



**GENESIS**

CHARTERED ACCOUNTANTS

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## INCOME TAX TABLES

### Natural person or a special trust: 2022/2023

Taxable income (R)		Tax Rate				
0 -	226 000					18%
226 001 -	353 100	40 680	+	26%	above	226 000
353 101 -	488 700	73 726	+	31%	above	353 100
488 701 -	641 400	115 762	+	36%	above	488 700
641 401 -	817 600	170 734	+	39%	above	641 400
817 601 -	1 731 600	239 452	+	41%	above	817 600
1 731 601 -	and above	614 192	+	45%	above	1 731 600

### Natural person or a special trust: 2021/2022

Taxable income (R)		Tax Rate				
0 -	216 200					18%
216 201 -	337 800	38 916	+	26%	above	216 200
337 801 -	467 500	70 532	+	31%	above	337 800
467 501 -	613 600	110 739	+	36%	above	467 500
613 601 -	782 200	163 335	+	39%	above	613 600
782 201 -	1 656 600	229 089	+	41%	above	782 200
1 656 601 -	and above	587 593	+	45%	above	1 656 600

## TAX REBATES: INDIVIDUALS

Type of rebate	2022	2023
Primary rebate: younger than 65	15 714	16 425
Secondary rebate: 65 years and older	8 613	9 000
Tertiary rebate: 75 years and older	2 871	2 997

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

## TAX THRESHOLDS: INDIVIDUALS

Type of person	2022	2023
Younger than 65 years	87 300	91 250
65 - 74 years	135 150	141 250
75 years and older	151 100	157 900

## MEDICAL SCHEME FEES TAX CREDITS PER MONTH

Type of person	2022	2023
Main member	332	347
Main member and one dependant	664	694
Additional credit per additional dependent	224	234

## INTEREST EXEMPTION: INDIVIDUALS

Type of person	2022	2023
Younger than 65 years	23 800	23 800
65 years or older	34 500	34 500

## TAX FREE INVESTMENTS: INDIVIDUALS

Tax free contribution limits	2022	2023
Annual limit	36 000	36 000
Lifetime limit	500 000	500 000
Penalty on surplus contributions	40%	40%

## DONATIONS TAX

Description	2022	2023
Annual exemption: Natural persons	100 000	100 000
Annual exemption: Entities	10 000	10 000
Donation tax: First R 30 million	20%	20%
Donation tax: Above R 30 million	25%	25%

## ESTATE DUTY TAX

Description	2022	2023
Estate duty: First R 30 million	20%	20%
Estate duty: Above R 30 million	25%	25%
Estate duty abatement	3 500 000	3 500 000

## FRINGE BENEFITS

Type of fringe benefit or allowance	2022	2023
Subsistence allowance: Deemed expenditure		
South Africa: Only incidental costs	139	152
South Africa: Meals and incidental costs	452	493
Outside South Africa	Per country	Per country
Car allowance: ceiling on vehicle cost	665 000	665 000
Car allowance: ceiling on debt	665 000	665 000
Exempt bursary to relative of employee		
Remuneration proxy limit	600 000	600 000
Relative of employee - no disability		
Grade R to 12	20 000	20 000
NQF 1 – 4	20 000	20 000
NQF 5 – 10	60 000	60 000
Relative of employee - with disability		
Grade R to 12	30 000	30 000
NQF 1 – 4	30 000	30 000
NQF 5 – 10	90 000	90 000
Employer provided low-cost housing/loans		
Employee's remuneration proxy	250 000	250 000
Market value of immovable property	450 000	450 000
Employees' accommodation: "B" in formula	87 300	91 250
Awards for bravery and long service	5 000	5 000
Accommodation: expatriate employees (monthly)	25 000	25 000
Employee loans: no value interest benefit	3 000	3 000
Travel allowance subject to PAYE	80%	80%
Reimbursive travel allowance	3.82	4.18
Employer-owned vehicles – Determined value		
No maintenance plan	3.5%	3.5%
Maintenance plan	3.25%	3.25%

## TRAVEL COSTS

### Deemed expenditure – 2022/2023

Value of the vehicle (Inc Vat) (R)	Fixed costs (R)	Fuel (c)	Maintenance (c)
0 - 95 000	29 836	131.7	40.9
95 001 - 190 000	52 889	147.0	51.1
190 001 - 285 000	76 033	159.7	56.3
285 001 - 380 000	96 197	171.8	61.5
380 001 - 475 000	116 438	183.8	72.3
475 001 - 570 000	137 735	210.8	84.9
570 001 - 665 000	159 031	218.0	105.5
665 001 - and above	159 031	218.0	105.5

### Deemed expenditure – 2021/2022

Value of the vehicle (Inc Vat) (R)	Fixed costs (R)	Fuel (c)	Maintenance (c)
0 - 95 000	29 504	104.1	38.6
95 001 - 190 000	52 226	116.2	48.3
190 001 - 285 000	75 039	126.3	53.2
285 001 - 380 000	94 871	135.8	58.1
380 001 - 475 000	114 781	145.3	68.3
475 001 - 570 000	135 746	166.7	80.2
570 001 - 665 000	156 711	172.4	99.6
665 001 - and above	156 711	172.4	99.6

## RETIREMENT BENEFITS

### Retirement fund lump sum or severance benefit tax table

Year of assessment ending 28 February 2022/2023

Taxable income (R)			Tax Rate			
0	-	500 000				0%
500 001	-	700 000				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 benefit tax table

Year of assessment ending 28 February 2022/2023

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

## CAPITAL GAINS TAX

Description	2022	2023
Annual exclusion: Individuals/special trusts	40 000	40 000
Exclusion on death	300 000	300 000
Exclusion: Disposal of primary residence		
Capital gain or loss	2 000 000	2 000 000
Proceeds on disposal	2 000 000	2 000 000
Disposal of small business assets exclusion		
Exclusion (lifetime limit)	1 800 000	1 800 000
Limit on market value of all assets	10 000 000	10 000 000
Age to qualify for exclusion	55 years	55 years
Inclusion rates:		
Individuals and special trusts	40%	40%
Companies and other trusts	80%	80%
Effective rates		
Individuals	0% - 18%	0% - 18%
Special trusts	7.2% - 18%	7.2% - 18%
Other trusts	36%	36%
Companies (years of assessment ending up to 30 March 2023)	22.4%	22.4%
Companies (years of assessment ending on or after 31 March 2023)		21.6%

## CORPORATE TAX RATES

Type of entity	Years of Assessment ending	
	Up to 30 March 2023	From 31 March 2023
Private and public companies, CC's	28%	27%
Personal service provider company	28%	27%
South African branch (foreign companies)	28%	27%
Public Benefit Organisations*	28%	27%
Recreational clubs**	28%	27%
Long-term insurance business:		
• Individual policyholder fund	30%	30%
• Company policyholder fund, corporate funds and risk policy funds	28%	27%
• Untaxed policyholder fund	0%	0%
Trusts (other than special trusts)	45%	45%
Dividend tax	20%	20%

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

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

**Limitation of assessed losses**

Companies with a year of assessment ending on or after 31 March 2023 will have to limit the set-off of the balance of assessed losses incurred in any previous year, carried forward to the current year of assessment. This limit is determined as the higher of R 1 million and 80% of the current taxable income.

**SMALL BUSINESS CORPORATIONS**

**Year of assessment ending between 1 April 2022 and 30 March 2023**

Taxable income (R)		Tax Rate			
0	- 91 250				0%
91 251	- 365 000				7% above 91 250
365 001	- 550 000	19 163	+		21% above 365 000
550 001	- and above	58 013	+		28% above 550 000

**Year of assessment ending on or after 31 March 2023**

Taxable income (R)		Tax Rate			
0	- 91 250				0%
91 251	- 365 000				7% above 91 250
365 001	- 550 000	19 163	+		21% above 365 000
550 001	- and above	58 013	+		27% above 550 000

**MICRO BUSINESSES**

**Year of assessment ending on 28 February 2022/2023**

Taxable turnover (R)		Tax Rate			
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

**LEARNERSHIP AGREEMENTS**

Annual and completion allowance	2022	2023
Learnership agreement: without disability		
NQF 1 - 6	40 000	40 000
NQF 7 - 10	20 000	20 000
Learnership agreement: with disability		
NQF 1 - 6	60 000	60 000
NQF 7 - 10	50 000	50 000

**VAT**

Description	2022	2023
Compulsory registration threshold	1 000 000	1 000 000
Voluntary registration threshold	50 000	50 000
Payment basis registration limit	2 500 000	2 500 000
Exception: payment basis: invoice exceeds	100 000	100 000
Foreign suppliers: electronic services	1 000 000	1 000 000
Commercial accommodation threshold	120 000	120 000
Tax invoice - Value of supply:		
No formal tax invoice required	50	50
Abridged tax invoice	5 000	5 000
Standard rate	15%	15%
Zero rate	0%	0%

**TRANSFER DUTY**

**Transfer duty payable by natural persons and legal entities**

Value of the property (R)	Rate
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

Payable by the purchaser within 6 months of the date of acquisition.

## NON-RESIDENTS WITHHOLDING TAXES

Type of entity	2022	2023
Royalty payments	15%	15%
Interest	15%	15%
Dividends tax	20%	20%
Sport persons and entertainers	15%	15%
Sale of immovable property (Type of seller)		
Natural person	7.5%	7.5%
Company	10%	10%
Trust	15%	15%

**Please note:** These withholding taxes could be subject to a Double Tax Agreement

## UNDERSTATEMENT PENALTIES

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

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

## FIXED AMOUNT PENALTY TABLE

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

## INTEREST RATES

### Prime interest rate

Date	Rate (%)	Date	Rate (%)
22 05 2020	7.25	19 11 2021	7.25
24 07 2020	7.00	28 01 2022	7.50

### Prescribed and official interest rates

Date	Payable to SARS (%)	Payable by SARS (%)	Official rate (%)
01 04 2020			6.25
01 05 2020	9.75	5.75	5.25
01 06 2020			4.75
01 07 2020	7.75	3.75	
01 08 2020			4.50
01 09 2020	7.25	3.25	
01 11 2020	7.00	3.00	
01 12 2021			4.75
01 02 2022			5.00
01 03 2022	7.25	3.25	

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

## FOREIGN EXCHANGE ALLOWANCES

Allowance	Rules and limits
Foreign discretionary allowance	<ul style="list-style-type: none"> <li>• Limit of R 1 million per calendar year</li> <li>• Individuals must be 18 years and older</li> <li>• In possession of a valid South African ID document</li> <li>• May be used for any legitimate purpose including investments, sending of gift parcels (excluding gold or jewellery)</li> </ul>
Export of Krugerrand coins	<ul style="list-style-type: none"> <li>• Up to R 30 000 as a gift to non-residents</li> <li>• Subject to the completion of the SARS Custom Declaration</li> </ul>
Travel allowance	<ul style="list-style-type: none"> <li>• Individuals may use their single discretionary allowance for travel purposes</li> <li>• Individuals under the age of 18 may avail of a travel allowance not exceeding R 200 000 per calendar year</li> <li>• May not avail of a travel allowance more than 60 days prior to departure</li> <li>• Must present a valid passenger ticket when travelling by air, bus, rail or ship</li> <li>• Travel allowance may be transferred abroad to the traveller's own bank account and/or spouse accounts but not to a third party bank account</li> <li>• Minors travelling with parents, may have their travel allowances transferred to their parents' bank account abroad</li> <li>• Unused foreign currency must be resold within 30 days to an Authorised Dealer upon return</li> <li>• Business travellers may retain the foreign currency if the next business trip is to commence within 90 days after returning from a previous business trip</li> <li>• Rand notes to the value of R 25 000 per person may be taken in addition to the travel allowance for visits outside the CMA</li> </ul>
Study allowance	<ul style="list-style-type: none"> <li>• Individuals may avail of the R 1 million single discretionary allowance to study abroad</li> <li>• Spouses accompanying students also qualify for the facility</li> <li>• Students may export any household and personal effects, including jewellery but excluding motor vehicles up to R 200 000 per student</li> <li>• Authorised Dealers may transfer directly to the institution concerned the relative tuition and academic fees for the academic year, against documentary evidence confirming the amount</li> <li>• Students under the age of 18 years also qualify for a study allowance to pay for costs associated with their studies abroad as well as a travel allowance of R 200 000 per calendar year</li> <li>• Residents must produce to an Authorised Dealer the following before an allowance can be paid:               <ul style="list-style-type: none"> <li>○ Documentary evidence from the institutions confirming that the student has been enrolled for a course for the period the allowance is claimed</li> <li>○ Evidence of the tuition and academic fees in the form of a letter or prospectus from the institution to be attended</li> </ul> </li> </ul>



<p>Foreign Capital Allowance</p>	<ul style="list-style-type: none"> <li>• Must apply for through an Authorised Dealer</li> <li>• Limit of R 10 million per calendar year per individual</li> <li>• Subject to a TCS PIN verifying the taxpayer's tax compliance status and valid ID</li> <li>• Individual must be <u>18</u> years and older</li> </ul>
<p>Residents temporarily abroad</p>	<ul style="list-style-type: none"> <li>• A resident proceeding abroad temporarily, may on departure and annually thereafter, through an Authorised Dealer, avail of the R 1 million single discretionary allowance and the R 10 million foreign capital allowance</li> <li>• Subject to a TCS PIN verifying the taxpayer's tax compliance status and valid ID</li> <li>• The annual limits may not be exceeded without prior FSD approval</li> <li>• May use local debit and/or credit cards within the overall single discretionary allowance limit of R1 million per applicant during a calendar year</li> <li>• Residents may further receive pension and retirement annuity income, but no other foreign currency may be availed of without the specific approval of the FSD</li> <li>• Any household and personal effects, motor vehicles, caravans, trailers, motorcycles, stamps and coins (excluding coins that are legal tender in South Africa) per family unit or single person, where the insurance value does not exceed R 1 million may be exported against the prescribed SARS Customs Declaration</li> </ul>
<p>Import payments via credit and/or debit cards</p>	<ul style="list-style-type: none"> <li>• Individuals with locally issued credit and/or debit cards are permitted to make foreign currency payments for small transactions (e.g. imports over the internet)</li> <li>• Payments are limited to R 50 000 per transaction</li> <li>• Any singular transaction exceeding R 50 000 may not be split to circumvent the limit applicable to this dispensation</li> </ul>
<p>Import payments via an Authorised Dealer in foreign exchange</p>	<ul style="list-style-type: none"> <li>• Individuals may purchase foreign currency for payment of imports via an Authorised Dealer</li> <li>• Where an import permit is required, importers must ensure that a covering import permit issued by ITAC is obtained</li> <li>• Payments for imports must be made against the following documentation:             <ul style="list-style-type: none"> <li>○ Commercial invoices issued by the supplier</li> <li>○ Transport documents evidencing transport of the relative goods to South Africa</li> <li>○ Freight Forwarders Certificate of Receipt or Freight Forwarders Certificate of Transport</li> <li>○ Importer's copy of the prescribed SARS Customs Declaration</li> <li>○ All documentation must be retained for a period of at least five years</li> <li>○ Where goods for which payment has been made have not been or will not be consigned to South Africa within four months of the date of payment, the importer must within 14 days of the expiry of such period advise the Authorised Dealer of this fact</li> </ul> </li> </ul>

## 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.
Member of partnership	Any other 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 a 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 the group contains a controlling group company that: <ul style="list-style-type: none"> <li>• Directly holds more than 50% of the equity shares or voting rights in at least one controlled group company;</li> <li>• Directly or indirectly holds more than 50% of the equity shares or voting rights in each controlled group company.</li> </ul> <p>Any person (excluding companies) that holds, alone or together with their connected persons, 20% or more of the equity shares or voting rights.</p> <p>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.</p> <p>Any other company, if managed or controlled by a connected person.</p>

## WEAR AND TEAR AND CAPITAL ALLOWANCES

Type of asset	Allowance
Small business corporations	New or used plant and machinery brought into use for the first time in a manufacturing or similar process: 100% Other depreciable assets: Normal wear and tear rates, or 50%:30%:20%
Manufacturing assets	Acquired on or after 1 January 2012: New and unused: 50%:30%:20%
Research and development	Plant and machinery acquired and brought into use for the first time after 1 January 2012: 50%:30%:20% Buildings used wholly or mainly for research and development: 5% annual allowance
Industrial buildings	Used wholly or mainly in a manufacturing or similar process: 5% per year
New commercial buildings	Buildings or improvements contracted for on or after 1 April 2007 and construction, erection, or installation commenced on or after that date: 5% per year
Farming equipment	50%:30%:20%
Urban Development Zones	New buildings, extensions, and additions: 20% initial allowance and 8% thereafter per year, for 10 years Improvements: 20% straight line Applies on buildings taken into use up until 31 March 2023

Capital 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 the following write-off periods (in years):

Aircraft (passenger light)	4	Office equipment (mechanical)	5
Air conditioners (window)	6	Passenger vehicles	5
Carports	5	Personal computers	3
Cell phones	2	Photocopying equipment	5
Curtains	5	Power tools (hand operated)	5
Computer software-personal	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 in full in the year of assessment when brought into use.

