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TAXTALK

South Africa's Leading Tax Journal

Issue 95 July/Aug 2022

INCOME TAX RETURN GUIDE 2022

Key steps in filing your return

sait

R25 • incl VAT

13hrs
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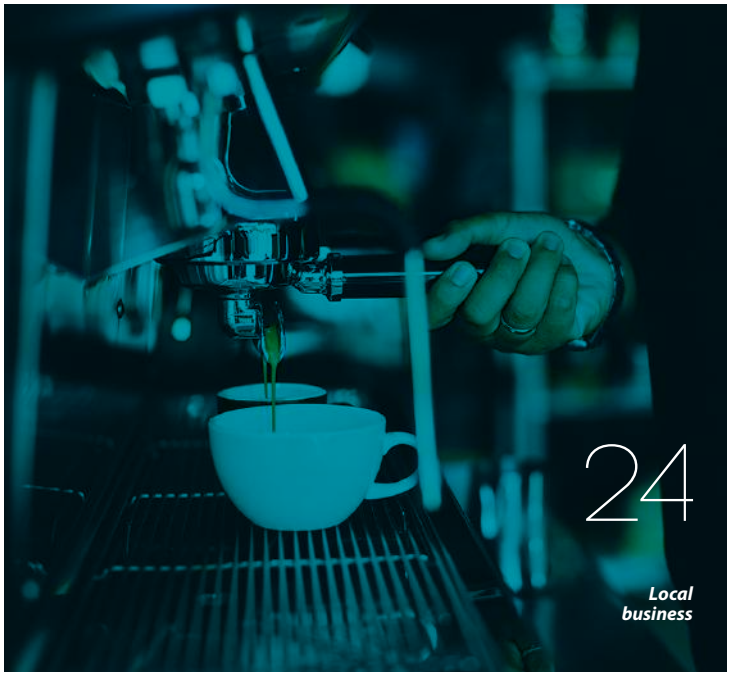

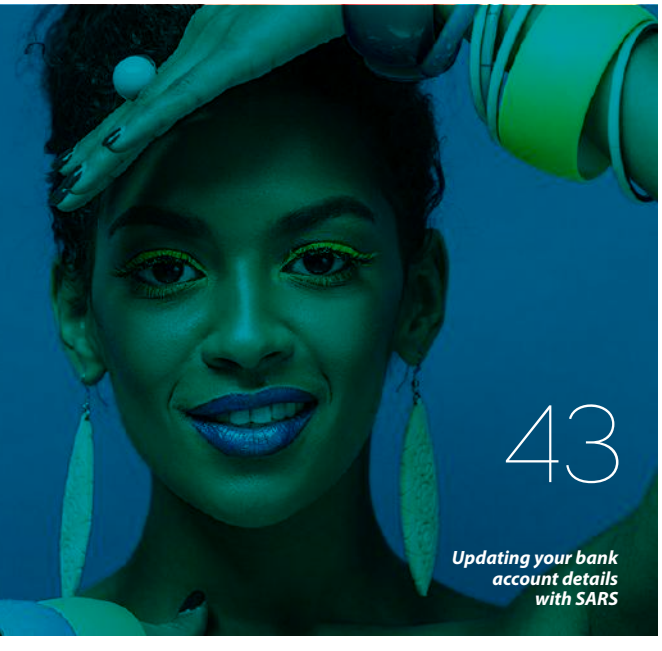

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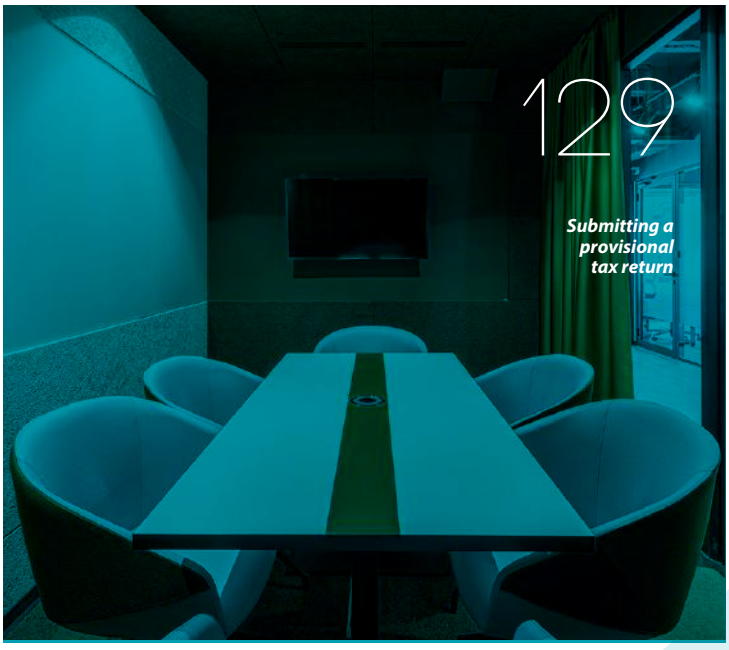

PROVISIONAL TAX RETURNS

POST-RETURN SARS MATTERS

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Menlyn Retail Park
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221 Garsfontein Road, Menlyn
Pretoria
South Africa
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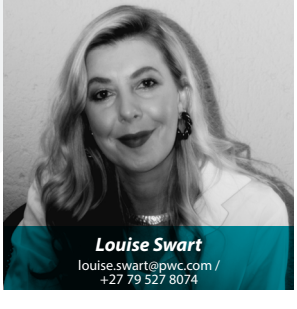

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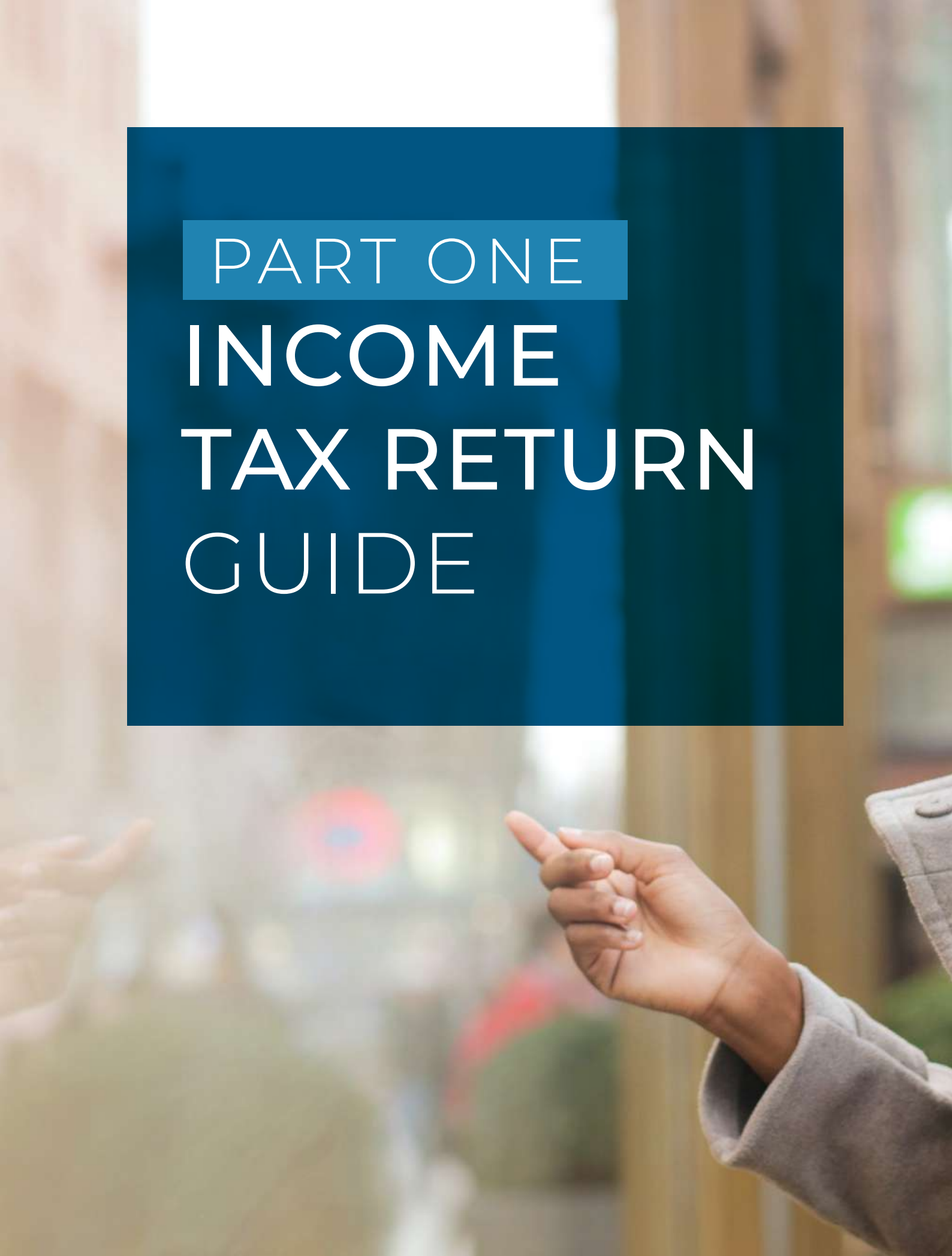

