SOUTH AFRICAN REVENUE SERVICE

TAX GUIDE
FOR
SMALL BUSINESSES
2011/12

Another helpful guide brought to you by the
South African Revenue Service

SARS
At Your Service

www.sars.gov.za

TAX GUIDE FOR SMALL BUSINESSES 2011/12

Foreword

This document is a general guide dealing with the taxation of small businesses. It is not meant to go into the precise technical and legal detail that is often associated with taxation. It should, therefore, not be used as a legal reference and is not a binding general ruling issued under section 76P of the Income Tax Act, No. 58 of 1962. Should an advance tax ruling be required, visit the South African Revenue Service (SARS) website for details of the application procedure.

The information in this guide relates to the 2011/12 year of assessment (tax year) that covers, in the case of –

- **individuals**, the period 1 March 2011 to 29 February 2012; and
- **companies and close corporations**, tax years ending during the 12 months period ending on 31 March 2012.

This guide has been updated to include the Taxation Laws Amendment Act, No. 24 of 2011 promulgated on 10 January 2012.

The Commissioner for SARS is responsible for the administration of tax and customs legislation.

Should you require further information or any other information on the interpretation and administration of tax and customs legislation, you may –

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

Comments or suggestions 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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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 the Republic of South Africa (RSA) – sole proprietorship, partnership, close corporation and a private company – and explains in general terms the tax responsibilities of each.

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

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

1.1 Glossary

CC	close corporation
CGT	capital gains tax
Commissioner	Commissioner for the South African Revenue Service
IT Act	Income Tax Act, No. 58 of 1962
PAYE	pay-as-you-earn (employees' tax)
RSA	Republic of South Africa
SARS	South African Revenue Service
SBC	small business corporation
SDL	skills development levy
SMMEs	small, medium and micro enterprises
STC	secondary tax on companies
STT	securities transfer tax
tax year	year of assessment
UIF	unemployment insurance fund
VAT	value-added tax
VAT Act	Value-Added Tax Act, No. 89 of 1991

2. General characteristics of different types of businesses

2.1 Introduction

Now that you have decided to start a business, you must also decide (which will be your 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 your decision.

The purpose of this guide is not to advise you on the type of business entity through which to conduct your 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 (individual). This is the simplest form of business entity. The business has no existence (therefore it is not a "legal person" such as a "company" as defined in the IT Act) separate from the owner who is called the proprietor. The owner must include the income from such business in his or her own income tax return and is responsible for the payment of taxes thereon. Only the proprietor has the authority to make decisions for the business. The proprietor assumes the risks of the business to the extent of all of his or her assets whether used in the business or not.

Some advantages of a sole proprietorship are:

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

Some disadvantages of a sole proprietorship are:

- Unlimited liability of the owner

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

- Limited ability to raise capital

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

- Limited skills

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

2.1.2 Partnership

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

Some advantages of a partnership are:

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

Some disadvantages of a partnership are:

- Unlimited liability of the partners
- Each partner may be held liable for all the debts of the business

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

2.1.3 Close corporation (CC)

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

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

Some advantages of a CC are:

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

Some disadvantages of a CC are:

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

2.1.4 Private company

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

Some advantages of a private company are:

- Life of the business is perpetual, that is, it continues uninterrupted as shareholders change
- Shareholders have limited liability, that is, they are generally not responsible for the liabilities of the company. However, certain tax liabilities do exist. One such liability is where an employer or vendor is a company, every shareholder and director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the employees' tax, value-added tax, additional tax, penalty or interest for which the company is liable, that is, where the taxes have not been paid to SARS within the prescribed period.
- Personal liability on directors

  The Companies Act, No. 71 of 2008 imposes personal liability on directors where in common law, such liability may not exist or be difficult to prove. Any person, not only a director, who is knowingly a party to the carrying on of a business in a reckless (gross carelessness or gross negligence) or fraudulent manner can be personally held liable for all or any of the debts of the private company.
- Transfer of ownership is easy
- Easier to raise capital and to expand
- Efficiency of management is maintained
- Adaptable to both small and medium to large business

Some disadvantages of a private company are:

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

2.1.5 Co-operative

A "co-operative" is defined in the IT Act as any association of persons registered under section 27 of the Co-operatives Act, 1981 (Act No. 91 of 1981) or section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005). The tax dispensation of co-operatives is discussed in **3.2.17** under the heading: "**Tax relief measures for small business corporations (SBCs)**".

2.1.6 Other types of business entities as described in the IT Act

a) Small business corporation (SBC)

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

b) Micro business (turnover tax)

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

c) Personal service provider

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

- such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or
- those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or
- more than 80% of the income of such company or trust during a tax year 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 to the IT Act, in relation to such client.

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

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

For more information see the guide[1], available on the SARS website.

d) Labour broker

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

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

[1] Guide for Employers in respect of Employees' Tax and Interpretation Note No. 35 (Issue 3): Employees' tax: Personal service providers and labour brokers,

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

For more information see the guide[2] and interpretation note[3], available on the SARS website.

Notes:

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

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

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

e) Independent contractor

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

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[2] Guide for Employers in respect of Employees' Tax,
[3] Interpretation Note No. 35 (Issue 3): Employees' tax: Personal service providers and labour brokers

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

Notes:

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

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

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

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

f) Small, medium and micro enterprises (SMMEs)

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

3. Your business and SARS

3.1 Introduction

Once you have started a business, it will be helpful if you have a general understanding of the various activities of SARS, as well as your duties and obligations in terms of the various tax laws.

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

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

3.2 Income tax

3.2.1 General

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

[4] Interpretation Note No. 17: "Employees' Tax: Independent contractors

3.2.2 Registration

As soon as you commence your business, whether as a sole proprietor/partnership or whether as a company, you or you and your company respectively are required to register with your local SARS office in order to obtain an income tax reference number. You must register within 60 days after you have commenced business operations by completing an IT 77 form, which can be obtained from your local SARS office or from the SARS website.

A company must be registered with the Intellectual Property Commission (CIPC) to obtain a business reference number. Please note that the Company and Intellectual Property Registration Office (CIPRO) and the Office of Companies and Intellectual Property Enforcement (OCIPE) merged on 1 May 2011 to form CIPC. For registration procedures see **www.dti.gov.za**. The company will then be registered automatically as a taxpayer. A company which does not hear from SARS after registering with CIPC must contact its SARS office.

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

3.2.3 Change of address

The IT Act requires that if a person's address which is normally used by the Commissioner for any correspondence with that person changes, the person must, within 60 days after the change, notify SARS of the new address for correspondence.

3.2.4 Filing of income tax returns

The tax year for individuals covers 12 months and commences on 1 March of a specific year and ends on the last day of February of the following year. However, in some circumstances you may be allowed to draw up your financial statements for your business to a date other than the end of February. For more details see the interpretation note[5], available on the SARS website.

A company on the other hand is permitted to have a tax year ending on a date that coincides with its financial year-end. The tax year of a company with a financial year-end of 30 June will run from 1 July and end on 30 June of the following year.

Income tax returns must be submitted by a specific date each year as notified by the Commissioner.

3.2.5 eFiling

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

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

- Value-added tax (VAT)
- Income tax
- Skills Development Levy (SDL)

[5] Interpretation Note No. 19: "Year of assessment: Accounts accepted to a date other than the last day of February

- Secondary tax on companies (STC)
- Transfer duty
- Pay-as-you-earn (PAYE)
- Provisional tax
- Unemployment Insurance Fund contributions (UIF contributions)

The eFiling service is on a par with international standards, being comparable with services offered in the US, Australia, Singapore, Ireland, Chile and France.

The following should, however, be noted:

- Taxpayers must retain all supporting documents for five years from the date upon which the return was received by SARS, should SARS require it for audit purposes.
- SARS will under certain circumstances, on request, still require the submission of original documents for purposes of verification.
- SARS will do extensive validation checks on the data submitted to ensure its accuracy, including validations against the electronic employees' tax certificates (IRP5s) submitted by employers to SARS.
- SARS will issue assessments electronically.

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

3.2.6 Payments at banks

Payment of taxes can be made to SARS *via* the internet facilities provided by the commercial banks such as First National Bank, ABSA, Nedbank and Standard Bank. Over the counter payment of taxes can also be done at these banks. For more information visit the *eFiling* website.

3.2.7 Provisional tax

As soon as you commence business, you will become a provisional taxpayer and will be required to register with your local SARS office as a provisional taxpayer within 30 days after the date upon which you become a provisional taxpayer. Companies are automatically registered as provisional taxpayers. The payment of provisional tax is intended to assist taxpayers in meeting their normal tax liabilities. This occurs by the payment of two instalments in respect of estimated taxable income that will be received or accrued during the relevant tax year and an optional third payment after the end of the tax year, 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 tax year. The first provisional tax payment must be made within six months after the commencement of the tax year and the second payment not later than the last day of the tax year. The optional third payment is voluntary and may be made within six months after the end of the tax year if your accounts close on a date other than the last day of February. For a tax year ending on the last day of February, the optional third payment must be made within seven months after the end of the tax year. For more information see the guide[6], available on the SARS website.

3.2.8 Employees' tax

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

[6] Reference Guide Provisional Tax 2012

annual basis in order to determine the employee's final income tax liability for the year of assessment

Every employer who pays remuneration to an employee must register as an employer for employees' tax purposes. That means that any business that pays a salary or a wage to any of its employees that is above the tax threshold amount (where liability for income tax arises for any employee, namely, R59 750 for individuals under the age of 65 years, R93 150 for individuals aged 65 years or older and R104 261 for individuals aged 75 or older), must register with SARS for employees' tax purposes within 14 days after becoming an employer or within such further period as the Commissioner may approve. This is done by completing an EMP 101 form and submitting it to SARS. The EMP 101 is available at all SARS offices and on the SARS website. Once registered, the employer will receive a monthly return (EMP 201) that must be completed and submitted together with the payment of employees' tax within seven days of the month following the month for which the tax was deducted. If not one of the employer's employees is liable for income tax, the employer is not required to register as an employer.

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

3.2.9 Directors' remuneration

The remuneration of directors of private companies (including individuals in CCs performing similar functions) is subject to employees' tax. Their remuneration is often only finally determined late in the tax year or in the following tax year. In these circumstances they finance their living expenditure out of their loan accounts until their remuneration is determined. To overcome the problem of no monthly remuneration being payable from which employees' tax can be withheld, a formula is used to determine a deemed monthly remuneration upon which the company must deduct employees' tax. For more information on the application of the formula and relief from hardship see the interpretation note[8], available on the SARS website.

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

3.2.10 How to determine net profit or loss

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

$$\boxed{\text{Income} - \text{Expenses} = \text{Profit (Loss)}}$$

You will use this formula with some slight changes in determining your profit or loss. The diagram "**Comparative profit or loss statements**" under **3.2.11** explains the determination of net profit or loss and the distribution of income for the different types of business entities.

[7] Guide for Employers in respect of Employees' Tax

[8] Interpretation Note No. 5 (Issue 2): Employees' tax*:* Directors of private companies (which include persons in close corporations who perform functions similar to directors of companies)

The following key concepts are explained:

- *Gross sales*

  Gross sales account for the income which is received by or accrued to a business. For example, ABC Furniture Store sold R1 000 000 worth of furniture of which R800 000 was received in cash and R200 000 was on credit. Therefore, ABC Furniture Store had gross sales of R1 000 000.

- *Cost of sales*

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

  For example, ABC Furniture Store had R120 000 worth of furniture in the store at the beginning of the year. During the current year R730 000 worth of furniture was bought from a manufacturer. At the end of the current year the store had R150 000 worth of furniture left. The cost of goods sold for the current year would therefore be:

  Opening stock + Purchases – Closing stock = Cost of sales

  R120 000 + R730 000 – R150 000 = R700 000

- *Gross profit*

  Gross profit equals gross sales less the cost of goods sold. ABC Furniture Store had gross sales of R1 000 000. The cost of sales was R700 000. The gross profit is therefore: R1 000 000 – R700 000 = R300 000.