## **RESIDENTS**

### **Residency test**

Residents of South Africa are taxable on their worldwide income. To be considered a resident an individual must be either “ordinarily resident” (as per Interpretation Note 3) or be “physically present” in South Africa during the year of assessment.

The physical presence test requires an individual to have been present in South Africa:

- For more than 91 days in total during the relevant year of assessment and during each of the preceding 5 years of assessment; and
- For more than 915 days in total during the 5 years preceding the relevant year of assessment.

If the individual was outside of South Africa for a continuous period of 330 full days, then the individual will no longer be a resident under the physical presence test, retrospectively from the day the person left South Africa.

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 excludes any person who is deemed to be exclusively a resident of another country, in terms of a double tax agreement, even if one of the other residency tests apply.

### **Individuals ceasing tax residency and exchange control**

The concept of emigration has been phased out with effect from 1 March 2021 for tax purposes.

Authorised Dealers may allow the transfer of assets abroad, provided an individual:

- Has ceased to be a tax resident in South Africa;
- Has obtained a TCS Pin in respect of “emigration” from SARS; and
- Is tax compliant upon verification of the TCS.

Individuals may in the same calendar year that they ceased to be residents transfer via an Authorised Dealer up to R 1 million as a travel allowance, without a TCS PIN. This is a once-off dispensation, and any surplus cannot be used in subsequent calendar years.

Individuals only qualify for the travel allowance and may not avail of any unutilised portion of the single discretionary allowance.

Household and personal effects up to R 1 million per family unit may be exported under a SARS Customs Declaration form within the same calendar year that the individual ceases to be a tax resident, provided such assets have been declared on the relevant forms. Transactions of this nature will be treated similar to cash.

Authorised Dealers may allow a transfer of up to R 10 million per calendar year per individual who is 18 years and older, is tax compliant and has submitted the relevant TCS application for verification.

Non-residents who transfer more than R 10 million offshore are subject, initially to a more stringent verification process by SARS, as well as a subsequent approval process from the FSD. Such transfers will trigger a risk management test that will include a verification of tax status and the source of funds, as well as risk assessment in terms of the Financial Intelligence Centre Act.

The application to the FDS must be accompanied by a TCS PIN to verify the taxpayer's tax compliance status and the amount requested to be transferred.

Any requests for further transfers of remaining assets will be subject to a TCS application in respect of Foreign Investment Allowance (FIA) irrespective of the date of emigration, i.e. prior to or after 1 March 2021.

The externalisation of listed and unlisted domestic securities will be treated similar to cash, which will form part of the foreign capital allowance and is also subject to the TCS process.

In respect of the withdrawal of retirement funds (lump sum benefits from pension preservation, provident preservation, and retirement annuity funds), the payment of lump-sum benefits shall only be allowed by Authorised Dealers if the member on or after 1 March 2021 is a non-tax resident for at least three consecutive years.

All assets that were previously blocked may be dealt with as follows:

- Income and capital distributions from *inter vivos* trusts may be transferred abroad, subject to the TCS process being completed by the trustees of the trust;
- Pre-inheritance gifts may be transferred abroad, subject to the TCS process being completed by the resident donor;
- For any transfers above R 10 million, the more stringent requirements as discussed above will apply;
- Applications by private individuals who cease to be residents for tax purposes and who are no longer active on the SARS database and receive an inheritance or life insurance policy (excluding lump sum benefits from retirement funds and annuities from insurers) up to R 10 million, will not be required to apply to SARS for a Manual Letter

of Compliance - Transfer of funds. For applications exceeding R 10 million, this letter must be obtained from SARS.

Income due to individuals may be transferred offshore, provided that the Authorised Dealer ensures that the amounts to be transferred are legitimately due to the individual, that suitable arrangements are made to settle all local liabilities and verifies a TCS of good standing at least once a year to confirm that the individual is tax compliant in respect of the transfer of income:

- Interest and profit;
- Dividends;
- Income distributions from close corporations;
- Directors' fees or members' fees;
- Pension payments made by registered funds only;
- Cash bonuses earned on insurance policies;
- Income received from a testamentary trust;
- Income received from an *inter vivos* trust;
- Rentals on fixed property including rental pool agreements, provided that rentals are substantiated by the production of a copy of the rental or rental pool agreement;
- Annuity payments;
- Refunds paid by SARS, provided that Authorised Dealers are satisfied that the beneficiaries are permanently resident outside the CMA; and
- Salaries and/or fees payable in respect of services rendered.

### **Ceasing to be a tax resident**

#### **Persons other than companies**

<b>Event</b>	<b>Tax implications</b>
Deemed disposal	All assets (except those excluded) at market value to a person who is a resident on the date immediately before the day on which he/she ceases to be a resident.
Deemed reacquisition	All assets (except those excluded) at market value on the day on which he/she ceases to be a resident.
Assets excluded	<ul style="list-style-type: none"> <li>• Immovable property situated in South Africa;</li> <li>• Assets attributable to a permanent establishment in South Africa;</li> <li>• Section 8B share granted less than 5 years before ceasing to be a resident;</li> <li>• Section 8C equity instrument not yet vested;</li> <li>• Section 8A option to acquire a share.</li> </ul>
End of year of assessment	On the date immediately before the day he/she ceases to be a resident.
Commencement of succeeding year of assessment	On the day he/she ceases to be a resident.

#### **Company**

<b>Event</b>	<b>Tax implications</b>
Deemed disposal	All assets (except those excluded) at market value to a person who is a resident on the date immediately before the day on which the company ceases to be a resident.
Deemed reacquisition	All assets (except those excluded) at market value on the day on which the company ceases to be a resident.

Assets excluded	<ul style="list-style-type: none"> <li>• Immovable property in South Africa;</li> <li>• Assets attributable to a permanent establishment in South Africa.</li> </ul>
End of year of assessment	On the date immediately before the day on which the company ceases to be a resident.
Commencement-succeeding year of assessment	On the day on which the company ceases to be a resident.
Deemed dividend declared to shareholders in accordance with their effective interest in the shares	<p>Deemed to have declared and paid a dividend <i>in specie</i> on the difference between:</p> <ul style="list-style-type: none"> <li>• The market value of the shares in that company on the day immediately before the day on which the company ceases to be a resident; and</li> <li>• The total value of the contributed tax capital of all the classes of shares in the company on the same date.</li> </ul>
Deemed dividend <i>in specie</i> that is exempt from dividends tax (Effective from 1 January 2021)	<p>If a person holds at least 10% of the equity shares and voting rights in a company that ceases to be a resident and the dividend <i>in specie</i>, deemed to have been declared by the company is exempt from dividends tax, then that person must be deemed to have:</p> <ul style="list-style-type: none"> <li>• Disposed of those shares to a resident at their market value on the day before the company ceases to be a resident; and</li> <li>• Reacquired those shares at market value on the day the company ceases to be a resident.</li> </ul>
Claw-back: disregarded capital gains (10% shareholding)	If a capital gain on the disposal of equity shares was disregarded within 3 years before a company ceases to be a resident, the capital gain is deemed to be a net capital gain derived by the company during the year of assessment that the company ceases to be a resident.
Claw-back: exempt foreign dividends (10% shareholding)	If any foreign dividend was exempt from normal tax within 3 years before the company ceases to be a resident, the foreign dividend is deemed to be received or accrued to the company during the year of assessment that the company ceases to be a resident and such foreign dividend is then not exempt.

### South African interest

Local interest is exempt limited to the following maximum amounts:

Type of person	2022	2023
Natural persons under 65 years	23 800	23 800
Natural persons aged 65 years and older	34 500	34 500

### Foreign interest

Foreign interest income is taxable.

### South African dividends

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

Dividends received for 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

Foreign dividends are exempt in the following circumstances:

- 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 foreign company, the dividend is paid or declared by another foreign company, and the two companies are resident in the same country;
- 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, that 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, that is a dividend *in specie*.

Taxable foreign dividends are subject to a maximum effective tax rate of 20%. The exemption is calculated as follows:

- Individuals, deceased or insolvent estates, trusts:  $25/45 \times$  dividend;
- Companies: financial years ends up to 30 March 2023:  $8/28 \times$  dividend;
- Companies: financial years ending on or after 31 March 2023:  $7/27 \times$  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 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 for any expenses incurred in the production of foreign dividends e.g., interest paid on loans to buy foreign shares.

### Tax-free investments

Any amount received by or accrued to a natural person or their deceased or insolvent estate, from a tax-free investment, is exempt from normal tax. Any capital gain or loss from such an investment is also disregarded. No dividends tax is payable on dividends paid on a tax-free investment.

### Contribution limits

Tax free limits	2022	2023
Annual limit	36 000	36 000
Lifetime limit	500 000	500 000

Individuals may transfer amounts between tax-free investments by different service providers. These transfers will not be considered when determining the annual or lifetime contribution limits.

Any exempt income received on a tax-free investment that is reinvested will also not be regarded as excess contributions.

#### **Penalties on excess contributions (added to normal tax liability)**

<b>Contributions</b>	<b>2022</b>	<b>2023</b>
Exceeding R 36 000 during year of assessment	40%	40%
Exceeding R 500 000 in aggregate	40%	40%

#### **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, 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. These amounts are accordingly included in gross income.

#### **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. The loss may not be set off against any income from a source in South Africa.

#### **Foreign employment income**

The first R 1.25 million per year of assessment of any remuneration that is received by or accrued to an employee, for services rendered outside South Africa, for or on behalf of any employer, is exempt from normal tax, if the employee was outside South Africa:

- For more than 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.

Any excess above the R 1.25 million will be subject to normal tax in South Africa.

Remuneration includes fringe benefits and benefits under employee share schemes.

Independent contractors and self-employed individuals, such as 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, holidays 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.

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 limit should accumulate monthly. Once the R 1.25 million is reached, the income exceeding R 1.25 million is subject to normal tax. The R 1.25 million 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 lump sum, pensions and annuities**

Any lump sum, pension or annuity received by or accrued to any resident from a source outside South Africa as consideration for past employment outside South Africa is exempt. Any amount transferred to a South African retirement fund from a source outside South Africa in respect of the member is also exempt.

### **Unemployment insurance benefits**

Any benefit or allowance received from the Unemployment Insurance Fund is exempt from normal tax.

### **NON-RESIDENTS**

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

### **Tax implications**

<b>Income</b>	<b>Tax implications</b>
Business income	Taxed in South Africa if the business is carried on in South Africa.
Dividends	South African dividends are included in gross income but are then exempt from normal tax. Dividends are subject to a final withholding tax of 20%. The rate of tax may be altered by a double tax agreement.
Interest received	<p>Taxed if the investment is made in South Africa or if the interest is earned on funds utilised, or credit extended to a resident in South Africa. Subject to a final withholding tax of 15%. (Unless reduced by a DTA) (Please refer below for more information about withholding taxes)</p> <p>Exempt from the withholding tax if paid by:</p> <ul style="list-style-type: none"><li>• The South African government in the national, provincial or local sphere;</li><li>• Any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation;</li><li>• A headquarter company in respect of it granting financial assistance to which the transfer pricing rules do not apply;</li><li>• Any listed debt instruments; or</li><li>• An entity as contemplated in section 21(6) of the Financial Markets Act to any foreign person that is a client as defined.</li></ul>

Rental income on fixed property	Taxed in South Africa if the property is situated in South Africa.
Rental income on moveable property	Taxed in South Africa if the primary cause of the income is in South Africa.
Remuneration and fees	Taxed in South Africa if the services are rendered in South Africa.
Royalties	Taxed in South Africa if the royalties are paid by a South African tax resident or the intellectual property was developed in South Africa or is used in South Africa. Subject to a final withholding tax of 15%. (Please refer below for more information about withholding taxes)
Foreign entertainers and sportspersons	A final withholding 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 South Africa is required to notify SARS within 14 days after the agreement has been concluded that the specified activity is to take place. The amount must be paid to SARS by the end of the following month.
Disposal of fixed property	<p>Subject to a withholding tax on the disposal of immovable property in South Africa for a consideration of more than R 2 million. This withholding tax is not a final tax but an advance payment towards the non-resident's normal tax liability.</p> <p>Unless a directive to the contrary is provided by the non-resident seller, the purchaser must withhold the following percentages of the selling price, based on the nature of the seller:  Natural person: 7.5%, Company: 10%, Trust: 15%</p> <p>If the purchaser is a resident, the amount withheld must be paid to SARS within 14 days after the date on which it was withheld, or within 28 days if the purchaser is a non-resident.</p> <p>A late payment is subject to a 10% penalty and interest.</p> <p>If a seller does not submit a return to SARS within 12 months after the end of the year of assessment, SARS may issue an estimated assessment. If the taxpayer does not request SARS to issue a reduced assessment by submitting a complete and correct return, the estimated assessment becomes final.</p> <p>If a non-resident disposes of an interest in immovable property e.g. equity shares in a company and:</p> <ul style="list-style-type: none"> <li>• 80% or more of the market value of the interest at the time of the disposal is directly or indirectly attributable to immovable property situated in South Africa (whether held as capital or trading stock) or any interest in, or right to, such immovable property; and</li> <li>• The non-resident (together with connected persons) directly or indirectly holds at least 20% of the interest;</li> </ul> <p>Then the gain that the non-resident makes on the disposal of the interest will be subject to CGT in South Africa.</p> <p>If the non-resident sells the shares, then the tax must be withheld from the proceeds of the sale of the shares.</p>

Service fees paid to non-residents	Any arrangement for the provision of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services by a non-resident, or their employee, agent or representative, carried on in South Africa, where the expenditure incurred or to be incurred in respect of those services exceeds or is anticipated to exceed R 10 million per arrangement, will be a reportable arrangement. No reporting is necessary if the service fee is taxed as remuneration in the non-resident's hands.
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### **Withholding taxes on interest and royalties**

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

The interest or royalty is deemed to be paid on the earlier of the date of payment or when it becomes due and payable. The person who pays the interest or royalty is responsible for withholding the correct amount of tax and paying it over to SARS.

