Legal & Policy

Tax Guide for Small Businesses

2014/15

South African Revenue Service

Tax Guide for Small Businesses 2014/15

Preface

This is a general guide dealing with the taxation of small businesses.

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

The information in this guide concerning income tax relates to –

- **individuals** for the 2015 year of assessment which commenced on 1 March 2014 and ended on 28 February 2015; and
- **companies and close corporations** with tax years ending during the 12 month period ending on 31 March 2015.

The information in this guide concerning value added tax and other taxes, duties, levies and contributions reflects the rates applicable as at the date of its publication. While care has been taken in the preparation of this document to ensure that the information and the rates published are correct at the date of publication, errors may occur. Should there be any doubt it would be advisable for users to verify the rates with the relevant legislation applicable to the tax concerned.

Further, the guides and interpretations notes referred to in this guide are the guides and interpretation notes available on The SARS website as at the date of this publication.

This guide has been updated to include the Taxation Laws Amendment Act 43 of 2014 promulgated on 20 January 2015 and the Rate and Monetary Amounts and Amendment Revenue Laws Act 42 of 2014 promulgated on 20 January 2015.

Should you require additional information concerning any aspect on the interpretation and administration of tax and customs legislation, you may –

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

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

Prepared by

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SOUTH AFRICAN REVENUE SERVICE
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Glossary

In this guide, unless the context indicates otherwise –

- **"CC"** means close corporation;
- **"CGT"** means capital gains tax;
- **"Commissioner"** means Commissioner for the South African Revenue Service;
- **"PAYE"** means Pay-As-You-Earn (Employees' tax);
- **"SARS"** means South African Revenue Service;
- **"SBC"** means small business corporation;
- **"Schedule"** means a Schedule to the Act
- **"SDL"** means skills development levy;
- **"Schedule"** means a schedule to the Act;
- **"section"** means a section of the Act;
- **"SMME"** means small, medium and micro enterprise;
- **"South Africa"** means the Republic of South Africa;
- **"STT"** means securities transfer tax;
- **"the Act"** means the Income Tax Act 58 of 1962;
- **"the TA Act"** means the Tax Administration Act 28 of 2011;
- **"the VAT Act"** means the Value-Added Tax Act 89 of 1991;
- **"UIF"** means unemployment insurance fund;
- **"VAT"** means value-added tax; and
- any word or expression bears the meaning ascribed to it in the relevant Act.

1. Overview

This guide contains information about the tax laws and some other statutory obligations that apply to small businesses. It describes some of the forms of business entities in South Africa – sole proprietorship, partnership, close corporation and a private company – and explains in general terms the tax responsibilities of each.

It also contains general information, such as registration, aspects of record-keeping, relief measures for small business corporations, and how net profit or loss and taxable income or assessed loss are determined. This helps to illustrate the specific tax considerations for the different types of business entities. Furthermore, it contains information on some of the other taxes that may be payable in addition to income tax.

While the information in this guide applies to different kinds of businesses and is of a general nature, specific types of businesses such as insurance companies, banks and investment companies are not discussed. However, the requirements of the tax laws regarding, for example, registration and filing of tax forms also apply to these businesses.

2. General characteristics of different types of businesses

2.1 Introduction

A person wishing to start a business must decide (which will be that person's own choice entirely) what type of business entity to use. There are legal, tax and other considerations that can influence this decision. The legal and other considerations are beyond the scope of this guide while the tax consequences of conducting business through each type of entity will be an important element in making a decision.

The purpose of this guide is not to provide advice on the type of business entity through which to conduct a business, but to provide entrepreneurs with information to assist them to make their own informed decisions when starting a business.

2.1.1 Sole proprietorship

A sole proprietorship is a business that is owned and operated by a natural person. This is the simplest form of business entity. The business has no existence (therefore it is not a "legal person" such as a "company" as defined in the Act) separate from the owner who is called the proprietor. The owner must include the income from such business in his or her own income tax return and is responsible for the payment of taxes thereon. Only the owner has the authority to make decisions for the business. The owner assumes the risks of the business to the extent of all of his or her assets whether used in the business or not.

Some advantages of a sole proprietorship are:

- Simple to establish and operate.
- Owner is free to make decisions.
- Minimum of legal requirements.
- Owner receives all the profits.
- Easy to discontinue the business.

Some disadvantages of a sole proprietorship are:

- Unlimited liability of the owner.

  The owner is legally liable for all the debts of the business. Not only the investment or business property, but any personal and fixed property may be attached by creditors.

- Limited ability to raise capital.

  The business capital is limited to whatever the owner can personally secure. This limits the expansion of a business when new capital is required. A common cause for failure of this form of business organisation is a lack of funds. This restricts the ability of the owner to operate the business effectively and survive at an initial low profit level, or to get through an economic "rough spot".

- Limited skills.

  One owner alone has limited skills, although he or she may be able to hire employees with sought-after skills.

2.1.2 Partnership

A partnership (or unincorporated joint venture) is the relationship existing between two or more persons who join together to carry on a trade, business or profession. A partnership is also not a separate legal person or taxpayer.[1] Each partner is taxed on his or her share of the partnership profits. Each person may contribute money, property, labour or skills, and each expects to share in the profits and losses of the partnership. It is similar to a sole proprietorship except that a group of owners replaces the sole proprietor. The number of persons who may form a partnership agreement is limited to 20.

Some advantages of a partnership are:

- Easy to establish and operate.
- Greater financial strength.
- Combines the different skills of the partners.
- Each partner has a personal interest in the business.

Some disadvantages of a partnership are:

- Unlimited liability of the partners.
- Each partner may be held liable for all the debts of the business, therefore, one partner who is not exercising sound judgment could cause the loss of the assets of the partnership as well as the personal assets of all the partners.
- Authority for decision-making is shared and differences of opinion could slow the process down.
- Not a legal entity.
- Lesser degree of business continuity as the partnership technically dissolves every time a partner joins or leaves the partnership.
- Number of partners restricted to 20 except in the case of certain professional partnerships such as accountants, attorneys etc.

[1] A partnership is, however, regarded as a separate person for VAT purposes as it is included in the definition of "person" in section 1(1) of the VAT Act.

2.1.3 Close corporation (CC)

A CC is similar to a private company. It is a legal entity with its own legal personality and perpetual succession and must register as a taxpayer in its own right. A CC has no share capital and therefore no shareholders. The owners of a CC are the members of the CC. Members have a membership interest in the CC. Members' interest is expressed as a percentage. Membership, generally speaking, is restricted to natural persons or (from 11 January 2006) a trustee of an *inter vivos* trust or testamentary trust as contemplated in section 29(1A) or 29(2)(*b*) of the Close Corporation Act 69 of 1984.

A CC may not have an interest in another CC. The minimum number of members is one and the maximum number of members is 10. For income tax purposes, a CC is dealt with as if it is a company.

Some advantages of a CC are:

- Relatively easy to establish and operate.
- Life of the business is perpetual, that is, it continues uninterrupted as members change.
- Members have limited liability, that is, they are generally not liable for the debt of the CC. However, certain tax liabilities do exist. One such liability is where an employer or vendor is a CC, every member and person who performs functions similar to a director of a company and/or who controls or is regularly involved in the management of the CC's overall financial affairs, will be personally liable for employees' tax, value-added tax, additional tax, penalty or interest for which the CC is liable, that is, where these taxes have not been paid to SARS within the prescribed period.
- Transfer of ownership is easy.
- Fewer legal requirements than a private company.

Some disadvantages of a CC are:

- Number of members restricted to a maximum of 10.
- More legal requirements than a sole proprietorship or partnership.

Section 27 of the Close Corporations Act 69 of 1984 has been repealed. As from 1 May 2011 (implementation date of the Companies Act 71 of 2008), no new close corporation can be registered or any conversion from a company to a close corporation allowed.

2.1.4 Private company

A private company is treated by law as a separate legal entity and must register as a taxpayer in its own right. It has a life separate from its owners with rights and duties of its own. The owners of a private company are the shareholders. The managers of a private company may or may not be shareholders. A private company may not have an interest in a close corporation. The maximum number of shareholders is restricted to 50.

Some advantages of a private company are:

- Life of the business is perpetual, that is, it continues uninterrupted as shareholders change.
- Shareholders have limited liability, that is, they are generally not responsible for the liabilities of the company. However, certain tax liabilities do exist. One such liability is where an employer or vendor is a company, every shareholder and director who

controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the employees' tax, value-added tax, additional tax, understatement penalty, penalty or interest for which the company is liable, that is, where the taxes have not been paid to SARS within the prescribed period.

- Personal liability on directors.
  The Companies Act 71 of 2008 imposes personal liability on directors where in common law, such liability may not exist or be difficult to prove. Any person, not only a director, who is knowingly a party to the carrying on of a business in a reckless (gross carelessness or gross negligence) or fraudulent manner can be personally held liable for all or any of the debts of the private company.
- Transfer of ownership is easy.
- Easier to raise capital and to expand.
- Efficiency of management is maintained.
- Adaptable to both small and medium to large business.

Some disadvantages of a private company are:

- Subject to many legal requirements.
- More difficult and expensive to establish and operate than other forms of ownership such as a sole proprietorship or partnership.

2.1.5 Co-operative

A "co-operative" is defined in the Act as any association of persons registered under section 27 of the Co-operatives Act 91 of 1981 or section 7 of the Co-operatives Act 14 of 2005.

2.1.6 Other types of business entities as described in the Act

a) Small business corporation (SBC)

This is discussed in **3.2.17** under the heading **Tax relief measures for small business corporations (SBCs)**.

b) Micro business (turnover tax)

This is discussed in **3.2.18** under the heading **Tax relief measures for micro businesses (turnover tax)**.

c) Personal service provider

A personal service provider means any company or trust where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and –

- such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or
- those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or

- more than 80% of the income of such company or trust during a year of assessment from services rendered consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any "associated institution" as defined in the Seventh Schedule, in relation to such client.

A company that falls within the above definition of a "personal service provider" will not qualify as an SBC. However, should that company employ three or more full-time employees (excluding shareholders or members or any persons connected to the shareholders or members) throughout the year of assessment and the employees are engaged in the business of the company in rendering the specific service, that company may qualify as an SBC.

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

For more information see the interpretation note[2] available on the SARS website.

d) Labour broker

A labour broker is any natural person who carries on a business for reward of providing clients with other persons to render a service to the clients for which such other persons are remunerated by the labour broker.

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

An exemption certificate will be issued by SARS to a labour broker if –

- the labour broker carries on an independent trade and is registered as a provisional taxpayer;
- the labour broker is registered as an employer; and
- the labour broker has, subject to any extension granted by the Commissioner, submitted all returns as are required to be submitted by the labour broker.

SARS will not issue an exemption certificate if –

- more than 80% of the gross income of the labour broker during the year of assessment consists of amounts received from any one client of the labour broker, unless the labour broker employs three or more full-time employees throughout the year of assessment who are engaged in the business of the labour broker on a full-time basis and who are not connected persons in relation to the labour broker;
- the labour broker provides to any of its clients the services of any other labour broker; or
- the labour broker is contractually obliged to provide a specified employee of the labour broker to render service to the client.

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

For more information see the interpretation note[3] available on the SARS website.

Notes:

(1) The deduction of expenses incurred by a labour broker without an exemption certificate is limited to the amounts paid to the employees of the labour broker for services rendered that will comprise remuneration in the hands of those employees.

(2) The deduction of expenses incurred by a personal service provider is limited to –

- the amounts paid to the employees of the personal service provider for services rendered that will comprise remuneration in the hands of those employees;
- legal expenses;
- bad debts;
- contributions to pension or provident funds or medical schemes for the benefit of the employees;
- refunds by a personal service provider of any amount previously paid as remuneration or compensation for restraint of trade; and
- expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance of assets, if such premises or assets are used wholly and exclusively for purposes of trade.

e) Independent contractor

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

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

Notes:

(1) A person will be deemed to be carrying on a trade independently if he or she employs three or more full-time employees throughout the year of assessment who are in the business of the person rendering that service (other than any employee who is a connected person) on a full-time basis engaged.

(2) A person will be deemed not to be carrying on a trade independently if the services are required to be performed mainly at premises of the person by whom the above amount is paid or payable or of the person to whom such services were or are to be rendered and the person who rendered or will render the services is subject to control or supervision as to the manner in which his or her duties are performed or as to his or her hours of work.

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

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

For more information see the interpretation note[4] available on the SARS website.

f) Small, medium and micro enterprises (SMMEs)

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, types of business entities and requirements of registration of a business entity, can be obtained from the Department of Trade and Industry or on its website **www.dti.gov.za**.

3. A business and SARS

3.1 Introduction

Once a business has been started, it will be helpful to have a general understanding of the various activities of SARS, as well as the duties and obligations of the business operator in terms of the various tax laws.

The tax laws are administered by the Commissioner or by any officer or person engaged in carrying out the relevant laws under a delegation from or under the control, direction or supervision of the Commissioner in various centres throughout the country.

SARS is obligated by law to determine and collect from each taxpayer only the correct amount of tax that is due. The SARS officials or persons are the representatives of the Commissioner and in that capacity must ensure that the tax laws are administered correctly and fairly so that no one is favoured or prejudiced above the rest.

3.2 Income tax

3.2.1 General

Income tax is the state's main source of revenue and is levied on taxable income determined in terms of the Act.

3.2.2 Registration

As soon as a taxpayer commences a business, whether as a sole proprietor, a partner in a partnership or as a shareholder in a company, the taxpayer, or the taxpayer and the company respectively, is required to register with their local SARS office in order to obtain an income tax reference number. The taxpayer must register within 21 business days after he or she has commenced business operations by completing an IT 77 form, which can be obtained from the local SARS office or from the SARS website.

A company must be registered with the Company Intellectual Property Commission (CIPC) to obtain a business reference number. For registration procedures see **www.dti.gov.za**. The company will then be registered automatically as a taxpayer. A company, which does not hear from SARS after registering with CIPC, must contact its SARS office.

