Budget and Tax Update 2020
Training Manual

March 2020



The views expressed in this document are not necessarily those of Fasset.

Contents

INCOME TAX: BUSINESS 3

EMPLOYMENT TAX INCENTIVE 3

TRADING STOCK (SECTION 22) 5

INTEREST DEDUCTION RELATED TO DEBT FINANCE ACQUISITIONS (SECTION 24O) 5

APPROVAL OF TAX EXEMPT STATUS OF PBO'S AND RECREATIONAL CLUBS (SECTIONS 30(3B) AND 30A(4)) 6

VENTURE CAPITAL COMPANIES (SECTION 12J) 6

SPECIAL ECONOMIC ZONES INCENTIVES (SECTION 12R) 7

CERTIFIED EMISSIONS REDUCTION EXEMPTION (SECTION 12K) 8

ENERGY EFFICIENCY SAVINGS DEDUCTION (SECTION 12L) 8

EMPLOYER RECONCILIATIONS (PARAGRAPH 14(6) OF THE FOURTH SCHEDULE) 9

ANTI-DIVIDEND STRIPPING RULES (SECTION 22B AND PARAGRAPH 43A OF THE EIGHTH SCHEDULE) 9

INCOME TAX: INTERNATIONAL 11

COMPARABLE TAX EXEMPTION (SECTION 9D(2A)) 12

CLARIFICATION OF THE INTERACTION BETWEEN SECTION 24I AND PARAGRAPH 43 OF THE EIGHTH SCHEDULE 12

TAX ADMINISTRATION 14

TAX CLEARANCE STATUS (SECTION 256 OF THE TAX ADMINISTRATION ACT) 14

INCOME TAX: INDIVIDUALS 15

2020/2021 BUDGET PROPOSALS – 26 FEBRUARY 2020 21

INCREASE IN SIN TAXES AND VARIOUS INDIRECT LEVIES 21

INCREASE IN THE LIMIT OF THE ANNUAL CONTRIBUTION TO TAX-FREE INVESTMENTS 23

INCREASE IN THE DUTY-FREE THRESHOLD RELATED TO THE PURCHASE OF RESIDENTIAL PROPERTY 24

RECENT CASES 26

RECENT SARS DOCUMENTS 28

GENERAL TAX OVERVIEW 32

INCOME TAX: BUSINESS

EMPLOYMENT TAX INCENTIVE

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

Eligible employers

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 qualifying employee:

- Is 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 employed by the employer or an associated person on or after 1 October 2013;
- For employers operating as a qualifying company in a Special Economic Zone, there is no age restriction for the employees.

Remuneration requirements

- Must earn at least the higher of the amount payable by virtue of a wage regulating measure, or the minimum wage;
- Where no wage regulation or minimum wage is applicable:
  - Paid for at least 160 hours in a month, the amount of R 2 000, or
  - If paid for less than 160 hours in a month the R 2 000 must be apportioned by applying the number of hours the for which employee was paid;
- Remuneration may not exceed R 6 500 in a month.

Please note: “hours” mean ordinary hours as defined in the Basic Conditions of Employment Act.

The incentive may only be claimed for a total of 24 qualifying months.

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

Monthly remuneration	Per month during the first 12 months	Per month during the next 12 months
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))

Before 1 March 2019

Monthly remuneration	Per month during the first 12 months	Per month during the next 12 months
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))

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. The Minister proposed an amendment to the legislation to address a current anomaly whereby non-compliant employers benefit more than compliant employers with regards to the rollover of amounts claimable.

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 receives the employment tax incentive in respect of an 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 qualifying for the incentive, a penalty of R 30 000 will be levied for each employee displaced.

The incentive will cease on 28 February 2029.

TRADING STOCK (SECTION 22)

Section 22 of the Income Tax Act contains provisions related to the valuation of trading stock. Section 22(1) determines that closing stock held at the end of the year of assessment, must be valued at:

- Cost price
  LESS
- A reduction in the value of closing stock due to
  - Damage;
  - Deterioration;
  - Change in fashion;
  - Decrease in market value; or
  - Another reason listed in public notice issued by the Commissioner.

A proviso has been added to section 22(1)(a) that determines that in the case of a diminution in the value of trading stock, no account must be taken of the fact that the value of some items of trading stock held and not disposed of by the taxpayer may exceed their cost price. The proviso also provides clarity on how the value of trading stock is to be "brought to account". The amendment provides clarity that it should be included in gross income. This amendment is effective on 1 January 2020 and must be applied in years of assessment commencing on/after this date.

INTEREST DEDUCTION RELATED TO DEBT FINANCE ACQUISITIONS (SECTION 24O)

Section 24O provides for a special interest deduction where companies incur interest to acquire a direct or indirect controlling interest in an operating company. The intention is to provide for such an interest deduction, where an interest in a functioning operating company is obtained and at least 80% of the operating company's receipts and accruals constitute income.

However, various taxpayers became party to interest-bearing debt utilized to obtain an interest in a start-up company and were of the view that the interest incurred will be claimable as a tax deduction in terms of section 24O. The special interest deduction is meant to provide for a deduction where interest bearing debt is used to acquire shares in established companies with income producing assets that already generate adequate levels of income.

The amendment provides for the exclusion of acquisitions of shares in companies that are not operating companies or controlling companies on the date of the acquisition of the shares.

APPROVAL OF TAX EXEMPT STATUS OF PBO'S AND RECREATIONAL CLUBS (SECTIONS 30(3B) AND 30A(4))

Currently, the Commissioner has the discretion to approve an organisation as a PBO in terms of section 30(3B) or a recreational club in terms of section 30A(4) retrospectively. The amendment determines that where an organisation applies for approval, the Commissioner may approve that organisation with retrospective effect, if the Commissioner is satisfied that the organisation during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in s 30(1) or a recreational club as defined in section 30A(1).

In order to qualify for the retrospective approval in the case of an organisation that complied with all its obligations under the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of s 99(1) of that Act not be made. In order to qualify for the retrospective approval in the case of an organisation that has not complied with all its obligations under the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of s 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with s 25(1) of that Act.

VENTURE CAPITAL COMPANIES (SECTION 12J)

A Venture Capital Company (VCC) acts as a financier to various independent small businesses referred to as qualifying companies. Investors invest in a VCC and the VCC acts as a middle-man and re-invests in qualifying companies.

The VCC must be approved by the Commissioner. Approval may be granted if the following requirements are met:

- The company must be a resident of South Africa;
- The company's tax affairs must be in order (the company must be tax compliant);
- The company's sole object must be the management of investments in qualifying companies; and
- The company must be licensed in terms of the Financial Advisory and Intermediary Services Act.

No shareholder may be a connected person to the VCC or hold more than 20% of a class of share.

A further requirement is imposed that at least 80% of the expenditure incurred by the VCC must be used to acquire shares in qualifying companies. A qualifying company is a company that is:

- A resident;
- Not a controlled group company in relation to a group of companies of which the VCC forms part from the date of issue of any such share;
- An unlisted or a junior mining company;

- Not carrying on an impermissible trade; and
- The tax affairs of the company are in order.

An amendment relates to the group test provided for in the determination of whether the entity invested in is a qualifying company. The intention is that the scope of the group test is expanded to not only be a once-off test, but that the group status be tested throughout the period of ownership of the interest. The amendment now requires that a qualifying company is "not a controlled group company in relation to a group of companies of which the VCC forms part from the date of issue of any such share and at any time during any year of assessment after that date".

If, at the end of the year of assessment, after the expiry of 48 months from the date of the first issue of the VCC shares, the VCC:
- Has spent less than 80% of its expenditure to obtain qualifying shares with a book value of R 50 million (R 500 million in a junior mining company), *or*
- Has spent more than 20% of the amounts received to acquire qualifying shares in any qualifying company

the Commissioner can withdraw the VCC approval. The abovementioned period of 48 months was 36 months before 21 July 2019.

In the case of a withdrawal of the VCC status, an amount equal to 125% of the expenditure incurred by investors to acquire VCC shares must be included in the income of the VCC in the year the approval is withdrawn. It is important to note that this recoupment represents the section 12J deduction claimed by the investors in the VCC, but must be included in the income of the VCC (and not in the income of the investors).

Prior to 21 July 2019 investors in VCC shares were allowed a deduction of the full amount of expenditure incurred during a year of assessment to acquire VCC shares. For expenditure incurred on/after 21 July 2019 this deduction will be limited to:
- R 5 million per year if the taxpayer is a company; and
- R 2.5 million per year if the taxpayer is a person other than a company.

No deduction will be allowed on shares acquired after 30 June 2021 – Government will review the effectiveness, impact and role of the incentive regime to ascertain whether it should be discontinued.

SPECIAL ECONOMIC ZONES INCENTIVES (SECTION 12R)

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

A "qualifying company" meets the following requirements:
- A company that is incorporated or effectively managed in South Africa;
- Carrying on business from a fixed place of business within a SEZ;
- At least 90% of the income must be derived from the carrying on of business or provision of services within the SEZ.

For years of assessment ending on or after 1 January 2019, the trade must have commenced:

- Before 1 January 2013 in a location that was subsequently designated as a SEZ;
- On or after 1 January 2013 in a SEZ and was not previously carried on by the company or a connected person in South Africa; or
- On or after 1 January 2013 in a SEZ and involves the production of goods not previously produced by the company or a connected person in South Africa, uses new technology in its production process or represents an increase in the production capacity of the company.

Not more than 20% of the deductible expenses incurred, or 20% of the income received, can originate from transactions with a connected person that is a resident or a non-resident with a permanent establishment in the Republic.

The relief is not available for manufacturing companies in the following industries:

- Distilling, rectifying and blending of spirits, wines, malt liquors and malt, tobacco products, weapons and ammunition and biofuels 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.

Section 12R and section 12S provide for the following tax relief mechanisms:

- An accelerated 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 SEZ, other than providing residential accommodation;
- No age restriction is applicable on the employment tax incentive (i.e. the ETI can be claimed regardless of the age of the employees);
- Reduced corporate rate of 15% (only if the company does not conduct activities listed in the regulations issued by the Minister of Finance).

It is also interesting to note that small business corporations have the option of paying tax at the lower of 15%, or the effective SBC rate.

This incentive will cease to apply in respect of any year of assessment commencing on or after 1 January 2024.

CERTIFIED EMISSIONS REDUCTION EXEMPTION (SECTION 12K)

Section 12K was repealed on 1 June 2019 when carbon tax was implemented. The Carbon Tax Act provides for various relief mechanisms and section 12K has, therefore, become redundant.

ENERGY EFFICIENCY SAVINGS DEDUCTION (SECTION 12L)

Section 12L provides for a tax deduction from income derived from the carrying on of any trade by taxpayers involved in energy efficiency savings initiatives. The taxpayer must be in possession of a certificate relating to the energy efficiency savings. The rationale behind the section is to motivate investment in transforming old technology into new technology. The deduction is calculated as 95c per kilowatt hour multiplied by the energy efficiency saving.

