and deducted to arrive at “taxable income”. These deductions are subject to certain limitations as legislated.
- The resultant taxable income is used to determine the income tax due by applying the relevant statutory rates of tax.
- The individual's income tax due is reduced by a primary rebate and, in the case of an individual who is 65 years of age but below 75, by an additional secondary rebate, and a further tertiary rebate for an individual who is 75 years of age or older. These rebates (or portions of these rebates) are merely in existence to reduce the income tax due, but cannot result in a refund or credit situation. In other words, they are limited to the income tax due. The applicable rebates for the 2020 year of assessment are as follows:
 - Primary rebate: R14 220
 - Secondary rebate: R7 794
 - Tertiary rebate: R2 601
- A medical scheme fees tax credit and an additional medical expenses tax credit may also be available to reduce an individual's tax liability. These are rebates for contributions made to a registered medical scheme and out-of-pocket medical expenses paid by individuals.⁶

⁵ Assessments are regulated by the TA Act. An “assessment” is defined in the TA Act as “the determination of the amount of a tax liability or refund” through an assessment by SARS (administrative assessment).

⁶ For more information on these rebates, please see the *Guide on the Determination of Medical Tax Credits*.

- The employees' tax and provisional tax paid (jointly referred to as "tax credits") during the year of assessment are finally deducted from the individual's income tax liability to arrive at the final income tax payable. This will result in a net amount that is either due **by** the individual or which is refundable **to** the individual.
- Note that foreign tax credits which are payable on foreign income which is subject to tax in South Africa may also be deducted from the income tax due by an individual, but may not result in a refund. Any foreign tax credits not allowed in a particular year of assessment may be carried forward to the subsequent year of assessment, and are subject to certain restrictions.

See **Annexure B** for an example on how the tax liability is calculated.

11. Penalties

An individual who does not comply with his or her tax obligations may be liable to certain penalties. The two broad categories of penalties introduced by the TA Act on 1 October 2012 are *administrative non-compliance penalties* in terms of Chapter 15 of the TA Act, intended mainly to promote compliance with the administrative provisions of a tax Act, and *understatement penalties* in terms of Chapter 16 of the TA Act, intended to deter conduct that flouts the law. Each penalty is briefly explained below.

11.1 Administrative non-compliance penalties

The two types of penalties falling within this category are –

- fixed amount penalties; and
- percentage-based penalties.

The fixed amount penalty may be levied when an individual fails to comply with an obligation imposed by or under a tax Act and which is listed in a public notice issued by the Commissioner. Currently the only non-compliance that could be subject to this penalty is failure by a person to submit an income tax return by the due date. These penalties are applicable for years of assessment commencing on or after 1 March 2006 where a person has two or more outstanding income tax returns for such years of assessment.

Fixed amount penalties are payable at a fixed rate per month. The amount of the penalty is dependent on the amount of taxable income received by an individual in the preceding year of assessment; or on whether that individual is in an assessed loss position (see **Annexure A** for the table of administrative non-compliance penalties). The penalty increases every month by the same amount, up to certain maximums – 35 months, if the individual's address is known to SARS; and 47 months, if the address is not known.

An individual will be liable for a penalty of 10% on the late or non-payment of provisional tax. Late or non-submission of an estimate for provisional tax or the failure to pay the correct amount of provisional tax as a result of underestimation could also result in penalties being levied. For more information on provisional tax penalties, please see Interpretation Note 1.

11.2 Understatement penalties

Understatement penalties are levied in cases where more serious contraventions of a tax Act take place. The penalty is levied in terms of a prescribed table (see **Annexure B** for the understatement penalty percentage table) if **one** of the understatements listed below takes place which either prejudices SARS or the *fiscus*:

- Failure to submit a return.
- An omission from a return.
- An incorrect statement in a return.
- If no return is required, the failure to pay the correct amount of 'tax'.
- An 'impermissible avoidance arrangement'.⁷

The understatement penalty could be up to 200% of the tax shortfall. For further information on understatement penalties, see the *Guide to Understatement Penalties*.

12. Interest

Interest at the prescribed rate may be charged under the following circumstances:

(a) Late payment

- If an individual is late in paying his or her income tax that is due on assessment.
- If the provisional tax is not paid in full within the applicable prescribed period.

(b) Underpayment

If the provisional tax paid for a year of assessment is not sufficient to offset the individual's assessed final income tax liability in full.