Persons required to withhold the tax, can be absolved of the withholding liability, if the person receives a written declaration and undertaking for exemption or a reduced rate in terms of treaty relief, from the non-resident. This declaration and undertaking must be submitted by the earlier of the date as determined by the person paying the interest or royalty or before the date of payment. Such declaration and undertaking will be valid for five years from the date of declaration.

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

A refund may be claimed from SARS by the non-resident within 3 years after payment of the applicable interest or royalties if a withholding tax was improperly withheld. SARS will refund the tax directly to the non-resident. Should the interest and royalties become irrecoverable, SARS must refund it to the person who withheld and paid the tax to SARS.

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

### **ALLOWANCES AND REIMBURSEMENTS**

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

A reimbursement occurs when an employee has incurred and already 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 a travel allowance. However, employees' tax may be calculated on 20% of the travel allowance if the employer is satisfied that at least 80% of the use of the vehicle for the year of assessment will be for business purposes. This determination must be done on a monthly basis.

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

### **Reimbursive travel allowance**

Where an allowance is based on the actual distance travelled by the employee for business purposes, no tax is payable on this allowance if it does not exceed a rate of 418 (382) cents per kilometre, regardless of the value of the vehicle.

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

The portion by which the reimbursive allowance exceeds 418 (382) cents per kilometre forms part of remuneration for employees' tax purposes.

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

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 in which the allowance is received.

### **Subsistence allowance**

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

- R 152 (R 139) per day for incidental costs only;
- R 493 (R 452) per day for incidental costs and meals.

For travelling outside South Africa, the amount deemed to have been expended is different for each country. More information is available on the SARS website.

The allowance for incidental costs is to cover expenses such as beverages, private telephone calls, tips and room service. The deemed expenditure does not cover accommodation.

If the employee is allowed on instruction of the employer to incur expenditure on meals and other incidental costs while such employee is by reason of the duties of his or her office or employment obliged to spend a part of a day away from his or her usual place of work or employment, the amount reimbursed is excluded from taxable income in the hands of the employee, provided that the amount does not exceed R 152 (R139) per day.

### **Uniform allowance**

An employer may provide an employee with a uniform, or an allowance to buy such uniform. The allowance is exempt from income tax, if the employee is required, while on duty, to wear the special uniform, and it is clearly distinguishable from ordinary clothing.

### **FRINGE BENEFITS**

A fringe benefit refers to payments made to employees (including a partner in a partnership) in a form other than cash. A taxable benefit is deemed to have been granted by the employer, if such benefit is granted to the employee 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 instruments (excluding section 8A, 8B or 8C shares) 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**

**General rule:** market value at the time the asset is acquired by the employee, less any consideration paid by the employee;

**Movable property:** cost to the employer, if acquired by the employer to dispose of it to the employee;

**Marketable securities:** market value;

**Asset which the employer had the use of prior to acquiring ownership thereof:** market value;

**Trading stock:** lower of the cost or market value.

### **No value benefits**

- Fuel or lubricants for use in a motor vehicle provided by the employer;
- Section 8A, 8B and 8C shares;
- Any asset awarded as a long service or bravery award up to R 5 000.

Long service means an initial unbroken period of service of at least 15 years, or any subsequent unbroken period of service of at least 10 years.

From 1 March 2022, the no value rule will only apply if the aggregate value of all long service awards given in the form of assets, the right to use assets, free or cheap services and cash do not exceed R 5 000.

No value shall be placed on any immovable property used for residential purposes acquired by an employee for free or 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. Interest not charged on a loan provided to the employee of less than R 450 000 to acquire the immovable property will also have no value if the same criteria are met.

### 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 value of the private use.

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

### Private use value

- **Asset leased by employer:** rent paid by employer.
- **Asset owned by employer:** 15% per annum on the lesser of the cost or market value of the asset on the first day of use by the employee (apportion if used only for a part of the year).
- **Employee is granted the sole right of use of the asset for a major portion of its useful life:** cost of the asset to the employer.

### Exclusions

- 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;
- Any equipment or machine and the private use is for a short period and SARS is satisfied that the value of private use is negligible;
- 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 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 purposes.

### Private use value of vehicle (calculated per month)

- Not subject to a maintenance plan: 3.5% of determined value;
- 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.

Maintenance plan means a contract covering all maintenance costs for at least 3 years and a distance of at least 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.

### Determined value

Type of employer	New/Demo vehicle:	Pre-owned vehicle:
Manufacturers/ Importers	Dealer Billing Price Including VAT	Cost excluding finance charges but including VAT
Vehicle dealers/ rental companies		If at no cost, then market value including repairs and VAT
Any other person	Price at acquisition including VAT, or where the vehicle was acquired at no cost, the market value including VAT.	

The determined value must be reduced by 15% per year on the reducing balance method, for every completed 12-month period between acquiring the motor vehicle and granting the right of use to the relevant 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 taxable benefit is determined using the vehicle carrying the highest value for private use.

#### **Definition of an operating lease**

A lease of movable property that is concluded by a lessor in the ordinary course of a business of letting vehicles (excluding banking, financial services or insurance businesses) if:

- Members of the public may rent the vehicle directly from the lessor for a period of less than one month;
- The cost of maintaining and repairing the vehicle in consequence of normal wear and tear is borne by the lessor;
- The risk of destruction or loss of the vehicle is not assumed by the lessee;
- The lessor may claim from the lessee for a loss arising out of the lessee's failure to take proper care of the vehicle.

#### **No value is placed on the private use of a company owned vehicle if:**

- It is available to and used by all employees in general, the private use is infrequent or merely incidental to the business use and 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.

#### **Reduction on assessment**

**Accurate records kept of business kilometres:** Value of private use x business kilometres/total kilometres.

**Employee bears the full cost of licence, insurance, or maintenance:** Total cost x private kilometres/total kilometres.

**Employee bears the full cost of fuel for private use:** Private kilometres x deemed cost per kilometre for fuel as per the deemed travel cost table.

#### **Employees' tax**

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

#### **Deemed supply for VAT purposes**

- **Motor vehicle:** 0.3% of the determined value (Excl. VAT) per month.
- **Other vehicles:** 0.6% of the determined value (Excl. VAT) per month.

#### **Insurance policies**

Premiums paid by an employer in respect of insurance policies is a taxable fringe benefit in the employees' hands.

- **Taxable benefit:** Amount of any premiums paid directly or indirectly for the benefit of an employee or his/her spouse, child, dependant or nominee.

- **Excluded:** Any premium paid by the employer on a policy that relates to an event arising solely out of and in the course of 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 a contribution made by the employee.

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

- A person who has retired due to age, ill health or other infirmity; or
- The dependants of a deceased employee; or
- The dependants of a retired employee after his death.

### **Categories of medical expenses**

- Contributions to a medical aid scheme; and
- Medical expenses not recovered from the medical aid (qualifying expenses).

### **Medical scheme fees tax credit (per month)**

Type of person	2022	2023
Main member	332	347
Main member and one dependant	664	694
Additional credit per additional dependent	224	234

The medical scheme fees tax credit applies in respect of fees paid by the taxpayer to a registered medical scheme, or a foreign medical fund which is registered under 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 determined as the pro-rata portion in the same ratio as the fees paid by that person to the total amount of fees paid.

### **Additional medical expenses tax credit**

For taxpayers 65 years or older and for persons with a “disability” themselves or in the immediate family:

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

### **Thus:**

$33.3\% \times [(\text{contributions} - 3 \times \text{credit}) + \text{qualifying expenses}]$

For all other natural persons:

- 25% of:
  - The amount of the fees paid to a medical scheme, as exceeds 4 times the amount of the medical scheme fees tax credit to which that person is entitled; plus
  - The amount of qualifying medical expenses paid by the person;



as exceeds 7.5% of the person's taxable income (including the taxable portion of a capital gain but excluding any retirement fund lump sum, withdrawal and severance benefit).

**Thus:**

$25\% \times \{[(\text{Contributions} - 4 \times \text{credit}) + \text{qualifying expenses}] - [7.5\% \times \text{taxable income}]\}$

For PAYE purposes the employer must deduct from employees' tax:

- The medical scheme fees tax credit; and
- Where the employee is 65 years or older the additional medical expenses tax credit of 33.3% of the fees paid to a medical scheme as exceeds 3 times the amount of the medical scheme fees tax credit to which that person is entitled.

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

**Definition of a "dependant"**

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

**Definition of a "child"**

A "child" means a person's child or child of his or her spouse (including an adopted child), who was alive during any portion of the year of assessment, and who was on the last day of the year of assessment:

- Unmarried and was:
  - Not over the age of 18;
  - Not over the age of 21 and was wholly or partially dependent on the taxpayer for maintenance, and has not become liable for the payment of normal tax; or
  - Not over the age of 26 and was wholly or partially dependent on the taxpayer for maintenance, and has not become liable for the payment of normal tax, and was a full-time student at a public educational institution; or
- In the case of any other child was incapacitated by physical or mental infirmity from maintaining himself or herself, was wholly or partially dependent on the taxpayer for maintenance and has not become liable for the payment of normal tax.

**Definition of a "disability"**

A "disability" means a moderate to severe limitation of a person's ability to function or perform daily activities, because of a physical, sensory, communication, intellectual or mental impairment if the limitation:

- Has lasted longer, or has a prognosis of lasting more than a year; and
- Is diagnosed by a duly registered medical practitioner in accordance with certain criteria prescribed by SARS. The medical practitioner needs to be a specialist in the disability he or she diagnoses.

Form ITR-DD must be completed by a medical practitioner and is valid for 10 years if the disability is of a more permanent nature. In the case of a temporary disability, the form is valid for only one year. \*

### **Meaning of “physical impairment”**

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

### **Meaning of “qualifying medical expenses”**

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

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

### **Qualifying medical expenses for school fees**

A tax credit can be claimed for the following costs paid in respect of learners with disabilities or impairments:

- Special schools for learners with disabilities:
  - School assistant or classroom costs; and
  - School fees (limited to the amount that exceeds the fees that would have been payable if the person attended the closest fee-paying public school not specialising in learners with special educational needs).
- Schools not specialising in learners with special educational needs:
  - School fees are limited to additional expenses incurred and paid as a result of the disability.

Take note that the taxpayers who will be affected by these changes are those whose children with a disability attended a private special education needs school. Taxpayers who have submitted their 2021 tax returns must log into their eFiling profile or visit their local SARS branch to request a correction or lodge an objection to claim the additional benefits.

### **Costs relating to medical services**

The cash equivalent is the amount paid by the employer during any month, directly or indirectly, for any medical, dental and similar services, hospital or nursing services or medicines for that employee, his/her spouse, child, other relative or dependants.

### **No value benefits**

- A medical scheme that is approved by the Registrar of Medical Schemes and run by an employer for his employees;
- A person who has retired by reason of 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 employer renders the services 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 South Africa.

### **Residential accommodation**

Where the employer provides free or cheap accommodation, the taxable value is either the actual cost to the employer, or the amount determined according to a formula. In both cases, the amount of any payments that the employee makes will be deducted from the amount calculated.

### **The formula**

$(A - B) \times C / 100 \times D / 12$  where:

- A = the remuneration proxy for the year of assessment;\*
- B = R 91 250 (R 87 300) (subject to certain exclusions)
- C = 17, or
- If the accommodation consists of a house, flat or apartment consisting of at least 4 rooms, then C is:
  - 18 if unfurnished and power or fuel is supplied or if furnished, and no power or fuel is supplied;
  - 19 if furnished and power or fuel is supplied;
- D = number of months during the year of assessment that the employee was entitled to the accommodation.

\*Remuneration derived by the employee in the previous year of assessment, excluding the residential accommodation benefit.

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

- The employer is a private company and the employee or their spouse controls the company;
- The employee, their spouse or minor child has the option to become the owner of the accommodation by virtue of a controlling interest.

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

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

**No rental value will be placed on the following:**

- Accommodation inside or outside South Africa supplied while the employee is away from his usual place of residence in South Africa for business purposes;
- Any accommodation in South Africa supplied to a non-resident employee away from his usual place of residence outside South Africa:
  - For up to two years from the date of arrival in South Africa; or
  - If the employee was physically present in South Africa for less than 90 days in the year of assessment.
- The no-value rule for non-residents will not apply:
  - If the non-resident employee was physically present in South Africa for a more than 90 days during the year of assessment immediately preceding the date of arrival; or
  - To the extent that the cash equivalent exceeds R 25 000 multiplied by the number of months to which the no-value rule applies.

**Holiday accommodation**

The employee is taxed on the prevailing 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 incurred for meals, refreshments, or any services borne by the employer while 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 taxable benefit is the difference between the actual cost to the employer and the amount paid by the employee. Where the employer's business is to convey passengers by sea or air, and the travel facility is granted to an employee or relative to travel to a destination outside of South Africa, the cash equivalent is valued at the lowest full fare less any amount paid by the employee or his relative.

**No value services:**

- Travel facilities provided by an employer, who is in the business of conveying passengers for reward by land, sea or air, to enable an employee, his/her spouse or minor child to travel to any destination in or outside (overland) of South Africa, or to any destination outside South Africa if travel was taken on a normal flight and the seat could not be reserved in advance;
- Transport services to convey employees between their home and work. Transport services that are rendered directly by the employer for the provision of exclusive transport services to employees in general between their homes and their place of employment will

qualify for the no-value provisions. The payment and provision of general public transport will not qualify for the no-value provisions;

- Any communication service provided to an employee if the service is used mainly for purposes of the employer's trade, 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 South Africa 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 loans**

- A loan that does not exceed R 3 000 per employee at any time;
- A loan to enable the employee to further his/her own studies;
- A loan to an employee that does not exceed R 450 000 if:
  - The debt was assumed to acquire immovable property used for residential purposes;
  - The market value of the property does not exceed R 450 000;
  - The employee's remuneration proxy does not exceed R 250 000; and
  - The employee is not a connected person in relation to the employer.

### **Payment or release of employees' debt**

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

### **No value benefits**

- Subscriptions paid 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 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 from normal tax.

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 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, 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 limits 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).

**Please note:** With effect from 1 March 2021 bursaries and scholarships that are subject to an element of salary sacrifice will not be exempt, regardless of the fact that all other requirements have been met.