The relief provided for in section 12L would have come to an end on 31 December 2019, but has now been extended until 1 January 2023.

EMPLOYER RECONCILIATIONS (PARAGRAPH 14(6) OF THE FOURTH SCHEDULE)

Where an employer fails to render **a complete return** to the Commissioner within the prescribed period, the Commissioner may impose a percentage-based penalty in terms of the Tax Administration Act, for each month that the employer fails to submit a complete return
The abovementioned penalty **may not in total exceed 10%** of the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period

The effective date of this amendment is 15 January 2020.

ANTI-DIVIDEND STRIPPING RULES (SECTION 22B AND PARAGRAPH 43A OF THE EIGHTH SCHEDULE)

Dividend stripping normally occurs when a shareholder company that intends on disinvesting in a target company avoids income tax (including capital gains tax) that would ordinarily arise on the sale of shares. This is achieved when a shareholder company (that either controls or has a significant influence over a target company) ensures that the target company declares a large dividend to it prior to the sale of shares in that target company to a prospective purchaser.

This pre-sale dividend, which is exempt from tax, decreases the value of shares in the target company. As a result, the shareholder company can sell the shares at the lowered value thereby reducing the inclusion in gross income (in the case where shares are held as trading stock) or by reducing the proceeds on the disposal (in the case where shares are held as capital assets). The company has, therefore, successfully reduced the tax liability related to the sale of the shares.

In its simplest form, the anti-avoidance rules provide that exempt dividends that are paid to a shareholder company (the "seller") within 18 months prior to the disposal of shares could give rise to an extraordinary dividend which will be treated as proceeds (in terms of paragraph 43A) or income (in terms of section 22B) that is subject to tax in the hands of the seller.

An extraordinary dividend is defined as follows:

- In the case of preference shares
    - Any dividend received or accrued in excess of 15% of the consideration for which the preference share was issued.
- In other cases any dividend received or accrued:
    - Within 18 months prior to the disposal of the share; or
    - In respect of the disposal of the share,

  That exceeds 15% of the higher of the market value of the share at the beginning of the 18 months or at the date of disposal of those shares.

When considering whether section 22B and paragraph 43A should be applied, one must assess whether a qualifying interest as defined is held. A qualifying interest is defined as a direct interest held by a company (whether directly or indirectly with any connected person) in another company, that consists of the following as a minimum:

- In the case of a listed company: 10% or more of the equity shares or voting rights;
- In all other cases: 20% of the equity shares or voting rights if no other person holds the majority interest, otherwise 50% of the equity shares or voting rights.

It has come to Government's attention that certain taxpayers have embarked on abusive tax schemes to circumvent the current anti-avoidance rules. These schemes involve a substantial dividend distribution by the target company to its shareholder company combined with the issuance of shares to a third party.

The impact of the abovementioned scheme is that a dilution of the shareholder company's effective interest in the shares of the target company arises, without an actual disposal of those shares by the shareholder company. Therefore, the shareholder company holds a reduced effective interest in the shares in the target company without triggering the current anti-avoidance rules. The anti-avoidance rules are not triggered as no actual disposal of shares arises.

Amendment 1: In order to curb this abuse, the anti-avoidance measures are extended to not only apply in respect of actual disposals of shares, but to also apply in respect of **deemed disposals** of shares. A deemed disposal will arise when the shareholder company holds a reduced effective interest in the shares in the target company due to the target company issuing **new shares** to **a third party.** The deemed disposal will be based on the percentage by which the effective interest held by the shareholder company in the target company has been reduced.

This deemed disposal will be imposed **solely for purposes** of the dividend stripping rules and will **result in an income inclusion or capital gain** in the hands of the shareholder company.

Therefore, if an extraordinary dividend was received or accrued in the 18 months prior to the deemed disposal, it will be treated as proceeds (in terms of paragraph 43A) or income (in terms of section 22B) to the extent that it relates to the deemed disposal.

Remember: Once treated as proceeds, it can never be treated as proceeds again in subsequent disposals (i.e. actual disposal of shares).

This amendment is deemed to become **effective on 20 February 2019** (and will be applicable if the issue of shares leads to a reduction in the effective interest on/after this date)**.**

Amendment 2: Dividends in specie received on/after 30 October 2019 that are distributed in terms of section 46(1)(a), unbundling transaction, or a section 47(1)(a) liquidation distribution is not an extraordinary dividend.

VALUE-SHIFTING RULES (SECTION 24BA AND SECTION 40CA)

Anti-avoidance principles preventing the transfer of high value assets to a company in return for low value shares issued by the company and the issuance of high value shares for low value assets.

Where a company acquires an asset from a person in exchange for an issue of shares, and:

- The market value of the asset > the market value of the shares, then:
  - Excess is deemed to be a capital gain
  - Base cost of the shares issued must be reduced in the hands of the person selling the asset by the amount of that excess
- market value of the shares > market value of that asset
  - Excess is deemed to be a dividend that consists of a distribution of an asset in specie that is paid by the company on the date of that issue

Consider the following example: Company A acquires an asset with a market value of R 15 million from Person X and as consideration for the assets Company A issues shares with a market value of R 10 million after the transaction:

- Person X has a base cost of R 15 million for the shares issued by Company A as he incurred a cost equal to the market value of his asset in order to acquire the shares;
- In terms of section 40CA, Company A is deemed to have a base cost of R 10 million for the assets (i.e. being the market value of the shares it issued immediately after the transaction);
- Given the difference in value, section 24BA applies to the transaction:
- As a result Company A is deemed to have a capital gain of R 5 million (i.e. the market value of the assets immediately before the transaction of R15 million less the market value of the shares issued immediately after they are issued of R 10 million)
- In addition, Person X must reduce his base cost for the shares with R 5 million, thereby not allowing for a base cost increase for shares of a lower value.

An amendment provides that the deemed expenditure incurred by a company that acquires an asset in exchange for the issue of its own shares must be equal to:

- The market value of the issued shares;
  PLUS
- Any deemed capital gain which arose in terms of the value shifting rules

The amendment became effective on 1 January 2020 and applies in respect of acquisitions made on or after that date

INCOME TAX: INTERNATIONAL

TRANSFER PRICING (SECTION 31)

A very important anti-avoidance principle exists in section 31 of the Income Tax Act. The rules around transfer pricing will be applied if an “affected transaction” is entered into between a resident and non-resident connected person that does not represent an arm’s length transaction and that

results in a tax benefit for a party to the transaction (in the form of a lower inclusion in taxable income or a greater deduction from taxable income).

Section 31(2) requires that a primary adjustment be made in taxable income (which represents the difference between the market-related value of the transaction and the actual value of the transaction). Furthermore, section 31(3) requires that a secondary adjustment be made and that the value described above will constitute:

- A deemed dividend in specie if the resident is a company; and
- A donation if the resident is not a company.

The scope of section 31 is that the abovementioned primary and secondary adjustments are only relevant if a transaction is entered into between connected persons (as defined in section 1 of the Income Tax Act).

The amendment made to section 31 expands the scope of the transfer pricing rules to also include transactions between persons that are not connected persons, but that are "associated enterprises" as described in Article 9(1) of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD). This includes an enterprise, which could be the same person (such as branches), that participates directly or indirectly in the management, control or capital of another enterprise (again potentially including the same person).

This amendment will become effective on **1 January 2021** and will be applied in respect of years of assessment commencing on or after this date.

COMPARABLE TAX EXEMPTION (SECTION 9D(2A))

Where a non-resident company meets the requirements of a Controlled Foreign Company ("CFC"), section 9D(2A) determines that the taxable income of the foreign company must be imputed (included) in the taxable income of residents holding interests in the CFC. The CFC rules contain an exemption known as a comparable tax exemption: The net income of a CFC shall be deemed to be nil where the taxes payable on income by the CFC to foreign governments was at least 75% of the South African tax the CFC would have paid had it been a South African resident company.

The amendment determines that the comparable tax exemption threshold be reduced to 67.5%. This amendment becomes effective on 1 January 2020 and is applicable to years of assessment ending on or after that date.

CLARIFICATION OF THE INTERACTION BETWEEN SECTION 24I AND PARAGRAPH 43 OF THE EIGHTH SCHEDULE

The tax treatment of changes in foreign currency is dealt with in section 24I of the Income Tax Act and paragraph 43 of the Eighth Schedule.

Section 24I determines that foreign exchange gains should be included in taxable income and foreign exchange losses deducted from taxable income, regardless of whether these are realised gains and losses.

Paragraph 43 of the Eighth Schedule determines:

1. If a natural person or non-trading trust disposes of an asset in a foreign currency and originally acquired the asset in the same foreign currency, the capital gain or loss on the disposal should be calculated in this foreign currency and converted to Rand by applying the average exchange rate for the year of assessment in which the asset was disposed of or the spot rate at the date of disposal.
2. If a company or trading trust acquires or disposes of an asset in a foreign currency, the proceeds and base cost must be converted to Rand (making use of either spot rates or average rates) and the capital gain or loss must be determined in Rand.

In an attempt to avoid double tax, paragraph 43(6A) of the Eighth Schedule determined that rule 2 above was not applicable to foreign debt (including foreign bonds, forward exchange contracts and foreign currency option contracts). The paragraph has been deleted. Repayment of debt in itself (either to or by the taxpayer) will not lead to a capital gain or loss as no disposal of an asset (as contemplated in the Eighth Schedule) has occurred. The repayment of a foreign debt may lead to a foreign currency gain or loss, the taxation of which are governed by sections 24I and 25D. Where a taxpayer holds a debt instrument (as creditor) in a foreign currency and disposes thereof (other than by way of receiving repayment of the capital), the provisions of paragraph 43 will be applicable.

The amendment provides that a new proviso be inserted to address the interaction between section 24I of the Income Tax Act and paragraph 43, ensuring that double tax does not arise.

The proviso reads as follows:

"The amount of any capital gain or capital loss determined under this subparagraph in respect of an exchange item contemplated in section 24I must be taken into account in terms of this paragraph only to the extent to which it exceeds the amounts determined in respect of that exchange item under section 24I"

The amendment becomes effective on 1 January 2020 and applies to years of assessment commencing on or after this date.

Example: Explanatory Memorandum

Company B acquired a foreign bond as long-term investments during its first year of assessment for X$100 when the exchange rate was X$1:R1. At the end of the first year of assessment the exchange rate was X$1:R1,40 and at the end of year 2 X$1:R2. On the last day of year 2 Company B disposed of the bond for an amount accrued of X$120.

Result:

Section 24I of the Income Tax Act is applied.

