SOUTH AFRICAN REVENUE SERVICE

TAX GUIDE

FOR

SMALL BUSINESSES

2009/10

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

TAX GUIDE FOR SMALL BUSINESSES 2009/10

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

The information in this guide relates to the 2009/10 year of assessment (tax year) that covers in the case of:

- **Individuals, the period 1 March 2009 to 28 February 2010.**
- **Companies and close corporations, tax years ending during the period of 12 months ending on 31 March 2010.**

This guide has been updated to include the Taxation Laws Amendment Act, No. 17 of 2009.

The Commissioner for the South African Revenue Service is responsible for the administration of tax and customs legislation.

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

- Contact your local SARS office
- Contact the SARS Call Centre on 0800 00 72 77
- Visit the SARS website at www.sars.gov.za
- Contact your own tax advisor/practitioner

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SOUTH AFRICAN REVENUE SERVICE
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TAX GUIDE FOR SMALL BUSINESSES

2009/10

CONTENTS

1. OVERVIEW

This guide contains information about the tax laws and some other statutory obligations that apply to small businesses. It describes some of the forms of business entities in RSA – sole proprietorship, partnership, close corporation and a private company – and explains in general terms the tax responsibilities of each.

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

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

1.1 Glossary

the Act	:	Income Tax Act, No. 58 of 1962
CC	:	close corporation
CGT	:	capital gains tax
Commissioner	:	Commissioner for the South African Revenue Service
ITAC	:	International Trade Administration Commission
PAYE	:	pay-as-you-earn (employees' tax)
RBT	:	residence basis of taxation
RSA	:	Republic of South Africa
SARS	:	South African Revenue Service
SBC	:	small business corporation
SDL	:	skills development levy
SMMEs	:	small, medium and micro enterprises
STC	:	secondary tax on companies
STT	:	Securities transfer tax
tax year	:	year of assessment
TCC	:	tax clearance certificate
UIC	:	unemployment insurance contribution
the VAT Act	:	Value-Added Tax Act, No. 89 of 1991
VAT	:	value-added tax

2. GENERAL CHARACTERISTICS OF DIFFERENT TYPES OF BUSINESSES

2.1 Introduction

Once you have decided to start a business, you must also decide (which will be your own choice entirely) what type of business entity to use. There are legal, tax and other considerations that can influence this decision. The legal and other considerations are beyond the scope of this guide while the tax consequences of conducting business through each type of entity will be an important element in making your decision.

The purpose of this guide is not to advise you on the type of business entity through which to conduct your business, but to provide entrepreneurs with information to assist them to make their own informed decisions when starting a business.

- **Sole proprietorship**

A sole proprietorship is a business that is owned/operated by one person. This is the simplest form of business entity. The business has no existence (therefore not a legal person such as a company) separate from the owner who is called the proprietor. The owner must include the income from such business in his/her own income tax return and is responsible for the payment of taxes thereon. Only the proprietor has the authority to make decisions for the business. The proprietor assumes the risks of the business to the extent of all of his or her assets whether used in the business or not.

Some advantages of a sole proprietorship are:

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

Some disadvantages of a sole proprietorship are:

- Unlimited liability of the owner.
  The individual owner is legally liable for all the debts of the business. Not only the investment or business property, but any personal and fixed property may be attached by creditors.
- Limited ability to raise capital.
  The business capital is limited to whatever the owner can personally secure. This limits the expansion of a business when new capital is required. A common cause of failure of this form of business organisation is lack of funds. This restricts the ability of a sole proprietor to operate the business effectively and survive at an initial low profit level, or to get through an economic “rough spot”.
- Limited skills.

One individual alone has limited skills, although the owner may be able to hire employees with sought after skills.

- **Partnership**

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

Some advantages of a partnership are:

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

Some disadvantages of a partnership are:

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

- **Close corporation (CC)**

The CC is similar to a private company. It is a legal entity with its own legal personality and perpetual succession and must register as a taxpayer in its own right. The CC has no share capital and therefore no shareholders. The owners of the CC are the members. Members do not hold shares in the CC and, therefore, have a membership interest in the CC. This interest is expressed as a percentage. Membership, generally speaking, is restricted to natural persons or (from 11 January 2006) a trustee of an *inter vivos* trust or testamentary trust as contemplated in section 29(1A) or 29(2)(b) of the Close Corporation Act, No. 69 of 1984.

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

Some advantages of a CC are:

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

Some disadvantages of a CC are:

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

- **Private Company**

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

Some advantages of a private company are:

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

- The Companies Act, No. 61 of 1973 (this Act will be replaced by the Companies Act, No. 71 of 2008, which is scheduled to become into operation next year) imposes personal liability on directors where in common law such liability may not exist, or be difficult to prove. Any person, not only a director, who is knowingly a party to the carrying on of a business in a reckless (gross carelessness or gross negligence) or fraudulent manner can be personally liable for all or any of the debts of the company.
- Transfer of ownership is easy.
- Easier to raise capital and to expand.
- Efficiency of management is maintained.
- Adaptable to both small and medium to large business.

Some disadvantages of a private company are:
- Subject to many legal requirements.
- More difficult and expensive to establish and operate than other forms of ownership such as a sole proprietorship or partnership.

- **Co-operatives**

A co-operative is defined in the Act as any association of persons registered in terms of section 27 of the Co-operatives Act, 1981 or section 7 of the Co-operatives Act, No. 14 of 2005. The tax dispensation of co-operatives is discussed in this guide under **Tax relief measures for: Small business corporations**.

- **Other types of business entities as described in the Act**

  - **Small business corporations**

    Small business corporations are discussed under **Tax relief measures for: Small business corporations**.

  - **Personal service provider**

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

    - such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or
    - where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which

the duties are performed or are to be performed in rendering such service; or

- where more than 80% of the income of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined in the Seventh Schedule to the Act, in relation to such client

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

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

For further information refer to the *GUIDE FOR EMPLOYERS IN RESPECT OF EMPLOYEES' TAX (2010 TAX YEAR)* which is available on the SARS website under All Publications/PAYE or contact a SARS office.

– **Labour broker**

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

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

An exemption certificate will be issued by SARS if –
- o the person carries on an independent trade and is registered as a provisional taxpayer;
- o the labour broker is registered as an employer; and
- o all returns required by SARS, have been submitted.

SARS will **not** issue an exemption certificate if –
- o more than 80% of the gross income of the labour broker during the year of assessment consists of amounts received from any one client of the labour broker, unless the labour broker employs three or more full-time employees throughout the year of assessment who are on a full-time basis engaged in the

business of the labour broker and who are not connected persons in relation to the labour broker; or
- the labour broker provides to any of its clients the services of another labour broker; or
- the labour broker is contractually obliged to provide a specified employee of the labour broker to the client.

Payments made to persons who render services to or on behalf of a labour broker without an exemption certificate are subject to the deduction of employees' tax.

For further information, refer to the *GUIDE FOR EMPLOYERS IN RESPECT OF EMPLOYEES' TAX (2010 TAX YEAR)* and Interpretation Note No. 35 (Draft) (Issue 3): *EMPLOYEES' TAX: PERSONAL SERVICE PROVIDERS AND LABOUR BROKERS* which are available on the SARS website.

Notes:

(1) The deduction of expenses incurred by a labour broker without an exemption certificate or a personal service provider is limited to the amounts paid to the employees of such labour broker or personal service provider ,for services rendered that will comprise taxable income in the hands of those employees.

(2) In the case of a personal service provider the following expenses will also be allowed as deductions –
- certain legal costs, bad debts, contributions to pension/provident funds/medical schemes, refunds of remuneration or compensation for restraint of trade included in taxable income ;
- operating expenses in respect of premises; and
- finance charges/insurance/repairs/fuel/maintenance in respect of assets, if such premises/assets are used wholly and exclusively for purposes of trade.

– **Independent contractor**

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

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

Notes:

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

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

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

For further information on independent contractors refer to Interpretation Note No. 17: *EMPLOYEES; TAX: INDEPENDENT CONTRACTORS* which is available on the SARS website.

- **Small, Medium and Micro enterprises (SMMEs)**

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

3. YOUR BUSINESS AND SARS

3.1 Introduction

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

The tax laws are administered by the Commissioner, acting through SARS offices situated in various centres throughout the country.

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

3.2 Income tax

- **General**

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

- **Registration**

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

  If you start your business *via* a CC or private company you must register the CC or private company with the Registrar of Companies and Close Corporations to obtain a business reference number. Your CC or private company will then be registered automatically as a taxpayer. If you do not hear from SARS after registering with the Registrar contact your SARS office.

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

- **Change of address**

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

- **Filing**

  The tax year for individuals covers a period of 12 months and commences on 1 March of a specific year and ends on the last day of February of the following year. However, in some circumstances you may be allowed to draw up your financial statements for your business to dates other than the end of February. For more details see Interpretation Note No. 19: *YEAR OF ASSESSMENT: ACCOUNTS ACCEPTED TO DATE OTHER THAN THE LAST DAY OF FEBRUARY*, which is available on the SARS website.

  A company/close corporation on the other hand is permitted to have a tax year ending on a date that coincides with its financial year-end. If the financial year-end is 30 June, its tax year or year of assessment will run from 1 July to 30 June.

Income tax returns must be submitted manually or electronically by a specific date each year.

- **e-Filing**

  The primary objective of SARS e-Filing is to facilitate the electronic submission of tax returns and payments by taxpayers and tax practitioners. Taxpayers registered for e-Filing can engage with SARS online for submission of returns and payments in respect of the following taxes:

  - Value-added tax (VAT).
  - Income tax.
  - Skills development levy (SDL).
  - Transfer duty and stamp duty
  - Pay-as-you-earn (PAYE).
  - Provisional tax.
  - Unemployment insurance fund (UIF).
  - Secondary tax on companies (STC).

  For more information visit the SARS e-Filing website at www.sarsefiling.gov.za.

  The following should, however, be noted:

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

- **Payments at banks**

  Payment of taxes can be made *via* the First National Bank, ABSA, Nedbank and Standard Bank internet facilities. Over the counter payment of taxes can also be done at these banks. For more information also visit the e-Filing website.

- **Provisional tax**

  As soon as you commence business, you will also be required to register with your local SARS office as a provisional taxpayer. Close corporations and companies are automatically registered as provisional taxpayers. The payment of provisional tax is intended to assist taxpayers in meeting their normal tax liabilities. This occurs by the payment of two instalments in respect of income received or accrued during the relevant tax year and an optional third payment after the end of the tax year, thus obviating, as far as possible, the need to make provision for a single substantial normal tax payment on assessment after the end of the tax year. The first provisional tax payment must be made six months after the commencement of the tax year and the second payment not later than

the last day of the tax year. The optional third payment is voluntary and may be made within six months after the end of the tax year if your accounts close on a date other than the last day of February. If your tax year ends on the last day of February, the optional third payment must be made within seven months after the end of the tax year. Further information regarding the payment of provisional tax, can be found in the *REFERENCE GUIDE - PROVISIONAL TAX* which is available on the SARS website, under All Publications/Provisional Tax.

- **Employees' tax**

  Employees' tax is a system in terms of which an employer, as an agent of government, deducts employees' tax (PAYE) from the earnings of employees and pays it over to SARS on a monthly basis. This tax serves as a tax credit that is set-off against the final income tax liability of an employee, which is determined on an annual basis. A business (employer) that pays salaries, wages and other remuneration to any of its employees that is above the tax thresholds (where liability for income tax arises, namely R54 200 for individuals under the age of 65 years and R84 200 for individuals aged 65 years or older), must register with SARS for employees' tax purposes. This is done by completing an EMP 101 form and submitting it to SARS. The EMP 101 is available at all SARS offices and on the SARS website. Once registered, the employer will receive a monthly return (EMP 201) that must be completed and submitted together with the deducted employees' tax within seven days of the month following the month for which the tax was deducted.

  Information regarding the deduction of PAYE can be found in the *GUIDE FOR EMPLOYERS IN RESPECT OF EMPLOYEES' TAX (2010 TAX YEAR)* which is available on the SARS website under All Publications/PAYE.

- **Directors' remuneration**

  The remuneration of directors of private companies (including individuals in close corporations performing similar functions) is subject to employees' tax. The remuneration of private company directors is often only finally determined late in the year of assessment or in the following year. The directors in these circumstances finance their living expenditure out of their loan accounts until the remuneration is determined. To overcome the problem of no monthly remuneration being payable from which employees' tax can be withheld, a formula is used to determine a deemed monthly remuneration upon which the company must deduct employees' tax. For more information on the application of the formula and relief from hardship refer to Interpretation Note No. 5: *EMPLOYEES' TAX: DIRECTORS OF PRIVATE COMPANIES (WHICH INCLUDE PERSONS IN CLOSE CORPORARIONS WHO PERFORM FUNCTIONS SIMILAR TO DIRECTORS OF COMPANIES)* which is available on SARS website.