The prescribed rate of interest is fixed from time-to-time by the Minister of Finance. With effect from 1 November 2019 this rate has been reduced from 10,25% to 10%.

13. Criminal offences

Criminal offences *relating to non-compliance* could be committed if an individual does not comply with an obligation imposed under a tax Act. The TA Act contains a comprehensive list of these obligations. These offences are committed if the person performs or fails to perform an act wilfully and without just cause. If convicted, the person is subject to a fine or to imprisonment for a period not exceeding two years. This category includes offences such as (but not limited to) –

- failure to register or notify SARS of a change in registered particulars when required;
- failure to retain records as required;
- failure or neglect to submit a return or document to SARS or issue a document to a person as required;
- failure to provide information, documents or material facts to SARS as and when required under a tax Act; and

⁷ An 'impermissible avoidance arrangement' refers to an arrangement with the sole or main purpose of obtaining an undue tax benefit by way of, for example, a transaction which lacks commercial substance or is not conducted at arm's length.

- obstructing or hindering a SARS official in carrying out his or her duties.

Criminal offences *relating to tax evasion* could be committed if a person intentionally evades tax or obtains an undue refund, or assists another person in such an endeavour. If convicted, that person may be subject to a fine or to imprisonment for a period not exceeding five years. This includes the making of false entries in books of account or income tax returns without reasonable grounds for believing that entry to be true, providing false answers to information requests, and fraud.

Criminal offences *relating to secrecy provisions* could be committed if a SARS official (current or former) or the Tax Ombud, who have sworn an oath or taken a solemn declaration, and persons or entities to whom the information is disclosed, contravene the secrecy provisions. If convicted, these persons could be subject to a fine or imprisonment for a period not exceeding two years.

Criminal offences *relating to filing a return without authority* occur where a person –

- submits a return or other document to SARS under a forged signature;
- uses another person's electronic or digital signature in an electronic communication to SARS without that other person's consent and authority; or
- submits to SARS a communication on behalf of another person without that other person's consent and authority.

A person convicted could be subject to a fine or imprisonment for a period not exceeding two years.

14. Conclusion

As has been noted in the previous Budget speeches by the Minister of Finance, the income tax payable by individuals can be reduced if everyone pays their fair share of income tax – the more of us who pay, the less we all have to pay!

It is therefore important that all individuals meet their income tax obligations and that cases of non-compliance are reported to SARS.

As a tax-compliant South African, you are responsible for everything good about our country. The income tax you pay enables Government to meet a host of economic and social development needs of our country and its people, thereby ensuring a better life for everyone.

Annexure A – Statutory rates of tax for the 2020 year of assessment

Statutory rates of tax for the 2019/20 year of assessment

TAXABLE INCOME	RATE OF TAX
Not exceeding R195 850	18 per cent of taxable income
Exceeding R 195 850 but not exceeding R305 850	R35 253 plus 26 per cent of amount by which taxable income exceeds R195 850
Exceeding R305 850 but not exceeding R423 300	R63 853 plus 31 per cent of amount by which taxable income exceeds R305 850
Exceeding R423 300 but not exceeding R555 600	R100 263 plus 36 per cent of amount by which taxable income exceeds R423 300
Exceeding R555 600 but not exceeding R708 310	R147 891 plus 39 per cent of amount by which taxable income exceeds R555 600
Exceeding R708 310 but not exceeding R1 500 000	R207 448 plus 41 per cent of amount by which taxable income exceeds R708 310
Exceeding R1 500 000	R532 041 plus 45 per cent of amount by which taxable income exceeds R1 500 000

Rebates	Primary rebate	R14 220
	Secondary rebate (Additional for persons of 65 years or older)	R7 794
	Third rebate (Additional for persons of 75 years or older)	R2 601

Tax thresholds	The tax thresholds at which liability for income tax commences, are –	
	• persons below 65 years	R79 000
	• persons 65 years but not yet 75	R122 300
	• persons 75 years or older	R136 750

Interest exemptions	• Persons below 65 years	R23 800
	• Persons 65 years or older	R34 500

Retirement fund lump sum benefits

There are two categories of lump sum benefits –

- Retirement fund lump sum benefits; and
- Retirement fund lump sum withdrawal benefits.

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

- Retirement;
- Death; or
- Termination of employment due to redundancy or an employer ceasing trade.