Depending on other factors such as turnover, payroll amounts, whether involved in imports and exports etc. a taxpayer could also be liable to register for other taxes, duties, levies and contributions such as VAT, PAYE, Customs, Excise, SDL and UIF contributions.

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

3.2.3 Change of address

The Tax Administration Act 28 of 2011 (the TA Act) requires that if a person's address which is normally used by the Commissioner for any correspondence with that person changes, the person must, within 21 business days after the change, notify SARS of the new address for correspondence.

3.2.4 Year of assessment and filing of income tax returns

The year of assessment for natural persons, deceased estates, insolvent estates and trusts covers a 12 month period which commences on 1 March of a specific year and ends on the last day of February of the following year. However, in some circumstances natural persons and trusts may be allowed to draw up financial statements for their business to a date other than the end of February.

For more details see the interpretation note[5] available on the SARS website.

Companies on the other hand are permitted to have a year of assessment ending on a date that coincides with their financial year-end. The year of assessment of a company with a financial year-end of 30 June will run from 1 July and end on 30 June of the following year.

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

3.2.5 eFiling

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

Taxpayers registered for eFiling can engage with SARS online for the submission of returns and payments in respect of the following taxes/duty/levy/contribution:

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

The following should, however, be noted:

- A taxpayer must retain all supporting documents to a return for five years from the date upon which the return was received by SARS, as SARS may require it for audit purposes.

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

- SARS will under certain circumstances, on request, still require the submission of original documents for purposes of verification.
- SARS will do extensive validation 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.

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

3.2.6 Payments at banks

Over-the-counter tax payments can be made countrywide at ABSA, Albaraka Bank Limited, Bank of Athens, Capitec Bank, FNB, Habib Bank Zurich (HBZ), Nedbank or Standard Bank. Currently air passenger tax payments can only be made at ABSA, FNB, Nedbank and Standard Bank. Over-the-counter customs payments can be made countrywide at any FNB branch.

By using the correct beneficiary ID, a person is able to make tax and customs internet payments at ABSA, Bank of Athens, Capitec Bank, FNB, Habib Bank Zurich (HBZ), HSBC, Investec, Mercantile Bank, Nedbank and Standard Bank. Payments can also be made via e-filing which would further include Bidvest Bank, Citybank and Standard Chartered Bank.

For more information on the payment rules, see the guide[6] available on the SARS website.

3.2.7 Provisional tax

As soon as a taxpayer commences business, such taxpayer will become a provisional taxpayer and will be required to register with their local SARS office as a provisional taxpayer within 21 business days after the date upon which you become a provisional taxpayer. Companies are automatically registered as provisional taxpayers.

The payment of provisional tax is intended to assist taxpayers in meeting their normal tax liabilities. This occurs by the payment of two instalments in respect of estimated taxable income that will be received or accrued during the relevant year is assessment and an optional third payment after the end of the year of assessment, thus obviating, as far as possible, the need to make provision for a single substantial normal tax payment on assessment after the end of the year of assessment. The first provisional tax payment must be made within six months after the commencement of the year of assessment and the second payment not later than the last day of the year of assessment. An optional third payment is voluntary and may be made within six months after the end of the year of assessment if the accounts close on a date other than the last day of February. For a year of assessment ending on the last day of February, the optional third payment must be made within seven months after the end of the year of assessment.

For more information see the guide available on the SARS website.

3.2.8 Employees' tax

An employer, as an agent of government, is required to deduct employees' tax from the earnings of employees and pay the amounts deducted over to SARS on a monthly basis. Employees' tax is not a separate tax but forms part of the Pay-As-You-Earn (PAYE) system. Based on the PAYE system the employees' tax deducted serves as an income tax credit that

[6] *External Guide: South African Revenue Service – Payment Rules*.

is set off against the income tax liability of an employee, calculated on an annual basis in order to determine the employee's final income tax liability for the year of assessment.

Every employer who pays or becomes liable to pay an amount by way of remuneration, or if that amount constitutes a lump sum to any person who is liable for normal tax must register with SARS as an employer for employees' tax purposes. An employer must apply for registration within 21 business days after becoming an employer or within such further period as the Commissioner may approve. That means that any business that pays a salary or a wage to any of its employees that is above the tax threshold (where liability for income tax arises for the 2015 year of assessment) for any employee, namely –

- R70 700 (for a natural person under the age of 65 years);
- R110 200 (for a natural person aged 65 years or older but not yet 75 years); or
- R123 350 (for a natural person aged 75 years or older),

must register with SARS for employees' tax purposes. Registration is done by filling in an EMP 101 form and submitting it to SARS. The EMP 101 is available at all SARS offices and on the SARS website.

Once registered, the employer will receive a monthly return (EMP 201) that must be filled in and submitted together with the payment of employees' tax within seven days of the month following the month for which the employees' tax was deducted. If none of the employer's employees is liable for income tax, the employer is not required to register as an employer.

For more information on the deduction of PAYE and payments thereof to SARS see the tables[7] available on the SARS website.

3.2.9 Directors' remuneration

The remuneration of directors of private companies (including natural persons in CCs performing similar functions) is subject to employees' tax.

The remuneration of directors of private companies is often only finally determined late in the year of assessment or in the following year. Directors in these circumstances finance their living expenditure out of their loan accounts until their remuneration is determined. In order to overcome the problem of no monthly remuneration being payable from which employees' tax is to be withheld, a formula is used to determine a director's deemed monthly remuneration from which the company must deduct employees' tax. For more information on the application of the formula and relief from hardship see the interpretation note[8] available on the SARS website.

A director is not entitled to receive an employees' tax certificate (IRP5) for the amount of employees' tax paid by the company on the deemed remuneration if the company has not recovered the employees' tax from the director.

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7 *Annual Tax Deduction Tables – Monthly Tax Deduction Tables*; *Fortnightly Tax Deduction Tables* and *Weekly Tax Deduction Tables*.

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

3.2.10 How to determine net profit or loss

In order to prepare an income tax return, a taxpayer will need to understand the basic steps in determining business profit or loss. These steps are much the same for each type of business entity. Basically, net profit or loss is determined as follows:

Income – Expenses = Profit (Loss)

This formula, with some slight changes, will be used in determining profit or loss. The diagram, **Comparative profit or loss statements** (see **3.2.11**), explains the determination of net profit or loss and the distribution of income for the different types of business entities.

The following key concepts are explained:

- *Gross sales*

  Gross sales account for the total amount in cash or otherwise received by or accrued to a business.

  Example: ABC Furniture Store sold R6 000 000 worth of furniture of which R1 000 000 was received in cash and R5 000 000 was on credit. Therefore, ABC Furniture Store had gross sales of R6 000 000.

- *Cost of sales*

  Cost of sales is the cost to a business to buy or make the product that is sold to the consumer. It would be easy to determine the cost of sales if all merchandise was sold during the same year of assessment in which it was bought or made. However, this seldom happens. Some sales during a year of assessment will probably be from stock that was bought or made in any previous year of assessment and some of the goods that were bought or made in the year of assessment. To determine the cost of sales under these circumstances, the cost of goods bought or made during the year must be added to the cost of stock on hand at the beginning of the year of assessment. From this total the cost of stock on hand at the end of the year of assessment is subtracted.

  In our example, ABC Furniture Store had R800 000 worth of furniture in the store at the beginning of the year of assessment. During the year of assessment R3 000 000 worth of furniture was bought from a manufacturer. At the end of the year of assessment the store had R500 000 worth of furniture left. The cost of goods sold for the year of assessment would therefore be:

  Opening stock + Purchases – Closing stock = Cost of sales

  R800 000 + R3 000 000 – R500 000 = R3 300 000

- *Gross profit*

  Gross profit equals gross sales less the cost of sales.

  In our example, ABC Furniture Store had gross sales of R6 000 000. The cost of sales was R3 300 000. The gross profit is therefore: R6 000 0001 – R3 300 00 = R2 700 000.

- *Business expenses*

  Business expenses, also referred to as operating expenses, are expenses incurred in the operation of a business. ABC Furniture Store expended R1 300 000 on items such as rent, wages, telephone, electricity, stationery, travelling and other business expenses.

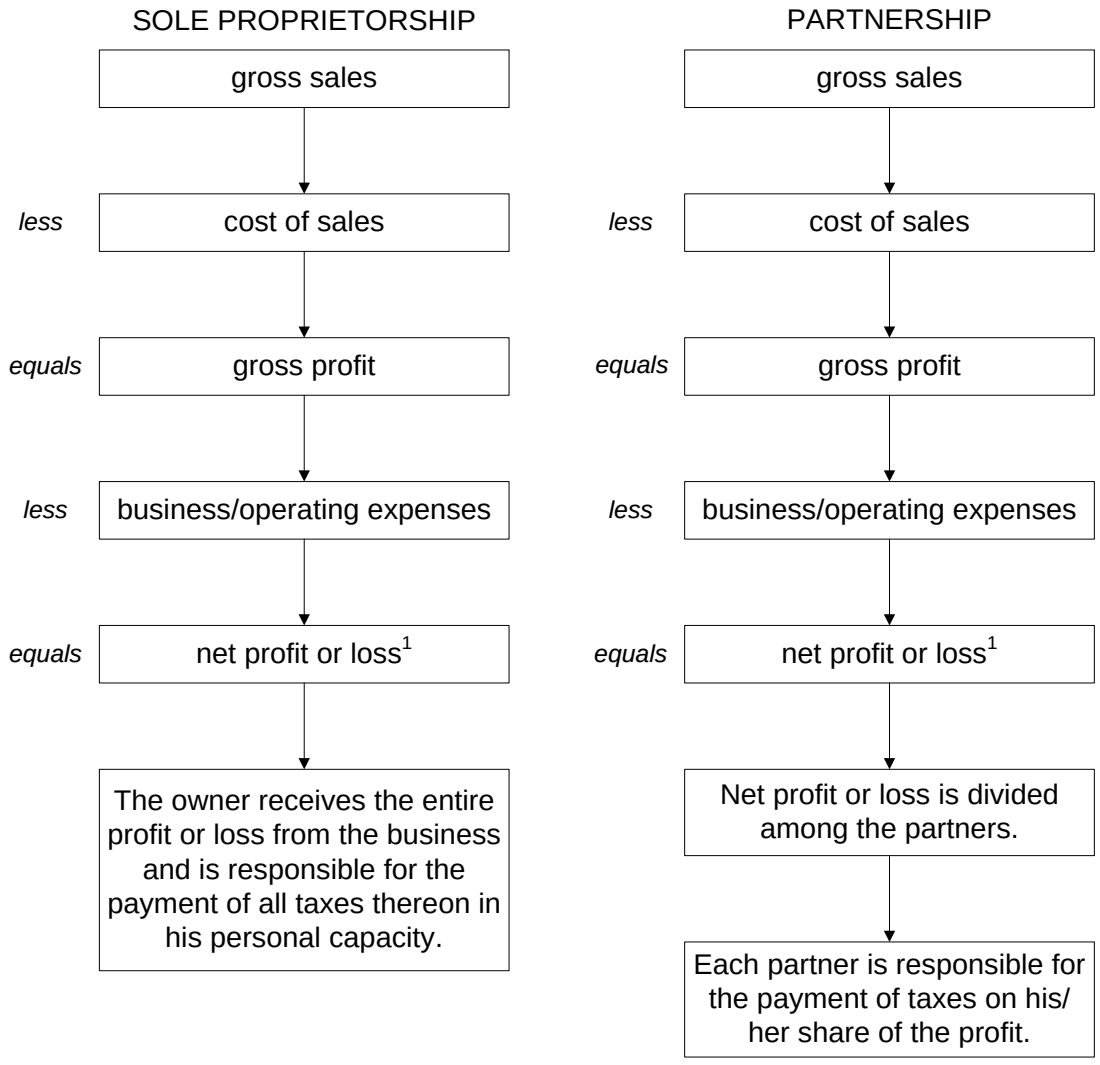
- *Net profit or loss*

  Net profit is the amount by which the gross profit exceeds the business expenses. Net loss is the amount by which the business expenses exceed the gross profit.