A director is not entitled to receive an employees' tax certificate (IRP 5) in respect of the amount of employees' tax paid by the company on the deemed remuneration if the company has not recovered the employees' tax from the director.

- **How to determine net profit or loss**

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

Income – Expenses = Profit (Loss)

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

- Gross sales

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

- Cost of sales

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

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

Opening stock + Purchases – Closing stock = Cost of sales
R120 000 + R730 000 – R150 000 = R700 000

- Gross profit

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

- Business expenses

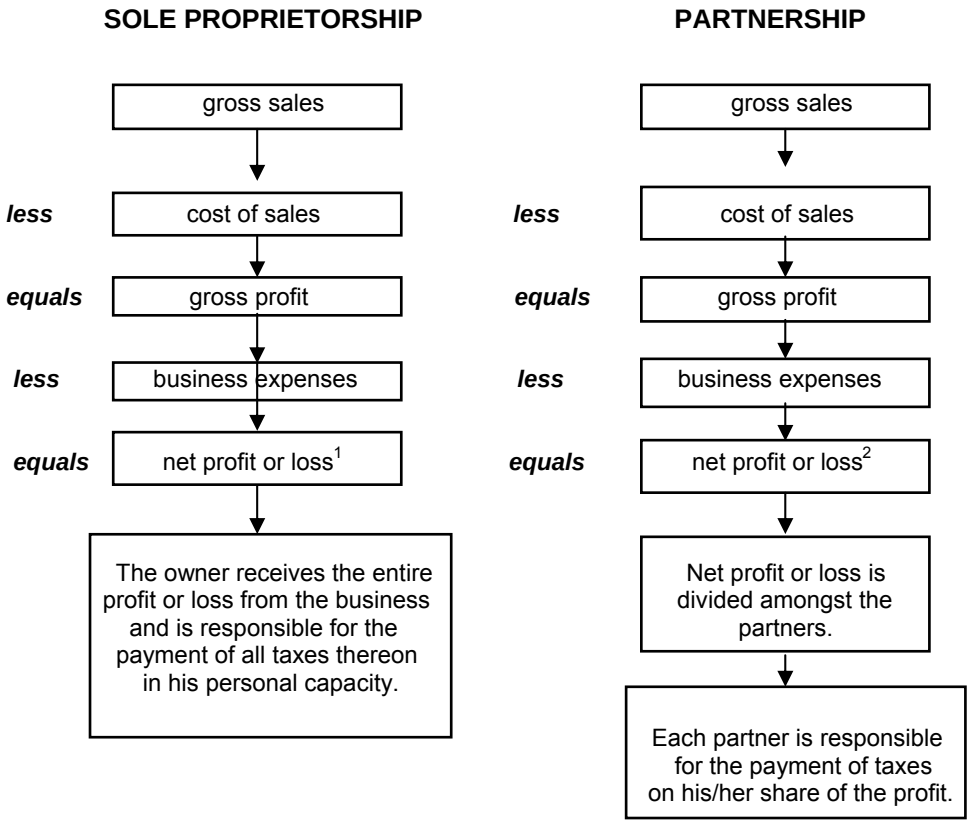
Business expenses, also referred to as operating expenses, are the ordinary and necessary expenses incurred in the operation of the business. ABC Furniture Store incurred R200 000 expenses, for example, wages, telephone, electricity, stationery, etc.

- Net profit or loss

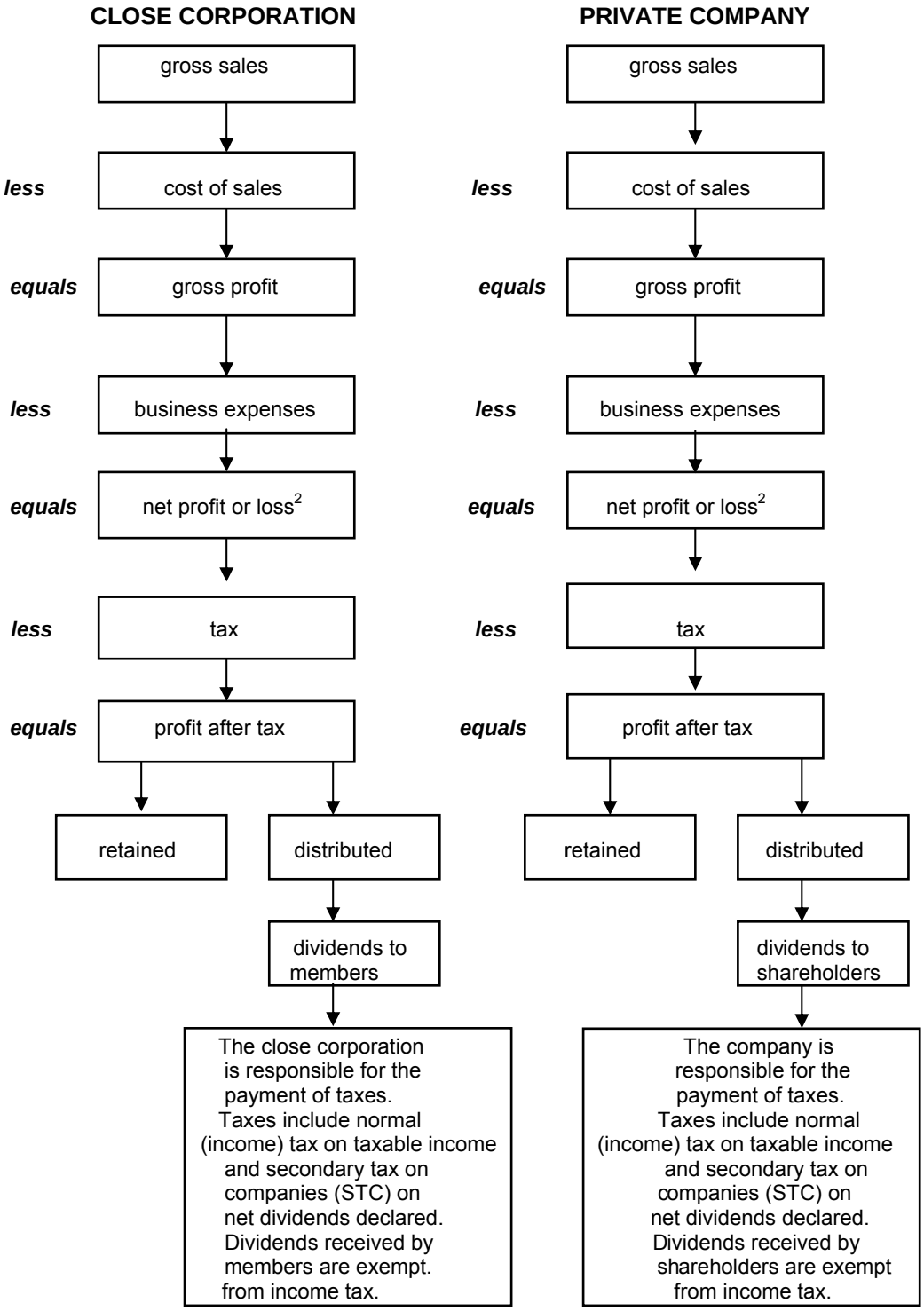
Net profit is the amount by which the gross profit for a period exceeds the business expenses for the same period. Net loss is the amount by which the business expenses exceed the gross profit. ABC Furniture Store had a gross profit of R300 000, the business expenses were R200 000 leaving ABC Furniture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

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

- **Comparative profit or loss statements**



[1] See also "How to determine taxable income/assessed loss"



Note: Certain foreign dividends are, however, taxable.

- **Link between "net profit" and "taxable income"**

  Net profit is an accounting concept and is a term used to describe the amount of the profit made by a business from an accounting point of view.

Taxable income on the other hand is a tax term that is used to describe the amount on which a business's income tax is calculated.

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

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

- **How to determine taxable income/assessed loss**

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

- any person who is a resident: The total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of such person during the tax year (subject to certain exclusions); or
- any person who is not a resident: The total amount of income, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the RSA during the tax year.

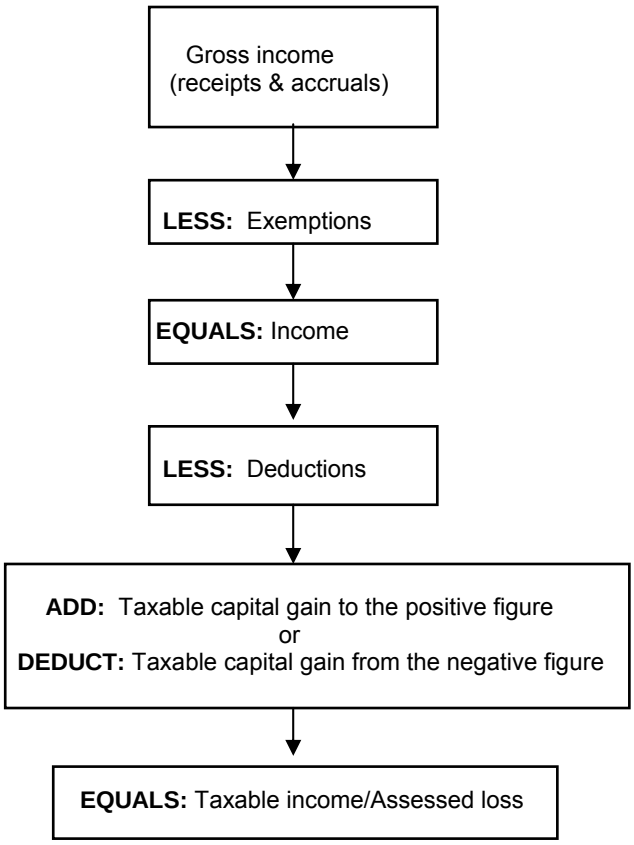
Receipts or accruals of a capital nature are generally excluded from gross income as the Eighth Schedule to the Act deals with capital gains and losses. However, "gross income" also includes certain other receipts and accruals specified within the definition of "gross income" regardless of their nature.

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

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

- deducting all the amounts allowed to be deducted or set off, in terms of the Act, from "income"'; and
- adding taxable capital gains to the net positive figure or deducting taxable capital gains from the net negative figure.

It can be illustrated as follows:



- **General deduction formula**

  The general deduction formula provides for the general rules with which an expense must comply in order to be deductible for income tax purposes. Other provisions of the Act allow for special deductions/ allowances. If no special deduction/allowance applies, however, the expense in question will have to comply with the general deduction formula.

  The general deduction formula provides that for expenditure and losses to be deductible they must be –
  - actually incurred;
  - during the year of assessment;
  - in the production of income;
  - not of a capital nature; and
  - laid out or expended for the purposes of trade.

- **Tax rates**

  A sole proprietor or each partner is subject to income tax on his/her taxable income. Income tax (normal tax) is levied at progressive rates ranging from 18% to 40%. For the 2010 tax year, the maximum marginal

rate of 40% applies where the taxable income exceeds R525 000. Unlike individuals, a company or CC pays income tax at a flat rate of 28% (except in the case of SBC – see below) on its taxable income for the tax year and 10% secondary tax on companies (STC) on the net amount of dividends declared.

Below is a summary of the different tax rates

- **Individuals, deceased or insolvent estates or special trusts**

Tax rates and rebates for the tax year commencing on 01 March 2009

Tax rates

Taxable income	**Rates of normal tax**
Not exceeding R132 000	18% of taxable income
Exceeding R132 000 but not exceeding R210 000	R23 760 plus 25% of the taxable income exceeding R132 000
Exceeding R210 000 but not exceeding R290 000	R43 260 plus 30% of the taxable income exceeding R210 000
Exceeding R290 000 but not exceeding R410 000	R67 260 plus 35% of the taxable income exceeding R290 000
Exceeding R410 000 but not exceeding R525 000	R109 260 plus 38% of the taxable income exceeding R410 000
Exceeding R525 000	R152 960 plus 40% of the taxable income exceeding R525 000

Rebates

Age	**Amount**
Under 65 years	R9 756
65 years or older	R15 156

- **Trusts (and personal service providers that are trusts)**

Tax rates – trusts (other than a special trust)

Tax year ending on	**Rate of normal tax**
28 February 2010	40% of taxable income

- **Corporates**

  - **Companies (Standard)/Close Corporations**

Tax year ending during the period of 12 months ending on	**Rate of normal tax**
31/03/2010	28% of taxable income

- **Secondary tax on companies (STC)**

STC is payable on dividends declared by resident companies after being reduced by dividends receivable during a dividend cycle. Companies which are not residents are not subject to STC. For more information see the *Comprehensive Guide to Secondary Tax on Companies (Issue 2)* which is available on the SARS website.