- *Business expenses*

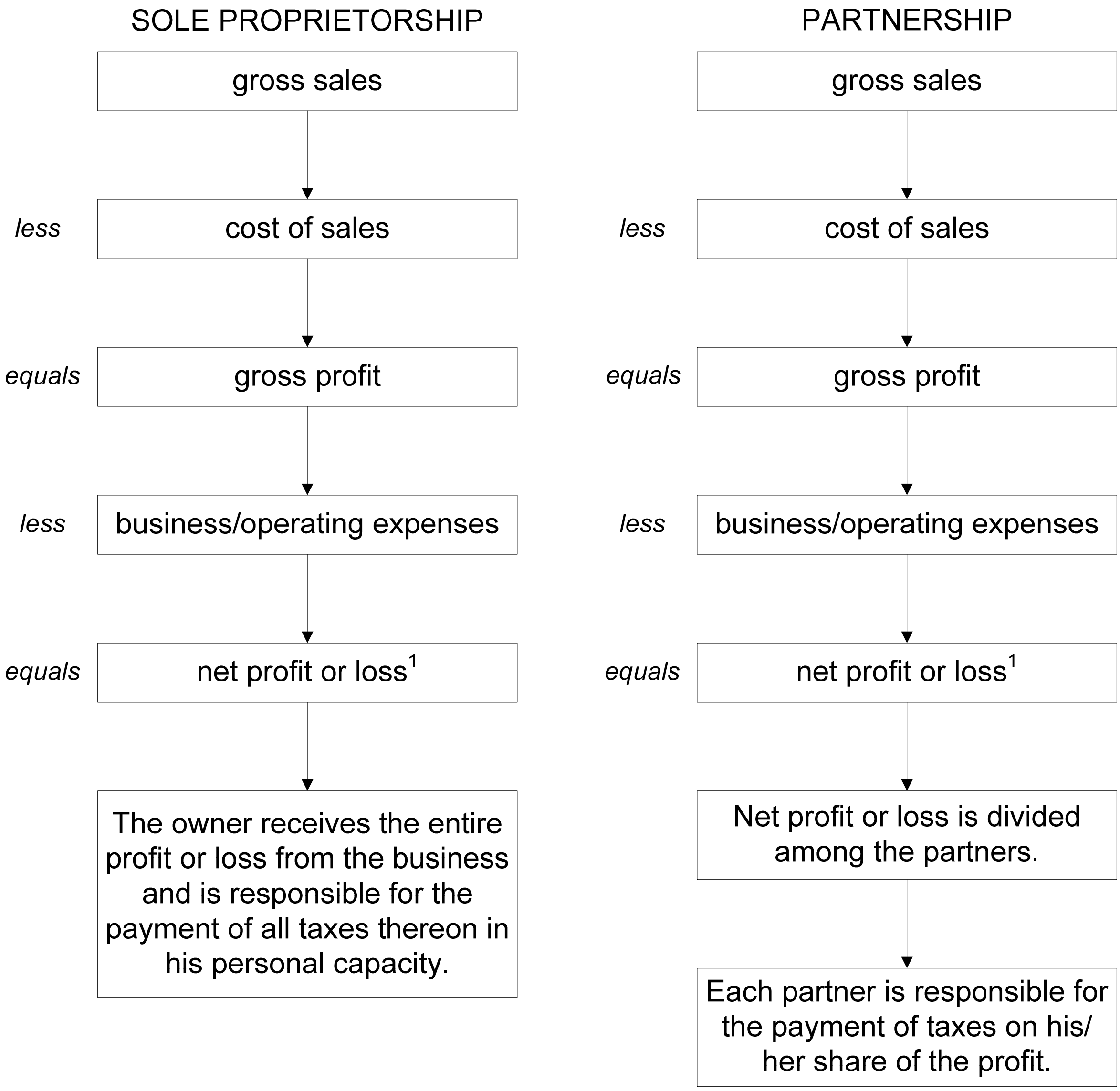
  Business expenses, also referred to as operating expenses, are the expenses incurred in the operation of a business. ABC Furniture Store expended R200 000 on items such as rent, wages, telephone, electricity, stationery and travelling.

- *Net profit or loss*

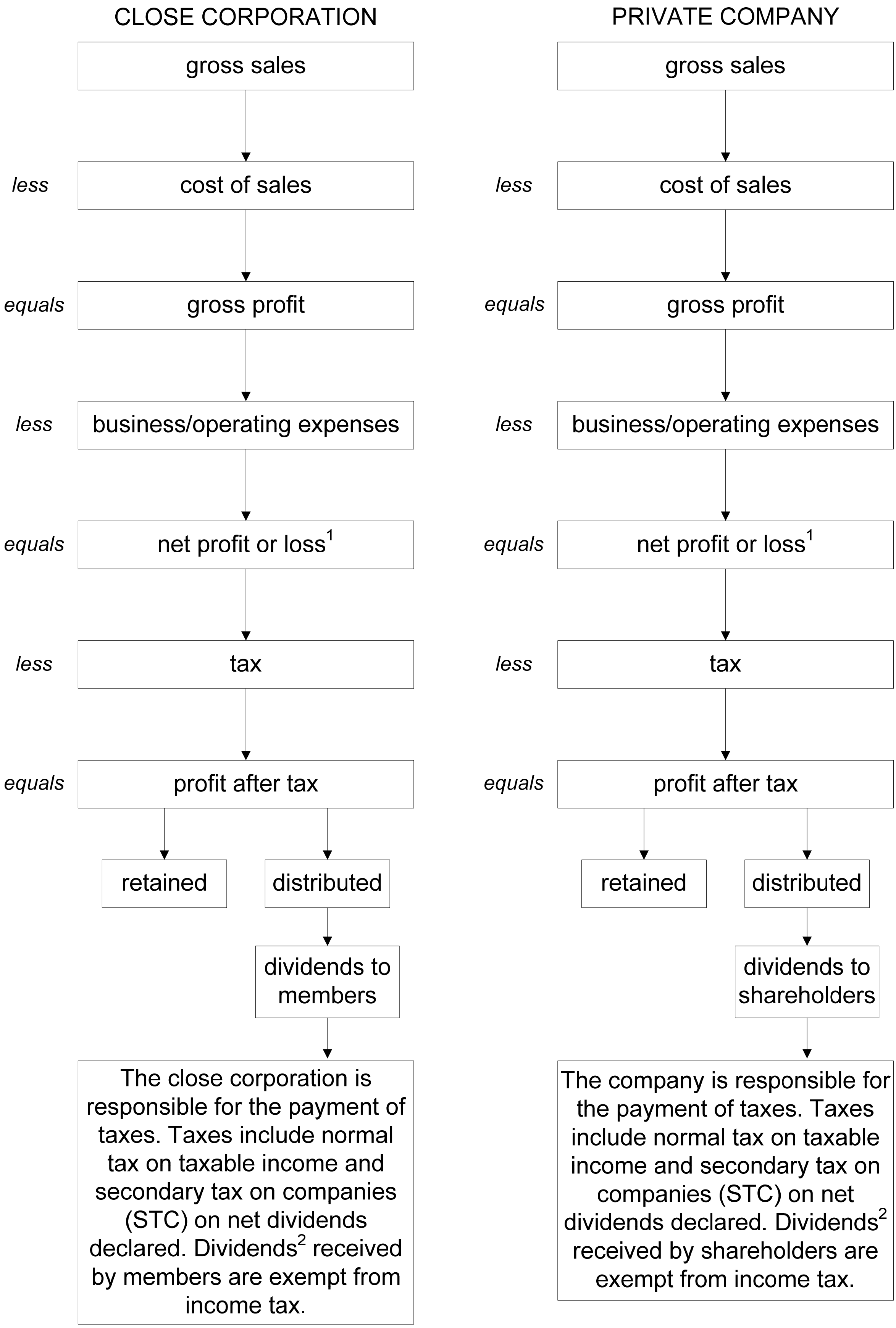
  Net profit is the amount by which the gross profit exceeds the business expenses. Net loss is the amount by which the business expenses exceed the gross profit. ABC Furniture Store had a gross profit of R300 000; the business expenses were R200 000 leaving ABC Furniture Store with a net profit of R100 000.

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

3.2.11 Comparative profit or loss statements



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



[1] See also **3.2.13**: "How to determine taxable income/assessed loss".
[2] Certain foreign dividends, are, however, taxable.

3.2.12 Link between "net profit" and "taxable income"

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

The term "taxable income" on the other hand is defined in the IT Act and describes the amount on which a business' income tax is calculated.

These two amounts will often be different because of the basic differences in the income and deductions taken into account in determining these amounts. For example, certain income of a capital nature may be fully included for accounting purposes, while only a portion thereof may be included for income tax purposes (see **3.4**). On the deduction side, there may be timing differences in respect of the depreciation of capital assets or special deductions or allowances for income tax purposes which will cause differences in the deductions allowed for accounting purposes and those allowed for income tax purposes.

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

3.2.13 How to determine taxable income or assessed loss

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

- any person who is a **resident**, the total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of such person during the tax year (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 such person from a source within or deemed to be within the RSA during the tax year (subject to certain exclusions).

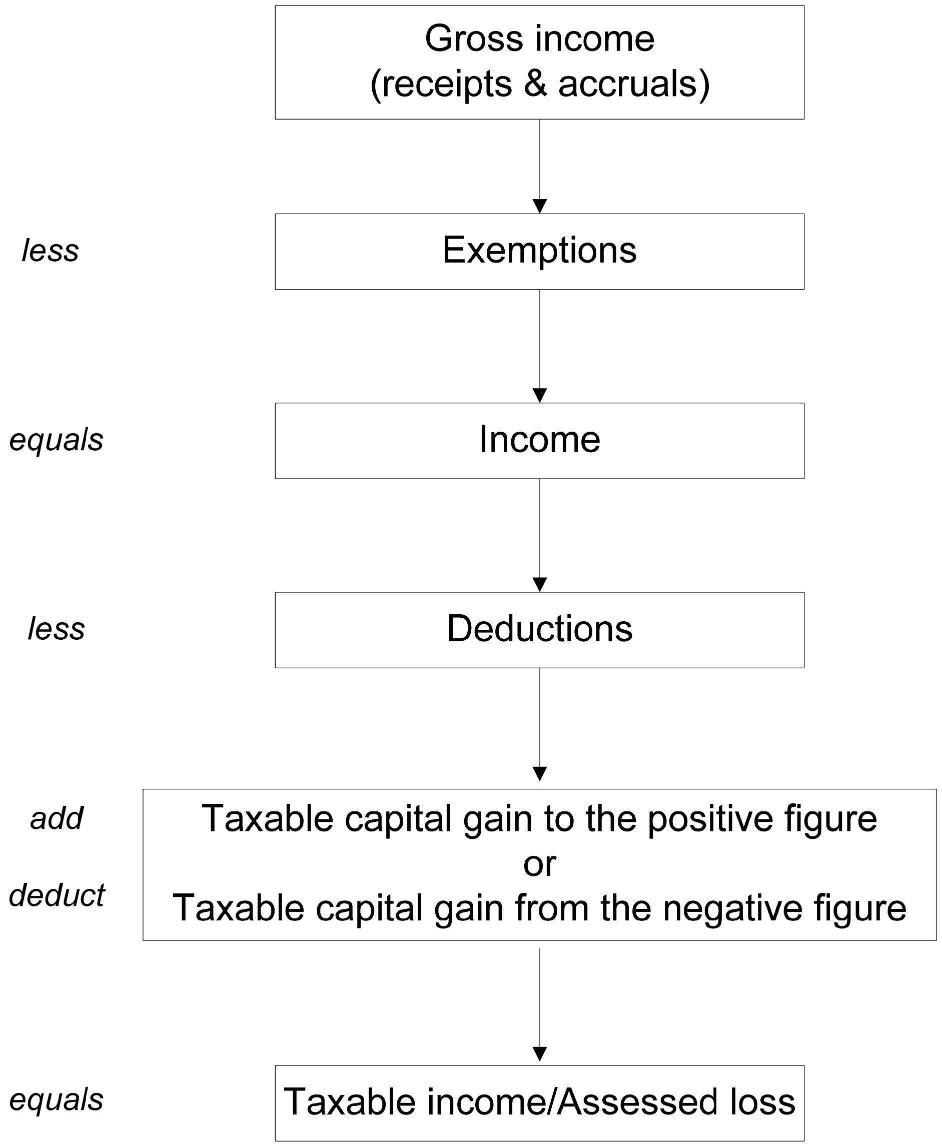
Receipts or accruals of a capital nature are generally excluded from gross income as the Eighth Schedule to the IT Act deals with capital gains and losses. However, "gross income" also includes certain other receipts and accruals specified within the definition of "gross income" regardless of their nature.

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

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

- deducting all the allowable expenses and allowances, under the provisions of the IT Act, from "income"; and
- adding taxable capital gains to the net positive figure or deducting taxable capital gains from the net negative figure.

It can be illustrated as follows:



3.2.14 General deduction formula

The Act contains a general deduction formula with which an expense must comply in order to be deductible as well as various other provisions which allow for specific allowances/deductions in respect of certain types of expenditure incurred.