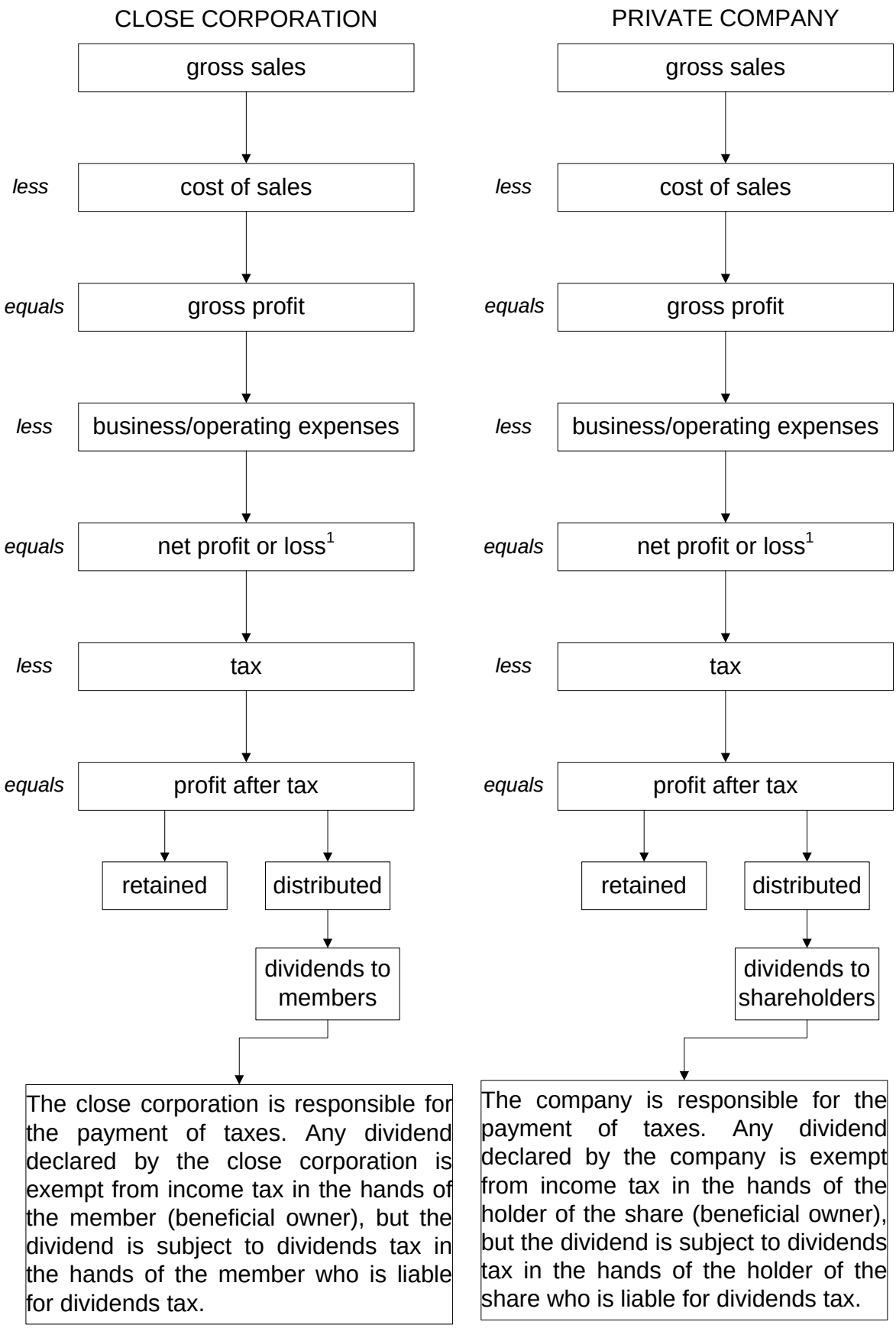
  In our example, ABC Furniture Store had a gross profit of R2 700 000 and business expenses of R1 300 000, leaving ABC Furniture Store with a net profit of R1 400 000.

  In the case of a business providing a service, that is, no physical goods are kept or sold, the procedure to determine business profit or loss is the same as mentioned above with the exception of cost of sales. A business that provides only a service will not have to calculate cost of sales. Business expenses will be deducted from the gross fees to determine net profit or net loss.

3.2.11 Comparative profit or loss statements



[1]See also **3.2.13**: "How to determine taxable income/assessed loss".



[1] See also **3.2.13**: "How to determine taxable income/assessed loss".

3.2.12 Link between “net profit” and “taxable income”

The concept “net profit” is an accounting concept and describes the amount of the profit made by a business from an accounting point of view.

The term “taxable income” on the other hand is defined in section 1(1) and describes the amount on which a business’ income tax is calculated.

These two amounts will often be different because of the basic differences in the income and deductions taken into account in determining these amounts. For example, certain income of a capital nature may be fully included for accounting purposes, while only a portion thereof may be included for income tax purposes (see **3.2.24**). On the deduction side, there may be timing differences in the depreciation of capital assets or special deductions or allowances for income tax purposes which will cause differences in the deductions allowed for accounting purposes and those allowed for income tax purposes.

Nevertheless, the determination of net profit from an accounting point of view is an important building block in the determination of the taxable income of a business. Every business must prepare a set of financial statements (income statement and a statement of assets and liabilities). From the income statement which determines the net profit or loss of a business, certain adjustments can be made to the net profit or loss to compute (normally referred to as the tax computation) the taxable income or assessed loss of the business.

3.2.13 How to determine taxable income or assessed loss

The Act provides for a series of steps to be followed in arriving at a taxpayer’s taxable income. The starting point is to determine the taxpayer’s gross income which is, in the case of –

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

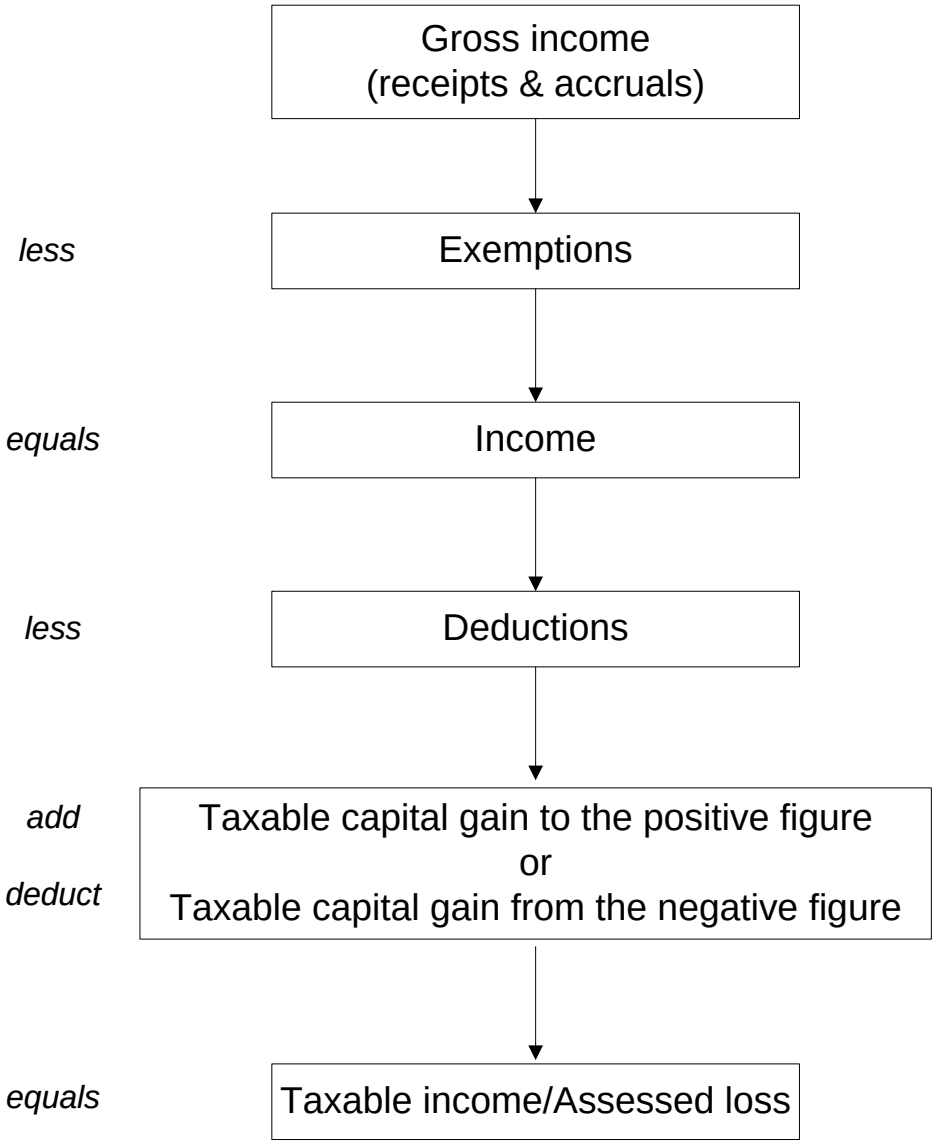
Receipts or accruals of a capital nature are generally excluded from gross income as the Eighth Schedule deals with capital gains and losses. However, gross income also includes certain other receipts and accruals specified within the definition of “gross income” regardless of their nature.

The next step is to determine income which is the result of deducting all receipts and accruals that are exempt from income tax under the Act from gross income.

Finally, taxable income or assessed loss is arrived at by –

- deducting all the allowable expenses and allowances, under the provisions of the Act, from income; and
- adding all specific amounts to be included in income or taxable income under the Act.

It can be illustrated as follows:



3.2.14 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 –

(i) actually incurred;

(ii) during the year of assessment;

(iii) in the production of income;

(iv) not of a capital nature; and

(v) laid out or expended for the purposes of trade.

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

3.2.15 Tax rates

A. Taxable income (excluding any severance benefit, retirement lump sum benefit or retirement fund lump sum withdrawal benefit) of any natural person, deceased estate, insolvent estate or special trust for the year of assessment commenced on 1 March 2014 or ended on 28 February 2015

Taxable income	Rate of tax
Not exceeding R174 550	18% of taxable income
Exceeding R174 550 but not exceeding R272 700	R31 419 plus 25% of the amount by which taxable income exceeding R174 550
Exceeding R272 700 but not exceeding R377 450	R55 957 plus 30% of the amount by which taxable income exceeding R272 700
Exceeding R377 450 but not exceeding R528 000	R87 382 plus 35% of the amount by which taxable income exceeding R377 450
Exceeding R528 000 but not exceeding R673 100	R140 074 plus 38% of the amount by which taxable income exceeding R528 000
Exceeding R673 100	R195 212 plus 40% of the amount by which taxable income exceeding R673 100

Normal tax rebates (only applicable to a natural person)

Rebate	Amount
Primary rebate – (Below the age of 65 years)	R12 726
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 110
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 367

Medical scheme fees tax credit

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

- R257 in respect of benefits to the person;
- R514 in respect of benefits to the person and one dependant; or
- R514 in respect of benefits to the person and one dependant, plus R172 for every additional dependant,

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

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

For more information see the guide[9] available on the SARS website. Also see section 6A.

Additional medical expenses tax credit

The Act was amended with effect from 1 March 2014 to no longer allow "qualifying medical expenses" as a deduction from income, but as a rebate that is deducted from the normal tax payable by a natural person.

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

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

- the person is aged 65 years or older;
- the person, his or her spouse or his or her child is a person with a "disability" as defined in section 6B(1); or
- in any other case.

The amount to be deducted is calculated as follows:

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

[9] *Guide on the Determination of Medical Tax Credits and Allowances* (Issue 5) dated 14 November 2014.

Check the SARS website for more information that will be made available in due course. Also see section 6B.

B. Taxable income of trusts (other than special trusts or public benefit organisations that are trusts for the year of assessment commenced on 1 March 2014 or ended on 28 February 2015

Rate of tax
40% of taxable income

C. Taxable income of corporates

i. Companies (including close corporations but excluding companies mining for gold, oil and gas companies, long term insurance companies, companies qualify as small business corporations and companies qualify as micro businesses) for the year of assessment ending during the 12 month period ending on 31 March 2015

Rate of tax
28% of taxable income

ii. Taxable income of companies qualify as small business corporations (SBCs): for the year of assessment ending during the 12-month period ending on 31 March 2015

Taxable income	Rate of tax
Not exceeding R70 700	0% of taxable income
Exceeding R70 700 but not exceeding R365 000	7% of the amount by which taxable income exceeds R70 700
Exceeding R365 000 but not exceeding R550 000	R20 601 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 451 plus 28% of the amount by which taxable income exceeds R550 000

D. Taxable income of micro businesses (turnover tax) for the year of assessment ending during the 12-month period ending on 31 March 2015

Taxable turnover	Rate of tax
Not exceeding R150 000	0% of taxable turnover
Exceeding R150 000 but not exceeding R300 000	1% of the amount by which taxable turnover exceeds R150 000
Exceeding R300 000 but not exceeding R500 000	R1 500 + 2% of the amount by which taxable turnover exceeds R300 000

Taxable turnover	Rate of tax
Exceeding R500 000 but not exceeding R750 000	R5 500 + 4% of the amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R15 500 + 6% of the amount by which taxable turnover exceeds R750 000

3.2.16 Special allowances or deductions

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

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

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

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

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

The depreciable cost of the 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*).

For more information see the guide[10] available on the SARS website.

b) Commercial buildings

An allowance, equal to 5% (20-year straight-line basis) will be granted on the cost to a taxpayer of new and unused buildings or improvements to buildings (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 (see section 13*quin*).

[10] *Guide to Building Allowances* dated 13 November 2014.

The depreciable cost of the 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 a taxpayer acquires a part of a building without erecting or constructing that part –

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

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

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

For more information see the guide[11] available on the SARS website.

c) Buildings used by hotel keepers

- **Buildings and improvements**

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

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

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

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

The depreciable cost of a building (or improvements) is the lessor 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 recoupments 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*).

For more information see the guide[12] available on the SARS website.

[11] *Guide to Building Allowances* dated 13 November 2014.
[12] *Guide to Building Allowances* dated 13 November 2014.

d) Aircraft or ships

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

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

The depreciable cost of the asset is the lesser of –

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

The full amount of any recoupment of the allowance will be included in the taxpayer's income under section 8(4)(*a*). In the case of a replacement asset (asset acquired to replace a damaged or destroyed asset) the recoupment will not be included in the taxpayer's income but the cost of the replacement asset must be reduced by the amount that has been recovered or recouped in respect of the damaged or destroyed asset [see section 8(4)(*e*)].

Section 8(4)(*e*) was amended with effect from 22 December 2003 and at the same time sub-sections 8(4)(*e*A), (*e*B), (*e*C), (*e*D) and (*e*E) (the new recoupment provisions) were introduced. This amendment, read with the new recoupment provisions, will only apply if the taxpayer opts that paragraphs 65 or 66 of the Eighth Schedule to apply to the disposal of the damaged or destroyed asset. It follows that the amount to be included in income in a year of assessment is limited to an amount apportioned to the replacement asset but in the same ratio as the deduction of the allowance is allowed for the replacement asset, which have the effect that the cost of the replacement asset is not reduced. Rather:

- If a taxpayer acquires more than one replacement asset that taxpayer must, in applying paragraphs (*e*B), (*e*C) and (*e*D), apportion the recoupment to each replacement asset in the ratio as the receipts and accruals from the disposal respectively expended to acquire the replacement asset bear to the total receipts and accrual expended in acquiring all those replacement assets [see 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 [see 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 that has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [see section 8(4)(*e*C)].
- In the year of assessment in which the taxpayer ceases to use a replacement asset, any portion of the recoupment that is apportioned to the replacement asset that has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [see section 8(4)(*e*D)].
- In the year of assessment in which the taxpayer fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraph 65 or 66 of the Eighth Schedule, section 8(4)(*e*) will not apply and the recoupment will be deemed to be recouped under section 8(4)(*a*) on the date on which the relevant period ends [see section 8(4)(*e*E)].

