Legal Counsel

Income Tax

Tax Guide for Small Businesses 2015/16

South African Revenue Service

Tax Guide for Small Businesses 2015/2016

Preface

This guide 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 –

- **natural persons** for the 2016 year of assessment commencing on 1 March 2015 and ending on 29 February 2016;
- **trusts** in respect of years of assessment commencing and ending during the period commencing on 1 March 2015 and ending on 29 February 2016; and
- **companies and close corporations** with years of assessment ending during the 12 month period ending on 31 March 2016.

The information in this guide concerning value-added tax and other taxes, duties, levies and contributions reflect the rates applicable as at the date of 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 pertaining to that rate, applicable to the tax, customs or excise concerned.

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

This guide has been updated to include the Taxation Laws Amendment Act 25 of 2015 promulgated on 8 January 2016 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act 13 of 2015 promulgated on 17 November 2015 as well as the Budget Review of 2016.

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

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

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

Prepared by

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SOUTH AFRICAN REVENUE SERVICE

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Contents

Glossary

In this guide, unless the context indicates otherwise –

- **"CC"** means close corporation;
- **"CGT"** means capital gains tax;
- **"Customs and Excise Act"** means the Customs and Excise Act 91 of 1964;
- **"PAYE"** means Pay-As-You-Earn;
- **"SBC"** means small business corporation;
- **"Schedule"** means a Schedule to the Act;
- **"SDL"** means skills development levy;
- **"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;
- **"TA Act"** means the Tax Administration Act 28 of 2011;
- **"the Act"** means the Income Tax Act 58 of 1962;
- **"UIF"** means unemployment insurance fund;
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the relevant Act.

1. 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 the net profit or loss and taxable income or assessed loss of a small business is determined. This guide illustrates some of 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 and 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 income from such business should be included in the owner's income tax return and the owner 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 the owner's 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 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 which 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 which 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 employees with sought-after skills may be hired.

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] The profits are taxed in the hands of each partner according to the relevant 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.

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. 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, since the partnership technically dissolves every time a partner joins or leaves the partnership.

2.1.3 Close corporation

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. The owners of a CC are the members of the CC and have a membership interest in the CC. Membership, generally speaking, is restricted to natural persons and a trustee of an *inter vivos* trust or testamentary trust.

A CC may not have an interest in another CC. For income tax purposes, a CC is dealt with as if it is a company.

With effect from 1 May 2011 (implementation date of the Companies Act 71 of 2008), no new close corporations can be registered and a conversion from a company to a close corporation is not allowed.

[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.

2.1.4 Private company

A private company is treated by law as a separate legal entity and must register as a taxpayer in its own right. The owners of a private company are the shareholders. The managers of a private company may or may not be shareholders.

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 if 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, amongst others, PAYE, VAT, additional tax, understatement penalty, penalty or interest for which the company is liable if the taxes have not been paid to SARS within the prescribed period.
- Personal liability of directors.
- The Companies Act 71 of 2008 imposes personal liability on directors. 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 of shares in the company is not prohibited.
- 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

This type of entity is discussed in **3.2.18** under the heading **Tax relief measures for small business corporations**.

(b) Micro business (turnover tax)

This type of entity is discussed in **3.2.19** under the heading **Tax relief measures for micro businesses (turnover tax)**.

(c) Personal service provider

A personal service provider means any company or trust if 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 "personal service provider" will not qualify as an SBC (see **3.2.18**). However, should that company employ three or more full-time employees (excluding holders of shares or members or any persons connected to the holders of shares 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 PAYE.

For more information see the interpretation note.[2]

Only the following expenses incurred by a personal service provider may be claimed as a deduction:

- The amounts paid or payable to the employees of the personal service provider for services rendered that will comprise remuneration in the hands of those employees.
- Certain legal expenses.
- Bad debts, if certain requirements are met.
- Contributions to pension or provident funds, medical schemes or retirement annuity funds for the benefit of the employees.
- Refunds of amounts received or accrued for services rendered or for or by virtue of employment or the holding of any office that was included in taxable income of the personal service provider.
- Refunds by a personal service provider of any amount previously paid as remuneration or compensation for restraint of trade.
- Expenses for 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.

[2] Interpretation Note 35 (Issue 3) dated 31 March 2010 "Employees' Tax: Personal Service Providers and Labour Brokers".

(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 PAYE 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 or any associated institution in relation to the client, 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 of providing persons to the clients 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.

For more information see the interpretation note.[3]

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.

(e) Independent contractor

The concept of an “independent trader” or “independent contractor” (synonymous for practical purposes) still remains one of the more contentious features of the Fourth Schedule. A decision in favour of either independent contractor or employee status impacts on an employer’s liability to deduct PAYE.

The liability of an employer to deduct PAYE is largely dependent on whether or not “remuneration” as defined in paragraph 1 the Fourth Schedule is paid. Subject to certain conditions, amounts paid to an independent contractor for services rendered are excluded from “remuneration” as defined, in which case an employer has no liability to deduct PAYE from the amounts paid.

[3] Interpretation Note 35 (Issue 3) dated 31 March 2010 “Employees’ Tax: Personal Service Providers and Labour Brokers”.

Two sets of tools are available to determine whether a person is an independent contractor for PAYE purposes. The first tool is referred to as statutory tests. The statutory tests are conclusive in nature which, if they apply, means that a person is deemed not to be an independent contractor for purposes of determining PAYE. The second tool is the common law tests, used to determine whether a person is an independent contractor or an employee. Unfortunately, the common law tests as they apply in South Africa do not permit a simple "checklist" approach. There are no hard and fast rules in determining whether or not a person is an independent contractor. An "overall" or "dominant impression" of the employment relationship must be formed. Legally, the common law tests should be performed first in determining whether a person is an employee or an independent contractor. In practice, the statutory tests are considered first. If the statutory tests are not applicable in a particular situation, the common law tests are applied to finally determine whether the person is an independent contractor or an employee.

For more information see the interpretation note.[4]

Small, medium and micro enterprises

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 the South African Revenue Services

3.1 Introduction

Once a business has commenced, it will be helpful to have a general understanding of SARS, as well as the duties and obligations of the business operator under the various tax laws.

Certain 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.

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 levied on taxable income determined under the Act.

3.2.2 Registration

As soon as a person commences a business, whether as a sole proprietor, a partner in a partnership or as a company, the person is required to register as a taxpayer with the local SARS branch in order to obtain a reference number. The person must register within 21 business days after becoming liable for any normal tax or becoming liable to submit any return.

[4] Interpretation Note 17 (Issue 3) dated 31 March 2010 "Employees' Tax: Independent Contractors".

See the SARS website for details for registering as a taxpayer.

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

3.2.3 Change of address

The TA Act requires that if a person's postal or physical address changes, the person must, within 21 business days after the change, notify SARS of the new address.

3.2.4 Year of assessment and filing of income tax returns

The year of assessment for natural persons 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. The year of assessment of a deceased person commences on 1 March and ends on the date of death. An insolvent person should submit two returns for a year of assessment, one for the period commencing on 1 March and ending on the date preceding the date of sequestration, and one commencing on the date of sequestration and ending on 28 February. A natural person ceasing to be a resident should submit a return for the period commencing on 1 March and ending on the day preceding the date that the person ceases to be a resident.

Natural persons and trusts may be allowed to draw up financial statements for their business to a date other than the last day of February. For more details see the interpretation note.[5]

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. A company that ceases to be a resident, must submit a return for the period commencing on the first day of the financial year and ending on the day preceding the date that the company ceases to be a resident.

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 a filing campaign to encourage compliance in this regard. Companies are allowed to close their financial accounts on another day than the last day of the financial year, based on the Commissioner's approval. For more details, see the interpretation note.[6]

3.2.5 eFiling

SARS eFiling is an 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.

[5] Interpretation Note 19 (Issue 4) dated 15 February 2016 "Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February".

[6] Interpretation Note 90 dated 15 August 2016 "Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company's Financial Year".

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

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

The following should be noted:

- A taxpayer must retain all supporting documents to a return for five years from the date upon which the return is submitted to SARS, since SARS may require these documents for audit purposes.
- SARS will under certain circumstances, on request, still require the submission of documents for purposes of verification.
- SARS will do 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 generally 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 several banks.

For more information on the payment rules see the guide.[7]

3.2.7 Electronic funds transfer

Payment may be made via internet banking facilities. All internet payments must be correctly referenced to ensure that SARS is able to identify taxpayers' payments and to correctly allocate the amounts to the taxpayer's account.

Several banks support EFT payments. See the SARS website for more details.

[7] *External Guide: South African Revenue Service Payment Rules (GEN-PAYM-01-G01), Revision 24.*

3.2.8 Provisional tax

As soon as a taxpayer commences business, such taxpayer may become liable for provisional tax.