In order for expenditure and losses to be deductible in terms of the general deduction formula they must be –

(i) actually incurred;

(ii) during the year of assessment;

(iii) in the production of income;

(iv) not of a capital nature; and

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

3.2.15 Tax rates

A sole proprietor or each partner in the case of a partnership is subject to income tax on his or her taxable income. Income tax (normal tax) is levied at progressive rates ranging from 18% to 40%. For the 2011/12 tax year, the maximum marginal rate of 40% applies to taxable income exceeding R580 000. Unlike individuals, a company or CC pays 28% income tax on its taxable income for the 2011/12 tax year and 10% secondary tax on companies (STC) on the net amount of dividends declared.

Below is a summary of the different tax rates and rebates, where applicable, as they apply to –

A. individuals, deceased or insolvent estates or special trusts;

B. trusts and personal service providers;

C. corporates; and

D. micro businesses.

A. Individuals, deceased or insolvent estates or special trusts for the tax year commencing on 1 March 2011

Tax rates

Taxable income	**Rate of tax**
Not exceeding R150 000	18% of taxable income
Exceeding R150 000 but not exceeding R235 000	R27 000 plus 25% of the taxable income exceeding R150 000
Exceeding R235 000 but not exceeding R325 000	R48 250 plus 30% of the taxable income exceeding R235 000
Exceeding R325 000 but not exceeding R455 000	R75 250 plus 35% of the taxable income exceeding R325 000
Exceeding R455 000 but not exceeding R580 000	R120 750 plus 38% of the taxable income exceeding R455 000
Exceeding R580 000	R168 250 plus 40% of the taxable income exceeding R580 000

Rebates

Age	**Amount**
Under 65 years	R10 755
65 years or older	R16 767
75 years or older	R18 767

B. Trusts and personal service providers that are trusts

Tax rates – trusts (other than a special trust)

Tax year ending on	**Rate of tax**
29 February 2012	40% of taxable income

C. Corporates

i. Companies (standard) or close corporations

Tax year ending during the 12-month period ending on	Rate of tax
31 March 2012	28% of taxable income

ii. Secondary tax on companies (STC)

STC is payable on dividends declared during a dividend cycle by resident companies after being reduced by dividends receivable during that dividend cycle. Companies which are not residents are not subject to STC. For more information see the guide[9], available on the SARS website.

From	Until	Rate of STC
14 March 1996	30 September 2007	12,5%
01 October 2007	31 March 2012	10%

iii. Small business corporations (SBCs): Tax year ending during the 12-month period ending on 31 March 2012

Taxable income	Rate of tax
Not exceeding R59 000	0% of taxable income
Exceeding R59 000 but not exceeding R300 000	10% of the taxable income exceeding R59 750
Exceeding R300 000	R24 025 plus 28% of the taxable income exceeding R300 000

iv. Personal service providers that are companies

Tax year ending during the 12-month period ending on	Rate of tax
31 March 2012	33% of taxable income

v. Companies which are not residents

A company which is not a "resident" as defined in section 1 of the IT Act

Tax year ending during the 12-month period ending on	Rate of tax
31 March 2012	33% of taxable income

[9] Comprehensive Guide to Secondary Tax on Companies (Issue 3)

D. Micro businesses (turnover tax)

Tax year ending during the 12-month period ending on	Taxable turnover (R)	Rate of tax (R)
31 March 2012	Not exceeding R150 000	0% of taxable turnover
	Exceeding R150 000 but not exceeding R300 000	1% of the taxable turnover exceeding R100 000
	Exceeding R300 000 but not exceeding R 500 000	R1 500 + 2% of the taxable turnover exceeding R300 000
	Exceeding R500 000 but not exceeding R750 000	R5 500 + 4% of the taxable turnover exceeding R500 000
	Exceeding R750 000	R15 500 + 6% of the taxable turnover exceeding R750 000

3.2.16 Special allowances or deductions

Note: The cost to a taxpayer on which the allowances are claimed in respect of the assets referred to in items **a)**, **b)**, **c)**, **f)**, **g)**, **l)**, **m)**, **s)** and **v)** below will 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 of the IT Act).

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

Wear-and-tear is normally not allowed on buildings or other structures of a permanent nature. However, an annual allowance equal to 5% (20-year straight-line basis) of the cost of industrial buildings or of improvements to existing industrial buildings is granted.

For more information, see sections 13 and 12N of the IT Act.

b) Commercial buildings

5% of the cost to a taxpayer of new and unused buildings or improvements to buildings (20-year straight-line basis) 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.

For the purposes of the aforementioned 5% allowance, to the extent a taxpayer acquires –

i) a building without erecting or constructing that building, the acquisition price of the building is deemed to be the cost incurred by the taxpayer for the building; and/or

ii) a part of a building without erecting or constructing that part –

(a) 55% of the acquisition price, in the case of a part being acquired; and

(b) 30% of the acquisition price, in the case of an improvement being acquired,

will be deemed to be the cost incurred.

For more information, see sections 13*quin* and 12N of the IT Act.

c) Hotelkeepers

Buildings and improvements: 5% of the cost to a taxpayer (20-year straight-line basis).

Machinery, improvements, utensils or articles or improvements thereto: 20% of the cost to a taxpayer (five-year straight-line basis). The assets must be owned by the taxpayer or acquired as purchaser in terms of an "instalment credit agreement" as defined in the Value-Added Tax Act 89 of 1991 (VAT Act).

Refurbishment of buildings within existing exterior framework: 20% of the cost to a taxpayer (five-year straight-line basis).

For more information, see sections 13*bis* and 12N of the IT Act.

d) Aircraft or ships

Aircraft or ships brought into use for the purpose of trade: 20% of the cost to a taxpayer (five-year straight-line basis).

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

For more information, see section 12C of the IT Act.

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

20% of the cost incurred by a taxpayer (five-year straight-line basis) in respect of rolling stock brought into use on or after 1 January 2008.

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

For more information, see section 12DA of the IT Act.

f) Pipelines, transmission lines and railway lines

i) Transportation of natural oil

- 10% of the cost incurred by a taxpayer in respect of the acquisition of the asset (10-year straight-line basis).
- The assets must be owned and be brought into use for the first time by the taxpayer and used directly by the taxpayer for the transportation of natural oil.

ii) Transportation of water used by power stations

- 5% of the cost incurred by a taxpayer in respect of the acquisition of the asset (20-year straight-line basis).

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

iii) Transmission of electricity

- 5% of the cost incurred by a taxpayer in respect of the acquisition of the asset (20-year straight-line basis).
- The assets must be owned and be brought into use for the first time by the taxpayer and used directly by the taxpayer for the transmission of electricity.

iv) Transmission of electronic communications

- 5% of the cost incurred by a taxpayer in respect of the acquisition of the asset (20-year straight-line basis).
- The assets must be owned and be brought into use for the first time by the taxpayer and used directly by the taxpayer for the transmission of telecommunication signals.

v) Railway lines used for transportation of persons, goods or things

- 5% of the cost incurred by a taxpayer in respect of the acquisition of the asset (20-year straight-line basis).
- The assets must be owned and be brought into use for the first time by the taxpayer and used directly by the taxpayer for transportation persons or goods or things.

Note: Earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line and improvements also qualify for the above allowances.

For more information, see sections 12D and 12N of the IT Act.

g) Airport and port assets

Airport assets [any aircraft, hangar, apron, runway or taxiway on any designated airport and any improvements to these assets (including earthworks or supporting structures forming part of such assets)] and port assets [port terminal, breakwater, sand trap, berth, quay wall, wharf, seawall etc (including earthworks or supporting structures forming part of such assets) and any improvements thereto]

- 5% of the cost incurred by a taxpayer in respect of the acquisition (including the construction, erection or installation) of new and unused airport or port assets (20-year straight-line basis).

For more information, see sections 12F and 12N of the IT Act.

h) Machinery, plant, implements, utensils and articles

An allowance, equal to the amount which the Commissioner may think just and reasonable by which the value of an asset used by a taxpayer for the purposes of his trade has been diminished by reason of wear-and-tear or depreciation.

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

Small items costing less than R7 000 purchased on or after 1 March 2009 may be written off in full in the year of acquisition.

Any foundation and supporting structure on which such asset is mounted (or to which it is fixed) is deemed to be part of that asset and is eligible for the same deduction as the asset.

For more information, see the interpretation note[10], available on the SARS website and section 11(*e*) of the IT Act.

i) Small business corporations (SBCs)

i) Plant or machinery (manufacturing or similar process)

- 100% of the cost of any plant or machinery brought into use in the tax year for the first time and used in a process of manufacture or similar process is deductible.
- The assets must be owned by the taxpayer or acquired as purchaser in terms of an "instalment credit agreement" as defined in the VAT Act.

ii) Machinery, plant, implement, utensil, article, aircraft or ship

- An allowance as calculated in **h)** above; or
- an accelerated allowance for the above assets (other than plant or machinery used in a manufacturing or similar process) acquired by an SBC on or after 1 April 2005 at –
  - ➢ 50% of the cost of the asset in the tax year during which it was first brought into use;
  - ➢ 30% in the second tax year; and
  - ➢ 20% in the third tax year.

An SBC can elect to either claim the wear-and-tear allowance under section 11*(e)* of the IT Act [see section 12E(1A)(*a*) of the IT Act] or the above 50:30:20 deduction [see section 12E(1A)(*b*)] of the IT Act.

For more information, see **3.2.17** under the heading "**Tax relief measures for small business corporations (SBCs)**", and the interpretation note[11], available on the SARS website.

j) Patents, inventions, copyrights, designs, other property etc

An allowance, in respect of expenditure incurred to acquire (otherwise than by way of devising, developing or creating) the following property, is allowed –

- "invention" or "patent" as defined in the Patents Act 57 of 1978;
- "design" as defined in the Designs Act 195 of 1993;
- "copyright" as defined in the Copyright Act 98 of 1978;
- other property which is of a similar nature (other than "trade marks" as defined in the Trade Marks Act 194 of 1993; or

[10] Interpretation Note No. 47 (Issue 2): Wear-and-tear or depreciation allowance
[11] Interpretation Note No. 9 (Issue 5): Small business corporations

- knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which is used in the production of income.

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

The allowance in respect of expenditure exceeding R5 000, will not exceed in any tax year –

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

For more information, see section 11(*g*C) of the IT Act.

k) Research and development (R&D)

A deduction for R&D will be allowed at a rate of 150% of expenditure incurred in respect of activities undertaken in the RSA directly for purposes of –

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

which is of a scientific or technological nature intended to be used in the production of income.

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

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

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

For more information, see the interpretation note[12], available on the SARS website and sections 11D and 12N of the IT Act.

l) Urban development zones

Taxpayers investing in one of the 15 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

[12] Interpretation Note No. 50: Deduction for scientific or technological research and development

Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mangaung, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje, Tshwane and Matjhabeng.

The allowance is:

- In respect of the *erection of any new building or the extension of or addition to any building*, an amount equal to –
  - 20% of the cost thereof to a taxpayer in the tax year that the building is brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and
  - 8% of that cost in each of the 10 succeeding tax years; and
- In respect of *improvements* to any existing building or part thereof (including any extension or addition which is incidental to that improvements) where the existing structural or exterior framework thereof is preserved, an amount equal to –
  - 20% of the cost thereof to a taxpayer in the tax year in which that part thereof so improved, extended or added to is brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and
  - 20% of that cost in each of the four succeeding tax years.
- In the case of the *erection* of any new building or the *extension* of or *addition* to a building (other than improvements referred to below), to the extent that it relates to a *low-cost* residential unit –

  (i) 25% of the cost to a taxpayer in the tax year during which the building is brought in use by the taxpayer;

  (ii) 13% of the cost in each of the five succeeding tax years; and

  (iii) 10% of the cost in the tax year following the last tax year contemplated in (ii) above.
- In the case of the *improvement* of any existing building or part of a building, to the e*xtent that it* relates to a *low-cost* residential unit, (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved –
  - 25% of the cost to a taxpayer in the tax year during which that building is brought into use by the taxpayer; and
  - 25% of the cost in each of the three succeeding tax years.

For the purposes of the above allowance, where a taxpayer purchased a building or part of a building from a developer, the percentages below will be deemed to be the costs incurred –

- 55% of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by that developer; and
- 30% of the purchase price of that building or part of a building, in the case of a building improved by that developer

For more information, see the guide[13], available on the SARS website and sections 13*quat* and 12N of the IT Act.

m) Agricultural co-operatives

Plant or machinery (including improvements) used for storing or packing farming products:

- 20% of the cost to a taxpayer in the tax year the asset is brought into use and in the four succeeding tax years (5-year straight-line basis).
- The assets must be owned by the taxpayer or acquired as purchaser in terms of an “instalment credit agreement” as defined in section 1 of the VAT Act.