PART ONE

INCOME TAX RETURN GUIDE

SEGMENT OVERVIEW

NAVIGATING THE ITR12

NOTES FROM Keith Engel, SAIT CEO and the TaxTim Team

GETTING STARTED

About eFiling

SARS eFiling is the official online tax return submission portal which is directly linked to SARS' internal systems and allows you to update your personal details at the click of a button.

You can submit most tax forms to SARS via eFiling. It seems to be an all-time favourite for individual taxpayers who want to receive an immediate response after submitting their annual returns to SARS. The vast majority of individual taxpayers now submit via eFiling (either directly from home or with assistance from SARS branches).

How to register for eFiling

To submit a tax return via eFiling, you must first register as an individual on the eFiling registration page by using your tax number, name and surname, and ID number.

Once you have registered, SARS will indicate on the eFiling page whether they need you to upload any supporting documents or whether your profile is activated. The verification step is usually dealt with internally by SARS. Your profile should be active within 21 working days. If your profile has not been activated, it could be that you need to upload your FICA documents (i.e. copy of ID document and proof of address less than three months old), IRP5, IT3(c) or even your IT3(b), depending on where you missed an answer in the questionnaire during the registration process.

How to submit your tax return

Once your profile has been activated, go to sarsefiling.co.za and click on 'Login' on the top right-hand side of the page. You will be asked to enter your eFiling username and password, which you created when you registered your SARS eFiling profile. Once you are logged in to your eFiling profile, click on 'Returns' (located at the top) > 'Returns Issued' (located on the left) > 'Personal Income Tax (ITR12)'. Click on 'Request Return' (located on the right of the screen) and then select the tax year, which is 2022 Year of assessment, ended on 28 February 2022.

The form normally takes a minute or so to load. As soon as the form opens, you can go ahead and start completing your return. Once the form has loaded, it is important to refresh all the data to ensure that all third-party data is up to date. Then the taxpayer can proceed to open and complete the return. You can save the return at any time by clicking on the 'Save' button at the top of your form. When you are happy that the form has been correctly populated, you can click 'Submit'.

Recovery of password and username

If you forgot your eFiling password, SARS now has a simplified process using a one time pin (OTP) to help you reset your password.

12 TAXPAYER INFORMATION

Ensure that your personal details and banking details are 100% accurate. The legally binding declaration in this section of the form will confirm all your tax, income, and deductions for the year of assessment.

16 EMPLOYEE TAX CERTIFICATE INFORMATION

You must declare the income received for the year of assessment, including investments, interest, foreign income, capital gains, and rental income.

18 TAXPAYER INFORMATION: INCOME

SARS will prepopulate this section based on the information provided to SARS by your employer or pension fund via your IRP5/IT3(a) certificates.

24 LOCAL BUSINESS

This segment accounts for local business, trade and professional income information. It is applicable to sole proprietors and those who earn any professional, freelance, independent contractor, or business income including partners in a partnership.

28 TAXPAYER INFORMATION: DEDUCTIONS

Certain deductions need to be taken into account such as medical deductions, retirement contributions and travel claims.

*Note that the screenshots included in this section are for illustrative purposes only and may not be an exact representation of this year's ITR12 forms.

TAXPAYER INFORMATION

A

Personal details, contact and address details

It is important that you declare your correct and current details to SARS as they might need to contact you regarding your return or any refunds they might owe you. Ensure that you provide an active email address, a current cell phone number and your current residential and postal address. Incorrect details might delay any refunds, while SARS tries to track you down. Assessments sent to a wrong address without your knowledge may also give rise to unintended difficulties with SARS (including mooted penalties and interest for the perceived failure to properly respond).

Your marital status should be correctly stated on the return as this could have an impact on your declared investment or rental income, especially because income may have to be split for tax purposes between you and your spouse if you are married in community of property.