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 will represent 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 free meal, refreshment or voucher for a meal or refreshment for a consideration which is lower than the actual value of the benefit.

### **No value benefits**

- Provided in a canteen, cafeteria or dining room operated by or on behalf of the employer, and used 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 makes a contribution for the benefit of an employee to a pension, provident or retirement annuity fund, such contributions will be treated as a taxable fringe benefit in the hands of the employee.

### Types of retirement funds

- **Defined contribution fund:** Cash value of the contribution, and the employer is not required to provide the employee with a contribution certificate.
- **Defined benefit fund:** Determined through a specific formula, and the employer is required to provide the employee with a contribution certificate.

From 1 March 2022 self-insured risk benefits are classified as a defined contribution component. Retirement funds that provide both a defined contribution component and self-insured risk benefits must determine the fringe benefit based on the actual contribution. The value of the risk premiums under self-insured risk benefits must be determined based on the cost to the employer.

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 option and/or share, and the market value on the date of vesting.

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.

### Vesting date

**Unrestricted instrument:** Date when the instrument is acquired.

**Restricted instrument:** Date when all restrictions are lifted.

An employer must apply for a tax directive on the gain made from the vesting of any equity instrument to pay the right amount of PAYE to SARS.

### Relocation benefits

Where the employer incurred expenses, or reimbursed an employee for any relocation costs due to a change in place of employment, the following expenses will be exempt from normal tax:

- Transport costs of the employee, members of his household and their possessions;
- Hiring of 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, 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 fees paid for the design or alteration of the new residence is not exempt.

## **DEDUCTIONS FOR INDIVIDUALS**

### **Retirement fund contributions**

Contributions made by an individual to a pension, provident and 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 maximum amount of the allowable deduction is called the “balance of unclaimed contributions”.

The “balance of unclaimed contributions” at the end of the 2021 year of assessment should be applied or used in the following order during the 2022 year of assessment:

- Claim a deduction against a lump sum received during 2022;
- Claim an exemption against any qualifying annuities received during 2022;
- Add the remaining unclaimed balance to the current contributions made during 2022.

Deductible contributions will be limited to the lesser of:

- R 350 000; or
- 27.5% of the greater of:
  - Remuneration; or
  - Taxable income including a taxable capital gain but before allowing this deduction and the section 18A donations deduction;
- The taxable income before:
  - Allowing this deduction and the section 18A donations deduction; and
  - The inclusion of any taxable capital gain.

**Please note:** All of the above-mentioned amounts exclude any retirement lump sum benefits and severance benefits.

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 taxed 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, limited to the lesser of R 350 000 or 27.5% of remuneration or taxable income. The capped amount of R 350 000 must be spread over 12 months on a cumulative basis for a portion of the year of assessment that the employee received remuneration from the employer. For employees who are remunerated monthly the deduction cannot exceed R 29 167 per month.

### **Donations**

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



### Home office expenses

An employee who works from home and has dedicated an area/room to be occupied for the purpose of “trade” (i.e. work activities), may be allowed to deduct certain home office expenses for tax purposes.

A tax deduction for home office expenses is only allowed when the following criteria are met:

- The area/room is regularly and exclusively used for the taxpayer’s trade and is specifically equipped for that purpose. The home office must be set up solely for work purposes.
- Where the employee’s remuneration consists solely or mainly (more than 50%) of only a salary and/or other fringe benefits, their duties must be performed mainly (more than 50%) in the dedicated part.
- Where the employee’s remuneration consists mainly (more than 50%) of commission or variable payments based on work performance, their duties must be performed elsewhere than at the employer’s office.

The following types of home office expenditure can be claimed:

- Rent of the premises;
- Cost of repairs to the premises;
- Expenses in connection with the premises;
- Phones, internet, stationery (not available where remuneration consists solely or mainly of salaries and other fringe benefits);
- Rates and taxes, cleaning, wear and tear on office equipment;
- According to SARS’ Interpretation Note 28, interest on a mortgage bond may not be claimed.

The tax deduction is calculated for the area/room utilised for trade. Home office expenses relating to the premises are calculated on a pro-rated basis (square metres of the home office space versus total square meters of the full property).

### Travel expenses

For an individual to claim a deduction, they must maintain a logbook 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 table 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 2023

Value of the vehicle (Inc Vat) (R)	Fixed costs (R)	Fuel (c)	Maintenance (c)
0 - 95 000	29 836	131.7	40.9
95 001 - 190 000	52 889	147.0	51.1
190 001 - 285 000	76 033	159.7	56.3
285 001 - 380 000	96 197	171.8	61.5
380 001 - 475 000	116 438	183.8	72.3
475 001 - 570 000	137 735	210.8	84.9
570 001 - 665 000	159 031	218.0	105.5
665 001 - and above	159 031	218.0	105.5

## Deemed expenditure – tax year ending 28 February 2022

Value of the vehicle (Inc Vat) (R)	Fixed costs (R)	Fuel (c)	Maintenance (c)
0 - 95 000	29 504	104.1	38.6
95 001 - 190 000	52 226	116.2	48.3
190 001 - 285 000	75 039	126.3	53.2
285 001 - 380 000	94 871	135.8	58.1
380 001 - 475 000	114 781	145.3	68.3
475 001 - 570 000	135 746	166.7	80.2
570 001 - 665 000	156 711	172.4	99.6
665 001 - and above	156 711	172.4	99.6

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

**Please note:** A travel or reimbursive travel allowance is deemed to accrue in the year of assessment in which it is paid. Therefore, the distance travelled for business purposes shall also be deemed to be travelled in such year of assessment.

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

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

Where the employee maintained 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 (R 665 000). The wear and tear is also 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 (R 665 000).

Self-employed taxpayers must claim motor vehicle expenses based on the actual costs in respect of the that vehicle over the actual distance travelled. A logbook must also be maintained to justify the business use.

### Investments in Venture Capital Companies (VCC)

Investors in VCC shares are allowed a deduction of expenditure incurred during a year of assessment to acquire VCC shares. This deduction is limited to:

- R 5 million per year if the investor is a company; and
- R 2.5 million per year if the investor is a person other than a company.

**Please note:** No deduction will be allowed in respect of VCC shares acquired after 30 June 2021.

## RETIREMENT BENEFITS

### Annuities

All annuities, including capital annuities, are included in gross income and taxed on the progressive tax table applicable to natural persons.

### **Lump sums received from an employer**

Lump sums paid by an employer that is not a fund are included in gross income and taxed in terms of the normal progressive tax table applicable to natural persons, unless it qualifies as a severance benefit that is taxed in terms of the separate tax table applicable to severance benefits.

### **Severance benefits**

The definition of a severance benefit entails the following:

- A lump sum received from an employer or associated institution;
- In respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person's office or employment;
- Where one of the following is applicable:
  - The person is 55 years or older; or
  - The person is 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 of employment 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 employee held more than 5% of the issued share capital or members' interest in the employer at any time).

Employers are required to apply for a tax directive to pay the correct amount of PAYE to SARS. The exemption and tax rates applicable are determined by SARS.

### **Lump sum benefits received from RSA retirement funds**

There are two types of lump sum benefits from retirement funds, namely a retirement fund lump sum benefit and a retirement fund lump sum withdrawal benefit. The net amount, being the lump sum received less allowable deductions, is included in gross income and taxed in terms of the separate tax tables applicable to retirement fund lump sum benefits.

Not more than one-third of the total value of the retirement interest may be commuted for a lump sum. The fund must pay the remaining two-thirds in the form of an annuity to a member or can use it to purchase an annuity from a registered insurer, subject to the de minimis rule. This rule applies if the value of the remaining two-thirds of the retirement interest does not exceed R 165 000. Thus, where the total value of the retirement interest does not exceed R 247 500, it can be taken in full as a lump sum.

The annuity can be provided by the fund in one of three ways:

- Paid directly by the fund to the member;
- Purchased from a South African registered insurer in the name of the fund; or
- Purchased by the fund in the name of the retiring member.

With effect from 1 March 2022 the full value of the retirement interest following commutation for a lump sum, can be used to purchase a combination of annuities, (including a combination of methods of paying the annuity), or a combination of types of annuities, provided that the retirement interest utilised to purchase each type of annuity exceeds R 165 000.

All the retirement interests i.r.o. which provident fund members already obtained a vested right to up to 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 by 1 March 2021.

### **Tax on a retirement fund lump sum or severance benefit**

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

The tax on these amounts is equal to:

- Tax determined by applying the tax table to the aggregate of the current lump sum or severance benefit plus all retirement fund lump sum benefits received from 1 October 2007, all retirement fund lump sum withdrawal benefits received from 1 March 2009 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 benefits received from 1 October 2007, 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 2022/2023**

Taxable income (R)			Tax rate			
0	-	500 000			0%	
500 001	-	700 000			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

### **Tax on a retirement fund lump sum withdrawal benefit**

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).

The tax is equal to:

- Tax determined by applying the tax table to the aggregate of the current lump sum plus all retirement fund lump sum benefits received from 1 October 2007, all retirement fund lump sum withdrawal benefits received from 1 March 2009 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 benefits received from 1 October 2007, 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 withdrawal benefit tax table**

**Year of assessment ending 28 February 2022/2023**

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

From 1 March 2021, members of a retirement annuity fund, pension preservation fund and provident preservation fund who emigrate will only be able to withdraw their full retirement interest as a lump sum prior to the retirement date:

- In respect of emigration applications received on or before 28 February 2021 and approved by the SARB on or before 28 February 2022; or
- If the person is not a resident for an continuous period of three years or longer on or after 1 March 2021.

### **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.

Any amount transferred for the benefit of a member of a retirement fund on or after retirement age but before retirement date is included in gross income and therefore taxable. Paragraph 6A of the Second Schedule however permits the following deductions when calculating the lump sum benefit to be included in gross income:

- Transfers from a pension fund into a pension preservation fund, provident preservation fund or a retirement annuity fund; or
- Transfers from a provident fund into a pension preservation fund, provident preservation fund, or retirement annuity fund;
- From 1 March 2022 transfers from a pension preservation fund or provident preservation fund to another pension preservation fund or provident preservation fund, or a retirement annuity fund.

### **Exemption of qualifying annuities**

Section 10(C)(2) allows an exemption equal to so much of any 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 2021 year of assessment could be applied or used in the following sequence during the 2022 year of assessment:

- Claim a deduction against a lump sum received during 2022;
- Claim an exemption against any qualifying annuities received during 2022;
- Add the remaining unclaimed balance to the current contributions made during 2022.

## **CORPORATE TAX**

### **Small business corporations**

A small business corporation is any close corporation, co-operative, private company, or a personal liability company where:

- The entire shareholding for the entire year of assessment is held by natural persons;
- The gross income for the year of assessment does not exceed R 20 million (apportioned for less than 12 months);
- 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 total receipts and accruals 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.

\*\*A qualifying entity that earns income from providing serviced accommodation on a short-term basis in, for example, a guesthouse, a lodge, a bed-and-breakfast establishment or a hotel, will not be regarded as rental income.

**\*\*\*Personal service:** 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.

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

**Year of assessment between 1 April 2022 and 30 March 2023**

Taxable income (R)		Tax Rate			
0	- 91 250			0%	
91 251	- 365 000			7%	above 91 250
365 001	- 550 000	19 163	+	21%	above 365 000
550 001	- and above	58 013	+	28%	above 550 000

**Year of assessment ending on or after 31 March 2023**

Taxable income (R)		Tax Rate			
0	- 91 250			0%	
91 251	- 365 000			7%	above 91 250
365 001	- 550 000	19 163	+	21%	above 365 000
550 001	- and above	58 013	+	27%	above 550 000

**Year of assessment between 1 April 2021 and 31 March 2022**

Taxable income (R)		Tax Rate			
0	- 87 300			0%	
87 301	- 365 000			7%	above 87 300
365 001	- 550 000	19 439	+	21%	above 365 000
550 001	- and above	58 289	+	28%	above 550 000

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

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

### **Personal service providers**

A personal service provider is defined as any company (including a close corporation) or trust, where any service rendered on behalf of such company or trust to a client, is rendered personally by any person who is a connected person in relation to such company or trust; and

- Such person would be regarded as an employee of the client if the service was rendered by the person directly to the client; or
- Where the duties must be performed mainly at the premises of the client and is subject to the control or supervision of the client; or
- Where more than 80% of the income during the year of assessment from services rendered, consist of amounts received directly or indirectly from any one client or any associated institution in relation to the client. (Unless the personal service provider has, in respect of a year of assessment, provided an affidavit or solemn declaration that no more than 80% of the income was received from one client, and that affidavit or declaration is relied on in good faith).

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 3 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:**

- Remuneration payable to a personal service provider is subject to employees' tax;
- Remuneration paid to a company is taxed at 28% (For years of assessment ending on or after 31 March 2023 this rate will change to 27%);
- Remuneration paid to a trust is taxed at 45%;
- The personal services company or trust may apply to SARS for a tax directive for a lower employees' tax rate.

Dividends paid is subject to dividends tax of 20% in the case of a company.

### **Limitation of deductions**

Only the following deductions can be claimed:

- 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;
- Contributions to pension, provident and benefit funds;
- Refunds of remuneration;
- Refunds of restraint of trade payments;
- Any expenses in respect of premises, finance charges, insurance, repairs, fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade.

Personal service providers cannot qualify as a micro business.

## Micro businesses

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

## Qualifying turnover

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

## Persons that do not qualify as micro businesses

- If any of the shareholders have an interest in other companies, 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 a shareholding 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 receipts 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 2 prior 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 SARS in terms of section 30B; and
- A small business funding entity.

## Tax rates

### Year of assessment ending on 28 February 2022/2023

Taxable turnover (R)			Tax Rate			
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 South Africa;
- 50% of all receipts of a capital nature from the sale of immovable



property, and other assets 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 taxable turnover**

- For natural persons: Investment income such as dividends, royalties, rental, annuities, interest, proceeds from disposals 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 by the micro business 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 of assessment and pay half of the tax thereon. The estimated taxable turnover may not be less than the taxable turnover for the previous year of assessment, unless SARS accepts a lower estimate;
- By the end of the year (by end of February): Estimate taxable turnover for the year of assessment and calculate the tax payable on this amount, less the amount of the first payment.

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 the 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 SARS to do so before the beginning of a year of assessment, or within 2 months from the date the business commenced.

#### **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 be reregistered as a micro business again. A registered micro business must notify SARS 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 required to deregister with effect from the beginning of the month following the month during which SARS 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 SARS for a decision whether the person must remain a registered micro business or not.

### **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.

### **Bodies corporate**

Levies received by a sectional title body corporate, a share block company or other association of persons, formed solely for purposes of managing the collective interest of all its members, including the collection of levies and administration of expenditure in respect of the common immovable property, are exempt from income tax. In addition, all other receipts or accruals are exempt up to a maximum of R 50 000 per annum. Income in excess of this exemption is subject to tax at 28%. (For years of assessment ending on or after 31 March 2023 this rate will change to 27%).