End of first year of assessment (X$100 x R1,40)	R140
Less: Date of acquisition (X$100 x R1)	(R100)

Income inclusion	R40

Date of disposal at the end of the second year of assessment (X$100 x R2)	R200
Less: Beginning of second year of assessment (X$100 x R1,40)	(R140)
Income inclusion	R60

Impact of section 25D

Amount received or accrued (X$120 x R2)	R240
Less: Arguably reduction of amounts included in income under s 24I	(R100)
Proceeds (per paragraph 35)	R140
Less: Base cost (X$100 x R1)	(R100)
Capital gain	R40

TAX ADMINISTRATION

TAX CLEARANCE STATUS (SECTION 256 OF THE TAX ADMINISTRATION ACT)

Section 256 of the Tax Administration Act determines that a taxpayer can demonstrate that his/her tax affairs are in order by proof of tax compliance. A taxpayer will only be compliant if the taxpayer:

- Is registered for tax;
- Does not have an outstanding tax debt of more than R100 (can be changed by a notice) unless that payment has been deferred, compromised, or suspended (including the 10-day collection period);
- Does not have an outstanding return unless an arrangement has been made for the submission of the return.

SARS may revoke third party access if the access was issued in error, or was provided 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 at least 10 business days prior to the revocation.

The amendment determines that the Commissioner can, by way of a public notice, insert a de minimis related to the value of outstanding tax debt that will contribute to the taxpayer's non-compliant tax status. Furthermore, a grace period is also provided for before a taxpayer's tax compliance status is reflected as non-compliant.

REPORTABLE ARRANGEMENT AND MANDATORY DISCLOSURE PENALTY-SECTION 212 OF THE TAX ADMINISTRATION ACT

Applies to a person referred to:

- As a 'participant' under s 34, who fails to disclose the information in respect of a reportable arrangement, as required by s 37; or
- In the definition of 'intermediary' in the regulations issued under the 'international tax standard', who fails to disclose the information required to be disclosed under the regulations.

DEREGISTRATION OF NON-COMPLIANT TAX PRACTITIONERS (SECTION 240 OF THE TAA)

SARS may refuse to register a tax practitioner, or may deregister a tax practitioner if any of the following apply to the person during the preceding 5 years:

(a) The person has been removed from a profession by a controlling body for serious misconduct during the preceding 5 years;
(b) The person has been convicted of any offence involving dishonesty, theft, fraud forgery or uttering a forged document, perjury or an offence under the Prevention and Combatting of Corrupt Activities Act and has been imprisoned for a period exceeding two years without the option of a fine, or to a fine exceeding the amount prescribed in the Adjustment of Fines Act;
(c) The person has been convicted of a serious tax offence in the preceding 5 years;
(d) *Was not tax compliant (to the extent referred to in S256(3) during the preceding 12 months for an aggregate period of at least 6 months and has failed to remedy the non-compliance within the period specified by SARS in a notice. (amended: par(d) added in 2018)*

The impact of deregistration is that a tax practitioner will lose access to the tax practitioner eFiling profile and will effectively be prevented to reregister as a tax practitioner for 6 months after the non-compliance has been remedied.

The practitioner will also not be able to make use of the SARS tax practitioner channel.

INCOME TAX: INDIVIDUALS

FOREIGN EMPLOYMENT TAX EXEMPTION (SECTION 10(1)(o)(ii))

Remuneration in respect of services rendered outside the Republic for or on behalf of any employer is exempt from normal tax, if the employee was outside the Republic for a:

- 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.

From 1 March 2020 the exemption will only apply to the extent that remuneration does not exceed **R 1.25 million** *(previously R1 million)* during a year of assessment. Any excess above the R 1.25 million is subject to normal tax in South Africa.

It is important to note that only remuneration received or accrued *in respect of services rendered* ***outside the Republic*** during the qualifying twelve month period could qualify for the exemption – remuneration for services rendered inside the Republic remains taxable in South Africa.

Additional considerations:

- Includes fringe benefits and benefits under employee share schemes

- Independent contractors and self-employed individuals do *not* qualify (they are not considered employees)
- Days outside South Africa include weekends, public holidays, leave and sick leave
- Any 12-month period may be used to calculate the 183 days
- The provisions of a DTA should be considered when the remuneration exceeds R 1.25 million
- Double tax relief in the form of a foreign tax credit (s 6quat) is available in South Africa where tax was paid in both countries on the same remuneration
- For PAYE purposes the R 1.25 million threshold should accumulate monthly
- Once the R 1.25 million threshold is reached, the income exceeding R 1.25 million is subject to normal tax. The R 1.25 million threshold may not be averaged over the year of assessment
- If an employer withholds employee tax on remuneration that is exempt, the employee may only claim the refund on assessment
- SARS may request supporting documents to substantiate the exemption e.g. employment contracts and copies of passports
- Where a person is in transit through South Africa between two places outside South Africa and does not formally enter South Africa through a designated port of entry, the person is deemed to be outside South Africa

For additional guidance refer to:

- SARS Interpretation note No. 16 (Issue 3) (The Interpretation note still refers to the original R1 million exemption amount)
- SARS FAQs: Foreign Employment Income Exemption (s 10(1)(o)(ii))

VARIABLE REMUNERATION (SECTION 7B)

The timing of accrual and incurral of variable remuneration must be on the payment basis and will only be included in the income of the employee (and be taken into account for employees' tax purposes) and be expenditure incurred by the employer, on the date of the actual payment.

Section 7B = **Timing rule**

The **definition** of "variable remuneration" was amended effective 1 March 2020.
Prior to amendment 'variable remuneration' means:

- Overtime pay, bonus or commission contemplated in the definition of 'remuneration' in para 1 of the Fourth Schedule;
- An allowance or advance paid in respect of transport expenses as contemplated in section 8(1)(b)(ii) or (iii); or
- Any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year

From 1 March 2020 'variable remuneration' will additionally include:

- Any night shift allowance;
- Any standby allowance; or

- Any amount paid or granted in reimbursement of any expenditure as contemplated in section 8(1)(a)(ii)

Proviso added to sections 8(1)(b)(ii) & (iii):
Where an allowance or advance is deemed to have accrued under section 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid.

RETIREMENT FUND AMENDMENTS

Aligning the effective date of tax-neutral transfers from pension to provident funds

Pending amendments:
- section 1 definition of 'provident fund'
- Paragraph 6(1)(a) of the Second Schedule

Changes were made to align the effective date of tax neutral transfers from pension to provident or provident preservation funds, with the effective date of compulsory annuitisation of provident funds, being 1 March 2021.

- Members of retirement funds can 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 could 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 the same rules apply for transfers to pension preservation funds or provident preservation funds

Amendments to the Second Schedule paragraph 6(1):

Non-taxable transfers effective 1 March 2019:
Benefits paid or transferred for the benefit of the person from a -

(aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;

(bb) pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;

(cc) provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(dd) provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and

(ee) retirement annuity fund into any retirement annuity fund;

Non-taxable transfers to come into operation 1 March 2021:
Benefits paid or transferred for the benefit of the person from a -

(i) pension fund, pension preservation fund, provident fund or provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(ii) retirement annuity fund into any retirement annuity fund

Exemption of non-deductible contributions Section 10C

- Once a member of a retirement fund retires and receives an annuity as a retirement benefit, any contributions to the retirement fund that did not previously qualify for tax deduction are tax-exempt – either against a lump sum benefit (Second Schedule) or an annuity (s 10C)
- The section 10C exemption applies to annuities from pension, pension preservation and retirement annuity funds but *did not previously apply to annuities from a provident or provident preservation fund*

  Amendment: To encourage annuitisation, the exemption is extended to annuities received from provident and provident preservation funds

Exemption of qualifying annuities

- Section 10(C)(2) allows an exemption equal to a person's own contributions to any fund that did not rank for a deduction against the person's income in respect of any prior year of assessment
- The unclaimed balance of contributions at the end of the 2019 year of assessment could be applied or used in the following sequence during the 2020 year of assessment:
  1. Claim a deduction against a lump sum received during the 2020 year of assessment;
  2. Claim an exemption against any qualifying annuities received during the 2020 year of assessment, or
  3. Add the remaining unclaimed balance to the current contributions made during the 2020 year of assessment.

The exemption will only apply to annuities paid out of the retirement interest to members of provident funds and provident preservation funds with effect from 1 March 2020

Lump sum payments to former members of deregistered funds

New paragraph 2D of the Second Schedule to the Act

Background:

- Para 2C of the Second Schedule read together with the notice published by the Minister of Finance in GG 32005 in 2009 allowed for **extraordinary lump** sum payments to be made by **registered active retirement funds;**

- When the notice was published, some retirement funds were no longer registered, and these funds had already paid the extraordinary lump sum payments to **the fund administrators;**
- These extraordinary lump sum payments are currently still held by the respective fund administrators;
- Paragraph 2C of the Second Schedule, read with the GG 32005 Notice provides that:
    - Extraordinary lump sum payments are only exempt if made by registered active retirement funds; and
    - Payments made by fund administrators does not qualify for the tax exemption

Amendment: New para 2D of the Second Schedule
To ensure consistent tax treatment of extraordinary lump sum payments, changes will be made in the Second Schedule and a revised Notice will be published making provision for the payment of extraordinary lump sums **currently held by fund administrators** on behalf of deregistered funds to **qualify for tax exempt treatment** in the hands of the recipient former members of the deregistered funds, provided that they meet the criteria to be determined by the Minister of Finance in the notice.
The proposed amendments will come into operation on the date to be determined by the Minister of Finance by notice in the Government Gazette.

Tax treatment of annuities

Addition of sub-paragraph (2B) to paragraph 2 of the Fourth Schedule

- Upon the death of a member, the surviving spouse may be entitled to receive a monthly spousal pension from the retirement fund;
- These spousal pension payments are subject to PAYE;
- If the surviving spouse also receives a salary or other income, it is added to the spousal pension to determine the correct tax liability on assessment;
- Usually the spouse does not save money to settle the liability.

Amendment: Retirement funds and insurers that pay an annuity must, when deducting or withholding employees' tax **disregard any tax rebates** in terms of section 6 applicable to a surviving spouse or any other taxpayer, if SARS issues a directive that the rebate must be disregarded

- This will be the case where the person to whom the annuity is paid receives an amount of remuneration from more than one employer;
- Any PAYE excessively withheld will be **refunded upon assessment**;
- Effective from 1 March 2021 and apply in respect of any year of assessment commencing on or after that date.