From	Until	Rate of STC
14/03/1996	30/9/2007	12,5%
01/10/2007	To date	10%

- **Small business corporations (SBCs): Tax year ending during the period of 12 months ending on 31/03/2010**

Taxable income	Rates of normal tax
Not exceeding R54 200	0% of taxable income
Exceeding R54 200 but not exceeding R300 000	10% of the taxable income exceeding R54 200
Exceeding R300 000	R24 580 plus 28% of the taxable income exceeding R300 000

- **Mining companies**

Companies mining for gold (taxed according to one of the following formulae "gold mining tax formula")

Tax year ending between	Not exempt from STC	Elected to be exempt from STC
1/04/2009 to 31/03/2010	y = 34 – (170/x) (other income taxed at 28%)	y = 43 – (215/x) (other income taxed at 35%)

Where x = the ratio expressed as a percentage as follows:

$$\frac{\text{Taxable income from gold mining}}{\text{Total revenue (turnover) from gold mining}}$$

y = rate of tax to be levied

- **Oil and Gas Companies**

Rate of normal tax

The rate of tax on taxable income derived from oil and gas income by an oil and gas company that –

- is a resident company may not exceed 28% (or an oil and gas company which is not a resident and which solely derives its oil and gas income by virtue of an OP26 right previously held by such company); and

- is not a resident and carries on a trade within the RSA may not exceed 31%.

Rate of STC

The STC rate of an oil and gas company may not exceed 5% on the net amount of dividends declared out of the profits of its oil and gas income. A rate of 0% applies to the net dividend declared by such a company derived from the profits of its oil and gas income solely derived (directly/indirectly) by virtue of an OP26 right previously held. The above rates (5% and 0%) are not applicable where the company is engaged in refining.

For more information see paragraphs 2 and 3 of the Tenth Schedule to the Act.

o **Other mining companies**

The rates applicable to ordinary companies also apply to all mining companies, other than companies mining for gold.

o **Insurance companies**

o **Long-term insurance companies – Four fund basis**

Four funds	**Rate of normal tax for tax year ending during the period of 12 month ending on 31/03/2010**
Corporate fund	28% of taxable income
Individual policyholder fund	30% of taxable income
Company policyholder fund	28% of taxable income
Untaxed policyholder fund: ■ Retirement fund business ■ Other	 (abolished from 1/03/07) 0% of taxable income

o **Short-term insurance companies**

Companies carrying on a short-term insurance business are taxed at the same rate as is applicable to standard companies

- **Personal service providers that are companies**

Tax year commencing on or after	Rate of normal tax
01/03/2009	33% of taxable income

- **Companies which are not residents**

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

Tax year ending during the period of 12 months ending on	Rate of normal tax
31/03/2010	33% of taxable income

- **Special allowances/deductions**

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

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

For more information refer to section 13 of the Act.

(b) Commercial buildings

- 5% of the cost to the taxpayer of new and unused buildings or improvements to buildings (20-year straight-line basis) which were contracted for on or after 1 April 2007 and the construction, erection or installation of which commenced on or after the above-mentioned date.

- For the purposes of the above 5% allowance, to the extent a taxpayer acquires –
  (1) a building without erecting or constructing that building, the acquisition price of the building is deemed to be the cost incurred by the taxpayer for the building; and
  (2) a part of a building without erecting or constructing that part, the percentages below will be deemed to be the cost incurred –
    (a) 55% of the acquisition price, in the case of a part being acquired; and
    (b) 30% of the acquisition price, in the case of an improvement being acquired.

For more information refer to section 13*quin* of the Act.

(c) Hotel keepers

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

- Machinery, improvements, utensils or articles or improvements thereto: 20% of the cost to the taxpayer (5-year straight-line basis). The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.

- Refurbishment of buildings within existing exterior framework: 20% of the cost to the taxpayer (5-year straight-line basis).

For more information refer to section 13*bis* of the Act.

(d) Aircraft/ships

- Where these assets are brought into use for the purpose of trade: 20% of the cost to the taxpayer (5-year straight-line basis).

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

For more information refer to section 12C of the Act.

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

- 20% of the cost incurred by the taxpayer (5-year straight-line basis) in respect of rolling stock brought into use on or after 1 January 2008.

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

For more information refer to section 12DA of the Act.

(f) Pipelines, transmission lines and railway lines

- Transportation of natural oil

    - 10% of the cost incurred by the taxpayer in respect of the acquisition of the asset (10-year straight-line basis).

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

- Transportation of water used by power stations

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

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

- Transmission of electricity

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

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

- Transmission of electronic communications

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

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

- Railway lines used for transportation of persons, goods or things

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

    - The assets must be owned and be brought into use for the first time by the taxpayer and used directly by the taxpayer for transportation persons/goods/things.

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

For more information refer to section 12D of the Act.

(g) Airport assets [Aircraft, hangars, aprons, runways or taxiways on any designated airport and improvements to these assets (including earthworks or supporting structures forming part of such assets)]

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

For more information refer to section 12F of the Act.

(h) Port assets [Port terminal, breakwater, sand trap, berth, quay wall, wharf, seawall, etc. (including earthworks or supporting structures forming part of such assets) and improvements thereto]

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

For more information refer to section 12F of the Act.

(i) Machinery, plant implements, utensils and articles

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

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

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

For more information, see Interpretation Note No. 47 (Issue 2): *WEAR-AND-TEAR OR DEPRECIATION ALLOWANCE* which is available on the SARS website.

(j) Machinery or plant (manufacturing or similar process) or improvements thereto

- An allowance equal to 20% (5-year straight-line basis) of the cost to the taxpayer to acquire such machinery or plant.

- This allowance is increased in respect of new or unused machinery or plant acquired on or after 1 March 2002 and brought into use by the taxpayer in its manufacture or similar

process carried on in the course of its business on or after that date to –

- 40% of the costs to the taxpayer of the machinery or plant in year of assessment during which the machinery or plant was brought into use; and
- 20% of the costs to the taxpayer of the machinery or plant in each of the three succeeding tax years.

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

For more information refer to section 12C of the Act.

(k) Small business corporations (SBCs)

- Plant or machinery (manufacturing or similar process)
  - 100% of the cost of any plant or machinery brought into use in the tax year for the first time and used in a process of manufacture or similar process is deductible.
  - The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.
- Machinery, plant, implement, utensil, article, aircraft or ship
  - An accelerated allowance for the above assets (other than plant or machinery used in a manufacturing or similar process) acquired by the SBC on or after 1 April 2005 at –
    - 50% of the cost of the asset in the tax year during which it was first brought into use;
    - 30% in the second tax year; and
    - 20% in the third tax year.

  An SBC can elect to either claim the above 50:30:20 deductions or the wear-and-tear allowance under section 11(e) of the Act.

For more information see under the heading **Tax relief measures for: Small business corporations (SBCs)**, and Interpretation Note No. 9 (Issue 5): *SMALL BUSINESS CORPORATIONS* which is available on the SARS website.

(l) Patents, inventions, copyrights, designs, other property, etc.

- An allowance is allowed as a deduction in respect of expenditure incurred to acquire (otherwise than by way of devising, developing or creating) the following property –
  (i) invention or patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);
  (ii) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);
  (iii) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);
  (iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of1993); or
  (v) knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

  which is used in the production of income.

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

- Where the expenditure exceeds R5 000, the allowance will not exceed in any tax year –
  - 5% of the expenditure in respect of any invention, patent, copyright or the property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
  - 10% of the expenditure of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted.

  For more information refer to section 11(*g*C) of the Act.

(m) Research and development

- The deduction of research and development (R&D) will be allowed at a rate of 150% of expenditure incurred in respect of activities undertaken in SA directly for purposes of –
  - the discovery of novel, practical and non-obvious information; or

- the devising, developing or creation of any invention, design, computer program or knowledge essential to the use of that invention, design or computer program,

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

- The deduction in respect of any new and unused building, part thereof, machinery, plant, implement, utensils or article or improvements thereto brought into use by the taxpayer for R&D purposes will be allowed at the rate of:
  - 50% of the cost of the asset in the tax year the asset is brought into use;
  - 30% in the first succeeding tax year; and
  - 20% in the second succeeding tax year.

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

For more information see Interpretation Note No. 50: *DEDUCTION FOR SCIENTIFIC OR TECHNOLOGICAL RESEARCH AND DEVELOPMENT* which is available on the SARS website.

(n) Urban development zones

Taxpayers investing in one of the 15 demarcated urban development areas receive special depreciation allowances for construction or refurbishment of commercial and residential buildings located in these areas that are used solely for trade purposes. These areas are located within the boundaries of the municipalities of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mangaung, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje, Tshwane or Matjhabeng.

The allowance is -

- in respect of the *erection* of any new building or the extension of or addition to any building, an amount equal to –
  - 20% of the cost thereof to the taxpayer in the tax year that building is brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and
  - 8% of that cost in each of the ten succeeding tax years; and

- in respect of *improvements* to any existing building or part thereof (including any extension or addition which is incidental to that improvements) where the existing structural or exterior framework thereof is preserved, an amount equal to –
  - 20% of the cost thereof to the taxpayer in the tax year in which that part thereof so improved, extended or added to is

brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and

- 20% of that cost in each of the four succeeding tax years.

- In the case of the *erection* of any new building or the extension of or addition to a building (other than improvements referred to below), to the extent that it relates to a *low-cost* residential unit –

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

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

  (iii) 10% of the cost in the tax year following the last tax year contemplated in (ii) above.

- In the case of the *improvement* of any existing building or part of a building, to the e*xtent that it* relates to a *low-cost* residential unit, (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved –

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

  (ii) 25% of the cost in each of the three succeeding tax years.

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

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

For more information see the *GUIDE TO THE URBAN DEVELOPMENT ZONE TAX INCENTIVE* – September 2009 which is available on the SARS website.

(o) Agricultural co-operatives

- Plant or machinery (including improvements) used for storing / packing farming products: 20% of the cost to the taxpayer in the tax year the asset is brought into use and in the four succeeding tax years (5-year straight-line basis).

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

For more information refer to section 12C of the Act.

(p) Additional deduction in respect of learnership agreements

The deduction is as follows:

(1) Where –

- during any tax year a learner is a party to a registered learnership agreement with an employer; and
- that agreement was entered into pursuant to a trade carried on by that employer,

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

(2) Where –

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

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

(3) Where –

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

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

(4) Where a learner contemplated in (1), (2) or (3) above is a person with a disability at the time of entering into the learnership agreement, the above amounts increase by R20 000.

For more information refer to section 12H of the Act.

(q) Machinery, plant, implements, utensils or articles used in farming or production of renewable energy or improvements thereto

- Farming

  An allowance in respect of these assets, brought into use for the first time by the taxpayer in the carrying on of farming operations, is equal to –

  - 50% of the cost to the taxpayer in the tax year in which the asset is so brought into use;
  - 30% of such cost in the second tax year; and
  - 20% of such cost in the third tax year.

- Production of bio-fuels

  An allowance in respect of these assets, brought into use for the first time by the taxpayer for the purpose of the taxpayer's trade to be used for the production of bio-fuels (bio-diesel and/or bio-ethanol), is equal to –

  - 50% of the cost to the taxpayer in the tax year in which the asset is so brought into use;
  - 30% of such cost in the second tax year; and
  - 20% of such cost in the third tax year.

- Generation of electricity

  An allowance in respect of these assets, brought into use for the first time by the taxpayer for the purpose of the taxpayer's trade to be used in the generation of electricity from –

  - wind;
  - sunlight;
  - gravitational water forces to produce electricity of not more than 30 megawatts; and
  - biomass comprising organic wastes, landfill gas or plants,

  is equal to –

  - 50% of the cost to the taxpayer in the tax year in which the asset is so brought into use;
  - 30% of such cost in the second tax year; and
  - 20% of such cost in the third tax year.

Note: All the assets referred to above must be owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an "instalment credit agreement" as defined in section 1 of the VAT Act.

For more information refer to section 12B of the Act.

(r) Film Owners

Special deductions are allowed in the determination of taxable income derived from their trade as film owners. These special deductions are contained in section 24F of the Act. Further information is available in the *Guide to the Taxation of Film Owners* which is available on the SARS website.