The payment of provisional tax is intended to assist taxpayers in meeting their normal tax liabilities. Provisional tax payments occur by the payment of two instalments in respect of estimated taxable income that will be received or accrued during the relevant year of 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.[8]

3.2.9 Employees' tax

An employer, as an agent of government, is required to deduct PAYE from the remuneration of employees and pay these amounts deducted over to SARS on a monthly basis. PAYE is not a separate tax and 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 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 PAYE 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 remuneration to any of its employees that is above the tax threshold for the 2016 year of assessment, namely –

- R73 650 (for a natural person under the age of 65 years);
- R114 800 (for a natural person aged 65 years or older but not yet 75 years); or
- R128 500 (for a natural person aged 75 years or older),

must register with SARS for PAYE purposes. See the SARS website for registration procedures.

For the 2017 year of assessment the tax threshold increased to –

- R75 000 (for a natural person under the age of 65 years);
- R116 150 (for a natural person aged 65 years or older but not yet 75 years); or
- R129 850 (for a natural person aged 75 years or older).

Once registered, the employer will receive a monthly return (EMP 201) that must be submitted within seven days after the end of the month during which the PAYE was deducted (e.g. PAYE deducted for the month of April should be paid by the 7th of May).

[8] *External Guide: Guide for Provisional Tax 2017 (IT-PT-AE-01-G01), Revision 17.*

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 the payments thereof to SARS see the tables.[9]

3.2.10 Directors' remuneration

The remuneration of directors of private companies (including natural persons in CCs performing similar functions) is subject to the deduction of PAYE.

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 PAYE is to be withheld, a formula is used to determine a director's deemed monthly remuneration from which the company must deduct PAYE. For more information on the application of the formula and relief from hardship see the interpretation note.[10]

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 PAYE from the director.

3.2.11 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. A 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 **3.2.12**), 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. ABC Furniture Store had gross sales of R6 000 000.

[9] *Annual Tax Deduction Tables – Monthly Tax Deduction Tables*; *Fortnightly Tax Deduction Tables* and *Weekly Tax Deduction Tables*.

[10] Interpretation Note 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)".

- *Cost of sales*

  Cost of sales is the cost to a business to buy or produce the product that is sold to the consumer. To determine cost of sales the cost of goods bought or produced during the year of assessment 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 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. The cost of goods sold for the year of assessment would 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 R6 000 000 – 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.

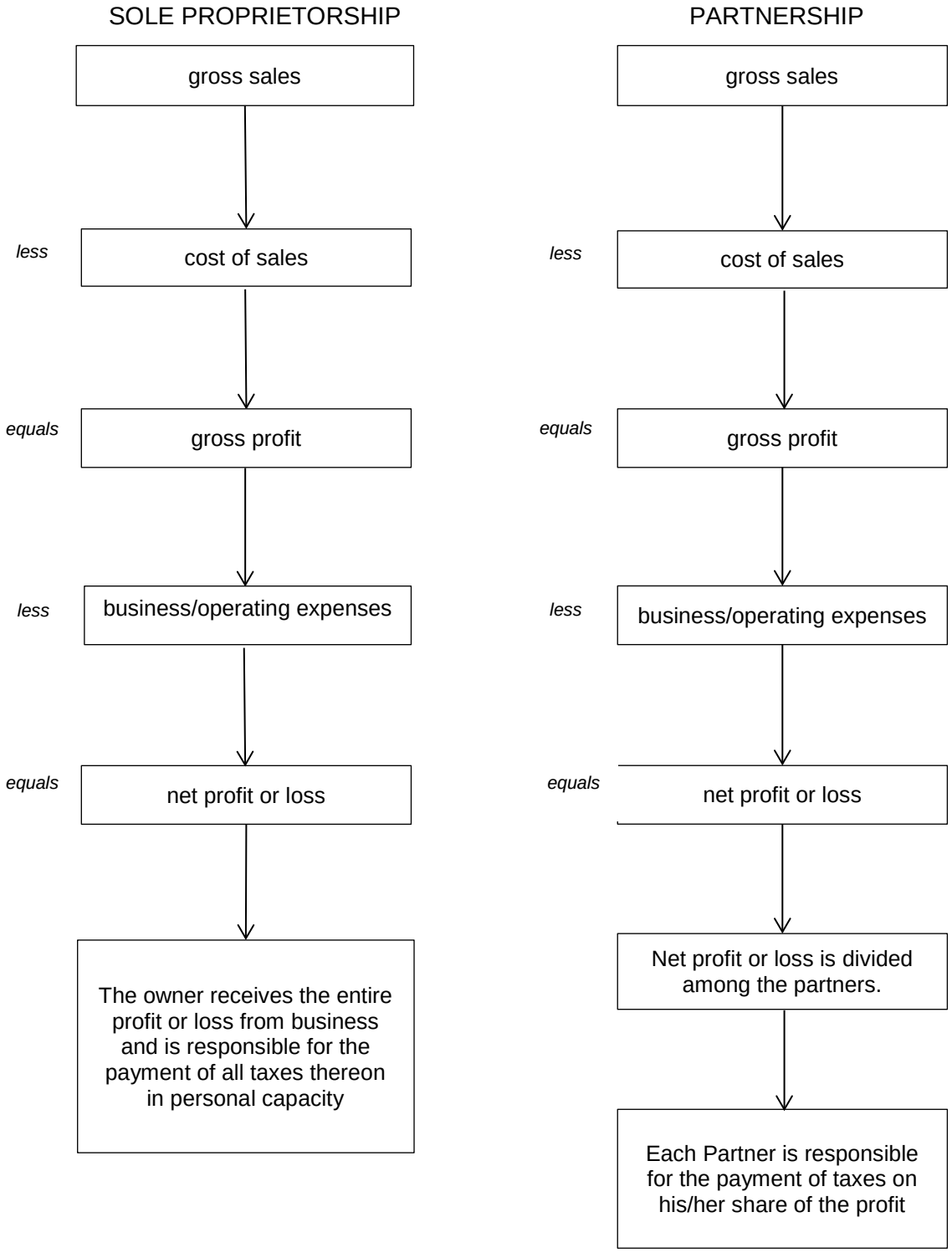
- *Net profit or loss*

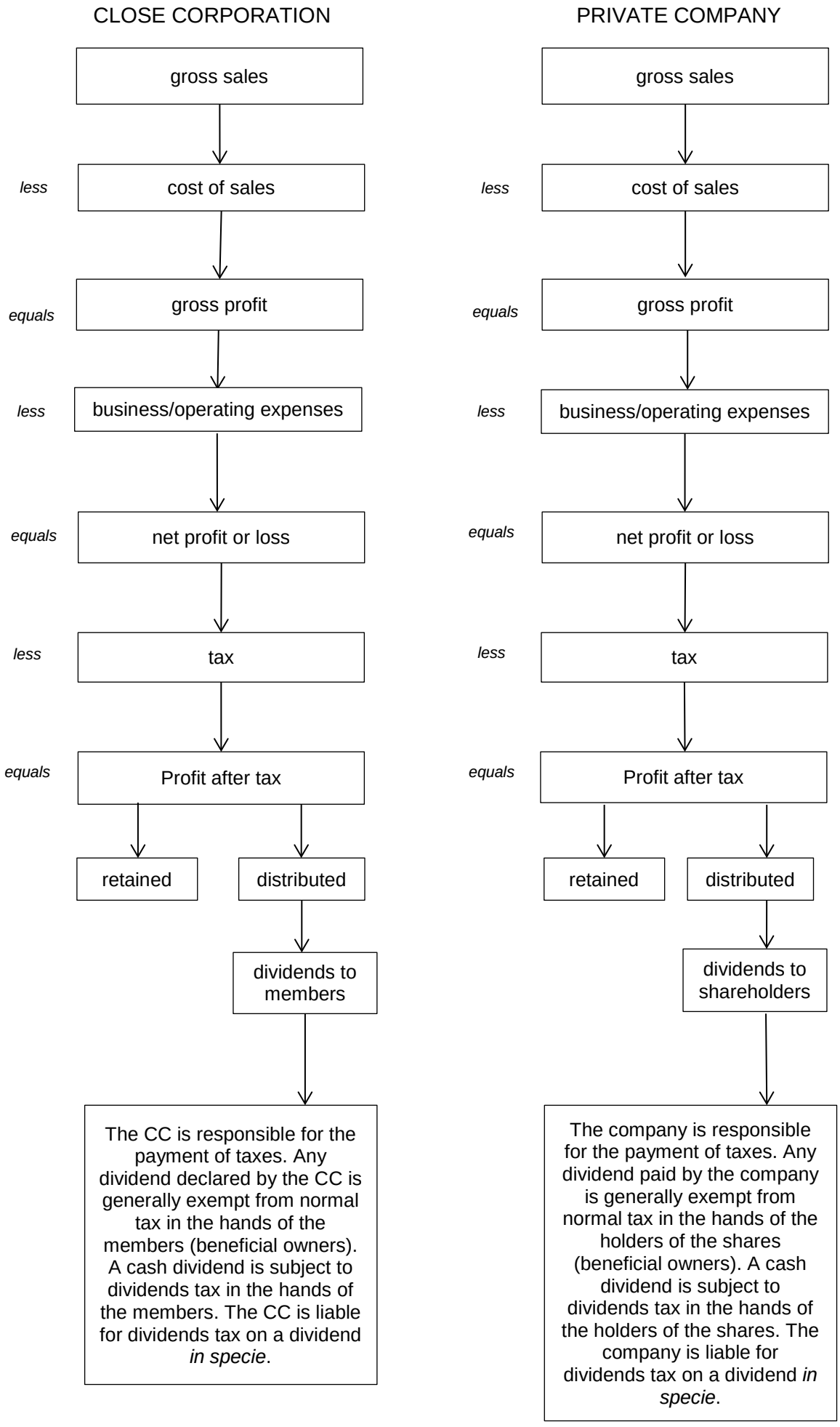
  Net profit is the amount by which the gross profit exceeds the business expenses. Net loss is the amount by which the business expenses exceed the gross profit.