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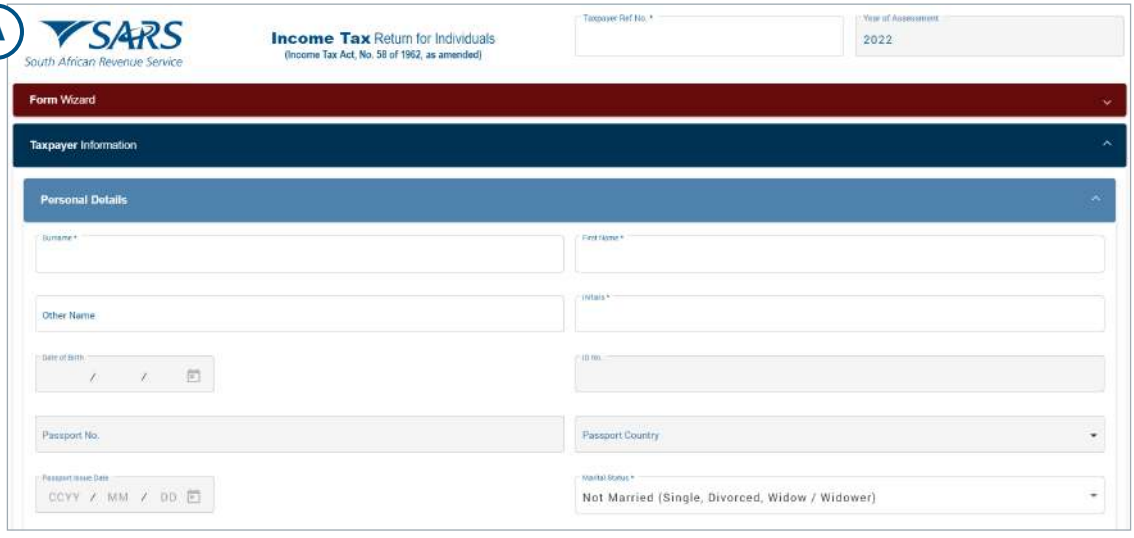
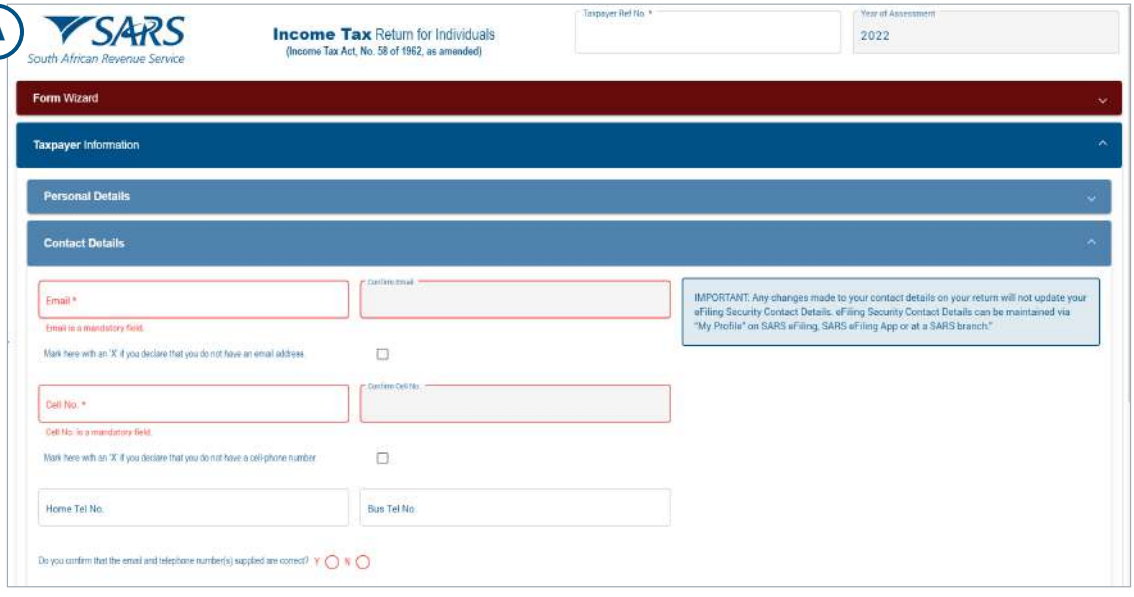
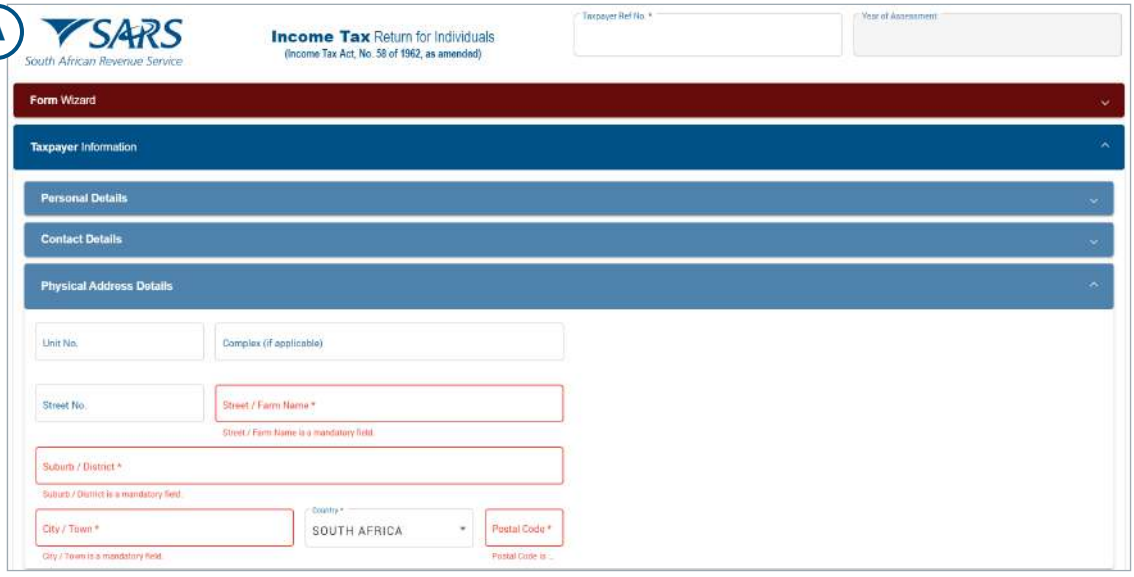

SARS
South African Revenue Service
Income Tax Return for Individuals
(Income Tax Act, No. 58 of 1962, as amended)
Taxpayer Ref No. *
Year of Assessment
2022
Form Wizard
Taxpayer Information
Personal Details
Surname *
First Name *
Other Name
Initials *
Date of Birth
ID No.
Passport No.
Passport Country
Passport Issue Date
CCYY / MM / DD
Marital Status *
Not Married (Single, Divorced, Widow / Widower)

A


SARS
South African Revenue Service
Income Tax Return for Individuals
(Income Tax Act, No. 58 of 1962, as amended)
Taxpayer Ref No. *
Year of Assessment
2022
Form Wizard
Taxpayer Information
Personal Details
Contact Details
Email *
Email is a mandatory field.
Confirm Email
IMPORTANT: Any changes made to your contact details on your return will not update your eFiling Security Contact Details. eFiling Security Contact Details can be maintained via "My Profile" on SARS eFiling, SARS eFiling App or at a SARS branch."
Mark here with an 'X' if you declare that you do not have an email address
Cell No. *
Cell No. is a mandatory field.
Confirm Cell No.
Mark here with an 'X' if you declare that you do not have a cell phone number
Home Tel No.
Bus Tel No.
Do you confirm that the email and telephone number(s) supplied are correct? Y N

A


SARS
South African Revenue Service
Income Tax Return for Individuals
(Income Tax Act, No. 58 of 1962, as amended)
Taxpayer Ref No. *
Year of Assessment
Form Wizard
Taxpayer Information
Personal Details
Contact Details
Physical Address Details
Unit No.
Complex (if applicable)
Street No.
Street / Farm Name *
Street / Farm Name is a mandatory field.
Suburb / District *
Suburb / District is a mandatory field.
City / Town *
Country *
SOUTH AFRICA
Postal Code *
City / Town is a mandatory field.
Postal Code is ...

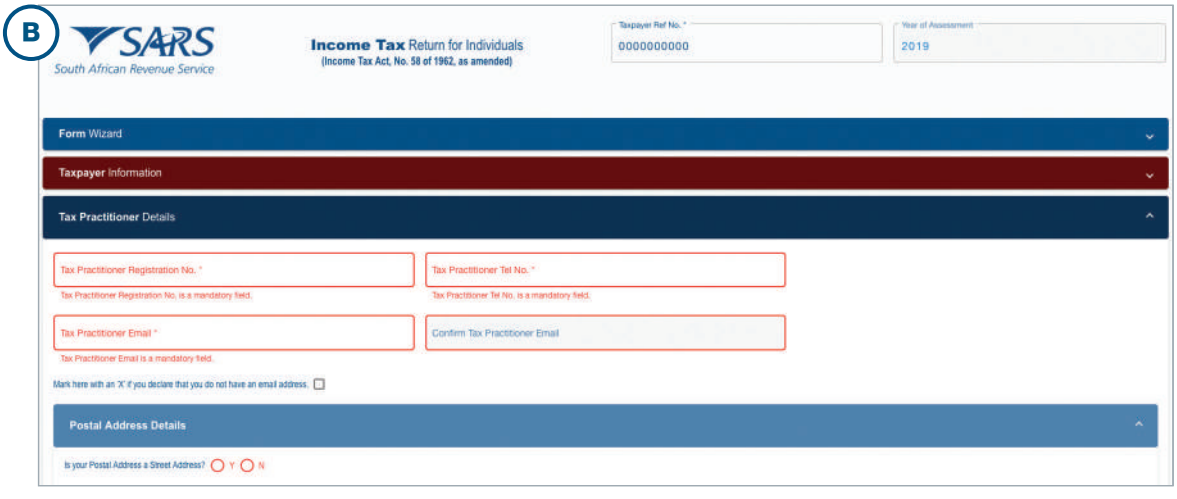
Tax practitioner details

If you employ someone to submit your return for you, make sure that the status of a practitioner be verified with the recognised controlling body (RCB) and SARS. You can check their registration status on the SARS website by entering their tax practitioner registration number; SARS should then confirm their full name and surname and that they are registered. Take note that the number should start with 'PR', followed by a seven digit number (PR-XXXXXXX).