### **Trusts**

Trusts (other than special trusts) are taxed at 45%. Trusts do not qualify for the interest exemption or normal tax rebates. A special trust means either a trust created solely for the benefit of one or more persons with a disability as defined, where such disability incapacitates them from earning sufficient income for their maintenance or managing their own financial affairs, or a testamentary trust formed for relatives of the deceased, where the youngest beneficiary is under the age of 18 years. These special trusts are taxed at the rates applicable to natural persons, but do not qualify for rebates.

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

### **Public Benefit Organisations**

Receipts and accruals are exempt to the extent that it is not generated from any business undertakings or trading activities.

The tax-free portion of trading income is the greater of 5% of total receipts and accruals or R 200 000 per annum. The taxable portion is taxed at 28%. (For years of assessment ending on or after 31 March 2023 this rate will change to 27%).

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

## **Recreational clubs**

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

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

The taxable portion is taxed at 28%. (For years of assessment ending on or after 31 March 2023 this rate will change to 27%).

## **EMPLOYMENT TAXES**

### **Remuneration**

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

- Annuities and living annuities;
- Salaries and wages, leave pay, bonuses, gratuities, commissions, fees, overtime pay, emoluments, or any other amounts paid for services rendered;
- Allowances and advances (excluding travel and subsistence);
- 50% of allowances paid to a holder of public office;
- 80% of any travel allowance, reduced to 20% if the employer is satisfied that at least 80% of the use of the vehicle was for business purposes;
- 100% of any travel allowance based on actual distance travelled, to the extent that the allowance exceeds R 4.18 (R 3.82) per kilometre;
- 80% of the amount of the taxable benefit from the use of an employer provided vehicle, reduced to 20% if the employer is satisfied that at least 80% of the use of the vehicle was for business purposes;
- A subsistence allowance paid where the employee does not spend a night away from his usual place of residence before the last day of the following month and did not repay the allowance to the employer;
- Pensions, superannuation allowances, annuities;
- Restraint of trade receipts;
- Amounts paid for the loss or variation of office;
- Retirement lump sums received from an employer;
- Cash equivalent of taxable fringe benefits;
- Any gain made from the disposal of any qualifying equity share in terms of a Broad-Based Employee Share Plan;
- Any gain determined in terms of the vesting of equity instruments in the hands of directors and employees;
- Dividends received from certain restricted equity instruments.

### **Variable remuneration**

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

Variable remuneration is defined as:

- Overtime, bonus or commission;
- Allowance or advance in respect of transport expenses e.g. a fixed travel allowance;
- Leave pay;
- Night shift allowances;
- Standby allowances;
- Any amount paid or granted for the reimbursement of expenditure.

### **Employees' tax**

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

### **Failure to withhold or pay over employees' tax**

If the employer does not withhold employee's tax or 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 paid the tax to the employer, he/she will not be entitled to receive a tax certificate.

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

### **Penalties**

If the employer pays the tax late, SARS must 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.

### **Offence**

Any person who wilfully uses any amount deducted or withheld for any purpose other than paying it to SARS, is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

#### **Deferral of employees' tax**

A qualifying taxpayer that was registered as an employer by 25 June 2021, was allowed to pay only 65% of the PAYE payable between 1 August 2021 and 31 October 2021. The remaining 35% of the PAYE had to be paid in four equal instalments from 7 December 2021 to 7 March 2022.

A qualifying taxpayer is defined as a company, trust, partnership, or individual:

- That conducted a trade during the year of assessment ending on or after 1 April 2021, but before 1 April 2022;

- That had a gross income of R 100 million or less during that year of assessment;
- Whose gross income for that year of assessment did not include more than 20% in aggregate of interest, dividends, foreign dividends, royalties, rental from letting property, annuities and any remuneration received from an employer;
- That did not have any outstanding tax debt;
- That did not have any outstanding tax returns (unless arrangements have been made with SARS for submitting a return).

**Please note:** Where the rental from letting fixed property is the primary trading activity and substantially (90% and more) constitutes the whole of gross income, this rental income must be excluded from the 20% test.

### **Implementation of tax directives for pensioners**

Where a pensioner is in receipt of more than one source of income, a tax debt may arise at year-end when all the sources of income are combined for purposes of determining taxable income and tax due.

With effect from 1 March 2022, SARS will determine the effective rate of tax in respect of the taxpayer's combined employment and/or pension sources of income, with reference to the latest data available to SARS, and provide that rate to the retirement fund administrators for purposes of withholding PAYE.

Retirement fund administrators will be required to use the rate provided by SARS in respect of remuneration paid or payable with effect from 1 March 2022.

Where SARS provides a PAYE rate, it will be by way of an annual directive. Where a pensioner's circumstances change during the year (for example other employment income ceases, or death), the retirement fund administrator may apply the normal PAYE deduction rate as opposed to the deduction rate provided by SARS with effect from the month in which it becomes aware of the change of circumstances.

Notwithstanding the PAYE rate provided by SARS, a pensioner may at any time request his or her retirement fund administrator to withhold PAYE at a rate higher than the rate provided by SARS or at the normal tax rates.

### **Employees' tax certificates**

Every employer must issue a tax certificate to an employee showing the total remuneration and employees' tax, within 60 days after the end of the year of assessment, or 14 days if the person leaves employment.

#### **Offence**

Any person who:

- Wilfully or negligently fails to deliver to an employee or former employee an employees' tax certificate; or
  - Is not an employer and without being duly authorised by any person who is an employer, wilfully issues an employees' tax certificate;
- is guilty of an offence and is liable to a fine or to imprisonment for a period not exceeding two years.

### **EMP501 returns**

Employers must render an EMP501 return to SARS for each 6 month period ending on the last day of August and February. The EMP501 is a reconciliation of employees' tax withheld for the relevant six or twelve-month period, to the employees' tax certificates for that period. If the employer does not submit the reconciliation in time, SARS may impose a penalty for each month that the employer fails to submit the return.

The penalty may not exceed 10% of the total amount of employees' tax. If the amount of employees' tax that was supposed to be withheld is unknown, SARS may estimate the total amount based on information readily available and impose the penalty on the estimate. When upon determining the actual employees' tax it appears that the total amount of employees' tax was incorrectly estimated, the penalty must be adjusted with effect from the date of the imposition of the penalty.

### **Employment Tax Incentive (ETI)**

The ETI permits eligible employers to reduce the PAYE for a specific month with the ETI amount claimable for that month in respect of qualifying employees.

#### **Employee**

From 1 March 2022 an employee is defined as an individual who works for another person and receives or is entitled to receive remuneration from that person. The employee must be involved directly or indirectly in the business and must be documented in the records of the employer in accordance with the recordkeeping requirements of the Basic Conditions of Employment Act. An independent contractor is excluded from the definition.

### **Eligible employers**

Employers who are registered for employees' tax will be eligible to reduce their employees' tax that is payable, for each month in respect of employing a qualifying employee. This benefit to the employer is exempt from tax.

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

### **Qualifying employee**

- A natural person that is not an independent contractor in relation to the employer;
- Is between the ages of 18 and 29, at the end of the month in respect of which the employment tax incentive is claimed;
- Is in possession of either a valid South African identity card, an asylum seeker permit or a refugee identity card;
- Is not connected to the employer;
- Is not a domestic worker;
- Was 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.

For years of assessment commencing on or after 1 March 2022, a person will not be a qualifying employee if the person is mainly studying, unless the employer and the employee have entered into a learnership agreement as defined in the Skills Development Act. To determine the ratio of study time to total time employed, the actual hours studied and worked must be used.

### Remuneration requirements

- The employee 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, the wage must not be less than:
  - R 2000 per month if the employee is employed for at least 160 hours in the month;
  - A percentage of the R 2 000 based on actual hours employed, if the employee is employed for less than 160 hours per month;
- 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 determined with the following formula from 1 March 2022

Monthly remuneration	Per month during the first 12 months	Per month during the next 12 months
R 0 – R 1 999	75% of monthly remuneration	37.5% of monthly remuneration
R 2 000 – R 4 499	R 1 500	R 750
R 4 500 – R 6 499	$R 1 500 - (0.75 \times (\text{monthly remuneration} - R 4 500))$	$R 750 - (0.375 \times (\text{monthly remuneration} - R 4 500))$
R 6 500 – and more	Nil	Nil

### The value of the incentive is prescribed by the following formula up to 28 February 2022

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	$R 1 000 - (0.5 \times (\text{monthly remuneration} - R 4 500))$	$R 500 - (0.25 \times (\text{monthly remuneration} - R 4 500))$
R 6 500 – and more	Nil	Nil

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

### COVID-19 relief: Extension of the ETI relief measures

ETI relief was applicable for the months of August, September, October and November 2021.

During this time the following applied:

- The ETI did not have to be reduced where the employee worked for less than 160 hours per month;
- The employee did not have to earn at least R 2 000 per month;
- The age limit for certain qualifying employees increased from 29 to 65;
- The reimbursement by SARS could be claimed each month.

Qualifying employee aged 18 - 29 years, employed on or after 1 October 2013

Monthly remuneration	Per month during the first 12 months	Per month during the next 12 months
R 0 - R 1 999	87.5% of monthly remuneration	62.5% of monthly remuneration
R 2 000 - R 4 499	R 1 750	R 1 250
R 4 500 - R 6 499	$R 1 750 - (0.875 \times (\text{monthly remuneration} - R 4 500))$	$R 1 250 - (0.625 \times (\text{monthly remuneration} - R 4 500))$
R 6 500 - and more	Nil	Nil

Each month after the 24 months: Qualifying employee aged 18 - 29 years and employed before or after 1 October 2013, or 30 - 65 years

Monthly remuneration	Monthly amount claimable
R 0 - R 1 999	37.5% of monthly remuneration
R 2 000 - R 4 499	R 750
R 4 500 - R 6 499	$R 750 - (0.375 \times (\text{monthly remuneration} - R 4 500))$
R 6 500 - and more	Nil

### Roll-over of incentive

The employer cannot deduct more than the total PAYE which is due to SARS in a month.

The excess allowable ETI may be rolled over to the following month when:

- The incentive amount available to a compliant employer exceeds the PAYE due in a month;
- A compliant employer fails to reduce the PAYE payable to SARS despite being eligible to receive the incentive; or
- A non-compliant employer was not allowed to claim the ETI due to tax returns outstanding, or an outstanding tax debt (to be claimed in the first month that the employer becomes compliant).

Any unclaimed monthly ETI as above must be claimed by the last month of each PAYE reconciliation period (namely August or February).

Any unclaimed amounts will be forfeited, on the first day of the month following the end of the PAYE reconciliation period (either 1 September or 1 March). As a result, the excess ETI on either 1 September or 1 March will be deemed to be nil.

### Refunds

Employers may claim a refund for the amount of the incentive that wasn't used to reduce the employees' tax payable at the end of bi-annual reconciliation period (1 March to 31 August and 1 September to the end of February). SARS will only pay the refund if the employer is tax compliant when the employer's reconciliation documents are received and processed by SARS. A non-compliant employer may still claim a refund in the prescribed form and manner, and will be granted 6 months



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

### Penalties

Penalties will apply when:

- An employer claims an employment tax incentive in respect of an 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 of 100% of the incentive received for that employee and will be subject to understatement penalties and interest;
- An employer displaced an employee to employ an individual that is eligible for the incentive. A penalty of R 30 000 will be levied for each employee displaced.

The incentive will cease on 28 February 2029.

### Skills Development Levies (SDL)

SDL is payable by every employer who has an annual payroll of more than R 500 000. It is calculated as 1% of the total amount of remuneration paid to employees.

#### Exclusions:

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

Directors' remuneration is still subject to the Skills Development Levy.

### Unemployment Insurance Fund (UIF)

The employer must pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer). The maximum earnings ceiling for determining contributions is R 17 712 (R 14 872) per month from 1 June 2021 or R 212 544 (R 178 464) annually.

The contributions must be paid to SARS 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.

### Learnership allowance

This allowance is applicable to registered learnership agreements entered into between a learner and an employer before 1 April 2024.

### Annual and completion allowance

Type of person	Qualification (NQF)	(R)
Person without a disability	1 - 6	40 000
	7 - 10	20 000
Person with a disability	1 - 6	60 000
	7 - 10	50 000

The annual allowance is based on the number of full months in the employer's year of assessment. The allowance must be apportioned proportionally if the learner agreement is in place for less than 12 full months in the year of assessment. The annual allowance is allowed in respect of each successive year that the learnership is active.

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

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

### 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

### Insurance policies

Type of policy	Tax consequences
Policies intended to benefit the employer if the employer is both the policyholder and the beneficiary (key man policies)	<p>The proceeds relating to the death, disablement or illness of an employee, former employee or director are included in the employer's gross income.</p> <p>If the premiums did not qualify for a deduction, the proceeds are exempt in the employer's hands.</p> <p>If the premiums qualified as a deduction, the proceeds are taxable in the employer's hands.</p> <p>The premiums are deductible only if:</p> <ul style="list-style-type: none"> <li>• The employer is the policy holder at the time of the payment of each premium; and</li> <li>• The policy relates to death, disablement or severe illness of an employee or director; and</li> <li>• The employer has elected to deduct the premiums.</li> </ul>
Policies where the employer is the policy holder, and the employee or director is the beneficiary and the employee or director, or his beneficiaries directly or indirectly receive the benefit	<p>These types of policies would usually pay out directly to the employee when an insured event occurs. It could also pay out to the employer, who uses the funds to pay a benefit to the employee or his or her family.</p> <p>Where the employee has been taxed on the premiums as a fringe benefit, the proceeds of the policy will be exempt in the employee's hands.</p> <p>Premiums paid by the employer are deductible only if:</p> <ul style="list-style-type: none"> <li>• The employer is the policy holder; and</li> <li>• The policy relates to death, disablement or severe illness of an employee or director; and</li> <li>• The premiums paid by the employer are taxed as a fringe benefit in the hands of the employee or director.</li> </ul>

Policies that cover death, disablement, or severe illness, arising solely out of, and in the course of employment e.g. general work-related accident plans and travel insurance	The premiums are deductible under the general deduction formula.  The premiums are not taxed in the hands of the employee as a fringe benefit.
Policies where a person other than an employer is the policy holder	If the policy proceeds are of a capital nature it will not be included in gross income.  If the policy is an income protection policy, the premiums paid are not deductible and the proceeds received will be exempt.

## **OTHER TAXES**

### **DIVIDENDS 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 a dividend paid by a company other than a headquarter company.

#### **Timing of dividend payments**

The deemed date of payment (cash and dividend *in specie*) is the earlier of the date on which the dividend is paid or becomes payable. For listed shares, a cash dividend is deemed to be paid when it is actually paid.

#### **Liability for the dividend tax**

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

It is the responsibility of the beneficial owner to notify the company, through a written declaration and undertaking in the prescribed form, of the fact that the dividend is exempt from dividends tax, 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 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.

The declaration and written undertaking will be valid for 5 years from the date the declaration is received.

#### **Payment of dividend tax**

Dividends tax 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. No percentage-based penalties are imposed for the late payment of dividend tax.