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

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

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

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

The depreciable cost of the stock is the lesser of –

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

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

Any recoupment of the allowance granted will be accounted for in exactly the same manner as mentioned in **d)** above.

f) Certain pipelines, transmission lines and railway lines

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

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

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

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

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

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

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

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

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

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

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

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

- **Railway lines used for transportation of persons, goods or things**

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

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

Earthworks or supporting structures forming part of abovementioned assets and any improvements thereto, 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 in exactly the same manner as mentioned in **d)** above.

g) Airport assets

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

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

The depreciable cost of an 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 in exactly the same manner as mentioned in **d)** above.

h) Port assets

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

Port assets are any port terminal, breakwater, sand trap, berth, quay wall, bollard, graving docks, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty of off-dock container depot, and 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 in exactly the same manner as mentioned in **d**) above.

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

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

Any foundation or supporting structure to which 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 thereof.

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 in terms of an "instalment credit agreement" as defined in the VAT Act.

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

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

For more information see the interpretation note[13] available on the SARS website.

j) Machinery or plant or improvements thereto used by manufacturers or machinery, implement, utensil or article [other than those referred to in paragraph (i) above – section 11(*e*)] or improvements thereto used by hotelkeepers and machinery or plant used by any agricultural co-operative for storing or packing farming products (the asset)

An allowance, equal to 20% (5-year straight-line basis) will be granted on the cost to a taxpayer to acquire the asset or improvements effected thereto (see section 12C).

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

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

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

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

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

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

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

Any recoupment of the allowance granted will be accounted for in exactly the same manner as mentioned in **d)** above.

k) Plant or machinery of SBCs

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

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

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

  An allowance equal to –

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

  will be granted.

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

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

The depreciable cost of plant or machinery (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 in exactly the same manner as mentioned in **d)** above.

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

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

- in the carrying on of farming operations;
- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for the purpose of his trade to generate electricity from –
    - wind power;
    - solar energy;
    - hydropower to produce electricity of not more than 30 megawatts; and
    - biomass comprising organic wastes, landfill gas or plants material.

An allowance 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,

will be granted (see section 12B).

Any foundation or supporting structure to which the abovementioned 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 in exactly the same manner as mentioned in **d)** above.

m) Invention, patent, designs, trade mark, copyright and knowledge

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

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

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

  will be granted.

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

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

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

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

  No allowance will be granted for expenditure incurred on or after 29 October 1999 for the acquisition of a trade mark or knowledge essential to the use of such trade mark.

  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 of the other provision of section 11)* [see section 11(*g*B)]

  Expenditure incurred in –

  - obtaining the grant of any patent;
  - the restoration of any patent;
  - the extension of the term of any patent;
  - the registration of any design;
  - extension of the registration period of any design;

- the registration of any trade mark;
- renewal of the registration of any trade mark,

will be allowed as a deduction.

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

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

  - an invention or patent as defined in the Patents Act 57 of 1978;
  - a design as defined in the Designs Act 195 of 1993;
  - a copyright as defined in the Copyright Act 98 of 1978;
  - other property which is of a similar nature (other than 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.

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

  - 5% of the expenditure incurred on 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*).

n) Scientific or technological research and development (R&D)

- *R&D expenditure incurred prior to 1 October 2012*

  A deduction for R&D will be allowed in the year of assessment in which the expenditure is incurred at a rate of 150% of expenditure incurred on activities undertaken in South Africa directly for purposes of –

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

  that is of a scientific or technological nature intended to be used in the production of income (see section 11D).

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

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

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

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 recoupments 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).

For more information see the guide[14] and the interpretation note[15] on the SARS website.

- *R&D expenditure incurred on or after 1 October* 2012

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

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

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

  See section 11D(3).

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

[14] *Guide to Building Allowances* dated 13 November 2014.

[15] Interpretation Note No. 50 dated 28 August 2009 'Deduction for Scientific or Technological Research and Development'.

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

For more information see the guide[16] available on the SARS website.

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

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

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

The depreciable cost of the asset is the lesser of –

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

Any recoupment of this allowance granted will be accounted for in exactly the same manner as mentioned in **d)** above.

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

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

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

  The Minister of Science and Technology may withdraw an approval granted for research and development with effect from a specific date. Under section 11D(19) an additional assessment for any year of assessment may be raised for a deduction for research and development allowed.

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

  For more information see the guide[17] available on the SARS website.

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

[16] *Guide to Building Allowances* dated 13 November 2014.
[17] *Guide to Building Allowances* dated 13 November 2014.

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 in exactly the same manner as mentioned in **d)** above.

o) Urban development zones

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

For more information see the guides[18] available on the SARS website.

p) Additional deduction for learnership agreements

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

"a learnership agreement that is –

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

The deduction to be allowed is as follows:

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

[18] *Guide to the Urban Development Zone Tax Incentive (Issue 4)* dated September 2014 and *Guide to Building Allowances* dated 13 November 2014.

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

For more information see the guide[19] and interpretation note[20] available on the SARS website.

q) Film owners

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

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

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

For more information see the guide[21] available on the SARS website.

As from 1 January 2012 income derived from the exploitation rights of qualifying films is, subject to the requirements as set out in section 12O being met, exempt from income tax. However, taxpayers will be entitled to claim a limited net loss for expenditure incurred, after a two-year period. Taxpayers claiming this net loss will lose the benefit of the exemption going forward.

For more information see the guide[22] available on the SARS website.

[19] *Guide on the Tax Incentive for Learnership Agreements* dated October 2009.
[20] Interpretation Note No. 20 (Issue 5) dated 30 January 2015 'Additional deduction for Learnership Agreements'.
[21] *Guide to the Taxation of Film Owners* dated February 2008.
[22] *Draft Guide to the Exemption from Normal Tax of Income from Films*.

r) Environmental expenditure

- *Environmental treatment and recycling assets*

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

  An allowance will be granted, equal to –

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

  See section 37B.

- *Environmental waste disposal assets*

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

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

  See section 37B.

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

- *Post-trade environmental expenses*

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

  See section 37B.

s) Certain residential units

An allowance, equal to 5% of the cost to a taxpayer of a new and unused residential unit (or of new and unused 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 purposes of a trade carried on by the taxpayer.

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

The percentages below will be deemed to be the costs incurred by a taxpayer on a

residential unit where the taxpayer acquires a residential unit (or improvements to a residential unit) representing only a part of a building, without erecting or constructing the unit or improvement:

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

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

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

For more information see the guide[23] available on the SARS website. Also see section 13*sex*.

t) Residential buildings

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

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

(ii) A *residential building annual allowance* equal to 2% of the cost to the taxpayer of the unit in the year in which the residential building initial allowance is deducted and 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 as provided for under section 13*ter*(7). Should the unit be disposed of, section 8(4)(*a*) will apply to the balances of these two allowance not yet recouped.

For more information see the guide[24] available on the SARS website.

[23] *Guide to Building Allowances* dated 13 November 2014.
[24] *Guide to Building Allowances* dated 13 November 2014.

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

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

No deduction will be allowed, if –

(i) the disposal is subject to any condition other than that the employee may be required to transfer the low-cost residential unit back to the taxpayer –

  (a) upon termination of employment; or

  (b) upon a consistent failure (for a minimum period of three months) by the employee to pay an amount owing to the taxpayer in respect of the low-cost residential unit,

(ii) interest is payable on the amount owing to the taxpayer by the employee; or

(iii) the unit is disposed of to the employee for an amount that exceeds the actual cost to the taxpayer of the unit and the land on which the unit is erected.

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

(i) the amount so paid; or

(ii) the amount allowed as a deduction in the current or previous years of assessment.

For more information see the guide[25] available on the SARS website. Also see section 13*sept*.

v) Environmental conservation and maintenance expenditure

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

(i) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years and is entered into by a taxpayer under the National Environmental Management: Biodiversity Act 10 of 2004; and

(ii) the land used by the taxpayer in the production of income and for purposes of a trade consists of, includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in (i) above.

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

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

[25] *Guide to Building Allowances* dated 13 November 2014.

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

See section 37C.

w) Expenditure incurred to obtain a licence

Expenditure (other than on infrastructure) incurred by a taxpayer to acquire a licence from certain government authorities to carry on a trade that constitutes the provision of a telecommunication service, the exploration, production or distribution of petroleum or the provisions 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 or 30 years, whichever is the lesser.

See section 11(*g*D).

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

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

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

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

i) Individuals (natural persons) –

- Annual deduction limited to R750 000,
- Cumulative lifetime deduction is limited to (adjusted for recoupments) – R2,25 million.

ii) Listed companies (and their group subsidiaries)

- A listed company is entitled to a 100% deduction of amounts invested in a VCC to the extent that its investments, including the investments of its group companies, do not exceed 40% of the equity shares of the VCC.

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

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

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

For more information see the guide[26] available on the SARS website.

y) Deduction of medical lump sum payments

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

a) 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

b) under a policy of insurance taken out with an insurer solely in respect of one or more former employees or dependants in (a) above,

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

See section 12M.

3.2.17 Tax relief measures for SBCs

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

- all the holders of share in the company or members of the close corporation or co-operative must at all times during a tax year be natural persons;
- no holders of shares or members should hold any shares or have any interest in the equity of any other company, other than companies as specified in the definition of "small business corporation" in section 12E(4).
- the gross income of the entity for the year of assessment may not exceed R20 million;
- not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the entity may consist collectively of "investment income" as defined in section 12E(4) and income from rendering a "personal service" as defined in section 12E(4); and
- the entity may not be a "personal service provider" as defined in the Fourth Schedule

The first concession is that the entity will be taxed on the basis of a progressive rate [see **3.2.15** paragraph **C**ii].

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 **3.2.16** paragraph **k)**] See section 12E(1). Furthermore the entity can elect under section 12E(1A) to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either –

- the wear-and-tear allowance under section 12E(1A)(*a*) read with section 11(*e*) [see **3.2.16** paragraph **k)**]; or
- at an accelerated write-off allowance under section 12E(1A)(*b*) [see **3.2.16** paragraph **k)**].

[26] *Venture Capital Companies – External Guide*.

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

For more information see the interpretation note[27] available on the SARS website.

3.2.18 Tax relief measures for micro businesses (turnover tax)

This is a simplified tax system for micro businesses (see **3.2.15** paragraph **D** for the progressive tax rates) and serves as an alternative to the current income tax, provisional tax, capital gains tax, dividends tax. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.[28]

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

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

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.

For more information see the SARS website.

3.2.19 Deduction of home office expenditure

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

For more information see the interpretation note[29] available on the SARS website.

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

Taxpayers are entitled to a deduction for pre-trade costs incurred before the commencement of and in preparation for carrying on a trade.

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

In order for these expenses and losses to be deductible during a year of assessment, the requirements as set out in section 11A must be met,

For more information see the interpretation note[30] available on the SARS website.

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27 Interpretation Note No. 9 (Issue 5) dated 14 October 2009 'Small Business Corporations'.

28 With effect from 1 March 2012 a qualifying micro business may choose to register for VAT as well as turnover tax, provided that all the conditions for voluntarily VAT registration are met. See **3.5.7** for more details on VAT registration.

29 Interpretation Note No. 28 (Issue 2) dated 15 March 2011 'Deduction of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office'.

30 Interpretation Note No. 51 (Issue 3) dated 22 July 2014 'Pre-trade Expenditure and Losses'.

3.2.21 Ring-fencing of assessed losses of certain trades

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

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

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

For more information see the guide[31] available on the SARS website.

3.2.22 Prohibited deductions

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

a) Domestic or private expenses

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

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

b) Bribes, fines or penalties

A payment of 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 .

For more information see the interpretation note[32] available on the SARS website.

c) Other prohibited deductions

Other prohibited deductions include –

- income carried to any reserve fund or capitalised in any way;

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

[32] Interpretation Note No 54 dated 26 February 2010 'Deductions – Corrupt Activities, Fines and Penalties'.

- moneys not laid out or expended for purposes of trade; and
- taxes, duties levies interest or penalties payable under Acts administered by the Commissioner and certain other Acts.

3.2.23 Exemption of certified emission reductions

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

3.2.24 Capital gains tax (CGT)

a) Introduction

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

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

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

b) Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. A natural person (whether a resident or a non-resident), whose sole source of taxable income comprises a capital gain or a capital loss that exceeds the annual exclusion of R30 000, needs to register as a taxpayer at a SARS branch office and must complete and submit an income tax return for that year of assessment.

c) Rates

- **Natural persons, deceased estates, insolvent estates or special trusts**

For natural persons, deceased estates, insolvent estates or special trusts, 33,3% of the net capital gain is included in his or her or its taxable income and is subject to income tax at the marginal rate of tax of that natural person, deceased estate, insolvent estate or special trust.

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

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

- **Effective rate of tax**

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

  - Natural person, deceased estates, insolvent estates and special trusts: 40% × 33,3 = 13.32% (assuming that the top marginal rate of income tax applies)

- Companies 28% × 66,6 = 18,65%
- Trusts that are not special trusts: 40% × 66,6 = 26,64%.

d) Capital losses

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

e) Disposal

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

f) Exclusion

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

The following are some of the specific exclusions:

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

g) Base cost

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

- the price the taxpayer originally paid to buy the asset;
- transfer costs (including any VAT or transfer duty paid, to the extent that the amount does not qualify as an "input tax" under the VAT Act, or is otherwise not refundable under the VAT Act or the Transfer Duty Act);
- cost of improvements to the asset;
- advertising costs to find a buyer or seller;
- cost of having the asset valued in order to determine a capital gain or loss;
- costs directly relating to the buying or selling of the asset, for example, fees paid to a surveyor, broker, agent or consultant for services rendered;
- cost of establishing, maintaining or defending a legal title or right in the asset;

- cost of moving the asset from one place to another upon acquisition or disposal; and
- cost of installing the asset, including the cost of foundations and supporting structures.