  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 generally not have to calculate cost of sales. Business expenses will be deducted from the gross fees to determine net profit or net loss.

3.2.12 Comparative profit or loss statements




CLOSE CORPORATION
gross sales
less
cost of sales
equals
gross profit
less
business/operating expenses
equals
net profit or loss
less
tax
equals
Profit after tax
retained
distributed
dividends to members
The CC is responsible for the payment of taxes. Any dividend declared by the CC is generally exempt from normal tax in the hands of the members (beneficial owners). A cash dividend is subject to dividends tax in the hands of the members. The CC is liable for dividends tax on a dividend *in specie*.
PRIVATE COMPANY
gross sales
less
cost of sales
equals
gross profit
less
business/operating expenses
equals
net profit or loss
less
tax
equals
Profit after tax
retained
distributed
dividends to shareholders
The company is responsible for the payment of taxes. Any dividend paid by the company is generally exempt from normal tax in the hands of the holders of the shares (beneficial owners). A cash dividend is subject to dividends tax in the hands of the holders of the shares. The company is liable for dividends tax on a dividend *in specie*.

3.2.13 Connection 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’ normal 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 normal tax purposes (see **3.2.25**). 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.

3.2.14 Determination of taxable income or assessed loss

The Act provides for a series of steps to be followed in arriving at a person’s taxable income or assessed loss. The starting point is to determine the person’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).

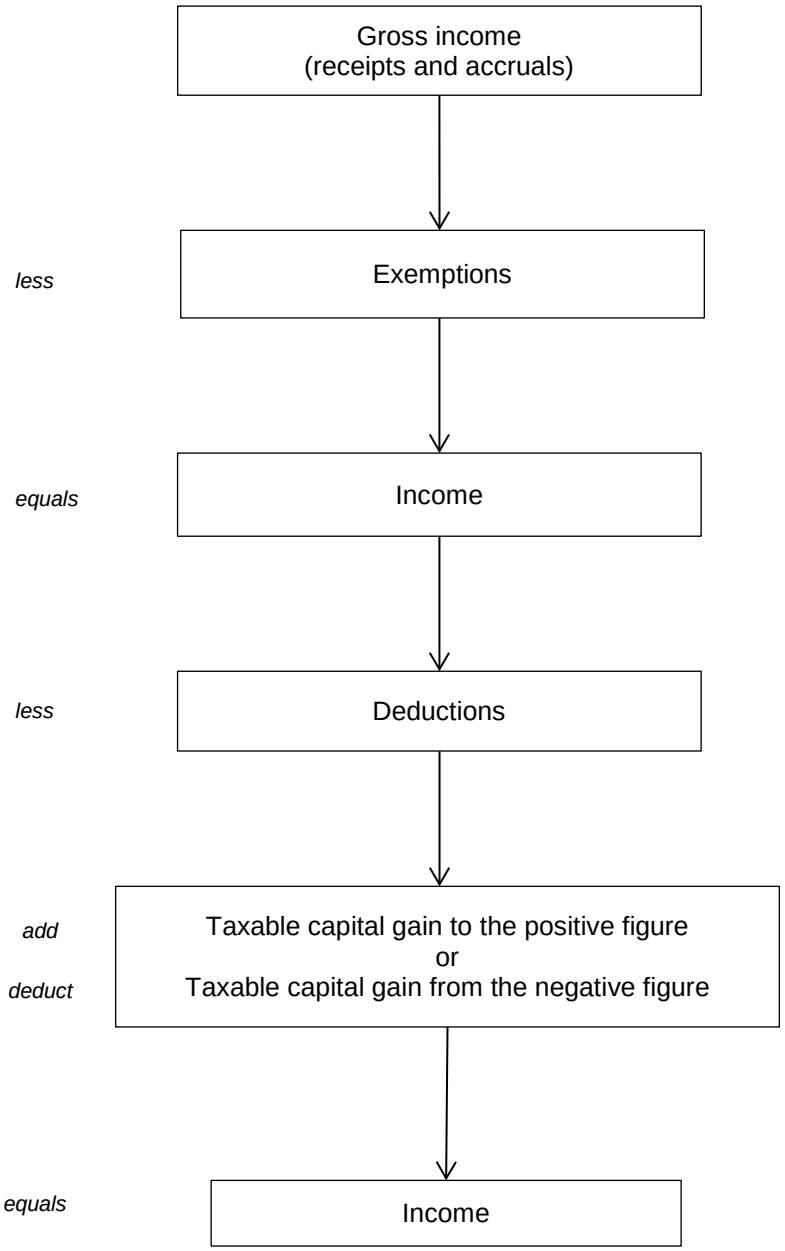
Receipts or accruals of a capital nature are generally excluded from gross income, since the Eighth Schedule deals with capital gains and losses. However, gross income also includes certain other receipts and accruals specified within the definition of “gross income” regardless of their nature.

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

Finally, the taxable income or assessed loss of a person is arrived at by –

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

It can be illustrated as follows:



3.2.15 General deduction formula

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

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

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

3.2.16 Tax rates

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

Year of assessment commencing on 1 March 2015 or ending on 29 February 2016

Taxable income	**Rate of tax**
Not exceeding R181 900	18% of taxable income
Exceeding R181 900 but not exceeding R284 100	R32 742 plus 26% of the amount by which taxable income exceeds R181 900
Exceeding R284 100 but not exceeding R393 200	R59 314 plus 31% of the amount by which taxable income exceeds R284 100
Exceeding R393 200 but not exceeding R550 100	R93 135 plus 36% of the amount by which taxable income exceeds R393 200
Exceeding R550 100 but not exceeding R701 300	R149 619 plus 39% of the amount by which taxable income exceeds R550 100
Exceeding R701 300	R208 587 plus 41% of the amount by which taxable income exceeds R701 300

Normal tax rebates

Only applicable to a natural person – Year of assessment commencing on 1 March 2015 or ending on 29 February 2016

Rebate	**Amount**
Primary rebate – (Below the age of 65 years)	R13 257
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 407
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 466

Year of assessment commencing on 1 March 2016 or ending on 28 February 2017

Taxable income	**Rate of tax**
Not exceeding R188 000	18% of taxable income
Exceeding R188 000 but not exceeding R293 600	R33 840 plus 26% of the amount by which taxable income exceeds R188 000
Exceeding R293 600 but not exceeding R406 400	R61 296 plus 31% of the amount by which taxable income exceeds R293 600
Exceeding R406 400 but not exceeding R550 100	R96 264 plus 36% of the amount by which taxable income exceeds R406 400

Exceeding R550 100 but not exceeding R701 300	R147 996 plus 39% of the amount by which taxable income exceeds R550 100
Exceeding R701 300	R206 964 plus 41% of the amount by which taxable income exceeds R701 300

Normal tax rebates

Only applicable to a natural person – Year of assessment commencing on 1 March 2016 or ending on 28 February 2017

Rebate	**Amount**
Primary rebate – (Below the age of 65 years)	R13 500
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 407
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 466

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 if 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 –

- R270 (R286 as from 1 March 2016) in respect of benefits to the person;
- R540 (R572 as from 1 March 2016) in respect of benefits to the person and one dependant; or
- R540 (R572 as from 1 March 2016) in respect of benefits to the person and one dependant, plus R181 (R192 as from 1 March 2016) 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.[11] Also see section 6A.