You can also validate the membership of a tax practitioner who is registered with SAIT (an RCB) through https://www.thesait.org.za/page/verify-a-member.

Note that someone who is not a registered tax professional may provide you with advice or assistance regarding your tax return. However, they may not charge you money for doing so and they are not allowed to file on your behalf. Be very wary of tax preparers who automatically promise refunds, especially if they are expecting payment via those refunds. Many unscrupulous preparers falsely claim refunds without documentary evidence, leaving unsuspecting taxpayers in conflict with SARS. If a refund is received, a large part of it ends up in the hands of the preparer.

When a registered practitioner submits your return, ensure that the practitioner does not add their contact details in the section meant for your contact details. This could be problematic if SARS needs to get hold of you (with possible penalties and interest due to your perceived non-responsiveness).



C

Banking details

Outdated or incorrect banking details are prominent causes for both refund delays and taxpayers being asked to appear at a SARS branch to validate their credentials. Double check your banking details to ensure they are 100% accurate. Another useful tip is to ensure that your employer accurately captures your banking details on your IRP5.

SARS is only able to add your personal banking details on the system and not third-party account, credit card or investment account details. If you would like to change your banking details at any stage, you can book for a branch or virtual appointment on https://www.sars.gov.za/latest-news/sms-ebooking-call-back-functionatily/.

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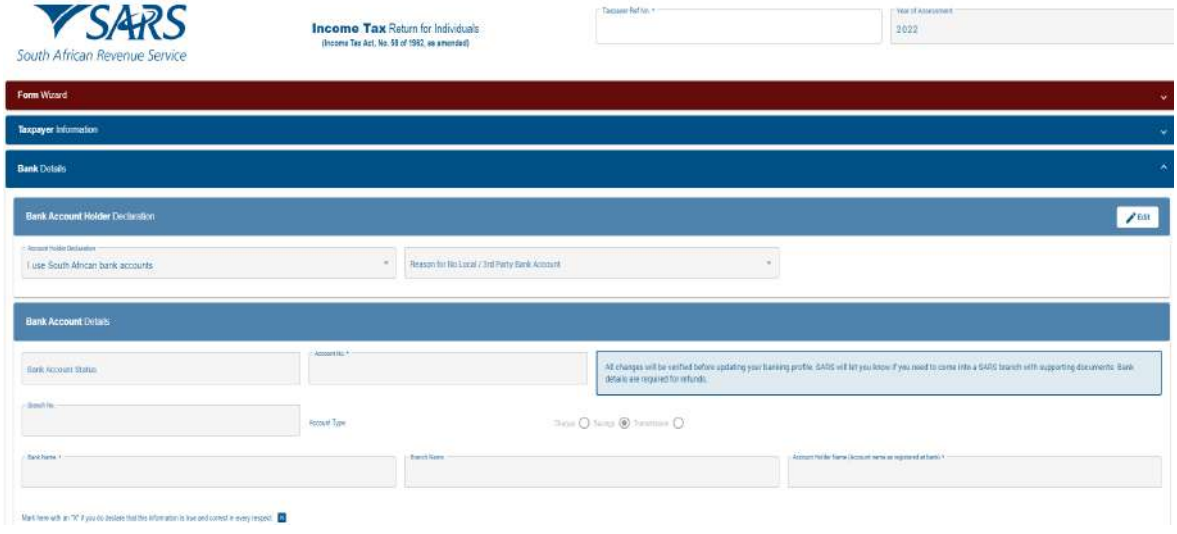


EMPLOYEE TAX CERTIFICATE INFORMATION

A

IRP5

The IRP5 section records the income you have earned from an employer or received from a pension fund during the last tax year (note that a tax year for an individual runs from 1 March to end of February each year). Your employer is required to declare to SARS the income they paid you, along with the amount of tax the employer deducted from your salary. The employer should also issue you with a hard copy of your IRP5 after the tax year has ended. If there are errors on the IRP5, such as an incorrect source code, your employer needs to correct the code and reissue the IRP5.

The IRP5 information on the ITR12 should be automatically populated by SARS. If this is not the case, the taxpayer needs to speak to their employer and find out if the reconciliation was done. SARS will not allow the taxpayer to make changes to the information on the IRP5.

Remember, you may have more than one IRP5 for a certain tax year, depending on the number of employers you have had. Each IRP5 will contain the period during which you worked for each employer, the tax year for which the income is applicable, and the amounts paid to you. Each type of amount will be indicated by a source code.

The following are some examples of the source codes applied:

- A salary is source code 3601
- A bonus is source code 3605
- A travel allowance is source code 3701
- Other allowance is source code 3713
- Commission is source code 3606
- A medical fringe benefit is source code 3810

The IRP5 should show the total income you received for the tax year and any deductions your employer set off against the tax calculation (before the employer deducted tax from your income).

Common deductions include the following:

- Employee pension contributions (source code 4001)
- Employee retirement annuity contributions (source code 4006)
- Employee provident fund contributions (source code 4003)
- Medical aid contributions (source code 4005)

To check if your employer actually declared (and paid over) the tax deducted from your salary during the year, the IRP5 on eFiling should reflect the PAYE source code 4102.

To check for which tax year the income on the IRP5 reflects, look at the top part of the document which will indicate the year of assessment. The IRP5 will also indicate when the employer completed the IRP5 and sent it off to SARS; this is called the transaction year.

Where the transaction year and the year of assessment differ, the income must be declared based on the 'assessment year'. This is usually the case for lump sum payments from funds or severance payouts.