### **Loans by companies**

Where an amount is owing in respect of a loan or advance provided by the company to a resident other than a company, 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 (official rate of interest) in respect of that loan or advance, less the amount of interest that was paid 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 deemed to be paid. Tax on dividends *in specie* will remain the liability of the company declaring the dividend.

### **Exemptions**

Any dividend is exempt from 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 South Africa 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, pension preservation, provident, provident preservation, retirement annuity or benefit fund;
- A person contemplated in section 10(1)(t) e.g. the CSIR, SANRAL;
- 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 foreign 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 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 but is then submitted to the company within 3 years from the date of payment of the dividend, the company must refund the dividend tax to the recipient of the dividend. The company must make the refund out of any dividends tax withheld by it within 1 year of the date that the declaration is submitted. If the dividend tax withheld is insufficient to cover the refund, the company must recover the difference from SARS within 4 years of the date that the dividend was paid.

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

## **VALUE-ADDED TAX (VAT)**

The VAT system is a self-assessment system.

### **Compulsory registration**

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

### **Voluntary registration**

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

### **Registration of an enterprise supplying commercial accommodation**

Commercial accommodation means lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, boathouse or similar establishment, which is regularly 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 taxable supply is 60% of the all-inclusive value.

### **Registration of E-Commerce suppliers**

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 South Africa;
- Any payment for the electronic services originates from a bank registered in South Africa;
- The recipient of the electronic services has a business address, residential address or postal address in South Africa.

Electronic services means 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.

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 South Africa, and is not a registered vendor; and
- The electronic services are supplied by the foreign supplier to a person in South Africa;

the supply shall be deemed to be made by the intermediary and not the foreign supplier. From 1 April 2021 these intermediaries are also allowed to register for VAT on the payment basis.

### **Registration requirements of non-executive directors**

Non-executive directors carry on an “enterprise” and are therefore required to register if the threshold of R1 million in total value of taxable supplies is exceeded or will be exceeded 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 R 50 000 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 register 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 vs. 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 less than R 2.5 million, the vendor can apply to be registered on the payment basis provided that 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 of up to R 30 million: 2 monthly: January, March, May, July, September, November
Category B	Taxable supplies of up to 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 of up to R 1.5 million and a micro business: 6 months (February and August)
Category E	Vendors who receive 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

Output tax is levied at a rate of 15% on the supply of goods and services, in South Africa by a registered as a vendor.

### Three categories of supplies

**Standard-rated supplies** are supplies of goods and services, importation of goods, and importation of certain services, which are taxed at the rate of 15%. A vendor making such supplies is entitled to recover the allowed input tax.

**Zero-rated supplies** are subject to VAT, but at a zero-rate. A vendor making zero rated supplies is entitled to recover the allowed input tax.

### Examples of zero rated supplies

**Basic foodstuffs:** brown bread and whole wheat brown bread (rye or low GI bread is not zero-rated), cake wheat flour, white bread wheat flour, maize meal, samp, mealie rice, dried mealies, dried beans, lentils, pilchards/ sardinella in tins, milk powder, dairy powder blend, rice, fresh vegetables and fruit, vegetable oil, milk, cultured milk, brown wheaten meal, eggs, edible legumes and pulses of leguminous plants;

**Female sanitary products:** sanitary pads and panty liners;

**Fuel levy goods:** petrol, diesel and biofuel;

**Paraffin:** for use as lighting and warming;

**Municipal rates:** property rates and taxes (excluding electricity, gas, water, drainage, disposal of sewerage and garbage);

**Transportation:** rendering of international transport services of passengers or goods, by any mode of transportation, if transported from a place outside South Africa to another place outside South Africa, or a place in South Africa to a place outside South Africa, or a place outside South Africa to a place in South Africa. The supply of a domestic leg of international transport is zero-rated provided the booking is made at the same time as the booking for the international flight and the ticket reflects all the flights.

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

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

An agreement to dispose of a dormant business cannot be zero-rated as it does constitute an income earning activity. The sale of shares is not the sale of a going concern and can't be zero-rated. The supply of a share is exempt from VAT.

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

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

### **Exempt supplies**

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

### **Examples of exempt supplies**

**Financial services:** exchange of currency; issue or transfer of ownership of a share or member's interest; provision of credit and paying of interest; contributions and proceeds i.r.o membership of a retirement or medical aid fund; issue, acquisition, buying selling or transfer of ownership of cryptocurrency. A fee, commission or similar charge relating to an exempt service is taxable at the standard rate of 15%. A fee for providing advice on these services is also taxable at 15%;

**Residential accommodation:** supply of a dwelling by way of letting and hiring. A dwelling is defined as any building, premises or structure that is intended for use mainly as a place of residence by a natural person;

**Transport by road or railway:** transport of fare-paying passengers and their personal effects e.g. bus, taxi or train;



**Education services:** supplied by a school, university, technicon or college for the benefit of learners e.g. school fees, tuition fees, accommodation;

**Membership contributions:** to employer organisations e.g. trade unions;

**Childcare services:** creche or after school centre.

### Deemed supplies

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

**Outstanding balances owing to suppliers older than 12 months:** Where a vendor registered on the invoice basis claimed input tax in respect of a taxable supply of goods or services made to him and has not paid the full consideration for the supply within a period of 12 months after the tax period within which such input tax was claimed, the vendor must account for output tax. Such output tax will be equal to the tax fraction of that portion of the consideration which has not been paid, at the rate applicable at the time of such deduction.

### Time of supply rules

**General rule:** Earlier of the date of the invoice or the date of payment received.

**Connected persons:** when the goods are removed or made available or when the services are rendered.

**Rental agreements:** earlier of the date on which payment is due, or the date on which payment is received.

**Instalment credit agreements:** earlier of time of delivery of the goods or the time any payment is received.

**Fixed property:** earlier of the date of registration in the name of the purchaser, or the date on which any payment is made for the supply.

### Value of supply rules

**General rule:** the amount of money if the consideration is in money, or the open market value of the consideration if it is not in money. A deposit is not treated as consideration unless it is applied towards the supply.

**Connected persons:** if the supply is for no consideration, for less than the open market value, or cannot be determined at the time of supply, and the purchaser would not have been able to claim a full input tax credit, the consideration is deemed to be its open market value.

### Input tax

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

## **Prohibited input tax**

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

**Motor cars:** Input tax 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 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 3 500 kilograms or more, game viewing vehicles or hearses. No VAT may be claimed on the purchase, rent or hiring thereof, unless the vendor is a motor dealer.

**Fees or subscriptions:** No input tax 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.

## **Second-hand goods**

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

## **Second-hand goods exclusions**

- Animals;
- Gold coins issued by the South African Reserve Bank;
- Any goods consisting solely of gold unless acquired solely to supply it without any further processing;
- Any other goods containing gold unless those goods are acquired for the sole purpose of supplying it in the same or substantially the same condition to another person.

The notional input tax is calculated by applying the tax fraction (15/115) to the lesser of the purchase price or the open market value.

The notional input may only be claimed to the extent that payment is made for it. If the goods are purchased on loan account, the notional input tax is only claimed as and when the loan is repaid.

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

The recipient of second-hand goods must obtain and retain the following documentation:

- Natural person: name and ID number of the supplier;
- Legal person: name and ID number of the natural person representing the supplier and any legal registration number;
- Address of the supplier;
- Date of the transaction;
- Description of the goods;
- Quantity or volume of goods;
- Consideration for the supply;
- Proof and date of payment;
- Declaration by the supplier that it is not a taxable supply.

The 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 affected by registration in a deeds registry.

### **Temporary letting of residential property by property developers**

The supply of residential fixed property by a property developer is subject to VAT at the standard rate of 15%, whereas the leasing/renting of residential property is an exempt supply. Property developers are entitled to claim input tax on the costs incurred to develop the property.

Where the property developer is unable to sell the residential property and enters into a lease agreement until a buyer is found, the property developer is required to make an output tax adjustment.

From 1 April 2022, section 18D provides relief for the temporary letting of residential accommodation for a combined total period not exceeding 12 months.

Where the developer temporarily applies a dwelling in supplying exempt residential accommodation, a deemed supply will arise for a consideration equal to the adjusted cost of the dwelling. The adjusted cost is the cost of any goods or services incurred by the developer where VAT has been charged. The supply will be deemed to be made in the tax period in which the rental agreement comes into effect. This means that the output tax effectively reverses the input tax that was initially claimed.

If the property is subsequently disposed of within the temporary 12-month period, output VAT must be levied on the selling price of the property at the standard rate of 15%. Input tax can be claimed based on the adjusted cost of the fixed property. This means that the developer still receives the benefit of the input tax as the property is disposed of in the course of making taxable supplies.

If the property is rented out for a period that exceeds the temporary relief period of 12 months, output VAT must be levied on the open market value of the property, and input tax previously reversed in terms of section 18D, can be claimed based on the adjusted cost of the fixed property.

If the property is however rented out for a fixed period exceeding 12 months, this temporary relief will not apply, and the developer must

levy the deemed output VAT on the open market value of the property. If the property is subsequently sold, it will be subject to transfer duty and not VAT.

If the property is no longer applied in supplying residential accommodation immediately after the expiry of the temporarily applied period not exceeding 12 months, no output VAT is levied as there is no change in use adjustment, and no actual supply of the property, and the input tax previously reversed can be claimed based on the adjusted cost of the fixed property.

### **Documentation requirements**

No input tax may be claimed unless the vendor is in possession of a valid 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:** corrections do not alter the original time of supply.

### **Tax invoice requirements**

- The words tax invoice, VAT invoice, or invoice;
- The name, address and VAT registration number of the supplier;
- The trading name, address and VAT registration number of the recipient if the invoice is for more than R 5 000, otherwise an abridged tax invoice may be issued without these details;
- An individual serial number;
- The date upon which the invoice is issued;
- A description of the goods or services supplied;
- If the goods supplied are second hand, this fact must be stated;
- The quantity or volume of the goods or services supplied;
- Either the value of the supply, plus the VAT charged, and the consideration, or the consideration for the supply and a statement that it includes VAT charged and the rate at which the tax is charged;
- Stated in South African currency unless it is a zero-rated supply.

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

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

### **Submission of VAT returns**

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

### **Refunds**

If the input tax exceeds the output tax, or if an amount is erroneously paid i.r.o. an assessment, a vendor is entitled to a refund.

SARS must refund the VAT within 21 business days from the date that the vendor submits all the relevant material requested by SARS or where the return is not subject to an audit or verification, from the date on which it was submitted. Interest must be paid by SARS at the prescribed rate if they fail to pay the refund in time.

An amount of less than a R 100 is not refundable.

Where the vendor has any other outstanding tax debt, the amount plus the interest may be applied against the outstanding tax debt.

A vendor must claim a refund within 5 years from the date of the assessment, otherwise it will be forfeited by the vendor.

### **Late payment of VAT**

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

### **DONATIONS TAX**

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

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

Some taxpayers have avoided donations tax by ceding the right to receive or use an asset at a future date from an employer to someone else, for example to a family trust, before the services are rendered.

From 1 March 2022, if an employee agrees to render services to an employer in exchange for the receipt or use of an asset, and the employee disposes of the right to that asset before becoming entitled to it, the disposal must be disregarded. The employee is treated as having acquired that asset at the date he/she would otherwise have become entitled to it.

The employee is deemed to have acquired that asset, or its use, for an amount equal to the amount included in his/her gross income, and is deemed to have made a donation equal to that same amount. The donation is subject to donation tax. The donee is deemed to have acquired the asset for the same amount.

### Annual exemption

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

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

### Exemptions

- *Bona fide* maintenance payments;
- Donations to tax exempt 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.

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

When a person passes away, the assets of that person at the date of death forms part of the deceased estate before the assets are distributed to the respective heirs.

The executor must prepare and submit the Liquidation and Distribution account (LDA) to the Master of the High Court as well as submit the relevant tax returns to SARS and pay the estate duty to SARS.

The LDA account must lie open for inspection at the Master's office for 21 business days. If no objections are lodged during this period, the LDA account can be finalised. If an objection is lodged the LDA account must remain open for another 21 business days. This 21-day period will be required until such time that no objections are raised.

For LDA accounts finalised on or after 1 March 2022, the deceased estate is deemed to have disposed of that asset at the earlier of the date on which the asset is disposed of or the date on which the account becomes final.

### **Estate duty payable**

Estate duty is charged on the dutiable amount of the estate at a rate of 20% on the first R 30 million and thereafter at a rate of 25% on the excess above R 30 million.

The 'dutiable amount' is the total value of the estate property, less certain admissible deductions, less the abatement of R 3.5 million.

### **The estate**

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

If the deceased was not ordinarily resident in South Africa, 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 SARS;
- Assets owned by the deceased prior to becoming ordinarily resident in South Africa;
- 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 during the lifetime of the deceased, with the deceased's consent, that enhanced the value of the property;
- 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.

### **Contributions to retirement funds**

The following will be regarded as deemed property of the estate:

- So much of the amount of any contributions made by the deceased on or after 1 March 2016 in consequence of membership or past membership to any retirement fund, as was allowed as a deduction against a lump sum received from the retirement fund to determine the taxable portion of the lump sum benefit that is deemed to have accrued to the deceased immediately prior to his or her death.

### **Portable estate duty abatement**

The unutilised portion of the R 3.5 million abatement from estate duty may be rolled over from the deceased to a surviving spouse. This means

that the surviving spouse can use a maximum abatement of R 7 million. The executor of the deceased must submit a copy of the estate return of the predeceased spouse, or other relevant material as SARS may regard as reasonable.

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

### **Successive death rebate**

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

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

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

### **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 electronically.

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.

### **PROVISIONAL TAX**

#### **Definition of provisional taxpayer**

- Any person other than a company who derives:
  - Income which is not remuneration, an allowance or advance; or
  - Remuneration from an employer who is not registered for employees' tax;
- Any company;
- Any person notified by SARS that he/she is a provisional taxpayer.

#### **Exclusions**

- Any natural person who does not derive any business income, if:
  - Their taxable income for the year of assessment does not exceed the tax threshold; or



- Their 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 tax exempt Public Benefit Organisation or recreational club;
- 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 deceased estate;
- An association as defined in section 30B of the Income Tax Act.

### **Estimate of taxable income**

Every provisional taxpayer must, during every period within which provisional tax is payable, submit a provisional tax return reflecting an estimate of taxable income in respect of the year of assessment.

Where a taxpayer has a year of assessment of less than 6 months, whether by reason of death, changing tax residency, a company being incorporated during a year or that changes their financial year, the first provisional tax payment and return is not required.

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

For natural persons, the estimate shall exclude any retirement fund lump sum, retirement fund lump sum withdrawal 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.

SARS 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 SARS is dissatisfied with the estimate, they may increase it to what they consider reasonable. The increase of the estimate is not subject to objection and appeal.

If a taxpayer fails to submit an estimate, SARS may determine the estimate with the information at their disposal. This estimate will be final and conclusive.

### **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, retirement fund lump sum withdrawal or any severance benefit;
- Any lump sum benefits arising from variation of office, including any amount received by an employee under 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 that has been assessed, the basic amount must be increased by 8% per annum, from the end of the latest preceding year of assessment 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 tax rebates in terms of section 6quat, 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).