(s) Environmental expenditure

- Environmental treatment and recycling assets [any air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment (and improvements to the plant or equipment)]:
  - 40% of the cost to the taxpayer in the tax year the asset is brought into use for the first time; and
  - 20% in each succeeding tax year.

- Environmental waste disposal assets, that is, any air, water, and solid waste disposal site, dam, dump or reservoir, or other structure of a similar nature, or any improvement thereto:
  - 5% of the cost to the taxpayer in the tax year the asset is brought into use for the first time; and
  - 5% in each succeeding tax year.

- Post-trade environmental expenses

  100% of the expenditure or loss incurred in respect of certain decommissioning, remediation or restoration expenditure

  For more information refer to section 37B of the Act.

(t) Residential units

(i) An allowance equal to 5% of the cost to the taxpayer of new and unused residential unit (or of new and unused improvement to a residential unit) owned by the taxpayer if –

- the unit or improvement is used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;
- the unit is situated within the RSA; and
- the taxpayer owns at least five residential units within the RSA, which are used by the taxpayer for the purposes of a trade.

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

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

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

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For more information refer to section 13*sex* of the Act.

(u) Sale of low-cost residential units on loan account

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

Note: This deduction applies to taxpayers deriving income from mining operations. For more information refer to section 13*sept* of the Act.

(v) Environmental conservation and maintenance expenditure

- Expenditure incurred by a taxpayer to conserve or maintain land, if –

  (a) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years entered into by the taxpayer in terms of the National Environmental Management: Biodiversity Act, No. 10 of 2004; and

  (b) the land is utilised by the taxpayer for the production of income and for purposes of a trade consists of, includes or is

in the immediate proximity of the land that is the subject of the agreement contemplated in (a).

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

- Expenditure incurred by a taxpayer to conserve or maintain land owned by the taxpayer is for purposes of section18A of the Act deemed to be a donation, if the conservation or maintenance is carried out in terms of a declaration that has a duration of at least 30 years in terms of the National Environmental Management Protected Areas Act, No. 57 of 2003.

- If land is declared a national park or nature reserve and the declaration is endorsed on the title deed of the land with a duration of at least 99 years, 10% of the lesser of the cost or market value of the land is for purposes of section 18A and paragraph 62 of the Eighth Schedule to the Act deemed to be a donation in the tax year in which the land is so declared and each of the succeeding nine tax years.

For more information refer to section 37C of the Act.

(w) Additional investment and training allowances for industrial policy projects

- Additional investment allowance:

A company may deduct an amount equal to –

(a) 55% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

(b) 35% of the cost of any new and unused manufacturing asset used in any other industrial policy project,

in the tax year during which the asset is first brought into use by the company as owner.

The additional investment allowance may not exceed –

(a) R900 million for a greenfield project with preferred status, or R550 million for any other greenfield project;

(b) R550 million for a brownfield project with preferred status, or R350 million for any other brownfield project.

- Additional training allowance:

The company may also deduct an amount equal to the cost of training provided to employees in the tax year during which the cost of training is incurred for the furtherance of the industrial policy project.

The training allowance may not exceed R36 000 per employee.
This allowance may not exceed –

(a) R30 million for an industrial policy project with preferred status; and

(b) R20 million for any other industrial policy project.

For more information refer to section 12I of the Act.

(x) Expenditure incurred to obtain a licence

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

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

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

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

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

Deductions allowable to investors for expenditure incurred are as follows:

(a) Individuals (natural persons)

- Annual deduction limit to R750 000
- Cumulative lifetime deduction limit to (adjusted for recoupments) – R2,25 million

(b) Listed companies (and their group subsidiaries)

- A listed company is entitled to a100% deduction of amounts invested in a VCC to the extent that its investments, including the investments of its group companies, do not exceed 40% of the equity shares of the VCC

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

For more information see section 12J of the Act and the *REFERENCE GUIDE VENTURE CAPITAL COMPANIES (VCCs)* available on the SARS website under All Publications.

(z) Deduction of medical lump sum payments

Provided certain conditions are met, a taxpayer will be allowed to deduct from his or her income derived from carrying on a trade a lump sum payment to a medical scheme or fund in respect of any former employee who has retired or to a dependant of that former employee with effect from 1 September 2009.

For more information refer to section 12M of the Act.

- **Tax relief measures for:**

– **Small business corporations (SBCs)**

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

The tax legislation regarding an SBC allows two major concessions to an SBC, which complies with all of the following requirements –

- all the shareholders or members of the SBC must at all times during the tax year be natural persons (individuals):

- shareholders or members of the SBC may not hold any shares or interest in the equity of any other company. However, a share or interest in the following entities are excluded from this requirement –
  - o listed companies;
  - o a portfolio in a collective investment scheme contemplated in paragraph (*c*) of the definition of company in section 1 of the Act);
  - o a company contemplated in section 10(1)(*e*)(i)(*aa*), (*bb*) or (*cc*) of the Act (that is, a body corporate, share block company, company incorporated under section 21 of the Companies Act, 1973 or an association of persons);

- less than 5% of the interest in a social or consumer co-operative or a co-operative burial society;
- friendly societies;
- less than 5% of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operatives Banks Act, 2007, that may provide, participate in or undertake only the following –
  - in the case of a primary savings co-operative bank, banking services contemplated in section 14(1)(*a*) to (*d*) of the above-mentioned Act; and
  - in the case of a primary savings and loans co-operative bank, banking services contemplated in section 14(2)(*a*) or (*b*) of the above-mentioned Act;
- venture capital companies (as defined in section 12J of the Act); or
- if the company, close corporation or co-operative has not during any year of assessment carried on any trade and has not during any year of assessment owned assets with a total market value of which exceeds R5 000;

- the gross income of the SBC for the year of assessment may not exceed R14 million;

- not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the SBC may consist collectively of investment income and income from rendering a personal service; and

  [Investment income includes interest, dividends, royalties, rental in respect of immovable property, annuities or income of a similar nature, interest contemplated in section 24J of the Act, *other than interest earned by a co-operative bank*, amounts contemplated in section 24K of the Act and proceeds derived from investment/trading in financial instruments/marketable securities/immovable property.

  Personal services are services in the field of, for example, accounting, real estate and engineering which are performed personally by a person holding an interest in the SBC.

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

- the SBC may not be a personal service provider (as defined in the Fourth Schedule to the Act) – see under the heading: **Other types of business entities as described in the Act**.

The **first concession** is to be taxed on the basis of a progressive rate system, *namely –,*

- 0% on the first R54 200 of taxable income:
- 10% on taxable income in excess of R54 200 but not exceeding R300 000; and
- R24 580 plus a rate of 28% on taxable income in excess of R300 000.

The **second concession** (see also under **Special allowances**) –

(a) the immediate write-off of all plant or machinery used in a process of manufacture or similar process ("manufacturing assets") in the tax year it is brought into use for the first time; and

(b) an accelerated write-off allowance for depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at –

- 50% of the cost of the asset in the tax year during which it was first brought into use;
- 30% in the second tax year; and
- 20% in the third tax year.

An SBC can elect to either claim the 50:30:20 deductions or the wear-and-tear allowance under section 11(*e*) of the Act.

For more information refer to Interpretation Note No. 9 (Issue 5): *SMALL BUSINESS CORPORATIONS* on the SARS website.

– **Micro businesses (turnover tax)**

A person qualifies as a micro business if that person is a –

(a) natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency); or

(b) company,

where the qualifying turnover of that person for the tax year does not exceed an amount of R1 million.

Tax year ending during the period of 12 months	**Taxable turnover (R)**	**Rate of tax (R)**

ending on		
31/03/2010	1 – 100 000	0%
	100 001 – 300 000	1% of the amount above 100 000
	300 001 – 500 000	2 000 + 3% of the amount above 300 000
	500 001 – 750 000	8 000 + 5% of the amount above 500 000
	750 001 and above	20 500 + 7% of the amount above 750 000

For more information refer to the *TAX GUIDE FOR MICRO BUSINESSES 2009/10* available on the SARS website.

– **Manufacturing**

Special allowances are granted to persons engaged in a process of manufacture or a process of a similar nature.

An SBC, as indicated above, may write off 100% of the costs of its manufacturing plant or machinery.

An allowance for new or unused machinery or plant acquired and brought into use and used directly by the taxpayer in a process of manufacture or similar process, is available. An allowance equal to 40% of the cash cost of the asset will be deducted in the first tax year and 20% of the cost for the subsequent 3 tax years.

– **Farming**

Farming operations include livestock farming, crop farming, milk production, plantation farming, sugar cane farming and game farming.

Persons carrying on farming operations are required to account for the value of livestock and produce on hand at the beginning and end of a tax year in their tax returns. The values to be placed on livestock at the beginning and end of the tax year are the standard values as prescribed by regulation (see Income tax – Regulations under section 107 of the Act, PART D, *Standard Values of Livestock*). Produce, on the other hand, must be accounted for at cost of production or market value, whichever is the lower.

Game is also regarded as livestock, but due to practical difficulties that can be encountered in establishing the actual numbers of game on hand at any given time, game is excluded from opening and closing stock.

Game farmers must prove that the game is purchased, bred and sold on a regular basis with a genuine intention to carry on farming operations profitably in order to qualify as farmers. Income relating to accommodation and catering facilities for visitors does not qualify as income from farming operations and separate financial statements must be drawn up for such income.

- Deductions for farmers include the following:

  - Expenditure incurred in respect of prevention of soil erosion, eradication of noxious plants/alien invasive vegetation, dams, fences, etc to conserve and maintain land owned by the farmer is allowed as a deduction if certain conditions are met as set out in paragraph 12(1A) of the First Schedule to the Act.

  - Capital expenditure

    The deduction of capital expenditure, such as the development of and improvements to farming property, is permitted in the determination of taxable income. This deduction may not exceed the farmer's taxable income from farming operations in respect of that year. If the amount of such expenditure exceeds the income in that year, the balance will be carried forward and deducted in the succeeding year, subject to the same limitation.

    For more information see paragraph 12 of the First Schedule to the Act or contact a SARS office..

  - Machinery, plant, implements, utensils or articles (see also under **Special allowances)** used by a farmer in farming operations or production of renewable energy is written off at the following rates:

    - First year : 50%
    - Second year : 30%
    - Third year : 20%

- Special measures in determining taxable income of farmers

  Since a farmer's income can fluctuate considerably from year to year, the Act contains provisions whereby the farmer may be taxed on the basis of his/her annual average taxable income from farming in the current and previous four tax years. Relief is also given to farmers whose income for any tax year includes any of the following income derived from –

  – the disposal of plantation and forest produce;

- the abnormal disposal of sugar cane as a consequence of damage to cane fields by fire;
- the disposal of livestock sold on account of drought; or
- excess profits as a result of farming land acquired by the State or certain juristic persons.

- **Mining**

  Mining enterprises are allowed to deduct capital expenditure incurred in full in the tax year the expense was incurred. Capital expenditure, for example, includes expenditure on shaft sinking and mining equipment. It also includes expenditure on development and general administration prior to the commencement of production or during a period of non-production.

  The capital expenditure incurred on a particular mine is restricted to the taxable income derived from that mine only. Any excess (unredeemed) capital expenditure is carried forward and is deemed to be capital expenditure incurred in the next tax year in respect of the mine to which the capital expenditure relates. Furthermore, the capital expenditure of a mine cannot be set-off against non-mining income such as interest, rental, other trading activities, etc.

  As stated above the capital expenditure of one mine may not be set-off against the taxable income of another mine. However, where a new mine commences mining operations after 14 March 1990 its excess (unredeemed) capital expenditure may also be deducted from the total taxable income derived from mining in respect of other mines operated by the taxpayer, as does not exceed 25% of such total taxable income derived from its other mines.

  The taxable income of a company derived from mining for gold is taxed in accordance with a special formula. A company which derives taxable income from other mining operations is taxed at the same rate (28%) that is applicable to other companies and also pays STC.

  As from the tax years commencing on or after 2 November 2006 special rules apply for tax purposes to oil and gas companies regarding their tax rates, STC, exploration/ production/capital expenditures, losses, etc. For more information see the Tenth Schedule to the Act. (See also under **Tax Rates** in this guide.)

  Taxpayers conducting mining operations are required to rehabilitate areas where mining has taken place. These taxpayers are, therefore, required to make provision for rehabilitation expenses, during the life of the mine. Amounts paid in cash to approved rehabilitation funds are allowed as a deduction for tax purposes.