Any foundation and supporting structure on which such asset is mounted (or to which it is fixed) is deemed to be part of that asset and is eligible for the same deduction as the asset.

For more information, see section 12C of the IT Act.

n) Additional deduction in respect of learnership agreements

The deduction is as follows:

(1) Where –

- ➢ during any tax year 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, in that tax year, will be allowed to be deducted from the income derived by that employer from that trade.

(2) Where the learner is a party to the above agreement for less than 12 full months during a tax year, the amount of 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) Where –

- ➢ during any tax year a learner is a party to a registered learnership agreement with an employer for less than 24 months ;
- ➢ that agreement was entered into pursuant to a trade carried on by that employer; and
- ➢ that learner successfully completes that learnership during that tax year,

R30 000 in that tax year will be allowed to be deducted from the income derived by that employer from that trade.

(4) Where –

- ➢ during any tax year a learner is a party to a registered learnership agreement with an employer for 24 months or longer;
- ➢ that agreement was entered into pursuant to a trade carried on by that employer; and

[13] Guide to the urban development zone tax incentive (September 2009)

- ➢ that learner successfully completes that learnership during that tax year,

  R30 000, multiplied by the number of consecutive 12-month periods within the duration of that agreement, will be allowed as a deduction in that tax year to be deducted from the income derived by that employer from that trade.

(5) Where a learner, contemplated in (1), (2), (3) or (4), above is a person with a disability at the time of entering into the learnership agreement, the above amount of R30 000 is increased by R20 000 to R50 000.

For more information, see section 12H of the IT Act.

o) Film owners

Special deductions are allowed to film owners in the determination of taxable income derived from their trade as film owners. These special deductions are contained in section 24F of the IT Act. For more information regarding the special deductions see the guide[14], available on the SARS website.

No special deductions will be allowed under section 24F of the IT Act in respect of expenditure incurred in respect any film, the principal photography of which commences on or after 1 January 2012, or any film after 31 December 2012.

These special deductions have been replaced, effective as from 1 January 2012, by an exemption. More specifically, the income for exploration rights allocable to initial investors (from qualifying films) will be wholly exempt.

For more information on the exemption, see section 12O of the IT Act.

p) Environmental expenditure

Environmental treatment and recycling assets [any air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment (and improvements to the plant or equipment)]

- 40% of the cost to a taxpayer in the tax year the asset is brought into use for the first time; and
- 20% in each succeeding tax year.

Environmental waste disposal assets, that is, any air, water, and solid waste disposal site, dam, dump or reservoir, or other structure of a similar nature, or any improvement thereto

- 5% of the cost to a taxpayer in the tax year the asset is brought into use for the first time; and
- 5% in each succeeding tax year.

Post-trade environmental expenses

- 100% of the expenditure or loss incurred on certain decommissioning, remediation or restoration expenditure

For more information see section 37B of the IT Act.

[14] Guide to the taxation of film owners

q) Residential

(1) Residential units

(i) An allowance equal to 5% of the cost to a taxpayer of a new and unused residential unit (or of new and unused improvements to a residential unit) owned by the taxpayer 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 the RSA; and
- the taxpayer owns at least five residential units within the RSA, which are used by the taxpayer for the purposes of a trade.

(ii) An additional allowance of 5% of the cost of a low-cost residential unit of a taxpayer will be allowed if the allowance of 5% (referred to in (i) above) is allowable.

(iii) The percentages below will be deemed to be the costs incurred by a taxpayer in respect of a residential unit where the taxpayer acquires a residential unit (or improvements to a residential unit) representing only a part of a building without erecting or constructing the unit or improvement:

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

For more information see sections 13*sex* and 12N of the IT Act.

(2) Residential buildings

Deductions are available to a taxpayer who erects at least five "residential units" in terms of a "housing project". The deductions are:

(i) A residential building initial allowance (RBIA) of 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.

(ii) A residential building annual allowance of 2% for each succeeding tax year, for the first time for the tax year in which the RBIA is made in respect of that unit.

For more information, see sections 13*ter* and 12N of the IT Act

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

In the case of a disposal of a low-cost residential unit by a taxpayer to an employee, a deduction is allowed equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's tax year.

s) Environmental conservation and maintenance expenditure

Expenditure incurred by a taxpayer to conserve or maintain land will be allowed as a deduction if –

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

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

Note: The above expenditure must not exceed the income derived by the taxpayer from a trade carried on by the taxpayer on the land used as contemplated in (ii). The excess amount will be carried forward and deemed to be a deduction in the next tax year.

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

If land is declared a national park or nature reserve and the declaration is endorsed on the title deed of the land with 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 to the IT Act deemed to be a donation in the tax year in which the land is so declared and each of the succeeding nine tax years.

For more information, see section 37C of the IT Act.

t) Expenditure incurred to obtain a licence

Expenditure (not in respect of infrastructure) incurred by a taxpayer to acquire a licence from certain government authorities to carry on a telecommunication, petroleum or gambling trade, may be claimed as a deduction from income over the number of years for which the taxpayer has the right to the licence or 30 years, whichever is the lesser.

For more information see section 11(*g*D) of the IT Act.

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

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

The deduction is allowable from the income of individuals and listed companies, including section 41 of the IT Act group company members, for expenditure incurred to acquire shares issued by VCCs.

Deductions allowable to investors for expenditure incurred during a year of assessment are as follows:

i) Individuals (natural persons) –

- A deduction not exceeding R750 000, provided the cumulative lifetime deduction is limited to (adjusted for recoupments) R2,25 million.

ii) Listed companies (and their group subsidiaries) –

- a listed company is entitled to a 100% deduction of amounts invested in a VCC to the extent that its investments, including the investments of its group companies, do not exceed 40% of the equity shares of the VCC. No deduction will, therefore, be allowed in respect of the amount invested in excess of the 40%.

Note: A claim for a deduction must be supported by a certificate issued by the approved VCC stating the amounts invested in that company and that the Commissioner has approved that company as a VCC.

For more information see section 12J of the IT Act and the guide[15] available on the SARS website.

v) Deduction of medical lump sum payments

Provided certain conditions are met, a taxpayer will be allowed to deduct from his or her income derived from carrying on a trade any lump sum payment to any former employee or an insurer for policies covering retired employees (and their dependents) to the extent that the amount is paid for the purposes of making any contribution, in respect of the former employee or of dependent to a medical scheme or fund. Any lump sum paid on or after 1 September 2009 will be allowed as a deduction.

For more information, see section 12M of the IT Act.

3.2.17 Tax relief measures for SBCs

For tax purposes an SBC can be a CC, co-operative or a private company.

The tax legislation regarding an SBC allows two major concessions to an SBC if such SBC complies with all of the following requirements:

- All the shareholders or members of the SBC must be natural persons (individuals) at all times during a tax year.
- The shareholders or members of the SBC may not hold any shares or interest in the equity of any other company, other than in –
  - listed companies;
  - a portfolio in a collective investment scheme contemplated in paragraph (*c*) of the definition of company in section 1 of the IT Act;
  - a company contemplated in section 10(1)(*e*)(i)(*aa*), (*bb*) or (*cc*) of the IT Act (that is, a body corporate, share block company, non-profit company as defined in section 1 of the Companies Act, 2008 or an association of persons);
  - a social or consumer co-operative or a co-operative burial society where the interest held must be less than 5%;
  - friendly societies;
  - a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operatives Banks Act, 2007, that may provide, participate in or undertake only the following –
    - in the case of a primary savings co-operative bank, banking services contemplated in section 14(1)(*a*) to (*d*) of the abovementioned Act; and

[15] AS-VCC-02 Reference guide venture capital companies (VCCs),

        - in the case of a primary savings and loans co-operative bank, banking services contemplated in section 14(2)(*a*) or (*b*) of the abovementioned Act and where the interest held must be less than 5%;
    - "venture capital companies" as defined in section 12J of the IT Act;
    - instances where the SBC has not during any tax year carried on any trade and has not during any tax year owned assets with a total market value of which exceeds R5 000; or
    - a company or close corporation if the company or close corporation has taken steps (see section 41(4) of the IT Act) to liquidate, wind up or deregister. This ceases to apply if the company or close corporation has at any stage withdrawn or invalidated any such steps, with the result that it will not be liquidated, wound up or deregistered. **Note:** This requirement applies from the commencement of tax years commencing on or after 1 January 2011.

- The gross income of the SBC for the tax year may not exceed R14 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 SBC may consist collectively of investment income.

    Investment income means –
    - dividends, royalties, rental on immovable property, annuities or income of a similar nature;
    - interest contemplated in section 24J of the IT Act (other than interest earned by a co-operative bank), amounts contemplated in section 24K of the IT Act and other income subject to the same treatment as income from money lent; and
    - the proceeds derived from investment or trading in financial instruments, marketable securities or immovable property.

- The SBC is not a "personal service provider" as defined in the Fourth Schedule to the IT Act.

    Personal service means:
    Personal service in relation to a company, co-operative or close corporation means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science if –
    - that service is performed personally by a person holding an interest in the SBC; and
    - the SBC does not throughout the year of assessment employ three of more full-time employees (other than employees who are shareholders of the company or members of the close corporation, or who are connected persons in relation to a shareholder or member), who are engaged on a full-time basis in the business of the SBC of rendering that service.

    An SBC which is engaged in the provision of personal services will still qualify for relief if it employs three or more full-time employees throughout the tax year (excluding shareholders or members and connected persons to such shareholders or members) who are engaged on a full-time basis in the business of the SBC rendering that service.

See **2.1.6** under the heading "**Other types of business entities as described in the IT Act**".

The *first concession* is to be taxed on the basis of a progressive rate system. See **3.2.15** under the heading "**Tax rates**".

The *second concession* is two-fold consisting of:

(a) The immediate write-off of all plant or machinery used in a process of manufacture or similar process ("manufacturing assets") in the tax year it is brought into use for the first time. See **3.2.16** paragraph **(j)**(i).

(b) An accelerated write-off allowance for depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at –
   - 50% of the cost of the asset in the tax year during which it was first brought into use;
   - 30% in the second tax year; and
   - 20% in the third tax year.

   (Under section 12E(1A) an SBC can elect to either claim the 50:30:20 deduction or the wear-and-tear allowance under section 11(*e*) of the IT Act. See **3.2.16** paragraph **(j)**(ii) read with paragraph **(h)**.

For more information, see the interpretation note[16] available on the SARS website.

3.2.18 Tax relief measures for micro businesses (turnover tax)

This is a simplified tax system for micro businesses and serves as an alternative to the current income tax, provisional tax, capital gains tax, secondary tax on companies and VAT systems.

A person qualifies as a micro business in terms of the Sixth Schedule to the IT Act 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,

where the qualifying turnover of that person for the a year does not exceed R1 million.

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

3.2.19 Deduction of home office expenditure

Expenses relating to your home office may be claimed as a deduction for income tax purposes provided that –

- a part of your home is occupied for purposes of your trade; and
- that part is regularly and exclusively used and specifically equipped for purposes of your trade.

Subject to the above requirements, if your trade is employment or the holding of an office, no deduction is allowed, unless –

- the income derived from that employment or office is mainly (that is, more than 50% of your total income from employment or office held) commission or other variable payments which are based on your work performance and your duties are not performed mainly in an office provided by your employer; or

[16] Interpretation Note No. 9 (Issue 5): Small business corporations
[17] Tax guide for micro businesses 2011/12

- your duties are mainly performed in that part of your home.

Only that portion of your total home expenses that relates to that part of your home used for business purposes may be claimed as a deduction against your income if the above requirements are met.

Typical home expenses may include rent of the premises or interest on bond, rates and taxes, cost of repairs and maintenance to the property etc. These expenses may be apportioned on the following basis:

$$A/B \times \text{Total costs}$$

where:	A	=	The area in square metre (m^2) of the area specifically equipped and used regularly and exclusively for trade
	B	=	The total area in m^2 (including any outbuildings and the area used for trade) of your home
	Total costs	=	Total home expenses referred to above

Example

The total area of your home office is 20 m^2 in relation to the total area of your home which is 200 m^2. The percentage area of the home office in relation to the total area of your home is 10%, that is, (20/200 x 100). You will, therefore, be entitled to claim 10% of your total home expenses as a deduction for tax purposes.

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

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

For more information, see the interpretation note[18], available on the SARS website.