CAPITAL GAINS TAX: BASE COST OF AN ASSET (PARAGRAPH 20(e) OF THE EIGHTH SCHEDULE)

Paragraph 20(1)(e) (amounts that from part of qualifying expenditure included in base cost) was updated to remove the requirement that improvements must still reflect in the asset at the time of

disposal:

"(e)The expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset ~~if that improvement or enhancement is still reflected in the state or nature of that asset at the time of its disposal~~"

WITHHOLDING TAXES ON ROYALTIES, INTEREST AND DIVIDENDS: DECLARATIONS AND WRITTEN UNDERTAKINGS (SECTIONS 49E, 50E, 64G AND 64H)

- The person who pays the royalty/interest/dividend 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 *written declaration and undertaking* of exemption/treaty relief from the foreign person; and
- This declaration and undertaking must be submitted before the payment of the interest/royalty/dividend.

Amendment:

- The requirement to submit a declaration before each payment will be removed and be replaced by a requirement to provide such a declaration once every two years, along with an undertaking to inform the payer if circumstances change during that period.
- With effect from 1 July 2020 such declaration and undertaking will only be valid for a **period of five years** from the date of declaration.

PROVISIONAL TAX EXEMPTION (PARAGRAPH 19 OF THE FOURTH SCHEDULE)

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.

If a provisional taxpayer fails to 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.

In cases where a taxpayer passed away during a year of assessment and no estimate was submitted within four months from the date of death of the taxpayer an underestimation penalty may be levied in terms of section 20 of the Fourth Schedule to the Act.

In order to have this penalty remitted the executor would have to lodge a request for remittance of the underestimation penalty.

Amendment:
An additional proviso (ii) to paragraph 19(1)(*a*) was inserted that provides that no estimate is required to be made in respect of the period ending on the date of death of the taxpayer in respect of the year of assessment in which the taxpayer dies. Any tax owing will be collected on assessment.

2020/2021 BUDGET PROPOSALS – 26 FEBRUARY 2020

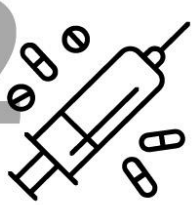
BUDGET HIGHLIGHT

1



Above-inflation increase in the personal income tax brackets and rebates.

2



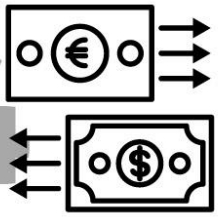
Below-inflation adjustments to the medical tax credits.

3



Increase in the annual contribution limit to tax-free savings accounts by R3 000, to R36 000, from 1 March 2020.

4



Increase in the exemption claimed on foreign employment income to R1.25 million.

5



The duty-free threshold on the purchase of a residential property will increase from R900 000 to R1 million.

6



In future, a taxpayer involved in a day trip for business purposes will be able to claim a deduction against the subsistence allowance received from the employer.

7



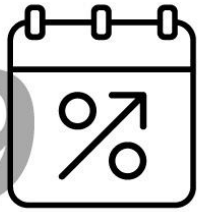
Adjustment of the travel allowance tables.

8



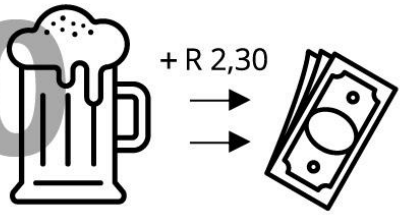
Increases of 25c per litre to the fuel levy, which consists of a 16c per litre increase in the general fuel levy and a 9c per litre increase in the RAF levy.

9



The carbon tax rate will increase by 5.6% for the 2020 calendar year.

10



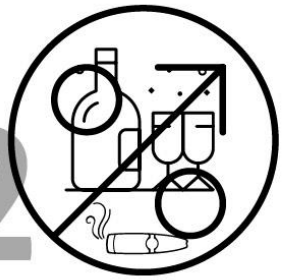
Expected increase in sin taxes and other indirect levies (such as the plastic bag levy).

11



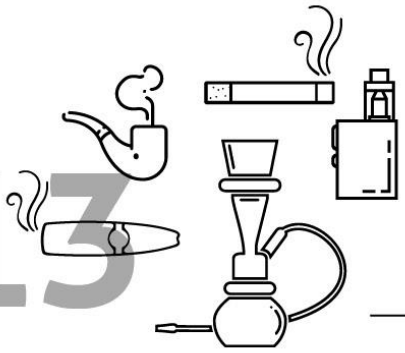
Marginal increase in grants.

12



Increase in excise duties on alcohol and tobacco by between 4.4 and 7.5 per cent.

13



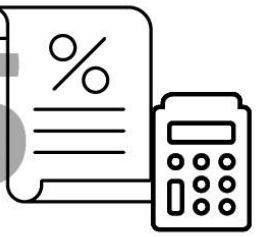
New excise duty on heated tobacco products, to be taxed at a rate of 75 per cent of the cigarette excise rate with immediate effect. A tax on e-cigarettes (for example, vapes) is also being considered to take effect in 2021, in line with international trends.

14



With effect 1 January 2021 certain companies will be subject to a limitation on the interest deduction claimable of 30% of its tax EBITDA.

15



The budget also proposes that only 80% of taxable income can be reduced by assessed losses carried forward from previous periods.

INCREASE IN SIN TAXES AND VARIOUS INDIRECT LEVIES

Heated tobacco products, for example hubbly bubbly will be taxed at 75% of the rate of cigarettes. Electronic cigarettes, or so-called vapes, will be taxed from 2021.

From 1 April 2020 the following increases will take place:

- Fuel levy will increase with 25c per litre (16c is for the general fuel levy and 9c is for the Road Accident Fund levy);
- Increase in excise duties on alcohol and tobacco by between 4,4% and 7,5%;
- The plastic bag levy will increase to 25c from 1 April 2020;
- The carbon tax rate will increase by 5,6% from R120 per ton of carbon dioxide equivalent to R127 per ton of carbon dioxide;
- The incandescent globe tax levy will be increased to R10;
- The motor vehicles emissions tax rates will increase to R120 (previously R110) for every gram of emissions/km above 95gCO_2/km (previously 120gCO_2/km) for passenger vehicles and R160 (previously R150) for every gram of emissions/km in excess of 160gCO_2/km (previously 175gCO_2/km) for double cab vehicles.

INCREASE IN GRANTS

The Budget Speech announced in increase in grants as follows:

- R80 increase for the old age, disability and care dependency grants to R1 860 per month;
- R80 increase in the war veterans grant to R1 880;
- R40 increase for the foster care grant to R1 040 per month; and
- R20 increase in the child support grant to R445 per month.

INCREASE IN THE LIMIT OF THE ANNUAL CONTRIBUTION TO TAX-FREE INVESTMENTS

Section 12T of the Income Tax Act provides for an exemption of:

- Interest earned;
- Dividends earned;
- Capital gains realised

related to tax-free investments. The limit of the annual contribution to tax-free savings accounts was R33 000 per annum. It was announced in the Budget Speech that this limit will be increased to R36 000 from 1 March 2020.

INCREASE IN THE DUTY-FREE THRESHOLD RELATED TO THE PURCHASE OF RESIDENTIAL PROPERTY

When residential property is purchased from a non-vendor, transfer duties will be payable on the purchase. The transfer duty table was last adjusted in 2017 and has now be updated to provide that the first R1 000 000 purchase price is exempt from transfer duties.

LIMITATION OF DEDUCTION OF INTEREST

If a company incurs interest cost related to trade and in the production of income as defined, the interest expense can be claimed as a deduction (mostly in terms of section 24J of the Income Tax Act). The proposal contained in the 2020/2021 Budget is that for years of assessment commencing on/after 1 January 2021, the net interest expense deduction claimable by companies in multinational groups will be limited to 30% of taxable income before interest and capital allowances (similar to EBITDA, but from a tax perspective). The excess will be carried forward for five years and will be claimable in a following period (subject to the limitation, on a FIFO basis), after which the balancing unclaimed portion will be lost.

It is expected that roughly 25% of taxpayers will be impacted by the proposal and will need to limit their interest deduction.

LIMITATION OF SET-OFF OF ASSESSED LOSSES

If a taxpayer has realised an assessed loss in terms of section 20 of the Income Tax Act, this loss is carried forward to the following year of assessment and set off against taxable income generated in the following year. The proposal contained in the 2020/2021 Budget Speech is that only 80% of the taxable income can be “reduced” by applying the assessed loss carried forward from previous years. The excess of the assessed loss will be carried forward. At this stage uncertainty exists whether a time limit will be applicable or whether the excess of the assessed loss will be carried forward indefinitely until fully utilised.

SUBSISTENCE ALLOWANCES

When an employee spends at least one night away from home and work for business purposes, a deduction can be claimed against the subsistence allowance received by the employee. This deduction is either based on actual costs incurred by the employee (provided that records have been kept) or will be based on a deemed deduction for meals and incidental costs or only for incidental costs.

Many employees are required to participate in business trips for a day and are not required to spend the night away from home and work. The impact of this is that a deduction cannot be claimed against the subsistence allowance received from an employer. If the employee incurs costs related to meals and incidental costs whilst on a day trip for business purposes, no deduction is claimable.

The 2020/2021 Budget proposal is that an exemption should be provided whereby employees who are required to participate in day trips for business purposes and are required to incur costs related to meals and incidental costs are reimbursed tax-free.

BURSARIES

Any *bona fide* open or merit 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 is available if 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 R600 000 during the year of assessment, and the amount of the bursary or scholarship does not exceed:

- R20 000 for basic education (Grade R to 12 and NQF 1 to 4);
- R60 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 R600 000;
- R30 000 for basic education (Grade R to 12 and NQF 1 to 4);
- R90 000 for higher education (NQF 5 to 10).

Where an employer rewards an employee for obtaining a qualification, successful completion of a study course or reimburses the employee for study expenses, such reward or reimbursement of study expenses will represent, in the case of the reward, taxable remuneration and in the case of the reimbursement of study expenses, a taxable benefit.

The 2020/2021 Budget Speech identified that various bursary schemes are abusive and that remuneration is merely re-classified as an exempt bursary. The proposal is that these schemes should be closed and anti-avoidance measures introduced with effect 1 March 2020.

SMALL BUSINESS RELIEF

Government has indicated that, in an attempt to provide relief to small businesses and to incentivise growth, the small business tax regime (small business corporations per section 12E), the compulsory VAT registration threshold of R1million and the turnover tax system will be reviewed and reconsidered.

CLOSING OF LOOPHOLE RELATED TO THE CHANGE OF RESIDENCE

When a company ceases to be a resident, deemed disposal of its assets arises and capital gains or losses arise on these disposals. Despite the change in residency and the deemed disposals, residents holding shares in these companies could at a later point in time dispose of these shares and the disposal could qualify for a participation exemption. The 2020/2021 Budget proposal is that amendments be made to close this loophole.

RECENT CASES

1. ABC (Pty) Ltd v C:SARS (TCIT 14287)

The case involved a South African company which was a wholly owned subsidiary of a Dutch company. In 2012, the South African company had paid dividends to the Dutch company at a reduced rate of 5% by relying on the SA-NL Protocol.

