Tax Guide

2019-2020

PINTO RUSSELL

INCORPORATED

CONTENTS

INCOME TAX RATES

Natural person or a special trust: 2019/2020

Taxable income (R)		Tax Rate (R)				
0 -	195 850			18%		
195 851 -	305 850	35 253	+	26%	above	195 850
305 851 -	423 300	63 853	+	31%	above	305 850
423 301 -	555 600	100 263	+	36%	above	423 300
555 601 -	708 310	147 891	+	39%	above	555 600
708 311 -	1 500 000	207 448	+	41%	above	708 310
1 500 001 -	and above	532 041	+	45%	above	1 500 000

Natural person or a special trust: 2018/2019

Taxable income (R)		Tax Rate (R)				
0 -	195 850			18%		
195 851 -	305 850	35 253	+	26%	above	195 850
305 851 -	423 300	63 853	+	31%	above	305 850
423 301 -	555 600	100 263	+	36%	above	423 300
555 601 -	708 310	147 891	+	39%	above	555 600
708 311 -	1 500 000	207 448	+	41%	above	708 310
1 500 001 -	and above	532 041	+	45%	above	1 500 000

TAX REBATES

Type of rebate	2019	2020
Primary rebate	14 067	14 220
Secondary rebate: 65 years and older	7 713	7 794
Tertiary rebate: 75 years and older	2 574	2 601

The rebate is reduced proportionally where the period of assessment is less than 12 months.

TAX THRESHOLDS

Type of person	2019	2020
Natural persons below age 65	78 150	79 000
Natural persons 65 - 74 years	121 000	122 300
Natural persons 75 years and older	135 300	136 750

MEDICAL SCHEME FEES TAX CREDITS PER MONTH

Type of person	2019	2020
Main member	310	310
Main member and one dependant	620	620
Additional credit per additional member	209	209

INTEREST RECEIVED

Type of person	2019	2020
Exemption: Person younger than 65	23 800	23 800
Exemption: Person 65 years or older	34 500	34 500

DONATION AND ESTATE DUTY TAX

Type of tax	2019	2020
Donations:		
Exemption: Natural persons	100 000	100 000
Exemption: Entities	10 000	10 000
Donation tax (first R 30 million)	20%	20%
Donation tax (above R 30 million)	25%	25%
Estate duty		
Estate duty (first R 30 million)	20%	20%
Estate duty (above R 30 million)	25%	25%
Estate duty abatement	3 500 000	3 500 000

FRINGE BENEFITS

Type of fringe benefit	2019	2020
Subsistence allowance		
Republic: Only incidental costs	128	134
Republic: Meals and incidental costs	416	435
Outside Republic	Per country	Per country
Car allowance: ceiling on vehicle cost	595 000	595 000
Car allowance: ceiling on debt	595 000	595 000
Bursary to relative of employee		
Remuneration proxy	600 000	600 000
Bursary to relative of employee without disability:		
Grade R to 12	20 000	20 000
NQF 1 – 4	20 000	20 000
NQF 5 – 10	60 000	60 000
Bursary to relative of employee with disability:		
Grade R to 12	30 000	30 000
NQF 1 – 4	30 000	30 000
NQF 5 – 10	90 000	90 000
Employer provided low cost housing/loans		
Employee's remuneration proxy	250 000	250 000
Market value of immovable property	450 000	450 000
Employees' accommodation "B" in formula	78 150	79 000
Awards for bravery and long service	5 000	5 000
Accommodation for expatriate employees	25 000	25 000
Employee loans	3 000	3 000
Travel allowance subject to PAYE	80%	80%
Reimbursive travel allowance		
Rate per kilometre	3.61	3.61
Employer-owned vehicles – Determined value		
No maintenance plan	3.5%	3.5%
Maintenance plan	3.25%	3.25%

CAPITAL GAINS TAX

Description	2019	2020
Annual exclusion: Individuals /special trusts	40 000	40 000
Exclusion on death	300 000	300 000
Exclusion: Disposal of primary residence		
Capital gain or loss	2 000 000	2 000 000
Proceeds on disposal	2 000 000	2 000 000
Disposal: small business person 55 and over		
Exclusion	1 800 000	1 800 000
Market value of small business assets	10 000 000	10 000 000
Inclusion rate:		
Individuals	40%	40%
Companies	80%	80%

VAT

Description	2019	2020
Compulsory registration	1 000 000	1 000 000
Voluntary registration	50 000	50 000
Payment basis of VAT registration	2 500 000	2 500 000
Foreign suppliers of electronic services	50 000	1 000 000
Commercial accommodation	120 000	120 000
Tax invoice		
No tax invoice required	50	50
Abridged tax invoice	5 000	5 000

CORPORATE TAX RATES

Type of entity	2019	2020
Private, public companies and close corporations	28%	28%
Personal service provider company	28%	28%
South African branches of foreign companies	28%	28%
Public Benefit Organisations*	28%	28%
Recreational clubs**	28%	28%
Company carrying on long-term insurance business:		
• Individual policyholder fund	30%	30%
• Company policyholder fund, corporate funds and risk policy funds	28%	28%
Trusts	45%	45%
Small Business Funding Entities	28%	28%
Dividend tax	20%	20%

* Annual trading income exemption is the greater of R 200 000 or 5% of total receipts and accruals.

**Annual trading income exemption is the greater of R 120 000 or 5% of total membership fees.

LEARNERSHIP AGREEMENTS

Type of learnership	2019	2020
Learnership agreement: without disability		
NQF 1 – 6	40 000	40 000
NQF 7 - 10	20 000	20 000
Learnership agreement: with disability		
NQF 1 – 6	60 000	60 000
NQF 7 - 10	50 000	50 000

INTEREST RATES

Prime interest rate

Date	Rate (%)	Date	Rate (%)
18.03.2016	10.50	21.07.2017	10.25
29.03.2018	10.00	23.11.2018	10.25

Official Interest rates

Date	Payable to SARS (percentage)	Payable by SARS (percentage)	Official interest rate (percentage)
01.02.2016			7.75
01.03.2016	9.75	5.75	
01.04.2016			8.00
01.05.2016	10.25	6.25	
01.07.2016	10.50	6.50	
01.08.2017			7.75
01.11.2017	10.25	6.25	
01.04.2018			7.50
01.07.2018	10.00	6.00	
01.12.2018			7.75
01.03.2019	10.25	6.25	

In determining the taxable income derived by a person during a year of assessment any interest to which a person becomes entitled to, that is payable by SARS in terms of a tax Act, is deemed to accrue to the person on the date on which the amount is paid to the person.

WEAR AND TEAR AND CAPITAL ALLOWANCES

General

Fixed assets may be depreciated on the straight-line basis over their expected useful lives. SARS has indicated certain periods which will be acceptable in Interpretation Note 47. These include amongst others (in years):

Aircraft (passenger light)	4	Office equipment (mechanical)	5
Air conditioners (window)	6	Passenger vehicles	5
Carports	5	Personal computers	3
Cellular phones	2	Photocopying equipment	5
Curtains	5	Power tools (hand operated)	5
Computer software	2	Shop fittings	6
Delivery vehicles	4	Solar energy units	5
Fitted carpets	6	Television sets	6
Furniture and fittings	6	Textbooks	3
Generators (portable)	5	Telephone equipment	5
Kitchen equipment	6	Trucks (heavy duty)	3
Motorcycles	4	Workshop equipment	5

If the cost price of an item is less than R 7 000, it can be written off immediately.

Small business corporations

- New or used plant and machinery (other than mining or farming) brought into use for the first time in a process of manufacturing or similar process: 100%
- Other depreciable assets: Normal wear and tear rates, or 50%:30%:20%

Plant and machinery used in a process of manufacturing or similar process

- New and unused, acquired on or after 1 March 2002: 40%:20%:20%:20%;
- New and unused, acquired on or after 1 January 2012 and used for qualifying research and development: 50%:30%:20%;
- Used: 20%.

Industrial buildings

Used wholly or mainly in the process of manufacturing or a similar process from 1 October 1999 or buildings used for research and development purposes on or after 1 October 2012: 5%.

New commercial buildings

Buildings or improvements contracted for on or after 1 April 2007 and construction, erection, or installation commences on or after that date: 5%.

Farming equipment

50%:30%:20%.

Urban Development Zones

- New buildings, extensions and additions: 20% initial allowance and 8% thereafter;
- Refurbishments: 20% straight line;
- Applies until 31 March 2020.

Recoupments

Normal profits and/or capital gains made on involuntary disposals of depreciable assets will be recouped over the period that the replacement asset is depreciated. A contract to replace the depreciable asset must be concluded within 12 months and the asset brought into use within 3 years. Losses on the sale of depreciable business assets can be claimed from ordinary revenue for tax purposes.

RESIDENTS

Residency test

Residents of South Africa are taxable on their worldwide income. To be considered a resident and therefore subject to South African income tax an individual must be either “ordinarily resident” in South Africa (have a permanent home in South Africa) or be “physically present” in the Republic of South Africa.

Physically present requires that an individual be present in South Africa:

- For more than 91 days in total during the current and each of the preceding 5 tax years; and
- For more than 915 days in total during the preceding 5 tax years.

If the individual was outside the Republic of South Africa for a continuous period of 330 full days after ceasing to be physically present in South Africa, then the individual will no longer be a resident from the commencement of the 330-day period.

A person other than a natural person will be a resident if it is incorporated, established or formed in South Africa, or has its place of effective management in South Africa.

The definition of a resident does not include any person who is deemed to be exclusively a resident of another country, for purposes of the application of a double tax agreement, even if the other test apply.

South African interest

Local interest is exempt limited to the following maximum amounts:

Type of person	2019	2020
Natural persons under 65 years	23 800	23 800
Natural persons aged 65 years and older	34 500	34 500

Foreign interest

Foreign interest is taxable.

South African dividends

Natural persons who receive dividends from South African companies are exempt from normal income tax on the dividend income. The dividends are subject to a 20% dividends tax, which is withheld by the company paying the dividend and then paid over to SARS on behalf of the taxpayer. This withholding dividend tax is a final tax.

Please note that some dividends are not exempt e.g. dividends paid by headquarter companies and dividends in respect of certain restricted equity instruments.

Vesting of equity instruments

Section 8C taxes gains and allows a deduction in respect of a loss made in respect of the vesting of any equity instrument which was acquired by a taxpayer by virtue of his employment or office as director. The gain is the amount by which the market value exceeds the amount paid by the taxpayer in respect of the instrument.

Capital distributions on restricted equity instruments

If a return of capital or foreign return of capital (other than a return of capital by way of a distribution of a restricted equity instrument or a dividend or foreign dividend in respect of that restricted equity instrument) is received by or accrues to the taxpayer, the amount of the return of capital is treated as normal income in the taxpayer's hands while the share is still a restricted equity instrument.

Dividends received in respect of employment

Dividends, including the proceeds of a share buy-back in excess of contributed tax capital, received or accrued in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of an office, shall not be exempt from income tax (and therefore taxable at up to 45% rather than at 20%), unless such dividends accrue in respect of a restricted equity instrument as defined in section 8C held by that person or in respect of a share held by that person. Such taxable dividends are included in remuneration for the purposes of withholding employees' tax.

Foreign dividends

A foreign dividend is exempt in the following circumstances:

- Participation exemption where a person holds at least 10% of the total equity shares and voting rights in the company declaring the foreign dividend;
- Where the shareholder is a company and resident in the same country as the other foreign company that paid, or declared the foreign dividend;
- Dividends received from a Controlled Foreign Company (CFC) that have already been taxed in the hands of the taxpayer when the profits were first made;
- A dividend from a foreign share listed on the JSE, and is not a dividend *in specie*;
- A foreign dividend received by or accrued to a company that is a resident in respect of a foreign share listed on the JSE and is a dividend *in specie*.

Any taxable foreign dividend is subject to a maximum effective tax rate of 20%. The exemption is calculated as follows:

- Natural persons, deceased estates, insolvent estates or trusts: 25/45 x dividend;
- Companies: 8/28 x dividend.

The foreign dividend exemption does not apply to any foreign dividend received by or accrued to a person in respect of services rendered, unless the person holds the foreign share, or the foreign share is a restricted equity instrument held by that person.

The exemptions also do not apply if the dividends are paid to a person as an annuity.

A resident is entitled to a foreign tax rebate for any withholding tax paid in respect of a foreign dividend that is included in gross income.

No deduction will be allowed in respect of any expenses incurred in the production of foreign dividends e.g. interest paid on loans to buy foreign shares.

Tax-free investments
Any amount received by or accrued to a natural person or its deceased or insolvent estate, in respect of a tax-free investment, shall be exempt from normal tax. Any capital gain or loss shall also be disregarded. No dividend tax is payable on dividends paid to a natural person in respect of a tax-free investment.

Contributions in respect of tax-free investments is limited to an annual limit of R 33 000 in aggregate during a year of assessment, and a lifetime limit of R 500 000 in aggregate. The contribution limits apply per person contributing, and not per tax free savings account contributed to. The contributions to a tax-free investment must be in the form of cash. Taxpayers may transfer amounts between tax-free investment offerings by different service providers. These transfers will not be considered when determining the annual or lifetime contribution limits.

A punitive penalty will be levied on contributions that exceed the prescribed contribution limits. If during a year of assessment, a person contributes more than R 33 000, an amount equal to 40% of that excess will be deemed to be an amount of normal tax payable in the relevant year of assessment. If any person contributes more than R 500 000 in aggregate, an amount equal to 40% of so much of that excess as has not previously been taken into account shall be deemed to be an amount of normal tax payable in respect of the year of assessment in which that excess is contributed. Any exempt amounts received from a tax-free investment that are reinvested will not be regarded as excess contributions for the 40% penalty.

Bursaries and scholarships
Any *bona fide* scholarship or bursary granted to assist or enable any person to study at a recognised educational or research institution is exempt.

There is no monetary limit for *bona fide* bursaries given to an employee to study. The exemption will not apply unless the employee agrees to reimburse the employer for any scholarship or bursary if the employee fails to complete his or her studies for reasons other than death, ill-health or injury.

If a bursary or scholarship is awarded to a relative of the employee, the exemption will apply only if the employee's remuneration proxy does not exceed R 600 000 during the year of assessment, and the amount of the bursary or scholarship does not exceed:
- R 20 000 for basic education. (Grade R to 12 and NQF 1 to 4);
- R 60 000 for higher education. (NQF 5 to 10).

If the bursary is paid to assist a disabled person who is a member of the employee’s family (and the employee has a duty of care and support in respect of the person with the disability), the thresholds are as follows:

- The remuneration proxy is R 600 000
- R 30 000 for basic education (Grade R to 12 and NQF 1 to 4);
- R 90 000 for higher education (NQF 5 to 10).

Restraint of trade receipts
Restraint of trade receipts are of a capital nature, except for any amount received by or accrued to any natural person, as consideration for any restraint of trade imposed on that person in respect of, or by virtue of employment or the holding of any office.

Foreign trading activities
If a South African resident carries on a business outside the country as a sole proprietor, the taxable income derived from such trade is determined in the same way as it would be in South Africa and must be converted into South African Rands. If the foreign trade results in a loss, such loss may be set off against other foreign trade income but may not be set off against any income from a source in the Republic.

Foreign employment
Any form of remuneration that is received by or accrued to an employee, if it is in respect of services rendered outside the Republic by that employee, for or on behalf of any employer, shall be exempt from normal tax, if the employee was outside the Republic:

- For a period or periods exceeding 183 full days in aggregate during any period of 12 months; and
- For a continuous period exceeding 60 full days during that period of 12 months.

Remuneration includes fringe benefits and benefits under employee share schemes.

Independent contractors may not claim the exemption.

With effect from 1 March 2020 the exemption will only apply to the first R 1 000 000 of remuneration per annum for work done outside South Africa.

Pensions and annuities
Any lump sum, pension or annuity received by or accrued to any resident from a source outside the Republic as consideration for past employment outside the Republic will be exempt, unless it is paid from a South African retirement fund. Any amount transferred to a South African retirement fund from a source outside the Republic is however excluded.

Income protection policies
Any premiums paid by a natural person, to an insurance policy to cover the person against illness, injury, disability, death, or unemployment is not deductible. Any amount received or accrued in respect of these policies will be exempt from tax.

Transfer of assets between spouses
The transferor spouse must disregard any capital gain or capital loss when he/she disposes of an asset to his/her spouse.

The spouse is treated as having acquired the asset on the same date that the transferor spouse acquired it, used it in the same way and incurred expenditure on the asset of the same amount, in the same currency and on the same date. The spouse is also deemed to have received an amount equal to any amount received by or accrued to the transferor in respect of that asset that would have constituted proceeds on disposal had the transferor disposed of it to a person other than the spouse.

In the case of trading stock, livestock or produce, the transferor spouse is treated as having disposed of the asset for an amount that is equal to the amount that was allowed as a deduction for determining the transferor's spouse taxable income, before the inclusion of any taxable capital gain.

The spouse acquiring the trading stock, livestock or produce must be deemed to be one and the same person as the transferor spouse insofar as the date of acquisition, and the date of incurral of any cost or expenditure in respect of that asset, (opening stock plus purchases).

The above does not apply in respect of the disposal of an asset by a person to his/her spouse who is not a resident, unless the asset disposed of is immovable property in South Africa or an interest in immovable property in South Africa.

NON-RESIDENTS

Non-residents are taxed on their income from a source within or deemed to be within South Africa. For individual non-residents, the same tax thresholds would be applicable as for South African residents. A non-resident is only subject to capital gains tax on the disposal of fixed property (or an interest in such property) situated in South Africa.

Business income

Business income is taxed in South Africa if the profits of the business are from a South African source. Most double taxation agreements state that these profits will only be taxable in South Africa if the non-resident has a permanent establishment located in South Africa.

Remuneration and fees

These are taxed in South Africa if the services are rendered in South Africa.

Rental income on fixed property

This is taxed in South Africa if the property is situated in South Africa.

Interest received

A withholding tax is levied at 15% on South African source interest paid to non-resident persons. The interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable. The withholding tax is a final tax.

Interest paid to a non-resident, will be exempt from the withholding tax if the interest is paid by:

- The South African government in the national, provincial or local sphere;
- Any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or
- A headquarter company in respect of it granting financial assistance to which the transfer pricing rules do not apply;
- Any listed debt instruments; or
- An entity as contemplated in section 21(6) of the Financial Markets Act to any foreign person that is a client as defined.

Royalties
A withholding tax is levied, calculated at a rate of 15% on the amount of a royalty that is paid to any foreign person, to the extent that the amount is received or accrued from a source within the Republic.

A royalty is deemed to be paid on the earlier of the date of payment or when it becomes due and payable.

The withholding tax is a final tax.

General rules in respect of withholding taxes on interest and royalties
The person who pays the interest or royalty is responsible for withholding the correct amount of tax and paying it over to SARS.

Persons required to withhold the tax, can be relieved of the withholding liability, if the person receives a declaration of exemption/treaty relief from the foreign person. This declaration must be submitted by the earlier of the date determined by the person paying the interest or royalty or the date of payment.

Any person that withholds tax on the payment of interest or royalties must submit a return and pay the tax to SARS by the last day of the month following the month during which the interest or royalty is paid.

A refund may be claimed by the non-resident from SARS if a withholding tax on interest or royalties was improperly withheld and application is made to SARS within 3 years after payment of the applicable interest or royalties. SARS will refund the tax directly to the non-resident.

If the payment of interest or royalties is denominated in a foreign currency, it must be converted to South African Rands at the spot rate on the date on which the amount was withheld.

A foreign person is exempt from the withholding tax on interest or royalties if that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the interest or royalty is paid, or the debt claim/royalty is effectively connected with a permanent establishment of that foreign person in the Republic, if that foreign person is registered as a taxpayer in the Republic. The reason is that the interest or royalty is subject to normal income tax.

Dividends
All dividends paid to non-residents are subject to a final withholding tax of 20%. The rate of tax may be altered by a double tax agreement.

Foreign entertainers and sportspersons
A final tax of 15% is payable on all amounts paid to a non-resident in respect of any specified activity exercised in South Africa. Any person who is responsible for the organising of a specified activity in the Republic is required to notify the Commissioner within 14 days after the agreement has been concluded that the specified activity is to take place.

Sale of immovable property
A disposal of immovable property situated in the Republic, by a non-resident is subject to capital gains tax.

Non-residents are subject to a withholding tax on the disposal of immovable property in South Africa for a consideration of more than R 2 million.