B

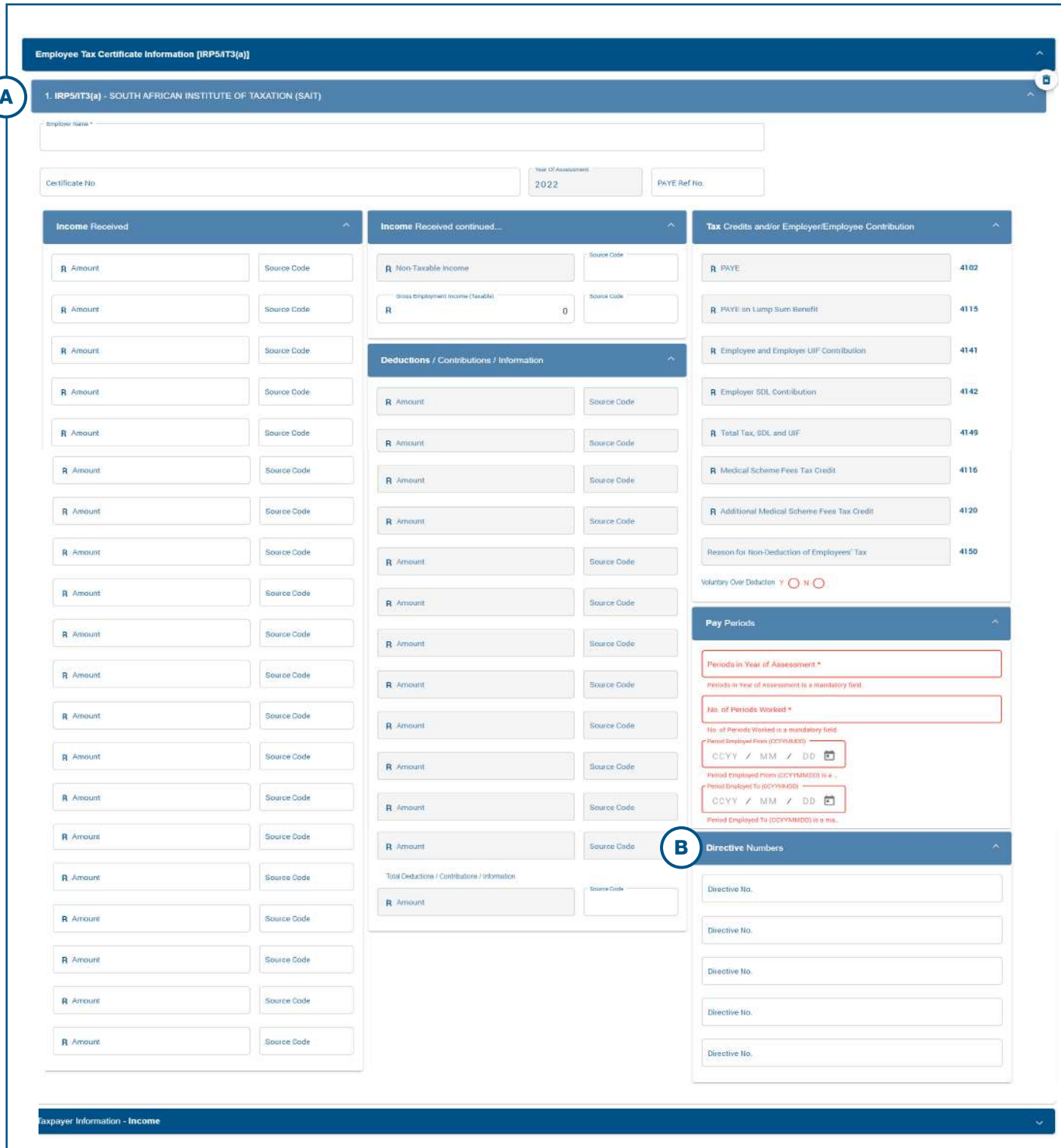
Directive numbers

If you received a lump sum from a retirement fund during the tax year, you should have a directive number which is reflected at the bottom of your IRP5. If you are a commission earner, you may also have a directive number reflected at the bottom of your IRP5.

A tax directive is simply an official instruction from SARS to your fund manager or employer to deduct tax at a set rate determined by SARS for your individual case.

Other common instances where you may have received a tax directive:

- Severance/retrenchment payout
- Employee share scheme payout
- If you have applied to SARS for a fixed amount directive due to 'financial hardship'


Employee Tax Certificate Information [IRP5/IT3(a)]
A
1. IRP5/IT3(a) - SOUTH AFRICAN INSTITUTE OF TAXATION (SAIT)
Employer Name *
Certificate No
Year Of Assessment
2022
PAYE Ref No.
Income Received
R Amount
Source Code
Income Received continued...
R Non-Taxable Income
Source Code
Gross Employment Income (Taxable)
R 0
Source Code
Deductions / Contributions / Information
R Amount
Source Code
Total Deductions / Contributions / Information
R Amount
Source Code
Tax Credits and/or Employer/Employee Contribution
R PAYE
4102
R PAYE on Lump Sum Benefit
4115
R Employee and Employer UIF Contribution
4141
R Employer SDL Contribution
4142
R Total Tax, SDL and UIF
4149
R Medical Scheme Fees Tax Credit
4116
R Additional Medical Scheme Fees Tax Credit
4120
Reason for Non-Deduction of Employees' Tax
4150
Voluntary Over Deduction Y N
Pay Periods
Periods in Year of Assessment *
Periods in Year of Assessment is a mandatory field
No. of Periods Worked *
No. of Periods Worked is a mandatory field
Period Employed From (CCYYMMDD)
CCYY / MM / DD
Period Employed To (CCYYMMDD)
CCYY / MM / DD
B
Directive Numbers
Directive No.
Directive No.
Directive No.
Directive No.
Directive No.
Taxpayer Information - Income

TAXPAYER INFORMATION: INCOME

A **Investment income**

This portion of the return is mainly directed toward local interest, foreign interest and foreign dividends, as well as other forms of foreign income. Given that this guide is directed toward individuals with little or no foreign investment activities, this guide only covers the first three.

B **Local interest**

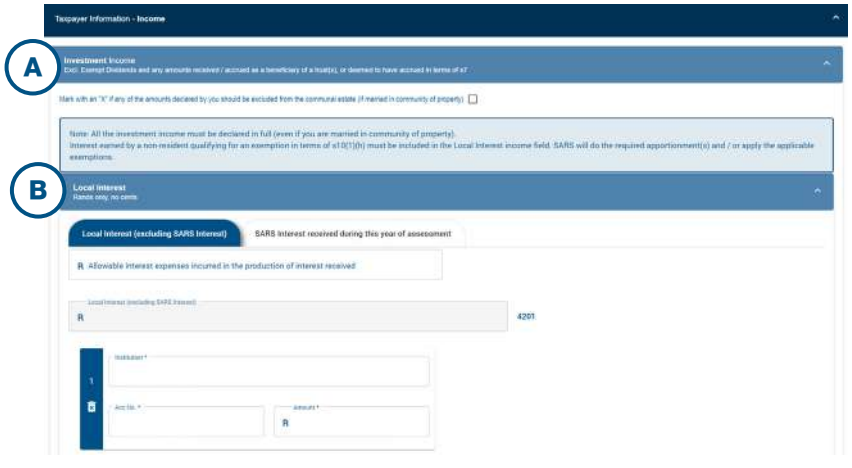
This section includes interest from a bank account or a local investment such as a unit trust, as well as interest earned from SARS. The bank or investment interest to be captured will be on your IT3(b) tax certificate which is issued to you by the bank or the applicable financial institution. If you have bank accounts and investments at more than one financial institution, you should receive an IT3(b) from each institution.

SARS will prepopulate all the IT3b's received from the financial institutions. The first 30 certificates will be populated, all other certificates must be manually captured. However, it is unlikely that the ordinary individual taxpayer will have interest from over 30 institutions.

If you have received interest from SARS due to overpaying tax, the amount should reflect on your Statement of Account which you can request from eFiling.

In terms of your tax return ending at the close of February 2022, there is a R23 800 annual local interest exemption for those under 65 years of age and a R34 500 exemption for those 65 years of age and older.

All interest must be included on the return even if exempt (SARS will automatically exclude this amount on the system). Moreover, even if you earn less than the exempt amount, you still need to report all the interest that you earned on the ITR12 as reflected on the IT3(b). To repeat, SARS will fully apply the exemption during the assessment.



C Foreign interest

Foreign interest

This is the interest received from a foreign investment. The interest must be converted to Rands using the average exchange rate for the year, and be included in the taxable income. SARS' average exchange rate tables can be found on the SARS website. This amount is not subject to any annual interest exemption. Refer to the IT3(b) form from your bank for any interest with the source code 4218.

Foreign tax credits on foreign interest

This is the foreign tax withheld from interest received on a foreign investment. Refer to the IT3(b) form from your bank for foreign tax credits with the source code 4113. These credits ensure that the same interest is not taxed by SARS if already taxed by another country.

D Foreign dividends

Gross foreign dividends

This includes the dividends received on a foreign investment. The amount must be converted to Rands and included in your taxable income. Refer to the IT3(b) form from your bank for foreign dividend income with the source code 4216.

Foreign tax credits on such foreign dividends

This is the foreign tax withheld from foreign dividends received. Refer to the IT3(b) form from your bank for foreign tax credits with the source code 4112. These credits ensure that the same dividend is not taxed by SARS if already taxed by another country.