The court was tasked with determining the application and interpretation of South African double taxation agreements entered into with the State of Kuwait, the Kingdom of the Netherlands, and the Kingdom of Sweden.

The SA-Netherlands double taxation agreement included a most favoured nation treatment ("**MFN"**) clause covering any double taxation agreement "concluded after the date of conclusion this [SA-NL Protocol]" where "South Africa limits its taxation on dividends … to a rate lower, including exemption from taxation".

The Tax Court found in favour of the Taxpayer, ordering SARS to refund the dividends tax overpaid to the Taxpayer with interest and pay the Taxpayer's costs including the costs of two counsel.

2. BMW South Africa (Pty) Ltd v C:SARS (ZASCA107)

The dispute relates to whether payments made by BMW SA to tax consulting firms in relation to services rendered to expatriate employees in respect of their domestic tax obligations, constitute a taxable benefit and consequently forms part of gross income in respect of which the employees are liable to taxation.

BMWSA objected to the assessment from SARS. It disputed that the payments constituted a benefit or advantage that formed part of gross income.

The court dismissed the appeal by BMW SA.

The court held that payment by the employer to tax consultants to render assistance to expatriate employees – whether a taxable 'benefit or advantage' as contemplated in the definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962 read with s 2(e) or (h) of the Seventh Schedule.

3. C:SARS v Atlas Copco SA (Pty) Ltd (ZASCA124)

The dispute relates to whether the value of the taxpayer's trading stock had diminished, entitling SARS to make a just and reasonable allowance under s 22(1)(a) of the Act.

- Income tax – valuation of stock at year end in terms of s 22(1)(a) of the Income Tax Act 58 of 1962;
- The taxpayer applied its global accounting policy as a basis for writing down trading stock for tax purposes.

  SARS's appeal was upheld with costs, and the order of the Tax Court was set aside and replaced with one dismissing the appeal and confirming the additional assessments for the 2008 and 2009 years of assessment.

The judgment demonstrates that the burden rests with a taxpayer to prove a diminution in the market value of trading stock before taking a reduced value into account for tax purposes.

4. Africa Cash & Carry (Pty) Ltd v C:SARS (ZASCA148)

Income tax and VAT was understated by the taxpayer.

The appeal related to the powers of the Tax Court to alter an assessment under section 129(2)(b) of the Tax Administration Act No. 28 of 2011,:

- ;
- SARS proved that the methods of assessment used were reasonable;
- the Tax court ought to have remitted the assessment
- Section 89quat interest

The appeal was dismissed with costs, including the costs of two counsel.

5. C:SARS v Clicks Retailers (Pty) Ltd (ZASCA187)

Clicks claimed a section 24C allowance in respect of vouchers that Clicks expected club card members to redeem in the following year of assessment. SARS disallowed the allowance.

The section 24C allowance was claimed in respect of the cost of complying with the terms of a loyalty card programme.

Customers must apply to be issued with a club card, and once issued, points are awarded based on the value of the customer's purchases. Vouchers are then issued based on number of points accumulated. Customers are able to present vouchers as part payment for future purchases of goods.

The question that arose was whether the amount received from earlier sales will be used to finance future expenditure on the same contract.

Held: The appeal was upheld with costs including costs of two counsel.

RECENT SARS DOCUMENTS

1. **SARS Interpretation Note 111**

   No value provision in respect of the rendering of transport services by any employer - SARS Interpretation Note 111

   No-value Provision in respect of Transport Services – Binding General Ruling 42

   No-value provision in respect of the rendering of transport services by any employer – Biding General Ruling 50

   Paragraph 10(2)(b) of the Second Schedule

   18 March 2019

There is uncertainty as to the application of the no-value provision contained in the Second Schedule to the Act in respect of transport services rendered by an employer to employees in general. The interpretation note addresses situations where the employer does not provide the transport service directly, but contracts another person to provide the transport service to employees.

Transport services that are rendered directly by the employer – or that meet the conditions laid out in the BGR 50 – for the provision of exclusive transport services to employees in general between their homes and the place of their employment, will fall within the provisions of paragraph 10(2)(b) of the Seventh Schedule to the Income Tax Act.

The provision of, and access to, general public transport will not be regarded as a transport service rendered by the employer and will therefore not qualify for the no-value provisions of para 10(2)(b).

2. **SARS Interpretation Note 113**

   Apportionment of surplus and minimum benefit requirements: Pension Funds Second Amendment Act (replaces General Note 29)

   Section 1(1): Definitions of "Pension" and "Provident funds"

   Paragraph 2C of the Second Schedule

   3 March 2020

This Note provides clarity on the tax treatment of the actuarial surplus allocations or distributions made to members, former members, existing pensioners and employers by funds under the provisions of sections 15B, 15C, 15D or 15E of the Pension Funds Act.

This Note explains the tax treatment of distributions in terms of past surplus for the two different periods, before 1 January 2006 and on or after 1 January 2006, as well as the tax treatment of the future surplus distributions.

3. **SARS Interpretation Note 44 (Issue 3)**

   Public benefit organisations: Capital gains tax

   Paragraph 63(A) of the Eighth Schedule

21 February 2020

The Note provides guidance on the application and interpretation of paragraph 63A which deals with the disregarding of a capital gain or capital loss on the disposal of an asset by a PBO, and must be read with Interpretation Note 24 "Income Tax: Public Benefit Organisations: Trading Rules – Partial Taxation of Trading Receipts".

Any capital gain or capital loss made on the disposal of an asset, substantially the whole of which has not been used in the carrying on of a PBA, must be taken into account for capital gains tax purposes.

The Note applies broad principles in interpreting the legislation. Since the facts and circumstances pertaining to specific PBOs may differ, each case must be considered on its own merits.

4. SARS Interpretation Note 75 (Issue 3)

Exclusion of certain companies and shares from a "group of companies" as defined in section 41(1)

Sections 1(1) and 41(1)

11 February 2020

This Note provides guidance on the application of the proviso to the definition of "group of companies" in section 41(1).

The Act contains a global definition of "group of companies" in section 1(1) and a narrower definition of the same term in section 41(1). The narrower definition generally applies for the purposes of the corporate rules.

5. SARS Interpretation Note 16 (Issue 3)

Exemption from income tax: Foreign employment income

Section 10(1)(o)(ii).

31 January 2020

The Note discusses the requirements to qualify for the exemption under section 10(1)(*o*)(ii). The impact of the limitation of the exemption and the correct method of apportionment is also examined, as well as how the exemption affects gains included in income upon the vesting of any equity instrument under section 8C.

6. SARS Interpretation Note 67 (Issue 4)

Connected persons

Section 1(1): Definition of "Connected person"

28 January 2020

This Note provides guidance on the interpretation and application of the definition of "connected person" in section 1(1) of the Income Tax Act.

7. Binding General Ruling (BGR) 9 (Issue 4)

Taxes on income and substantially similar taxes for purposes of South Africa's tax treaties

30 January 2020

This Binding General Ruling identifies the taxes administered by SARS which in its opinion constitute taxes on income or substantially similar taxes for purposes of South Africa's tax treaties.

8. Tax guide for share owners (Issue 7)

21 February 2020

The guide examines –

- the tax consequences of holding shares as trading stock compared to holding them as capital assets;
- how to distinguish between profits of a capital and revenue nature using common law principles and statutory rules;
- the determination of a taxpayer's liability for capital gains tax;
- how dividends are taxed; and
- various corporate actions that can impact on the determination of a person's liability for tax.

9. Guide on Venture Capital Companies

18 February 2020

This guide provides users with general guidance on venture capital companies and investments in such companies.

10. List of qualifying physical impairment or disability expenditure

Section 6B(1)

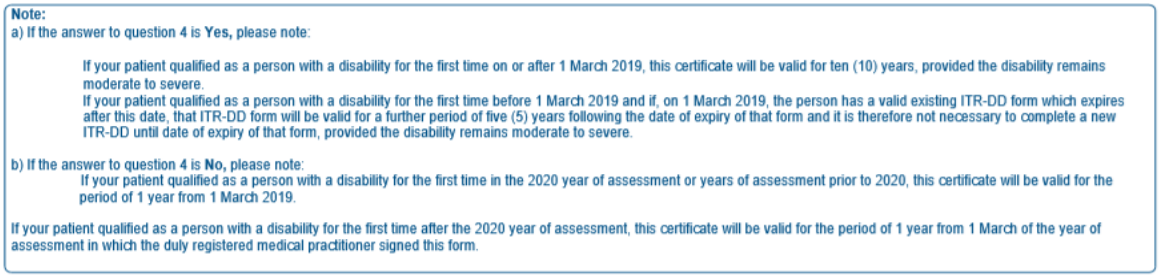
16 January 2020

***Effective 1 March 2020*

11. Confirmation of diagnosis of Disability form (ITR-DD)

24 December 2019

The validity period of the form has been extended to 10 years for moderate to severe permanent disabilities. (refer No 4 on page 5 of the form)



Note:
a) If the answer to question **4** is **Yes,** please note:

If your patient qualified as a person with a disability for the first time on or after 1 March 2019, this certificate will be valid for ten (10) years, provided the disability remains moderate to severe.
If your patient qualified as a person with a disability for the first time before 1 March 2019 and if, on 1 March 2019, the person has a valid existing ITR-DD form which expires after this date, that ITR-DD form will be valid for a further period of five (5) years following the date of expiry of that form and it is therefore not necessary to complete a new ITR-DD until date of expiry of that form, provided the disability remains moderate to severe.

b) If the answer to question **4** is **No,** please note:
If your patient qualified as a person with a disability for the first time in the 2020 year of assessment or years of assessment prior to 2020, this certificate will be valid for the period of 1 year from 1 March 2019.

If your patient qualified as a person with a disability for the first time after the 2020 year of assessment, this certificate will be valid for the period of 1 year from 1 March of the year of assessment in which the duly registered medical practitioner signed this form.

12. VAT 404- Guide for vendors
12 December 2019

This is a basic VAT guide and includes amendments that came into effect from 1 April 2019.