Unless a directive is provided by the non-resident seller, the following amounts must be withheld by the purchaser of the property from the selling price:

Type of person	Rate
Natural person	7.5%
Company	10%
Trust	15%

The amount withheld by the purchaser must be paid to SARS within 14 days after the date on which that amount was withheld if the purchaser is a resident, or within 28 days if the purchaser is a non-resident.

A late payment is subject to a 10% penalty and interest.

If a seller does not submit a return to SARS within 12 months after the end of the year of assessment, the payment of that amount is deemed to be a self-assessment which is not subject to objection or appeal.

If a non-resident holds 20% or more of the equity shares in a South African resident property company, and 80% or more of the market value of those shares is attributable to South African immovable property held as a capital asset or as trading stock, then the shares held by the non-resident are deemed to be fixed or immovable property in South Africa. If the non-resident sells the shares, then the tax must be withheld from the proceeds of the sale of the shares.

Service fees paid to non-residents

Any arrangement for the provision of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services by a non-resident, or his employee, agent or representative, carried on in the Republic, and where the expenditure incurred or to be incurred in respect of those services exceeds or is anticipated to exceed R 10 million per arrangement, will be a reportable arrangement.

No disclosure is necessary if the service fee is taxed as remuneration in the non-resident’s hands.

ALLOWANCES AND REIMBURSEMENTS

An allowance is an amount of money granted by the employer, to an employee, where the employer is certain that the employee will incur business related expenditure on behalf of the employer, but where the employee is not obliged to prove, or account to the employer for the expenditure.

A reimbursement is a repayment by the employer to the employee for business related expenditure incurred by the employee and is subject to proof of the expenditure by the employee.

Travelling and car allowance

Employees' tax is calculated on 80% of the travel allowance. However, employees' tax may be calculated on 20% of the travel allowance if the employer is satisfied that at least 80% of the use of the vehicle for the year of assessment will be for business purposes.

The 80% does not apply to any travel allowance that is based on actual distance travelled.

Reimbursive travel allowance
Where an allowance or advance is based on the actual distance travelled by the employee for business purposes, no tax is payable on an allowance paid by an employer to an employee up to the rate of 361 (361) cents per kilometre, regardless of the value of the vehicle.

However, this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.

The portion by which the allowance paid by the employer exceeds 361 (361) cents per kilometre will form part of remuneration for employees' tax purposes.

Where a travel allowance is paid in addition to a reimbursive allowance both amounts will be combined on assessment and treated as a single travel allowance.

Subsistence allowance
If an employee is obliged to spend at least one night away from his/her usual place of residence in South Africa on business, a subsistence allowance may be paid by the employer without the amount being included in the employee's taxable income:

- R 134 (R 128) per day for incidental costs only;
- R 435 (R 416) per day for incidental costs and meals.

For travelling outside South Africa, the amount deemed to have been expended is different for each country. Details can be found on the SARS website.

The allowance for incidental costs is to cover expenses such as beverages, private telephone calls, tips and room service.

FRINGE BENEFITS
A fringe benefit refers to payments made to employees (including a partner in a partnership) in a form other than cash. A taxable benefit is deemed to have been granted by the employer to the employee if such benefit is granted as a reward for services rendered or to be rendered.

Acquisition of an asset at less than the actual value
A taxable benefit arises where an employee acquires an asset consisting of any goods, commodity, financial instrument or property of any nature (other than money), either for no consideration or for a consideration that is less than the market value of the asset.

The value to be placed on such asset shall be the market value thereof, at the time the asset is acquired by the employee, less the value of any consideration given by the employee for such asset.

The cost of the asset must be used to determine the value of the benefit where:

- The asset is movable property (other than marketable securities or an asset which the employer had the use of prior to acquiring ownership thereof) and was acquired by the employer to dispose of it to the employee; or
- The asset was held by the employer as trading stock, unless the market value thereof is less than cost, in which case the market value must be used.

No value shall be placed on:

- Fuel or lubricants for use in a motor vehicle provided by the employer;
- Any asset awarded as a long service or bravery award up to R 5 000.

Long service means an initial unbroken period of service of not less than 15 years, or any subsequent unbroken period of service of not less than 10 years.

No value shall be placed on any immovable property acquired by an employee for less than the market value, provided that the employee's remuneration proxy does not exceed R 250 000 in relation to the year of assessment during which the immovable property is acquired, and the market value of the immovable property on the date of acquisition by the employee does not exceed R 450 000. The employee may also not be a connected person in relation to the employer. Loans at preferential interest rates, which are solely for housing, made to employees who satisfy the same remuneration criteria for loans with a value of less than R 450 000, will not be subject to fringe benefits tax.

Right of use of an asset

A taxable benefit arises where an employee has been granted the private or domestic use of any asset free of charge or for a consideration that is less than the determined value of the use.

The value of the taxable benefit is the determined value of the private use or domestic use of the asset, less any consideration given by the employee for its use during that period, and any amount spent by him on its maintenance or repair.

The determined value is:

- The amount of the rental/lease if the asset is hired or leased by the employer; or
- Where the employer owns the asset, 15% per annum on the lesser of the cost, or the market value of the asset at the date of commencement of the period of use by the employee.
- Where the employee is granted the sole right of use of the asset for a major portion of its useful life the value is the cost of the asset to the employer.

The following are excluded:

- Private use that is incidental to the business use;
- Provided as an amenity or for recreational purposes at the place of work, or for the use of employees in general, excluding clothing provided by the employer;
- Asset consists of any equipment or machine and the private use is for a short period and the Commissioner is satisfied that the value of private use is negligible;

- Asset consists of telephone or computer equipment which the employee uses mainly for the purposes of the employer's business;
- Books, literature, recordings or works of art.

Use of company owned motor vehicle
A taxable benefit arises where an employee is granted the right to use the employer's motor vehicle. Private use includes travelling between the employee's place of residence and place of work, or any other travelling done for private or domestic purposes.

Fringe benefit value
- Vehicle not subject to a maintenance plan: 3.5% of determined value;
- Vehicle subject to a maintenance plan: 3.25% of determined value.

For vehicles held under an operating lease concluded at arm’s length, the value is the actual cost to the employer, plus the cost of fuel.

The employer must calculate employees' tax on 80% of the taxable value of the fringe benefit. However, employees' tax need only be withheld on 20% of the fringe benefit where the employer is satisfied that at least 80% of the use of the vehicle for the year of assessment will be for business purposes.

The value of the fringe benefit must be reduced on assessment where accurate records have been kept in respect of distances travelled for business purposes by the ratio that the business mileage bears to the total distance travelled during the year of assessment. The value must further be reduced if the employee bears the full cost of the licence, insurance, or the maintenance of the vehicle. The value of private use must be reduced to the extent of that full cost multiplied by the ratio of private kilometres travelled in relation to total kilometres travelled for the year. If the employee bears the full cost of fuel for private use, the value of private use must be reduced by the private kilometres travelled multiplied by the fuel cost in the travel allowance table.

No reduction in the taxable value shall be made because the vehicle was during any period, for any reason, temporarily not used by the employee for private purposes.

Determined value
The determined value is the retail market value excluding finance charges but inclusive of VAT. This has been determined by the Minister as follows for any year of assessment commencing after 1 March 2018:

<table>
<tr><th></th><th>New/Demo vehicle:</th><th>Pre-owned vehicle:</th></tr>
<tr><td>Manufacturers /importers</td><td rowspan="2">Dealer Billing Price Incl. VAT.</td><td rowspan="2">Cost excluding finance charges and interest but Including VAT.

If at no cost, then market value including repairs and VAT.</td></tr>
<tr><td>Vehicle dealers/ rental companies</td></tr>
<tr><td>Any other person</td><td colspan="2">Price at acquisition including VAT.</td></tr>
</table>

Where an employee has been granted the right of use of a motor vehicle, and the vehicle was acquired by the employer more than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the determined amount, a depreciation allowance of 15% calculated on the reducing balance method for each completed period of 12 months from the date on which the employer first obtained the vehicle to the date on which the employee was first granted the right of use thereof.

Where an employee is given the use of more than one vehicle, and both vehicles are used primarily for business purposes, the value placed on the private use of all vehicles shall be deemed to be the value of the private use of the vehicle carrying the highest value for private use.

Definition of an operating lease:
It is a lease of movable property that is concluded by a lessor in the ordinary course of a business of letting vehicles, excluding a banking, financial services or insurance business, if:
- The vehicle may be hired by members of public directly from the lessor for a period of less than a month;
- The cost of maintaining and repairing the vehicle in consequence of normal wear and tear must be borne by the lessor;
- The risk of destruction or loss of the vehicle is not assumed by the lessee;
- The lessor may claim from the lessee for such loss as arises out of the lessee's failure to take proper care of the vehicle.

No value is placed on the private use of a company owned vehicle if:
- It is available to, and used by all employees as a pool car in general;
- The private use is infrequent, or is merely incidental to the business use;
- The vehicle is not normally kept at or near the residence of the employee after business hours, or
- The nature of the employee's duties requires regular use of the vehicle outside normal working hours, and the employee is not permitted to use the vehicle for private purposes, other than travelling between his/her place of residence and place of work, or the private use is infrequent or incidental to the business use.

Deemed supply for VAT purposes
- Motor vehicle: 0.3% of the determined value (excl. VAT) per month.;
- Other vehicles:0.6% of the determined value (excl. VAT) per month.

Insurance policies
Premiums paid by an employer in respect of insurance policies for the benefit of employees will constitute a taxable fringe benefit in the employees' hands. The value of the taxable benefit is the amount of any contribution or payment made by the employer in respect of a year of assessment, for premiums payable directly or indirectly, for the benefit of an employee or his/her spouse, child, dependant or nominee.

The above does not apply to any premium paid by the employer on a policy that relates to an event arising solely out of, and during employment of the employee.

Medical aid contributions, expenses and credits

The full medical scheme contribution made by the employer is taxed as a fringe benefit in the hands of the employee. The amount is then deemed to be medical scheme contributions made by the employee.

No value shall be placed on the taxable benefit where the contribution is in respect of:

- An employee that retired due to superannuation, ill-health or other infirmity; or
- The dependants of a person after such person's death, if such person was an employee on the date of death; or
- The dependants of a person after such person's death, if such person retired due to superannuation, ill-health or other infirmity.

Medical expenses fall into two categories:

- Contributions to a medical aid scheme; and
- Out-of-pocket medical expenses (qualifying expenses).

Medical scheme fees tax credit

Type of person	2019	2020
Main member	310	310
Main member and one dependant	620	620
Additional credit per additional member	209	209

The medical scheme fees tax credit applies in respect of fees paid by the taxpayer to a registered medical scheme, or a foreign fund which is registered under any similar provisions contained in the laws of another country.

The rebates are only claimable for those months in respect of which contributions are actually paid to a medical scheme.

From 1 March 2018 where more than one person pays fees in respect of a dependant, the credit is the pro rata portion in the same ratio that the fees paid by that person bear to the total amount.

Additional medical expenses tax credit

For taxpayers 65 years and older and for persons with a “disability” (in the immediate family) the additional medical expenses tax credit is:

- 33.3% of the fees paid to a medical scheme as exceeds 3 times the amount of the medical scheme fees tax credit to which that person is entitled; and
- 33.3% of qualifying medical expenses paid by the person.

Thus:

33.3% x [(contributions – 3 x credit) + qualifying expenses)]

For all other natural persons, the additional medical expenses tax credit is 25% of so much of the aggregate of:

- The amount of the fees paid to a medical scheme, as exceeds 4 times the amount of the medical scheme fees tax credit, to which that person is entitled; and
- The amount of qualifying medical expenses paid by the person;

as exceeds 7,5% of the person's taxable income (including the taxable portion of a capital gain but excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit).

Thus:

25% x [(Contributions – 4 x credit) + qualifying expenses] – 7.5% x income

Only where a taxpayer or dependant has a "disability" as defined will he/she qualify for the additional medical expenses tax credit at 33.3%. Where a taxpayer or dependant has a "physical impairment" the expenses incurred will be regarded as "qualifying medical expenses" *.

For PAYE purposes the employer must deduct from employees' tax:
- The medical scheme fees tax credit; and
- Where the employee is 65 years of age or older the additional medical expenses tax credit of 33.3% of the fees paid to a medical scheme as exceeds 3 times the amount of the medical scheme fees tax credit to which that person is entitled.

Qualifying medical expenses may not be taken into account for employees' tax purposes.

Definition of a "dependant"

A "dependant" means a person's spouse or child, and the child of his or her spouse, any other member of a person's immediate family in respect of whom he or she is liable for family care and support (such as parents), or any person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund, at the time the contributions to the medical aid fund or the qualifying medical expenses were paid.

Definition of a "child"

A "child" means a person's child or child of his or her spouse (including an adopted child), who was alive during any portion of the year of assessment, and who was on the last day of the year of assessment:
- Unmarried and was:
  - Not over the age of 18;
  - Not over the age of 21 and was wholly or partially dependent for maintenance upon the taxpayer and has not become liable for the payment of normal tax; or
  - Not over the age of 26 and was wholly or partially dependent for maintenance upon the taxpayer and has not become liable for the payment of normal tax, and was a full-time student at an educational institution of a public character; or
- In the case of any other child was incapacitated by physical or mental infirmity from maintaining himself or herself and was wholly or partially dependent for maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of that year.

Definition of a "disability"

A "disability" means a moderate to severe limitation of a person's ability to function or perform daily activities, because of a physical, sensory, communication, intellectual or mental impairment if the limitation:
- Has lasted longer, or has a prognosis of lasting more than a year; and
- Is diagnosed by a duly registered medical practitioner in accordance with certain criteria prescribed by the Commissioner. The medical practitioner needs to be a specialist in the disability he or she diagnoses.

Form ITR-DD must be completed by a medical practitioner and is valid for 5 years if the disability is of a more permanent nature. In the case of a temporary disability, the form is valid for only one year. *

Meaning of "physical impairment"

The meaning of a "physical impairment" is not defined in the Act, but it is regarded as a disability that is less restraining than a "disability" as defined. It means the restriction on the person's ability to function or perform daily activities, after maximum correction, is less than a "moderate to severe limitation". Maximum correction means appropriate therapy, medication and use of devices. This could include for example bad eyesight, hearing problems, paralysis of a portion of the body, brain dysfunctions such as dyslexia, hyperactivity or lack of concentration. Diabetes and asthma are medical conditions and not physical impairments.

Meaning of "qualifying medical expenses"

Any amounts (other than amounts recoverable by the taxpayer, or his or her spouse) which were paid during the year of assessment to any duly registered:

- Medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist for professional services rendered or medicines supplied to the person or any dependant of the person;
- Nursing home or hospital, or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person;
- Pharmacist for medicines supplied on prescription;
- Expenditure incurred outside the Republic which are substantially similar to qualifying medical services rendered and medicines supplied in South Africa; and
- Expenditure that is prescribed by the Commissioner* (other than expenditure recoverable by a person or his/her spouse) and necessarily incurred and paid by the person, during the year of assessment, in consequence of any physical impairment or disability suffered by the person or any dependant of the person.

* Please refer to the SARS Guide on the determination of medical tax credit allowances for a detailed explanation of disability and the expenses as prescribed by the Minister

Costs relating to medical services

The cash equivalent of the value of the taxable benefit is the amount incurred by the employer during any month, directly or indirectly, in respect of any medical, dental and similar services, hospital services, nursing services or medicines in respect of that employee, his/her spouse, child or other relative or dependants.

No value must be placed on any taxable benefit in respect of the following:

- A medical scheme that is approved by the Registrar of Medical Schemes and is run by an employer for his employees;
- A person who by reason of superannuation, ill-health or other infirmity retired from the employ of that employer, or for the benefit of his dependants;

- The dependants of a person after that person's death, if that person was in the employ of that employer on the date of death;
- The dependants of a person after that person's death, if that person retired by reason of superannuation, ill health or other infirmity;
- A person who during the relevant year of assessment is 65 years or older where the employer incurs qualifying medical expenses;
- Where the services are rendered by the employer to its employees in general at their place of work for the better performance of their duties;
- Any medical benefit where the services are rendered, or the medicines supplied to comply with any law in the Republic.

Residential accommodation

Where the employer provides free or cheap accomodation, the taxable value is determined on the actual cost to the employer or the amount determined according to a formula. In both cases the amount of any rentals paid by the employee will be deducted from the amount calculated.

The formula:

(A - B) x C/100 x D/12 where:

- A = remuneration proxy as determined in relation to the year of assessment; *
- B = R 79 000 (R 78 150) (subject to certain exclusions).
- C = 17, or
- If the accommodation consists of a house, flat or apartment consisting of at least 4 rooms,; then:
    - 18 if unfurnished and power or fuel is supplied by the employer or furnished, and no power or fuel is supplied by the employer;
    - 19 if furnished and power or fuel is supplied by the employer;
- D = the number of completed months during the year of assessment during which the employee was entitled to the accommodation.

*This is remuneration as defined derived by the employee in the previous year of assessment, excluding the residential accommodation benefit.

B in the formula is Nil in the following two situations:

- The employer is a private company and the employee, or his spouse controls the company;
- The employee or his spouse or minor child has a right of option or pre-emption whereby they may become the owner of the accommodation directly or indirectly by virtue of a controlling interest.

Where the employer or associated institution supplies accommodation, obtained in terms of a transaction at arm's length, with a person that is not a connected person in relation to the employer, or associated institution, and the full ownership does not vest in the employer or associated institution, the value to be placed on such accommodation shall be the lower of:

- The amount as per the formula; or
- The amount of the expenditure incurred for accommodation by the employer or associated institution.

No rental value will be placed on the following:

- Supply of accommodation to an employee away from his/her usual place of residence in the Republic for the purposes of performing the duties of employment.

- If an employee's usual place of residence is outside South Africa, the employee will not be taxed on being given the use of residential accommodation in South Africa for a period of up to 2 years from the date of arrival in South Africa. The exemption will not apply if:
  - The employee was present in the Republic for a period exceeding 90 days during the year of assessment immediately preceding the date of arrival; or
  - To the extent that the cash equivalent of the value of the taxable benefit exceeds an amount of R 25 000 multiplied by the number of months during which the housing was provided;
- If an employee's usual place of residence is outside South Africa, the employee will not be taxed on the use of residential accommodation in South Africa if the employee is physically present in South Africa for a period of less than 90 days in that year.

Holiday accommodation

The employee is taxed on the prevailing market rate per day if the property is owned by the employer or rented from an associated entity, or actual rental paid where the employer rented the accommodation and any amount chargeable in respect of meals, refreshments, or any services borne by the employer during which the accommodation was occupied by the employee.

Free or cheap services

Where services are provided to an employee, by his employer or by another person on behalf of the employer, for an amount lower than the actual costs, or at no cost to the employee, the value to be placed on the service is the difference between the actual cost to the employer and the amount paid by the employee for that service. Where the employer's business is to convey passengers by sea or air, then travel to destinations outside South Africa is valued at the lowest full fare less any amount paid by the employee or his relative.

The following services are excluded:

- Travel facilities provided by an employer, who is in the business of conveying passengers, to his employee, his/her spouse or minor child, to travel to any destination in or outside South Africa, but only on a stand-by basis;
- Transport services to convey employees between their home and work. Transport services that are rendered directly by the employer for the provision of exclusive transport services to employees in general between their homes and their place of employment will qualify for the no-value provisions. The provision of, and access to general public transport will not qualify for the no-value provisions.
- Any communication service provided to an employee if the service is used mainly for business purposes, e.g. access to internet or e-mail;
- Services rendered to employees at their place of work for the better performance of their duties;
- Travel facilities granted to a spouse or minor child of an employee, if the employee is stationed more than 250 km away from his/her usual place of residence in the Republic for business purposes, for more than 183 days during the relevant year of assessment.

Low interest or interest free loans

The cash equivalent is the difference between the official rate of interest less the amount of interest (if any) actually incurred by the employee. No value shall be placed on the following benefits:

- A casual loan to an employee if it does not exceed the sum of R 3 000 at any relevant time; or
- The loan to an employee to enable the employee to further his/her own studies;
- A loan to an employee that does not exceed R 450 000 if:
    - The debt was assumed to acquire immovable property;
    - The market value of the property does not exceed R 450 000;
    - The remuneration proxy of the employee does not exceed R 250 000; and
    - The employee is not a connected person in relation to the employer (from 1 March 2019).