A retirement fund lump sum withdrawal benefit refers to a lump sum from any one of the abovementioned funds which is payable other than as a result of retirement, death, termination of employment or redundancy.

The amounts of R500 000 and R25 000 in the tables below, that is, the threshold where the lump sum payments become taxable, are only available to an individual once-off. Lump sum benefits must therefore be aggregated – from 1 October 2007 in respect of retirement fund lump sum benefits and all severance benefits received or accrued from 1 March 2011, and from 1 March 2009 in respect of retirement fund lump sum withdrawal benefits.

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

Table for retirement fund lump sum benefits or severance benefits

TAXABLE INCOME	RATES OF TAX
Not exceeding R500 000	0 per cent of the taxable income
Exceeding R500 000 but not exceeding R700 000	18 per cent of amount by which taxable income exceeds R500 000
Exceeding R700 000 but not exceeding R1 050 000	R36 000 plus 27 per cent of amount by which taxable income exceeds R700 000
Exceeding R1 050 000	R130 500 plus 36 per cent of amount by which taxable income exceeds R1 050 000

Table for retirement fund lump sum withdrawal benefits

TAXABLE INCOME	RATES OF TAX
Not exceeding R25 000	0 per cent of the taxable income
Exceeding R25 000 but not exceeding R660 000	18 per cent of amount by which taxable income exceeds R25 000
Exceeding R660 000 but not exceeding R990 000	R114 300 plus 27 per cent of amount by which taxable income exceeds R660 000
Exceeding R990 000	R203 400 plus 36 per cent of amount by which taxable income exceeds R990 000

Table of amount of administrative non-compliance penalties

Assessed loss or taxable income for preceding year	Penalty
Assessed loss	R250
R0 - R250 000	R250
R250 001 - R500 000	R500
R500 001 - R1 000 000	R1 000
R1 000 001 - R5 000 000	R2 000
R5 000 000 - R10 000 000	R4 000
R10 000 000 - R50 000 000	R8 000
Above R50 000 000	R16 000

Understatement penalty percentage table

Behaviour	Standard case	If obstructive or if it is a repeat case	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
Substantial understatement	10%	20%	5%	0%
Reasonable care not taken in completing return	25%	50%	15%	0%
No reasonable grounds for tax position taken	50%	75%	25%	0%
Impermissible avoidance arrangement	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%
Intentional tax evasion	150%	200%	75%	10%

Annexure B – Example of how tax is calculated

An employee who is not yet 65 years of age and who is a resident of the Republic, received the following income for the period 1 March 2019 to 29 February 2020 (that is, the 2020 year of assessment):

	R
Pensionable Salary	230 000
Overtime	17 000
Bonus	25 000
Interest from South African Banks	24 000
Gross rental income on fixed property	<u>27 000</u>
GROSS INCOME RECEIVED	<u>323 000</u>

The employee contributed R17 250 to a South African pension fund during the year of assessment and claimed qualifying expenses of R10 000 against rental income.

Tax deducted or paid during the year of assessment is as follows:

	R
Employees' tax	40 829
Provisional tax payments for the year of assessment ⁸	1 500

Calculation of taxable income:

Gross income received	323 000
Less: Exempt income:	
South African interest (limited to R23 800)	<u>(R23 800)</u>
Income	<u>299 200</u>
Less: Deductions:	
Allowable expenses against rental income	(10 000)
Current pension fund contributions	<u>(17 250)</u>
TAXABLE INCOME	<u>271 950</u>

The income tax payable on the taxable income of R271 950 is calculated by applying the statutory (marginal) rates of tax for the year of assessment ending 29 February 2020 (see the applicable table in **Annexure A**). This is determined as follows:

The taxable income of R271 950 falls within the taxable income bracket of R195 850 – R305 850 as per the table of rates.

As per the table of rates, the tax on the first R195 850 is	35 253
The tax on the amount above R195 850 is 26% of (R271 950 less R195 850)	
Therefore, 26% x R76 100 is	<u>19 786</u>
Normal tax payable	55 039
Less: Primary rebate	<u>(14 220)</u>
Net normal tax payable	40 819
Less: Employees' tax	(40 829)
Provisional tax paid	<u>(1 500)</u>
TAX LIABILITY (TAX REFUNDABLE ON ASSESSMENT – DUE TO YOU)	<u>(1 510)</u>

⁸ The implications of any penalty for an underpayment as a result of the underestimation of provisional tax are not considered here.