GENERAL TAX OVERVIEW

INCOME TAX RATES

Natural person or a special trust: 2020/2021

Taxable income (R)		Tax Rate (R)				
0 -	205 900			18%		
205 901 -	321 600	37 062	+	26%	above	205 900
321 601 -	445 100	67 144	+	31%	above	321 600
445 101 -	584 200	105 429	+	36%	above	445 100
584 201 -	744 800	155 505	+	39%	above	584 200
744 801 -	1 577 300	218 139	+	41%	above	744 800
1 577 301 -	and above	559 464	+	45%	above	1 577 300

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

TAX REBATES

Type of rebate	2020	2021
Primary rebate	14 220	14 958
Secondary rebate: 65 years and older	7 794	8 199
Tertiary rebate: 75 years and older	2 601	2 736

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

TAX THRESHOLDS

Type of person	2020	2021
Natural persons below age 65	79 000	83 100
Natural persons 65 - 74 years	122 300	128 650
Natural persons 75 years and older	136 750	143 850

MEDICAL SCHEME FEES TAX CREDITS PER MONTH

Type of person	2020	2021
Main member	310	319
Main member and one dependant	620	638
Additional credit per additional member	209	215

DONATION TAX AND ESTATE DUTY

Type of tax	2020	2021
Donations tax		
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

INTEREST EXEMPTION

Type of person	2020	2021
Person younger than 65	23 800	23 800
Person 65 years or older	34 500	34 500

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
19 07 2019	10.00	17 01 2020	9.75

In determining the taxable income derived by a person during a year of assessment any interest to which a person becomes entitled, 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

Capital allowances

Type of asset	Allowance
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, or buildings used for research and development purposes: 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 (before 21 October 2008: 5%) Refurbishments: 20% straight line Applies until 31 March 2020

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 (provided that it is not part of a set and can function on its own).

Recoupments

Normal profits and/or capital gains made on involuntary disposals of capital assets and qualifying voluntary replacement of depreciable movable 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 (as per interpretation note 3) 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 tests apply.

South African interest exemption for natural persons

Local interest is exempt limited to the following maximum amounts:

Type of person	2020	2021
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 and no exemption is claimable against it.

South African dividends

Natural persons who receive dividends from South African companies are exempt from normal income tax on the dividend income. Most 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 dividends tax is a final tax.

Dividends received as a result of services rendered are not exempt, unless:

- The dividend is received i.r.o. a restricted equity instrument; or
- The share is held by the employee.

Foreign dividends

A foreign dividend is fully 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 a South African exchange, 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 a South African exchange 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 gross 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 in respect of a tax-free investment, shall be exempt from normal tax. Any capital gain or loss shall also be disregarded. No dividends 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 36 000 (previously 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 investment contributed to.

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 36 000 (previously 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 (over his/her lifetime), an amount equal to 40% of so much of that excess that 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.

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, personal service provider company or trust or a labour broker without an exemption certificate, as consideration for any restraint of trade imposed on that person in respect of employment or the holding of any office. Such a receipt will be included in the gross income of the recipient.

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 remuneration

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 and self-employed individuals, for example sole proprietors or partners in a partnership, do not qualify for the exemption.

In calculating the days during which a person is outside South Africa, weekends, public holidays, vacation leave and sick leave are included.

Any 12-month period may be used to establish whether the person was outside South Africa for more than 183 days. Where a person is in transit through South Africa between two places outside South Africa and does not formally enter South Africa through a designated port of entry, the person is deemed to be outside South Africa.

With effect from 1 March 2020 the exemption will only apply to the extent that remuneration for services rendered outside South Africa does not exceed R 1.25 million during a year of assessment. Any excess above the R 1.25 million will be subject to normal tax in South Africa.

The provisions of a double tax agreement should be considered when the remuneration exceeds R 1.25 million. Double tax relief in the form of a foreign tax credit is available in South Africa where tax was paid in both countries on the same remuneration.

For PAYE purposes the R 1.25 million threshold should accumulate monthly. Once the R 1.25 million threshold is reached, the income exceeding R 1.25 million is subject to normal tax. The R 1.25 million threshold may not be averaged over the year of assessment.

If an employer withholds employees' tax on remuneration that is exempt, the employee may only claim the refund on assessment. SARS may request supporting documents to substantiate the exemption e.g. employment contracts and copies of passports.

Foreign 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 is exempt. An apportionment might be necessary to determine the portion of the lump sum, pension or annuity to be exempted if services were rendered both within and outside South Africa.

Blocked foreign funds

A special rule applies where a person's income includes an amount that accrued to a person from a foreign country, where that country imposes currency or other restrictions which prevent the amounts from being remitted to South Africa during the year of assessment. These amounts must be deducted from taxable income in that year of assessment and are deemed to be amounts received by or accrued to the person in the following year of assessment.

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.

NON-RESIDENTS

Non-residents are taxed on their income from a source within or deemed to be within South Africa. For natural person 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, and therefore employees' tax must be withheld.

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.

A foreign person is exempt from the withholding tax on interest 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 is paid, or the debt claim 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 will be subject to normal income tax.

Interest paid to a non-resident, will also 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. The withholding tax is a final tax.

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

A royalty is exempt from the withholding tax if the foreign person is a natural person who was physically present in South Africa for a period exceeding 183 days in aggerate during the 12 month period preceding the date on which the royalty is paid, or if the natural person carried on a business through a permanent establishment in the Republic at any time during the 12 month period. The royalty will be subject to normal income tax.

Dividends

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 if the selling price exceeds 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 seller	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.

ALLOWANCES AND REIMBURSEMENTS

An allowance is an amount granted by an employer to an employee to incur business related expenditure on behalf of the employer, without the obligation on the employee to prove or account for the business-related expenditure.

A reimbursement occurs when an employee has incurred and paid for business-related expenditure on behalf of an employer and is then subsequently reimbursed for the exact expenditure

by the employer after having proved and accounted for the expenditure to the employer.

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 relates to business travel. This determination must be done on a monthly basis.

Reimbursive travel allowance
Where an allowance or advance is based on the actual distance travelled by the employee for business purposes, employees' tax will not be withheld on the allowance paid by an employer to an employee if the rate does not exceed 398 (previously 361) cents per kilometre, regardless of the value of the vehicle.

The portion by which the allowance paid by the employer exceeds 398 (previously 361) cents per kilometre will form part of the balance of remuneration calculation 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.

With effect from 1 March 2020 both a travel allowance and reimbursive travel allowance are included in the definition of variable remuneration. This means that the allowance only accrues to the employee when it is paid. The distance travelled for business purposes will also be deemed to be travelled in such a year of assessment.

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 139 (previously R 134) per day for incidental costs only;
- R 452 (previously R 435) per day for incidental costs and meals.

For travelling outside South Africa, the amount deemed to have been expended is based on the country travelled to and is expressed in a foreign currency which must be converted to Rand using an average exchange rate. 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.

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 and is worn exclusively for business purposes.

FRINGE BENEFITS

A fringe benefit refers to payments made to employees (including a partner in a partnership) other than in 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.

Cash equivalent value: market value at the time the asset is acquired by the employee, less any consideration paid by the employee;
In the case of a movable property: the cost to the employer, if acquired by the employer to dispose of it to the employee;
In the case of marketable securities: market value;
In the case of an asset which the employer had the use of prior to acquiring ownership thereof: market value;
In the case of trading stock: lower of the cost to the employer or the market value.
(Remember: All of the amounts are exclusive of VAT where relevant if the employer is a registered VAT vendor)

Nil value provisions:

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

Nil value provisions:
- 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
- Vehicle held under an operating lease concluded at arm's length: actual cost to the employer plus the cost of fuel (members of the public can rent the vehicles for periods shorter than one month)

*Maintenance plan means a contract covering all maintenance costs for not less than 3 years and a distance not less than 60 000 kilometres.

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.

The determined value must be reduced by 15% per year on the reducing balance method for every completed 12 month period between acquisition of the motor vehicle by the employer and granting the right of use to the employee for the first time.

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.

Nil value provisions:
- 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.

Employees tax

The employer must calculate employees' tax on 80% of the cash equivalent, or on 20% if the employer is satisfied that the business use will be at least 80%.

Reduction on assessment

- If accurate records are kept of business kilometres: Value of private use x business kilometres/total kilometres.
- If the employee bears the full cost of the licence, insurance, or the maintenance: full cost x private kilometres/total kilometres.
- If the employee bears the full cost of fuel for private use: Private kilometres x deemed cost per kilometre i.r.o. fuel as per the deemed cost table.

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.

Nil value provisions:

- A person who has retired from employment by reason of old age, ill health or other infirmity; or
- The dependants of a deceased employee; or
- The dependants of a retired employee after his death.

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	2020	2021
Main member	310	319
Main member and one dependant	620	638
Additional credit per additional member	209	215

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.

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

For all other natural persons, the additional medical expenses tax credit is:
25% x [(Contributions – 4 x credit) + qualifying expenses) – (7.5% x taxable income)]

Only where a taxpayer or dependant has a "disability" as defined will he or 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 without taking qualifying medical expenses into account

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 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 or her spouse, child or other relative or dependants.

Nil value provisions:

- A medical scheme that is approved by the Registrar of Medical Schemes and is run by an employer for his employees;
- A person who has retired from employment by reason of old age, ill health or other infirmity;
- The dependants of a deceased employee;
- The dependants of a retired employee after his death;
- 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 accommodation, 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 83 100 (previously R 79 000) (subject to certain exclusions) (Rnil if the employer is a private company and the employee, or his spouse controls the company; or if the employee or his spouse or minor child has a right of option whereby they may become the owner of the accommodation directly or indirectly by virtue of a controlling interest)
- 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.*

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.

Nil value provisions:

- Accommodation inside or outside South Africa supplied while the resident employee is away from his usual place of residence in South Africa for work purposes.
- Any accommodation in South Africa supplied to a non-resident employee away from his usual place of residence outside South Africa for a period:
  - Less than two years after the date of arrival in South Africa; or
  - Less than 90 days in the year of assessment.
- 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 excess of the cash equivalent over an amount of R 25 000 multiplied by the number of months during which the accommodation is supplied.

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.

Nil value provisions

- Travel facilities provided by an employer, who is in the business of conveying passengers, to its 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 nil value provisions. The provision of, and access to general public transport will not qualify for the nil 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, to travel between the employee's home and the business place, 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

Debt owed by an employee to the employer, or to any other person by arrangement with the employer or any associated institution, at no interest or at a lower rate than the official interest rate constitutes a fringe benefit.

The cash equivalent is the interest on the outstanding balance calculated at the official interest rate less the actual interest paid.

No value shall be placed on the following benefits:

- A casual loan that does not exceed the sum of R 3 000 at any relevant time; or
- A loan to enable the employee to further his or 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.

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.

Nil value provisions:

- 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;
- The payment of an employee's bursary or study loan debt by the new employer to the previous employer, provided the employee undertake to work for the new employer at least for the unexpired period that had not been worked for the previous employer.

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).

Where an employer rewards an employee for obtaining a qualification, successful completion of a study course or reimburses the employee for study expenses, such reward or reimbursement of study expenses will represent, in the case of the reward, taxable remuneration and in the case of the reimbursement of study expenses, a taxable benefit.

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.

Nil value provisions:

- 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.