Additional medical expenses tax credit

Qualifying medical expenses is allowed as a rebate that is deducted from the normal tax payable by a natural person.

Any medical 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.

[11] *Guide on the Determination of Medical Tax Credits and Allowances* (Issue 6).

A person's entitlement to the additional medical expenses tax credit depends on the category in which the person falls, namely whether –

- the person is aged 65 years or older;
- the person, the person's spouse or child is a person with a "disability" as defined in section 6B(1); or
- the taxpayer is aged below 65.

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, spouse or 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.

For more information see the guide.[12] Also see section 6B.

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

Year of assessment –

- commencing on 1 March 2015 or ending on 29 February 2016; or
- commencing on 1 March 2016 or ending on 28 February 2017

Rate of tax
41% of taxable income

[12] *Guide on the Determination of Medical Tax Credits* (Issue 7).

(c) Taxable income of corporates

(i) Companies (including close corporations but excluding companies mining for gold, oil and gas companies in respect of taxable income attributable to its oil and gas income, long term insurance companies in respect of its individual policyholder fund, companies qualifying as small business corporations and companies qualifying as micro businesses)

Year of assessment –

- ending during the 12-month period ending on 31 March 2016; or
- ending during the 12-month period ending on 31 March 2017

Rate of tax
28% of taxable income

(ii) Taxable income of companies qualifying as small business corporations

Year of assessment ending during the 12-month period ending on 31 March 2016

Taxable income	**Rate of tax**
Not exceeding R73 650	0% of taxable income
Exceeding R73 650 but not exceeding R365 000	7% of the amount by which taxable income exceeds R73 650
Exceeding R365 000 but not exceeding R550 000	R20 395 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 245 plus 28% of the amount by which taxable income exceeds R550 000

Year of assessment ending during the 12-month period ending on 31 March 2017

Taxable income	**Rate of tax**
Not exceeding R75 000	0% of taxable income
Exceeding R75 000 but not exceeding R365 000	7% of the amount by which taxable income exceeds R75 000
Exceeding R365 000 but not exceeding R550 000	R20 300 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R59 150 plus 28% of the amount by which taxable income exceeds R550 000

(iii) Taxable income of micro businesses (turnover tax)

Year of assessment –

- ending during the 12-month period ending on 31 March 2016; or
- ending during the 12-month period ending on 31 March 2017

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

3.2.17 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 or a process of a similar nature) (section 13)

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

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

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.[13]

[13] *Guide to Building Allowances*.

(b) Commercial buildings (section 13*quin*)

An allowance, equal to 5% (20-year straight-line basis) may be deducted on the cost to a taxpayer of new and unused buildings or improvements to buildings wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade (other than the provision of residential accommodation) which were contracted for on or after 1 April 2007 and the construction, erection or installation of which commenced on or after the abovementioned date.

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 that 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.[14]

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

Buildings and improvements

An allowance, equal to 2% (50-year straight-line) may be deducted on the cost to a taxpayer of the erection of buildings and improvements.

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

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

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

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.

[14] *Guide to Building Allowances*.

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.[15]

(d) Aircraft or ships (section 12C)

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

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in 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 [section 8(4)(*e*)].

Section 8(4)(*e*) was amended with effect from 22 December 2003 and at the same time sub-paragraphs (*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 apply only if the taxpayer opts that paragraph 65 or 66 of the Eighth Schedule 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. The following provisions must be kept in mind:

- 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 same ratio as the receipts and accruals from the disposal respectively expended to acquire each replacement asset bear to the total receipts and accrual expended in acquiring all those replacement assets [section 8(4)(*e*A)].
- The amount of the recoupment will be included in the taxpayer's income over the period that the replacement asset is written off for tax purposes in the same proportion as the allowance granted on the replacement asset [section 8(4)(*e*B)].
- In the year of assessment in which the taxpayer disposes of a replacement asset, any portion of the recoupment that is apportioned to the replacement asset that has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(*e*C)].

[15] *Guide to Building Allowances*.

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

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

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

(e) Rolling stock (trains and carriages) (section 12DA)

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

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 under 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 under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

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

Pipelines used for transportation of natural oil

An allowance, equal to 10% (10-year straight-line basis) may be deducted on the cost incurred by a taxpayer on the acquisition of any new or unused pipelines.

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

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.

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

Lines or cables used for transmission of electricity

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

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

Lines or cables used for transmission of electronic communications

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

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

The allowance increased to 6,67% (15-year straight-line basis) for lines and cables (new or used) owned by the taxpayer and brought into use for the first time by the taxpayer. The increased allowance applies only to lines and cables acquired on or after 1 April 2015.

Railway lines used for transportation of persons, goods or things

An allowance, equal to 5% (20-year straight-line basis) may be deducted on the cost incurred by a taxpayer to acquire new or unused railway lines.

The railway line must be owned and brought into use for the first time by the taxpayer and used directly for the transportation of persons 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 under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

(g) Airport assets (section 12F)

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

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 under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

(h) Port assets (section 12F)

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

The term "port asset" means 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 or off-dock container depot (including any earthworks or supporting structures forming part of the aforementioned and any improvements thereto).

The depreciable cost of an asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

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

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

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 under 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.[16]

[16] Interpretation Note 47(Issue 3) dated 2 November 2012 "Wear-and-Tear or Depreciation Allowance".

(j) Manufacturing assets (section 12C)

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

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

An allowance, equal to 20% (5-year straight-line basis) may be deducted on the cost to a taxpayer to acquire the asset or improvements effected thereto. The allowance in the third bullet is only applicable for years of assessment ending on or after 1 January 2016.

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

The allowance is increased for a new or unused asset, acquired on or after 1 March 2002 and brought into use by the taxpayer in 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 from one location to another, for which an allowance was deducted or is deductible, will be allowed as a deduction as follows:

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

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

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

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, may be deducted.

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

An allowance equal to –

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

may be deducted.

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 by the taxpayer as purchaser under an "instalment credit agreement" as defined of the VAT Act.

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance –

- granted under section 11(*e*) will be included in the taxpayer's income under section 8(4)(*a*), and
- granted under section 12E(1A)(*b*) will be accounted for under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

(l) Machinery, plant, implements, utensils or articles or improvements thereto (the asset) used in farming or production of renewable energy (section 12B)

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

An allowance will be granted fon these assets owned or acquired by the taxpayer as purchaser under 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 except on –
  - livestock;
  - any motor vehicle of which the sole primary function is the conveyance of persons;
  - any caravan;
  - any aircraft (other than an aircraft used solely or mainly for crop spraying); or
  - any office furniture or equipment;
- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for trade purposes to generate electricity from –
  - wind power –
- (i) photovoltaic solar energy of more than 1 megawatt;
- (ii) photovoltaic solar energy not exceeding 1 megawatt; or
- (iii) concentrated solar energy;
  - hydropower to produce electricity of not more than 30 megawatts; and
  - biomass comprising organic wastes, landfill gas or plants material.

An allowance on –

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

may be deducted.

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 under section 8(4)(a) or (e) (see **3.2.17(d)**).

(m) Inventions, patents, designs, trade marks, copyrights and knowledge [sections 11(*g*A), 11(*g*B) and 11(*g*C)]

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

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

may be deducted.

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

In the case of expenditure exceeding R5 000 and incurred before 29 October 1999, an allowance shall not exceed for any one year the amount which is greater of –

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

In the case of expenditure exceeding R5 000 and incurred on or after 29 October 1999, an allowance will not exceed an amount equal to –

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

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

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

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

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

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

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

An allowance may be deducted for expenditure actually incurred to acquire (otherwise than by 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 may be deducted in the year of assessment in which the abovementioned property is brought into use for the first time by the taxpayer for purposes of the taxpayer's trade if used in the production of income.

In the 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) (sections 11D, 12C and 13)

R&D expenditure incurred on or after 1 October 2012

A deduction will be allowed in the year of assessment that the expenditure is incurred, equal to 150% of 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 [section 11D(2)].

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 deduction [section 11D(4) and (5)].

A deduction, equal to 5% (20-year straight-line basis) 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 (section 13).

For more information see the guide.[17]

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 to a three year write-off at a rate of 50:30:20 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 (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 under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

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, if approval for such deduction is subsequently withdrawn.

[17] *Guide to Building Allowances*.

A deduction, equal to 5% (20-year straight-line basis) 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 (section 13).

For more information see the guide.[18]

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 (section 12C).

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

The depreciable cost of the asset is the lesser of –

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

Any recoupment of the allowance granted will be accounted for under section 8(4)(*a*) or (*e*) (see **3.2.17(d)**).