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

For more information see the guides[33] available on the SARS website.

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

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

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

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

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

No withholding amount is deductible –

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

For more information see the document[34] available on the SARS website.

3.3 Withholding tax on royalties

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

[33] *Draft Comprehensive Guide to Capital Gains Tax* (Issue 5) dated 23 December 2014; *ABC of Capital Gains Tax for Individuals* (Issue 7) dated April 2013, *ABC of Capital Gains Tax for Companies* (Issue 5) dated April 2013 and *Guide on Valuations of Assets for Capital Gains Tax Purposes* (Issue 2) dated February 2006.

[34] *Withholding amounts from payments to non-resident sellers of immovable property in South Africa IT-PP-02-G01* effective date 1 October 2012.

A final withholding tax of 12% (or a lower rate determined in a relevant tax treaty) is payable in respect of royalties or similar payments made to a person who is a non-resident for the right of, or the grant of permission to use in South Africa –

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

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

The above applies to royalties paid prior to 1 January 2015.

As from 1 January 2015 the following applies:

- The withholding tax increases to 15%.
- The liability for payment remains with the person making the payment of the royalty.
- The withholding of tax is triggered by the date that the royalty is paid or becomes due and payable.
- The amount of the royalty must be translated to rand at the spot rate on the day the royalty is paid or becomes payable.
- Overpayment may be refunded if the person paying the royalty lodges a claim for a refund within three years after the royalty is paid.

The amount received by or accrued to a person who is a non-resident is exempt from income tax under section 10(1)(*l*) if that amount is subject to withholding tax on royalties. This exemption is not applicable if that person –

- is physically present in South Africa during the year of assessment for more than 183 days; or
- has a permanent establishment in South Africa at any time during the year of assessment.

See the SARS website for more information. Also see sections 49A to 49G.

3.4 Taxation of foreign entertainers and sportspersons

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is a non-resident) for his/her performance in South Africa, must deduct or withhold tax at a rate of 15% of the gross payments to the foreign entertainer or sportsperson. The resident must pay the amount so deducted or withheld over to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold tax and to pay it over to SARS will render the resident personally liable for the tax.

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

The 15% withholding tax is a final tax. The amount received by or accrued to a person who is non-resident is exempt from income 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 that 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 may require the submission of an income tax return.

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

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

See sections 47A to 47K.

3.5 Donations tax

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

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

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

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

If two natural persons draw up a joint will, at the death of the first dying, and subject to the survivor accepting the benefits and devolution of assets under that will, the positive difference in value between the survivor's property (which falls into the massed estate) and the benefit derived by the survivor from that estate, if any, will be regarded as a donation.

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

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

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

See the SARS website for more information.

3.6 Value-added tax (VAT)

3.6.1 Introduction

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

3.6.2 Rates of tax

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

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

3.6.3 Collection and payment of VAT

There are three main collection mechanisms for VAT, depending on whether it is -

- VAT charged on taxable supplies; or
- VAT which is payable on the importation of goods; or
- VAT which is payable on imported services.

Taxable supplies

Any person who carries on an enterprise and is liable to register for VAT, or has registered voluntarily as a vendor (see **3.6.7**), is required to charge VAT on all taxable supplies made by that vendor in the course or furtherance of its enterprise.

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) plus certain other permissible deductions from the tax collected on the supplies made by the enterprise (output tax) during a tax period. The effect is that VAT is ultimately borne by the final consumer of the goods and services, but it is collected and paid over to SARS by registered VAT vendors. In instances where the output tax attributable to a tax period exceeds the sum of the input tax and other permissible deductions for that period, VAT is payable to SARS. A

vendor is entitled to a refund when the sum of the input tax and other permissible deductions exceed the output tax attributable to that tax period.

VAT may only be charged on taxable supplies and input tax may only be deducted on goods or services acquired for taxable purposes (subject to certain exclusions where input tax is specifically denied). See **3.6.10** to **3.6.12** and **3.6.14** for more details on the calculation and payment of VAT.

Importation of goods

VAT on the importation of goods is paid directly to SARS Customs before the goods are released for home use. The VAT and customs duties must be paid together, generally within seven days of the goods arriving in South Africa. The payment of VAT and customs duties can also be deferred for up to 30 days if the importer is a participant in the SARS deferment scheme. See **3.10** for more details in this regard.

Imported services

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

For more information on VAT registration and the collection and payment of VAT, see the guide[35] available on the SARS website.

3.6.4 Application of VAT to supplies and imports

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

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

See **3.6.5** and **3.6.6** for some examples of zero-rated and exempt supplies of goods and services and exempt imports.

3.6.5 Zero-rated supplies

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

- Goods exported[36] from South Africa;

[35] *VAT 404 – Guide for Vendors.*

[36] The zero-rating is subject to the parties meeting the relevant requirements set out in Interpretation Note 30 with regard to direct exports and Regulation 316 published in *Government Gazette 37580* on 2 May 2014 with regard to indirect exports.

- 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; and
- Certain basic foodstuffs supplied for human consumption, such as:
  - Brown bread;
  - Brown wheaten meal;
  - Maize meal;
  - Samp;
  - Mealie rice;
  - Dried mealies;
  - Dried beans;
  - Rice;
  - Lentils;
  - Fruit and vegetables;
  - Tinned pilchards or sardinella
  - Milk, cultured milk and milk powder;
  - Vegetable cooking oil;
  - Eggs;
  - Edible legumes and pulse of leguminous plants; and
  - Dairy powder blends.

Certain agricultural products such as animal feed, seedlings and fertilisers which are for use in farming enterprises are also currently zero rated when supplied to VAT registered farmers. The VAT Act has, however, been amended to remove this zero rating with effect from a future date determined by the Minister by notice in the *Gazette*.[37]

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[38] such as valid tax invoices being held.

3.6.6 Exempt supplies

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

- Financial services;
- Public transport of fare-paying passengers by road and rail;

[37] The notice will only be published after a period of of at least 12 months after the promulgation of the Taxation Laws Amendment Act 43 of 2014. Farmers will therefore have a period of at least 12 months from 20 January 2015 to prepare for this change.

[38] See Interpretation Note 31 (Issue 3) for more information.

- The supply of a dwelling[39] under a lease agreement;
- Certain educational services, for example, in primary and secondary schools, universities and universities of technology (formerly known as technikons);
- Certain supplies of goods or services made by an employee organisation, bargaining council or political party to any of its members, subject to certain conditions; and
- Child minding services in crèches and after-school centres.

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

3.6.7 Registration

a) Compulsory registration

Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) has exceeded the compulsory VAT registration threshold of R1 million in any consecutive 12 month period, must register for VAT from the first day of the month after the threshold was exceeded. In addition, a person must register within 21 days of entering into a written contractual commitment to make taxable supplies exceeding R1 million within the next 12 month period.[40]

Non-resident suppliers of certain "electronic services" prescribed in The Electronic Services Regulation[41] are also currently required to register and account for VAT in South Africa if the total value of such taxable supplies exceeds R50 000. With effect from 1 April 2015, such non-resident suppliers will be required to register for VAT if at least two out of the following three circumstances are present –

i) electronic services are supplied to recipients who are South African residents;

ii) payment for the electronic services originates from a South African bank; or

iii) the recipient of the electronic services has a business address, residential address or postal address in South Africa to which the tax invoice for the supply of the electronic services will be sent.

b) Voluntary registration

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.[42] A person may also qualify to register voluntarily if the R50 000 threshold has not yet been reached, or if that person carries on certain types of activities which will only lead to taxable supplies being

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

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

[41] Regulation 221 (*Government Gazette 37580* dated 2 May 2014) which came into operation on 1 June 2014. The different types of electronic services include educational services, games and games of chance, internet-based auction services, subscription services and the supply of e-books, audio visual content, still images and music. See the SARS website to view the Regulations.

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

made after a period of 12 months due to the nature of the activity. However, registration in respect of these special cases will only be permitted under certain conditions prescribed by Regulation.[43]

3.6.8 Refusal of registration

A person will not qualify to register as a vendor if that person does not fall within the aforementioned categories. In addition, where only exempt supplies or other non-taxable activities are carried on, that person will not be conducting an enterprise for VAT purposes and will not be able to register.

The Commissioner may also refuse an application for voluntary VAT registration if certain other requirements are not met. For example, the applicant must keep proper accounting records and must have a fixed place of business or abode in South Africa, as well as a South African bank account.

3.6.9 How to register

Application for registration as a vendor must be made, on form VAT 101 (obtainable from your local SARS office or on the SARS website), within 21 business days of becoming liable to register. The reference guide[44] which is available on the SARS website will assist you in completing of the VAT 101 form.

3.6.10 Accounting basis

Invoice basis

Generally, a vendor must account for VAT on the invoice basis.[45] In other words, output tax must be accounted for at the earlier of an invoice being issued or any payment being received for a supply. This applies to the output tax liability on cash and credit sales as well as the input tax that may be deducted on cash and credit purchases.

Vendors must therefore account for the full amount of output tax on any supplies made in the tax period, even where payment has not yet been received from the recipient. Similarly, the full amount of input tax may be deducted on supplies received in the tax period, even where payment has not yet been made. A tax invoice or other necessary documents as prescribed in the VAT Act must, however, be held by the vendor before deducting the input tax. Furthermore, the vendor also needs to consider if the input tax on any particular supply is specifically denied before making a deduction. In instances where a vendor has deducted input tax and payment for that supply is not made within 12 months after the expiry of the tax period within which the input tax was deducted, output tax must be accounted for on that portion of the payment that has not yet been made.

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[43] See sections 23(3)(*b*) and 23(3)(*d*) of the VAT Act. The draft Regulations were published for comment and are available on the SARS website. At the time of updating this guide, the draft Regulations were still in the process of being finalised.

[44] *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide*.

[45] Fixed property transactions are, however, treated on the payment basis even if the vendor normally accounts for VAT on the invoice basis for all other supplies.

Payments basis

The payments basis (or cash basis) allows a vendor to only account for VAT on actual payments made and actual payments received in respect of taxable supplies during the period.[46] Although the payments basis works according to payments made and received, the vendor must be in possession of a valid tax invoice issued by the supplier or other necessary documents as prescribed in the VAT Act before any input tax will be allowed as a deduction.

A vendor must apply in writing to SARS before being allowed to apply the payments basis, which, if approved, will only apply from a future tax period as specified by SARS. A vendor who no longer qualifies for the payments basis must also notify SARS within 21 business days of the end of the tax period concerned and use the invoice basis from the commencement of the tax period in which that vendor ceased to qualify for the payments basis.

The payments basis is only available to vendors in the following cases:

- Natural persons (or partnerships consisting only of natural persons) whose total taxable supplies at the end of a tax period have not exceeded R2.5 million in the previous 12 months, and are not likely to exceed R2.5 million in the next 12 months.
- Public authorities, water boards, regional electricity distributors, certain municipal entities, municipalities, associations not for gain and welfare organisations – regardless of the value of taxable supplies.
- Non-resident suppliers of certain "electronic services" that carry on an enterprise in South Africa and qualify to be registered as vendors.
- Certain vendors that have been allowed by the Commissioner to register in accordance with the Regulations governing voluntary registration under section 23(3)(*b*)(ii) must account for VAT on the payment basis until the R50 000 threshold is met. Thereafter the invoice basis will apply.

See section 15 of the VAT Act for further information.

3.6.11 Tax periods

A tax period refers to a predetermined period of time in respect of which a vendor is required to calculate the VAT on transactions and submit a VAT return. Generally speaking, there are five different types of tax periods.[47]

Monthly (Category C)	Applies to vendors that have an annual turnover of more than R30 million a year.
Two-monthly (Category A or B)	Applies to vendors whose annual turnover is less than R30 million a year. The applicable category (A or B) is determined by the Commissioner.

[46] Supplies made under an instalment credit agreement and supplies with a consideration of R100 000 or more must, however, be treated as if the vendor is registered on the invoice basis, even if that person has been granted approval to account for VAT on the payments basis.

[47] See section 27 of the VAT Act for more details regarding the requirements.

Four-monthly (Category F)	Applies to vendors that qualify as small businesses with an annual turnover of less than R1,5 million in a 12 month period. Category F was introduced in 2005 to assist small businesses, but as very few vendors applied to register under this category, it will be withdrawn with effect from 1 July 2015. Vendors who were registered under category F will be absorbed into categories A and B.
Six-monthly (Category D)	Applies to small farmers with an annual turnover less than R1,5 million. Micro businesses that are registered for turnover tax may also account for VAT under this category if registered for VAT.
12-monthly (Category E)	Generally this tax period ends on the last day of the vendor's "year of assessment" as defined in section 1(1) of the VAT Act. It only applies to companies or trusts where the income consists solely of property rentals, management or administration fees charged to connected persons that are entitled to a full deduction of input tax on such fees.

3.6.12 Calculation of VAT

For ease of reference the terms "input tax" and "output tax", as defined in section 1(1) of the VAT Act, are briefly explained below:

Input tax – Is the VAT paid by a vendor on the purchase of goods or services which may be deducted, provided the goods or services are acquired for making taxable supplies and the vendor is in possession of a valid tax invoice, debit or credit note (as the case may be). In certain other cases, the vendor may also deduct input tax on the acquisition of second-hand goods which are acquired under a non-taxable supply for the purpose of making taxable supplies, provided certain documents and evidence is retained as proof of the transaction. This is called "notional" or "deemed" input tax.

In some cases, input tax is specifically denied. The following are some examples:

- Purchase, lease or hire of a "motor car" as defined in the VAT Act;
- Most expenses relating to entertainment; and
- Membership fees for sporting and recreational clubs (for example, country clubs and golf clubs).

Output tax – Is the VAT charged at the standard rate by a vendor in respect of the taxable supply of goods or services. This will also include certain payments which give rise to deemed supplies. For example, short-term insurance payments received for loss or damage to business assets which are applied for "enterprise" purposes.