Payment of employees' debt or release from debt

A taxable fringe benefit arises when the employer has directly or indirectly paid an amount owing by the employee, to any third party, without holding the employee accountable for such amount, or requiring the employee to reimburse the employer. This includes releasing an employee from an obligation to pay an amount owing by the employee to the employer. The employer is deemed to have released an employee from an obligation to pay a debt if the debt prescribes, unless the prescription was not due to an intention on the part of the employer to confer a benefit on the employee. The taxable value is the amount the employer paid/settled on behalf of the employee, or the amount of debt from which the employee has been released.

No value shall be placed on the following benefits:

- Subscriptions due by the employee to a professional body, if membership of such body is a condition of the employee's employment;
- Insurance premiums indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer.

Uniform allowance

An employer may provide an employee with a uniform, or an allowance to buy such uniform. No value is placed on the fringe benefit, if the employee is required, while on duty, to wear the special uniform, and it is clearly distinguishable from ordinary clothing.

Free or subsidised meals and refreshments

A taxable benefit arises if an employee has been provided with any meal, refreshment or voucher entitling him to any meal or refreshment for free or for a consideration which is lower than the value of the benefit.

No value is placed on the following benefits:

- Provided in a canteen, cafeteria or dining room operated by, or on behalf of the employer, and patronised wholly or mainly by employees;
- Supplied during business hours, extended working hours or on a special occasion;
- Enjoyed by an employee in the course of providing entertainment on behalf of the employer.

Contributions to retirement funds by employer

Where the employer has made any contribution for the benefit of any employee to any pension fund, provident fund or retirement annuity fund, such contributions will be treated as a taxable fringe benefit in the hands of the employee.

The fringe benefit will be taxed as follows:

- Defined contribution fund: Cash value of the contribution;
- Defined benefit fund: Determined through a specific formula.

Employer contributions included as a fringe benefit in the hands of the employee are deemed to have been contributed by the employee.

Share incentive schemes

Any employee or director who derived a gain in respect of rights to acquire equity instruments (including shares, share options, convertible instruments or contractual rights) obtained in terms of a share incentive scheme, is subject to tax on such gain. The taxable gain is based on the difference between the amount paid by the employee to acquire the equity instrument, and the market value on the date of vesting. The vesting date of an unrestricted instrument is the date when the instrument is acquired, whereas for restricted instruments the vesting date is the date when all restrictions ceases. If the instrument is disposed of to an employer or associated institution for less than the market value, the gain is the amount received or accrued minus the consideration paid by the employee. An employer must apply for a directive on the gain made from the vesting of any equity instrument.

Contributions by an employer to bargaining councils

An employer must withhold PAYE from employer contributions to funds administered by the Bargaining Councils in respect of employees who are members of those Bargaining Councils. The cash equivalent is the amount of the premium paid.

The fringe benefit provisions Is not applicable to contribution made to a pension or provident fund.

Employee contributions to the fund administered by the Bargaining Council will not be subject to PAYE as such contributions can only be made from after taxed income.

Any payments made by the funds administered by the Bargaining Councils to their members should be tax free, except to the extent that the pay-out is from a pension or provident fund.

DEDUCTIONS FOR INDIVIDUALS

Retirement fund contributions

Deductible contributions will be limited to the lesser of:

- R 350 000; or
- 27.5% of the greater of:
  - Remuneration, excluding retirement lump sum benefits and severance benefits; or
  - Taxable income including a taxable capital gain but before allowing this deduction and the section 18A donations deduction. It also excludes any retirement lump sum benefits and severance benefits.

- The taxable income of that person before:
  - Allowing this deduction; and
  - The inclusion of any taxable capital gain.

If the employer has contributed to the retirement fund, the employee is deemed to have contributed an amount equal to the value of the fringe benefit.

Contributions more than the annual limits may be rolled over to future years where the amounts will again be deductible together with contributions made in that year, but subject to the limits applicable in that year. If any contributions have not been deducted at retirement, the nominal value will be available to be set off against any lump sum income prior to the tax calculation or will be available on assessment to reduce the tax payable in respect of compulsory annuities.

Employers may take this deduction into account for PAYE purposes, limited to the lesser of R 350 000 or 27.5% of remuneration or taxable income. The capped amount of R 350 000 must be spread over 12 months on a cumulative basis for a portion of the year of assessment that the employee received remuneration from the employer. For monthly paid employees the deduction cannot exceed R 29 167 per month.

Donations
Donations to certain Public Benefit Organisations are deductible, limited to 10% of taxable income. The taxable income must exclude any lump sums from retirement funds and severance benefits but must include the taxable portion of a capital gain. The taxpayer must be in receipt of a qualifying section 18A donations certificate. Donations in excess of the 10% may be carried forward and treated as a donation in the next year. If the taxpayer has no taxable income or has an assessed loss no deduction may be claimed for that year.

Travel expenses
For an individual to claim a deduction, a log book must be maintained to justify business use. A log book must contain at least the date of travel, destinations of travel, reasons for travel and the business kilometres travelled. Accurate records of the opening and closing odometer readings must be maintained.

The following schedule must be used to determine the deductible portion of the allowance (alternatively the actual expenditure may be used):

Deemed expenditure – tax year ending 28 February 2019/ 2020

Value of the vehicle (Inc Vat) (R)	Fixed costs (c)	Fuel (c)	Maintenance (c)
0 - 85 000	28 352	95.7	34.4
85 001 - 170 000	50 631	106.8	43.1
170 001 - 255 000	72 983	116.0	47.5
255 001 - 340 000	92 683	124.8	51.9
340 001 - 425 000	112 443	133.5	60.9
425 001 - 510 000	133 147	153.2	71.6
510 001 - 595 000	153 850	158.4	88.9
595 001 and above	153 850	158.4	88.9

The fixed cost per the table must be divided by the total kilometres travelled during the year of assessment for both private and business purposes. The fixed cost must be reduced proportionately if the vehicle is used for business purposes for less than a full year.

The value of the vehicle is the cost of the vehicle, including VAT but excluding finance charges or interest.

No fuel or maintenance costs may be claimed if the employee has not borne the full cost of fuel or maintenance.

Where the employee retained supporting documentation, the actual expenditure can be claimed on assessment, limited to the value of the allowance. Where the deduction is based on actual expenditure the value of the vehicle is limited to R 595 000. The wear and tear is limited to this value and must be determined over a period of 7 years. Finance charges must also be limited as if the vehicle had a cost of R 595 000.

Self-employed taxpayers must claim motor vehicle expenses based on the actual costs in respect of the particular vehicle over the actual distance covered. It follows that a log book must be maintained to justify the business use.

Home study expenses
A deduction for home study costs will be allowed if:

- The study is regularly and exclusively used for the taxpayer's trade and is specifically equipped for such purpose;
- An employee derives income mainly from commission, which is based on work performance and his/her duties are mainly performed otherwise than in an office provided by the employer; or
- In the case of other employees, their duties are mainly performed in the home study.

Interest, penalties and taxes
The deduction of any tax, interest or penalty imposed by the Commissioner is disallowed. In calculating the taxable income of any person for a year of assessment, any interest that becomes payable by SARS, to a taxpayer is deemed to accrue on the date of actual payment by SARS. If this interest owing by SARS, to a taxpayer, becomes repayable to SARS, the interest may only be deducted from the taxpayer’s taxable income in the year the taxpayer actually repays the interest to SARS.

RETIREMENT BENEFITS

Annuities

All annuities, including capital annuities are taxed in full in the hands of a resident.

On retirement members of pension funds and retirement annuity funds are required to take a third of their retirement benefit as a lump sum and two-thirds will be paid every month as an annuity until they die. Members who do not have a retirement benefit exceeding R 247 500 at retirement will not be required to annuitise. This does not apply to members of a provident fund. Benefits from a provident fund usually take the form of a lump sum only. It is expected that the provisions relating to the annuitisation requirements for provident funds will become effective from 1 March 2021.

Retirement fund lump sum benefits or severance benefits.

Retirement fund lump sum benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on death, retirement or termination of employment due to the redundancy or termination of employer's trade.

Tax on the retirement fund lump sum benefit or a severance benefit is equal to:

- Tax determined by applying the tax table to the aggregate of that lump sum or severance benefit plus all other retirement fund lump sum benefits received from 1 October 2007, and all retirement fund lump sum withdrawal benefits received from 1 March 2009 and all other severance benefits received from 1 March 2011; less
- Tax determined by applying the tax table to the aggregate of all previous retirement fund lump sum benefits received from 1 October 2007 and all retirement fund lump sum withdrawal benefits received from 1 March 2009 and all severance benefits received from 1 March 2011.

Retirement fund lump sum or severance benefit tax table
Year of assessment ending 28 February 2019/2020

Taxable income (R)			Tax payable				
0	-	500 000			0%		
500 001	-	700 000	0	+	18%	above	500 000
700 001	-	1 050 000	36 000	+	27%	above	700 000
1 050 001	-	and above	130 500	+	36%	above	1 050 000

Retirement fund lump sum withdrawal benefits

Retirement fund lump sum withdrawal benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on withdrawal (including amounts assigned to a former spouse in terms of a divorce order).

Tax on a retirement fund lump sum withdrawal benefit is equal to:

- Tax determined by applying the tax table to the aggregate of that lump sum plus all other retirement fund lump sum withdrawal benefits accruing from 1 March 2009 and all retirement fund lump sum received from 1 October 2007 and all severance benefits received from 1 March 2011; less
- Tax determined by applying the tax table to the aggregate of all previous retirement fund lump sum withdrawal benefits received from 1 March 2009 and all retirement fund lump sum benefits received from 1 October 2007 and all severance benefits received from 1 March 2011.

Withdrawal benefit tax table
Year of assessment ending 28 February 2019/2020

Taxable income (R)			Tax payable				
0	-	25 000			0%		
25 001	-	660 000	0	+	18%	above	25 000
660 001	-	990 000	114 300	+	27%	above	660 000
990 001	-	and above	203 400	+	36%	above	990 000

Severance benefits

The definition of a severance benefit includes the following:

- It must be a lump sum received from an employer;
- It must be in respect of the relinquishment, termination, loss,

repudiation, cancellation or variation of the person's office or employment;

- One of the following must apply:
  - The person must be 55 years or older; or
  - The person must be permanently incapable of holding his employment or office due to sickness, accident, injury or incapacity through infirmity of mind or body; or
  - The termination or loss is due to the employer retrenching personnel, because it ceased to carry on trade, or implementing a reduction in personnel in general.

This retrenchment provision will not apply where the person held more than 5% of the issued share capital or members' interest in the employer.

An employer is required to apply for a tax deduction directive. The exemption and tax rates applicable will be determined by SARS.

Members of retirement funds are allowed to postpone 'retirement' by keeping their benefits within their funds past the 'normal retirement age'. Retirees may "elect to retire" at any age of their choice subject to the rules and regulations of each individual fund. From 1 March 2018 employees were allowed to transfer their benefits into a retirement annuity fund on or after reaching normal retirement age, but before retirement date without incurring any tax consequences. With effect from 1 March 2019 this is extended for transfers to pension preservation funds or provident preservation funds.

Withdrawal from retirement funds

A withdrawal from a retirement annuity fund will only be permitted where the member:

- Is a resident who emigrated from the Republic, and the emigration is recognised by the South African Reserve Bank for purposes of exchange control; or
- Departed from the Republic at the expiry of a work visa.

As from 1 March 2019 members of pension preservation funds and provident preservation funds will also be entitled to withdraw their full lump sum benefit when they emigrate from South Africa and such emigration is recognised by the South African Reserve Bank for the purposes of exchange control or upon repatriation on expiry of their work visas.

SMALL BUSINESS CORPORATIONS

A small business corporation is any close corporation, co-operative or private company (as defined in section 1 of the Companies Act), or a personal liability company (as defined in section 8(2)(c) of the Companies Act). This type of company enjoys a graduated tax rate structure as per the following table:

Year of assessment between 1 April 2019 and 31 March 2020

Taxable income (R)			Tax Rate (R)				
0	-	79 000			0%		
79 001	-	365 000			7%	above	79 000
365 001	-	550 000	20 020	+	21%	above	365 000
550 001	-	and above	58 870	+	28%	above	550 000

Year of assessment between 1 April 2018 and 31 March 2019

Taxable income (R)			Tax Rate (R)				
0	-	78 150			0%		
78 151	-	365 000			7%	above	78 150
365 001	-	550 000	20 080	+	21%	above	365 000
550 001	-	and above	58 930	+	28%	above	550 000

The lower rate structure will apply in respect of companies where:

- The entire shareholding is held for the entire year of assessment by natural persons;
- The gross income for the year of assessment does not exceed R 20 million;
- None of the shareholders, at any time during the year of assessment, held any shares or had any interest in any other company, other than a listed company, portfolio in a collective investment scheme, sectional title body corporate, share block companies, friendly society, less than 5% in co-operatives, venture capital company, any company, close corporation, or co-operative, which has not during any year of assessment carried on any trade and has never owned assets of more than R 5 000 in value, or a company or close corporation that has taken steps to liquidate, wind up or deregister;
- Not more than 20% of the company's gross income and all capital gains consists collectively of investment income and income from rendering personal services;
- The entity does not meet the definition of a personal service provider.

Investment income includes an annuity, interest, rental income, royalty or any income of a similar nature, as well as dividends and foreign dividends and any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities and immovable property.

“Personal service” is defined as any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the close corporation, co-operative or company, or by a person who is connected to a person who holds an interest, except where such small business corporation employs 3 or more unconnected full-time employees for core operations.

The full cost of any asset used directly in a process of manufacture, may be deducted in the tax year in which the asset is brought into use. All other depreciable assets may be written off on a 50%:30%:20% basis, or the normal wear and tear rates may be used.

Dividends paid by a small business corporation are subject to dividends withholding tax at 20%.

PERSONAL SERVICE PROVIDERS

A personal service provider is defined as any company (including a close corporation) or trust, where any service rendered on behalf of such company or trust to a client, 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 the client if the

service was rendered by the person directly to the client; or
- Where the duties must be performed mainly at the premises of the client and is subject to the control or supervision of the client; or
- Where more than 80% of the income during the year of assessment from services rendered, consist of amounts received directly or indirectly from any one client or any associated institution in relation to the client.

A company or a trust will not be regarded as a personal service provider where such company or trust, throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of the company or trust, other than any employee who is a shareholder in a company or a settlor or beneficiary of the trust, or is a connected person in relation to such person.

The personal service provider is taxed as follows:
- The remuneration payable to a personal service provider is subject to employees' tax;
- Personal service providers can claim amounts paid to any employee for services rendered, which will be taken into account in the determination of the taxable income of the employee, legal expenses, bad debts and contributions to pension, provident and benefit funds, refunds of remuneration, refunds of restraint of trade payments and any expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade;
- The income of a personal service provider company will be taxed at a rate of 28%, and any declaration of a dividend will be subject to dividend tax in the case of a company;
- Remuneration paid to a trust is taxed at 45%;
- The entity may apply to SARS for a tax directive for a lower rate of tax.

No employees' tax is required to be withheld from payment if the personal service provider has, in respect of a year of assessment, provided an affidavit or solemn declaration that no more than 80% of the income was received from one client, and that affidavit or declaration is relied on in good faith.

Personal service providers cannot qualify as a micro business.

MICRO BUSINESSES

The simplified tax system essentially consists of a turnover tax as a substitute for income tax, CGT and dividends tax. The turnover tax is optional, meaning that a micro business still has the option to use the current tax system. Natural persons, companies, and close corporations can qualify as micro businesses, provided their "qualifying turnover" for a year of assessment does not exceed R 1 million. A trust cannot qualify as a micro business.

Qualifying turnover

Qualifying turnover is the total receipts (not accruals) from carrying on business activities, excluding any amounts of a capital nature and amounts received from a small business funding entity or a government grant that is exempt.

Exclusions

- If any of the shareholders have an interest in the equity of any other company, other than a share or interest in listed companies, portfolios in collective investment schemes, a body corporate, a share block company, venture capital companies, less than 5% interest in co-operatives and savings co-operative banks, as well as interests in friendly societies. This disqualification does not apply to the holding of shares by shareholders in the equity of another company, if the other company has not during any year of assessment carried on any trade and has not owned assets of which the total market value exceeds R 5 000 and a company which has taken steps to liquidate, wind up or deregister;
- If more than 20% of a natural person's income during the year of assessment consists of income from the rendering of a professional service*;
- If more than 20% of a company's receipts during the year of assessment consists of investment income** and the rendering of a professional service;
- A personal service provider or labour broker without an exemption certificate;
- If the total of receipts from the disposal of immovable property and other capital assets used mainly for business purposes exceeds R 1.5 million over a period of 3 years (current year and the last 2 years);
- If any of the shareholders of a company is not a natural person;
- If the year of assessment of a company or close corporation does not end on the last day of February;
- Tax exempt Public Benefit Organisations or Recreational clubs;
- An association approved by the Commissioner in terms of section 30B; and
- A small business funding entity.

* “Professional service” means a service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science.

** Investment income: any income in the form of annuities, dividends, foreign dividends, interest, rental derived in respect of immovable property, royalties, or income of a similar nature and any proceeds derived from the disposal of financial instruments

Tax rates
Year of assessment ending on 28 February 2019/2020

Taxable turnover (R)			Tax Rate (R)				
0	-	335 000			0%		
335 001	-	500 000			1%	above	335 000
500 001	-	750 000	1 650	+	2%	above	500 000
750 001	-	and above	6 650	+	3%	above	750 000

Taxable turnover

- Revenue amounts received (cash basis) during the year of assessment from carrying on business activities in the Republic;
- 50% of all receipts of a capital nature from the sale of immovable property, and any other asset used mainly for business purposes

(excluding trading stock and financial instruments);

- For companies and close corporations: 100% of the investment income (excluding dividends and foreign dividends);
- Less: any amount refunded to any person in respect of goods and services supplied during that year of assessment, or any previous year of assessment.

Excluded from the taxable turnover

- For natural persons: Investment income such as dividends, royalties, rental, annuities, interest, proceeds from trading in financial instruments, etc.;
- Any exempt government grants or receipts from a small business funding entity.
- Any amount received where the amount accrued to it prior to registration as a micro business and the amount was subject to normal income tax;
- Any amount received from any person by way of a refund in respect of goods or services supplied by that person to the registered micro business.

Dividends tax

The first R 200 000 dividends paid during the year of assessment is exempt from dividends tax.

Payment of tax

- Within the first 6 months (by 31 August): Estimate taxable turnover for the year and pay tax on half of the taxable turnover. The estimate cannot be less than the taxable turnover for the previous year of assessment unless the Commissioner accepts a lower estimate;
- By the end of the year (by 28 or 29 February): Estimate taxable turnover and calculate the tax and pay this tax less the amount already paid at the end of the first 6 months of the tax year.

If the year-end estimate is less than 80% of the actual taxable turnover for the year, the penalty is 20% of the difference between the tax payable on 80% of taxable turnover and the tax actually paid. Interest is payable on late payments at the prescribed rate.

Registration

A micro business that opts to register for the turnover tax must apply to do so before the beginning of a year of assessment, or within 2 months from the date of commencement of business.

Deregistration

A registered micro business may elect to be deregistered before the beginning of a year of assessment, or during a year of assessment. If it is voluntarily deregistered during a year of assessment the deregistration is effective from the beginning of that year of assessment. A business that is deregistered may not again be registered as a micro business. A registered micro business must notify the Commissioner within 21 days from the date on which the qualifying turnover for a year of assessment exceeds R 1 million, or if there are reasonable grounds for believing that the qualifying turnover will exceed that amount. The micro business will then be deregistered with effect from the beginning of the month following the month during which the Commissioner received such notification.

If the increase in the qualifying turnover to an amount greater than R 1 million is of a nominal and temporary nature, the person must apply to the Commissioner for a decision whether the person must remain a registered micro business or not.

With effect from the beginning of the years of assessment commencing 1 March 2018 if a micro business ceases to be a registered micro business due to **exceeding the qualifying turnover of R 1 million** during the year of assessment, and the micro business has to pay normal tax on taxable income, the micro business will be exempt from the understatement penalties arising solely as result of this deregistration, if the understatement penalties would have been payable under the Fourth Schedule e.g. provisional tax penalties.

VAT registration
A micro business can register for VAT as a category D vendor (6-month VAT period ending on the last day of February and August).

Record keeping
The following records must be retained by a micro business during a year of assessment:
- Amounts received;
- Dividends declared;
- Each asset with a cost price of more than R 10 000; and
- Each liability that exceeds R 10 000.

TRUSTS
Trusts are taxed at 45% except for a special trust. Trusts do not qualify for the interest exemption or personal rebates. A special trust means a trust created solely for the benefit of one or more persons with a disability as defined, where such disability incapacitates the person or persons from earning sufficient income for their maintenance or managing their own financial affairs. These special trusts are taxed at the rates applicable to natural persons, but do not qualify for rebates.