(o) Urban development zones (section 13*quat*)

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.[19]

(p) Additional deduction for learnership agreements (section 12H)

Employers are entitled to deductions in addition to deductions allowable under the Act in respect of learnership agreements. The term "registered learnership agreement" as defined in section 12H(1) means –

> "a learnership agreement that is –
>
> - registered in accordance with the Skills Development Act, 1998; and
> - entered into between a learner and an employer before 1 April 2022".

[18] *Guide to Building Allowances*.

[19] *Guide to the Urban Development Zone Tax Incentive (Issue 5)* and *Guide to Building Allowances.*

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.
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 any allowable deduction.
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 any allowable deduction.
5) If the learner mentioned 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 interpretation note.[20]

(q) Film owners (section 12O)

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

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

Section 12O effectively eliminates income tax on qualifying film receipts and accruals for a 10-year period from the date the film is completed. It applies to films that have been approved by the National Film and Video Foundation as a local production or a co-

[20] Interpretation Note 20 (Issue 6) dated 27 November 2015 "Additional deduction for Learnership Agreements".

production. The National Film and Video Foundation has introduced a set of qualifying criteria, the South African Film Criteria, that are used to determine whether a film constitutes a local production or a co-production based on a point system. The exemption is limited to investors who acquired the exploitation rights held before the completion date of the film.

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

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

For more information see the guide.[21]

(r) Environmental expenditure (sections 37A and 37B)

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

An allowance may be deducted, 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.

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

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

The depreciable cost of the 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*).

[21] *Draft Guide to the Exemption from Normal Tax of Income from Films*.

Post-trade environmental expenses (section 37A)

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

Section 37A permits a deduction from the income of certain persons carrying on any trade, of any cash paid during any year of assessment to a company or trust whose sole object is the application of its property solely for rehabilitation. Under section 10(1)(*c*P) the receipts and accruals of a company contemplated in section 37A are exempt from normal tax.

(s) Certain residential units (section 13*sex*)

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of a new and unused residential unit (or of new and unused improvements to a residential unit) acquired by or the erection of which commenced on or after 21 October 2008 by the taxpayer, may be deducted 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 if 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.
- 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.[22]

[22] *Guide to Building Allowances*.

(t) Residential buildings (section 13*ter*)

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. The terms "residential unit" and "housing project" are defined in section 13*ter*(1). The deductions are as follows:

- A *residential building initial allowance* equal to 10% of the cost to the taxpayer of the unit if it is let to a tenant for 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.
- 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.[23]

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

Should a taxpayer dispose of a low-cost residential unit to an employee on or after 21 October 2008, a deduction, equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's year of assessment, will be allowed, 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 –

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

[23] *Guide to Building Allowances*.

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 –

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

For more information see the guide.[24]

(v) Environmental conservation and maintenance expenditure (section 37C)

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

- the conservation or maintenance is carried out under a biodiversity management agreement 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
- 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 mentioned above.

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

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

If land is declared a national park or nature reserve, and the declaration is endorsed on the title deed of the land 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(2) in the year of assessment in which the land is so declared and each of the succeeding nine years of assessment.

- If land is declared on or after 1 March 2015 as a national park or nature reserve for at least 99 years, it is not deemed a donation but an allowance will be allowed under section 37D (see **3.2.17(w)**).

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

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

- the expenditure incurred to acquire the land and improvements thereon, if the cost is not less than the market value or municipal value of the declared land; or

[24] *Guide to Building Allowances*.

- an amount determined in accordance with the formula in section 37D, if the market value or municipal value exceeds the expenditure incurred.

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

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 after the date that the expenditure was incurred or 30 years, whichever is the lesser.

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

This deduction aims to encourage investors to invest in approved venture capital companies (VCCs), which in turn, invest in qualifying investee companies.

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

For more information see the guide.[25]

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

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

- to any former employee of the taxpayer who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity or to a dependant of that former employee; or
- under a policy of insurance taken out with an insurer solely in respect of one or more former employees or dependants mentioned 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 referred to above, to a medical scheme or fund contemplated in section 6A(2)(*a*)(i) or (ii).

3.2.18 Tax relief measures for small business corporations (section 12E)

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 shares in the company or members of the close corporation or co-operative must at all times during a year of assessment 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

[25] *External Guide: Venture Capital Companies (GEN-REG-48-G01), Revision 6.*

"investment income" as defined in section 12E(4) and income from rendering a "personal service" as defined in section 12E(4).

- The entity may not be a "personal service provider" as defined in the Fourth Schedule.

The first concession is that the entity will be taxed on the basis of a progressive rate of tax (see **3.2.16** 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. 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 **3.2.17** paragraph **(k)**); or
- at an accelerated write-off allowance under section 12E(1A)(*b*) (see **3.2.17** paragraph **(k)**).

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.[26]

3.2.19 Tax relief measures for micro businesses (turnover tax) (sections 48 to 48C and the Sixth Schedule)

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

- natural person (or the deceased or insolvent estate of a natural person 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.

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

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

See **3.2.16** paragraph **(c) iii** for the progressive tax rate applicable to micro businesses.

For more information see sections 48 to 48C and the guide.[27]

[26] Interpretation Note 9 (Issue 6) dated 26 July 2016 "Small Business Corporations".
[27] *Tax Guide for Microbusinesses 2016/17.*

3.2.20 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.[28]

3.2.21 Deductions in respect of expenditure and losses incurred before commencement of trade (pre-trade costs) (section 11A)

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

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

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

In order for any pre-trade expenditure and losses to qualify as a deduction under section 11A(1), a pre-trade expense must pass a "post-trade" test under one of a number of specified sections, namely –

- section 11 (general deduction), excluding section 11(*x*);
- section 11B (deduction for research and development[29]);
- section 11D (deduction for scientific or technological research and development); or
- section 24J (incurral and accrual of interest).

For more information see the interpretation note.[30]

3.2.22 Ring-fencing of assessed losses of certain trades

Section 11(*a*) contains 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 constitutes the carrying on of a trade, even if intended or labelled by a taxpayer as such. Whether an activity constitutes the carrying on of a trade, is a question of law that depends on the "facts and circumstances" of each case.

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

[29] Section 11B has been repealed with effect from 12 December 2013.

[30] Interpretation Note 51 (Issue 3) dated 22 July 2014 "Pre-trade Expenditure and Losses".

Section 20A was inserted in the Act to prevent assessed losses incurred in respect of certain trades to be set off against any income derived otherwise than from carrying on that trade. Section 20A applies only to natural persons meeting certain requirements.

For more information see the guide.[31]

3.2.23 Prohibited deductions

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

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

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

- The cost incurred in the maintenance of the taxpayer, the taxpayer's family or 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 [section 23(*o*)(i) and (ii)]

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 if the activity would be unlawful had it been carried out in South Africa.
- For more information see the interpretation note.[32]

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

Other prohibited deductions include –

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

3.2.24 Exemption of certified emission reductions (section 12K)

Section 12K provides that any amount received by or accrued to or in favour of any person on the disposal of any certified emission 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.

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

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

3.2.25 Capital gains tax (the Eighth Schedule)

(a) Introduction

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

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

Since CGT forms part of the income tax system, the capital gains and capital losses must be declared in 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), who had capital gains or a capital losses exceeding R30 000 during a year of assessment, must register as a taxpayer and must 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% (40% as from years of assessment commencing on or after 1 March 2016) of the net capital gain is included in taxable income and is subject to income tax at the marginal rate of tax of that natural person, deceased estate, insolvent estate or special trust.

Companies and trusts (other than special trusts)

For companies and trusts other than special trusts, 66,6% (80% as from years of assessment commencing on or after 1 March 2016) of the net capital gain must be included in taxable income.

Effective rate of tax

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

- Natural persons

  The minimum marginal rate of income tax for natural person is 18% and the maximum marginal rate is 41%. The effective CGT rate for natural persons is from 0% to 13,65% depending on the marginal rate of normal tax applicable to the person. As from 1 March 2016 the effective CGT rate is from 0% to 16,4%.

  (For purposes of the Eighth Schedule, the disposal of an asset by a deceased estate/insolvent estate of a natural person is treated in the same manner as if that asset had been disposed of by that person. See paragraphs 40(3) and 83(1) of the Eighth Schedule.)

- Companies

  The effective rate of CGT for most companies is 18,65%. (As from 1 March 2016 the effective rate is 28% × 80% = 22,4%.)