3.2.21 Ring-fencing of assessed losses of certain trades

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

It is, however, possible for an activity such as a hobby to be disguised as a trade and that individuals attempt to set off expenditure related to a hobby, which is in fact private consumption, against other income such as salary or business income.

[18] Interpretation Note No. 51: Pre-trade expenditure and losses

Section 20A of the IT Act aims to prevent expenditure and losses normally associated with suspect activities, that is, disguised hobbies, to be deducted from income. This deduction limitation applies only to natural persons.

For more information, see the guide[19] available on the SARS website.

3.2.22 Prohibited deductions

Prohibited deductions are listed in section 23 of the IT Act, and include –

- the cost incurred in the maintenance of the taxpayer, his or her family or his or her establishment;
- domestic or private expenses, including the rent of, repairs to, or expenses in connection with any premises not occupied for the 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 purposes of trade;
- income carried to any reserve fund or capitalised in any way;
- moneys not laid out or expended for the purposes of trade;
- taxes, duties levies interest or penalties payable under Acts administered by the Commissioner and certain other Acts; and
- a payment for a bribe, fine or penalty which will not be allowed as a deduction for income tax purposes if –
  - (a) 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
  - (b) the payment is a fine charged or penalty imposed as a result of carrying out an unlawful activity in the RSA or in another country where the activity would be unlawful had it been carried out in the RSA.

  For more information see the interpretation note[20], available on the SARS website.

3.2.23 Exemption of certified emission reductions

Section 12K of the IT Act provides that any amount received by or accrued to a person in respect of the disposal of any certified emission reduction (CER) derived by that person in the furtherance of a qualifying clean development mechanism project carried on by that person, will be exempt from income tax. This exemption came into operation on 11 February 2009 and applies in respect of disposals on or after that date of any CER issued in the furtherance of a qualifying Clean Development Mechanism project registered on or before 31 December 2012.

For more information, see the explanatory memoranda[21], available on the SARS website.

3.2.24 Withholding tax on royalties

A final withholding tax of 12% is payable in respect of royalties or similar payments made to a person (other than a resident or a controlled foreign company) for the right of, or the grant of permission to use in the RSA –

[19] Giude on the ring-fencing of assessed losses arising from certain trades conducted by individuals,
[20] Interpretation Note No. 54: Deductions – Corrupt activities, fines and penalties
[21] Explanatory Memoranda on the Taxation Laws Amendment Bill, 2009

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

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

For more information, see section 35 of the IT Act.

3.2.25 Withholding tax on foreign entertainers and sportspersons

With effect from 1 August 2006 residents who are liable to pay amounts to foreign entertainers and sportspersons (visiting artists) for their performances in the RSA must deduct or withhold tax at a rate of 15% of the gross payments and pay it over to SARS on behalf of the foreign entertainers and sportspersons before the end of the month following the month in which the tax was withheld. Failure to deduct or withhold and to pay it over to SARS will render the resident payer personally liable for the tax.

In the event that it is not possible for the withholding tax to be withheld (that is, the payer is a not a resident), the foreign entertainer or sportsperson will be held personally liable for the 15% tax and must pay it over to SARS within 30 days after the amount accrues to or is received by the foreign entertainer or sportsperson.

The 15% tax is a final tax, which means that there will be no need for the foreign entertainer/sportsperson to submit the usual income tax return.

A foreign entertainer or sportsperson who is employed by an employer who is a resident and such entertainer or sportsperson is physically present in the RSA for more than 183 days in aggregate in a 12-month period that commences or ends in a tax year, will have to pay tax on the same basis as a resident, that is, at the usual tax rates, which may require the submission of an income tax return.

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

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

For more information, see sections 47A to 47K of the IT Act.

3.2.26 Withholding tax on payments to non-resident sellers of immovable property

A withholding tax is payable by a person (the purchaser) that acquires immovable property in the RSA from a non-resident seller (the seller). The purchaser of the property is required to withhold from the amount which has to be paid for the property an amount equal to –

- 5% of the amount payable if the seller is an individual;
- 7,5% of the amount payable if the seller is a company; 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 if certain conditions are met as set out in section 35A(2) of the IT Act.

The amount withheld is an advance (credit) against the non-resident's income tax liability for the tax year during which the property was disposed of. Section 35A does not apply if the total amount payable for the immovable property does not exceed R2 million.

For more information, see the external policy[22], available on the SARS website.

3.3 Capital gains tax (CGT)

3.3.1 Introduction

CGT forms part of the income tax system. A taxpayer need not register separately for CGT if already registered for income tax.

Capital gains tax was introduced with effect from 1 October 2001. A capital gain arises when the proceeds from the disposal of an asset exceed the base cost of that asset. A capital loss occurs when an asset is disposed of and the base cost of that asset exceeds the proceeds from that disposal.

CGT only comes into effect when the taxpayer disposes of an asset. (The word "disposal" is described very widely – see paragraph 11 of the Eighth Schedule to the IT Act.) A taxable capital gain forms part of a taxpayer's taxable income and must be declared in the income tax return for the tax year in which the asset is disposed of.

For individuals, 25% of the net capital gain, after deducting the annual exclusion described below, must be included in taxable income when calculating the income tax payable. For companies, close corporations and trusts, the amount to be included in taxable income is 50% of the net capital gain on the disposal of assets. Relief in the form of a deferral of the capital gain is available where the asset is either disposed of involuntarily and is replaced, or is disposed of in order to acquire another business asset that qualifies for a capital allowance.

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

- price the taxpayer originally paid to buy the asset;
- transfer costs, stamp duty, VAT paid and not claimed or refunded on the asset;
- 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

[22] All publication/Capital gains tax/AS-CGT-02 External policy – Withholding amounts from payments to non-resident sellers of immovable property in South Africa

- cost of installing the asset, including the cost of foundations and supporting structures.

The taxpayer does not have to pay tax on the full profit when an asset owned before 1 October 2001 is disposed of. The base cost of the asset must be determined, and only the difference between the proceeds and that base cost is subject to CGT.

The base cost of an asset acquired before 1 October 2001 may be determined according to one of the following three methods –

(a) 20% x proceeds less any expenditure incurred on or after 1 October 2001 (the valuation date) plus expenditure incurred on or after the valuation date; or

(b) the market value of the asset on 1 October 2001 (the valuation date) plus any expenditure incurred on or after the valuation date. The valuation must have been carried out on or before 30 September 2004; or

(c) the time-apportionment method which is based on the following formulae:

$$P = R \times [B/(A + B)]$$

and

$$TAB = B + [(P - B) \times N/(T + N)]$$

Note:

1) The symbols used in the above formulae are as follows:

   R = Amount received or accrued from disposal of asset

   P = Amount determined using the proceeds formula or where the formula does not apply, the proceeds

   A = Expenditure incurred on or after 1 October 2001

   B = Expenditure incurred before 1 October 2001

   N = Number of years before valuation date

   T = Number of years after valuation date

2) The proceeds formula P = R x [B/(A + B)] must be applied where expenditure has been incurred before and after the valuation date.

3) Parts of a year are treated as a full year for the purpose of determining the periods before and after the valuation date (‘N’ and ‘T’ in the formula).

4) If expenditure has been incurred in more than one tax year before the valuation date, N is limited to 20 years.

5) A TAB calculator which uses a Microsoft Excel spreadsheet is available on the SARS website.

Example

Facts:

Zelda bought her holiday home on 1 June 1983 for R25 000. She sold it on 1 June 2011 for R850 000. Capital expenditure of R50 000 was incurred after 1 October 2001. The market value (MV) of the house on the valuation date was R550 000.

Result:

Time-based apportionment method

Step 1 – Apply proceeds formula

The proceeds formula must be used because Zelda incurred R50 000 in respect of capital expenditure after the valuation date.

P = R x [B/(A + B)]

= R850 000 x [R25 000/(R50 000 + R25 000)]
= R283 333

Step 2 – Determine time-apportionment base cost (TAB)

TAB = B + [(P – B) x N/(T + N)]

= R25 000 + [(R283 333 – R25 000) x 19/(10 + 19)]
= R25 000 + R169 252
= R194 252

Step 3 – Determine capital gain or loss

Capital gain = R850 000 – (R194 252 + R50 000)
= R605 748

Market value method

Assuming that Zelda did the valuation before 30 September 2004, her capital gain would be

	R	R	R
Proceeds		850 000	
Less: Base cost			
Market value on 1 October 2001	550 000		
Capital expense	50 000	(600 000)	
Capital gain		250 000	

20% of proceeds method

Proceeds	850 000
Less: Capital expense	(50 000)
Subtotal	800 000
20% x R800 000	160 000
Capital expenditure	50 000
Base cost	210 000
Proceeds	850 000
Less: Base cost	(210 000)
Capital gain	640 000

Compare capital gains under the three methods:

	R
Time apportionment	605 748
Market value	250 000
20% of proceeds	640 000

In this example the **market value method** provides the lowest capital gain.

Note:

1) In the event of a loss, the formula will reduce the original cost by the portion of the loss relating to the period before the valuation date.
2) If no records of pre-1 October 2001 expenditure have been kept, the market value or 20% of proceeds methods must be used.
3) An individual is entitled to an annual exclusion amounting to R20 000. This is an amount of the individual's net annual capital gain or loss that is disregarded for CGT purposes. The annual exclusion is increased to R200 000 in the tax year in which an individual dies.
4) A person who operates a small business as sole proprietors, or is a partner in a small business or an owner of an interest (10% or more) in a company or close corporation which qualifies as a small business is, subject to certain conditions, entitled to a concession which excludes capital gains of up to R900 000 on the disposal of active business assets when such person attains the age of 55 years or the disposal is in consequence of ill-health, other infirmity, superannuation or death. For purposes of CGT, a small business means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest, does not exceed R5 million.

For further information, see paragraph 57 of the Eighth Schedule to the IT Act.

3.3.2 CGT on disposal of foreign assets by residents

Residents are subject to CGT on the disposal of their worldwide assets. The method for determining the capital gain or loss depends on the nature of the asset. The relevant legislation is contained in the Eighth Schedule to the IT Act. Set out below are some examples of foreign assets and their CGT treatment.

- *Immovable property held outside the RSA*

  The capital gain or loss on disposal of immovable property acquired and disposed of, where payment made and received is in the same foreign currency, is determined in the foreign currency and then translated into Rand by applying (1) the average exchange rate for the tax year in which the asset was disposed of; or (2) the spot rate on the date of disposal of the asset.

  Special rules[23] apply to immovable property bought with payment in one foreign currency and disposed of where the proceeds are in another (or where assets are attributable to a foreign permanent establishment and financial reporting is in another foreign currency).

- *Assets other than immovable property attributable to a foreign permanent establishment*

  The same rules apply as in the case of foreign immovable property as explained above.

- *Foreign equity instruments (that is, shares and interests in collective investment schemes) and deemed South African source assets (that is, foreign endowment policies and other movable assets)*

  The capital gain or loss is determined by translating the proceeds from the sale of the asset into Rand at the average exchange rate for the tax year in which the asset was disposed of or at the spot rate on the date of disposal, and the expenditure incurred in

[23] See paragraph 43(2) of the Eighth Schedule to the Income Tax Act

respect of that asset into Rand at the average exchange rate for the tax year during which it was incurred or the spot rate on the date on which it was incurred.

- *Foreign currency assets and liabilities (foreign bank notes, traveller's cheques, bank accounts and foreign loans)*

  Foreign bank notes and coins in current circulation are not assets for CGT purposes and accordingly cannot give rise to a capital gain or loss.

  Currency fluctuations relating to an asset comprising a loan, advance or debt in a foreign currency cannot give rise to a capital gain or loss since such assets are excluded from paragraph 43(4) of the Eighth Schedule to the IT Act. Should a loan, advance or debt of this nature become irrecoverable, a capital loss in a foreign currency may arise which must be translated to rand under paragraph 43(1) of the Eighth Schedule of the IT Act. The loss of a trade debt would give rise to a deduction from income under section 11(*i*) of the IT Act.

3.3.3 CGT on disposal of property in the RSA by a person who is not a resident

A person who is not a resident must account for capital gains and losses made from the disposal of the following assets:

- Immovable property situated in the RSA or any interest or right in immovable property situated in the RSA. The term "interest in immovable property situated in the RSA" includes a direct or indirect holding of 20% or more of the shares in a company, where 80% or more of the current market value of the shares of that company are directly or indirectly attributable to immovable property situated in the RSA. Also included as immovable property is a vested interest in a trust where 80% or more of the value of that interest is directly or indirectly attributable to immovable property situated in the RSA.
- Assets attributable to a permanent establishment in the RSA (that is, a branch or agency of a foreign company in the RSA).