The year of assessment of all trusts ends on the last day of February each year.

Interest free or low interest loans
Section 7C applies to any loan, advance or credit provided directly or indirectly to the trust by any natural person who is a connected person in relation to the trust.

It also applies where a company makes a loan to a trust at the instance of a natural person who is a connected person to the company by virtue of shareholding or voting rights in the company, i.e. a company in which that natural person, either individually or together with a connected person or persons, holds an interest of at least 20%.

Section 7C also applies to any loan, advance or credit made to a company if at least 20% of the equity shares in the company are held, directly or indirectly, or the voting rights in that company can be exercised by the trust, whether alone or together with any person who is a beneficiary of the trust or the spouse of a beneficiary or any person related to the beneficiary or the spouse within the second degree of consanguinity.

If a loan is made to the trust or company free of interest or at a rate lower than the official rate of interest, an amount equal to the difference between the interest charged and the official interest rate will be treated as a donation made to the trust or company by the natural person.

The interest forgone by the lender or holder of the loan will be treated as an ongoing and annual donation made to the trust or company on the last day of the trust's year of assessment. This donation will be subject to donations tax of 20%.

The donations tax must be paid by the 31st of March of each year that the loan is outstanding. The annual R 100 000 donation tax exemption is available to a natural person making the donation if it has not already been utilised for other donations.

If the loan is provided to a trust or company, by a company, at the instance of more than one person connected to the company, then the donation is deemed to be made by the persons in the ratio of their equity shares or votes in the company.

An amount that is vested irrevocably by a trustee in a trust beneficiary and that is used or administered for the benefit of the beneficiary without distributing or paying it to the beneficiary will not qualify as a loan or credit provided by that beneficiary to that trust if:

- The vested amount may in terms of the trust deed governing that trust not be distributed to the beneficiary, e.g. before that beneficiary reaches a specific age; or
- That trustee has the sole discretion in terms of that trust deed regarding the timing of and the extent of any distribution to that beneficiary of such vested amount.

An amount vested by a trust in a trust beneficiary that is not distributed to that beneficiary will qualify as a loan or credit provided by the beneficiary to the trust if that non-distribution results from an election exercised by the beneficiary, or a request by the beneficiary that the amount must not be distributed or paid over, e.g. if the beneficiary has reached the age at which a vested amount must be paid over or distributed to him or her and:

- The trustee accedes to a request by that beneficiary that this not be done; or
- The beneficiary enters into an arrangement with the trustee in terms of which the amount may be retained in the trust.

Transfer of a loan

Where a person acquires a loan to a trust or a company from another person, and the person is connected to the trust or the previous lender, the person will be treated as having provided a loan, advance or credit to the trust or company on the date on which the person acquired the loan that is equal to the amount of the loan acquired.

If the person was not a connected person to the trust or the previous lender on the date that the person acquired the loan, then the person will be treated as having provided a loan, advance or credit to the trust or company on the date on which the person became a connected person in relation to that trust or person.

Denial of tax deduction or losses

No deduction, loss, allowance or capital loss may be claimed in respect of a disposal, reduction or waiver, or the failure, wholly or partly, of a claim for the payment. This is not the case for losses on loans in respect of which interest was charged at the official rate or higher.

Other exclusions

- Where the trust is an approved Public Benefit Organisation or a small business funding entity;
- Loans to a trust by reason of, or in return for, a vested right the person has in the receipts and accruals and assets of the trust (vested trusts);
- Loans to special trusts that are created solely for the benefit of minors with a disability as defined in paragraph (a) of the definition of "special trust" in section 1 of the Act;
- Where the trust used the loan, advance or credit wholly or partly to fund the acquisition of a residence that is used by the person or their spouse as their primary residence throughout the year of assessment, to the extent to which that loan, advance or credit was used to fund the acquisition;
- Where the loan, advance or credit constitutes an affected transaction relating to transfer pricing;
- A loan provided to a trust in terms of a Sharia compliant financing arrangement;
- The loan, advance or credit is subject to the provisions of section 64E (4) (deemed dividend).

Exemption for employee incentive schemes

A specific exclusion for employee incentive schemes exists subject to certain requirements:

- The trust must be created solely for purposes of giving effect to an employee share incentive scheme in terms of which the loan, advance or credit was provided by a company to the trust for purposes of funding the acquisition of shares in the company or in any other company forming part of the same group of companies;
- Shares may only be offered by the trust to a full-time employee of a company or someone holding the office of director;
- Connected persons in relation to a company or any other company forming part of the same group of companies (i.e. a person that holds at least a 20% interest either individually or collectively with connected persons) may not participate in the scheme.

BODIES CORPORATE

Levies received by a sectional title body corporate, a share block company, or other association of persons, formed solely for purposes of managing the collective interest common to all its members, including the collection of levies and administration of the expenditure, in respect of the common property, are exempt from income tax. In addition, all other receipts or accruals are exempt up to a maximum of R 50 000 per annum. Income more than this exemption is subject to tax at 28%.

PUBLIC BENEFIT ORGANISATIONS

The Receipts and accruals of Public Benefit Organisations approved by the Commissioner are exempt to the extent that it is not from:

- Business undertakings or trading activities; or
- Certain integral, occasional, or approved business or trading activities.

The tax-free portion of the trading income is the greater of 5% of total receipts and accruals or R 200 000 per annum. The taxable portion is taxed at 28%.

An approved tax-exempt Public Benefit Organisation is not liable for provisional tax.

RECREATIONAL CLUBS

The receipts and accrual of recreational clubs are exempt if derived from:

- Membership or subscription fees paid by members;
- Receipts from any business undertaking or trading activity that are integral and directly related to the provision of social or recreational amenities for the members if carried out on a cost recovery basis and does not result in unfair competition in relation to taxable entities.
- Fund raising activities of an occasional nature and undertaken substantially with assistance on a voluntary basis;
- Any other source to the extent that they do not exceed the greater of 5% of total membership fees and subscriptions for the year of assessment or R 120 000.

The taxable portion is taxed at 28%.

EMPLOYEES' TAX

Employees' tax is a withholding tax which is deducted from an employee's remuneration by the employer. The employee's tax must be paid to SARS within 7 days after the end of the month. Should the 7th day be a weekend or a holiday, then the employees' tax must be paid by the last business day before the 7th. Any agreement between an employer and an employee where the employer undertakes not to withhold employees' tax is void.

Failure to withhold or pay over employees' tax

If the employer does not withhold the tax from the employee's remuneration or does withhold it but does not pay it to SARS, the employer becomes personally liable for the tax to SARS.

If SARS is satisfied that the failure to withhold tax was not due to an intent to postpone payment or to evade tax and there is a reasonable prospect of recovering the tax from the employee, SARS can absolve the employer from this liability. An employer who has not been absolved shall have a right of recovery against the employee. Until the employee has repaid the tax to the employer, he/she will not be entitled to receive a tax certificate.

The tax not withheld which the employer is liable to pay is deemed to be a penalty, therefore the employer will not be able to claim the amount as a deduction.

Penalties

If the employer pays the tax late, SARS may impose a late payment penalty of 10%. If the employer fails to pay the tax or pays the incorrect amount, SARS can also impose an understatement penalty. This penalty can range from 10% to 200% depending on the circumstances.

REMUNERATION

Remuneration includes all payments and amounts, in cash or otherwise, whether or not for services rendered. The following are included:

- Annuities and living annuities;
- Salary and wages, leave pay, bonuses, gratuities, commissions, fees, overtime pay, emoluments, other amounts paid for services rendered;
- Allowances and advances (excluding travel allowances and subsistence allowances);
- 50% of allowances paid to a holder of public office;
- 80% of any travel allowance, reduced to 20% if the employer is satisfied that at least 80% of the distance travelled was for business purposes;
- 100% of any travel allowance that is based on actual distance travelled, to the extent that the allowance exceeds R 3.61 (R 3.61) per kilometre;
- 80% of the amount of the taxable benefit from the use of an employer-owned vehicle reduced to 20% if the employer is satisfied that at least 80% of the distance travelled was for business purposes;
- Pensions, superannuation and allowances;
- Restraint of trade receipts;
- Amounts paid for variation of office;
- Retirement lump sums received from an employer;
- Fringe benefits;
- Any gain made from the disposal of any qualifying equity share in terms of a Broad-Based Employee Share Plan;
- Any gain determined in terms of the vesting of equity instruments in the hands of directors and employees;
- Dividends received from certain restricted equity instruments.

EMPLOYEES' TAX ON EMPLOYEE SHARE SCHEMES

Remuneration includes any gain made as a result of the vesting of an equity instrument in the hand of an employee or any taxable dividends in respect of an employee share scheme.

The person from whom the equity instrument, that gave rise to the gain was acquired, is deemed to be the person who pays the gain or dividend, therefore the person is liable to deduct or withhold employees' tax.

If an associated institution is unable to deduct the full amount of employees' tax due on the gain made because it exceeds the amount from which the deduction is to be made, then the associated institution and the employer will be required to withhold from remuneration an aggregate amount equal to the employees' tax payable on that gain. The employer and the associated institution will be jointly liable for the employees' tax.

Before deducting withholding tax, the employer must ascertain from SARS the amount to be deducted.

If the employer is unable to deduct the full amount because it exceeds the amount payable to the employee, the employer must notify SARS.

If the employer or the person liable for employees' tax are not parties to the gain that gives rise to the employees' tax, the employee must advise them of the transaction and the amount of the gain. Should the employee fail to inform the employer of the gain, the employee shall be guilty of an offence and liable to a fine not exceeding R 2 000.

DIVIDEND TAX

Definition of a dividend

For the purpose of dividends tax, a dividend is defined as any dividend or foreign dividend that is:

- Paid by a company that is a resident; or
- Paid by a foreign company:
  - If the share in respect of which that foreign dividend is paid is a listed share; and
  - To the extent that the foreign dividend does not consist of a distribution of an asset *in specie*.

Levy of tax

Dividends tax is levied at a rate of 20% of the amount of any dividend paid by any company other than a headquarter company.

Timing of dividend payments

The deemed date of payment is the earlier of the date on which the dividend is paid or becomes payable by the company that declared the dividend. For listed shares a dividend is deemed to be paid on the date it is actually paid.

Liability for the dividend tax

Although it is a tax that must be paid by the shareholder, it is withheld by the company, which then pays the shareholder the net amount. Where the dividend consists of a distribution of an asset *in specie*, the company that declares and pays a dividend is liable for the dividends tax in respect of that dividend.

It is the responsibility of the shareholder to notify the company, by means of a written declaration of the fact, that it is exempt from the withholding tax on dividends (DTD(EX)), or when a reduced rate is applicable (DTD(RR)). This is not applicable if the shareholder is part of the same group of companies as the company paying the dividend, or the dividend is paid to a regulated intermediary.

If a dividend received would have been exempt from dividend tax, but the recipient of the dividend acquired the right to the dividend by way of a cession and the dividend was either announced or declared before this acquisition, the person that ceded the right is deemed to be the beneficial owner of the dividend.

Payment of dividend tax

Withholding tax on dividends is payable to SARS by the last day of the month following the month when the company paid the dividend.

Interest becomes payable on unpaid dividends tax at the prescribed rate from the end of the payment period. There are no late payment penalties.

Loans by company

Where an amount is paid in respect of a loan or advance provided by the company to a natural resident person, who is a connected person in relation to that company, or to someone who is connected to this person, the company is deemed to have paid a dividend, if the loan or advance is provided by virtue of any share held in that company.

The amount of the dividend is the market related interest (official rate of interest) in respect of that loan or advance, less the amount of interest that was paid on the loan or advance, for the period that the loan was outstanding during the year of assessment.

The dividend is deemed to have been paid on the last day of the year of assessment during which the loan or advance is provided by the company.

The dividend must be treated as a distribution *in specie*. This means that the company is liable in its own name for the dividends tax. It will however not be treated as a dividend *in specie* if the loan was subject to the deemed dividend provisions under the STC regime.

Distribution of an asset *in specie*

If a company distributes an asset *in specie*, the amount of the dividend is the market value of the asset on the date that the dividend is deemed to be paid. For listed financial instruments this value would be the price quoted on the exchange at the close of business on the day before the date the dividend is paid. Tax on dividends *in specie* will remain the liability of the company declaring the dividend.

Exemptions

Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend *in specie* if the beneficial owner is:

- A company which is a resident;
- The government of the Republic in the national, provincial or local sphere or a municipality;
- An approved Public Benefit Organisation (PBOs);
- A closure rehabilitation trust;
- Institutions, boards or bodies established under law and exempt from tax in terms of section 10(1) (cA);
- A pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity or benefit fund;
- A person contemplated in section 10(1)(t) of the Act (these include, amongst others, CSIR, SANRAL, DBSA);
- A small business funding entity;
- A holder of shares in a registered micro business, paying that dividend, to the extent that the aggregate of dividends paid to all holders of shares during the year of assessment, does not exceed the amount of R 200 000;
- A non-resident and the dividend is paid by a non-resident company which is listed on the JSE;
- A portfolio of a collective investment scheme in securities;
- Any person to the extent that the dividend constitutes income of that person, or was subject to STC;
- Dividends paid by a REIT (Real Estate Investment Trust) or a controlled property company received or accrued before 1 January 2014 (insofar as it does not consist of a dividend *in specie*);
- Any fidelity or indemnity fund; or
- A natural person or deceased estate or insolvent estate of that person in respect of a dividend paid in respect of a tax-free investment.

Refunds

Where the required declaration was not submitted to the company by the relevant date and is then submitted to the company within 3 years of the date of payment of the dividend, the company must refund the dividend tax to the recipient of the dividend. The declaring company must refund the excess out of any dividends tax withheld by it within 1 year of the date of the submission of the late declaration. If the dividend tax withheld is insufficient to cover the full refund, then the company must recover the excess from SARS, which must be claimed within 4 years of the date of payment of the dividend.

If dividends tax is paid by a company in respect of a dividend that consists of a distribution of an asset *in specie*, as a result of the company being unable to obtain the declaration and written undertaking by the date the dividend is paid, and both the declaration and the written undertaking are submitted to the company, within 3 years after the payment of the tax, SARS must refund the company, if claimed from SARS within 3 years of the date of payment of the tax.

Submissions of dividends tax returns
Dividends tax declarations can be submitted manually or on e-filing. Returns must be submitted by a company when declaring a dividend but not when receiving a dividend.

VALUE-ADDED TAX (VAT)

The VAT system is a self-assessment system.

Output tax
From 1 April 2018 output tax is levied at a rate of 15% on the supply of goods and services, in the Republic, by a person registered as a vendor.

Input tax
Input tax is the VAT paid by the vendor on supplies of goods and services made to the vendor by other vendors and in respect of which the vendor is entitled to claim it back from SARS. It also includes VAT paid on the import of goods. It is also the notional input (15/115) of the cost of second-hand goods acquired from a non-vendor. To claim input tax the goods or services must be used wholly or partly, for the purposes of consumption or supplied in the course of making taxable supplies.

Submission of VAT returns
Electronic VAT returns must be submitted by the last business day of the month after the end of the tax period. Manual VAT returns must be submitted by the 25th day of the month following the end of the tax period. If the submission day falls on a weekend or a public holiday, the return must be submitted on the last business day before the weekend or public holiday.

Compulsory registration
If a person carries on an enterprise in the Republic (or partly in the Republic), it is obliged to register as a vendor if the value of taxable supplies at the end of any 12-month period has exceeded R1 million, or at the commencement of any month where the total value of the taxable supplies, in terms of a written contractual commitment will exceed R 1 million within the next 12 months.

Voluntary registration
A person may voluntarily register for VAT where the person has already made taxable supplies exceeding R 50 000 in a 12-month period, or has not yet exceeded the R 50 000 threshold, but reasonably expects that the R 50 000 threshold will be exceeded within 12 months from the date of registration. Such persons will be registered to account for VAT on the payment basis. Once the value of taxable supplies has exceeded

R 50 000, VAT must be accounted for on the invoice basis unless the person qualifies to continue to account for VAT on the payment basis.

Registration of an enterprise supplying commercial accommodation
Commercial accommodation means lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment, which is regularly or systematically supplied, but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof. The definition also includes the lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons or lodging in a hospice.

Where a person supplies commercial accommodation, it will be deemed not to be an enterprise if the total value of the taxable supplies made by the person in the preceding period of 12 months, or the reasonable projected value of the taxable supplies in a period of 12 months will not exceed R 120 000.

Domestic goods and services include cleaning and maintenance, electricity, gas, air conditioning or heating, a telephone, television set, radio or other similar article, furniture and other fittings, meals, laundry, nursing services or water.

Where domestic goods and services are supplied at an all-inclusive charge for an unbroken period exceeding 28 days, the value of the supply is 60% of the full value.

Registration of E-Commerce suppliers
Electronic services mean any services supplied by means of an electronic agent, electronic communication or the internet for any consideration, other than:
- Intra group transactions if the local company is a wholly-owned subsidiary of a foreign entity;
- Telecommunication services;
- Educational services provided by an entity regulated in a foreign country.

Foreign suppliers of electronic services must register as a vendor where the total value of the services supplied in South Africa exceeds R 1 000 000 (R 50 000) in any consecutive 12-month period. These vendors will be allowed to register for VAT on the payment basis.

The registration requirements apply to any supply of electronic services carried on by a person in an export country where at least two of the following circumstances are present:
- The recipient of the electronic services is a resident of the Republic; or
- Any payment for the electronic services originates from a bank registered in South Africa; or
- The recipient of the electronic services has a business address, residential address or postal address in the Republic.

From 1 April 2019 where electronic services are supplied by an intermediary, who is acting on behalf of a principal and:
- The intermediary is a vendor;

- The principal is not a resident of the Republic and is not a registered vendor; and
- The electronic services are supplied by the principal to a person in the Republic,

the supply shall be deemed to be made by the intermediary and not the principal.

Registration requirements of non-executive directors
Non-executive directors carry on an "enterprise" and is therefore required to register if the compulsory registration threshold of R1 million in total value of taxable supplies is exceeded or will exceed that amount in terms of a contractual obligation in writing in any consecutive period of 12 months.

Registration requirements for separate branches or divisions
Branches or divisions of one person can be registered separately for VAT purposes. The following requirements must be met:

- The vendor must apply to SARS in writing for separate registration;
- Each separate enterprise must maintain an independent system of accounting;
- Each separate enterprise must be separately identifiable by reference to the nature of the activities carried on and their location.

Invoice basis versus payment basis
Normally VAT must be accounted for on the invoice basis by a vendor. However, where the taxable supplies in a 12-month period is likely to be less than R 2.5 million, the vendor can apply to be registered on the payment basis provided the vendor is a natural person or an unincorporated body of persons whose members are natural persons.

Any vendor who accounts for VAT on the payment basis shall, in respect of any supply made of goods (other than fixed property) or services of R 100 000 or more, account for VAT on the invoice basis. This rule does not apply to a public authority or municipality.

VAT periods

Category A	Turnover less than R 30 million: 2 monthly: January, March, May, July, September, November
Category B	Turnover less than R 30 million: 2 monthly: February, April, June, August, October, December
Category C	Turnover more than R 30 million: monthly
Category D	Farming enterprise with a turnover less than R 1.5 million and a micro business: 6 months (February and August)
Category E	Vendors which receives only rental income, administration or management fees from connected persons, who are all registered vendors: 12-month period ending on the last day of the year of assessment. Tax invoices must only be issued once a year.

Supplies fall into three categories
Standard-rated supplies are supplies of goods and services, importation of goods, and importation of some services which are taxed at the rate of 15%. A vendor making such supplies is entitled to recover all related input tax.
Exempt supplies are not subject to VAT. Examples of exempt supplies are: exchange of currency, non-fee related financial services including the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency, educational services provided by an approved educational institution, residential rental accommodation, and public

road and rail transport. Vendors who supply these services may not recover any related input tax.

Zero-rated supplies are subject to VAT, but at a zero-rate. The following are examples of supplies that are zero-rated: brown bread and whole wheat brown bread (rye or low GI bread is not to be zero rated),cake wheat flower, white bread wheat flower, maize meal, samp, mielie rice, dried mielies, dried beans, lentils, pilchards/ sardinella in tins, milk powder, dairy powder blend, rice, vegetables, fruit, vegetable oil, milk, cultured milk, brown wheaten meal, eggs, edible legumes and pulses of leguminous plants, sanitary towels, exports sales and services, illuminating paraffin, goods which are subject to the fuel levy (petrol and diesel), international transport services, insuring and arrangement of insurance of passengers on an international journey under a single inbound and single outbound insurance policy for a single premium, farming inputs, sales of going concerns, and certain grants by government. Since these supplies are taxable, the vendors who supply them may recover all related input tax.