(d) Capital losses

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

(e) Disposal

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

(f) Exclusions

Some capital gains or losses (or a portion of them) are disregarded 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.
- A capital gain on disposal of the primary residence of a natural person or special trust if the proceeds from the disposal do not exceed R2 million.
- A capital gain or loss on disposal of a personal use asset by a natural person or special trust. Examples are motor vehicles, including a motor vehicle for which a travel allowance was received, caravans, furniture and jewellery.
- Retirement benefits.
- An amount received for a long-term insurance policy by the original beneficial owner.
- A natural person and a special trust qualify for an annual exclusion of R30 000 (as from 1 March 2016 R40 000) of the sum of capital gains and losses in a year of assessment.
- The annual exclusion increases to R300 000 in the year of death for a natural person.

(g) Small businesses (paragraph 57 of the Eighth Schedule)

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

(h) Base cost (paragraph 20 of the Eighth Schedule)

The base cost of an asset is the amount the taxpayer incurred for acquisition of the asset plus other expenditure incurred directly 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 expenditure that may form part of the base cost of an asset are –

- the expenditure incurred on acquisition of the asset;
- transfer costs (including any VAT or transfer duty paid, to the extent that the amount does not qualify as an "input tax" under the VAT Act, or is otherwise 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 disregarded for CGT purposes.

For more information see the guides.[33]

3.2.26 Withholding of amounts from payments to non-resident sellers on the sale of their immovable property (section 35A)

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.

[33] *Comprehensive Guide to Capital Gains Tax*; *ABC of Capital Gains Tax for Individuals*; *ABC of Capital Gains Tax for Companies* and *Guide on Valuations of Assets for Capital Gains Tax Purposes*.

No amount must be withheld –

- if the total amount payable for the immovable property does not exceed R2 million; or
- from any deposit paid by a purchaser for the purpose of securing the acquisition of the immovable property until the agreement for the disposal has been entered into, in which case the 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] on the SARS website.

3.3 Withholding tax on royalties (sections 49A to 49H)

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

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

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

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

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

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

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

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

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

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

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson (who is a non-resident) for a 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/sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold tax and to pay it over to SARS will render the resident personally liable for the tax. Either the foreign entertainer or sportsperson or the resident who pays the withholding tax must submit a return together with the payment to the Commissioner.

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

The 15% tax on foreign entertainers and sportspersons is a final tax. Any 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, 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 **nres@sars.gov.za**.

3.5 Donations tax (sections 54 to 64)

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

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

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

- Casual gifts made by a donor other than a natural person, not exceeding R10 000 during the year of assessment. If the period of assessment is less than 12 months or exceeds 12 months the R10 000 must be adjusted in accordance with the ratio that the year of assessment bears to 12 months.
- Donations by a donor that is a natural person, not exceeding R100 000 during the year of assessment.

- The sum of all *bona fide* contributions made by a donor for the maintenance of any person as the Commissioner considers to be reasonable.

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

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

3.6 Value-added tax

3.6.1 Introduction

VAT is an indirect tax levied under the VAT Act on the consumption of goods and services in South Africa. 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 be registered for VAT. VAT is a destination-based tax which means that tax will be payable on most goods or services supplied for consumption in South Africa as well as on the importation of goods into the country. Goods or services which are exported will attract VAT at the zero rate in most cases which means that the supplier will generally not charge any tax on exports, provided certain requirements are met. "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 Tax rates

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 and certain basic foodstuffs are also taxed at the zero rate of VAT provided certain conditions are met. Certain goods and services are also exempt when supplied in, or imported into South Africa.

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

3.6.3 Collection and payment of value-added tax

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

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

The recipient of imported services is liable to declare and pay the VAT to SARS. A registered vendor will only declare and pay VAT on imported services to the extent that 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 the collection and payment of VAT, see the guide.[35]

3.6.4 Application of value-added tax to supplies and imports

Most supplies of goods or services by vendors are subject to the standard rate of VAT (currently 14%). The same applies to most goods imported into South Africa and any services which fall in the definition of "imported services" as explained in **3.6.3**. 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 customs 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
- 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
- Certain basic foodstuffs supplied for human consumption, such as:
    - Brown bread
    - Brown wheaten meal
    - Maize meal
    - Samp
    - Mealie rice
    - Dried mealies

[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.

- 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
- Dairy powder blends

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

Certain agricultural products such as animal feed, seedlings and fertilisers which are for use in farming enterprises are also currently zero rated when supplied to VAT registered farmers. The VAT Act has, however, been amended to remove this zero rating with effect from a future date determined by the Minister by notice in the *Government 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 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.
- The supply of a dwelling[38] 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.
- Child minding services in crèches and after-school centres.

Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply which 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.

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

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

3.6.7 Registration

(a) Compulsory registration

Any person who carries on an enterprise if 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 when entering into a written contractual commitment to make taxable supplies which will exceed the R1 million threshold within the next 12 month period.[39] An application to register in these cases must be submitted within 21 business days reckoned from the first day of the month after the threshold was exceeded, or the contract was entered into (as the case may be). Most vendors account for VAT on a monthly or bi-monthly basis, although other tax periods for the payment of VAT are available to certain vendors, provided certain conditions are met.

Non-resident suppliers of certain "electronic services" prescribed in The Electronic Services Regulation[40] are also currently required to register and account for VAT in South Africa if the total value of such taxable supplies has exceeded 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:

- Electronic services are supplied to recipients who are South African residents.
- Payment for the electronic services originates from a South African bank.
- The recipient of the electronic services has a business address, residential address or postal address in South Africa to which the tax invoice for such 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. Voluntary registration applies when the value of taxable supplies has already exceeded the minimum voluntary threshold of R50 000 within the preceding 12 months, or if there is a written contractual commitment to make taxable supplies exceeding R50 000 within the next 12 month period.[41] A person may also qualify to register voluntarily if the R50 000 threshold has not yet been reached, or if that person carries on certain types of activities which will only lead to taxable supplies being made after a period of 12 months owing to the nature of the activity. However, registration in respect of these special cases will be permitted only under certain conditions prescribed by Regulation.[42]

For more information on VAT registration see the guide.[43]

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

40 Regulation 221 (*GG 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.

41 Persons supplying "commercial accommodation" are subject to a minimum threshold for voluntary registration of R60 000 and not R50 000. Before 1 April 2016 the voluntary registration threshold for suppliers of commercial accommodation was R60 000.

42 See the regulations issued under section 23(3)(*b*)(ii) and 23(3)(*d*) in Government Notices R446 and 447 respectively, which were published in *GG* 38836 dated 29 May 2015.

43 *VAT 404 – Guide for Vendors.*

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, if 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

(a) 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 rule 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 if 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 if 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. A vendor who 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, must account for output tax on that portion of the payment that has not yet been made.

(b) Payments basis

The payments basis (or cash basis) allows a vendor to account for VAT only on actual payments made and received in respect of taxable supplies during the period.[46] Although the payments basis works according to payments made and received, the vendor must still 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.

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[44] *External Guide: Guide for Completion of VAT Registration Application Forms (VAT-REG-02-G01), Revision 4*.

[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.

[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.

A vendor must apply in writing to SARS before being allowed to apply the payments basis, which, if approved, will apply only 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 available to vendors only 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, municipalities, certain municipal entities, 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.
- 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.

The VAT Act also provides for certain other deductions to be made when calculating the net amount of VAT payable for a tax period. For example, when an insurer makes an indemnity payment to a person who is insured under a taxable short-term insurance policy, the insurer may deduct an amount equal to the tax fraction of the indemnity payment. These deductions apply in the same manner whether the vendor accounts for VAT on the invoice basis or the payments basis of accounting. There are also special rules that apply to certain types of supplies, for example, goods or services supplied under an instalment credit agreement and supplies of fixed property.

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.
Four-monthly (Category F)	Category F was introduced in 2005 to assist small businesses with an annual turnover of less than R1,5 million. However, since very few vendors registered under this category it was withdrawn on 1 July 2015. Vendors previously registered under category F were absorbed into the Category B tax period.

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

Six-monthly (Category D)	Applies to small farmers with an annual turnover of 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" for income tax purposes. It applies only to companies or trusts whose 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 value-added tax

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

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 are retained as proof of the transaction. This form of input tax is called "notional" or "deemed" input tax. Certain things like animals, certain prospecting and mining rights as well as gold, gold coins and goods containing gold do not qualify as second-hand goods.

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.
- Membership fees for sporting and recreational clubs (for example, country clubs and golf clubs).

Output tax

Output tax is the VAT charged at the standard rate by a vendor in respect of the taxable supply of goods or services. Output tax 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 if the output tax exceeds the input tax or the vendor will be entitled to a refund from SARS if 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.

Late payments of VAT attract a penalty of 10% of the outstanding amount. Interest is also payable at the prescribed rate on any outstanding amounts of VAT which have not been paid by the first day of the month following the month during which the period allowed for payment of the tax ended.