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

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

**Taxable income of more than R 1 million:** The estimated taxable income must not be less than 80% of actual taxable income (including taxable capital gains) for the year.

### **Penalty for underpayment because of underestimation**

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

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

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

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.

### **Penalty on late payment of provisional tax**

If a provisional taxpayer fails to pay the provisional tax within the prescribed period, a penalty will be levied at 10% of the unpaid amount.

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

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

### Third provisional payment

Companies and close corporations with taxable income more than R 20 000 and individuals and trusts with taxable income more than R 50 000 may make a third additional payment to avoid interest on underpayment.

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

The third payment is not compulsory and there is therefore no penalty for late or underestimated payments.

### Offences

Any person who wilfully or negligently fails to submit any estimate of taxable income is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

### Disclosure of wealth

Provisional taxpayers with business interests are required to declare their assets (based on cost) and liabilities in their tax returns each year.

To assist with the detection of non-compliance or fraud through the existence of unexplained wealth, it is proposed that all provisional taxpayers with assets above R 50 million in value be required to declare specified assets and liabilities at market values in their 2023 tax returns.

### CAPITAL GAINS TAX (CGT)

CGT is payable upon the disposal or deemed disposal of a capital asset.

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

### Calculation

Proceeds from disposal of an asset	xxx
Less: Base cost of an asset	(xxx)
Capital gain/loss on specific asset	xxx
Add: Capital gains/losses of all other assets disposed of during the year of assessment	xxx
Less: Annual exclusion (only natural persons or special trusts)	(xxx)
Aggregate capital gain/loss	xxx
Less: Assessed capital losses brought forward from previous year of assessment	(xxx)
Net capital gain/loss for the year *	xxx

\*A net capital loss must be carried forward to the next year of assessment. No set-off is allowed against taxable income.

## Annual exclusions

Type of taxpayer	2022	2023
Natural persons and special trusts	40 000	40 000
Natural persons in year of death	300 000	300 000
Other trusts	0	0
Companies	0	0

The annual exclusion cannot be carried forward to the following year of assessment.

## Inclusion rates

Type of taxpayer	2022	2023
Natural persons and special trusts	40%	40%
Other trusts	80%	80%
Companies	80%	80%

## Effective rates

Taxpayer	Inclusion rate (%)	Statutory rate (%)	Effective rate (%)
Individuals	40	0 - 45	0 - 18
Trusts (normal)	80	45	36
Trusts (special)	40	18 - 45	7.2 - 18
Companies (years of assessment ending up to 30 March 2023)	80	28	22.4
Companies (years of assessment ending on or after 31 March 2023)	80	27	21.6

## Residents

Residents pay CGT resulting on the disposal of their worldwide assets.

## Non-residents

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

- Fixed property or an interest in fixed property in South Africa;
- Assets of a permanent establishment in South Africa.

An interest in immovable property in South Africa includes:

- Equity shares held in a company;
- The ownership or right to it 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 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 persons directly or indirectly holds at least 20% of the interest, the gain will be subject to CGT.

## Asset

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

## Disposal of assets

A disposal arises when there is an event, act forbearance or operation of law that results in the creation, variation, transfer or extinction of an asset. It specifically includes:

- Sale, donation, expropriation, conversion, granting, cession,

- exchange, or any other alienation or transfer of ownership;
- Forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment;
- Scrapping, loss or destruction;
- Vesting of an interest in a trust asset in a beneficiary;
- Distribution of an asset by a company to a shareholder;
- Granting renewal, extension or exercising of an option;
- Decrease in the value of an interest in a company, trust or partnership as a result of a value shifting arrangement.

### **Deemed disposals to determine a capital gain and loss**

- A person ceasing to be a resident;
- Capital assets become trading stock;
- Non-personal use asset becomes a personal use asset;
- From 1 March 2021, the removal of a listed security from a South African Exchange to an exchange outside South Africa in the hands of the South African resident holding the listed security;
- From 1 January 2021, a deemed disposal arises in the hands of a shareholder who holds at least 10% interest in a resident company, when that company ceases to be a tax resident in South Africa.

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

### **Deemed disposals to establish a base cost at market value**

- A non-resident who becomes a resident;
- Trading stock becomes a capital asset;
- Personal use asset becomes a non-personal use.

### **Proceeds**

Proceeds constitute the amounts received or accrued to the taxpayer in respect of the disposal of assets, and includes an amount by which any debt owed by the person has been reduced or discharged by the creditor:

Proceeds excludes:

- Amounts taken into account in determining taxable income e.g. recoupment of capital allowances;
- A reduction of the proceeds e.g. the price of the disposed asset is reduced;
- Output tax levied and paid to SARS by vendors.

### **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. For donations, all the legal requirements of a valid transfer must be complied with. For a distribution of an asset by a trust it is the date that the interest in the asset vests 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. paid to a surveyor, valuer, auctioneer, accountant, broker, agent, consultant, legal advisor;
- Transfer costs;
- Cost incurred to obtain electrical certificate;
- Stamp duty, transfer 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;
- 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 not 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 tax that was claimed by vendors.

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

- Expenditure already allowed as a deduction in calculating taxable income e.g. capital allowance;
- Expenditure that is reduced, recovered or paid by another person;
- If the debt associated with the asset is reduced or cancelled.

#### **Assets obtained before valuation date**

The base cost is the valuation date value of the asset plus any qualifying expenses incurred after valuation date. The valuation date value could be one of the following 3 values:

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

#### **Market value of the asset on valuation date**

- Listed South African shares: Published value as per Gazette;
- Foreign listed shares: Ruling price on the last business day before 1 October 2001;
- Other assets: Market value if determined within 3 years after the valuation date.

#### **Transfer of assets between spouses**

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

The receiving 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.

## **Exclusions**

Certain capital gains and losses are excluded from CGT. These include:

### **Primary residence**

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 passed away.

The first R 2 million of any capital gain or loss on the disposal of primary residence must be disregarded. If the primary residence is sold for R 2 million or less, the full capital gain must be disregarded.

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.

The exemption only applies to the residence and the land on which it is built, provided that the land does not exceed 2 hectares. 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, the gain applicable to the land must be apportioned.

If the residence is used for business purposes as well, the capital gain or loss to be excluded must be calculated on a pro-rata basis for the portion and period it was used for domestic purposes.

A primary residence would still qualify for the exemption even if it is rented out, provided that the lease does not exceed 5 years, the owner lived there for at least a year before and after the lease, did not have any other primary residence during this period, and was employed or carried on a business in South Africa at a location further than 250 kilometres from the residence.

### **Personal use assets**

The disposal of assets which are mainly used for purposes other than carrying on a trade e.g. personal jewellery, private art collection or personal furniture are also excluded from CGT. The exemption is not applicable to the following assets:

- Gold or platinum coins;
- Immovable property;
- Aircraft with an empty mass exceeding 450kg;
- A boat exceeding 10 metres in length;
- A financial instrument (includes crypto assets);
- A fiduciary, usufructuary or like interest, the value of 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 makes a capital gain on the disposal of active business assets of a small business, he can disregard up to R 1.8 million of the capital gain. 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 all the assets does not exceed R 10 million at the date of the disposal.

Active business assets consist of immovable property 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 it is held for business purposes. Active business assets do not include financial instruments or assets held mainly to earn rental, annuity or royalty income, foreign exchange gains or similar income.



The person disposing of the assets must:

- Be a natural person of 55 years or older, or dispose of the business due to ill health, other infirmity, superannuation or death;
- 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.

The exemption of R 1.8 million is cumulative over 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, lawful or unlawful.

### **Other 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.

## **GENERAL**

### **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.

For companies not using IFRS 9 for financial reporting purposes the allowance is calculated as follows:

- 40% of debts in arrears for 120 days or more; plus
- 25% of other debt in arrears for 60 days or more.

From 1 January 2021 the amount of the debt subject to the allowance is the amount after taking into the account the value of any security provided in respect of the debt.

SARS may, on application by a taxpayer, issue a directive that the 40% 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 SARS 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 a 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.

For years of assessments starting on or after 1 January 2021, where:

- A natural person; or
- At the instance of a natural person, a company that is a connected person in relation to that natural person;

subscribes for a preference share in a company in which 20% or more of the equity shares are held (whether directly or indirectly) or the voting rights can be exercised by a trust that is a connected person in relation to that natural person or to that company, whether alone or together with any person who is a beneficiary of that trust:

- The consideration received by that company for the issue of the preference share shall be deemed to be a loan; and
- Any dividend or foreign dividend accrued in respect of that preference share shall be deemed to be interest in respect of the loan.

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

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

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

If the loan is 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 not, in terms of the trust deed be distributed to the beneficiary, e.g. before 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 honours a beneficiary's request that this not be done; or
- The beneficiary enters into an arrangement with the trustee in terms of which the amount may be retained in the trust.

### **Transfer of a loan**

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

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

### **Denial of tax deduction or losses**

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

### **Exclusions**

- Where the trust or company 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 persons with a “disability” as defined section 6B, which incapacitates such person from earning sufficient income for their maintenance or managing their own financial affairs;
- Where the trust or company used the loan, advance or credit wholly or partly acquire 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 made by a South African resident company to a resident person (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.

## **TAX ADMINISTRATION MATTERS**

### **Lodging a complaint with the Office of the Tax Ombud (OTO)**

Before approaching the OTO the taxpayer must ensure that he/she has exhausted all SARS internal complaints resolution mechanisms.

An employee of the OTO will send the taxpayer an information pack that includes a complaint form and complaints guide and will take the taxpayer through the process of how to complete the form.

A representative of a taxpayer will receive a Power of Attorney form that needs to be completed in full by all parties. The Power of Attorney must be signed by the taxpayer, representative and witnesses.

The complaint form must detail the information about the complaint in chronological order (what happened and when). All supporting documents must be attached and the form signed before it is submitted to the OTO. The POA together with copies of the identity documents of both the representative and taxpayer must also be submitted.

The completed complaints form and documents must be submitted to: [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za).

The OTO will send a letter of acknowledgment to the taxpayer. If the OTO does not terminate or reject the complaint, the outcome of the evaluation will be sent to the taxpayer within eight business days of acknowledgment of your complaint.

SARS has 15 business days to consider the OTO's recommendations and respond with a final report.

The taxpayer will be provided with feedback on the progress of the complaint every 15 business days until SARS has finalised the complaint.

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

### **Tax compliance status**

A taxpayer may apply, in the prescribed form and manner to SARS for third party access the taxpayer's tax compliance status. SARS must provide or decline third party access to the taxpayer's tax compliance status, within 21 business days, or a longer period to confirm the correctness of the taxpayer's status compliance status, from the date the application is submitted.

A taxpayer will only be compliant if the taxpayer:

- Is registered for tax;
- Does not have an outstanding tax debt of more than R 100 unless that payment has been deferred, compromised, or suspended;
- 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 it 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 at least 10 business days prior to the revocation, given the taxpayer the opportunity to respond to the allegations.

### **Notification of an audit**

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

### **Request for relevant material**

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

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

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

- Within the time specified in the request; or
- If the material is held by a connected person located outside South Africa, within 90 days from the date of the request, which request must set out the consequences of failing to do so.

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

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

### **Persons who may be interviewed by SARS**

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

### **Assistance during field audit or criminal investigation**

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

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

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

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

### **Issuance of assessments**

An additional or reduced assessment may not be made after:

- Three years from the date of an original assessment issued by SARS;
- Five years in the case of self-assessment for which a return is required;
- Five years from the date of the payment if no return is required.
- The above does not apply to the extent that:
  - In the case of an assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to fraud, misrepresentation or non-disclosure of material facts;
  - In the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to fraud, intentional or negligent misrepresentation or non-disclosure of material facts or the failure to submit a return; or
  - If no return is required, the failure to pay the required of tax.

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

### **Estimated assessments**

SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a return, submits a return or relevant material that is incorrect or inadequate, or does not submit a response to a request for relevant material after delivery of more than one request for such material.

In the event that SARS raises an assessment based on an estimate when a return or relevant material is incorrect or inadequate, the assessment will be subject to objection and appeal.

When an assessment based on an estimate was made when the taxpayer did not submit a return or did not submit a response to a request for relevant material after delivery of more than one request for such material, the taxpayer may within 40 business days from the date of the assessment, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.

This period may be extended by a senior SARS official if the taxpayer submits reasonable grounds for the extension. This extension cannot exceed the relevant prescription period or 40 business days, whichever ends last.

Once a taxpayer submits a return or the relevant material SARS has one of the following three options and the taxpayer may respond accordingly:

- After review SARS accepts the return or relevant material and makes a reduced or additional assessment as requested by the taxpayer;
- After review SARS does not accept all the information contained in the return or some of the relevant material and makes a reduced or additional assessment accordingly, the reduced or additional assessment will be subject to objection and appeal;
- After review SARS does not accept the return or any of the relevant material and does not make a reduced or additional assessment and relies on the assessment based on an estimate, the taxpayer may object and appeal within the normal timeframes from the date of the notice of the decision.

In the event that the taxpayer does not submit a true and full return, or the relevant material, and an assessment based on an estimate has been issued the taxpayer cannot object against the assessment and the assessment becomes final.

### **Auto-assessments**

SARS uses the data received from employers and other third-party data providers to issue simulated assessments to non-provisional individual taxpayers. As part of the auto-assessment process, SARS requests taxpayers to either accept or edit the simulated assessment via eFiling or the SARS MobiApp, which is then followed by an original assessment issued by SARS.

Taxpayers in the auto-assessment population, who neither accepts nor edit and submit their simulated assessments by the due date, will receive an original assessment based on an estimate. This assessment is not subject to objection and appeal.

However, a taxpayer who is not in agreement with his or her assessment may file a complete and accurate tax return within 40 business days of the assessment date. Such a return will be late, which means that normal late submission penalties and interest will apply.

### **Reduced assessments**

SARS may reduce an assessment if:

- The taxpayer successfully disputed the assessment;
- Necessary to give effect to a settlement;
- Necessary to give effect to a judgment pursuant to an appeal and there is no right of further appeal;
- SARS is satisfied that there is a \*readily apparent undisputed error in the assessment;
- A senior SARS official is satisfied that an assessment was based on:
  - The failure to submit a return or submission of an incorrect return by a third party or by an employer;
  - A processing error by SARS; or
  - A return fraudulently submitted by a person not authorised by the taxpayer.
- The taxpayer requests SARS to issue a reduced assessment after submitting a true and full return or the relevant material.

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

\*The error must be clearly visible, must be identified without hesitation or difficulty, and such error must be either in the return or the assessment. At the first glance of the request, SARS must be able to easily determine that there is an undisputed error. The presence of any doubt will disqualify the taxpayer's request for a reduced assessment. If SARS cannot make this determination from merely looking at the return or assessment, the error cannot be said to be readily apparent.