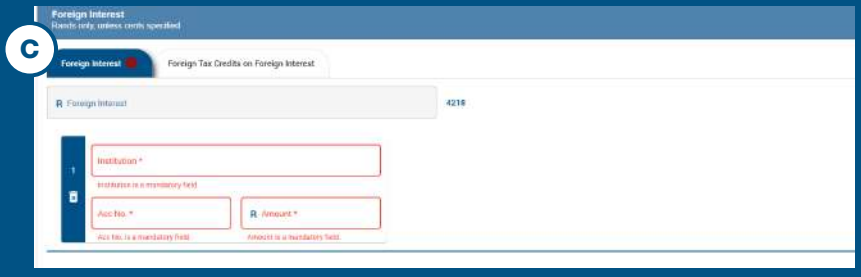
E Distribution from a real estate investment trust (REIT)

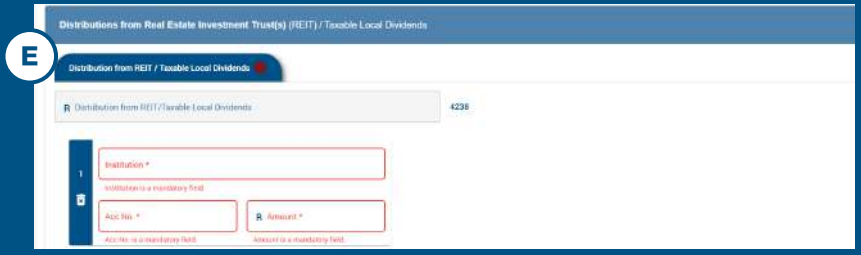
Distributions from REITs are included in your taxable income. Refer to the IT3(b) form from your bank for amounts with the source code 4238. REITs typically make annual distributions to their unit holders.

NOTE TO TAXPAYERS MARRIED IN COMMUNITY OF PROPERTY

An important point of confusion arises in the case of investment income when couples are married in community of property. Should you be married in community of property, the amounts received by you and your spouse in respect of local interest, foreign interest and foreign dividends must be added together and entered as a single amount. For example, if you earned R50 000 from investment income in the financial year and your spouse earned R70 000, you need to enter the joint total of R120 000 on your return.

The total amount must be completed on both spouses' ITR12s, as the SARS system will programmatically split the amount. If any investment income is specifically excluded from the communal estate, this needs to be indicated with an "X" in the applicable box.





F

Capital gain / loss

If you sell or dispose of assets (e.g. land and other immovable property as well as shares, unit trusts, REITs, and cryptocurrency), the sale or other disposal will trigger capital gains tax (CGT) unless you regularly dispose of assets of the same nature. A capital gain arises when you dispose of an asset for proceeds that exceed its base cost. A capital loss arises when you dispose of an asset for proceeds that are less than the base cost. Stated more loosely, you have a capital gain when you receive more revenue from the sale than the asset's cost (and a loss when the cost of the asset exceeds revenue from the sale).

Example: Thabo purchases vacant land in 2014 for a total cost of R450 000 and sells the land in June 2022 for R800 000 after deciding not to build on the land. The capital gain in this case is R350 000 (R800 000 – R450 000). If he had sold the land for R200 000, he would report a capital loss of R250 000 (R200 000 – R450 000).

NOTE ABOUT CAPITAL GAIN PAPERWORK

Examples of supporting documents, which SARS may ask to see, include a deed of sale as well as invoices from lawyers, building contractors, estate agents, and surveyors.

The proceeds, costs, and capital gain on investments (such as shares and unit trusts) will be reflected on an IT3(c) certificate from the investment house.

The CGT calculation takes into account all direct and indirect proceeds from the disposal. The sales proceeds would be reduced by estate agent's commission and other selling costs. The cost aspect of the calculation takes into account all acquisition costs associated with the property as well as any improvements. Note that repairs and maintenance expenditure is not included in the base cost as it is not a capital expenditure.

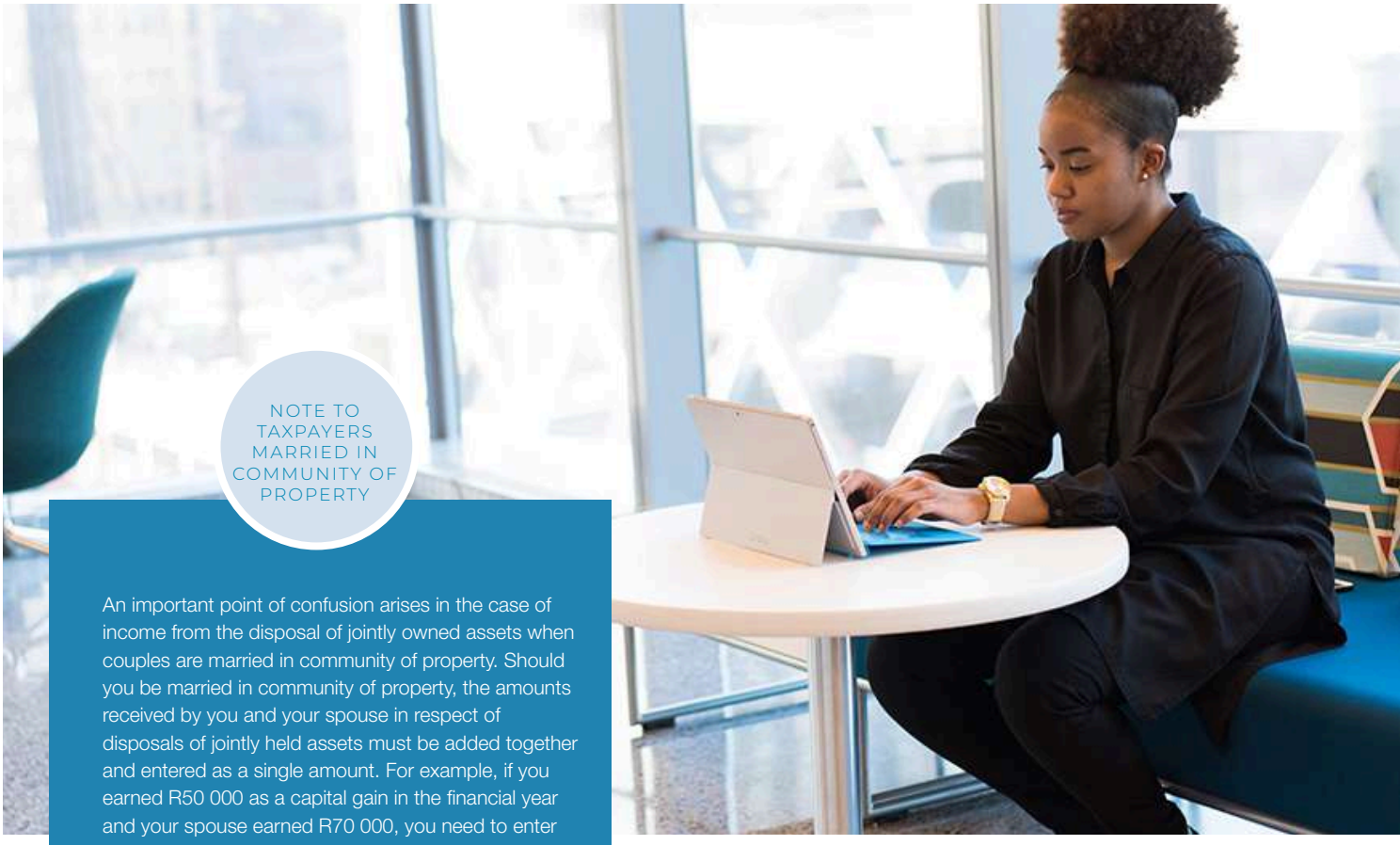
CGT is calculated separately but is, in fact, part of the overall income tax system. The only difference is how capital gains and losses are taken into account. All net capital gains and losses are added up. If the result is a net gain for an individual, 40% of the gain is added to the overall taxable income. If the result is a net capital loss, the capital loss does not reduce taxable income but is carried forward and set off against capital gains arising in future years.