Interest will also be paid by SARS at the prescribed rate if a vendor does not receive any refund which was due and payable 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 provided 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 if the consideration exceeds R5 000:

- The words “Tax Invoice”, “VAT invoice” or “Invoice”.
- 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, if 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
    - if 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. Non-resident suppliers of certain electronic services are allowed to issue abridged tax invoices instead of full tax invoices. The requirements in this regard are set out in Binding General Ruling 28.

[48] For more information see paragraph 12.5 of the *Short Guide to the Tax Administration Act, 2011 (Act 28 of 2011)* and sections 45(1) and 45(2) of the VAT Act.

3.6.14 Submission of value-added tax 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, if 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.

(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.

See the SARS website for more information on electronic submission of returns and payments.

3.6.15 Duties of a vendor

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

- Provide correct and accurate information to SARS.
- Collect VAT and submit returns and payments on time.
- Include VAT in all prices, advertisements and quotes.
- Keep accurate accounting records.
- Produce relevant documents when required by SARS.
- Notify SARS about any changes affecting the business, for example, any change of the representative vendor; the business address; trading name; the names of partners, or members; or changes in bank details.
- Issue tax invoices, debit and credit notes in connection with any taxable supplies made.

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 if 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[49] 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*.

[49] Regulation 316 published in *Government Gazette* 37580 of 2 May 2014.

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). However, property physically situated outside South Africa will be excluded from the deceased's estate if the deceased was not ordinarily resident in South Africa at the time of his or her death. A deduction against the net value of an estate will also be allowed on the value of property situated outside the Republic which was acquired before the deceased person became ordinarily resident in South Africa for the first time, or after that person became ordinarily resident in South Africa for the first time and had acquired such property under a donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The deduction also applies to property situated outside South Africa which was acquired by the deceased out of profits and proceeds of any such property.

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

The Estate Duty Act 45 of 1955, unlike the Act, does not define "resident" and only refers to persons who are "ordinarily resident" or not "ordinarily resident". It follows, therefore, that any natural person, who was not ordinarily resident in South Africa but who may have become a resident of South Africa under the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. Two important deductions are (1) the value of property in the estate that accrues to the surviving spouse of the deceased and (2) all debts due by the deceased. The net value of the estate is reduced by a R3,5 million general deduction (specified amount) to arrive at the dutiable amount of the estate.

If a person was a spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to –

- the specified amount multiplied by two (R3,5 million × 2 = R7 million); and
- reduced by so much of the specified amount already allowed as a deduction from the net value of the estate of any one of the previously deceased persons.

If that person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to the sum of –

- the specified amount, which is R3,5 million; and
- 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 1 – 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 2 – Estate duty calculation (death on or after 01 January 2010)

The whole estate was bequeathed to the spouse. The deceased was a spouse at the time of death of a previously deceased person. No amount was previously allowed as a deduction against the net value of the pre-deceased's estate.

	R
Net value of the estate	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 entered into agreements to avoid double taxation (relating to 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 is a tax levied under the Securities Transfer Tax Act 25 of 2007 and is payable on the transfer of any security issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on a South African stock exchange, and on the reallocation of securities between different stock accounts.

For purposes of this tax a "security" means –

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

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

The debt portion in respect of a share linked to a debenture is excluded from a "security".

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.

STT is payable by –

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

The person who is liable to pay the STT may, however, recover the tax from the person to whom the securities are transferred.

STT on the transfer of securities must be paid as follows:

- Listed securities – by the 14th day of the month following the month during which transfer of the securities occurred.
- Unlisted securities – within two months from the end of the month during which the transfer of the securities occurred.

Payment of STT must be made electronically through the SARS e-STT system. If any tax remains unpaid after the due date, a penalty of 10% of the unpaid tax is imposed. The Commissioner may, however, remit the penalty (or any portion thereof) in accordance with Chapter 15 of the TA Act.[50]

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.

For more information, see the guide.[51]

3.9 Transfer duty

3.9.1 Introduction

Transfer duty is payable on transactions constituting "property" as defined in section 1(1) of the Transfer Duty Act 40 of 1949 subject to certain exemptions and exceptions.

Transfer duty is levied on –

- the value of the property acquired by any person under a transaction or in any other manner; and
- the value by which the property is enhanced by the renunciation of an interest in or restriction upon the use or disposal of that property.

The most common forms of property transactions 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.

50 Section 6A of the Securities Transfer Tax Administration Act 26 of 2007.
51 *External Reference Guide: Securities Transfer Tax*.

The definition of “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 payable is based on the higher of the following values:

- The amount of the consideration payable
- The declared value
- 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. If property is acquired for no consideration, or if the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property - whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. The most common date of acquisition for a normal sale of property is the date of the last signature to the agreement. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,[52] calculated for each completed month during which the transfer duty remains unpaid.[53]

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

- the transaction is subject to VAT and qualifies for exemption under section 9(15) of the Transfer Duty Act;
- the transaction is exempt under any other specific exemption provided under section 9 of the Transfer Duty Act;
- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration or the fair value of the property is R750 000 or less (R600 000 if the date of acquisition was between 23 February 2011 and 1 March 2015).

[52] Interest will be charged at the “prescribed rate” under the TA Act from the effective date that the Presidential Proclamation on interest comes into effect for all taxes.

[53] 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.

3.9.2 Transfer duty rates

Transfer duty is levied on a progressive sliding scale. The more expensive the property, the higher the rate of tax that will apply. The rates are also based on the date of acquisition which applies to the transaction concerned, as follows:

From 23 February 2011 to 28 February 2015

Fair market value or consideration	**Rate**
Not exceeding R600 000	0%
Exceeding R600 000 but not R1 000 000	3% of the value exceeding R600 000
Exceeding R1 000 000 but not R1 500 000	R12 000 + 5% of the value exceeding R1 000 000
Exceeding R1 500 000	R37 000 + 8% of the value exceeding R1 500 000

From 1 March 2015 to 29 February 2016

Fair market value or consideration	**Rate**
Not exceeding R750 000	0%
Exceeding R750 000 but not R1 250 000	3% of the value exceeding R750 000
Exceeding R1 250 000 but not R1 750 000	R15 000 + 6% of the value exceeding R1 250 000
Exceeding R1 750 000 but not R2 250 000	R45 000 + 8% of the value exceeding R1 750 000
Exceeding R2 250 000	R85 000 + 11% of the value exceeding R2 250 000

From 1 March 2016

Fair market value or consideration	**Rate of duty**
Not exceeding R750 000	0%
Exceeding R750 000 but not R1 250 000	3% of the value exceeding R750 000
Exceeding R1 250 000 but not R1 750 000	R15 000 + 6% of the value exceeding R1 250 000
Exceeding R1 750 000 but not R2 250 000	R45 000 + 8% of the value exceeding R1 750 000
Exceeding R2 250 000 but not R10 000 000	R85 000 + 11% of the value exceeding R2 250 000
Exceeding R10 000 000	R937 500 + 13% of the value

	exceeding R10 000 000

The above rates apply to all persons, regardless of whether the person acquiring the property is a natural person, trust, company or other juristic person.

3.9.3 Transfer duty or value-added tax payable

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 if the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty, since these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

If 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.[54]

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 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;

[54] *Transfer Duty Guide* and the *External Guide for Transfer Duty via eFiling (TD-AE-02-G02)*, Revision 9.

- rebated if the goods meet certain conditions as provided for in Schedule No's. 3 and 4 of the Customs and Excise Act; 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 under 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 under such agreements.

In addition, VAT at 14% is also payable on goods imported and cleared for home consumption unless exempted under section 13(3) of the VAT Act, read with Schedule 1 to the VAT Act. See **3.6.4**.

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;
- 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 for goods imported. Goods that are not declared within this time period will be detained and removed to a state warehouse.

The importer must ensure to be 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 if 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 under 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 under 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 1 Part 1 to the Customs and Excise Act 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, with 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 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 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 Value-added tax on the 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 be exported only 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 the number of exports are 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 if 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. See below.

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 Republic of South Africa (non-reciprocal)

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

3.12.3 Free or preferential trade agreements (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 Systems of Preference (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 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)

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 and submit quarterly excise accounts to such Controller.

Payment of this levy is additional to any customs or excise duty payable under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. On 1 April 2013 this levy was increased from 4 cents per bag to 6 cents per bag. On 1 April 2016 the levy was increased from 6 cents to 8 cents per bag.

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 (Part 3B of Schedule 1 of the Customs and Excise Act)

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.