- **Exemption of certified emission reductions**

  Section 12K of the Act provides that any amount received by or accrued to a person in respect of the disposal of any certified emission reductions derived by that person in the furtherance of a qualifying Clean Development Mechanism project carried on by that person will be exempt from tax. This exemption came into operation on 11 February 2009 and applies in respect of disposals on or after that date.

- **Deduction of home office expenditure**

  Expenses relating to your home office may be claimed as a deduction for tax purposes if a part of your home is occupied for purposes of your trade and that part is regularly and exclusively used and specifically equipped for purposes of your trade.

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

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

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

  If the above requirements are met you will be entitled to claim a portion of your total home expenses that relate to that part of your home used for business purposes, as a deduction against your income.

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

  A/B x Total costs

  where: A = The area in m² of the area specifically equipped and used regularly and exclusively for trade

  B = The total area in m² (including any outbuildings and the area used for trade) of your home

  Total costs = Total home expenses referred to above

  Example

  The total area (square metres) of your home office is 20 sq. metres in relation to the total area of your home which is 200 sq. metres. The percentage area of the home office in relation to the total area of your

home is, therefore, 10% (20/200 x 100). You will, therefore, be entitled to claim 10% of your total home expenses as a deduction for tax purposes.

- **Deductions in respect of expenditure and losses incurred prior to commencement of trade (pre-trade costs)**

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

  For more information refer to Interpretation Note No 51 available on the SARS website.

- **Ring fencing of assessed losses of certain trades**

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

  However, more often than not, private consumption, for example, a hobby, can be disguised as a trade so that individuals can set off these expenditures and losses against other income such as salary or business income.

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

  Further information is available in a guide entitled *Ring Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals* available on the SARS website.

- **Prohibited deductions**

  Prohibited deductions are listed in section 23 of the Act which include the following:

- The cost incurred in the maintenance of the taxpayer, his/her family or his/her establishment.
- Domestic or private expenses, including the rent of, repairs of, or expenses in connection with any premises not occupied for the purposes of trade or of any dwelling or house used for domestic purposes, except in respect of those parts as may be occupied for the purposes of trade.
- Income carried to a reserve fund or capitalised
- Moneys not expended for the purposes of trade
- Taxes, duties levies interest or penalties payable under Acts administered by the Commissioner and certain other Acts
- A payment for a bribe, fine or penalty will not be allowed as a deduction for income tax purposes if (a) the payment, agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 or (b) the payment is a fine charged or penalty imposed as a result of carrying out an unlawful activity in SA or in another country where the activity would be unlawful had it been carried out in SA.

- **Withholding tax on royalties**

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

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

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

  For more information refer to section 35 of the Act.

- **Withholding tax on foreign entertainers and sportspersons**

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

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

The 15% tax is a final tax, which means there will be no need to submit the usual return of income (income tax return).

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

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

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

For more information refer to sections 47A to 47K of the Act.

- **Withholding tax on payments to non-residents sellers on the sale of their immovable property in the RSA**

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

- 5% of the amount payable, if the non-resident seller is an individual
- 7,5% of the amount payable, if the non-resident seller is a company
- 10% of the amount payable, if the non-resident seller is a trust

The non-resident seller may apply for a directive that no amount or a reduced amount be withheld if certain conditions are met as set out in section 35A(2) of the Act.

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

For more information refer to the *EXTERNAL POLICY – WITHHOLDING AMOUNTS FROM PAYMENTS TO NON-RESIDENT SELLERS ON IMMOVABLE PROPERTY IN SOUTH AFRICA* which is available on the SARS website under All Publications/Capital Gains Tax.

- **Mineral and petroleum resources royalties**

  In the past minerals and petroleum resources were privately owned. As a result consideration for the extraction of minerals and resources was payable to the State only under certain circumstances such as where mining was conducted on the State-owned land.

  To bring South Africa in line with the prevailing international norms, the Mineral and Petroleum Resources Development Act, No 28 of 2002 (MPRDA) was promulgated. Section 3(2)(b) of the MPRDA states that the State as the custodian of the nation's Mineral and Petroleum Resources may, determine and levy, any fee or consideration payable.

  The enactment of the MPRRA means that the exploitation of all minerals and petroleum resources in South Africa will require the payment of a consideration in the form of a mineral and petroleum royalty payable to the State through SARS.

  Entities liable for registration must do so from 1 November 2009 for existing right holders or within sixty days after qualifying for registration for new right holders. The Application form (MPR1) is available on the SARS website under the path, Tax Types/Mineral and Petroleum Resource Royalties.

3.3 Residence basis of taxation (RBT)

All residents are subject to tax in the RSA on their worldwide income, that is, income derived from sources within and outside the RSA. Relief is granted in respect of foreign taxes paid on income derived from foreign sources. A persons who is not a "resident" as defined in the Act is taxable in the RSA on income they derive from South African sources.

Two tests apply to determine whether an individual is a resident or not. The **first test** is the ordinarily resident test (that is, normally the place to which a person will naturally and as a matter of course return to from his/her wanderings). The **second test** is the physical presence test in the RSA (that is based on the number of days during which a natural person is physically present in the RSA).
A company or other entity which is incorporated, established, formed or has its place of effective management in the RSA is regarded as being resident in the RSA.

Income earned by certain foreign companies controlled by residents (controlled foreign companies – CFCs) can under certain circumstances be taxed in the hands of the controlling residents.

Further information is obtainable from SARS offices or on the SARS website under Tax Brochures and Interpretation Notes.

3.4 Capital gains tax (CGT)

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

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

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

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

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

- the price the taxpayer originally paid to buy the asset;
- transfer costs, stamp duty, VAT paid and not claimed or refunded on the asset;
- cost of improvements to the asset;
- advertising costs to find a buyer or seller;
- the cost of having the asset valued in order to determine a capital gain or loss;
- costs directly relating to the buying or selling of the asset, for example fees paid to a surveyor, broker, agent or consultant for services rendered;
- cost of establishing, maintaining or defending a legal title or right in the asset;
- cost of moving the asset from one place to another upon acquisition or disposal; and
- cost of installing the asset, including the cost of foundations and supporting structures.

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

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

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

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

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

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

and

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

Note:

1. The symbols used in the above formulae are as follows:
   - R = Amount received or accrued from disposal of asset
   - P = Amount determined using the proceeds formula, or where the formula does not apply, the proceeds.
   - A = Expenditure incurred on or after 1 October 2001
   - B = Expenditure incurred before 1 October 2001
   - N = Number of years before valuation date
   - T = Number of years after valuation date

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

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

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

Example (where method (c) is used)

Zelda bought her holiday home on 1 June 1982 at a cost of R25 000. She sold it on 1 June 2009 for R850 000. Capital expenditure of R50 000 was incurred after 1 October 2001. The market value (MV) of the house on the valuation date was R550 000.

Solution

Step 1 – Apply proceeds formula

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

P = R x [B/ (A + B)]
= 850 000 x 25 000/(50 000 + 25 000)
= 283 333

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

TAB = B + [(P – B) x N/(N+T)]
= 25 000 + [(283 333 – 25 000) x 20/28]
= 25 000 + 184 524
= 209 524

Step 3 – Determine capital gain or loss

Capital gain = R850 000 – R209 524 – R50 000
= R590 476

Comment

Had Zelda done a valuation, her capital gain would be

Proceeds		R850 000
Less: Base cost		
Market value on 1 October 2001	R550 000	
Capital expense	R 50 000	(R600 000)
Capital gain		R250 000

Compare: Capital gain of R590 476 under the TAB method with R250 000 under the market value method

Note:

Where there is a loss, the formula will reduce the original cost by the portion of the loss relating to the period before the valuation date.

Where no records have been kept, methods (a) or (b) must be used.

Individuals are entitled to an annual exclusion. This is the amount of an individual's net annual capital gain or loss that is disregarded for CGT purposes. The annual exclusion is R17 500 but is increased to R120 000 where an individual dies during a tax year.

Persons who operate **small businesses** (for purposes of CGT, a small business means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest, does not exceed R5 million as sole proprietors, partners or owners of an interest (10% or more) in a company or close corporation are, subject to certain conditions, entitled to a concession which excludes capital gains of up to R750 000 on the disposal of active business assets when these persons attain the age of 55 years or the disposal is in consequence of ill-health, other infirmity, superannuation or death. For further information, see paragraph 57 of the Eighth Schedule to the Act.

CGT on disposal of foreign assets by residents

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

- Immovable property held outside the RSA

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

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

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

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

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

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

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

  Foreign currency notes and coins, traveller's cheques and bank accounts used for the regular payment of personal expenses (that is, during a holiday) are exempt from CGT. A person is also allowed one foreign bank account (a call or current account) free of CGT, provided that it is used for the regular (for example, monthly) payment of personal expenses.

  Foreign currency gains and losses on these assets became subject to CGT with effect from 1 March 2003. A foreign currency asset pool must be maintained for each foreign currency for the purpose of determining the base cost of a foreign currency asset. Additions to the pool are made at the average exchange rate in the year of acquisition. When an asset is disposed of its base cost will be the weighted average Rand cost of the pool. Proceeds are translated at the average exchange rate in the year of disposal.

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

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

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

Relief from double taxation

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

CGT rates

Individuals (and special trusts)

Tax year	Annual exclusion	Inclusion rate
2009/10	R17 500	25% of net capital gain

Trusts

Tax year	Inclusion rate
2009/10	50% of net capital gain

Companies

Tax year ending between	Inclusion rate
01/04/2009 to 31/03/2010	50% of net capital gain

More information on CGT is available on the SARS website or from any SARS office.

3.5 Donations Tax

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

Donations to certain persons (see section 56 of the Act) such as public benefit organisations (PBO) and recreational clubs are also exempt from the payment of donations tax.

The deduction of donations to approved bodies (such as a PBO) carrying on certain public benefit activities as set out in Part II of the Ninth Schedule to the Act, from taxable income is limited to 10% of taxable income (excluding retirement fund lump sum benefits) as determined before the deduction of donations and/or medical expenses.

For more information see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* available on the SARS website.

3.6 Value-added tax (VAT)

Value-added tax (VAT) is an indirect tax levied in terms of the VAT Act. VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor's enterprise. VAT is also levied on the importation of goods into the RSA. In certain instances, VAT is payable on the importation of services into the RSA.

- **Supplies**

  There are two main types of supplies, namely, taxable supplies and exempt supplies.

  - ***Taxable supplies***

A taxable supply is any supply of goods or services made by a vendor in the course or furtherance of an enterprise. A taxable supply is subject to VAT at either –

- the standard rate, (currently 14%); or
- the zero rate (0%)

Standard-rated supplies

Goods or services supplied by vendors in the RSA will generally be standard-rated unless a specific zero-rating or exemption applies. Imports of goods are also generally subject to VAT at the standard rate unless a specific exemption applies.

Zero-rated supplies

Section 11 of the VAT Act provides for certain supplies to be zero-rated. Examples of these supplies (goods and services) include:

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

Any vendor applying the zero rate must obtain and retain certain documentary proof as described by SARS in order to substantiate the vendor's entitlement to apply the zero rate. VAT incurred on any goods or services acquired in order to make zero-rated supplies may be claimed as input tax.

- ***Exempt supplies***

  Exempt supplies are supplies of goods or services on which VAT is not levied. Exempt supplies are not taxable supplies and do not form part of your taxable turnover for VAT purposes. VAT incurred on any goods or services acquired in order to make exempt supplies may not be claimed as input tax. Examples of exempt supplies include –

  - certain educational services;
  - public transport by road or rail;
  - the provision of medical aid;
  - interest on loans; and
  - life insurance and retirement fund benefits.

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

- **Registration**

  - ***Compulsory registration***

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

  - ***Voluntary registration***

    The VAT Act allows a person to register as a vendor, if that person carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R20 000 (but does not exceed R1 million) in the preceding 12 month period.

    There are also some special rules which apply in regard to voluntary registrations, for example –

    - welfare organisations are not required to meet the minimum threshold of R20 000;
    - in the case of vendors supplying commercial accommodation, the minimum voluntary registration threshold is R60 000 and not R20 000;
    - when a person intends carrying on an enterprise which is to be acquired as a going concern, the total value of taxable supplies made by the supplier of the going concern must have exceeded R20 000 in the previous 12 month period; and
    - where a person carries on an activity such as plantation farming or mining, where the minimum voluntary registration

threshold of R20 000 can only reasonably be expected to be exceeded after a period of time, that person may be permitted to register for VAT. In such cases, the applicant must provide sufficient supporting information to show that the business activities carried on will lead to taxable supplies exceeding the minimum threshold will be made in the foreseeable future.