3.3.4 Relief from double taxation

Relief from double taxation is granted, where applicable, in an agreement for the avoidance of double taxation between RSA and the country of residence of the taxpayer who is not a resident.

3.3.5 CGT rates

Individuals (and special trusts)

Tax year commencing on	Annual exclusion	Inclusion rate
01 March 2011	R20 000 (if the individual dies during that year of assessment, the exclusion is R200 000)	25% of net capital gain

Trusts

Tax year ending on	Inclusion rate
28 February 2012	50% of net capital gain

Companies

Tax year ending during the 12-months period ending on	Inclusion rate
31 March 2012	50% of net capital gain

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

3.4 Donations Tax

Donations tax is payable on the value of property disposed of by a resident by means of a donation at the rate of 20%. Donations made by a natural person (individual) up to the value of R100 000 per tax year are exempt from the payment of donations tax. For other persons such as private companies, the exemption is limited to R10 000 in respect of casual gifts.

3.5 Value-added tax (VAT)

3.5.1 Introduction

Value-added tax (VAT) is an indirect tax levied in terms of the VAT Act. VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor's enterprise. A vendor is a person who is registered, or required to be registered for VAT. VAT is a destination-based tax, which means that only the consumption of goods and services in South Africa is taxed. VAT is paid on the supply of goods or services in South Africa as well as on the importation of goods into South Africa.

3.5.2 Rate of tax

VAT is presently levied at the standard rate of 14% on most supplies and importations but there is a limited range of goods and services which are either exempt or which are subject to tax at the rate of zero percent (for example, exports and certain basic foodstuffs are taxed at 0%). Certain goods are also exempt from VAT on importation and the importation of services is only subject to VAT where the importer is not a vendor or where the services are imported for private or exempt purposes. VAT is levied on an inclusive basis, which means that VAT has to be included in all prices on products, price lists, advertisements and quotations.

3.5.3 Who is liable for the payment of VAT?

VAT is levied on all supplies made by vendors in the course or furtherance of their enterprises and only a vendor may levy VAT. Vendors therefore charge and account for VAT on supplies but ultimately, the VAT charge is borne by the final consumers from whom the VAT is collected. A vendor making exempt supplies may, therefore, not charge VAT and may not claim back any VAT borne by the enterprise. Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds or is likely to exceed the compulsory VAT registration threshold of R1 million in any consecutive 12-month period, must register for VAT. Before 1 March 2009 the compulsory VAT registration threshold was R300 000 in any consecutive 12-month period.

The VAT Act also allows a person to register voluntarily as a vendor if that person carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R50 000

[24] Comprehensive guide to capital gains tax (Issue 4)

(but does not exceed R1 million) in the preceding 12-month period. Note, however, that the voluntary registration threshold for persons that supply "commercial accommodation" is R60 000 and not R50 000.

When a vendor is supplied with goods or services by another vendor, VAT is levied by the supplier of those goods or services. The vendor acquiring the goods subtracts the input tax (VAT borne by the vendor) from the output tax (VAT charged by the supplying vendor). The difference is VAT payable to or refundable by SARS. The effect is that VAT is borne by the final consumer of goods and services.

3.5.4 Supplies subject to the standard rate

The standard rate of 14% applies to the supply of most goods and services supplied by vendors. The importation of most goods and imported services (that is, services acquired for purposes other than making taxable supplies) is also subject to VAT at the standard rate.

3.5.5 Supplies subject to the zero rate

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

- Goods exported from the RSA where the vendor is liable for the transport of the goods to the foreign country
- Brown bread
- Brown wheaten meal
- Maize meal
- Samp
- Mealie rice
- Dried mealies
- Dried beans
- Rice
- Lentils
- Fruit and vegetables
- Pilchards and sardinella in tins or cans
- Milk, cultured milk and milk powder
- Vegetable cooking oil
- Eggs
- Edible legumes and pulse of leguminous plants
- Dairy powder blends
- Petrol, diesel and illuminating paraffin
- Certain agricultural inputs supplied to VAT registered farmers
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services
- Services physically rendered outside the RSA.

A zero rating implies that VAT at 0% is levied on supplies made by the vendor. VAT incurred on goods or services acquired by the vendor for purposes of making zero-rated supplies, is deductible as input tax.

3.5.6 Exemptions

The following goods and services are exempt from VAT:

- Financial services such as interest earned and life insurance benefits
- Public transport of fare paying passengers by road and rail
- The supply of residential accommodation under a lease agreement
- Certain educational services, for example, in primary and secondary schools, universities and technikons
- Medical services and medicines supplied by government (provincial hospitals) but excluding municipal medical facilities
- Any goods or services supplied by an employee organisation to its members to the extent that the supplies are funded from membership contributions
- Child minding services in crèches and after-school centres

An exemption implies that the supplier of goods does not levy VAT (output tax) on those exempt supplies but must bear VAT (input tax) on the purchases incurred in making such supplies.

Section 12 of the VAT Act provides for those supplies that are exempt from VAT.

3.5.7 Registration

a) Compulsory registration

Any person who carries on an enterprise and whose total value of taxable supplies (taxable turnover) exceeds, or is likely to exceed, the compulsory VAT registration threshold, must register for VAT. The threshold is currently R1 million in any consecutive 12-month period. Before 1 March 2009, the compulsory registration was R300 000.

b) Voluntary registration

The VAT Act allows a person to register as a vendor, if that person carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R50 000 (but does not exceed R1 million) in the preceding 12-month period. Before 1 March 2010, the minimum threshold for voluntary registration threshold was R20 000. A minimum voluntary registration threshold of R60 000 applies to vendors supplying “commercial accommodation”.

3.5.8 Refusal of registration

You will not qualify to register as a vendor if you do not fall within the aforementioned categories. In all other instances, no VAT registration will be allowed if the annual turnover is below the minimum voluntary registration threshold.

In addition, where only exempt supplies or other non-taxable supplies are made, that person will not be conducting an enterprise for VAT purposes and will therefore 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.

3.5.9 How to register

Application for registration as a vendor must be made, on form VAT101 (obtainable from your local SARS office or on the SARS website), within 21 days of becoming liable to register. The reference guide[25] available on the SARS website will assist you in the completion of the VAT101 form.

3.5.10 Accounting basis

- **Invoice basis**

Generally, a vendor must account for VAT on the invoice basis. In other words, output tax must be accounted for at the earlier of an invoice being issued or payment being received for a specific supply.

Input tax may only be claimed when the vendor is in possession of a valid tax invoice, irrespective of whether payment has been made to the supplier or not. In instances where a vendor has claimed 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 claimed, output tax must be accounted for on that portion of the payment that has not been made.

- **Payments basis**

The Commissioner may, on written application by a vendor, direct that the vendor account for VAT on the payments basis. When using this method, output tax and input tax must be accounted for at the time that payments are received and made. It is still required for input tax purposes that the vendor be in possession of a valid tax invoice. Certain requirements must be met for the vendor to account for VAT on the payments basis. The vendor must be –

- ➢ a public authority, any water board or any other institution which has powers similar to those of any such boards listed in Part B of Schedule 3 of the Public Finance Management Act, 1999, a regional electricity distributor established after 30 June 2005, a "municipal entity" as defined in section 1 of the Local Government: Municipal Systems Act, 2000, a municipality, or an association not for gain; or
- ➢ a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons. In this case, it is also required that the total value of the vendor's taxable supplies in the 12 months preceding the application did not exceed R2.5 million, nor be likely to exceed that amount in the next 12-month period.

See section 15 of the VAT Act for further information.

3.5.11 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.

Monthly	Known as Category C and which applies to vendors whose annual

[25] AS-VAT-08 – Reference guide: Completion of VAT registration application forms

	turnover is more than R30 million a year.
Two-monthly	Known as Category A or B which is applicable to vendors whose annual turnover is not more than R30 million a year. The applicable category is determined by the Commissioner.
Four-monthly	Known as Category F and which applies to vendors that qualify as small businesses with an annual turnover of less than R1,5 million for tax periods commencing on or after 1 March 2008.
Six-monthly	Known as Category D and which applies to small farmers with an annual turnover is not more than R1,5 million for tax periods commencing on or after 1 March 2008.
12-monthly	Known as Category E and which generally ends on the last day of the vendor's "year of assessment" as defined in section 1 of the VAT Act. It only applies to vendors who are companies or trusts where the income consists solely of property rentals, management or administration fees charged to connected persons that are entitled to a full deduction of input tax on such fees.

The abovementioned tax periods have various requirements which must be satisfied before a vendor will be allowed to fall within a certain tax period. These requirements are contained in section 27 of the VAT Act.

3.5.12 Calculation of VAT

For ease of reference the terms "input tax" and "output tax" are defined in section 1 of the VAT Act:

Input tax – Is the VAT paid by a vendor on the purchase of goods or services which may be claimed as input tax provided the goods or services are acquired for making taxable supplies and the vendor is in possession of a valid tax invoice. In certain other cases, the vendor may also claim 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 is called "notional" or "deemed" input tax.

In some cases, input tax is specifically denied. The following are examples of purchases where input tax can generally not be claimed:

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

In determining the VAT liability, the vendor has to subtract the input tax claimed from the output tax charged. The vendor has to pay the difference to SARS where the output tax exceeds the input tax. The vendor is entitled to a refund from SARS where the input tax exceeds the output tax.

Interest will be paid by SARS at the prescribed rate where the vendor does not receive the refund within 21 business days of submitting the correctly completed VAT201 return. However, the payment of interest is subject to a few conditions. For example, the VAT return to which the refund relates must not be defective in any material respect and you need to have submitted your VAT returns and paid any outstanding VAT for prior tax periods. See the document[26] available on the SARS website for more details of the circumstances under which SARS will not pay any interest on refunds.

3.5.13 Requirements of a valid tax invoice

A vendor must be in possession of a valid tax invoice in order to claim input tax. The following information must be reflected on a tax invoice:

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

An abridged tax invoice may be issued for the consideration of supplies that do not exceed R3 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.

3.5.14 Submission of VAT returns

a) Manual submission

A vendor that manually submits a VAT201 return to SARS, must ensure that it is received by the 25th of the month following the end of the vendor's tax period. Payment must, where applicable, accompany the VAT201 return.

In the event that the 25th of the month falls over a weekend or on a public holiday, the VAT201 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

[26] VAT News 34 (August 2009)

A vendor that has registered to submit the VAT201 return and payment electronically on SARS' eFiling facility must ensure that the VAT201 return and the payment are received by no later than the last business day of the month following the end of the vendor's tax period.

The table below provides the dates by which a VAT201 return must be submitted and the date by which payment must be made, depending on the payment method used.

Payment method	Returns	Payment
Cheque	25th of the month following the end of the vendor's tax period	25th of the month following the end of the vendor's tax period
Payments at any of the four major banks	25th of the month following the end of the vendor's tax period	25th of the month following the end of the vendor's tax period
VAT201 debit order	25th of the month following the end of the vendor's tax period	Last business day of the month following the end of the vendor's tax period
Efiling of return and payment via SARS efiling	Last business day of the month following the end of the vendor's tax period	Last business day of the month following the end of the vendor's tax period
Electronic transfers (including internet banking)	25th of the month following the end of the vendor's tax period	25th of the month following the end of the vendor's tax period

Important notes:

1) The return and payment must be received on or before the abovementioned dates for the particular payment method selected, or, if that day falls on a Saturday, Sunday or public holiday (that is, not a business day), it must be received by SARS on the last business day before that date.
2) Postal orders and money orders are not accepted as forms of payment and with effect from 1 April 2010 SARS also ceased to accept cash payments at the various SARS offices.

3.5.15 Duties of a vendor

Once registered as a vendor, you have certain responsibilities including the following:

- Provide correct and accurate information to SARS.
- Submit returns and payments on time.
- Include VAT in your prices, advertisements and quotes.
- Keep accurate accounting records.
- Produce relevant documents when required by SARS.

- Notify SARS about any changes in your business, namely, its address, trading name, partners or members or shareholders, bank details and tax periods.
- Issue tax invoices, debit and credit notes.
- Notify SARS of any changes of the details of the representative person.

Note: Failure to meet these responsibilities could result in penalties being payable and prosecution, additional fines or imprisonment.

3.5.16 Exports

VAT is levied at the standard rate of 14% on the sale of goods supplied locally, but if the goods are exported from the RSA by the supplier, VAT is charged at the rate of 0%. Alternatively, a person who is not a resident and purchases goods whilst in the RSA may apply for a refund of the VAT charged when the goods are physically removed from the RSA via any of the 42 official designated commercial ports.