Lastly, proceeds from the sale of personal use assets, such as a car or jewellery, are exempt from capital gains tax and do not need to be declared. Individual taxpayers are entitled to an annual R40 000 capital gains exclusion. This means that if your capital gains for the tax year are R40 000 or less you will not pay capital gains tax. The gains should, however, still be declared and SARS should automatically take the exclusion into account.

Sale of a primary residence

Special rules apply when you sell your home (i.e. primary residence). A gain (or loss) on the home is disregarded (exempt). However, this relief applies only for net gains or losses up to R2 million (any excess gain or loss remains in the tax system).

If you jointly own a property with your spouse or other party, you need to indicate this with an 'X' in the applicable box. The full proceeds and cost must still be declared. SARS will then split the proceeds and cost and allocate 50% of the primary residence exclusion to the gain on assessment.



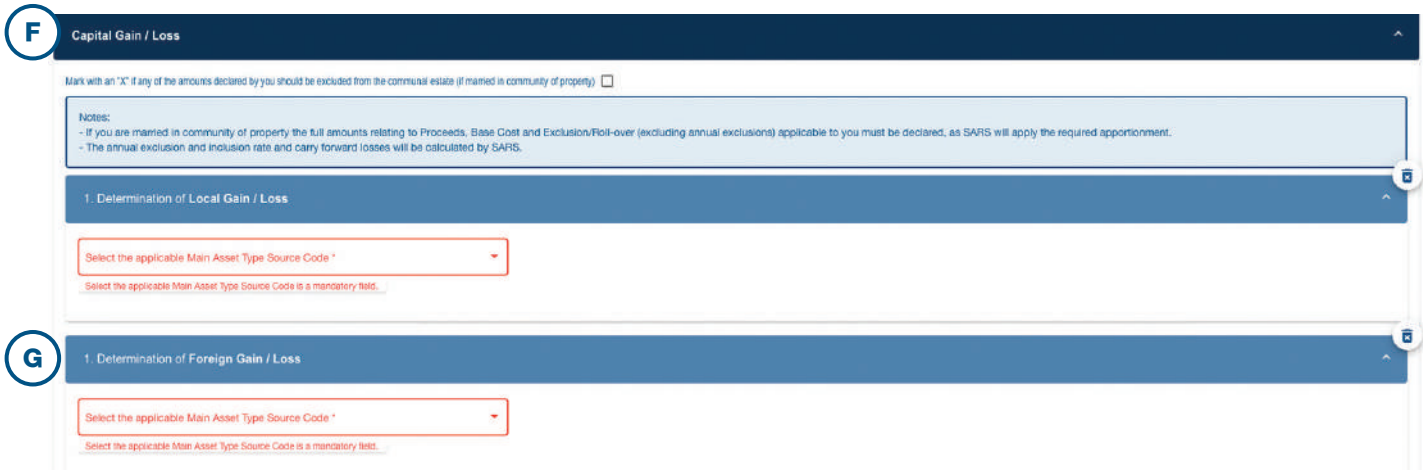
NOTE TO TAXPAYERS MARRIED IN COMMUNITY OF PROPERTY

An important point of confusion arises in the case of income from the disposal of jointly owned assets when couples are married in community of property. Should you be married in community of property, the amounts received by you and your spouse in respect of disposals of jointly held assets must be added together and entered as a single amount. For example, if you earned R50 000 as a capital gain in the financial year and your spouse earned R70 000, you need to enter the joint total of R120 000 on your return.

The total amount must be completed on both spouses' ITR12s, as the SARS system will programmatically split the amount. If any asset is specifically excluded from the communal estate, this needs to be indicated with an 'X' in the applicable box.

G Determination of foreign gain / loss

This section applies to the sale of foreign properties and investments that the taxpayer may hold offshore. The proceeds and costs related to the disposal of these assets need to be converted to Rands and disclosed. The same rules will apply here as those that pertain to the disposal of local assets.



H Local rental income

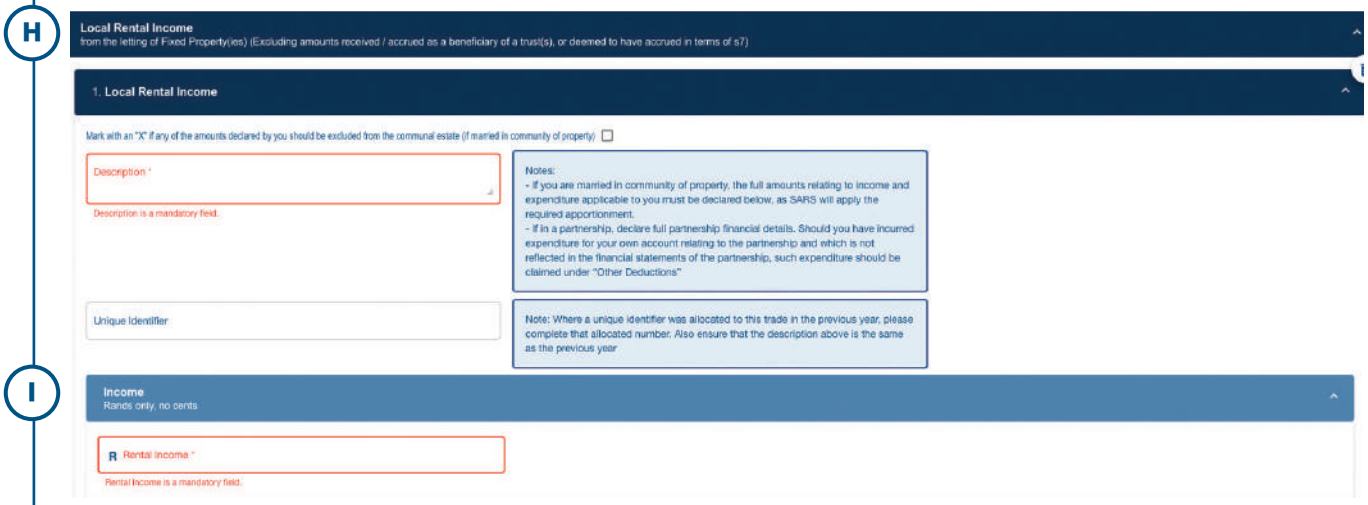
This part of the return deals solely with net rental yields, typically from the letting of residential property (e.g. rental income earned via renting out an investment property). The sale of rental property typically gives rise to capital gain / loss covered in the prior part of the return.