In determining the VAT liability, the vendor has to subtract the allowable input tax which may be deducted from the output tax charged on the VAT 201 return. The vendor has to pay the difference to SARS where the output tax exceeds the input tax or the vendor will be entitled to a refund from SARS where the input tax exceeds the output tax. However, any refund will be offset against any tax which may be outstanding by that vendor before refunding the balance.

Interest will be paid by SARS at the prescribed rate where the vendor does not receive the refund within 21 business days of submitting the correctly completed VAT 201 return. However, the payment of interest may be suspended or reduced in relation to the period

during which the vendor has not complied with certain requirements.[48] For example, if the vendor –

- has not provide SARS with the banking details of the enterprise;
- has prevented SARS from gaining access to the records of the enterprise to verify the validity of the refund;
- has failed to rectify a material defect in the refund return concerned; or
- has outstanding taxes or returns for past tax periods.

3.6.13 Requirements of a valid tax invoice

A vendor must be in possession of a valid tax invoice in order to deduct input tax. The tax invoice must be issued within 21 days of making the supply. The following information must be reflected on the tax invoice where the consideration exceeds R5 000:

- The words "Tax Invoice" in a prominent place.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number and the date upon which the tax invoice is issued.
- A full and proper description of the goods or services supplied (indicating, where applicable, that the goods are second-hand goods).
- The quantity or volume of the goods or services supplied.
- Either –
    - the value of the supply, the amount of tax charged and the consideration for the supply; or
    - where the amount of tax charged is calculated by applying the tax fraction (14/114) to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax is charged.

An abridged tax invoice may be issued when the consideration for a supply does not exceed R5 000. An abridged tax invoice contains the same information as a tax invoice, except that the quantity or volume of the goods or services supplied and recipient's particulars need not appear on the document. From 1 April 2014, non-resident suppliers of certain electronic services will be allowed to issue abridged tax invoices instead of full tax invoices. The requirements regarding information that must appear on the tax invoice issued in respect of electronic services will be set out in a Binding General Ruling.

3.6.14 Submission of VAT returns

a) Manual submission

A vendor that manually submits a VAT 201 return to SARS must ensure that it is received by the 25th of the month following the end of the vendor's tax period. Payment must, where applicable, accompany the VAT 201 return. In the event that the 25th of the month falls over a weekend or on a public holiday, the VAT 201 return and the payment must be submitted to the SARS office no later than the last business day before the 25th of the month.

[48] For more information see paragraph 12.5 of the Short Guide to the Tax Administration Act, 2011 (Act No. 28 of 2011) and sections 45(1) and 45(2) of the VAT Act.

b) Electronic submission

A vendor that has registered to submit the VAT 201 return and payment electronically on SARS' eFiling facility must ensure that the VAT 201 return and the payment are received by no later than the last business day of the month following the end of the vendor's tax period.

The table below provides the dates by which a VAT 201 return must be submitted and the date by which payment must be made, depending on the payment method used.

Payment method	Returns	Payment
SARS Office (Cheques only, not exceeding R50 000).[49]	25th or preceding business day.	25th or preceding business day.
Over the counter payments at certain banks.	25th or preceding business day.	25th or preceding business day.
Manual submission of return and payment via Electronic Funds Transfers (internet banking).	25th or preceding business day.	25th or preceding business day.
eFilling of return and payment via either SARS eFiling or Electronic Funds Transfers (internet banking).	Last business day of the month.	Last business day of the month.

Important notes:

1) Electronic payments are processed on the last business day of the month but a manual return must still be submitted as normal by the 25th day of the month after the end of the tax period.

2) The return and payment must be received on or before the abovementioned dates for the particular payment method selected, or, if that day falls on a Saturday, Sunday or public holiday (that is, not a business day), it must be received by SARS on the last business day before that date.

3) Cash, postal orders and money orders are no longer accepted as forms of payment by SARS. For more information on the payment rules, see the guide[50] available on the SARS website

3.6.15 Duties of a vendor

Once registered as a vendor, that person has certain responsibilities in terms of the TA Act and the VAT Act, including, amongst others, the following:

- Provide correct and accurate information to SARS.
- Submit returns and payments on time.
- Include VAT in all prices, advertisements and quotes.
- Keep accurate accounting records.

[49] Payments by cheque are no longer accepted if the vendor has more than two "Refer to Drawer" (RD) cheques in three years. Also see General Notice 415 published in *Government Gazette* 37690 of 30 May 2014.

[50] External Guide: South African Revenue Service – Payment Rules.

- Produce relevant documents when required by SARS.
- Notify SARS about any changes affecting the business, for example; the business address; trading name; the names of partners, or members; bank details; and tax periods.
- Issue tax invoices, debit and credit notes.
- Notify SARS of any changes of the details of the representative person.

Note: Failure to meet these responsibilities is an offence which could lead to a fine, penalty or other punishment prescribed under the TA Act or VAT Act (as the case may be).

3.6.16 Exports to foreign countries

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

If a non-resident or a foreign enterprise purchases goods in South Africa and subsequently exports the goods, the VAT may be refunded by the VAT Refund Administrator (VRA). In certain circumstances a vendor may elect to apply the zero rate of VAT where goods are indirectly exported from South Africa under specific conditions relating to certain modes of transport as set out in Part 2 of the Export Regulation[51] and provided that the vendor obtains and retains the proof of export as required.

For more information on the VAT treatment of supplies, including exports, see the VAT 404 – Guide for vendors which is available on the SARS website.

3.7 Estate duty

3.7.1 Introduction

The estate of a deceased person who was ordinarily resident in South Africa, will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies and payments from pension funds). However, property situated outside South Africa will be excluded from the estate if such property was acquired by him or her before he or she became ordinarily resident in South Africa for the first time, or after he or she became ordinarily resident in South Africa and acquire such property by way of donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The exclusion also applies to property situated outside South Africa, acquired out of profits or proceeds of any such property acquired in the above circumstances.

The estate of a person who was not a resident of South Africa is only subject to estate duty to the extent that it consists of certain property of the deceased in South Africa.

The Estate Duty Act, unlike the Act, does not define “resident” and only refers to persons who are “ordinarily resident” or not “ordinarily resident”. It follows, therefore, that any natural person, who was not ordinarily resident in South Africa but who became a resident of South Africa in terms of the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. Two important deductions are (1) the value of property in the estate that accrues to the surviving spouse of the deceased and (2) all debts

[51] Regulation 316 published in *Government Gazette 37580* dated 2 May 2014.

due by the deceased. The net value of the estate is reduced by a R3,5 million general deduction (specified amount) to arrive at the dutiable amount of the estate.

Note:

With effect from 1 January 2010, the following will apply to the estate of a person who dies on or after that date:

- If a person was a spouse at the time of death of one or more previously deceased persons, the deductible amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to –
  - the specified amount multiplied by two (that equals R7 million) less so much of the specified amount already allowed as a deduction from the net value of the estate of any one of the previously deceased person.
- If that person was one of the spouses at the time of death of a previously deceased person, the deductible amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to the sum of –
  - the specified amount, which is R3,5 million; and
  - an amount calculated as follows:

    the specified amount, which is R3,5 million, reduced by so much of the specified amount already allowed as a deduction from the net value of the estate of the previously deceased person, divided by the number of spouses of that previously deceased person.

3.7.2 Rate of estate duty

Estate duty is charged at a rate of 20% of the dutiable amount of the estate.

Example of estate duty calculation

	R
Net value of estate	3 600 000
Less: Deduction	(3 500 000)
Dutiable amount	100 000
Estate duty payable on R100 000 at 20%	20 000

Example of estate duty calculation (death on or after 01 January 2010)

The whole estate was bequeathed to the spouse.

	R
Net value of the estate of spouse	7 100 000
Less: Deduction (2 × R3,5m)	(7 000 000)
Dutiable amount	100 000
Estate duty payable on R100 000 at 20%	20 000

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

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

3.8 Securities transfer tax (STT)

STT is a tax which is payable on the transfer of any securities[52] issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on the South African stock exchange. STT applies from with effect from 1 July 2008.

For purposes of this tax a "security"[53] means –

(a) any share or depository receipt in a company; or

(b) any member's interest in a close corporation.

The STT rate is 0.25% of the taxable amount in respect of any transfer of a security which in effect is the higher of the consideration paid for or the market value of the security concern.

STT is payable by –

- the transferee (purchaser), where securities are transferred; or
- the company or close corporation cancelling or redeeming the share, where the securities are cancelled or redeemed.

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 is imposed. The Commissioner may however remit the penalty (or any portion thereof) in accordance with Chapter 15 of the TA Act.[54]

Certain entities and types of transactions are exempt from STT, for example -

- the government of South African or the government of any other country;
- certain 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.

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

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

[54] Section 6A of the Securities Transfer Administration Act, 2007.

For more information, see the guide[55] available on the SARS website.

3.9 Transfer duty

3.9.1 Introduction

Transfer duty is payable in respect of the acquisition of any "property" as defined in section 1(1) of the Transfer Duty Act 40 of 1949 (Transfer Duty Act) and is levied on the value of the property acquired, or the value by which the property is enhanced by the renunciation of an interest in, or restriction upon the use or disposal of property.

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

- physical property such as land and any fixtures thereon, including sectional title units;
- real rights in land but excluding rights under mortgage bonds or leases (other than the leases mentioned below); and
- rights to minerals or rights to mine for minerals (including any sub-lease of such a right).

The transfer of this type of property must be recorded in a Deeds Registry.

The definition of the term "property" also includes–

- certain shares, contingent rights and other interests in entities such as companies, close corporations and discretionary trusts that own residential property;
- fractional ownership timeshare schemes; and
- shares in a share block company.

Transfers of these rights and interests in property are not recorded in a Deeds Registry.

Transfer duty is based on the fair value of the property. In a transaction between unrelated persons transacting at arms-length, the fair value is usually equal to the consideration paid or payable for the property. In cases where property is acquired for no consideration, or where the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property - whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[56] calculated for each completed month during which the transfer duty remains unpaid.[57]

The general rule is that transfer duty is payable on the acquisition of all forms of property unless –

- the transaction is subject to VAT and qualifies for exemption under section 9(15) of the Transfer Duty Act; or
- the transaction is exempt under any other specific exemption provided under

[55] *Securities Transfer*.

[56] Interest will be charged at the "prescribed rate" in terms of the TA Act from the effective date that the Presidential Proclamation on interest comes into effect for all taxes. At the date of publication of this guide, the Proclamation had not yet come into effect.

[57] Currently, the rate of 10% is prescribed in the Transfer Duty Act. Once the interest provisions in the TA Act become effective, the "prescribed rate" as defined in that Act will apply. At the date of publication of this guide, the Proclamation had not yet come into effect.

section 9 of the Transfer Duty Act; or

- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration (or the fair value of the property) is R600 000 or less.

3.9.2 Transfer duty rates from 23 February 2011 28 February 2015

Fair market value or consideration	Rate
On the first R600 000	0%
On the amount that exceeds R600 000 but not R1 000 000	3%
On the amount that exceeds R1 000 000 but not R1 500 000	5%
On the amount that exceeds R1 500 000	8%

3.9.3 Transfer duty rates from 1 March 2015

Fair market value or consideration	Rate
On the first R750 000	0%
On the amount that exceeds R750 000 but not R1 250 000	3%
On the amount that exceeds R1 250 000 but not R1 750 000	6%
On the amount that exceeds R1 750 000 but not R2 250 000	8%
On the amount that exceeds R2 250 000	11%

The above rates apply to all persons. No distinction is made between natural persons and legal persons as was the case before 23 February 2011.

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty to the extent that the supply is subject to VAT. The provisions of the VAT Act will, therefore, normally take precedence over the Transfer Duty Act where the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

In a case where the sale of fixed property is part of the supply of an entire enterprise to another VAT vendor, which meets the requirements of a going concern under section 11(1)(*e*) of the VAT Act, VAT will be charged at the zero rate on all the enterprise assets (including the fixed property). In this case, no transfer duty will be payable on the property.

All payments of transfer duty and any TDC01 returns which may be required for the processing of transactions must be submitted to SARS via eFiling as the manual submission of forms or payments is no longer accepted. SARS issues a transfer duty receipt on payment of the tax, or an exemption receipt is issued if the transaction is exempt from transfer duty.

In most cases, the property transaction will have to be lodged in the Deeds Registry to effect transfer of the property into the transferee's name. In these cases, the receipt or exemption receipt must be lodged together with the transfer documents prepared by the conveyancer attending to the transfer. In cases involving the acquisition of shares, rights and other interests in entities that own residential property, no transfer of property is registered in the Deeds Registry. However, any changes to the membership of a close corporation or changes in a trust deed which are necessary as a result of the transaction will need to be submitted to the Companies and Intellectual Property Commission (CIPC) or the office of the Master of the High Court (as the case may be).

For more information see the guides[58] available on the SARS website.

3.10 Importation of goods and payment of customs and excise duties

3.10.1 Introduction

Goods arriving in South Africa may only enter through designated commercial points of entry. These goods must be declared to SARS within the prescribed time periods. The applicable customs duties, if any, must be paid when the goods are entered for home consumption, that is, for use in the Southern African Customs Union comprising of South Africa, Botswana, Lesotho, Namibia and Swaziland. The rate of duty is dependent on the tariff category (code) under which the goods are classified and duty is usually payable on the value (customs value) or the volume or quantity of the goods imported. The customs duty may however be –

- deferred if the importer is a participant in the SARS deferment scheme;
- rebated if the goods meet certain conditions as provided for in Schedule No's. 3 and 4 of the Customs and Excise Act 91 of 1964; or
- suspended temporarily if the goods are entered for storage in a licensed warehouse.

Imported goods may also qualify for a preferential rate of duty in terms of free or preferential trade agreements to which South Africa is a party. The goods may be subject to import control as well as sanitary and photo-sanitary requirements in terms of such agreements.