Relocation benefits

Where the employer incurred expenses, or reimbursed an employee any relocation costs, the following expenses will be exempt from normal tax:

- Transportation costs of the employee, members of his household and their goods and possessions;
- Hiring of residential accommodation e.g. hotel for a maximum of 183 days after transfer;
- New school uniforms, replacement of curtains, registration of a mortgage bond and legal fees, transfer duty, motor vehicle registration fees, telephone and water and electricity connection fees, cancellation of a mortgage bond, estate agent fees.

Any loss incurred on the sale of the previous residence or architect fee for the design or alteration of the new residence is not exempt.

DEDUCTIONS FOR INDIVIDUALS

Retirement fund contributions

Contributions made to a pension fund, provident fund and a retirement annuity fund can be claimed as a deduction.

Any amount contributed to any fund during any previous year of assessment and which has been disallowed solely because the amount contributed exceeds the amount of the allowable deduction is called the “unclaimed balance of contributions”.

The “unclaimed balance of contributions” at the end of the 2019 year of assessment should be applied or used in the following sequence during the 2020 year of assessment:

- Claim a deduction against a lump sum received during 2020;
- Claim an exemption against any qualifying annuities received during 2020;
- Add the remaining unclaimed balance to the current contributions made during 2020.

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 excluding taxable capital gains.

Employers can claim deductions i.r.o. all amounts paid to any retirement fund on behalf of an employee. The cash equivalent of the contributions must be included as a fringe benefit in the hands of the employee. The employee is deemed to have contributed an amount equal to the value of the fringe benefit.

Employers may take this deduction into account for PAYE purposes. The capped amount of R350 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 employees who are paid monthly the deduction cannot exceed R 29 167 per month.

Donations

Qualifying donations to Public Benefit Organisations are deductible if a section 18A certificate is obtained, 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. 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. Qualifying donations in terms of an employer donation scheme is taken into account in the determination of balance of remuneration, but limited to 5% of taxable income.

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.

Travel expenses

For an individual to claim a deduction, a logbook must be maintained to justify business use. A logbook 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 2021

Value of the vehicle (Inc Vat) (R)	Fixed costs (c)	Fuel (c)	Maintenance (c)
0 - 95 000	31 332	105.8	37.4
95 001 - 190 000	55 894	118.1	46.8
190 001 - 285 000	80 539	128.3	51.6
285 001 - 380 000	102 211	138.0	56.4
380 001 - 475 000	123 955	147.7	66.2
475 001 - 570 000	146 753	169.4	77.8
570 001 - 665 000	169 552	175.1	96.6
665 001 and above	169 552	175.1	96.6

Deemed expenditure – tax year ending 29 February 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

Notes related to the table:

- 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 665 000 (previously R 595 000). The wear and tear allowance 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 665 000 (previously 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 logbook must be maintained to justify the business use.

Interest, penalties and taxes

When 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 the interest must be repaid by that person to SARS, it must be deducted in the year of assessment that the interest is repaid to SARS. The deduction is only available to the extent that the interest is or was included in the persons taxable income.

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 may elect 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.

Members of provident funds can still until 28 February 2021 elect to have the total value of the fund paid out as a lump sum on retirement date. From 1 March 2021 members of provident funds will not be able to commute more than one-third for a lump sum and will be forced to take qualifying annuities i.r.o. the remaining two-thirds.

All the retirement interests i.r.o. which members already obtained a vested right to on 28 February 2021, will be protected and can still be taken as a lump sum. The one-third limitation is not applicable in the case of members who have already reached the age of 55 years on 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 a 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 2020/2021

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 a 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 received 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 2020/2021

Taxable income (R)		Tax payable (R)				
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.

Tax neutral transfers to other funds
Members of retirement funds can 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 could 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 the same rules apply for transfers to pension preservation funds or provident preservation funds.

Tax neutral transfers from pension funds to provident or provident preservation funds will only be effective from 1 March 2021.

Exemption of qualifying annuities
Section 10(C)(2) allows an exemption equal to so much of a person’s own contributions to any fund that did not rank for a deduction against the person’s income in respect of any prior year of assessment. The unclaimed balance of contributions at the end of the 2019 year of assessment could be applied or used in the following sequence during the 2020 year of assessment:

- Claim a deduction against a lump sum received during 2020;
- Claim an exemption against any qualifying annuities received during 2020;
- Add the remaining unclaimed balance to the current contributions made during 2020.

The exemption will only apply to annuities paid out of the retirement interest to members of

provident funds and provident preservation funds with effect from 1 March 2020.

Withdrawal from retirement funds

Members of pension preservation funds, provident preservation funds or retirement annuity funds will be entitled to withdraw their full lump sum benefit when the member:

- Is or was a resident who emigrated from the Republic, and the emigration is recognised by the SARB; or
- Departs from the Republic upon the expiry of a visa obtained to work or visit the Republic and the member is not recognised as a resident by the SARB.

SMALL BUSINESS CORPORATIONS

This type of company enjoys a graduated tax rate structure as per the following table:

Year of assessment between 1 April 2020 and 31 March 2021

Taxable income (R)			Tax Rate (R)				
0	-	83 100			0%		
83 101	-	365 000			7%	above	83 100
365 001	-	550 000	19 733	+	21%	above	365 000
550 001	-	and above	58 583	+	28%	above	550 000

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

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) 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: annuities, 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.

Normal dividend tax rules are applied to dividends paid by a small business corporations.

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.

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 normal income 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: 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 2020/2021

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.

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 (that are taxed based on the natural person sliding scale rates). Normal trusts do not qualify for the interest exemption or personal rebates.

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

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 isvoid.

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.

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.

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;
- A cash dividend paid by a foreign company that is listed on a South African exchange;
- A deemed dividend due to secondary transfer pricing adjustments.

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 (i.e. when the cash flow happens).

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 cash 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 beneficial owner to notify the company, by means of a written declaration and written undertaking in the prescribed form of the fact, that the dividend is exempt from the withholding tax on dividends or when a reduced rate is applicable. These documents must be submitted to the company before the dividend is paid. This is not applicable if the beneficial owner of the dividend forms part of the same group of companies as the company paying the dividend, or if a cash dividend is paid to a regulated intermediary.

Payment of dividend tax
Withholding tax on dividends is payable to SARS by the last day of the month following the month during which the dividend is paid.

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

Deemed dividends
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 deemed dividend is the market related interest (based on the 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 for the dividends tax.

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 listed on a stock exchange registered in terms of the financial markets act;
- Any person to the extent that the dividend constitutes income of that person, or was subject to STC;
- 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, the company must withhold dividend tax based on the normal principles. If the required declaration is then submitted to the company within 3 years from the date of payment of the dividend, a refund is claimable.

VALUE-ADDED TAX (VAT)

The VAT system is a self-assessment system.

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 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 is expected to 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.

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 non-resident suppliers of electronic services

Foreign suppliers of electronic services must register as a vendor where the total value of the services supplied in South Africa exceeds R 1 million 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.

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.

From 1 April 2019, where electronic services are supplied by an intermediary, who is acting on behalf of a foreign supplier and:

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

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

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.

Non-executive directors that earn fees below the compulsory VAT registration threshold can choose to register voluntarily if the minimum threshold of R50 000 has been exceeded and all the other requirements for voluntary registration have been met.

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 or 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	Taxable supplies less than R 30 million: 2 monthly: January, March, May, July, September, November
Category B	Taxable supplies less than R 30 million: 2 monthly: February, April, June, August, October, December
Category C	Taxable supplies more than R 30 million: monthly
Category D	Farming enterprise with taxable supplies 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.

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.

Types of supplies

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.

Zero-rated supplies are subject to VAT, but at a zero-rate. A vendor making zero rated supplies is entitled to recover all related input tax (where input tax was actually paid by the vendor).

Exempt supplies are not subject to VAT. Vendors who supply these services may not recover any related input tax.

Prohibited input tax

Costs incurred related to the below three items constitute prohibited deductions:

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 where an exception is applicable. One of these exceptions will be applicable where 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. The prohibition is not applicable to other costs related to motor cars, such as its maintenance and insurance which constitute taxable supplies.

Sports, recreational or social club 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. Input VAT related to professional body membership fees will, mostly, be claimable.

Second-hand goods

Second-hand goods are goods (movable and immovable) which were previously owned and used.

The following are excluded from the scope of second-hand goods:

- 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.

The notional input tax is calculated by the application of the tax fraction to the lesser of the purchase price or the open market value and will 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.

The seller of the second-hand goods must be a resident of the Republic. The sale must also take place in the Republic.

A notional input tax that may be claimed by a vendor acquiring fixed property, from a non-vendor, is 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.

Documentation requirements
No input VAT may be claimed unless the vendor is in possession of a tax invoice.

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 original 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.

DONATIONS TAX

A donation is any gratuitous disposal of property including any gratuitous waiver or renunciation of a right. A donation is 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 aggregation for purposes of applying the increased rate of 25% must commence from 1 March 2018 (donations made prior to this date will not be included in the aggregation calculation).

General exemptions

Type of person	Annual exemption
Natural person	R 100 000
Other persons	R 10 000

Where more than one donation is made during a tax year, the exemption must be applied to donations in chronological order.

Specific exemptions

- Bona fide maintenance payments;
- Donations to Public Benefit Organisations, recreational clubs, 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 in contemplation of death;

- Donations made by a public company;
- Donations between companies forming part of the same group of companies;
- Donations cancelled within 6 months of the effective date;
- Distribution by a trust to the beneficiaries of the 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 that forms part of the joint estate 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 shortfall constitutes a donation.

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.

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.

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

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 (which mostly equates to the market value of the asset on the date of death)

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 roll over 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.

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 payable by natural persons and legal entities

From 1 March 2020

Value of the property (R)	Rate of transfer duty		
0 - 1 000 000		0%	
1 000 001 - 1 375 000		3% above	1 000 000
1 375 001 - 1 925 000	11 250 +	6% above	1 375 000
1 925 001 - 2 475 000	44 250 +	8% above	1 925 000
2 475 001 - 11 000 000	88 250 +	11% above	2 475 000
11 000 001 - and above	1 026 000 +	13% above	11 000 000

Before 1 March 2020

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 can only be paid by means of an electronic payment.

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 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;
  - 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 natural person who does not derive any income from the carrying on of any business, if:

- The taxable income for the year of assessment does not exceed the tax threshold; or
- The taxable income for the year of assessment derived from interest, dividends, foreign dividends, rental from the letting of fixed property and remuneration from an unregistered employer does not exceed R 30 000;

- Any Public Benefit Organisation or 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;
- 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.

Where a taxpayer dies during a year of assessment, no estimate is required to be made for the period ending on the date of death.

For natural persons, such estimate shall exclude any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received. The taxable portion of the aggregate capital gain must be included in the first and the second provisional tax payment calculations.

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 year of assessment (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 6*quat* 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 year of assessment (for individuals the end of February).