Electricity generated under specific circumstances as outlined in Note 2 in Schedule 1 Part 3B to the Customs and Excise Act 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)

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 under Parts 1 or 2 of Schedule 1 to the Customs and Excise Act and was increased from R3 per lamp to R4 per lamp on 1 April 2013. On 1 April 2016 the levy was increased from R4 to R6 per globe.

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 emissions levy is in addition to the current *ad valorem* luxury tax on new vehicles. The levy is based on certification provided by the vehicle manufacturer, or in the absence thereof according to the set methods of calculation as described in Note 5 in Schedule 1 Part 3D to the Customs and Excise Act.

The levy of passenger vehicles was increased on 1 April 2013 to R90 per g/km on emissions exceeding the threshold of 120g/km and in the case of double-cab vehicles the rate was increased to R125 per g/km on emissions exceeding the threshold at 175g/km. The tax is included in the price of the vehicle before calculating the VAT payable on the sale of the vehicle.

Example 3 – Carbon dioxide (CO_2) vehicle emissions levy

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.

On 1 April 2016 the levies of R90 and R125 were increased to R100 and R140 respectively.

Guides on environmental levy (such as on emissions tax and plastic bags) are available on the SARS website.

3.14 Air passenger departure tax

From 1 October 2011 to date –

- 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

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 anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12 month period are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees will generally receive grants from the Sector Education and Training Authorities (SETAs) under this initiative, to be used for, amongst other things, developing the skills of the South African workforce. The Minister of Higher Education and Training in conjunction with the various Sector Education and Training Authorities (SETAs) is responsible for the administration of the Skills Development Act 97 of 1998. Any enquiries regarding the levy grant scheme must therefore be referred to the relevant SETA or the Minister of Higher Education and Training.

The application form to register for SDL is the same form that is used to register for PAYE (EMP101). The monthly return for SDL is combined with the monthly return for PAYE (EMP201) which means that the same provisions apply for submission and payment.

For more information see the guide.[55]

3.16 Unemployment insurance fund contributions

The Unemployment Insurance Fund (UIF) gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

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 remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the PAYE) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating PAYE) paid or payable by the employer to its employees during any month.

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

- R14 872 per month (R178 464 a year); or
- R3 432 per week.

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

For further information, see the guide[56] and refer to **www.uif.gov.za**.

[55] *External Guide, Guide for Employers in respect of Skills Development Levy. (SDL-GEN-01-G01)* Revision 3.

[56] External Guide, *Guide for Employers in respect of the Unemployment Insurance Fund* (*UIF-GEN-01-GO1)* Revision 5.

4. A business and other authorities

4.1 Introduction

Before commencing with business activities it may be necessary to register a business with certain other authorities to comply with certain laws or regulations. Some of the authorities that may require registration of a business are mentioned below.

4.2 Municipalities

Municipalities will provide information with regard to the rules or regulations laid down for 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 for all its employees to the Unemployment Insurance Commissioner at the Department of Labour. (See **3.16**.)

4.4 South African Reserve Bank – Exchange control

Exchange control regulations restrict the in and out flow of capital from South Africa.

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

Residents of South Africa wishing to remit or invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

A person in good standing and over the age of 18 years, can invest up to R10 million outside the Common Monetary Area (Lesotho, Swaziland and Namibia), per calendar year. A Tax Clearance Certificate (in respect of foreign investments) must be obtained. These funds may not be reinvested into the CMA countries thereby creating a loop structure or be re-introduced as a loan to a CMA resident. In addition, up to R1 million, within the single discretionary allowance facility, can be transferred abroad, without the requirement to obtain a Tax Clearance Certificate.

South African companies (excluding Close Corporations) can make *bona fide* new outward foreign direct investments into companies outside the Common Monetary Area up to R1 billion per company per calendar year through any bank.[57]

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**.

[57] For more information visit **www.resbank.co.za**.

4.6 Broad-Based Black Economic Empowerment Act 53 of 2003

This 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 legislation

Various Acts exist with regard to the control and management of pollution which are administered by different government departments. Persons 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

Under this Act, government departments, public and private companies, including registered close corporations and businesses are required to compile and publish manuals containing, amongst other things, a description of the entity's structure and functions and a description of the records held. The Department of Justice and Constitutional Development's website **www.doj.gov.za** has more information in this regard. See the *South African Revenue Service Manual on the Promotion of Access to Information Act, 2000* (Issue 4).

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

The purpose of Regulation of Interception of Communications and Provision of Communication-related Information Act (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

The Electronic Communications and Transactions Act 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

The purpose of Prevention of Organised Crime Act is to combat organised crime activities such as racketeering and money laundering. Under section 7A of this Act, businesses must report any unlawful activities. Failure to do so is an offence.

4.14 Financial Intelligence Centre Act 38 of 2001

The Financial Intelligence Centre Act (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. These records must be kept in electronic form.

For further information on FICA see **www.finance.gov.za** or **www.fic.gov.za**.

4.15 Financial Advisory and Intermediary Services Act 37 of 2002

The Financial Advisory and Intermediary Services 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

The Prevention and Combating of Corrupt Activities 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.

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

Under 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. The Promotion of Administrative Justice Act 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 2006, 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 see 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 11 March 2011, is to protect consumers against unfair market practices and unsafe products. For more information see the Department of Trade and Industry website **www.dti.gov.za**.

5. Duty to keep records, retention period in case of audit, objection or appeal and records

A person (taxpayer/vendor) is required to keep records[58] (such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists and registers), books of accounts, data in electronic form and records or documents for five years from the date of submission of a return or if a person is not required to submit a return, for five years from the end of a relative tax period.

However, if an objection or appeal[59] has been lodged against an assessment of all records,[60] books of account or documents relevant to the objection or appeal must be retained until the assessment or decision becomes final.

6. Appointment of auditor or accounting officer

A company is generally 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.

7. Representative taxpayer

Any company or close corporation (CC) 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 an individual residing in the Republic as the public officer of the company or CC. The representative must be approved by SARS.

[58] Section 29 of the TA Act.
[59] Section 32 of the TA Act.
[60] Section 55 of the VAT Act.

8. 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 (see **4.4**).

Investors are required to apply for a tax clearance certificate (TCC) from SARS.

See the SARS website for more information.

9. 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. Additional tax, penalties and interest may be levied when taxpayers ignore their tax obligations such as failing to register or to submit tax returns.

10. Interest, penalties and additional tax

The TA Act provides for, amongst other things, –

- the imposition of interest (Chapter 12 of the TA Act);
- the imposing of penalties (fixed amount penalties and percentage based penalty) (Chapter 15 of the TA Act); 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 (Chapter 16 of the TA Act).

The above provisions exclude customs and excise legislation.[61] A person may also be liable on conviction of criminal offences relating to non-compliance with Tax Acts to a fine or to imprisonment on matters such as non-payment of taxes, failure to submit tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which that person is not entitled (Chapter 17 of the TA Act).

11. Request for correction

A taxpayer, who makes an error in the return submitted, and wishes to correct this mistake, is to submit a Request for correction (RFC) which is available through eFiling or at a SARS branch. This action allows the taxpayer to correct a previously submitted return/declaration for income tax and in certain circumstances for VAT. 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.

12. Objection against assessment or decision

A taxpayer, who is not –

- able to submit a RFC (see above); or
- satisfied with an assessment, decision or determination received from SARS,
- may lodge an objection in writing stating fully, and in detail the grounds on which the objection is lodged.

[61] See Chapter XI of the Customs and Excise Act which contains provisions dealing with penalties.

The objection must be submitted within 30 business days from –

- the date of the assessment; or
- the date that written reasons (decision or determination) for the assessment were provided by SARS.

If the taxpayer's objection has been disallowed (in part or in full), the taxpayer has the right to note an appeal (see **13.**).

For more information regarding the process and forms to use for lodging an objection or appeal, see the SARS website, the interpretation note[62] and guide.[63]

13. Dispute resolution

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an alternative dispute resolution (ADR) process. A dispute which is subject to ADR may be resolved by agreement whereby the taxpayer or SARS accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.

For more information, see the interpretation note,[64] and a number of guides.[65]

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

14. Complaint Management Office

The Complaint Management Office (CMO) is a special office operating independently of SARS branch offices. The CMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS branch offices through the normal channels.

A complaint can be lodged in the following ways:

- Via e-filing[66]
- By visiting a SARS branch office or
- By calling the CMO on 0860 12 12 16

15. Further information

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

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62 Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in Case of Late Objection or Appeal".

63 *South African Revenue Service Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act, 2011* (Issue 1).

64 Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in Case of Late Objection or Appeal".

65 *South African Revenue Service Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act, 2011* (Issue 1).; *Quick Guide on Alternative Dispute Resolution* and *What do You do if you Dispute you Tax Assessment*.

66 See *Guide to the Complaints Functionality on Efiling*.