Time and value of supply

The general rule for the time of a supply is the earlier of the date of the invoice or the date of payment of any part of the price.

For fixed property the time of supply is the earlier of registration in the name of the purchaser or payment of any part of the purchase price. The payment of a deposit is not treated as the payment of any part of the purchase price.

Where the parties are connected persons, the time of supply is when the goods are removed or made available, or when the services are rendered.

The supply between connected persons will be deemed to be at market value if the consideration is less than the open market value of the supply and the recipient was unable to claim a full or partial input of the VAT on the supply.

Second-hand goods

Second hand goods are goods (movable and immovable) which were previously owned and used. Intangible assets such as patents, trademarks and copyrights are not goods and so cannot be second-hand goods.

The seller of the second-hand goods must be a resident of the Republic. The sale must also take place in the Republic. The notional input may only be claimed to the extent that payment is made for the second-hand goods. If the goods are purchased on loan account, the notional VAT input is only claimed as and when the loan is repaid.

A notional input tax that may be claimed by a vendor acquiring fixed property, from a non-vendor, are deferred to the extent of actual payment made by the vendor, and the transfer of that fixed property is effected by registration in a deeds registry, and the fixed property is registered in the name of the vendor that makes the deduction during that tax period.

Second-hand goods exclusions

- Animals;
- Gold coins issued by the South African Reserve Bank;
- Any goods consisting solely of gold unless acquired for the sole

purpose of supplying such goods in the same state without any further processing;

- Any other goods containing gold unless those goods are acquired for the sole purpose of supplying those goods in the same or substantially the same state to another person.

Export of goods

Goods consigned or delivered by the vendor to an address in the export country are a zero-rated supply. The following documentary proof is required before the export can be a zero-rated supply:

- The order from the overseas customer;
- The copy of the vendor's zero-rated tax invoice;
- A copy of the transport document and proof that the vendor paid for the transport of the goods from South Africa;
- A copy of the customs documentation bearing a customs date stamp;
- Proof of payment by the customer;
- Proof that the goods were received by the customer in the export country e.g. a signed delivery note.

For the zero-rating supply of movable goods to a custom controlled area enterprise, or to an IDZ operator, the supplier must deliver the goods, or use a cartage contractor (who need not be a VAT vendor), provided that the transporting of goods is one of the activities of the cartage contractor. The supplier must pay for the delivery of the goods by the cartage contractor.

Disposal of a going concern

The disposal of a business as a going concern is deemed to be a supply of goods. The supply may be zero rated if the following conditions are met:

- Both the seller and the purchaser are VAT vendors.
- The seller gets a copy of the purchaser's VAT registration form.
- The sales agreement must be in writing and state:
    - The business is sold as a going concern;
    - The VAT rate is 0%;
    - The business will be an income-earning activity on the date of transfer;
    - The enterprise will remain active and operating until its transfer to the purchaser.

After the sale of an enterprise as a going concern, should goods sold before the transfer of the going concern, be returned by a customer to the new vendor, that vendor shall be deemed to have supplied the goods for the purpose of issuing a credit note.

The purchaser of the going concern is therefore allowed to issue a credit note in respect of goods that were supplied by the seller of the enterprise but subsequently returned to the purchaser.

Temporary letting of residential fixed property

From 10 January 2012 developers of residential property were provided temporary tax relief when they temporarily change the use of properties held as stock for sale by letting them as dwellings to tenants.

Developers were allowed to temporarily rent those properties during a 36-month relief period without having to declare output tax on the adjustment relating to the change in use from taxable to exempt supplies.

Output tax is payable on the open market value of the property at the earlier of the following dates:

- A period of 36-months after the conclusion of the letting agreement; or
- The date that the vendor applies the fixed property permanently for a purpose other than that of making a taxable supply.

The cut-off date for the tax relief was 1 January 2018.

Developers who previously relied on this provision who did not make a change of use adjustment must now make the requisite adjustment. The developer must account for output tax on the market value of the property that is now used wholly for an exempt purpose (e.g. residential letting) or for private use, even though the developer has not sold the units and generated the income necessary to meet its VAT liability.

Developers are only required to make the change in use adjustment in the tax period during which the 36-month period ends, even if this period only expires after 31 December 2017. The 36-month period is calculated from the date that the temporary letting agreement was entered into for the first time from 10 January 2012 to 31 December 2017. This provision is not available to any change in use after 1 January 2018.

Prohibited inputs

Entertainment expenses: VAT cannot be claimed in respect of goods or services acquired by a vendor to the extent that such goods or services are acquired for the purposes of entertainment. Entertainment is defined as the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind. This prohibition does not apply to vendors who provide entertainment to customers for a consideration which covers all the direct and indirect costs of such entertainment. Despite the general VAT prohibition against entertainment, input tax deductions for a vendor's cost to supply any entertainment will be allowed if the entertainment is ancillary to air or sea travel and provided at no additional charge. If an employee, or office holder of the vendor is away from his residence and usual working place in the Republic for at least one night on business, the VAT on his subsistence expenses e.g. food and hotel accommodation may be claimed as input while he is away.

Motor cars: Input VAT cannot be claimed in respect of any motor car supplied to, or imported by the vendor, whether the supply is by way of purchase or lease. A motor car is defined as a motor car, station wagon, minibus, double-cab light delivery vehicle, and any other motor vehicle of a kind normally used on public roads, which has 3 or more wheels, and is constructed or converted wholly or mainly for carrying passengers. It does not include vehicles capable of accommodating only one person or suitable for carrying more than 16 persons, or caravans, ambulances, vehicles of unladen mass of 3500 kilograms or more, game viewing vehicles or hearses. No VAT may be claimed on the purchase, rent or hiring thereof, unless the vendor is a motor dealer.

Fees or subscriptions: No input VAT may be claimed in respect of any fees or subscriptions paid by the vendor in respect of membership of any club, association or society of a sporting, social or recreational nature.

Documentation requirements
A tax invoice must be issued for every taxable supply made by a vendor within 21 days of the date of a supply. Only one tax invoice can be issued per supply. If a copy of a tax invoice is made it must be clearly marked "copy".

Where the supplier is informed by the recipient that information on the tax invoice is incorrect and requested to correct it, the supplier must correct the initial document with the correct particulars within 21 days from the date of the request, which correction will not constitute an offence. The supplier must obtain and retain information sufficient to identify the transaction to which the first document and the corrected tax invoice refers.

Please note: The correction does not alter the time of supply.

A tax invoice must contain the following information:
- The words tax invoice, VAT invoice, or invoice;
- The name, address and VAT registration number of the supplier;
- The trading name, address and VAT registration number of the recipient if the invoice is for more than R 5 000, otherwise an abridged tax invoice may be issued;
- A serial number;
- The date upon which the invoice is issued;
- A description of the goods or services supplied;
- If the goods supplied are second hand, this fact must be stated;
- The quantity or volume of the goods or services supplied;
- Either the value of the supply, plus the VAT, and the consideration, or the consideration for the supply and a statement that it includes VAT charged and the rate at which the tax is charged;
- Stated in South African currency unless it is a zero-rated supply.

Where a supply is in cash and does not exceed R 50, the supplier must give the recipient a document that is acceptable to SARS.

Where a tax invoice has been issued and the supply is cancelled or fundamentally altered or varied, or the amount has been altered, or there is an error in the amount on the original invoice, the vendor must issue a credit note or debit note reflecting the change.

Alternative documentary proof
Where a vendor was unable to obtain the prescribed documents no deduction of input tax will be allowed unless:
- A ruling is issued no later than two months prior to the expiry of the five-year period confirming that the document in the vendor's possession is acceptable for making a deduction; and
- The ruling and document are held by the vendor at the time a return in respect of the deduction is furnished.

The Commissioner may only issue a ruling if he satisfied that:
- The vendor has taken reasonable steps to obtain the prescribed document and is unable to obtain such a document due to

circumstances beyond the vendor's control; and

- No other provision of this Act can be applied to satisfy the Commissioner that the document in the vendor's possession is acceptable for purposes of making a deduction.

Vendors can only access this relief as a last resort. Only when the ruling is issued, may the amount be deducted as input tax. Vendors will thus not be allowed to backdate the claim to a past tax period that has already been closed.

Person ceasing to be a vendor
Whenever a person ceases to be a vendor, any goods which form part of the enterprise, excluding those goods on which an input deduction was denied, are deemed to be supplies made immediately prior to the person ceasing to be a vendor. The output tax is paid at a rate of 15/115 on the lesser of the cost of the goods (including VAT), or their market value. The vendor is also required to account for output VAT on any unpaid debts in respect of which input VAT was previously claimed.

Refunds
SARS must pay a refund if a person is entitled to a refund, including interest thereon if reflected in an assessment, or the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment. A refund of an amount erroneously paid may only be made by the Commissioner where the claim for the refund is received by the Commissioner within five years after the date on which the erroneous payment was made.

The claim for a refund of an amount properly refundable, shall be deemed not to have been received where the vendor has not furnished the Commissioner in writing with the particulars of the enterprise's banking account within 90 days from the submission of the claim.

Such an amount refundable including interest to the vendor or any separate enterprise, branch or division, which is registered separately, may be set off against the outstanding tax debt of the vendor or any separate enterprise, branch or division, which is registered separately.

Late payment of VAT
If VAT is paid late, a penalty of 10% is payable, plus interest at the prescribed rate for the period the VAT remains unpaid.

DONATIONS TAX
Donation means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right. A donation shall be deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with. Donation tax is payable on the value of any property disposed of under any donation by a South African Resident. Donation tax does not apply to non-residents even if they donate South African assets.

Donation tax is levied at a rate of 20% of the value of the property donated if the aggregated value of all property donated does not exceed R 30 million. If the aggregate value of donations exceeds R 30 million the first R 30 million is taxed at 20%, while the excess is taxed at 25%. The R 30 million is aggregated over the lifetime of the taxpayer.

Donations tax is payable by the donor. The tax is payable by the end of the month following that in which the donation takes effect. If the donor fails to pay the tax within the prescribed period, the donor and the donee become jointly and severally liable for the tax. The annual exemption for casual donations by natural persons is R 100 000. For other persons, it is R 10 000.

Where a donor made more than one donation during a tax year, the exemption is to be calculated according to the order in which the donations were made.

Exemptions

- Bona fide maintenance payments;
- Donations to Public Benefit Organisations and qualifying traditional councils and communities;
- Donations between spouses, who are not separated;
- Donations where the donee will not benefit until after the death of the donor;
- Donations made by companies which are recognised as public companies for tax purposes;
- Donations between companies forming part of the same group of companies;
- Donations cancelled within 6 months of the effective date;
- Property disposed of under, and in pursuance of any trust;
- Donation of property, or a right in property situated outside South Africa, if acquired by the donor before becoming resident in South Africa for the first time, or by inheritance or donation from a non-resident.

Where two persons are married in community of property and property is disposed of in terms of a donation by one of the spouses, the donation shall be deemed to have been made in equal shares. If the property was excluded from the joint estate of the spouses, the donation shall be deemed to have been made solely by the spouse making the donation.

Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration, that property shall be deemed to have been disposed of under a donation.

Interest will be levied on the late payment of donations tax. Donations tax is subject to the penalty provisions in the Tax Administration Act, but there is no late payment penalty.

ESTATE DUTY

Estate duty is charged on the dutiable amount of the estate at a flat rate of 20% on the first R 30 million of the dutiable amount and a rate of 25% on the estate exceeding R 30 million when a person dies on or after 1 March 2018. For persons who died before 1 March 2018 the rate was 20% on the full dutiable amount.

The ‘dutiable amount’ is the amount of the total value of property, less certain admissible deductions, less the abatement of R 3,5 million.

The estate of a deceased person who was ordinarily resident in South Africa consists of all the property and deemed property of the deceased, wherever situated.

If the deceased was a non-resident, his/her South African estate would generally comprise of all enforceable rights to property in South Africa.

Admissible deductions:

- Deathbed and funeral expenses;
- Debt owed to persons ordinarily resident in South Africa;
- Costs which have been allowed by the Master in the administration and liquidation of the estate;
- All expenditure incurred in carrying out the requirements of the Master or Commissioner;
- Assets owned by the deceased prior to immigration to the Republic;
- An amount of any claim by the surviving spouse;
- Value of any property that accrues to any public benefit organisation or institution which is exempt from tax;
- Improvements made to the property by the beneficiary;
- Assets accruing to a surviving spouse.

All lump sum benefits received, as a result of death, from a retirement fund will be exempt from estate duty.

If a person dies on or after 1 January 2016 any contributions made by the deceased in consequence of membership or past membership of any pension, provident, or retirement annuity fund, that was not allowed as a deduction against taxable income or against any lump sum received is deemed to be the property of the estate.

Income after death from 1 March 2016

Income received by or accrued to the executor of a deceased estate must be taxed in the hands of the deceased estate. Income includes amounts which would have been income in the hands of the deceased had it been received during his or her lifetime.

The deceased estate must be taxed as a natural person, but it cannot deduct the personal rebates, or the medical contributions or medical expenses rebates.

Acquisition of assets by the deceased estate after 1 March 2016

Except for assets that will be acquired by a resident surviving spouse, the deceased estate is treated as having acquired the assets for an amount of expenditure incurred equal to the market value of the asset as at the date of death.

Where the deceased estate disposes of an asset to an heir or legatee, the deceased estate is treated as having disposed of it for an amount received or accrued equal to the amount of expenditure incurred by the deceased estate in respect of that asset.

The surviving spouse must be treated as having acquired the asset on the same date as the deceased had acquired it and must be deemed to have claimed the deductions and allowances that the deceased spouse and the deceased estate claimed:

- For trading stock: Amount of expenditure incurred by the deceased and allowed as a deduction, i.e. cost of purchase or cost of opening stock in the year of his or her death;
- Capital asset that was part of the deceased estate: Base cost of the asset as at the date of the deceased death;
- For assets (trading stock and capital assets) acquired by the deceased estate, or improvements to assets made by the estate, the

surviving spouse is deemed to have acquired such assets for an expense equal to the expense incurred by the deceased estate. This would include the base costs at the date of death plus any further costs incurred.

The surviving spouse must be deemed to have used the assets in the same manner in which the asset was used by the deceased person and the deceased estate.

The deceased estate is exempt from the payment of provisional tax.

Portable estate duty abatement
The portable spousal deduction allows for the unutilised portion of the R 3.5 million deduction from estate duty to rollover from the deceased to a surviving spouse, so that the surviving spouse can use a maximum deduction of R 7 million. The executor of the deceased must submit a copy of the estate return of the predeceased spouse, or other relevant material as SARS may regard as reasonable.

The executor is entitled to an administration fee of up to 3.5% of the value of the estate and 6% of all income accumulated through the course of the finalisation of the deceased estate.

Successive death rebate
Relief is provided if the same property is included in the estate of taxpayers dying within 10 years of each other. The relief is calculated as follows:

- 100% (year 0 – 2); 80% (year 3 - 4); 60% (year 5 – 6); 40% (year 7 – 8); 20% (year 9 – 10).

Where a person and his/her spouse die at the same time, the spouse with the smaller estate must be deemed to have died first.

TRANSFER DUTY

Transfer duty is a tax paid on the acquisition of fixed property situated in South Africa. The transfer duty is payable by the purchaser and must be paid within 6 months of the date of acquisition.

Transfer duty table

Value of the property (R)	Rate of transfer duty			
0 - 900 000		0%		
900 001 - 1 250 000		3%	above	900 000
1 250 001 - 1 750 000	10 500 +	6%	above	1 250 000
1 750 001 - 2 250 000	40 500 +	8%	above	1 750 000
2 250 001 - 10 000 000	80 500 +	11%	above	2 250 000
10 000 001 - and above	933 000 +	13%	above	10 000 000

No transfer duty is payable if the transaction is subject to VAT (either standard or zero rate).

Transfer between spouses on divorce/death, or to heirs from a deceased estate are exempt from transfer duty.

SECURITIES TRANSFER TAX (STT)

STT is payable by the purchaser at a rate of 0.25% on the transfer of all shares in companies incorporated in South Africa as well as foreign companies listed on the South African stock exchange. It is also payable on the transfer of a member's interest in a close corporation. No STT is payable on the original issue of shares.

STT is payable on the higher of the consideration paid or the market value of the securities transferred. The STT is payable by the purchaser if the securities are transferred. If the shares or securities are cancelled or redeemed, the entity cancelling or redeeming the shares is liable for the payment of the STT.

STT is not payable where a security is cancelled or redeemed by an issuing company that is being wound up, liquidated or deregistered.

STT on listed securities must be paid by the 14th of the month following the month during which the transfer occurred. STT on unlisted securities must be paid by the end of the second month following the month during which the transfer occurred.

The late payment of STT is subject to a 10% penalty. Interest will also be imposed at the prescribed rate.

SKILLS DEVELOPMENT LEVIES (SDL)

SDL is payable by every employer in South Africa who has an annual payroll more than R 500 000. The amount payable will be calculated at 1% of the total amount of remuneration paid to employees.

The amount, on which the percentage levy is calculated, is the total amount of remuneration paid by an employer to its employees during any month, as determined for the purposes of determining employees' tax, whether employees' tax is deducted or not. This will include any amount that is paid or payable to any person, whether in cash or otherwise, in respect of services rendered or to be rendered.

Exclusions:

- Amounts paid to labour brokers with a certificate of exemption;
- Any amounts paid as pension, superannuation allowances or retiring allowances;
- Any annuities and lump sums from employers and retirement funds;
- Remuneration of learners under a learnership agreement.

Directors' remuneration, on the same basis as for PAYE, will be subject to the Skills Development Levy.

UNEMPLOYMENT INSURANCE FUND (UIF)

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

The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period. The maximum earnings ceiling is R 14 872 per month or R 178 464 annually.

The amounts deducted or withheld must be paid by the employer to SARS on a monthly basis, by completing the Monthly Employer Declaration (EMP201). It must be paid within seven days after the end of the month during which the amount was deducted. If the last day for payment falls on a public holiday or weekend, the payment must be made on the last business day before the public holiday or weekend.

An unemployment benefit received is exempt from tax in the hand of the recipient.

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES

The aim of the Act is to provide for compensation in the case of disablement caused by occupational injuries or diseases, sustained or contracted by employees during their employment, or death resulting from such injuries or diseases, and to provide for matters connected therewith.

Registration

All employers who employ one or more part- or full-time employees must register with the Compensation Fund and pay annual assessment fees. The annual assessment fee is based on the employee's earnings and the risks associated with the type of work or profession.

Please note: A separate registration is necessary for each separate branch of a business, unless an arrangement for combined registration has been made.

The Act applies to:

- All employers; and
- Casual and full-time workers who, as a result of a workplace accident or work-related disease are injured, disabled, killed or become ill.

Exclusions

- Workers who are totally or partially disabled for less than 3 days;
- Domestic workers;
- Anyone receiving military training;
- Members of the South African National Defence Force, or the South African Police Service;
- Any worker guilty of wilful misconduct, unless they are seriously disabled or killed;
- Anyone employed outside the RSA for 12 or more continuous months;
- Workers working mainly outside the RSA and only temporarily employed in the RSA.

On duty

The accident must occur while the worker is on duty. The accident must have occurred because the employee was at work doing what he or she was employed to do. It must be because of the employment that caused the accident or exposed the worker to the risk of the accident.

Submission dates for returns

Employers must submit their return of earnings no later than the 31st of March each year.

PROVISIONAL TAX

Any person who falls within the definition of a provisional taxpayer is required to be registered as a provisional taxpayer within 21 business days after becoming obliged to register.

A provisional taxpayer is defined as:

- Any natural person who derives income which is not remuneration or an allowance or advance;
- Any natural person who derives remuneration from an employer who

is not registered for employees' tax;

- Any company;
- Any person notified by the Commissioner that he/she is a provisional taxpayer.

Exclusions

- Any Public Benefit Organisation that is exempt from tax;
- Any recreational club that is exempt from tax;
- A body corporate, share block company or association of persons formed solely for purposes of managing the collective interest common to all its members;
- A small business funding entity;
- A non-resident owner or charterer of any ships or aircraft assessed under section 33 of this Act;
- Any natural person who does not derive any income from the carrying on of any business, if:
  - The taxable income of that person for the year of assessment does not exceed the tax threshold; or
  - The taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends, rental from the letting of fixed property and remuneration from an employer not registered for employee's tax does not exceed R 30 000; and
- A deceased estate.