Penalty for underpayment because of underestimation
Taxable income ≤ R 1 million: 20% x lower of:

- 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 > R 1 million: 20% x 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.

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.

Third provisional payment
For taxpayers with a February year-end, the third payment could be made within 7 months after the end of the year of assessment (30 September). For other taxpayers the payment should be made within 6 months.

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.

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).

Residents

Residents pay tax on capital gains resulting from the disposal of assets situated anywhere in the world (world-wide disposals).

Non-residents

Non-residents will only be subject to CGT on disposals where the source of the disposal is South African, namely:

- Immovable property, or an interest in immovable property in South Africa;
- Assets of a permanent establishment in South Africa.

An interest in immovable property is South Africa includes:

- Equity shares held in a company;
- The ownership, or right to ownership, of any other entity (including a trust); or
- A vested interest in the assets of a trust.

If a non-resident disposes of an interest in immovable property, and 80% or more of the market value of the interest is directly or indirectly attributable to immovable property in South Africa, and the non-resident together with connected person directly or indirectly hold at least 20% of the interest, the gain will be subject to capital gains tax 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 during the year of assessment or for a reduction in the sales price in the same year that the disposal took place.

Disposal of assets

A capital gain or loss can only realise if an “asset” 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 non-resident who becomes a resident;
- 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;
- Capital assets become trading stock;
- Trading stock becomes a capital asset;
- Personal use asset becomes a non-personal use asset; and
- Non-personal use asset becomes a personal use asset.

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 (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 excluded from the deemed disposal rule when a resident becomes a non-resident:

- 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.

Time of disposal

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:

- Acquisition or creation costs;
- Valuation costs for CGT purposes;
- Direct cost of acquisition or disposal e.g. remuneration of surveyor, valuer, auctioneer, accountant, broker, agent, consultant, legal advisor;
- Transfer costs;
- Cost incurred to obtain electrical certificate;
- Stamp duty or securities transfer tax;
- Advertising costs to find a buyer or seller;
- Sales commission;
- Any cost to move the asset;
- Installation costs e.g. foundations and supporting structures;
- Portion of donation tax payable by donor or donee;
- Costs incurred in defending or maintaining a legal right to the asset;
- Costs of improving the asset. The relevant improvement does not need to reflect in the asset at the time of disposal anymore.
- Option costs to obtain the asset;
- 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 following expenditure may <u>not</u> be included in the base cost:

- Borrowing costs; raising fees, bond registration and cancellation costs, repairs and maintenance, security costs, insurance, rates and taxes, input VAT that was claimed.

The following amounts must reduce the base costs of an asset:

- Expenditure already allowed as a deduction in calculating taxable income e.g. capital allowances and scrapping allowances;
- Expenditure that has been reduced, recovered or paid by another person.

Pre-valuation date assets

The base cost of assets acquired before valuation date is determined as the valuation date value of the asset plus any qualifying expenses incurred after valuation date. The valuation date value is the highest of:

- 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 less allowable expenses incurred after 1 October 2001.

Transfer of assets between spouses
Roll-over relief is provided for and 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 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.

Primary residence exclusion
Primary residence is any structure including a boat, caravan or mobile home which is used as a place of residence by a natural person or a special trust.

The natural person or a beneficiary of the special trust or a spouse of the person or beneficiary, must ordinarily reside in the residence and regard the residence as his or her main residence, and use or have used it mainly (more than 50%) for domestic purposes.

Only one residence at a time can qualify as a primary residence. A holiday home will never qualify as a primary residence.

A person will be treated as being ordinarily resident in a residence for a continuous period of up to two years, if he does not reside in it during this period for any of the following reasons:

- The residence was offered for sale and was vacated due to the acquisition, or intended acquisition of a new primary residence;
- The residence was erected on land acquired for the purpose of building a primary residence;
- The residence was accidentally rendered uninhabitable;
- The taxpayer died.

The first R 2 million of any capital gain or loss on the disposal of primary residence of a natural person or a special trust must be disregarded. If the primary residence is sold for R 2 million or less, the full capital gain on the disposal must be disregarded (provided that the residence was used exclusively for private purposes and the owner was ordinarily resident in the residence throughout the period of ownership).

Where two individuals have an equal interest in the same primary residence, and both of them use it as a primary residence, the R 2 million must be apportioned as this exclusion is available per residence (and not per person).

Apportionment of the capital gain on the disposal of a primary residence that will qualify for the primary residence exclusion might be necessary in the following circumstances:

- 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. Where the size of the land exceeds 2 hectares, apportionment of the gain of the land is required.
- If the residence is partially used for trade purposes, 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.
- If the owner moves out of the residence, the capital gain must be apportioned based on the period that the owner was ordinarily resident in the residence. 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 primary residence during this period, and he was employed or carried on a business in South Africa at a location further than 250 kilometres from the residence.

Personal use assets

The capital gain or loss realised on the disposal of assets of a natural person which are mainly (i.e. more than 50%) used for purposes other than carrying on a trade, must be disregarded. This principle 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 short-term insurance policy for non-personal use assets;
- 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

Where a natural person generates a capital gain on the disposal of active business assets of a small business, up to R 1.8 million of the capital gain on the disposal can be disregarded.

For the exemption to be applicable, the following requirements must be met:

- The asset can also be an interest in a partnership or a share of at least 10% in a company.
- A small business is a business where the market value of the assets does not exceed R 10 million at the date of the disposal.
- 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;
- Have been substantially involved in the business;
- Have had the business for a continuous period of at least 5 years prior to disposal;
- Have realised all his or her qualifying capital gains within a period of 24 months from the date of the first qualifying disposal.

Active business assets consists of immovable property, to the extent used for business purposes, and other assets that are used or held wholly or exclusively for business purposes. If the immovable property is not held wholly or exclusively for business purposes the R 1.8 million exclusion will only apply to the extent that the immovable property is held for business purposes. 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 exemption is only applicable to a maximum of R 1.8 million in a person's lifetime.

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.

Gambling, games and competitions

A natural person must disregard a capital gain or loss relating to any form of gambling, game or competition, if it is authorised by and conducted under the law of South Africa. The following capital gains will be subject to CGT:

- Foreign winnings by natural persons;
- Illegal gambling, games and competitions in South Africa;
- Capital gains by companies, trusts and other non-natural persons from any gambling, games or competitions whether local or foreign and whether lawful or unlawful.

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;
- 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.

CONNECTED PERSONS RULES

Type of taxpayer	Connected persons
Natural person	Any relative within the third degree of kinship, including adopted children/parents. A trust of which the natural person or a relative is a beneficiary.
Trust	Any beneficiary of the trust. Any connected person in relation to a beneficiary.
Partnership	Any member of the partnership. Any connected person in relation to any member of the partnership.
Close corporation	Any member. Any relative of the member or trust that is a connected person in relation to a member. Any other close corporation which is a connected person to one of the members, or relative or connected trust.
Company	Any other company in the same group of companies (controlling and controlled group companies) where a group of companies consists of a controlling group company that: • Directly holds more than 50% of the equity shares or voting rights in at least one controlled group company. • Directly or indirectly holds more than 50% of the equity shares or voting rights in each controlled group company. Any person (excluding companies) that individually or jointly with that person's connected persons holds 20% or more of the equity shares or voting rights. Any company that holds 20 % or more of the equity shares or voting rights, but only if no holder of shares holds the majority of voting rights in the company. Any other company, if managed or controlled by a connected person. Any other company that would be part of the same group of companies according to the definition "group of companies".

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.

Values applicable to the 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	40 000	30 000
	7 - 10	20 000	30 000
Person with a disability	1 - 6	60 000	50 000
	7 - 10	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. Where the learnership agreement is shorter than two years, the completion allowance consists of 100% of the abovementioned value. Where the learnership agreement consists of a minimum of two years, the completion allowance can be claimed for the number of full 12 month cycles 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.

NQF levels

Level	Description
NQF 1 - 6	General certificate, Elementary certificate, Intermediate certificate, National certificate (Grade 12), Higher certificate, Diploma or Advanced certificate
NQF 7 - 10	Bachelor's degree, Advanced diploma, Honours degree, Master's degree, Doctoral degree

DOUBTFUL DEBT ALLOWANCE

A doubtful debt allowance can only be claimed if:

- The debt is due to the taxpayer; and
- It was included in the income of the taxpayer.

Doubtful debt allowance for years of assessments commencing before 1 January 2019

In order to claim a doubtful debt allowance the taxpayer is required to render a list of all trade debts due that is considered to be doubtful. The amount allowed is at the discretion of the Commissioner but is usually calculated by applying a rate (not exceeding 25%) to the debt considered to be doubtful. The amount of allowance granted must be included in the taxpayer's income in the following year of assessment.

Doubtful debt allowance for years of assessment commencing on or after 1 January 2019

For companies adopting IFRS 9 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(a) or 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 that consist of 12 month expected credit losses

For companies not adopting IFRS 9 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 (regardless of whether the taxpayer has adopted IFRS9 or not), 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.

INTEREST FREE OR LOW INTEREST LOANS

Section 7C applies to any loan, advance or credit granted 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 grants 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 granted 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 granted 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 deemed continuous donation made to the trust or company by the natural person. The donation is deemed to be made on 28/29 February and will be subject to donations tax of

20% (the R100 000 donations tax exemption can be applied, if not utlised in other donations). The donations tax must be paid by the end of the following month (i.e. 31 March).

If the loan is granted 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 granted by that beneficiary to that trust if:

- The vested amount may in terms of the trust deed 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 granted 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 acquiring the loan in this manner will be treated as having granted a loan, advance or credit to the trust or company on the date on which the person acquired the loan.

Denial of tax deduction or losses

No deduction, loss, allowance or capital loss may be claimed in respect of a disposal, reduction or waiver 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 granted 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.

FRUITLESS AND WASTEFUL EXPENDITURE

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.

CRYPTOCURRENCIES

SARS issued a media release on 6 April 2018 in which it is stated that SARS will apply normal income tax rules to cryptocurrencies and require taxpayers to declare such gains and losses as part of their taxable income in the year of assessment in which it is received or accrued.

In this media statement, cryptocurrency is defined as “an inter-net based digital currency that exists almost wholly in the virtual realm”. Cryptocurrency is not deemed to be a currency for income tax and Capital Gains Tax purposes. SARS deems cryptocurrency to be intangible assets.

Cryptocurrency can be valued and an “amount” determined which should be recognized in gross income or form proceeds for Capital Gains Tax purposes.

Taxpayers can also claim expenses actually incurred related to the accrual or receipt, provided that it is incurred in the production of income and for trade purposes.

The VAT treatment of cryptocurrency must still be reviewed and clarity provided. At this stage, SARS does not require VAT registration as a vendor related to the supply of cryptocurrency.