### **Objection against an assessment or decision**

If a taxpayer is aggrieved by an assessment, or a decision made by a SARS official, he may object. Prior to lodging an objection, the taxpayer can write to SARS within 30 business days after the date of the assessment and request written reasons for the assessment. SARS has 30 days to let the person know if a reason was already provided. If a reason was not provided, they have 45 days to do so. The taxpayer has 30 business days from the later of the day of assessment, or the date the written reasons are given to object. Condonation for a late objection not based on exceptional circumstances may be extended by a senior SARS official for a period up to 30 business days, but if there are exceptional circumstances this period may be further extended by SARS. The maximum period within which a late objection may be extended remains 3 years.

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

### **Payment of tax**

A taxpayer must settle a tax liability in a single amount. If this is not possible due to financial hardship or distress an instalment payment arrangement may be requested from a senior SARS official.

Historically, a request for a deferred payment arrangement had to be submitted either at a SARS branch office or via the SARS Contact Centre. SARS added a third channel allowing the taxpayer to make this request via eFiling.

The payment arrangement request functionality on eFiling is available to individuals, tax practitioners, and organisation portfolio



types and will be limited to personal income tax, company tax, dividends tax, VAT, PAYE, UIF, SDL and administrative penalties.

A request for multiple tax types cannot be accounted for in a single payment arrangement request

Certain supporting documents may be requested:

- Company, Close Corporation, Trust, Sole Proprietor, Partnership:
  - Copies of bank statements for the past three months;
  - Cash flow statement for the next 12 months;
  - Financial statements for the last 3 years;
  - Management accounts: last financial statements up to date;
  - Detailed asset register including disposals for the last 3 years;
  - Detailed list of debtor and creditor's analysis.
- Individual (salary income):
  - Copies of bank statements for the past six months;
  - Copy of most recent payslips;
  - Proof of outstanding accounts.

**Please note:** The taxpayer will not be able to cancel a payment arrangement request once it has been submitted.

### **Liability of third parties**

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

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

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

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

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

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

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

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

### **Refunds and interest**

SARS must pay a refund if a person is entitled to a refund, including interest thereon of:

- An amount properly refundable as reflected in an assessment; or
- The amount erroneously paid in excess of the amount payable in terms of the assessment.

SARS has 30 days after the date that the payment was made to determine the erroneous nature of the payment, before interest on such payment need to be paid to the taxpayer.

SARS need not authorise a refund until such time that a verification, inspection, audit or criminal investigation is completed unless the taxpayer can give security that is acceptable to SARS.

A decision not to authorise a refund of an amount erroneously paid is subject to objection and appeal.

### **Delivery of documents**

If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having issued, given, sent or served the communication to the person if it was:

- Handed to the person;
- Left with another person over 16 years of age apparently residing or employed at the person's last known residence, office or place of business;
- Sent to the person by post to the person's last known address, which includes:
  - A residence, office or place of business;
  - The person's last known post office box number or that of the person's employer; or
- Sent to the person's last known electronic address, which includes:
  - The person's last known e-mail address;
  - The person's last known telefax number; or
  - The person's electronic address page e.g. e-filing.

### **Deregistration of non-complaint tax practitioners**

All tax practitioners must be registered with a recognised controlling body, if they provide tax advice or completes or assists in completing a tax return.

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:

- The practitioner has been removed from a profession by a controlling body for serious misconduct;
- The practitioner has been convicted (whether in South Africa or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, or any offence involving dishonesty, for which the practitioner has been sentenced to a period of imprisonment

exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act;

- The practitioner has been convicted of a serious tax offence;
- Was not tax compliant 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.

A tax practitioner deregistered due to a serious offense may only register as a tax practitioner again after a period of 5 years. A tax practitioner deregistered due to non-compliance with the tax Act can only register as a tax practitioner again after six months from the date when she/he becomes fully compliant.

### **Illegal use of the SARS trademark**

It is unlawful to use the SARS' name, trademark or the SARS triangle, and logo on personal correspondence including e-mail signatures.

SARS will report such unlawful use of their trademark to Recognised Controlling Bodies (RCBs) in future.

The unlawful use of the SARS trademark could lead to a fine, or imprisonment not exceeding 10 years, or both.

## **PENALTIES AND INTEREST**

### **Administrative non-compliance penalties**

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

Penalties will be levied where a natural person fails to submit a tax return as and when required in terms of a Tax Act and has:

- With effect from 1 January 2022:
  - Two or more outstanding income tax returns for years of assessment commencing on or after 1 March 2006 but ending on or before 29 February 2020; or
  - One or more outstanding income tax returns for years of assessment commencing on or after 1 March 2020.
- With effect from 1 December 2022:
  - One or more outstanding income tax return, for years of assessment commencing on or after 1 March 2006.

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

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

A penalty assessment must be issued for administrative non-compliance penalties.

The assessment must give the taxpayer notice of:

- The non-compliance that resulted in the penalty and its duration;
- The amount of the penalty imposed;
- The date by when the penalty becomes payable;
- The fact that the penalty will automatically increase per month;
- Summary of the process for requesting remittance of the penalty.

### Fixed amount table

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

The amount of the penalty is based on the taxpayer's taxable income, or assessed loss, for the preceding year of assessment. Special rules apply for large companies or large exempt institutions.

The fixed amount penalty increases monthly calculated from one month after the penalty assessment is issued, subject to a maximum of either 35 months or 47 months, depending on whether or not SARS has the taxpayer's current address.

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

### Percentage-based penalty

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

The amount of penalty can vary between 10% and 20%.

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

### Remittance of penalties

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

### Fixed amount penalty

Remitted up to R 2 000 in case of a first incidence of non-compliance (no penalty assessment during the preceding 36 months), or the duration of non-compliance is less than 5 business days and reasonable grounds exist for the non-compliance, and the non-compliance has been remedied.

### Percentage-based penalty

Remitted in case of a first incidence of non-compliance (no penalty assessment during the preceding 36 months), or if the amount is less than R 2 000, and reasonable grounds exist for the non-compliance, and the non-compliance has been remedied.

### Exceptional circumstances

Remitted in whole or in part, if one or more of the following circumstances rendered the person incapable of complying:

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

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

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

### Understatement penalties

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

No understatement penalty is payable if the understatement results from a *bona fide* inadvertent error. The onus is on the taxpayer to show that a *bona fide* inadvertent error was made.

If more than one behaviour applies, the understatement penalty is determined by applying the highest applicable percentage based on the table below to the shortfall in relation to each understatement.

### Understatement Penalty Percentage Table

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

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

### The shortfall is the sum of:

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

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

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

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

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

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

### **Remittance of interest**

If a senior SARS official is satisfied that interest is payable as a result of circumstances beyond the taxpayer's control, the official may, unless prohibited by a Tax Act, remit so much of the interest as is attributable to the circumstances.

The circumstances referred to above are limited to:

- A natural or human-made disaster;
- A civil disturbance or disruption in services; or
- A serious illness or accident.

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

### **CRIMINAL OFFENCES**

If a person is convicted of a criminal offence, he/she may be subject to a fine or imprisonment for up to 2 years.

Any person who wilfully:

- Submits a false certificate or statement;
- Issues an erroneous, incomplete or false document to SARS or another person;
- Fails to reply to or answer truly and fully any question asked by a SARS official;
- Fails to take an oath or make a solemn declaration;
- Obstructs or hinders SARS officials to discharge their duties;
- Refuses to give assistance during an audit or investigation;
- Holds himself or herself out as a SARS official;
- Dissipates assets in order to impede the collection of any taxes, penalties or interest.

Any person who wilfully or negligently fails to:

- Register or notify SARS of a change in registered particulars;
- Appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer;
- Register as a tax practitioner;
- Submit a return or document to SARS or issue a document to a person;

- Retain records as required;
- Furnish or make available any information or document (excluding information requested for the purpose of revenue estimation);
- Attend and give evidence, as and when required;
- Comply with a directive or instruction issued by SARS;
- Disclose to SARS any material facts which should have been disclosed, or to notify SARS of anything which the person is required to so notify SARS of;
- Comply with the provisions applicable to third parties when given notice to transfer assets or pay amounts to SARS;
- Where that person becomes liable to make a payment for withholding any tax, deduct or withhold or pay to SARS the amount of tax.

### **TAX EVASION, FRAUD OR THEFT**

A person who intentionally evades tax or assists another person to evade tax or to obtain an undue refund under a tax Act, and:

- Makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing it to be true;
- Gives a false answer, whether orally or in writing, to a request for information;
- Prepares, maintains or authorises the preparation or maintenance of false books of account or other records or falsifies or authorises the falsification of books of account or other records;
- Makes use of, or authorises the use of, fraud or contrivance; or
- Makes any false statement for the purposes of obtaining any refund of or exemption from tax;

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

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

### **VOLUNTARY DISCLOSURE PROGRAMME (VDP)**

A person who committed a default may apply for VDP relief.

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

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

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

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

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

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

### Relief granted

- No criminal prosecution;
- No understatement penalty (per understatement penalty table);
- 100% relief for the administrative non-compliance penalty;
- The late payment penalty.

## RETENTION OF RECORDS

### Companies

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

### Close corporations

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

### Tax records

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

## IRP5 CODES

### Income Tax Codes

(Codes in brackets refer to foreign income)

Code	Description	Type of Tax
3601 (3651)	Income for services rendered	Subject to PAYE
3602 (3652)	Non-taxable income for services rendered	Non-taxable
3603 (3653)	Pension	Subject to PAYE
3605 (3655)	Annual payment	Subject to PAYE
3606 (3656)	Commission	Subject to PAYE
3607 (3657)	Overtime	Subject to PAYE
3608 (3658)	Arbitration award	Subject to PAYE
3610 (3660)	Annuity from Retirement Annuity Fund	Subject to PAYE
3611 (3661)	Purchased annuity	Subject to PAYE
3613 (3663)	Restraint of trade	Subject to PAYE
3614 (3664)	Other retirement lump sums	Subject to PAYE
3616 (3666)	Independent contractor - remuneration	Subject to PAYE
3617 (3667)	Labour brokers without exemption certificate	Subject to PAYE
3618 (3668)	Annuity from provident/provident preservation	Subject to PAYE
3619 (3669)	Labour brokers with exemption certificate	IT
3620 (3670)	Directors fees: resident NED	IT
3621	Directors fees: non-resident NED	Subject to PAYE

### Allowance Codes

Code	Description	Type of tax
3701 (3751)	Travel allowance	Subject to PAYE
3702 (3752)	Reimbursive travel allowance	IT
3703 (3753)	Reimbursive travel allowance	Non-taxable
3704 (3754)	Subsistence allowance – local travel	IT
3707 (3757)	Share options exercised	Subject to PAYE
3708 (3758)	Public office allowance	Subject to PAYE
3713 (3763)	Other allowances, e.g. entertainment, tools, computer, cellphone	Subject to PAYE
3714 (3764)	Uniform, relocation, subsistence allowance local and foreign	Non-taxable
3715 (3765)	Subsistence allowance – foreign travel	IT
3717 (3767)	Broad-based employee share plan	Subject to PAYE
3718 (3768)	Vesting of equity instruments or return of capital i.r.o. restricted equity instruments	Subject to PAYE
3719 (3769)	Dividends not exempt para (dd) of the proviso to s10(1)(k)(i)	Subject to PAYE
3720 (3770)	Dividends not exempt para (ii) of the proviso to s10(1)(k)(i)	Subject to PAYE
3721 (3771)	Dividends not exempt para (jj) of the proviso to s10(1)(k)(i)	Subject to PAYE
3722 (3772)	Reimbursive travel allowance (rate exceeds prescribed rate)	Subject to PAYE
3723 (3773)	Dividends not exempt par (kk) of the proviso to s10(1)(k)(i)	Subject to PAYE
3724	Amounts paid by Covid-19 Disaster relief organisation	IT

## Fringe Benefit Codes

Code	Description	Type of tax
3801 (3851)	General fringe benefits	Subject to PAYE
3802 (3852)	Use of motor vehicle (not operating lease)	Subject to PAYE
3805 (3855)	Free or cheap accommodation	Subject to PAYE
3806 (3856)	Free or cheap services	Subject to PAYE
3808 (3858)	Payment of employee's debt	Subject to PAYE
3809 (3859)	Taxable bursaries or scholarships: basic education education (not disabled)	Subject to PAYE
3813 (3863)	Medical services costs paid by the employer	Subject to PAYE
3815 (3865)	Non-taxable bursaries and scholarships – basic education – not disabled	Non-taxable
3816 (3866)	Use of motor vehicle acquired by employer via operating lease	Subject to PAYE
3817 (3867)	Employers pension fund contribution	Subject to PAYE
3820 (3870)	Taxable bursaries or scholarships - further education – not disabled	Subject to PAYE
3821 (3871)	Non-taxable bursaries or scholarships - further education – not disabled	Non-taxable
3822 (3872)	Non-taxable fringe benefit on acquisition of immovable property	Non-taxable
3825 (3875)	Employer provident fund contributions	Subject to PAYE
3828 (3878)	Employees debt: employer paid retirement annuity fund contributions	Subject to PAYE
3829 (3879)	Taxable bursaries to a disabled person – basic education	Subject to PAYE
3830 (3880)	Non-taxable bursaries to a disabled person – basic education	Non-taxable
3831 (3881)	Taxable bursaries to a disabled person – further education	Subject to PAYE
3832 (3882)	Non-taxable bursaries to a disabled person – further education	Non-taxable
3833 (3883)	Bargaining council employer contributions	Subject to PAYE
3834 (3884)	Loan to purchase immovable residential property	Non-taxable

## Lump sum codes

Code	Description	Type of tax
3901 (3951)	Gratuities/Severance benefits	Subject to PAYE
3906 (3956)	Special Remuneration paid to proto-team members	Subject to PAYE
3907 (3957)	Other lump sums	Subject to PAYE
3908	Surplus apportionments and exempt policy proceeds	Non- taxable
3915	Retirement/termination of employment lump sum benefits/commutation of annuities	Subject to PAYE
3920	Lump sum withdrawal benefits	Subject to PAYE
3921	Living annuity and section 15C of the Pension Funds Act and surplus apportionments	Subject to PAYE
3922	Compensation i.r.o. death during employment	Non- taxable
3923	Transfer of unclaimed benefits	Non- taxable
3924	Transfer on retirement	Subject to PAYE

## Deduction Codes

Code	Description
4001	Pension fund contributions paid or deemed paid by employee
4003	Provident fund contributions paid or deemed paid by employee
4005	Medical scheme fees (contributions) paid or deemed paid by employee
4006	Retirement annuity fund contributions paid or deemed paid by employee
4024	Medical services costs deemed to be paid by the employee in respect of himself/herself, spouse or child
4030	Donations deducted from the employee's remuneration and paid by the employer to the organisation (Including Covid-19 Disaster relief fund but excluding donations to the Solidarity Fund)
4473	Employer's provident fund contributions paid for the benefit of the employee
4474	Employer's medical scheme fees (contributions) paid for the benefit of employees (employee 65 years and older and who has not retired from that employer, should also be reflected under this code)
4475	Employer's retirement annuity fund contributions paid for the benefit of the employee
4493	Employer's medical scheme fees (contributions) paid for the benefit of retired employees who qualifies for the "no value" provisions
4582	Value of "remuneration" included in allowances and benefits (travel related)





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## GENESIS CHARTERED ACCOUNTANTS