Estimate of taxable income

Every provisional taxpayer shall, during every period within which provisional tax is payable, submit to the Commissioner (unless the Commissioner directs otherwise) a return of an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment. For natural persons, such estimate shall not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to the taxpayer during the relevant year of assessment. The taxable portion of the aggregate capital gain must be included in the first and the second provisional tax payment calculations.

The amount of any estimate shall not be less than the basic amount unless the circumstances of the case justify an estimate of a lower amount.

The Commissioner may call upon a provisional taxpayer to justify any estimate, or to furnish particulars of the income and expenditure or any other particulars that may be required. If the Commissioner is dissatisfied with the estimate, he may increase it to what he considers reasonable, even if this is more than the basic amount. The increase of the estimate is not subject to objection and appeal.

If a taxpayer fails to submit an estimate, the Commissioner may also determine an estimate.

Basic amount

The basic amount is the taxable income reflected in the latest assessment issued by SARS, not less than 14 days before the date the taxpayer submits the provisional tax return, excluding:

- Any taxable capital gain, the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit;

- Any lump sum benefits arising from variation of office, including any amount received by an employee in respect of a policy of insurance held by the employer, or ceded by the employer to the employee included in the taxpayer's taxable income for that year of assessment.

For a company, the basic amount is the taxable income, as assessed by SARS, for the latest preceding year of assessment, less the amount of any taxable capital gain.

Where the estimate must be made more than 18 months after the end of the latest preceding year of assessment, the basic amount must be increased by 8% per annum, from the end of such year, to the end of the year of assessment in respect of which the estimate is made.

First year of assessment
Where a taxpayer has not been assessed previously, a reasonable estimate of taxable income must be made. The basic amount cannot be estimated as nil unless it is fully motivated.

First provisional payment
Within 6 months after the commencement of the tax year (for individuals 31 August), an amount equal to half of the tax on the estimated taxable income, less any employee's tax deductions to date, and foreign taxes subject to section 6quat rebate, must be paid to SARS. The estimated taxable income must not be less than the basic amount (as discussed above), unless permission is obtained from SARS to use a lower estimate.

Second provisional payment
Payable on or before the last day of the financial year (for individuals the end of February).

Taxable income equal or less than R 1 million: The estimated taxable income must not be less than the lower of:

- The basic amount (as discussed above); or
- 90% of actual taxable income (including taxable capital gains) for the year.

Taxable income of more than R 1 million: The estimated taxable income must be equal to at least 80% of actual taxable income (including taxable capital gains) for the year.

Penalty for underpayment because of underestimation
Taxable income equal or less than R 1 million: The penalty is 20%, based on the lower of either normal tax on 90% of taxable income or normal tax on the basic amount, less any employees' tax and provisional tax already paid by the end of the year of assessment.

Taxable income of more than R 1 million: The penalty is 20%, based on normal tax on 80% of taxable income, less any employees' tax and provisional tax already paid by the end of the year of assessment.

Please note that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, received by or accrued to the taxpayer, during the relevant year of assessment, shall not be included for purposes of this calculation. Any lump sum received from an employer in respect of variation or loss of office is however included in the penalty calculation.

Where the Commissioner is satisfied that the amount of any estimate was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, the Commissioner may in his or her discretion remit the penalty or a part thereof.

If a provisional taxpayer does not submit a provisional tax return within 4 months after the last day of the year of assessment, the taxpayer is deemed to have submitted a nil return.

Penalty on late payment of provisional tax
If a provisional taxpayer fails to pay any amount of provisional tax within the period allowed for payment, a penalty of 10% of the amount not paid will be levied.

The 20% underestimation penalty in respect of the second provisional tax payment must be reduced by the 10% late penalty payment.

If SARS is satisfied that the provisional taxpayer's failure to submit an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, it may remit the whole or any part of the 20% underestimation penalty.

Third provisional payment
Companies and close corporations with taxable income more than R 20 000 and individuals and trusts with taxable income more than R 50 000 may make a third additional payment to avoid interest on underpayment. This payment should be made within 6 months after the end of the financial year and represents the outstanding balance of tax payable on the actual taxable income for the year. If the year-end is February, the third payment is payable on or before 30 September (7 months after the end of the year). The third payment is not compulsory and there is therefore no penalty for late or underestimated payments.

CAPITAL GAINS TAX (CGT)
Capital gains tax is payable when a capital asset is sold or when there is a change in the ownership of the asset.

If a capital asset is sold at a profit, the profit is subject to capital gains tax, and if it is sold at a loss, the capital loss can be set-off against other capital profits. If there are no other capital profits in the year, the capital loss is carried forward to the next year.

Calculation

Proceeds from disposal of an asset		XXXXX
Less:	Base cost of an asset	XXXXX
Capital gain/loss on specific asset		XXXXX
Add:	Capital gains/losses of all other assets disposed of during the year of assessment	XXXXX
Less:	Only for natural person’s R 40 000; or R 300 000 in year of death	XXXXX
Less:	Assessed capital losses brought forward from previous year of assessment	XXXXX
=	Net capital gain for the year *	XXXXX

Inclusion rates

Individuals and special trusts: 40%

Others: 80%

*(If it is a net capital loss, it will be carried forward to the next year of assessment, no set-off is allowed against taxable income).

Effective rates

Taxpayer	Inclusion rate (%)	Statutory rate (%)	Effective rate (%)
Individuals	40	0 - 45	0 - 18
Companies	80	28	22.4
Small business corporations	80	0 - 28	0 - 22.4
Personal service providers	80	28	22.4
Branches of foreign companies	80	28	22.4
Trusts (normal)	80	45	36
Trusts (special)	40	0 - 45	0 – 18
Public Benefit Organisation	80	28	22.4

Liability for capital gains tax

All persons who are residents of South Africa for purposes of income tax will be subject to CGT on the disposal of their world-wide assets.

Non-residents will only be subject to CGT on disposal of the following:

- Immovable property or an interest in the property in South Africa;
- Assets of a permanent establishment in South Africa; and
- At least a 20% interest in the shares of a company where at least 80% of its net asset value is derived from immovable property, not held as trading stock, situated in South Africa.

Proceeds

Proceeds are the amounts received or accrued to the taxpayer in respect of the disposal of assets. It specifically includes the amount by which any debt owed by the person has been reduced or discharged by the creditor. It excludes amounts included in gross income for income tax purposes and amounts repaid or repayable or for a reduction in the sale price.

Asset

Any property, movable or immovable, corporeal or incorporeal as well as a right or interest in such property. Specifically excluded is any currency, except for coins made mainly from gold or platinum.

Disposal of assets

A capital gain or loss can only realise if an "asset" as described above is disposed of. Disposal of assets include circumstances where an asset is transferred, for example with sale, as well as other occurrences like creation, variation, extinction, donation, expropriation, cession, exchange, cancellation, expiry, abandonment, scrapping, loss and destruction of an asset. The transfer of a trust asset to a beneficiary is also considered a disposal except when the beneficiary has a vested right in the asset. Any distribution of an asset by a company to its shareholders, the granting, renewal, extension or exercise of an option is also a disposal but not the original issue of shares, debentures, options and units in a unit portfolio by the company. A decrease in value of an interest in a trust, company or partnership, as a result of a value-shifting arrangement, is deemed to be a disposal, but not the granting of credit, or the provision of assets as security, corrections of errors on deeds, etc. and appointments of new trustees.

Deemed disposals

- A person ceases to be a resident;
- Non-residents cease to have a permanent establishment in South Africa or when the assets become assets of a permanent establishment;
- Assets become trading stock; and
- Assets cease to be personal use assets or trading stock other than by way of disposal.

The above-mentioned assets are deemed to be disposed of at market value and then re-acquired at the same market value.

Where a person becomes a South African resident, he/she is deemed to have disposed of his/her assets at market value and to have re- acquired it at the same value on the day immediately before he/she became a resident.

The time of disposal is the day on which ownership changes but where an agreement has a suspensive condition, this condition has to be fulfilled first. With donations, all the legal requirements of a valid transfer must be complied with. For a distribution of an asset by a trust, the time of disposal is the date that the interest in the asset vested in the beneficiary.

Base cost

The base cost of assets consists of the following expenses:

- Expenses incurred to obtain or to improve the asset;
- Costs incurred with the disposal or acquisition of the asset;
- Valuation costs for CGT purposes;
- Costs incurred in defending or maintaining a legal right to the asset;
- Costs of improving the asset;
- Transfer costs;
- Advertising, relocation and installation costs;
- Option costs to obtain the asset;
- Certain costs incurred in holding the asset (wholly or exclusively held for business purposes) for example maintenance, repairs, certain interest and municipal taxes. No costs can however be added to the base cost of an asset if that cost was allowed as a normal income tax deduction;
- Where the asset consists of listed shares or a participatory interest in a portfolio of a collective investment scheme, one third of interest incurred in financing the shares can be included in the base cost;
- The value of base cost has to be reduced by any amounts already deducted for income tax purposes, amounts recouped and amounts not paid.

Where a tax-free government grant is received for the acquisition, creation or improvement of an asset, or a reimbursement for expenditure incurred to acquire, create or improve an asset, the base cost of the asset must be reduced to the extent that the amount of the government grant is applied.

Assets acquired before valuation date

The base cost of assets acquired before valuation date is determined as the valuation date value of the asset plus any allowable expenses incurred after valuation date. The valuation date value could be one of the following 3 values:

- Market value of the asset on 1 October 2001;
- Time apportionment base cost (the apportionment of costs by way of a formula plus post valuation date costs); or
- 20% of the proceeds received minus expenses incurred after 1 October 2001.

Market value of the asset on valuation date

- Listed South African shares: Published value as per Gazette;
- Foreign listed shares: Trading price last ruling day before 1 October 2001;
- Other assets: Market value if the market value was obtained within 3 years after the valuation date.

Exclusions

Certain capital gains and losses are excluded from capital gains tax. It is mainly on the following assets:

Primary residence

- The first R 2 million of any capital gain or loss on the disposal of a primary residence of a natural person (or a special trust under certain circumstances). If the primary residence is sold for R 2 million or less, the full capital gain on the disposal is disregarded;
- Only one residence at a time can qualify as a primary residence except under certain circumstances, for example where a new home is being built;
- It must be the residence in which the person/beneficiary normally resides and can be any structure including a boat, caravan, etc.;
- The exemption is only applicable to the residence and the land on which it is built provided the land is only 2 hectares or less. The residence must only be used for domestic purposes and the land and residence must be disposed of at the same time to the same person;
- The exemption is not applicable to a residence that is only occupied temporarily;
- If the property is not occupied when for example a new house is being built or on the death of the owner, it could only be unoccupied for a period not exceeding 2 years;
- If the residence is used for business purposes as well, the capital gain or loss has to be calculated on a pro-rata basis for the portion and period it was used for domestic purposes;
- A primary residence would still qualify for the exemption even if it is leased out provided that the lease does not exceed 5 years, the owner lived there for at least a year before and after the lease, he did not have any other house as a primary residence and he was temporarily absent from the area in which the house is, but at least 250 km away or in a foreign country.

Assets for personal use

The disposal of assets of a natural person which are mainly used for purposes other than a business are also excluded from CGT. The exemption is not applicable to the following assets:

- Gold or platinum coins;
- Immovable property;
- Aircraft with an empty mass exceeding 450kg;
- A boat exceeding 10 metres in length;
- A financial instrument;
- A fiduciary, usufructuary or like interest, the value which decreases over time;
- A right or interest in any of the above-mentioned assets.

Retirement benefits
A lump sum benefit from a pension, pension preservation, provident, provident preservation or retirement annuity funds is not subject to CGT.

Disposal of small business assets
- The market value of all the business's assets (or all the businesses assets) on the date of disposal of the asset or interest in the business should not exceed R 10 million;
- The person disposing of the assets must be a natural person 55 years or older, or the business is disposed of as a result of ill- health, other infirmity, superannuation or death of the taxpayer;
- The person must have been substantially involved in the business;
- The person should have had the business for a continuous period of at least 5 years prior to disposal;
- All capital gains must be realised within a period of 2 years from disposing of the first asset;
- The exemption is only applicable to a maximum of R 1.8 million in a person's lifetime;
- Active business assets do not include financial instruments or assets held mainly to earn rental, annuity income or royalty income, foreign exchange gain or similar income;
- The asset can also be an interest in a partnership or a share of at least 10% in a company.

Disposal of micro business assets
A registered micro business will not be subject to capital gains tax and may not deduct any capital loss which arises on the disposal of any asset if it is part of the micro business.

Further exclusions
- Compensation for personal injury, illness or defamation;
- Capital gain or loss in respect of a risk policy with no cash value or surrender value;
- Insurance benefits accruing to employees if the amount of premiums paid by the employer has been deemed to be a taxable fringe benefit;
- Proceeds from gambling, games and competitions (only for natural persons);
- Donations and bequests to approved Public Benefit Organisations;
- Assets disposed of by persons or institutions exempted from income tax;
- Assets used to generate income that is exempt from income tax except for assets used to produce interest, shares from which dividends are received and the copyright of a first owner thereof.

Exit charges on interests in assets
Where a person (other than a company) ceases to be a resident of South Africa, in any year of assessment, that person must be treated as having

disposed of all of its assets on the date immediately before the day on which the person ceases to be a resident. The disposal must be treated as being for an amount equal to the market value of each asset, on that date and then he/she must be treated as having repurchased those assets on the next day for that same market value. The year of assessment is deemed to end on the date immediately before the day the person ceases to be a resident.

The following assets are not subject to the exit charges:

- Immovable property in the Republic;
- Assets of a 'permanent establishment' through which a trade is carried on in South Africa;
- Any right in immovable property in the Republic excluding equity shares in a company that holds South African immovable property (at least 20% interest in an entity, if 80% of the market value of the interest in the entity is attributable to South African immovable property);
- A section 8B share within the first 5 years of acquisition, a section 8C share or equity instrument that has not yet vested in the person and a section 8A option to acquire a share.

The market value of the asset must be determined in the currency of the expenditure incurred to acquire the asset.

Capital gain attributed to a beneficiary

If a trust distributes an asset to a beneficiary (who is a South African resident), the gain made by the trust on the disposal of the asset is taxable in the beneficiary's hands and not in the trust's hands.

If the trust sells an asset and makes a capital gain, the trust is not taxed on the gain if it vests the gain in a South African beneficiary. The beneficiary is taxed on the gain. The gain must be vested in the same tax year that it arises. If an asset or gain is vested in a non-resident beneficiary, the trust is taxed.

Share Incentive Scheme Trust

Where a capital gain arises on the disposal of an equity instrument by the trust it must not take into account a capital gain of the trust if the amount must either be included in the income of the beneficiary as an amount received or accrued in respect of a section 8C restricted equity instrument, or if the gain must be taken into account in determining the gain or loss in the hands of the employee beneficiary in respect of the vesting of the restricted equity instrument.

LEARNERSHIP ALLOWANCE

The learnership allowance is applicable to registered learnership agreements entered between a learner and an employer before 1 April 2022.

A learnership agreement is a learnership agreement registered in accordance with the Skills Development Act.

If the learnership is registered within 12 months after the last day of the year of assessment in which it was entered into, it must be deemed to have been registered from the date it was entered into.

The agreement must be entered into pursuant to a trade carried on by the employer.

Annual and completion allowance

Type of person	Qualification NQF	From 1 October 2016 (R)	Up to 30 September 2016 (R)
Person without a disability	1 - 6 7 - 10	40 000 20 000	30 000 30 000
Person with a disability	1 - 6 7 - 10	60 000 50 000	50 000 50 000

The annual allowance is based on full monthly periods completed in the employer's year of assessment. The allowance must be apportioned if falling in more than one year of assessment. The annual allowance is allowed in respect of each successive year of learnership.

The completion allowance is only claimable on the successful completion of the learnership. The completion allowance can be claimed for the number of consecutive 12-month periods within the duration of the agreement.

If a learner fails to complete the learnership, no allowance may be claimed by the employer if that learner registers for a new learnership, either with the same employer or with an associated institution, and the new learnership contains the same training component as the learnership that the person has not completed.

EMPLOYER-OWNED LIFE POLICIES

Risk and investment policies premiums paid by the employer are deductible only if:

- The employer is the policy holder; and
- The policy relates to death, disablement or severe illness of an employee or director; and
- The premiums paid by the employer are taxed as a fringe benefit in the hands of the employee or director.

These types of policies would usually pay out directly to the employee when an insured event occurs. It could also pay out to the employer, who uses the funds to pay a benefit to the employee or his or her family. Where the employee has been taxed on the premiums as a fringe benefit, he or she is entitled to an exemption from tax on the proceeds of the policy.

Where the policy is a risk policy only (no cash or surrender value) and the premiums are not taxed as a fringe benefit in the hands of any employee or director, the premiums will be deductible only if:

- The employer is the policyholder at the time of the payment of each premium; and
- The policy relates to death, disablement or severe illness of an employee or director; and
- The employer has elected to deduct the premiums; and
- The election is made in the policy agreement if it is entered into on or after 1 March 2012, or in an addendum to the policy agreement for earlier policies. The addendum must have been added by no later than 31 August 2012.

If an insured event occurs, the amount received by the employer will be taxable if the premiums were deducted.

Where no deductions are claimed in respect of the premiums paid, the insurance proceeds received by the employer will be exempt. The fact that the employer may have deducted the premiums prior to 1 March 2012 does not affect the tax exemption.

If the policy owned by the employer covers death, disablement, or severe illness, arising solely out of, and in the course of employment, then the premiums are deductible under the normal deduction formula. An example of such a policy would be one which covers general work-related accident plans and travel insurance for when an employee travels for business purposes.

If the policy covers such an employment event, the premiums are not taxed in the hands of the employee as a fringe benefit.

RESEARCH AND DEVELOPMENT

Definition

- Systematic investigative or experimental activities of which the result is uncertain for the purpose of:
  - Discovering new non-obvious scientific or technical knowledge;
  - Creating or developing an invention as defined in the Patents Act;
  - A functional design as defined in the Designs Act, that can qualify for registration and that is innovative in respect of the functional characteristics or intended use;
  - A computer program as defined in the Copyright Act which is of an innovative nature, or knowledge essential to the use of those items, other than creating or developing operating manuals or instruction manuals or documents of a similar nature intended to be utilised subsequent to the research and development being completed; or
  - Making a significant and innovative improvement to any invention, functional design, computer program or knowledge that will result in a new or improved function or improvement of performance, reliability or quality;
- Creating or developing a multisource pharmaceutical product;
- Conducting a clinical trial.

Deduction of 150%

- Expenditure actually incurred, directly and solely in respect of the carrying on of research and development in the Republic;
- In the production of income;
- In the carrying on of any trade;
- The research and development are approved by the Minister of Science and Technology; and
- The expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for its approval.

Non-qualifying expenditure

No research and development deduction may be claimed for the following expenditure:

- Market research, market testing or sales promotion;
- Routine testing, analysis, collection of information or quality control in the normal course of business;
- Development of internal business processes, unless it is mainly

intended for sale, or for granting the use or right of use thereof, to unconnected persons (e.g. typical computer software);
- Social science research, including the arts and humanities;
- Oil and gas or mineral exploration or prospecting, except research and development carried out to develop technology used for oil and gas or mineral exploration;
- The creation or development of financial instruments or financial products;
- The creation or enhancement of trademarks or goodwill; and
- Costs incurred for the registration or acquisition of pre-existing inventions, designs or computer programs.

The above may however be claimed under section 11(a) if the expenditure is of a revenue nature, in the production of income, and in the course of the taxpayer's trade.

Reopening and reduced assessments due to late approval

A taxpayer may apply to the Commissioner to allow all deductions in respect of research and development if:
- The expenditure was incurred on or after the date of receipt of an application by the Department of Science and Technology for the approval of that research and development;
- The expenditure was not allowable in respect of a year of assessment solely because of the absence of approval; and
- The research and development is approved after that year of assessment.

The Commissioner may make a reduced assessment for such a year of assessment.

Research and development machinery or plant and buildings

The accelerated allowance of 50%:30%:20% is available with effect from 1 April 2012 on new or unused machinery or plant, or on improvements to the machinery or plant, if acquired by the taxpayer under an agreement formally and finally signed, on or after 1 January 2012, and brought into use on or after that date. Where a building is used wholly or mainly for research and development a 5% allowance can be claimed.