It may be advantageous for a person to register voluntarily if supplies of goods or services are made mainly to other vendors so as to allow the purchasing vendor to claim the VAT incurred on the supply (that is, input tax). However, where the person supplies mainly services to non-vendors, (that is, people who are not registered for VAT), it will generally not be advantageous to voluntarily register for VAT.

Note: The current minimum threshold of R20 000 for voluntary registration will increase to R50 000 with effect from 1 March 2010.

Refusal of Registration

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

In addition, where only exempt supplies or other non-taxable supplies are made, that person will not be conducting an enterprise for VAT purposes and will therefore not be able to register. The Commissioner may also refuse an application for voluntary VAT registration if certain other requirements are not met. For example, the applicant must keep proper accounting records and must have a fixed place of business or abode in South Africa, as well as a South African bank account.

How to register

Application for registration as a vendor must be made, on form VAT101 (obtainable from your local SARS office or on the SARS website), within 21 days of becoming liable to register. The reference guide *AS-VAT-08 - Guide for Completion of VAT Registration Application Forms* will assist you in the completion of the VAT101 form.

- ***Turnover tax – an alternative to VAT registration***

As part of Government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, a turnover tax has been introduced to reduce the tax compliance burden on micro businesses with a turnover of up to R1 million per annum. The simplified tax system is essentially an alternative to the current income tax and VAT systems, meaning that a micro business still has the option to use the

conventional tax system. It is available to sole proprietors, partnerships, close corporations, companies and cooperatives with effect from 1 March 2009.

- **Accounting Basis**

  - ***Invoice Basis***

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

    Input tax may only be claimed when the vendor is in possession of a valid tax invoice, irrespective of whether payment has been made to the supplier or not. In instances where a vendor has claimed input tax and payment for that supply is not be made within 12 months after the expiry of the tax period within which the input tax was claimed, output tax must be accounted for on that portion of the payment that has not been made.

  - ***Payments Basis***

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

    - the vendor must be a public authority, municipality, or an association not for gain; or
    - the vendor must be a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons. In this case, it is also required that the total value of the vendor's taxable supplies in the past 12 months has not exceeded R2.5 million, nor be likely to exceed that amount in the next 12 month period.

    Refer to section 15 of the VAT Act for further information.

- **Tax periods**

  It is the predetermined period in which a vendor is required to lodge a VAT return. Generally speaking, there are five different types of tax periods.

  - Monthly: known as Category C and applies to vendors whose turnover is more than R30 million a year.

- Two monthly: known as Category A or B which is applicable to vendors whose turnover is less than R30 million a year. The applicable category is determined by the Commissioner.

- Four monthly: known as Category F and applies to vendors that qualify as small businesses with a turnover of less than R1,5 million for tax periods commencing on or after 1 March 2008.

- Six monthly: known as Category D and applies to small farmers with a turnover of less than R1,5 million for tax periods commencing on or after 1 March 2008.

- Twelve monthly: known as Category E and generally ends on the last day of the vendor's "year of assessment" as defined in section 1 of the Act. It only applies to vendors who are companies or trusts where the income consists solely of property rentals, management or administration fees charged to connected persons that are entitled to a full deduction of input tax on such fees.

The above-mentioned categories have various requirements which must be satisfied before a vendor will be allowed to fall within a certain category. These requirements are contained in section 27 of the VAT Act.

- **Calculation of VAT**

For ease of reference, the following terms are defined:

Input tax – VAT paid by the vendor on the purchase of goods or services may be claimed as input tax provided the goods or services are acquired for making taxable supplies and the vendor is in possession of a valid tax invoice. In certain other cases, the vendor may also claim input tax on the acquisition of second-hand goods which are acquired under a non-taxable supply for the purpose of making taxable supplies, provided certain documents and evidence are retained as proof of the transaction. This is called "notional" or "deemed" input tax.

The following are examples of purchases where input tax can generally not be claimed:
- Purchase/lease/hire of a "motor car" as defined in the VAT Act.
- Most expenses relating to entertainment.
- Membership fees for sporting and recreational clubs (for example, country clubs and golf clubs).

Output tax – The VAT charged at the standard rate by a vendor in respect of the taxable supply of goods or services. This will also include certain payments which give rise to deemed supplies, for example, short-

term insurance payments received for loss or damage to business assets which are applied for “enterprise” purposes.

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

Where the vendor does not receive the refund within 21 business days after the date on which SARS received the VAT201 return and any defects on the VAT201 (if any) have been rectified and additional information requested by SARS has been supplied, interest will be paid by SARS at the prescribed rate, subject to various conditions being met.

- **Small retailers VAT package (SRVP)**

  The SRVP is a simpler VAT option for small retailers and forms part of the drive to assist certain small businesses. It works on the basis of a presumptive industry mark-up of 40% which is an average rate used to simplify the calculation of VAT.

  To qualify for the SRVP you must –

  - sell standard-rated goods (i.e. goods taxed at 14% VAT) as well as zero-rated goods (i.e. goods taxed at 0%) from the same place of business;
  - make taxable supplies (excluding VAT) of less than R1 million in any 12 month period; and
  - not have adequate point of sale equipment, that is, an electronic scanning system; or a touch screen register; or a product-specific cash register which is able to separately record zero-rated and standard-rated sales.

  You can find more information in the *VAT416 - Guide for the Small Retailers VAT Package* which is available on the SARS website.

  As the turnover tax is also an initiative which intends to address the issues of small and micro businesses, it is envisaged that the SRVP will be discontinued in the near future.

- **Requirements of a valid tax invoice**

  A vendor must be in possession of a valid tax invoice in order to claim input tax. The following information must be reflected on a tax invoice:
  - The words “Tax Invoice” in a prominent place.
  - The name, address and VAT registration number of the supplier.
  - The name, address and VAT registration number of the recipient.

- An individual serialised number and the date upon which the tax invoice is issued.
- A full and proper description of the goods or services supplied (indicating, where applicable, that the goods are second-hand goods).
- The quantity or volume of the goods or services supplied.
- Either -
  - the value of the supply, the amount of tax charged and the consideration for the supply; or
  - where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax is charged.

Where the consideration for the supply does not exceed R3 000, an abridged tax invoice may be issued. An abridged tax invoice contains the same information as a tax invoice, except that the quantity or volume of the goods or services supplied and recipient's particulars need not appear on the document.

- **Submission of VAT returns**

  – ***Manual submission***

  Where a vendor manually submits a VAT201 return to SARS, it must be received by the 25th of the month following the end of the vendor's tax period. Where applicable, payment must accompany the VAT201 return.

  Where the 25th of the month falls over a weekend or on a public holiday, the VAT201 return and the payment must be submitted to the SARS office no later than the last business day before the 25th of the month.

  – ***Electronic submission***

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

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

Payment method	SARS must receive the return by (or last preceding business day before)	SARS must receive payment by (or last preceding business day before)

Cash	25th	25th
Cheque	25th	25th
Postal order	25th	25th
Counter Payment at FNB, ABSA, Nedbank or Standard Bank	25th	25th
Electronic Funds Transfers (EFT) via the internet	25th	25th
VAT201(a) debit order	25th	Last business day of the month
SARS eFiling of return only and payment not using SARS e-filing	Last business day of the month	25th
SARS eFiling of return and payment via SARS eFiling website	Last business day of the month	Last business day of the month

- **Duties of a vendor**

  Once registered as a vendor, you have certain responsibilities including the following:
  - Provide correct and accurate information to SARS
  - Submit returns and payments on time
  - Include VAT in your prices, advertisements and quotes
  - Keep accurate accounting records
  - Produce relevant documents when required by SARS
  - Notify SARS about any changes in your business, namely its address, trading name, partners / members / shareholders, bank details and tax periods
  - Issue tax invoices, debit and credit notes
  - Notify SARS of any changes of the details of the representative person

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

- **Exports**

  VAT is levied at the standard rate of 14% on the sale of goods supplied locally, but if the goods are exported from the RSA by the supplier, VAT is charged at the rate of 0%. Alternatively, if a person who is not a resident purchases goods whilst in the RSA, that person may apply for a refund of the VAT charged when the goods are physically removed from the RSA by that person when returning to his or her country of residence.

  The basic rule is that if –

  - **the seller controls the export**, (a direct export), the zero rate applies, and the requirements as stipulated in Interpretation Note No. 30 (Issue 2) – 15 March 2006 must be met; and
  - **the purchaser controls the export,** (an indirect export), the standard rate of 14% applies. The purchaser may, however, claim a refund when the goods are exported in terms of Part One of the Export

Incentive Scheme (the Scheme). Part Two of the Scheme offers the option to the South African vendor, at his own risk, to zero rate the supply of goods to be exported as an "indirect export" by sea or air.

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

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

3.7 Estate duty

Where the deceased was ordinarily resident in the RSA his/her estate will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies, payments from pension funds, etc). However, property situated outside the RSA will be excluded from his/her estate if such property was acquired by him/her before he/she became ordinarily resident in the RSA for the first time, or after he/she became ordinarily resident in the RSA and acquired such property by way of donation/inheritance from a person which was not ordinarily resident in the RSA at the date of such donation/inheritance. The exclusion also applies to property situated outside the RSA, acquired out of profits/proceeds of any such property acquired in the above circumstances.

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

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

Note:

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

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

Estate duty rates

From	Until	Specified amount	Rate
01/03/2009	To date	R3 500 000	20%

Example of estate duty calculation

Net value of estate	R3 600 000
Less: Deduction	R3 500 000
Dutiable amount	R 100 000
Estate duty payable on R100 000 at 20%	R 20 000

Interest at 6% per annum is charged on unpaid duty.

Example of estate duty calculation (death on or after 01/01/2010)

The whole estate was bequeath to the spouse

Net value of the estate of spouse	R7 100 000
Less: Deduction (2 x R3.5m)	R7 000 000
Dutiable amount	R 100 000

Estate duty payable on R100 000 at 20% R 20 000

Interest at 6% per annum is charged on unpaid duty.

For more information refer to the guide *Frequently Asked Questions Estate Duty* on the SARS website

3.8 Stamp duty

Stamp duty is an indirect tax charged on the execution of an instrument (a legal document). An instrument is subject to stamp duty if it is executed in the RSA or if relates to any property or matter in the RSA. The type of instrument determines the rate at which the duty is charged.
Stamp duty was abolished with effect from 1 April 2009 when the Stamp Duties Act, No. 77 of 1968 was repealed. The scrapping of the Act follows the reduction in the scope of stamp duties over the past few years so that prior to the abolition of the Stamp Duty Act on 1 April 2009, only property leases concluded for a period of more than five years required stamp duties to be paid. However, stamp duty is still applicable on lease agreements or other dutiable instruments if they were executed before 1 April 2009 and were not duly stamped at the time.

Adhesive revenue stamps will only be demonetorized from 1 November 2009 to allow time for other government departments which utilize these to introduce alternative measures. After that date they may not be used for any purpose.

Procedures for the claiming of refunds were published in Government Gazette No. 32059 on 27 March 2009.

3.9 Securities transfer tax (STT)

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

A “security” means any –
(a) share in a company;
(b) member’s interest in a close corporation; or
(c) any right or entitlement to receive any distribution from a company or close corporation.

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

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

- *Listed securities* - by the 14th day of the month following the month during which transfer of the securities occurred.

- *Unlisted securities* - within two months from the end of the month during which the transfer of the securities occurred.

Payment of STT must be made electronically through the SARS e-STT system.

Certain entities and types of transactions are exempt from STT. For example -

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

3.10 Transfer duty

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

Transfer duty must be paid within six (6) months of the date of acquisition of the property in terms of the applicable transaction. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% per annum for the period during which any amount of the transfer duty remains unpaid.

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

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

Transfer duty rates (From 1/03/2006 to date)

- *Natural Persons (individuals)*

Fair market value or consideration	Rate
• On the first R500 000	0%
• On the amount exceeding R500 000 but not R1 million	5%
• On the amount exceeding R1 million	8%

Note that the method of calculating the duty payable by natural persons requires

a three step approach, as follows:

Step 1:
The total consideration must be split between the applicable value ranges.

Step 2:
The duty for each range of values is calculated by multiplying the consideration in that range by the applicable rate.

Step 3:
The duty calculated in each value range is aggregated to determine the total duty payable.

- *Non-natural persons (e.g. juristic persons such as companies, CCs or trusts)*

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

A special formula is used for calculating transfer duty when an undivided share of a property (for example, a half or quarter share) is being transferred. The formula affects the calculation of transfer duty for natural persons only.