In addition, VAT at 14% is also payable on goods imported and cleared for home consumption unless exempted under section 13(3), read with Schedule 1 to the VAT Act. See **3.10.8**.

3.10.2 Registration as an importer

Any person who intends importing goods must register with SARS as an importer. Importers of goods of which the value for each consignment is less than R20 000, subject to the limitation of three such consignments per calendar year, are excluded from the registration requirement.

3.10.3 Goods imported through designated commercial points

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

- customs-appointed airports;
- customs-appointed land border posts;

[58] *Transfer Duty Guide* dated 13 March 2013 and the *Guide for Transfer Duty* via eFiling dated February 2014.

- customs-appointed harbours; and
- the South African postal service.

3.10.4 Import declarations

An importer is required to complete the prescribed clearance declaration within the stipulated time period in respect of goods imported. Goods that are not declared within this time period will be detained and removed to a state warehouse.

The importer must ensure that he or she is in possession of all documents that may include an import permit or a certificate or other authority issued under any law authorising the importation of the goods. The importer must further ensure that the declaration is fully and accurately completed before submitting it electronically or manually to SARS. However, the supporting documents as mentioned above must only be submitted to SARS upon request.

Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Provision exists for the imposition of penalties, in addition to seizure of the goods where goods have been dealt with irregularly or false declarations have been made, irrespective of the duty implication. In instances of fraud, offenders may also be prosecuted criminally.

3.10.5 Tariff classification

Tariff classification is the process whereby goods imported are categorised in terms of the Harmonised System by virtue of what it is, what it is made of or its use. The rate of duty is dependent on the tariff category (code) under which the commodity is classified.

3.10.6 Customs value

Customs value is established in terms of Article VII of the General Agreement on Tariffs and Trade (GATT). Provision is made for six valuation methods. The majority of goods are valued 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 value, allowing for certain deductions (for example, interest charged on extended payment terms) and additions (for example, certain royalties) to be effected.

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

3.10.7 Duties and levies

As a general rule customs duties listed in Schedule No. 1 Part 1 to the Customs and Excise Act 91 of 1964 are protective towards local industries and not levied to generate revenue for the fiscus. Excise duty, fuel and environmental levies are forms of indirect taxation used by government to influence consumer behaviour and also to generate revenue for the fiscus. SARS also collects the Road Accident Fund (RAF) levy.

a) Customs duty

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

b) Excise duty

Excise duty, fuel and RAF levies as well as environmental levies are levied on certain locally-manufactured goods.

A specific customs duty (provided in Schedule No. 1 Part 2A) of the Customs and Excise Act, equal to the rate of the duty on locally-manufactured goods, is levied on goods imported of the same class or kind. The specific customs duty is payable in addition to the ordinary customs duty payable in Schedule No. 1 Part 1 of the Customs and Excise Act.

c) Anti-dumping, countervailing and safeguard duties on imported goods

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

3.10.8 Importation of goods

VAT is levied at the rate of 14% on the importation of goods from export countries, including Botswana, Lesotho, Namibia and Swaziland (the BLNS countries).

For VAT purposes the value to be placed on the importation of goods into South Africa is deemed to be the value of the goods for customs duty purposes, plus any duty levied under the Customs and Excise Act on the importation of those goods, plus a further 10% of the said customs value. The value of any goods which have their origin in any of the BLNS countries 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.

3.10.9 Deferment, suspension and rebate of duties

Participation in the SARS deferment scheme allows an importer to defer duty and VAT for up to 30 days after clearance of goods imported for home consumption. At the conclusion of the period of deferment the client is allowed a further seven days to settle the account. A requirement for participation in the deferment scheme is the furnishing of adequate security to cover the amount of duty and VAT deferred.

The payment of duty and VAT is suspended for up to two years when goods are entered into a licensed customs and excise storage warehouse for storage. Duty and VAT must be brought to account when the goods are cleared for home consumption.

3.11 Exportation of goods

3.11.1 Introduction

Goods exported from South Africa may only be exported through designated commercial points. Any exporter of any goods must within the prescribed period declare such goods for export. The goods may also be subject to export control being either totally prohibited from export or subject to the production of a permit from the issuing authority at the time of clearance.

3.11.2 Registration as an exporter

Any person who intends exporting goods from South Africa must register with SARS as an exporter. Exporters who export goods of which the value for each consignment is less than R20 000, provided that this is limited to three consignments per calendar year, are excluded from registration.

3.11.3 Export declarations

Any exporter of any goods must, before such goods are exported from South Africa deliver to the Controller a bill of entry in the prescribed form. Declarations may be submitted either manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Provision exists for the imposition of penalties, in addition to seizure of the goods where goods have been dealt with irregularly or false declarations have been made. In instances of fraud, offenders may also be prosecuted criminally.

3.12 Free Trade Agreements and preferential arrangements with other countries

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

3.12.1 Bi-lateral Agreements (non-reciprocal)

These include trade agreements between the governments of –

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

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

3.12.2 Preferential dispensation for goods entering the RSA (non-reciprocal)

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

3.12.3 Free or Preferential Trade Agreements (FTAs and PTAs) (reciprocal)

These include –

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

3.12.4 Generalised System of Preferences (GSPs) (Non-reciprocal)

These include –

- AGOA

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

- EU

  Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the European Community.

- Norway

  Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Kingdom of Norway.

- Switzerland

  Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Swiss Confederation.

- Russia

  Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Russian Federation.

- Turkey

  Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Republic of Turkey.

Guide to the Approval of International Airports

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

3.13 Environmental levy

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

3.13.1 Plastic Bags (Part 3A of Schedule 1 of the Customs and Excise Act, 1964)

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

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

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

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

3.13.2 Electricity generated in South Africa from non-renewable resources (Part 3B of Schedule 1 of the Customs and Excise Act, 1964)

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

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

Electricity generated under specific circumstances as outlined in Note 2 in Schedule 1 Part 3B to the Customs and Excise Act, 1964 will not be liable for this levy.

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

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

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

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

3.13.4 Carbon dioxide (CO_2) vehicle emissions levy

A CO_2 emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this levy is to influence the composition of South Africa's vehicle fleet to become more energy-efficient and environmentally-friendly. The levy is based on certification provided by the vehicle manufacturer, or in the absence thereof according to the set methods of calculation as described in Note 5 in Schedule 1 Part 3D to the Customs and Excise Act, 1964.

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

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

(140 g/km – 120 g/km) × R90

= 20g/km × R90

= R1 800

In this example, R1 800 will be added to the price of the vehicle before calculating the VAT inclusive price.

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

3.14 Air passenger departure tax

As from 1 October 2011 –

- passengers departing to Botswana, Lesotho, Namibia and Swaziland pay R100 per passenger.
- passengers departing to other international destinations pay R190 per passenger.

3.15 Skills development levy (SDL)

SARS administers the collection of SDL. SDL is levied on payrolls in order to finance the development of skills and thus enhance productivity.

An employer must pay SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees tax purposes with SARS or not) are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees receive grants from Sector Education and Training Authorities (SETAs) in terms of this initiative.

The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.

For more information see the guide[59] available on the SARS website.

3.16 Unemployment insurance fund (UIF) contributions

South Africa has an unemployment insurance fund which insures employees against the loss of earnings due to termination of employment, illness and maternity leave.

SARS administers the collection of the bulk of UIF contributions. UIF contributions, which are equal to 2% of the remuneration (subject to specified exclusions) paid or payable by an employer to its employees, are collected from employers on a monthly basis. The total amount of contributions so collected consist of –

- the sum of the contribution made by each employee equal to 1% of the employee's gross remuneration (before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions) paid or payable by the employer to its employees during any month.

UIF contributions are only calculated on so much of the remuneration paid or payable by the employer to its employee as does not exceed –

- R14 872 per month (R178 464 a year); or

[59] *Guide for Employers in respect of Skill Development Levy.*

- R3 432 per week.

Employers must pay the total contribution of 2% over to SARS within seven days after the end of the month during which the amount was deducted from the remuneration of its employees.

Further information see the guide[60] available on the SARS website.

The Department of Labour's website, **www.uif.gov.za** also has useful information in this regard.

4. A business and other authorities

4.1 Introduction

Before commencing with business activities it may be necessary to register with certain other authorities in order to comply with laws or regulations of a general nature or pertaining to the business' area of operation specifically. It will be in a taxpayer's own interest to make enquiries in this regard and to comply with all the requirements that might be set. Some of the requirements that might be applicable are mentioned below. The purpose is merely to bring to a taxpayer's attention some of the authorities that might require registration of their business. The list below is not exhaustive.

4.2 Local sphere governments

A local sphere government (municipality) will provide information with regard to the rules or regulations laid down in respect of businesses in their respective areas.

4.3 Unemployment Insurance Commissioner

Those employers who are not liable to register with SARS for PAYE and SDL purposes, but are liable for the payment of UIF contributions must pay such contributions in respect of all its employees to the Unemployment Insurance Commissioner at the Department of Labour. (See **3.15** under the heading "**Unemployment insurance fund (UIF) contributions**".)

4.4 South African Reserve Bank – Exchange control

Exchange control regulations, restricting the in and out flow of capital from South Africa, still exist. For example, investments into South Africa must be reported and prior approval is required if loan capital is invested in South Africa.

The administration of exchange control is performed by the South African Reserve Bank. The Reserve Bank has delegated some of its powers to deal with exchange control related matters too commercial banks. These banks are known as "authorised dealers" in foreign exchange.

Residents of South Africa wishing to remit or invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach their local authorised commercial banks in this regard.

Individuals older than 18 years and in good standing with their tax affairs may invest a total of R4 million a year outside South Africa. This foreign investment allowance of R4 million is available to residents with a valid bar-coded South African identity document. However, individuals are also able to invest, without restriction, in foreign companies that are inward

[60] *Guide for Employers in respect of the Unemployment Insurance Fund.*

listed on South African security exchanges. In addition individuals are allowed a total single discretionary allowance of R1 million a year for purposes of travel, donations, gifts and maintenance.

Companies may use unlimited South African funds for new approved foreign-direct investments (strictly true investments in factories or businesses and not for portfolio investments). Companies are allowed to retain foreign dividends offshore, and dividends repatriated to South Africa after 26 October 2004 may be transferred offshore for the financing of approved foreign-direct investments or approved foreign expansion.

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

4.5 Department of Trade and Industry

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, type of business entities and requirements of registration of a business entity can be obtained from the Department of Trade and Industry or on its website **www.dti.gov.za**.

4.6 Broad-Based Black Economic Empowerment Act 53 of 2003

The above Act provides a legislative framework for the promotion of black economic empowerment and for the issuing of the codes of good practice. For more information contact the Department of Trade and Industry or visit its website **www.dti.gov.za**.

4.7 Environmental

Various Acts exist with regard to the control and management of pollution which are administered by different government departments. Companies and individuals conducting businesses which may cause harm to the environment should approach the relevant department to ensure that they comply with the relevant environmental standards. Acts in this regard may include the following:

- National Environmental Management Act 107 of 1998 (management of pollution in general)
- National Environmental Management: Air Quality Act 39 of 2004 (management of air pollution)
- National Water Act 36 of 1998 (management of water resources)
- Mineral and Petroleum Resources Development Act 28 of 2002 (rehabilitation of mining areas)
- Hazardous Substances Act 15 of 1973

4.8 Safety and security

Below is a list of some legislation relating to safety, security and health issues, which will enable businesses to ensure that their work places are safe and secure environments to work in.

- Explosives Act 15 of 2003
- National Nuclear Regulator Act 47 of 1999
- Nuclear Energy Act 46 of 1999
- Occupational Health and Safety Act 85 of 1993

- Tobacco Products Control Act 83 of 1993

4.9 Labour

Various Acts, administered by the Department of Labour, govern the relationship between employers and employees. These Acts include the following:

- Basic Conditions of Employment Act 75 of 1997
- Labour Relations Act 66 of 1995
- Employment Equity Act 55 of 1998
- Skills Development Act 97 of 1998
- Compensation for Occupational Injuries and Diseases Act 130 of 1993

Employers are required to make contributions calculated on a certain percentage of their employees' earnings to the Compensation Fund, from which compensation is paid for injuries or diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries or diseases. For more information visit the Department of Labour's website **www.labour.gov.za**.

4.10 Promotion of Access to Information Act 2 of 2000

In terms of this Act, government departments, public and private companies, including registered close corporations and businesses are required to compile and publish manuals containing, inter alia, a description of the entity's structure and functions and a description of the records held. The Department of Justice and Constitutional Development website **www.doj.gov.za** has more information in this regard. The SARS Manual on the Promotion of Access to Information Act, 2000 is available on the SARS website.

4.11 Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (RICA)

The purpose of RICA, in broad terms, is to regulate or control the interception of electronic and other communications. Senior persons in businesses using some form of electronic communications should take note of the provisions of RICA.

4.12 Electronic Communications and Transactions Act 25 of 2002 (ECTA)

ECTA regulates the electronic communications, including digital signatures, electronic agreements and storage requirements. All persons making use of electronic communications are affected by this legislation.

4.13 Prevention of Organised Crime Act 121 of 1998 (POCA)

The purpose of POCA is to combat organised crime activities such as racketeering and money laundering. In terms of section 7A of POCA, businesses must report any unlawful activities. Failure to do so is an offence.

4.14 Financial Intelligence Centre Act 38 of 2001 (FICA)

FICA sets up a regulatory anti-money laundering regime which is intended to break the cycle used by organised criminal groups to benefit from illegitimate profits. This Act aims to maintain the integrity of the financial system. Apart from the regulatory regime this Act also creates the Financial Intelligence Centre.

The regulatory regime of FICA imposes 'know your client', record-keeping and reporting obligations on accountable institutions. It also requires accountable institutions to develop and implement internal rules to facilitate compliance with these obligations.

FICA imposes a duty on accountable institutions to establish and verify the identity of clients. Detailed records of clients and the transactions entered into by clients must be kept. Records obtained by an accountable institution must be kept for at least five years after a transaction was concluded and for a minimum of five years after the date which a business relationship was terminated and must be kept in electronic form.