SPECIAL ECONOMIC ZONE TAX INCENTIVE

The Special Economic Zones Act came into effect on the 9th of February 2016.

Qualifying company
- Incorporated or effectively managed in South Africa;
- Carrying on business from a fixed place of business within a Special Economic Zone;
- At least 90% of the income must be derived from the carrying on of business or provision of services within the Special Economic Zone;
- No more than 20% of the deductible expenses incurred, or 20% of the income received are from transactions with connected persons that are residents or with non-residents, and those transactions are attributable to a permanent establishment in the Republic

Manufacturing companies in the following industries are excluded:
- Distilling, rectifying and blending of spirits;
- Manufacture of wines;

- Manufacture of malt liquors and malt;
- Manufacture of tobacco products;
- Manufacture of weapons and ammunition;
- Manufacture of bio-fuels if it negatively impacts on food security in the Republic;
- Any activities listed in the SIC codes which the Minister of Finance may designate by notice in the Gazette.

Tax relief

- Accelerated depreciation allowance of 10% per annum on new or unused buildings and improvements, owned by the company, and used wholly or mainly for producing income, in that special economic zone, other than providing residential accommodation;
- No age restriction is applicable on the employment tax incentive;
- Reduced corporate rate of 15%; (only if the company does not conduct activities listed in the regulations issued by the Minister of Finance).

Please note: Small business corporations have the option of paying tax at the lower of 15%, or the effective tax rate determined in terms of the graduated marginal structure for small business corporations.

This incentive will cease to apply in respect of any year of assessment commencing on the later of:

- On or after 1 January 2024; or
- 10 years after the commencement of the carrying on of a trade in a Special Economic Zone.

EMPLOYMENT TAX INCENTIVE

The Employment Tax Incentive Act commenced on 1 January 2014. The aim is to encourage employment creation.

Employers who are registered for the purposes of the withholding and payment of employees' tax will be eligible to reduce their employees' tax that is payable, for each month that an employer employs a qualifying employee. This benefit to the employer is exempt.

This incentive is not applicable to the government as an employer, nor to certain public entities or municipal entities.

Qualifying employee

- A natural person that is not an independent contractor in relation to the employer;
- Is between the ages of 18 and 29 at the end of the month in respect of which the employment tax incentive is claimed;
- Is in possession of either a valid South African identity card, an asylum seeker permit or a refugee identity card;
- Is not connected to the employer;
- Is not a domestic worker;
- Was not employed by the employer or an associated person on or before 1 October 2013;
- Earns at least the amount payable by virtue of a wage regulating measure; or
- Where the employee is employed and paid for at least 160 hours in a month, the amount of R 2 000, or
- Where the employee is paid for less than 160 hours the R 2 000 must

be apportioned pro-rata;

- Receives remuneration of not more than R 6 500 in a month;
- For employers operating in a Special Economic Zone, there is no age restriction for the employees.

Please note: With effect from 1 March 2018 "hours" mean ordinary hours as defined in the Basic Conditions of Employment Act.

The incentive will be available for the first 2 years of employment.

The value of the incentive is prescribed by the following formula:
After 1 March 2019

Monthly remuneration	Per month during the first 12 months of employment	Per month during the next 12 months of employment
R 0 – R 1 999	50% of monthly remuneration	25% of monthly remuneration
R 2 000 – R 4 499	R 1 000	R 500
R 4 500 – R 6 499	R 1 000 – (0.5 x (monthly remuneration – R4 500))	R 500 – (0.25 x (monthly remuneration – R 4 500))
R 6 500 – and more	Nil	Nil

Before 1 March 2019

Monthly remuneration	Per month during the first 12 months of employment	Per month during the next 12 months of employment
R 0 – R 1 999	50% of monthly remuneration	25% of monthly remuneration
R 2 000 – R 3 999	R 1 000	R 500
R 4 000 – R 5 999	R 1 000 – (0.5 x (monthly remuneration – R4 000))	R 500 – (0.25 x (monthly remuneration – R 4 000))
R 6 000 – and more	Nil	Nil

If a qualifying employee was previously employed by an associated person, the number of months that the employee was employed by the associated person, must be taken into account by that employer for the purposes of calculating the incentive.

The employer cannot deduct more than the total employees' tax which is due to SARS in a month. However, the incentive amount may be rolled over to the next month where the incentive available exceeds the employees' tax otherwise due in a month.

The employer may not claim the incentive if any tax returns are outstanding or if there are outstanding debts, unless arrangements have been made with SARS. In these circumstances the employer will be allowed to carry forward the incentive to the next month or it may be claimed when the taxpayer is tax compliant. If the employer does not claim the ETI amount they are entitled to within 6 months, the ETI will be Nil after the 6-month reconciliation cycle and the employer will not receive the ETI as a refund and cannot backdate the ETI claims if the 6-month cycle has lapsed.

Refunds
In terms of the refund process SARS will refund employers the amount of the incentive that wasn't used to reduce the employees' tax amount payable at the end of each 6-month reconciliation period. (1 March to 31 August and 1 September to 28 February). The refund will only be paid if the employer is tax compliant when the employer's reconciliation documents are received and processed by SARS. A non-compliant

employer will have 6 months from the start of the next reconciliation cycle to correct any non-compliance and be able to receive the refund. If the employer does not become compliant by the end of the next 6-month reconciliation period, the refund will be forfeited.

Penalties

Penalties will apply when:

- An employer claims an employment tax incentive in respect of an eligible employee earning less than the minimum wage (or less than R 2 000 where a minimum wage is not applicable). The employer will be liable for a penalty equal to 100% of the incentive received for that employee and will be subject to understatement penalties and interest.
- If an employer is believed to have displaced an employee to employ an individual eligible for the incentive. A penalty of R 30 000 will be levied for each employee displaced.

The incentive will cease on 28 February 2029.

GOVERNMENT GRANTS

All grant received from Government in the national, provincial or local sphere must be included in the gross income of the recipient. Any exemption from tax should be made based on a special exemption in terms of section 12P read together with the Eleventh Schedule to the Act.

VENTURE CAPITAL COMPANIES (VCC)

A taxpayer is allowed a deduction of 100% of the cost of the shares issued by a venture capital company (VCC).

The VCC must be approved by the Commissioner. A certificate stating the amount of the investment and the fact that it is approved must be issued by the VCC to the shareholder.

In order to obtain VCC approval, the company must be a resident, its tax affairs must be in order, and its sole object must be the management of investments in qualifying companies and it must be licenced with the Financial Services Board.

At least 80% of the expenditure incurred by the VCC must be used to acquire shares in qualifying companies.

No shareholder may hold, directly or indirectly, more than 20% of the shares of any class in a VCC. This maximum shareholding test must only be applied in respect of a class of share at the end of any year of assessment following a period of 36 months from the date of issue of that class of shares by that VCC. Under these circumstances the Commissioner will withdraw the VCC status during the current year of assessment when the VCC fails to take corrective steps acceptable to SARS and an amount equal to 125% of the allowable tax deduction in respect of expenditure incurred to acquire VCC shares should be included in the income of a VCC in the year of assessment in which the VCC status is withdrawn.

Shares issued by the VCC to managers for certain services rendered in respect of the incorporation, marketing, management or administration of a VCC or qualifying company held by the VCC, must be excluded from the concept of a VCC share. Such shares will, therefore, not qualify for a VCC deduction and will not be subject to the maximum holding test.

Not more than 20% of the share capital raised by the VCC may be used to acquire shares in any qualifying company.

A qualifying company' means any company if the company is:

- A resident;
- Not a controlled group company in relation to a group of companies;
- Not carrying on an impermissible trade; and
- The tax affairs of the company are in order.

Impermissible trade means and trade carried on in respect of:

- Immovable property, other than a hotel keeper;
- A bank, a long-term insurer, short term insurer, money-lending or hire-purchase financing;
- Financial or advisory services, legal services, tax advisory services, stock broking services, management consulting services, auditing or accounting services;
- Gambling;
- Liquor, tobacco, arms or ammunition;
- Any trade carried on mainly outside the Republic.

VCC shareholders (together with connected persons) may not hold more than 50% of participation or voting rights in the underlying company:

The sum of the investment income derived by the qualifying company during any year of assessment that ends after the expiry of a period of 36 months commencing on the first date on which that company issued any share to VCC may not exceed 20% of the gross income of that company.

Any amount received or accrued by the qualifying company from any transactions between a VCC shareholder (together with connected persons) shall be limited to not more than 50% of the aggregate amount received or accrued from the carrying of a trade. This limitation must only be applied after a period of 36 months from the date that the VCC acquires an interest in the qualifying company.

IN DUPLUM RULE

Where any notional interest has to be calculated under the Income Tax Act using the "official rate of interest" the calculation must be done ignoring the statutory or common law *in duplum* rule. This rule will apply from 1 January 2018.

DOUBTFUL DEBT ALLOWANCE

For companies using the IFRS 9 accounting standard for financial reporting purposes:

- 40% of the aggregate of:
    - The loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss, as contemplated

in IFRS 9, in respect of debt other than in respect of lease receivables as defined in IFRS 9; and
    - The amounts of debts disclosed as bad debt written off for financial reporting purposes that have not been allowed as a deduction under s 11(i) for the current or any previous year of assessment and the debt is included in the income of the taxpayer in the current or any previous year of assessment; plus
- 25% of the loss allowance relating to impairment, as contemplated in IFRS 9, in respect of debt other than in respect of lease receivables.

For companies not using the IFRS 9 accounting standard for financial reporting purposes:
- 40% of debts in arrears for 120 days or more; plus
- 25% of other debt in arrears for 60 days or more.

The Commissioner may, on application by a taxpayer, issue a directive that the 40% may be increased, to a percentage not exceeding 85 % after taking into account:
- The history of a debt owed to that taxpayer, including the number of repayments not met, and the duration of the debt;
- Steps taken to enforce repayment of the debt;
- The likelihood of the debt being recovered;
- Any security available in respect of that debt;
- The criteria applied by the taxpayer in classifying debt as bad; and
- Such other considerations as the Commissioner may deem relevant.

The allowance must be added back in the following year of assessment.

FRUITLESS AND WASTEFUL EXPENDITUTE

From 1 April 2019 the deduction of fruitless and wasteful expenditure by a Public Entity is prohibited. It is defined as expenditure which was made in vain and would have been avoided had reasonable care been exercised by the Public Entity.

The PFMA does require a Public Entity to take effective and appropriate disciplinary steps against any employee who makes or permits fruitless and wasteful expenditure. These steps may include any actions to recover such wasteful and fruitless expenditure from the offending employee,

An amount of fruitless and wasteful expenditure that was not allowed as a deduction and was recovered shall be deemed to be exempt from income tax during the year of assessment in which it is received or accrued.

TAX ADMINISTRATION MATTERS

Tax Ombud

The mandate of the Tax Ombud is to review and address any complaint by a taxpayer regarding a service, procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.

A complaint can only be lodged with the Tax Ombud after the taxpayer tried to resolve the complaint directly with SARS at the branch where the case was dealt with, or through the SARS Contact Centre and allowed reasonable time for a resolution.

The Tax Ombud’s recommendations are not binding on a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations. This will ensure that the Tax Ombud is able to review the reasonableness of the reasons.

Tax compliance status

A taxpayer may apply, in the prescribed form and manner to SARS for a confirmation of the taxpayer's tax compliance status. SARS must issue or decline to issue the confirmation of the taxpayer's tax compliance status, within 21 business days from the date the application is submitted. A senior SARS official may provide a taxpayer with confirmation of the taxpayer's tax compliance status as compliant only if satisfied that the taxpayer is registered for tax and does not have any:

- Outstanding tax debt of more than R 100 unless that payment has been deferred, compromised, or suspended;
- Outstanding return unless an arrangement acceptable to the SARS official has been made for the submission of the return.

SARS may alter the compliance status to non-compliant if the confirmation was issued in error, or was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts, and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 14 days prior to the alteration.

Illegal use of the word SARS

No person may:

- Use the name or abbreviated name of SARS in an unlawful manner;
- Use any logo or design of SARS without its authorisation;
- Falsely represent any material or substance as emanating from SARS;
- Use any name or description which implies some association or connection between the person or any corporate entity, body, firm, business or undertaking and SARS; or
- Register or use a domain name which incorporates the name or description 'South African Revenue Service' or 'SARS' or the name or description of any of its subsidiaries.

Notification of an audit

The SARS official involved in or responsible for an audit must provide the taxpayer with a notice of the commencement of an audit and, thereafter, a report indicating the stage of completion of the audit.

Request for relevant material

SARS may require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.

A request by SARS for relevant material from a person other than the taxpayer is limited to material maintained or kept by the person in respect of the taxpayer.

A taxpayer receiving a request from SARS for relevant material must submit the relevant material to SARS at the place, in the format (which must be reasonably accessible to the taxpayer) and:

- Within the time specified in the request; or
- If the material is held by a connected person located outside the

Republic, within 90 days from the date of the request, which request must set out the consequences of failing to do so.

If reasonable grounds for an extension are submitted by the taxpayer, SARS may extend the period within which the relevant material must be submitted.

If a taxpayer fails to provide the material that is held by a connected person located outside the Republic it may not be produced by the taxpayer in any subsequent proceedings, unless a competent court directs otherwise on the basis of circumstances outside the control of the taxpayer and any connected person located outside the Republic.

Persons who may be interviewed by SARS

A senior SARS official may require a taxpayer, or any of the taxpayer's employees or directors to attend an interview with SARS, concerning the tax affairs of the taxpayer, provided that it is not for the purpose of a criminal investigation.

Assistance during field work or criminal investigation

The person on whose premises an audit or criminal investigation is carried out and any other person on the premises, must provide such reasonable assistance as is required by SARS to conduct the audit or investigation, including:

- Making available appropriate facilities, to the extent that such facilities are available;
- Answering questions relating to the audit or investigation; and
- Submitting relevant material as required.

No person may without just cause obstruct a SARS official from carrying out the audit or investigation or refuse to give the access or assistance.

The person may recover from SARS after completion of the audit or criminal investigation (or, at the person's request, on a monthly basis) the cost for the use of photocopying facilities in accordance with the fees prescribed in the Promotion of Access to Information Act.

Inquiry order

A judge may grant an inquiry order if satisfied that there are reasonable grounds to believe that a person has:

- Failed to comply with an obligation imposed under a tax Act;
- Committed a tax offence; or
- Disposed of, removed or concealed assets which may fully or partly satisfy an outstanding tax debt; and
- That relevant material is likely to be revealed during the inquiry which may provide proof of the failure to comply, of the commission of the offence or of the disposal, removal or concealment of the assets.

Reduced assessments

SARS may make a reduced assessment if:

- The taxpayer successfully disputed the assessment;
- Necessary to give effect to a settlement;
- Necessary to give effect to a judgment pursuant to an appeal and there is no right of further appeal;
- SARS is satisfied that there is a readily apparent undisputed error in the assessment by:

  - SARS; or
  - The taxpayer in a return; or
- A senior SARS official is satisfied that an assessment was based on:
  - The failure to submit a return or submission of an incorrect return by a third party or by an employer;
  - A processing error by SARS; or
  - A return fraudulently submitted by a person not authorised by the taxpayer.

SARS may reduce an assessment despite the fact that no objection has been lodged or appeal noted.

Objection against an assessment or decision
If a taxpayer is aggrieved by an assessment, or a decision made by a SARS official, he may object. Prior to lodging an objection, the taxpayer can write to SARS within 30 business days after the date of the assessment and request written reasons for the assessment. SARS has 30 business days to notify the taxpayer where he already provided a reason or if not, SARS has 60 business days to do so. The taxpayer has 30 business days from the later of the day of assessment, or the date the written reasons are given to object. Condonation for a late objection not based on exceptional circumstances may be extended by a senior SARS official for a period up to 30 business days, but if there are exceptional circumstances this period may be further extended by SARS. The maximum period within which a late objection may be extended remains 3 years.

Business days exclude the days from 16 December to 15 January.

Issuance of assessments
An assessment may not be made:
- Three years after the date of the assessment of an original assessment by SARS;
- In the case of self-assessment for which a return is required, 5 years after the date of assessment of an original assessment;
- The above does not apply to the extent that:
  - In the case of an assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to fraud, misrepresentation or non-disclosure of material facts;
  - In the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to fraud, intentional or negligent misrepresentation, intentional or negligent non-disclosure of material facts or the failure to submit a return or, if no return is required, the failure to make the required payment of tax;
  - SARS and the taxpayer so agree prior to the expiry of the limitations period;
- It is necessary to give effect to:
  - The resolution of a dispute;
  - A judgment pursuant to an appeal and there is no right of further appeal; or
  - A request for a reduced assessment, if SARS becomes aware of the error before the expiry of the period of assessment.

The Commissioner may, by prior notice of at least 30 days to the taxpayer, extend a prescription period or an extended period, before the expiry thereof, by a period approximate to a delay arising from:

- Failure by a taxpayer to provide all the relevant material requested within the required period;
- Resolving an information entitlement dispute, including legal proceedings.

The Commissioner may, by prior notice of at least 60 days to the taxpayer, extend a prescription period before the expiry thereof, by 3 years in the case of an assessment by SARS, or 2 years in the case of self-assessment, where an audit or investigation relates to:

- The application of the doctrine of substance over form;
- The application of the general anti-avoidance rule;
- The taxation of hybrid entities or instruments; or
- Transfer pricing matters.

SARS will only be allowed in exceptional circumstances, i.e. fraud, misrepresentation and non-disclosure to reopen the tax period, audit and issue an additional assessment after prescription.

Liability of third parties

A senior SARS official may authorise the issue of a notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, requiring the person to pay the money to SARS in satisfaction of the taxpayer's outstanding tax debt.

A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period specified in the notice and the official may withdraw or amend the notice as is appropriate under the circumstances.

A person receiving the notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money.

SARS may, on request by a person affected by the notice, amend the notice to extend the period over which the amount must be paid to SARS, to allow the taxpayer to pay the basic living expenses of the taxpayer and his or her dependants.

SARS may only issue the notice after delivery to the tax debtor of a final demand for payment which must be delivered at the latest 10 business days before the issue of the notice, which demand must set out the recovery steps that SARS may take if the tax debt is not paid and the available debt relief mechanisms.

If the tax debtor is a natural person, the tax debtor may within 5 business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS based on the basic living expenses of the tax debtor and his or her dependants.

If the tax debtor is not a natural person, the tax debtor may within 5 business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS based on serious financial hardship.

SARS need not issue a final demand if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt.

Refunds and interest
SARS must pay a refund if a person is entitled to a refund, including interest thereon of:
- An amount properly refundable under a tax Act and if so reflected in an assessment; or
- The amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.

SARS need not authorise a refund until such time that a verification, inspection or audit of the refund has been finalised.

SARS must authorise the payment of a refund before the finalisation of the verification, inspection or audit if security in a form acceptable to a senior SARS official is provided by the taxpayer.

An amount that is erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment is regarded as a payment to the National Revenue Fund unless a refund is made in the case of:
- An assessment by SARS, within 3 years from the later of the date of the assessment or the erroneous payment; or
- Self-assessment, within 5 years from the later of the date the return had to be submitted or, if no return is required, payment had to be made in terms of the relevant tax Act or the erroneous payment was made.

If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount, including interest thereon is regarded as an outstanding tax debt from the date on which it is paid to the person.

A decision not to authorise a refund of an amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment is subject to objection and appeal.

Evasion of tax, fraud or theft
A person who with intent to evade or to assist another person to evade tax or to obtain an undue refund under a tax Act:
- Makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;
- Gives a false answer, whether orally or in writing, to a request for information;
- Prepares, maintains or authorises the preparation or maintenance of false books of account or other records or falsifies or authorises the falsification of books of account or other records;
- Makes use of, or authorises the use of, fraud or contrivance; or
- Makes any false statement for the purposes of obtaining any refund of or exemption from tax;

Is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding 5 years.

Any person who makes a statement referred to above may, unless the person proves that there is a reasonable possibility that he or she was ignorant of the falsity of the statement and that the ignorance was not due to negligence on his or her part, be regarded as being aware of the falsity of the statement.

Delivery of documents
If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having issued, given, sent or served the communication to the person if it was:
- Handed to the person;
- Left with another person over 16 years of age apparently residing or employed at the person's last known residence, office or place of business;
- Sent to the person by post to the person's last known address, which includes:
  - A residence, office or place of business;
  - The person's last known post office box number or that of the person's employer; or
- Sent to the person's last known electronic address, which includes:
  - The person's last known e-mail address;
  - The person's last known telefax number; or
  - The person's electronic address page e.g. e-filing.