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

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

The documentation for completion and signature for a transfer pursuant to a sale usually consists of Forms TD 1 (for signature by the seller), and TD 2 (for signature by the purchaser). Where the transaction is subject to VAT, only form TD 5 is used. The forms can be downloaded electronically from the SARS website.

3.11 Importation of goods and payment of customs and excise duties and VAT

- **Introduction**

Goods arriving in the RSA may only enter through appointed places of entry. These goods must be declared to SARS within the prescribed time periods. The applicable customs duties, if any, must be paid when the goods are entered for home consumption, that is, for use in the Southern African Customs Union comprising of the RSA, Botswana, Lesotho, Namibia and Swaziland. The rate of duty is dependant on the tariff classification (description) of the goods and duty is usually payable on the value (customs value) or the volume or quantity of the goods imported. The customs duty may however be –

- deferred if the importer is a participant in the SARS deferment scheme;
- or rebated if the goods meet certain conditions; or
- suspended if the goods are entered for storage in a licensed warehouse.

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

In addition, VAT is also payable on goods imported and cleared for home consumption.

- **Registration as an importer**

  Any person who intends importing goods into the RSA must register with SARS as an importer. Importers who import non-commercial goods of which the value for each consignment is less than R20 000, provided that this is limited to three importations per calendar year, are excluded from the registration requirement.

- **Goods imported through appointed places of entry**

  Imported goods can only enter the RSA through appointed places of entry, which include –
  - Customs appointed airports;
  - Customs appointed land border posts;
  - Customs appointed harbours; and
  - the postal service.

- **Import declarations**

  The importer is required to complete the prescribed bill of entry declaration within the stipulated time period in respect of imported goods. Goods not declared within this time period will be detained and removed to a state warehouse. It is the responsibility of the importer to ensure that the declaration is fully and accurately completed and all supporting documents are produced. Declarations may either be submitted manually

or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Where errors are detected by SARS or false declarations are made, whether duties were payable or not, the Customs and Excise Act, 1964 provides for penalties, in addition to the forfeiture of the goods. In instances of fraud, offenders may be prosecuted. Goods subject to import control will only be released on the production of the relevant permit at the time of clearance or seized if their importation is prohibited.

- **Tariff classification**

  Tariff classification is the process whereby imported goods are categorized by virtue of what it is, or how it is made or what it is used for. According to this classification, the applicable rate of duty is levied.

- **Customs value**

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

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

- **Duties and levies**

  Customs duty is protective in nature and the purpose of the duty is to protect local industries. Excise duty, fuel levy and environmental levy are forms of indirect taxation used by government to primarily contribute to the *fiscus*, but also in certain instances to influence consumer behaviour. SARS also collects the Road Accident Fund levy.

  - **Customs duty**
    Customs duty is a consumption tax levied on imported goods and is usually calculated as a percentage on the value of the goods. However, goods such as certain meat and primary plastic products, certain textile products and certain firearms attract rates of duty that are calculated either as a percentage of the value of the goods, or as cents per unit, kilogram or metre, etc.

  - **Excise duties**
    Excise duty is a consumption tax levied on certain locally manufactured products. A counter-veiling customs duty, equal to the

rate of the excise duty, is levied on imported goods of the same class and kind in addition to any customs duty payable. Excise duty or its counter-veiling customs duty counterpart is fiscal in nature to raise revenue.

– **General fuel levy and Road Accident Fund levy**
  The general fuel levy and the Road Accident Fund levy are charged over and above the excise duty or counter-veiling customs duty on certain fuel products.

– **Environmental levy (see also par 3.14)**
  Environmental levy is currently levied on certain plastic carrier bags and flat bags.
– **Anti-dumping and countervailing duties on imported goods**
  Anti-dumping, countervailing and safeguard duties are trade remedies to protect local industries against goods being dumped in the RSA or on subsidised imported goods or in the case of disruptive competition respectively. These goods are the subject of trade and industry investigations into pricing and export incentives in the country of origin and the rate imposed will depend on the result of the investigations.

  The above duties are either levied on an *ad valorem* basis (percentage of the value of the goods) or as a specific duty (percentage per unit, kilogram, litre, etc).

- **VAT – Importation of goods**

  VAT is levied at the rate of 14% on the importation of goods into the RSA from export countries, including Botswana, Lesotho, Namibia and Swaziland (the BLNS countries). However, certain goods which are listed in Schedule 1 to the VAT Act are exempt from VAT on importation into the RSA.

  The value to be placed on the importation of goods into the RSA is deemed to be the value of the goods for customs duty purposes, plus any duty levied in terms of the Customs and Excise Act, 1964 in respect of the importation of those goods, plus a further 10% of the said customs value. The value of any goods which have their origin in any of the BLNS countries and which are imported into RSA from any of those countries is not increased by the factor of 10 % as is the case for imports from other countries.,

- **Deferment, suspension and rebate of duties**

  Participation in the SARS deferment scheme allows an importer to defer duty and VAT for a period up to 30 days after clearance of imported goods for home consumption. At the conclusion of the period of deferment the client is allowed a further seven days in order to settle the account. A requirement for participation in the deferment scheme is the furnishing of adequate security to cover the amount deferred.

The payment of duty and VAT is suspended for a period of up to two years when goods are entered into a licensed customs and excise storage warehouse for storage. Duty and VAT must be brought to account when the goods are cleared for home consumption.

Rebate provisions are provided for the suspension of customs duties on goods imported for inward processing (Industrial rebates) and outward processing (temporary admission for purposes of manufacture for export) subject to certain conditions. Value-added tax is suspended as well for goods temporary admitted for outward processing.

Relief (in the form of full or partial rebates) is also granted in respect of the use of excisable products in the manufacture of other non-excisable products and for the industrial use of these excisable products, that is, spirits used in the manufacture of medicines, paints, adhesives, etc. and petroleum products used for farming, fishing and forestry purposes.

3.12 Exportation of goods

- **Introduction**

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

- **Registration as an exporter**

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

- **Export declarations**

  Every exporter of any goods must, before such goods are exported from the RSA deliver to the Controller a bill of entry in the prescribed form. Declarations may either be manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Where errors are detected by SARS or false declarations are made, the Act provides for penalties in addition to forfeiture of the goods. In instances of fraud, offenders may be prosecuted.

3.13 Free Trade Agreements and preferential arrangements with other countries

A number of agreements have been concluded or are in the process of being negotiated with other countries and trading blocs, which provides for preferential market access into the RSA (imports) as well as for South African products into other markets (exports). These are:

- **Bi-lateral Agreements (Non-reciprocal)**

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

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

- **Preferential dispensation for goods entering the RSA (Non-reciprocal)**

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

- **Free or Preferential Trade Agreements (FTAs and PTAs) (Reciprocal)**

  - SACU – The Southern African Customs Union consists of the RSA, Botswana, Lesotho, Namibia and Swaziland. Its aim is to maintain the free interchange of goods between member countries. It provides for a common external tariff and a common excise tariff to this common customs area.
  - TDCA - Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the RSA, on the other part, which was implemented 1 January 2000.
  - SADC-Treaty of the Southern African Development Community, which was implemented on 1 September 2000.
  - A number of such agreements are in the process of being negotiated or being finalised which will come into operation during 2006. Notably will be the agreement with the European Free Trade Association (EFTA). Other agreements being negotiated are those with the United States of America, India, China and the Common Market of the Southern Cone (MERCOSUR).

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

  - AGOA
    Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from the Republic as contemplated in the African Growth and Opportunity Act

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

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

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

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

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

3.14 Environmental Levy

(a) Plastic bag levy

Since 1 June 2004 an environmental levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as “grocery bags”) at a rate of 3 cents per bag. Plastic bags used for immediate wrapping/packaging, refuse bags and refuse bin liners are excluded from paying this levy.

Apart from the payment of this specific Environmental Levy per quarterly excise account, VAT is also levied on these bags, calculated on a value which includes the amount of the levy.

Manufacturers of such bags must licence their premises as manufacturing warehouses with the local Controller of Customs and Excise and submit quarterly excise accounts to such Controller.

From 1 April 2009 the above levy is increased to 4 cents per bag.

(b) Incandescent (filament) light bulbs

The introduction of an environmental levy on incandescent light bulbs is to promote energy efficiency and to reduce electricity demand.

From 1 October 2009 an environmental levy of R3 per bulb (between 1 cent and 3 cents per watt) is levied on incandescent light bulbs.

(c) Electricity generated from non-renewable resources

From 1 July 2009 an environmental levy of 2 cents per kWh is levied. It should be noted that VAT is calculated on the final price of the electricity supplied, including the amount of the levy.

3.15 Air passenger departure tax

From 1 August 2005 to 30 September 2009:

(a) Passengers departing to Botswana, Lesotho, Namibia, and Swaziland, R60 per passenger.

(b) Passengers departing to other international destinations, R120 per passenger.

From 1 October 2009 to date:

(a) Passengers departing to Botswana, Lesotho, Namibia and Swaziland, R80 per passenger.

(b) Passengers departing to other international destinations, R150 per passenger.

3.16 Skills development levy (SDL)

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

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

For more information refer to the *Guidelines for Skills Development Levies SDL10* and *Quick Reference Guide on SDL* on the SARS website.

3.17 Unemployment insurance contributions

The Unemployment Insurance Fund insures employees against the loss of earnings due to termination of employment, illness and maternity leave. A

monthly contribution has to be made by the employer (1%) and the employee (1%) based on the earnings of the employee. The contributions are calculated as a percentage of the remuneration paid to the employee for services rendered. An employer who is registered for employees' tax or the Skills Development Levy is automatically registered for U.I. contributions. (The forms used are the same forms that are used for SDL and PAYE purposes). An employer that is not liable for the payment of employees' tax or SDL must register for U.I. purposes with the Unemployment Insurance Commissioner at the Department of Labour.

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

Employees who earn more than the annual, monthly or weekly maximum amounts indicated above are also liable to contribute to the UIF, but contributions payable are only calculated on R149 736 of their annual earnings, or on R12 478 of their monthly earnings, or on R2 879.53 of their weekly earnings.

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

Further information in this regard is available in the *Quick Reference Guide on Unemployment Insurance Fund* on the SARS website. The Department of Labour's website, www.uif.gov.za also has useful information in this regard.

4. YOUR BUSINESS AND OTHER AUTHORITIES

4.1 Introduction

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

- **Municipalities**

  Your local municipality will provide information with regard to the rules/regulations laid down in respect of businesses in their respective areas.

- **Unemployment Insurance Commissioner**

  Those employers who are not liable to register with SARS for PAYE and/or SDL purposes, but are liable for the payment of U.I. contributions must pay such contributions in respect of all its employees to the U.I. Commissioner at the Department of Labour. (See also under **Unemployment insurance contributions**)

- **South African Reserve Bank – Exchange Control Regulations**

  Exchange control regulations restricting the in and out flow of capital in South Africa, still exist. For example, investments into the RSA must be reported and prior approval may be required if loan capital is invested in the RSA.

  Residents of the RSA wishing to remit/invest/lend amounts abroad are as a general rule subject to exchange control restrictions and will need to approach their local commercial banks in this regard.

  Individuals who are over 18 years and in good standing with their tax affairs may invest a total of R2 million outside the RSA. This foreign investment allowance has been increased from R2 million to R4 million for residents with a valid bar-coded South African Identity Document, with effect from 28 October 2009. However, individuals are also able to invest, without restriction, in foreign companies listed on South African bond and security exchanges. In addition individuals will be allowed a single discretionary allowance of R500 000 per year for purposes of travel, donations, gifts and maintenance.

  Companies may use unlimited South African funds for new approved foreign direct investments (strictly true investments in factories or businesses and not for portfolio investments). Companies will also be allowed to retain foreign dividends offshore, and dividends repatriated to South Africa after 26 October 2004 may be transferred offshore again at any time for any purpose.

  Application to the South African Reserve Bank's Exchange Control Department is still required for monitoring purposes and for approval in terms of existing foreign direct investment criteria, including demonstrated benefit to the RSA. The South African Reserve Bank, however, reserves the right to stagger capital outflows relating to very large foreign investments so as to manage any potential impact on the foreign exchange market.

Further information is available on the Reserve Bank website http://www.reservebank.co.za/.