Further information on FICA and what is meant by accountable institutions can be found on the websites of the National Treasury **www.finance.gov.za** or the Financial Intelligence Centre **www.fic.gov.za**.

4.15 Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act)

The FAIS Act has been enacted to regulate the provision of a wide range of financial and intermediary services to clients. This Act seeks to protect the public from unscrupulous and unprofessional investment advisors, intermediaries and representatives. It outlines areas such as codes of conduct, licensing requirements, the appointment of external auditors, reporting and retention obligations of financial advisors, and the declaration of 'undesirable practices'.

4.16 Prevention and Combating of Corrupt Activities Act 12 of 2004 (PCCA Act)

The PCCA Act aims to prevent and combat corruption and corrupt activities and lays out the offences relating to those activities. This Act requires that a person who holds a position of authority, who knows or ought to reasonably have known or suspected that any other person has committed a specified act of corruption or the offence of fraud, theft, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion to a police official.

4.17 Companies Act 71 of 2008

A company is a separate legal entity as from the date of incorporation and continues in existence until it is deregistered or liquidated, irrespective of whether there is a change in shareholding from time to time.

The Companies Act, 2008 requires that companies must submit annual returns to Companies and Intellectual Property Commission (CIPC). Annual returns refer to the information that companies must submit to CIPC: (such as confirmation that the company is still in business and that the information provided is still valid). For more information, visit **www.cipc.gov.za**.

4.18 National Small Enterprise Act 102 of 1996

This Act provides for the establishment of an Advisory Body and the Small Enterprise Development Agency to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Small Enterprise Development Agency; to provide guidelines for organs of state to promote small enterprises in South Africa. The Ntsika Enterprise Promotion Agency is an agency of the Department of Trade and Industry and facilitates non-financial support and business development services to SMMEs through a broad range of intermediary organisations.

4.19 Lotteries Act 57 of 1997

Regulations under the Lotteries Act provide the extent to which one may lawfully hold a lottery or other competition to promote the sale or use of any goods or services.

4.20 Promotion of Administrative Justice Act 3 of 2000 (PAJA)

In terms of the Constitution of South Africa, 1996 everyone has the right to administrative action that is lawful, reasonable and procedurally fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. PAJA gives effect to this right.

4.21 Protected Disclosures Act 26 of 2000

This Act provides for procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees and for the protection of employees making that disclosure.

4.22 National Credit Act 34 of 2005

The purposes of this Act, which came into effect on 1 June 2007, are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless granting of credit, assists people who are heavily in debt and regulates credit information. For more information refer to the National Credit Regulator's website **www.ncr.org.za**.

4.23 Consumer Protection Act 68 of 2008

The aim of this Act, which came into operation on 24 October 2010, is to consolidate and integrate various existing consumer protection provisions that are currently contained in various other laws, for example, the Consumer Affairs Act, 1988 and the Trade Practices Act 76 of 1976 to name a few, and to protect consumers against unfair market practices and unsafe products. For more information refer to the Department of Trade and Industry website **www.dti.gov.za**.

5. General

5.1 Record-keeping

A taxpayer involved in a business must keep records that will enable that taxpayer to prepare complete and accurate tax returns for such business.

Any system of record-keeping that is suited to the purpose and nature of the business may be chosen. These records must clearly reflect the income and expenditure. This means that, in addition to permanent books of account or records, all other information that may be required to support the entries in the records and tax returns must be maintained.

Paid accounts, cancelled cheques and other source documents that support entries in the records should be filed in an orderly manner and stored in a safe place. For most small businesses, the business chequebook is the prime source for entries in the business records. It is advisable to open a separate bank account for the business so that private and business expenses are not confused.

The records should include –

- records showing the assets, liabilities, undrawn profits, revaluation of fixed assets and various loans;

- a register of fixed assets;
- detailed daily records of cash receipts and payments reflecting the nature of the transactions and the names of the parties to the transactions (except for cash sales);
- detailed records of credit purchases (goods and services) and sales reflecting the nature of the transactions and the names of the parties to the transactions;
- statements of annual stocktaking; and
- supporting vouchers.

5.2 Importance of accurate records

Accurate records are essential for efficient management. The following demonstrates the need to keep accurate records:

5.2.1 Identify nature of receipt

The records will show whether the receipts are of a revenue nature or capital nature.

5.2.2 Prevent omission of deductible expenses

Expenses may be overlooked or forgotten when preparing a tax return, unless recorded at the time they are incurred or paid.

5.2.3 Establish amounts paid out as salaries or wages

Under normal circumstances amounts paid to employees for services rendered are taxable in the hands of the employees. In these cases employees' tax must be deducted from salaries or wages by the person paying such salaries or wages.

5.2.4 Explain items reported on your income tax return

SARS may ask a taxpayer to explain the items reported if the taxpayer's income tax return is examined by SARS. Adequate and complete records are always supported by sales slips, invoices, receipts, bank deposit slips, cancelled cheques and other documents.

5.3 Availability and retention of records

A taxpayer is required to keep the books and records of the taxpayer's business in order to make them available at any time for examination by SARS. The retention period commences from the date of the last entry in the particular document, record or book. In terms of Regulations issued under the Companies Act, 2008 and the Close Corporation Act, 1984, records must be kept for 15 years. A list of the retention periods in terms of the Regulations is given below.

RETENTION PERIODS OF CLOSE CORPORATION RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
1.	Founding statement *(form CK1)*	Indefinite
2.	Amended founding statement *(forms CK2 and CK2A)*	Indefinite
3.	Minute book as well as resolutions passed at meetings	Indefinite
4.	Annual financial statements including:	

RETENTION PERIODS OF CLOSE CORPORATION RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
	• Annual accounts; and • the report of the accounting officer	15 years
5.	Accounting records, including supporting schedules to accounting records and ancillary accounting records	15 years
6.	The microfilm image ("camera master") of any original record reproduced directly by the camera	Indefinite

RETENTION PERIODS OF COMPANY RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
1.	Certificate of incorporation	Indefinite
2.	Certificate of change of name (if any)	Indefinite
3.	Memorandum and articles of association	Indefinite
4.	Certificate to commence business (if any)	Indefinite
5.	Minute book, *CM25* and *CM26*, as well as resolutions passed at general or class meetings	Indefinite
6.	Proxy forms	3 years
7.	Proxy forms used at court-convened meetings	3 years
8.	Register of allotments – after a person ceased to be a member	15 years
9.	Registration of members	15 years
10.	Index of members	15 years
11.	Registers of mortgages and debentures and fixed assets	15 years
12.	Register of directors' shareholdings	15 years
13.	Register of directors and certain officers	15 years
14.	Directors attendance register	15 years
15.	Branch register	15 years
16.	Annual financial statements including:	

RETENTION PERIODS OF COMPANY RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
	• Annual accounts • Directors' report • Auditors' report	15 years
17.	Books of account recording information required by the Companies Act, 2008	15 years
18.	Supporting schedules to books of account and ancillary books of account	15 years

5.4 Record-keeping as required under section 29 of the Tax Administration Act 28 of 2011 (the TA Act) and the retention period in case of audit, objection or appeal under section 32 of this Act as well as recordkeeping under section 55 of the VAT Act

In terms of the abovementioned sections, a person (taxpayer/vendor) is required to keep records such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists, registers, books of accounts, data in electronic form and records relating to the determination of capital gains or capital losses –

- for five years from the date on which the return for that tax year was submitted, if that person has submitted a return for that tax year; or
- for five years from the end of the relevant tax year, if that person is not required to submit a return, but has, during that tax year, received income, has a capital gain or capital loss or engaged in any other activity that is subject to tax or would have been subject to tax but for the application of a threshold or exemption.

However, in cases where objections and appeals have been lodged against assessments, it would be advisable to keep all records and data relating to the assessments under objection or appeal until such time that the objection or appeal has been finalised, even if the timeframe for finalisation exceeds five years.

5.5 Appointment of auditor or accounting officer

A company is required by law to appoint an auditor who will audit and sign an audit report in respect of its financial statements. Similarly a close corporation is required to appoint an accounting officer. Normally, the auditor or accounting officer will provide assistance in determining the taxable income and the amount of tax to be paid.

5.6 Representative taxpayer

Any company or close corporation which conducts business or has an office in South Africa must, within one month from the commencement of business operations or acquisition of an office for the purposes of section 246 of the TA Act, appoint a representative as the public officer of the company or CC. The name of the representative and his or her position in the company or CC must be submitted to the SARS office for the district in which the company or CC has its registered office, for approval. The representative must be a responsible officer

of the company or CC (for example, director, manager, senior member, secretary etc.) and such position must constantly be kept filled by the company or CC.

It is also advisable (although not a requirement of the TA Act) that a sole proprietor or partner of a business appoints a representative taxpayer such as an accountant to deal with his or her tax affairs.

5.7 Tax clearance certificates

Exchange controls have been relaxed since 1 July 1997, allowing South African residents to invest funds abroad, or to hold funds in foreign currencies at local banks.

An individual, aged 18 years or older and who is a resident may transfer loans within a overall discretionary limit of R4 million per applicant during a calendar year to persons who/which are normally resident outside South Africa. Such investors are required to apply for a tax clearance certificate (TCC) from their local SARS office where they are registered for income tax purposes before any foreign investment being made.

A TCC may only be issued if all tax returns have been submitted (unless extension was granted) and no taxes (that is, income tax, value-added tax and employees' tax) are outstanding and a statement of assets and liabilities has been provided. A person who is not registered for income tax purposes will also be required to apply for such a certificate.

Prospective tenderers will also be required to obtain a TCC from the SARS office where they are registered for tax purposes before submitting a tender for providing goods or services to government.

The application forms are obtainable from any SARS office and are also available on the SARS website.

5.8 Non-compliance with legislation

Taxes are collected to enable the government to provide essential services such as education, health, security and welfare to the people of South Africa. Therefore, if everyone pays their fair share, better services can be provided and tax rates can be reduced. Taxpayers who ignore their tax obligations such as not to register or failure to submit tax returns are actually defrauding their country and fellow residents or citizens.

5.9 Interest, penalties and additional tax

The TA Act provides for –

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

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

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

5.10 Request for correction (RFC)

A taxpayer, who makes a mistake in the return submitted, and wishes to correct this mistake, is to submit a RFC which is available through eFiling or contact a SARS branch. This allows the taxpayer to correct a previously submitted return/declaration for income tax and in certain circumstances for value added tax. If the RFC function is not available to the taxpayer through eFiling an objection is to be lodged.

See the SARS website for more information.

5.11 Notice of objection (NOO)

A taxpayer, who is not –

- able to submit a RFC (see the next paragraph); or
- satisfied with an assessment, decision or determination received from SARS,

must lodge an objection in writing, together with a filled in and signed NOO form stating fully, and in detail the grounds on which the objection is lodged.

An RFC will not be available in the following circumstances:

- In the case of an on-going audit, an RFC for a particular year of assessment has already been submitted or the relevant material (supporting documents) has already been sent, the taxpayer will need to wait for the outcome.
- An audit was completed or a revised declaration was done by a SARS user.
- In the case of income tax (personal, corporate or trust) three years after the assessment or where the decision was not allowed.
- For any VAT period more than five years after the assessment and for Diesel any tax period more than two years.

The NOO 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,

to the SARS office as specified on the assessment.

If the taxpayer's objection has been disallowed (in part or fully), the taxpayer has the right to note an appeal (see **5.12)**.

More information and an interpretation note[61] are available on the SARS website.

[61] Interpretation Note No. 15 (Issue 4) dated 20 November 2014 '*Exercise of Discretion in Case of Late Objection or Appeal'.*

5.12 Dispute resolution

Dispute resolution processes are available to a taxpayer if an objection is disallowed (in part or fully), and the taxpayer believes the assessment, decision or determination received from SARS is still incorrect (see Chapter 9 of the TA Act). These processes are in terms of the legislation that SARS administers.

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an alternative dispute resolution (ADR) process. The formal dispute resolution process need not be followed if the difference is clearly the result of an administrative error. However, the taxpayer may still find it useful to record the details and the nature of the error in writing as it reduces the likelihood of misunderstanding and provides a document that may be referred to in future for record purposes.

Rules prescribing the procedures for lodging an objection and noting an appeal against an assessment were originally formulated and promulgated as provided for in section 107A. These rules included the procedures for the conducting and hearing of an appeal before a Tax Court; or a Tax Board.

Section 107A was repealed by paragraph 73 of Schedule 1 to the TA Act, but applied until new rules were promulgated under section 103 of the TA Act (see Government Notice No. 550 dated 11 July 2014 published in Government Gazette No. 37819 dated 11 July 2014.).

These rules make provision for a dispute resolution process and an alternative dispute resolution process.

For more information, see the interpretation note[62], and a number of guides[63] are available on the SARS website.

The Customs and Excise Act 91 of 1964, contains its own provisions relating to dispute resolution.

5.13 Service Monitoring Office (SMO)

The SMO is a special office operating independently of SARS offices. The SMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS offices through the normal channels.

Contact details

The SMO can be reached through the following channels:

Tel: 0860 121216
Fax: 012 431 9695
Postal address: PO Box 1161, HATFIELD, 0028
Business hours: 07h30 to 16h30, Monday to Friday, excluding weekends and public holidays
Email: **ssmo@sars.gov.za**.

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[62] Interpretation Note No. 15 (Issue 4) dated 20 November 2014 '*Exercise of Discretion in Case of Late Objection or Appeal'*

[63] *Dispute Resolution Guide (Rules under s. 103)* dated 28 October 2014; *Quick Guide on Alternative Dispute Resolution* dated 31 October 2014 and *What do You do if you Dispute you Tax Assessment* dated 31 October 2014.

6. Conclusion

It is trusted that this guide has contributed to greater clarity regarding the application and provisions of the relevant Acts pertaining to the taxation of Small Businesses.

Further information about the different taxes administered by SARS is available on the SARS website **www.sars.gov.za** or from any SARS office.