Bank account holds
If a bank that holds an account on behalf of a client into which an amount is deposited, reasonably suspects that the payment of the amount is related to a tax offence, the bank must immediately report the suspicion to SARS and not proceed with the carrying out of any transaction in respect of the amount for a period not exceeding 2 business days unless SARS or a High Court directs otherwise.

Deregistration of non-complaint tax practitioners
A person seeking registration as a tax practitioner or a registered tax practitioner will not be registered or will be deregistered if he or she has during the preceding 12 months, for an aggregate period of at least 6 months:
- Not been registered with SARS, or has a debt of more than R 100 owing to SARS, unless the payment has been deferred, or compromised, or suspended pending the outcome of an objection or appeal;
- Failed to demonstrate that he or she has been compliant for that period or remedy the non-compliance, within the period specified in a notice delivered by SARS.

The person may be registered, or a tax practitioner may be reregistered once he or she remedies the tax non-compliance and the above conditions are no longer met.

PENALTIES AND INTEREST

Administrative non-compliance penalties

SARS has the power to impose administrative penalties in respect of non-compliance with any procedural or administrative action or duty imposed or requested in terms of the Income Tax Act.

Fixed amount table

Item	Assessed loss or taxable income for preceding year of assessment	Penalty
(i)	Assessed loss	R 250
(ii)	R 0 - R 250 000	R 250
(iii)	R 250 001 - R 500 000	R 500
(iv)	R 500 001 - R 1 000 000	R 1 000
(v)	R 1 000 001 - R 5 000 000	R 2 000
(vi)	R 5 000 001 - R 10 000 000	R 4 000
(vii)	R 10 000 001 - R 50 000 000	R 8 000
(viii)	R 50 000 001 and above	R 16 000

The fixed amount penalty increases monthly calculated from one month after the penalty assessment is issued, subject to a maximum of either 35 months or 47 months, depending on whether or not SARS has the taxpayer's current address. The amount depends on the taxpayer's taxable income, or assessed loss, for the preceding year of assessment. Special rules apply for large companies or large exempt institutions.

The non-compliance penalty does not apply where the percentage- based penalty, reportable arrangement, or the understatement penalty applies.

Penalties will be levied where a natural person fails to submit a tax return as and when required, for the year of assessment commencing on or after 1 March 2016, and where that person has two or more outstanding tax returns for such year of assessment.

All registered companies must submit income tax returns within 12 months of the end of the company’s financial year-end. This is applicable to all companies that are resident in South Africa, that receive source income in South Africa, or that maintain a permanent establishment or a branch in South Africa.

The administrative non-compliance penalties will be imposed for outstanding returns for years of assessment ending during the 2009 and subsequent calendar years. This will also apply to dormant companies with no receipts or assets.

SARS will issue a final demand which will grant the company 21 business days from the date of the final demand to submit the outstanding returns before the penalties will be imposed.

The penalties will be imposed by way of a penalty assessment. Any unpaid penalties will be recovered by means of the debt recovery steps.

Companies may request remittance of the penalties imposed and have the right to lodge an objection via eFiling should the request for remittance be unsuccessful.

Percentage based penalty

The percentage-based penalty is imposed where SARS is satisfied that the taxpayer has not paid the tax as and when required under a tax Act. The penalty is equal to a percentage of tax not paid.

The amount of penalty varies between 10% and 20%.

Penalties are levied in terms of a penalty assessment. This assessment will set out the date by which the penalty must be paid.

Remittance of penalties

A person can request that a penalty be remitted. This request must contain the grounds and supporting documents.

The penalty will only be remitted in the following exceptional circumstances:

- A natural or human-made disaster;
- A civil disturbance or disruption in services;
- A serious illness or accident;
- Serious emotional or mental distress;
- Certain SARS errors e.g. capturing errors or processing delay;
- Serious financial hardship;
- Any other circumstances of analogous seriousness.

A fixed amount penalty can be remitted up to an amount of R 2 000 in cases where there is a first incidence of non-compliance (no penalty assessment during preceding 36 months), or the duration of non-compliance is less than 5 business days.

For percentage-based penalties it can be remitted in respect of a first incidence (no penalty assessment during preceding 36 months), or if the amount is less than R 2 000, and reasonable grounds exist for the non-compliance, and the non-compliance has been remedied.

SARS may also remit a penalty or a portion thereof if a tax Act other than the Tax Administration Act provides for remittance grounds for a penalty.

A decision by SARS not to remit a penalty in whole or in part is subject to objection and appeal.

Understatement penalties

The understatement penalty is a percentage in accordance with the table set out below, applied to the shortfall of the tax.

An “understatement” is a failure to submit a return required under a tax Act or by the Commissioner, an omission from a return, an incorrect statement in a return, or if no return is required the failure to pay the correct amount of tax or an impermissible avoidance arrangement.

A “substantial understatement” is a case where the prejudice to the fiscus exceeds the greater of 5% of the amount of tax properly chargeable or refundable for the relevant period, or R 1 million.

A repeat case is one which takes place within 5 years of the previous case.

Understatement Penalty Percentage Table

1. Standard case
2. If obstructive or if it is a 'repeat case'
3. Voluntary disclosure after notification of audit or criminal investigation
4. Voluntary disclosure before notification of audit or criminal investigation

Behaviour	1	2	3	4
Substantial understatement	10%	20%	5%	0%
Reasonable care not taken in completing return	25%	50%	15%	0%
No reasonable grounds for tax position taken	50%	75%	25%	0%
Impermissible avoidance arrangement	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%
Intentional tax evasion	150%	200%	75%	10%

The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table, to each shortfall in relation to each understatement in a return.

The shortfall is the sum of:

- The difference between the amount of tax properly chargeable for the tax period, and the amount of tax that would have been chargeable for the tax period if the understatement were accepted;
- The difference between the amount properly refundable for the tax period and the amount that would have been refundable if the understatement were accepted; and
- The difference between the amount of an assessed loss or any other benefit to the taxpayer properly carried forward from the tax period to a succeeding tax period and the amount that would have been carried forward if the understatement were accepted.

If the understatement is a failure to submit a return, the tax that resulted from the understatement must be regarded as Nil for the purposes of calculating the shortfall and the understatement penalty.

The tax rate applicable to the shortfall determined is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period.

The understatement penalty will be payable unless the understatement results from a bona fide inadvertent error. The onus is on the taxpayer to show that a bona fide inadvertent error was made.

A decision by SARS not to remit an understatement penalty is subject to objection and appeal.

Request for interest remittance

If a senior SARS official is satisfied that interest payable by a taxpayer is payable as a result of circumstances beyond the taxpayer's control, the official may, unless prohibited by a tax Act, direct that so much of the interest as is attributable to the circumstances is not payable by the taxpayer.

The circumstances referred to above are limited to:

- A natural or human-made disaster;
- A civil disturbance or disruption in services; or

- A serious illness or accident.

SARS may not make a direction that interest is not payable after the expiry of 3 years, in the case of an assessment by SARS, or 5 years, in the case of self-assessment, from the date of assessment of the tax in respect of which the interest accrued.

VOLUNTARY DISCLOSURE PROGRAMME

“Default” means the submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a 'tax position' that resulted in an understatement.

A person may apply for voluntary disclosure relief, unless the person is aware of a pending audit or investigation in his tax affairs, or an audit or investigation has commenced, but has not yet been concluded. If the default does not relate to what is being audited the taxpayer may apply for voluntary disclosure relief for that default.

In the case of an audit or investigation that has commenced, a senior SARS official may permit the voluntary disclosure if he/she is of the view that the default would not otherwise have been detected during the audit, and the application would be in the interest of good management of the tax system, and the best use of SARS’s resources.

The disclosure must be voluntary, involve a default which has not occurred within 5 years of the disclosure of a similar default, be full and complete in all material respects, involve a behaviour referred to in the understatement penalty percentage table, not result in a refund by SARS, and must be made in the prescribed form and manner.

A senior SARS official may issue a non-binding private opinion as to a person's eligibility for relief. The identity of the party to the default need not be disclosed to SARS in such a case.

Relief granted

- Criminal prosecution;
- Understatement penalty (per understatement penalty table);
- 100% relief for the administrative non-compliance penalty;
- The late payment penalty.

If the voluntary disclosure application is accepted, SARS must enter into a voluntary disclosure agreement with the taxpayer. The statement issued to give effect to the agreement is not subject to objection and appeal.

EXCHANGE CONTROL ALLOWANCES

Discretionary allowance for resident individuals

A single discretionary allowance of R 1 million per calendar year is available to all South African residents who are 18 years and older, and that is in possession of a valid green bar-coded South African identity document or smart identity document card. This dispensation may be used for any legitimate purpose, including for investment purposes abroad as well as the sending of gift parcels in lieu of cash (excluding gold and jewellery) at the discretion of the individual without any documentary evidence having to be produced to the Authorised Dealer, except for travel purposes outside the CMA, where certain prescribed documentation has to be produced.

Travel allowance

Individuals may also use the single discretionary allowance as a travel allowance through an Authorised Dealer subject to the following conditions:

- Individuals, who are under the age of 18 years may not qualify for a single discretionary allowance but may make use of a travel allowance not exceeding an amount of R 200 000 per calendar year;
- Individuals may not avail of travel allowances more than 60 days prior to their departure and must present a valid passenger ticket when travelling by air, bus, rail or ship;
- The travel allowance may be transferred abroad to the traveller's own bank account and/or spouse accounts, but not to the account of a third party. Minors travelling with parents, may have their travel allowances transferred to their parents' bank account abroad;
- Any unused foreign currency must be resold within 30 days to an Authorised Dealer upon return to South Africa. However, business travellers going abroad on recurring business trips, where the next business trip is to commence within 90 days after returning from a previous business trip, may retain any unutilised foreign currency for use during subsequent business trips;
- Travellers are permitted to take with them up to R 25 000 in South African Reserve Bank notes in addition to the travel allowance.

Foreign capital allowance

Resident individuals, older than 18 years, are permitted to invest R 10 million per calendar year outside South Africa. A tax clearance certificate in respect of foreign investments must be obtained from SARS prior to the transfer of funds. The investment and any income on the investment may be kept offshore. The foreign investment allowance is not available to companies or trusts.

Study allowance

Individuals studying abroad may use the R 1 million single discretionary allowance. Spouses accompanying students also qualify for the facility.

Students may also export any household and personal effects, including jewellery (but excluding motor vehicles), up to a value of R 200 000 per student.

In addition, Authorised Dealers may transfer directly to the institution concerned the relative tuition and academic fees for the academic year.

Residents must produce to an Authorised Dealer:

- Documentary evidence from the institutions concerned confirming that the student has been enrolled for a course; and
- Evidence of the tuition and academic fees in the form of a letter or prospectus from the institution to be attended.

Students under the age of 18 years also qualify for a study allowance to pay for costs associated with their studies abroad as well as a travel allowance of R 200 000 per calendar year.

Emigration facilities

Family units emigrating will qualify for the following facilities after all their assets have been brought under the administration of an Authorised Dealer:

- A foreign capital allowance of up to R 20 million per calendar year after all liabilities including the cost of the passenger tickets and the applicable travel allowances have been provided for;
- Single persons qualify for a foreign capital allowance of up to R 10 million per calendar year after all liabilities including the cost of the passenger ticket and the applicable travel allowance, have been provided for.

Any household and personal effects, motor vehicles, caravans, trailers, motorcycles, stamps and coins (excluding coins that are legal tender in South Africa) per family unit or single person, within the overall insured value of R 2 million, may be exported.

Companies

South African registered private, public and listed companies (excluding sole proprietorships, partnerships, close corporations and trusts), as well as mandated state-owned enterprises as defined in Schedule 2 of the Public Finance Management Act, 1999, are allowed to transfer capital for foreign direct investment purposes to any country outside the CMA, subject to certain conditions outlined herein.

While there is no monetary limit on the amount that can be transferred offshore, requests for investments not exceeding R1 billion per entity per calendar year must be submitted to an Authorised Dealer.

Requests for investments exceeding R1 billion per entity per calendar year must be referred to the Financial Surveillance Department via an Authorised Dealer.

To qualify for the dispensation, business entities must acquire at least 10% of the foreign target entity’s voting rights.

RETENTION OF RECORDS

Companies

Document	Retention period
Any documents, accounts, books, writing, records or other information required to be kept in terms of the Companies Act	7 years
Registration certificate	Indefinite
Memorandum of Incorporation and alterations or amendments	Indefinite
Rules	Indefinite
Securities register and uncertificated securities register	Indefinite
Register of company secretary and auditors	Indefinite
Notice and minutes of all shareholders/directors/audit committee and other committee meetings including resolutions adopted and documents made available to holders of securities	7 years
Copies of reports presented at the annual general meeting	7 years
Copies of annual financial statements	7 years
Copies of accounting records	7 years
Records of directors and past directors, after the director has retired from the company	7 years
Written communication to holders of securities	7 years

Close corporations

Accounting records, including supporting documents	15 years
Founding statement/amended founding statement	Indefinite
Annual financial statements, including annual accounts and the report of the accounting officer	15 years
Minute books and resolutions	Indefinite

Tax records

A person who has submitted a return for a tax period	For a period of 5 years from the date of submission of the return, unless subject to an audit, investigation, objection or appeal
A person who is required to submit a return for the tax period and has not submitted a return	Indefinite, until a return is submitted, then the above period applies
A person who is not required to submit a return but has, during the tax period, received income, has a capital gain or loss or engaged in any other activity that is subject to tax, or would be subject to tax, but for the application of a threshold or exemption	For a period of 5 years from the end of the relevant tax period
A person who has been notified or is aware that the records are subject to an audit or investigation, or a person who has lodged an objection or appeal against an assessment or decision	Until the audit is concluded, or the assessment or decision becomes final, or the applicable period above, whichever is the latest

BUDGET SPEECH TAX PROPOSALS

Increase in the fuel levy by 29c per litre, consisting of a 15c per litre increase in the general fuel levy, a 5c per litre increase in the Road Accident Fund (RAF) levy and the introduction of a carbon tax on fuel of 9c per litre.

Increase in the excise duties on alcohol and tobacco products by between 7.4% and 9%.

The health promotion levy was implemented on 1 April 2018. It applies to beverages with more than 4 grams of sugar content per 100ml. To avoid an erosion in the value of the tax due to inflation, the levy rate will increase to 2.21 cents per gram in excess of 4 grams of sugar per 100ml from 1 April 2019.

The energy-efficiency savings tax incentive was introduced in November 2013 to offset the tax burden on the industry from the introduction of the carbon tax. The incentive expires on 31 December 2019. It provides companies with a tax deduction for energy-efficient investments, contributing to environmental goals while reducing energy costs. To encourage additional investment in energy efficiency, government proposes to extend the incentive to 31 December 2022. During 2019, government will review the design and administration of the incentive to improve its ease of use, effectiveness and economic impact.

The carbon tax will be implemented on 1 June 2019. The tax will assist in reducing emissions. It will be reviewed after three years.

The tax exemption for certified emissions reduction will be repealed from 1 June 2019.

The wage-regulating measures in the Employment Tax Incentive Act (2013) will be revised in line with the recently promulgated National Minimum Wage Act (2018).

IRP5 CODES

Income Tax Codes

Code	Description	Type of Tax
3601	Income	Subject to PAYE
3602	Income	Non-taxable
3603	Pension	Subject to PAYE
3605	Annual payment	Subject to PAYE
3606	Commission	Subject to PAYE
3608	Arbitration award	Subject to PAYE
3611	Purchased annuity	Subject to PAYE
3613	Restraint of trade	Subject to PAYE
3614	Other retirement lump sums	Subject to PAYE
3616	Independent contractors	Subject to PAYE
3617	Labour brokers without exemption certificate	Subject to PAYE
3619	Labour brokers with exemption certificate	IT
3620	Non-executive director: RSA resident	IT
3621	Non-executive director: Non-resident	Subject to PAYE

Allowance Codes

Code	Description	Type of tax
3701	Travel allowance	Subject to PAYE
3702	Reimbursive travel allowance	IT
3703	Reimbursive travel allowance	Non-taxable
3704	Subsistence allowance – local travel	IT
3707	Share options exercised	Subject to PAYE
3708	Public office allowance	Subject to PAYE
3713	Other allowances, e.g. entertainment, tool, computer, cellphone	Subject to PAYE
3714	Uniform, relocation, subsistence local and foreign	Non-taxable
3715	Subsistence allowance – foreign travel	IT
3717	Broad-based employee share plan	Subject to PAYE
3718	Vesting of equity instruments or return of capital i.r.o restricted equity instruments	Subject to PAYE
3719	Dividends not exempt i.t.o para (dd) of the proviso to s10(1)(k)(i)	Subject to PAYE
3720	Dividends not exempt i.t.o para (ii) of the proviso to s10(1)(k)(i)	Subject to PAYE
3721	Dividends not exempt i.t.o para (jj) of the proviso to s10(1)(k)(i)	Subject to PAYE
3722	Reimbursive travel allowance (rate exceeds prescribed rate)	Subject to PAYE
3723	Dividends not exempt i.t.o par (kk) of the proviso to s10(1)(k)(i)	Subject to PAYE

Fringe Benefit Codes

Code	Description	Type of tax
3801	General fringe benefits	Subject to PAYE
3802	Use of motor vehicle (not operating lease)	Subject to PAYE
3810	Medical aid contributions paid on behalf of employee	Subject to PAYE
3813	Medical services costs paid by the employer	Subject to PAYE
3815	Non-taxable bursaries and scholarships - basic education	Non-taxable
3816	Use of motor vehicle acquired by employer via operating lease	Subject to PAYE
3817	Employers pension fund contribution	Subject to PAYE

3820	Taxable bursaries or scholarships - further education	Subject to PAYE
3821	Non-taxable bursaries or scholarships - further education	Non-taxable
3822	Non-taxable fringe benefit on acquisition of immovable property	Non-taxable
3825	Employer provident fund contributions	Subject to PAYE
3828	Employer retirement annuity fund contributions	Subject to PAYE
3829	Taxable bursaries to a disabled person (basic education)	Subject to PAYE
3830	Non-taxable bursaries to a disabled person (basic education)	Non-taxable
3831	Taxable bursaries to a disabled person (further education)	Subject to PAYE
3832	Non-taxable bursaries to a disabled person (further education)	Non-taxable

Lump sum codes

Code	Description	Type of tax
3901	Gratuities/Severance benefits	Subject to PAYE
3906	Special Remuneration paid to proto-team members	Subject to PAYE
3907	Other lump sums	Subject to PAYE
3908	Surplus apportionments and exempt policy proceeds	Non- taxable
3909	Unclaimed benefits	Subject to PAYE
3915	Retirement/termination of employment lump sum benefits/commutation of annuities	Subject to PAYE
3920	Lump sum withdrawal benefits	Subject to PAYE
3921	Living annuity and section 15C of the Pension Funds Act and surplus apportionments	Subject to PAYE
3922	Compensation i.r.o death during employment	Non- taxable
3923	Transfer of unclaimed benefits	Non- taxable
3924	Transfer on retirement	Subject to PAYE

Deduction Codes

Code	Description
4001	Pension fund contributions paid or deemed paid by employee
4003	Provident fund contributions paid or deemed paid by employee
4005	Medical scheme fees (contributions) paid and deemed paid by employee
4006	Retirement annuity fund contributions paid and deemed paid by employee
4024	Medical services costs deemed to be paid by the employee in respect of himself/herself, spouse or child
4030	Donations deducted from the employee's remuneration and paid by the employer to the organisation
4472	Employer's pension fund contributions paid for the benefit of the employee
4473	Employer's provident fund contributions paid for the benefit of the employee
4474	Employer's medical scheme fees (contributions) paid for the benefit of employees (employee 65 years and older and who has not retired from that employer, should also be reflected under this code)
4475	Employer's retirement annuity fund contributions paid for the benefit of the employee
4493	Employer's medical scheme fees (contributions) paid for the benefit of retired employees who qualifies for the “no value” provisions
4582	Value of “remuneration” included in allowances and benefits (travel related)
4583	The portion (80 or 20%) of travel allowances and benefits which is subject to PAYE

4497	Total deductions/contributions

Employees' Tax Deduction and Reason Codes

Code	Description
4102	PAYE
4115	Tax on retirement lump sum and severance benefits
4116	Medical schemes fees tax credit
4118	Sum of ETI amounts
4120	Additional medical expenses tax credit (65 years and older)
4141	UIF employee and employer contribution
4142	SDL contribution

NOTES

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