- **Department of Trade and Industry**

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

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

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

- **Environmental**

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

  - National Environmental Management Act, 1998 (management of pollution in general)
  - Atmospheric Pollution Prevention Act, 1965 (management of air pollution)
  - National Water Act, 1998 (management of water resources)
  - Mineral and Petroleum Resources Development Act, 2002 (rehabilitation of mining areas)
  - Hazardous Substances Act, 1973

- **Safety and Security**

  Below is a list of some legislation relating to safety, security and health issues, which will enable businesses to ensure that their work places are safe and secure environments to work in.

  - Explosives Act, No. 15 of 2003
  - National Nuclear Regulator Act, No. 47 of 1999
  - Nuclear Energy Act, No. 46 of 1999
  - Occupational Health and Safety Act, No. 85 of 1993
  - Tobacco Products Control Act, No. 83 of 1993

- **Labour**

  Various Acts, administered by the Department of Labour, govern the relationship between employers and employees. These Acts include the following:

  - Basic Conditions of Employment Act, 1997
  - Labour Relations Act, 1995
  - Employment Equity Act, 1998
  - Skills Development Act, 1998
  - Compensation for Occupational Injuries and Diseases Act,1993

    - Employers are required to make contributions calculated on a certain percentage of their employees' earnings to the Compensation Fund, from which compensation is paid for injuries/diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries/diseases (for more information visit the Department of Labour's website, www.labour.gov.za).

- **Promotion of Access to Information Act, No. 2 of 2000**

  In terms of this Act, government departments, public and private companies, including registered close corporations and businesses are required to compile and publish manuals of their records. The Department of Justice and Constitutional Development website www.doj.gov.za has more information in this regard. The SARS manual on the Promotion of Access to Information Act, 2000 is available on the SARS website under Brochures and Guides in three languages, namely English, Afrikaans and Xhosa.

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

  The purpose of the RICA in broad terms is to regulate/control the interception of electronic and other communications. Senior persons in businesses using some form of electronic communications should take note of the provisions of RIC.

- **Electronic Communications and Transactions Act, No. 25 of 2002 (ECTA)**

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

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

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

- **Financial Intelligence Centre Act, No. 38 of 2001 (FICA)**

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

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

  FICA imposes a duty on accountable institutions to establish and verify the identity of clients. Detailed records of clients and the transactions entered into by clients must be kept. Records obtained by an accountable institution must be kept for at least 5 years after a transaction was concluded and for a minimum of 5 years after the date which a business relationship was terminated and must be kept in electronic form.

  Financial Intelligence Centre – contacts:

  Private Bag X115
  PRETORIA
  0001
  Tel: +27 12 309 9200
  Fax: +27 12 315 0440

  Further information on the FICA and what is meant by accountable institutions can be found on the National Treasury website, namely, www.finance.gov.za / www.fic.gov.za.

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

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

reporting and retention obligations of financial advisors, and the declaration of 'undesirable practices".

- **Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 (PCCA Act)**

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

- **Companies Act, No. 61 of 1973**

  Section 173 of the Companies Act requires that private companies must submit annual returns with effect 1 May 2005 to CIPRO (Companies and Intellectual Property Registration Office). Annual returns refer to the information that companies must submit to CIPRO as confirmation that the company is still in business and that the information provided is still valid. For more information, visit www.cipro.gov.za. (This Act will be replaced by Act No 71 of 2008, which is scheduled to come into operation next year.)

- **Close Corporations Act, No. 69 of 1984 (CCA)**

  Close corporations (CCs) are governed by the CCA. CCs are simpler, less expensive corporate entities for single business persons or small groups of entrepreneurs. For income tax purposes a close corporation is classified as a company.

  A CC does not have to appoint an auditor, but only an "accounting officer" to draw up its financial statements. An accounting officer is a person who is a member of a recognised profession which as a condition for membership requires its members to have passed in accounting and related fields of study which would qualify such member to perform the duties of an accounting officer.

  The CCA also requires that a CC must keep accounting records to fairly represent the state of its affairs and business and must prepare annual financial statements. Furthermore, the CCA provides for penalties if certain requirements such as mentioned above are not carried out.

- **Consumer Affairs (Unfair Business Practices) Act, No. 71 of 1988**

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

- **National Small Enterprise Act, No. 102 of 1996**

  This Act provides for the establishment of an Advisory Body and the Ntsika Enterprise Promotion Agency; to provide guidelines for organs of state in order to promote small business in South Africa. The Ntsika Enterprise Promotion Agency is an agency of the Department of Trade and Industry and facilitates non-financial support and business development services to SMMEs through a broad range of intermediary organisations. For more information, refer to the Ntsika website, namely www.ntsika.org.za

- **Business Names Act, No. 27 of 1960**

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

- **Lotteries Act, No. 57 of 1997**

  Regulations under Lotteries Act provide the extent to which one may lawfully hold a lottery or other competition to promote the sale or use of any goods or services.

- **Mineral and Petroleum Resources Development Act, No. 28 of 2002**

  This Act affects the holders of "old order rights" (previous mining, prospecting or unused rights) held under the Minerals Act, 1991 (repealed by this Act) in the mining industry. In terms of this Act the right to prospect, mine, explore, produce, etc for minerals vests in the State. Applications for the new forms of prospecting, mining, exploration, production rights, etc ("new order rights") must be made directly to the Department of Minerals and Energy.

  This Act also facilitates the conversion of prospecting and mining rights currently held to the new forms of prospecting and mining rights contemplated by this Act.

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

  In terms of The Constitution of the RSA, No 108 of 1996 everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. The PAJA gives effect to this right.

- **Protected Disclosures Act, No. 26 of 2000**

This Act provides for procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees and for the protection of employees making that disclosure.

- **National Credit Act, No. 34 of 2005**

  The purposes of the Act, which came into effect on 1 June 2007, are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless credit granting of credit, assists people who are heavily in debt and regulates credit information. For more information refer to the Department of Trade and Industry website, namely, www.dti.gov.za.

- **Consumer Protection Act, No. 68 of 2008**

  The aim of this Act, which comes into operation on 24 October 2010, is to consolidate and integrate various existing consumer protection provisions that are currently contained in various other laws, for example, the Consumer Affairs Act, 1988 and the Trade Practices Act, No. 76 of 1976 to name a few, and to protect consumers against unfair market practices and unsafe products. For more information refer to the Department of Trade and Industry website, namely, www.dti.gov.za.

5. GENERAL

- **Record-keeping**

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

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

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

  The records should include –

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

- **Importance of accurate records**

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

– **Identify nature of receipt**

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

– **Prevent omission of deductible expenses**

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

– **Establish amounts paid out as salaries or wages**

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

– **Explain items reported on your income tax return**

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

Availability and retention of records

You are required to keep the books and records of your business in order to make them available at any time for examination by SARS. The retention period commences from the date of the last entry in the particular document, record or book. In terms of Regulations issued under the Companies Act and

the Close Corporation Act, records must be kept for 15 years. A list of the retention periods in terms of the Regulations is given below.

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

RETENTION PERIODS OF COMPANY RECORDS		
ITEM NO.	**RECORDS**	**RETENTION PERIOD**
1.	Certificate of incorporation	Indefinite
2.	Certificate of change of name (if any)	Indefinite
3.	Memorandum and articles of association	Indefinite
4.	Certificate to commence business (if any)	Indefinite
5.	Minute book, CM25 and CM26, as well as resolutions passed at general/ class meetings	Indefinite
6.	Proxy forms	3 years
7.	Proxy forms used at Court convened meetings	3 years
8.	Register of allotments – after a person ceased to be a member (section 111)	15 years
9.	Registration of members	15 years
10.	Index of members	15 years
11.	Registers of mortgages and debentures and fixed assets	15 years
12.	Register of directors' shareholdings	15 years
13.	Register of directors and certain officers	15 years
14.	Directors attendance register	15 years
15.	Branch register	15 years
16.	Annual financial statements including: • Annual accounts • Directors' report • Auditors' report	15 years
17.	Books of account recording information required by the Act	15 years
18.	Supporting schedules to books of account and ancillary books of account	15 years

Record keeping as required in terms of sections 73A (Income Tax purposes) and 73B (Capital Gains Tax purposes) of the Income Tax Act and section 55 of the Value-Added Tax Act

In terms of the above mentioned sections, a taxpayer is required to keep records such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists, registers, books of accounts, data in electronic form and records relating to the determination of capital gains or capital losses **for a period of five years** from the date on

which the return for that year of assessment was received by SARS. However, in cases where objections and appeals have been lodged against assessments, it would be advisable to keep all records and data relating to the assessments under objection/appeal until such time that the objection/appeal has been finalised, even if the timeframe for finalisation exceeds five years.

- **Appointment of Auditor/Accounting Officer**

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

- **Representative taxpayer**

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

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

- **Tax clearance certificates**

  Exchange controls have been relaxed since 1 July 1997, allowing South African residents to invest funds abroad, or to hold funds in foreign currencies at local banks. The current permissible amount is R2 million over one's lifetime.

  In terms of existing policy, South African individuals who are over 18 years and in good standing with their tax affairs may invest outside the RSA. Such investors are required to apply for a tax clearance certificate (TCC) from their local SARS office where they are registered for income tax purposes prior to any foreign investment being made.

  A TCC may only be issued if all tax returns have been submitted (unless extension was granted) and no taxes (that is, income tax, value-added tax and employees' tax) are outstanding and a statement of assets and liabilities

has been provided. A person who is not registered for income tax purposes will also be required to apply for such a certificate.

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

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

- **Non-compliance with legislation**

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

- **Interest, penalties and additional tax**

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

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

- **Dispute resolution**

  – **Objections**

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

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

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

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

– **Appeals**

If the objection is disallowed wholly or in part, the taxpayer may appeal to a specially constituted Tax Board or to the Tax Court for hearing appeals. The notice of appeal must be in writing and must be made within 30 days of the notice of the disallowance of the objection.

– **Rules regarding objections and appeals**

Rules regarding objections and appeals have been formulated in terms of section 107A of the Act for assessments issued, objections lodged or appeals noted. These rules are available on the SARS website at www.sars.gov.za/dr and are also set out in the *Guide on Tax Dispute Resolution*. Essentially, the rules set timeframes for both SARS and taxpayers' adherence in order that objections and appeals may be dealt with in an expeditious manner. It is important to note that objections need to be lodged at the address specified in the assessment in terms of these new rules. Additionally, these rules make provision for alternative dispute resolution.

– **ADR**

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

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

Where the dispute is not resolved, the taxpayer may continue on appeal to the Tax Board or the Tax Court. In essence, a taxpayer has three options available when disputing an assessment:

- Where the tax in question is does not exceed R500 000 the Tax Board is to be utilised.
- Where the tax in question is more than R500 000 the Tax Court is to be utilised.
- However, instead of going to the Tax Board or Tax Court, the ADR process can be used where the Commissioner decides it is appropriate.

ADR applies to taxes such as –

- Income tax (including PAYE and CGT)
- VAT
- Customs and Excise
- Transfer duty
- Stamp duty
- Skills development levies
- Unemployment insurance contributions
- Estate duty
- Donations tax

- **SARS Service Monitoring Office (SSMO)**

The SSMO is a special office operating independently of SARS offices. The SSMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS offices through the normal channels. The SSMO reports directly to the Commissioner and provided regular reports to the Minister of Finance.

How do you raise an issue?

If you believe you have an issue that you want to bring to the attention of the SSMO, three steps must be followed:

Step one

When you wish to raise an issue, it is usually best to do it in writing, by phone or fax, or by visiting your local SARS office. The relevant officer will try to resolve the issue as quickly as possible.

Step two

If all avenues of communication have failed to solve your issue at Step One, contact your local Call Centre and request the Call Centre Agent to assist. If the problem can not be solved, the Call Centre Agent will register your complaint and provide you with a service request number. Your complaint will then be escalated to a Consultant/Manager to assist you.

Step three

If you have received no resolution within a reasonable time at Step two, you can ask the SSMO to look into the issue.

Examples of issues SSMO will look into are:

- Delays in processing returns, decision making and the correction of administrative mistakes
- Failure to provide reasons for making an adjustment to a return
- Failure to respond to queries, objections and appeals
- The conduct and attitude of SARS staff

Examples of issues SSMO will not look into are:

Merits of disputes as to the amount of an assessment or schedules
- Complaints that have been referred to the Public Protector
- Matters that have been, or are, before the Courts
- Complaints about Government or SARS policy
- Changes to legislation

Contact details

The SSMO can be reached through the following channels:
Tel: 0860 12 12 16
Fax: 012 431 9695
Postal address: PO Box 1161, HATFIELD 0028
Email: ssmo@sars.gov.za

For more information visit the SARS website at www.sars.gov.za/ssmo

- **Conclusion**

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