The basic rule is that if –

- **the seller controls the export**, (a direct export), the zero rate applies, and the requirements as stipulated in the interpretation note[27] available on SARS website must be met; and
- **the purchaser controls the export,** (an indirect export), the standard rate of 14% applies. The purchaser may, however, claim a refund when the goods are exported in terms of Part One of the Export Incentive Scheme (the Scheme). Part Two of the Scheme offers the option to the South African vendor, at his own risk, to zero-rate the supply of goods to be exported as an “indirect export” by sea or air.

The reason for this distinction is quite simple – if the purchaser controls the export, the seller cannot be sure that the goods will actually be exported from the RSA.

There is a special value of supply rule which applies in the case of second-hand goods being exported if the exporter claimed a “notional” or “deemed” input tax deduction when those goods were originally acquired. The effect is that the exporter must account for VAT at the standard rate on the cost price of the second-hand goods exported. For an indirect export where VAT has been charged on the full consideration, a refund may only be obtained by the purchaser from the VAT Refund Administrator (VRA) upon exporting those goods from the RSA. The refund will be based on the difference between the VAT charged on the full consideration and the VAT claimed on the cost of acquisition of those goods by the supplier.

For more information on VAT, see the guide[28], available on the SARS website. Various other guides on specific VAT topics are also available for your convenience.

3.6 Estate duty

3.6.1 Introduction

The estate of a deceased who was ordinarily resident in the RSA will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies, payments from pension funds etc). However, property situated

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[27] Interpretation Note No. 30 (Issue 2) “Documentary proof required on consignment or delivery of movable goods to a recipient at an address in an export country” (15 March 2006)
[28] VAT 404 - Guide for Vendors

outside the RSA will be excluded from the estate if such property was acquired by the deceased before becoming ordinarily resident in the RSA for the first time or after becoming ordinarily resident in the RSA and acquiring such property by way of donation or inheritance from a person who was not ordinarily resident in the RSA at the date of such donation or inheritance. The exclusion also applies to property situated outside the RSA, acquired out of profits or proceeds of any such property acquired in the above circumstances.

The estate of a person who is not a resident is only subject to estate duty to the extent that it consists of certain “property” and “deemed property” of the deceased as defined in the Estate Duty Act, 1955. The Estate Duty Act unlike the Income Tax Act of 1962 does not have a definition for the word “resident” and only refers to persons who are “ordinarily resident” or not “ordinarily resident”. It follows, therefore, that any natural person who is not ordinarily resident in the RSA but who became a resident of the RSA in terms of the physical presence test for income tax purposes, is still regarded as not a resident for estate duty purposes due to the fact that such person is not ordinarily resident in the RSA.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. One such deduction is the value of property in the estate that accrues to the surviving spouse of the deceased. The net value of the estate is reduced by a R3.5 million general deduction to arrive at the dutiable amount of the estate.

Note:

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

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

3.6.2 Estate duty rates

From	**Until**	**Specified amount**	**Rate**
01 March 2009	To date	R3 500 000	20%

Example of estate duty calculation	
	R
Net value of estate	3 600 000
Less: Deduction	(3 500 000)
Dutiable amount	100 000
Estate duty payable on R100 000 at 20%	20 000
Interest at 6% a year is charged on unpaid estate duty.	

Example of estate duty calculation (death on or after 01 January 2010)	
The whole estate was bequeathed to the spouse.	
	R
Net value of the estate of spouse	7 100 000
Less: Deduction (2 x R3.5m)	(7 000 000)
Dutiable amount	100 000
Estate duty payable on R100 000 at 20%	20 000
Interest at 6% a year is charged on unpaid duty.	

For more information see the guide[29], available on the SARS website.

3.7 Securities transfer tax (STT)

STT is a tax which is payable on the transfer of listed and unlisted securities and applies with effect from 1 July 2008.

A "security" means any –

(a) share in a company;

(b) member's interest in a close corporation; or

(c) right or entitlement to receive any distribution from a company or close corporation.

The tax rate is 0.25% of the taxable amount in respect of any transfer of a security. The taxable amount is usually equal to the consideration payable for the security or in certain cases, it may be the market value or declared value of the security.

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.

[29] Frequently Asked Questions Estate Duty

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

- the South African government or the government of any other country;
- certain public benefit organisations;
- heirs or legatees that acquire securities through an inheritance; or
- if the transaction is regarded as the acquisition of property, that is, subject to transfer duty.

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

3.8 Transfer duty

3.8.1 Introduction

Transfer duty is a tax which is payable on the acquisition of immovable property. It is levied in terms of the Transfer Duty Act No. 40 of 1949 and is based on the consideration paid or payable for the property. In cases where property is acquired for no consideration, or where the consideration is not market related, transfer duty is paid on the fair market value of the property.

Transfer duty must be paid within six months of the date of acquisition of the property in terms of the applicable transaction. Failure to pay the tax in the prescribed period will result in interest being levied at the rate of 10% a year for the period during which any amount of the transfer duty remains unpaid.

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

- the transaction is subject to VAT;
- the transaction is exempt in terms of any other specific exemption under section 9 of the Transfer Duty Act; or
- the purchaser is a natural person and the consideration (or the fair market value of the property) is R500 000 or less.

3.8.2 Transfer duty rates

A special formula is used to calculate transfer duty where a natural person acquires any property consisting of or including an undivided share in any property. The formula[31] affects the calculation of transfer duty for natural persons only.

Provision has also been made to counter the practice of placing residential property in companies, close corporations and discretionary trusts and selling the shares, members' interest or contingent rights instead of the property, thereby avoiding transfer duty. The definition of "property" in the Transfer Duty Act now includes shares, members' interest and contingent rights in residential property in certain circumstances to ensure that the transfer of these assets are also subject to transfer duty.

SARS issues a transfer duty receipt on payment of the tax, or an exemption certificate is issued if the transaction is exempt from transfer duty. The receipt or exemption certificate must be lodged in the Deeds Registry together with the transfer documents to effect transfer of the property into the transferee's name.

[30] External reference guide - Securities transfer tax (STT) FIN-CH-11-G1
[31] See section 2(5) of the Transfer Duty Act, No. 40 of 1949

The documentation for completion and signature for a transfer pursuant to a sale usually consists of Forms TD1 (for signature by the seller), and TD2 (for signature by the purchaser). Only form TD5 is used where the transaction is subject to VAT and exempt from transfer duty. The forms can be downloaded electronically from the SARS website.

From 1 March 2006 to 22 February 2011

a) Natural persons (individuals)

Fair market value or consideration	Rate of transfer duty
Not exceeding R500 000	0% of the amount
Exceeding R500 000 but not R1 million	5% of the amount exceeding R500 000 but does not exceed R 1 000 000
Exceeding R1 000 000	R25 000 plus 8% of the amount exceeding R1 000 000

b) Non-natural persons (for example, juristic persons such as companies, CCs or trusts)

Fair market value or consideration	Rate
On the full purchase consideration or fair market value (whichever is applicable)	8%

From 23 February 2011 to date

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

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

3.9 Importation of goods and payment of customs and excise duties

3.9.1 Introduction

Goods arriving in the RSA may only enter through designated commercial points of entry. These goods must be declared to SARS within the prescribed time periods. The applicable customs duties, if any, must be paid when the goods are entered for home consumption, that is, for use in the Southern African Customs Union comprising of the RSA, Botswana, Lesotho, Namibia and Swaziland. The rate of duty is dependant 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; or
- rebated if the goods meet certain conditions as provided for in Schedule Nos. 3 and 4 of the Customs and Excise Act 91 of 1964; or
- suspended temporarily if the goods are entered for storage in a licensed warehouse.

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

In addition, VAT at 14% is also payable on goods imported and cleared for home consumption unless exempted under Schedule 1 or zero-rated under Schedule 2 to the VAT Act.

3.9.2 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.

3.9.3 Goods imported through designated commercial points

Imported goods can only enter the RSA through designated commercial points, which include –

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

3.9.4 Import declarations

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

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

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

3.9.5 Tariff classification

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

3.9.6 Customs value

Customs value is established in terms of Article VII of the General Agreement on Tariffs and Trade (GATT). Provision is made for six valuation methods. The majority of goods are valued using method 1, which is the actual price paid or payable by the buyer of the goods. The Free on Board (FOB) price forms the basis for the value, allowing for certain deductions (for example, interest charged on extended payment terms) and additions (for example, certain royalties) to be effected.

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

3.9.7 Duties and levies

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

a) Customs duty

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

b) Excise duty

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

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

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

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

3.9.8 Importation of goods

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

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

3.9.9 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 imported goods 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.

3.10 Exportation of goods

3.10.1 Introduction

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

3.10.2 Registration as an exporter

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

3.10.3 Export declarations

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

3.11 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 provides for preferential market access into the RSA (imports) as well as for South African products into other markets (exports). These are:

3.11.1 Bi-lateral Agreements (non-reciprocal)

These include –

- Trade Agreement between the governments of the Republic of South Africa and Southern Rhodesia (Zimbabwe); and
- Trade Agreement between the government of the Republic of South Africa and the government of the Republic of Malawi,

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

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

Goods produced or manufactured in the Republic of Mozambique (Rebate Item 412.25), providing for free or reduced duties subject specific origin requirements.

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

These include –

- SACU – The Southern African Customs Union consists of the RSA, Botswana, Lesotho, Namibia and Swaziland. Its aim is to facilitate the cross-border movement of goods between member countries. It provides for a common external tariff and a common excise tariff to this common customs area.
- TDCA – Trade, Development and Cooperation Agreement between the European Community and its member states on the one part, and the RSA 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.

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

These include –

- AGOA

  Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from the Republic as contemplated in the African Growth and Opportunity Act upon the issue of a visa by Customs.

- EU

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

- Norway

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

- Switzerland

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

- Russia

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

- Turkey

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

Guide to the Approval of International Airports

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

3.12 Environmental levy

3.12.1 Plastic Bags (Schedule No. 1 Part 3A of the Customs and Excise Act)

Since 1 June 2004 an environmental levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as “grocery bags”). Plastic bags used for immediate wrapping or packaging, refuse bags and refuse bin liners are excluded from paying this levy.

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

The above levy is 4 cents per bag at present and is payable on entry for home consumption.

Payment of this levy is additional to any customs or excise duty payable in terms of Schedule No. 1;Parts 1 or 2.

3.12.2 Electricity generated in the Republic from non-renewable resources (Schedule No. 2 Part 3B of the Customs and Excise Act)

Electricity generated at an electricity generation plant is liable to environmental 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 in the Republic is subject to an environmental levy of 2 cents per kW.h. As from 1 April 2011 an environmental levy of 2.5 cents per kWh will be levied.

3.12.3 Electrical filament lamps (Schedule No. 1 Part 3C of the Customs and Excise Act)

The introduction of an environmental levy on electrical filament lamps is to promote energy efficiency and to reduce electricity demand.

Any rate of environmental levy payable shall be additional to any customs or excise duty payable in terms of Schedule No. 1 Parts 1 or 2.

An environmental levy of R3 per lamp is currently levied.

3.12.4 Carbon dioxide (CO_2) vehicle emissions levy

The 2009 Budget announced an *ad valorem* CO_2 emissions levy (a specific tax) on new passenger motor vehicles, effective from 1 September 2010. 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.

From 1 September 2010 to date (Transport of persons)

The levy is payable on new vehicles (that is, motor cars and other motor vehicles principally designed for the transport of persons, including station wagons and racing cars), based on their CO_2 emissions at R75 per g/km for each g/km exceeding 120 g/km, effective from 1 September 2010.

Example: If the certified CO_2 emissions of a new vehicle are 140 g/km the levy payable will be calculated as follows:

(140 g/km – 120 g/km) x R75 = R1 500.

From 1 September 2010 to date (Transport of goods)

The levy is payable on new vehicles (that is, motor vehicles for the transport of goods), based on their CO_2 emissions at R100 per g/km for each g/km exceeding 175 g/km, effective from 1 March 2011.

3.13 Air passenger departure tax

From 1 October 2009 to 30 September 2011 –

- Passengers departing to Botswana, Lesotho, Namibia and Swaziland pay R80 per passenger.
- Passengers departing to other international destinations, R150 per passenger.

From 1 October 2011 to date –

- Passengers departing to Botswana, Lesotho, Namibia and Swaziland pay R100 per passenger.
- Passengers departing to other international destinations, R150 per passenger.

3.14 Skills development levy (SDL)

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

This levy (currently 1%) is used for the funding of education and training of employees. It is calculated as a percentage of a leviable amount, which is approximately equal to the earnings of all the employees. The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.

For more information see the guide[32], available on the SARS website.

3.15 Unemployment insurance fund contributions

The unemployment insurance fund contributions (UIF contributions) insure employees against the loss of earnings due to termination of employment, illness and maternity leave. In terms of the Unemployment Insurance Contributions Act, No 4 of 2002, both the employer and the employee have to make a contribution to the Unemployment Insurance Fund. The contributions made by each of them are calculated as 1% of the gross remuneration (before the deduction of pension fund, retirement fund and qualifying medical aid contributions) paid or payable by the employer to the employee for services rendered.

An employer who is registered for employees' tax and/or the skills development levy (SDL) will be automatically registered for UIF contributions with SARS. (The application form to register for UIF contributions is the same form that is used to register for PAYE and/or SDL.) An employer who is not liable for the payment of employees' tax and/or SDL must register for UIF purposes with the Unemployment Insurance Commissioner at the Department of Labour.

The maximum earnings on which UIF contributions may be calculated have been increased to R149 736 per annum, R12 478 per month or R2 879-53 per week with effect from 1 February 2008.

Employees who earn more than the annual, monthly or weekly maximum amount indicated above are also liable to contribute to the UIF, but contributions payable are limited to an amount calculated on the relevant maximum earnings as reflected above.

Note must be taken of the following where an amount of an employee's contribution which has been deducted by an employer which is a company (other than a listed company) has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs, will be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty which may be imposed in respect of that payment.

Further information, see the guide[33] available on the SARS website.

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

[32] Quick reference guide on SDL
[33] Quick reference guide on UIF

4 Your business and other authorities

4.1 Introduction

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

4.2 Local sphere governments

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

4.3 Unemployment Insurance Commissioner

Those employers who are not liable to register with SARS for PAYE and SDL purposes, but are liable for the payment of UIF contributions must pay such contributions in respect of all its employees to the Unemployment Insurance Commissioner at the Department of Labour. (See **3.16**: under the heading "**Unemployment insurance fund contributions**".)

4.4 South African Reserve Bank – Exchange control

Exchange controls regulating the outflow of capital from South Africa, still exist. For example, investments into the RSA must be reported and prior approval is required if loan capital is invested in South Africa.

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

Individuals older than 18 years and in good standing with their tax affairs may invest a total of R4 million a year outside South Africa. This foreign investment allowance of R4 million is available to residents with a valid bar-coded South African identity document. However, individuals are also able to invest, without restriction, in foreign companies that are inward listed on South African security exchanges. In addition individuals are allowed a total single discretionary allowance of R1 million a year for purposes of travel, donations, gifts and maintenance.

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

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

4.5 Department of Trade and Industry

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

4.6 Broad-Based Black Economic Empowerment Act, No. 53 of 2003

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

4.7 Environmental

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

- National Environmental Management Act, No. 107 of 1998 (management of pollution in general)
- Atmospheric Pollution Prevention Act, No. 45 of 1965 (management of air pollution)
- National Water Act, No. 96 of 1998 (management of water resources)
- Mineral and Petroleum Resources Development Act, No. 28 of 2002 (rehabilitation of mining areas)
- Hazardous Substances Act, No. 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, No. 15 of 2003
- National Nuclear Regulator Act, No. 47 of 1999
- Nuclear Energy Act, No. 46 of 1999
- Occupational Health and Safety Act, No. 85 of 1993
- Tobacco Products Control Act, No. 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, No. 75 of 1997
- Labour Relations Act, No. 66 of 1995
- Employment Equity Act, No. 55 of 1998
- Skills Development Act, No. 97 of 1998
- Compensation for Occupational Injuries and Diseases Act, No. 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, No. 2 of 2000

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

4.11 Regulation of Interception of Communications and Provision of Communication-related Information Act, No. 70 of 2002 (RICA)

The purpose of the 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, No 25 of 2002 (ECTA)

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

4.13 Prevention of Organised Crime Act, No. 121 of 1998 (POCA)

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

4.14 Financial Intelligence Centre Act, No 38 of 2001 (FICA)

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

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

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

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

4.15 Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act)

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

4.16 Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCA Act)

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

4.17 Companies Act, No. 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. Please note that the Company and Intellectual Property Registration Office (CIPRO) and the Office of Companies and Intellectual Property Enforcement (OCIPE) merged on 1 May 2011 to form the Companies and Intellectual Property Commission (CIPC).

The Companies Act, 2008 requires that companies must submit annual returns to 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.cipro.gov.za**.

4.18 Consumer Affairs (Unfair Business Practices) Act, No 71 of 1988

This Act provides for the prohibition or control of certain business practices; and for matters connected therewith.

4.19 National Small Enterprise Act, No 102 of 1996

This Act provides for the establishment of an Advisory Body and the Ntsika Enterprise Promotion Agency; to provide guidelines for organs of state in order to promote small business 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.

4.20 Business Names Act, No. 27 of 1960

This Act provides for the control of business names and related matters such as particulars to be disclosed regarding persons carrying on business, restrictions in respect of business names and prohibiting use of certain business names.

4.21 Lotteries Act, No. 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.

4.22 Promotion of Administrative Justice Act, No. 3 of 2000 (PAJA)

In terms of the Constitution of the RSA, 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 PAJA gives effect to this right.

4.23 Protected Disclosures Act, No. 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.

4.24 National Credit Act, No. 34 of 2005

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

4.25 Consumer Protection Act, No. 68 of 2008

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

5 General

5.1 Record-keeping

You must keep records that will enable you to prepare complete and accurate tax returns if you are involved in a business.

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

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

The records should include –

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

5.2 Importance of accurate records

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

5.2.1 Identify nature of receipt

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

5.2.2 Prevent omission of deductible expenses

Expenses may be overlooked or forgotten when you prepare your tax return, unless you record them at the time they are incurred or paid.

5.2.3 Establish amounts paid out as salaries or wages

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

5.2.4 Explain items reported on your income tax return

You may be asked to explain the items reported if your income tax return is examined by SARS. Adequate and complete records are always supported by sales slips, invoices, receipts, bank deposit slips, cancelled cheques and other documents.

5.3 Availability and retention of records

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

RETENTION PERIODS OF CLOSE CORPORATION RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
1.	Founding statement *(form CK1)*	Indefinite
2.	Amended founding statement *(forms CK2 and CK2A)*	Indefinite
3.	Minute book as well as resolutions passed at meetings	Indefinite
4.	Annual financial statements including: • Annual accounts; and • the report of the accounting officer	15 years
5.	Accounting records, including supporting schedules to accounting records and ancillary accounting records	15 years
6.	The microfilm image ("camera master") of any original record reproduced directly by the camera	Indefinite

RETENTION PERIODS OF COMPANY RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
1.	Certificate of incorporation	Indefinite
2.	Certificate of change of name (if any)	Indefinite
3.	Memorandum and articles of association	Indefinite
4.	Certificate to commence business (if any)	Indefinite
5.	Minute book, *CM25* and *CM26*, as well as resolutions passed at general or class meetings	Indefinite
6.	Proxy forms	3 years
7.	Proxy forms used at court-convened meetings	3 years
8.	Register of allotments – after a person ceased to be a member	15 years
9.	Registration of members	15 years
10.	Index of members	15 years
11.	Registers of mortgages and debentures and fixed assets	15 years
12.	Register of directors' shareholdings	15 years
13.	Register of directors and certain officers	15 years
14.	Directors attendance register	15 years
15.	Branch register	15 years
16.	Annual financial statements including: • Annual accounts • Directors' report • Auditors' report	15 years
17.	Books of account recording information required by the Companies Act, 2008	15 years
18.	Supporting schedules to books of account and ancillary books of account	15 years

5.3.1 Record-keeping as required in terms of sections 73A (income tax purposes) and 73B (capital gains tax purposes) of the IT Act and section 55 of the VAT Act

In terms of the abovementioned sections, a taxpayer is required to keep records such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists, registers, books of accounts, data in electronic form and records relating to the determination of capital gains or capital losses for five years from the date on which the return for that tax year was received by SARS. However, in cases where objections and appeals have been lodged against assessments, it would be advisable to keep all records and data relating to the assessments under objection or appeal until such time that the objection or appeal has been finalised, even if the timeframe for finalisation exceeds five years.

5.4 Appointment of auditor or accounting officer

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

5.5 Representative taxpayer

Any company or close corporation which conducts business or has an office in the RSA must, within one month from the commencement of business operations or acquisition of an office, for the purposes of section 101 of the IT Act, appoint a representative as the public officer of the company or CC. The name of the representative and his or her position in the company or CC must be furnished to the SARS office for the district in which the company or CC has its registered office, for approval. The representative must be a responsible officer of the company or CC (for example, director, manager, senior member, secretary etc) and such position must constantly be kept filled by the company or CC.

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

5.6 Tax clearance certificates

See also **4.4**: **South African Reserve Bank – Exchange control**.

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

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

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

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

The application forms are obtainable from any SARS office and are also available on the SARS website under All Forms/Tax Clearance.

5.7 Non-compliance with legislation

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

5.8 Interest, penalties and additional tax

The various tax or revenue laws also provide for the imposition of interest, penalties and additional tax up to 200% for non-payment of or non-compliance to these laws. A person may also be liable on conviction to a fine or to imprisonment on matters such as non-payment of taxes, failure to complete tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which he or she is not entitled.

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

5.9 Administrative penalties for non-complaint taxpayers

Under section 75B of the IT Act administrative penalties (determined according to the taxpayer's taxable income or assessed loss – "Fixed Amount Penalty Table") may be imposed for taxpayers who fail to comply with their tax obligations, such as the failure to submit tax returns, register as a taxpayer, change address and reply to a question, required under the IT Act.

For more information see also the Regulations[34] available on the SARS website or call the SARS Contact Centre on 0800 00 7277.

5.10 Dispute resolution

5.10.1 Objections

The procedure for taxpayers who are not satisfied with their assessments is to lodge an objection in writing stating fully and in detail the grounds on which the objection is lodged.

The objection must be in the prescribed *ADR 1* form and must be submitted within 30 days after the date of assessment to the SARS office where the taxpayer is registered. This form must be completed as comprehensively as possible, and must include detailed grounds on which the objection is founded. The form is available from a SARS office or call 0800 00 7277. These actions are also available electronically to registered *eFilers*.

[34] Regulations issued under section 75B the IT Act, prescribing administrative penalties in respect of non-compliance (GG 31764 – 31 December 2008)

It must be signed by the taxpayer. In instances where the taxpayer is unable to personally sign the objection, the person signing on behalf of the taxpayer must state in an annexure to the objection –

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

A dispute that concerns an individual who wishes to lodge an objection relating to his or her personal income tax must be lodged following the process above using the Notice of Objection (NOO) form. To obtain a copy of the NOO form the individual must call the SARS Contact Centre, visit the nearest SARS Branch or access the form on his or her eFiling profile. The NOO form for individuals cannot be downloaded from the SARS website.

For more information, see the guide[35] available on the SARS website

5.10.2 Appeals

In the event that an objection is disallowed, wholly or in part, the taxpayer may appeal (by completing form *ADR 2*) to a specially constituted Tax Board or to the Tax Court for hearing appeals. The notice of appeal must be in writing and must be made within 30 days of the notice of the disallowance of the objection.

5.10.3 Rules regarding objections and appeals

Rules for objections and appeals have been formulated under section 107A of the IT Act for assessments issued, objections lodged or appeals noted. These rules make provision for alternative dispute resolution. For more information see the *Guide on Tax Dispute Resolution*, available on the SARS website.

5.10.4 ADR

Alternative Dispute Resolution (ADR) is a form of dispute resolution other than litigation or adjudication through the courts. It is less formal, less cumbersome and less adversarial and is a more cost-effective and speedier process of resolving a dispute with SARS.

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

A dispute that is not resolved may be appealed to the Tax Board or the Tax Court. In essence, a taxpayer has two options available when disputing an assessment:

- Use the Tax Board where the tax in question does not exceed R500 000.
- Use the Tax Court where the tax in question is more than R500 000.

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

ADR applies to taxes such as –

- Income tax (including PAYE and CGT)
- VAT

[35] Guide on Tax Dispute Resolution

- Customs and Excise
- Transfer duty
- Skills development levies
- Unemployment Insurance Fund contributions
- Estate duty
- Donations tax

5.11 Service Monitoring Office (SMO)

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

Contact details

The SMO can be reached through the following channels:

Tel: 0860 12 1216
Fax: 012 431 9695
Postal address: PO Box 1161, HATFIELD, 0028
Business hours: 07h30 to 16h30, Monday to Friday, excluding weekends and public holidays
Email: **ssmo@sars.gov.za**.

6 Conclusion

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

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