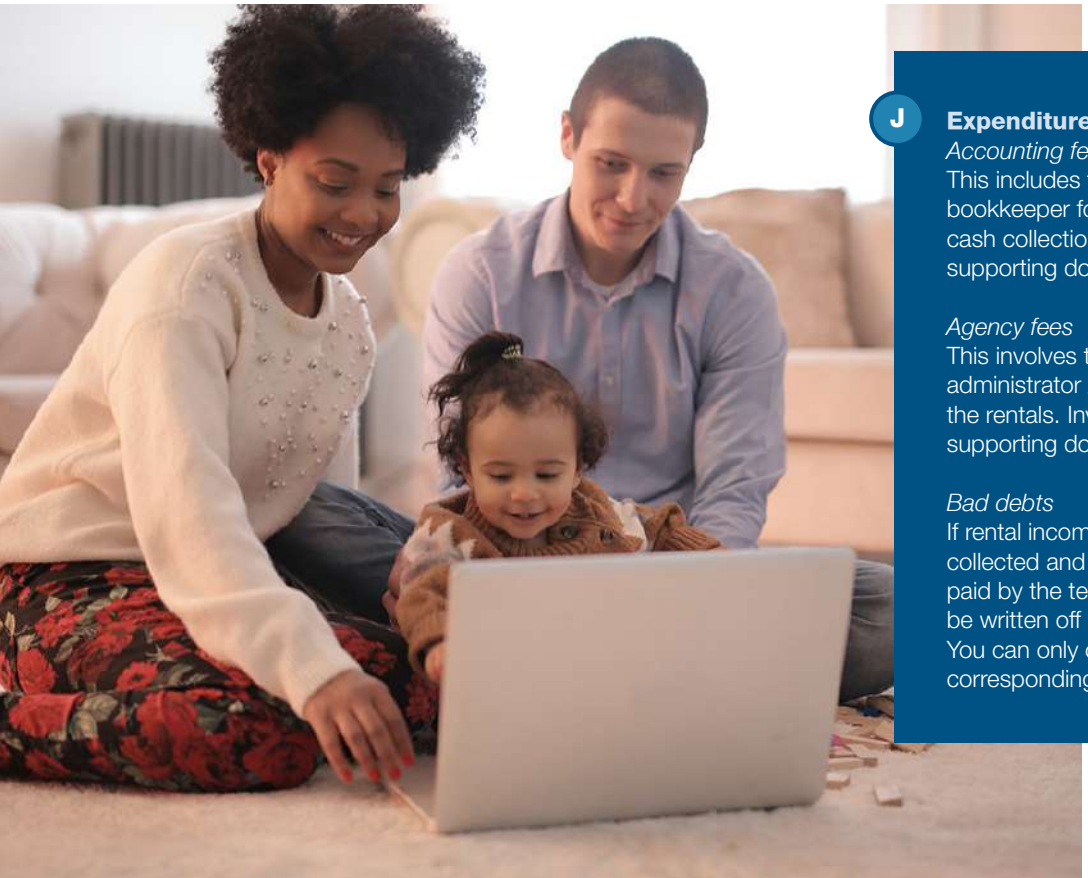
Description / Unique Identifier

The requested unique identifier is a number allocated by SARS. Refer to the prior year's ITA34 assessment for your reference number. If this is the first year of declaring this income, then you can leave the unique identifier field blank.

I Income

This segment includes all rental received or accrued (i.e. due even if unpaid) arising in the tax year at issue.





J Expenditure

Accounting fees

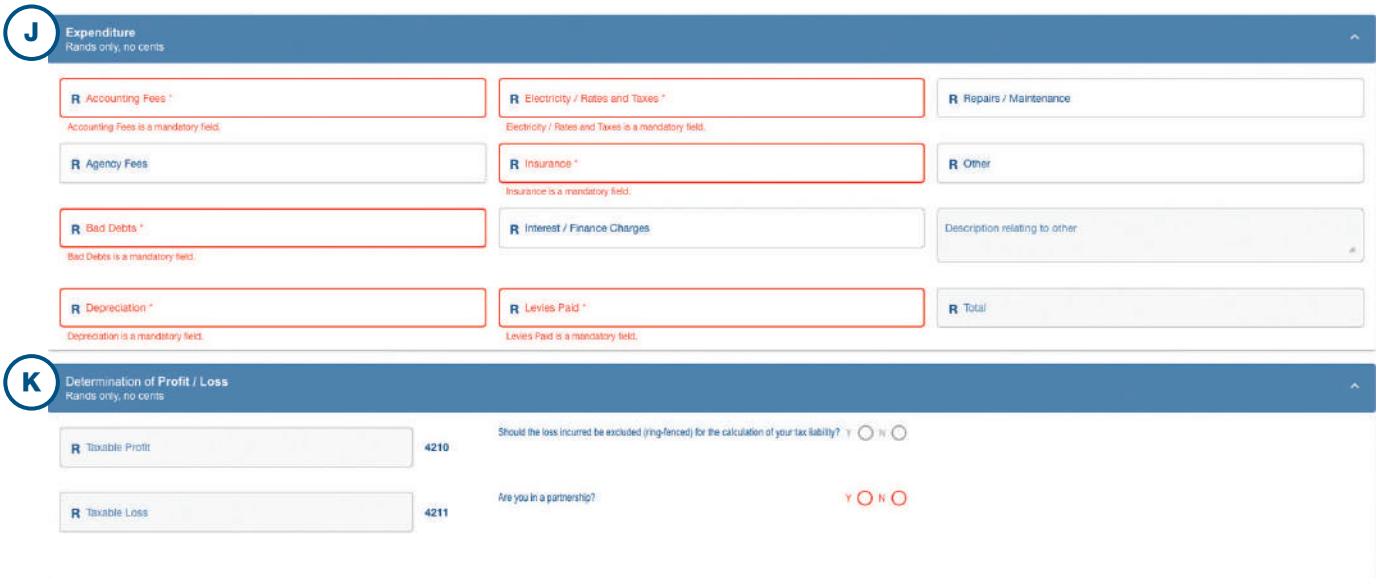
This includes the fees paid to an accountant or bookkeeper for services such as invoicing and cash collection. Invoices may be required as supporting documentation.

Agency fees

This involves the fees paid to a rental administrator / estate agent who manages the rentals. Invoices may be required as supporting documentation.

Bad debts

If rental income (accrued) has not been collected and it is very unlikely that it will be paid by the tenant, the rental income can be written off as bad debt (i.e. an expense). You can only capture an amount here if the corresponding rental income is also captured.



Emails or lawyers' letters between the taxpayer and the debtor may be required as supporting documentation to prove the amount is uncollectable.

Depreciation
Depreciation involves wear and tear on the rental property furniture. Note, the building itself generally does not qualify for a wear and tear allowance.

Insurance
The only insurance that is claimable is homeowner's insurance and insurance on the mortgage bond. Insurance on household contents is not claimable. The invoice or contract reflecting the premium paid may be required as supporting documentation should SARS so request.

Interest / finance charges
Only the interest or finance portion of the bond payment is deductible (not the entire monthly instalment, which includes repayment of loan capital). The mortgage bond statement from the bank may be required as supporting documentation.

Repairs / maintenance
The expenditure allowed here is the money spent to restore something that was broken to its previous condition. Be careful not to take into account amounts spent on improvements as this is a capital cost and, therefore, would not be deductible for tax. Unlike repairs and maintenance, improvements increase the cost of the asset when disposing of the property.

Given this distinction, it is important to determine the nature of the expense. You can consult a tax practitioner if you are unsure.

Other
Some examples of other expenses include software expenses, marketing costs, and low value assets.

Determination of profit / loss K
The overall profit/loss is automatically calculated and populated in the ITR12. If the rental property has generated a loss for the year, SARS will either carry it forward (i.e. ring-fence it and offset it against rental profits in future years) or alternatively they may allow the loss to be set off against other income earned in the current year by the taxpayer. SARS will apply the complicated ring-fencing provisions of the Income Tax Act when making this decision (Section 20A of the Income Tax Act).

LOCAL BUSINESS

A **Local business**

This section typically applies to individuals who run their own businesses (sole proprietorship) or who do freelancing or contract work on the side. These forms of income are often generated in addition to earning a salary (such as teaching). Examples may include sole proprietors, freelancers, and independent contractors.

Description / Unique Identifier

The unique identifier is a number allocated by SARS. Refer to the prior year's ITA34 (assessment) for the reference number, if applicable.

B **Income**

Income reflected on an IRP5/IT3(a) regarded as trading income

This is intended for independent contractors with source code 3616 on one or more IRP5s. Make sure that you have a document for each different person / entity paying you and that these documents cover the full amounts to which you are entitled.

C **Expenditure**

List all operating expenses incurred during the tax year. If the business is a VAT vendor, only the expenses should be captured (not the VAT) because the VAT will be claimed back. If the business is not a VAT vendor, expenses to be captured include VAT (because the VAT cannot be claimed back).

Depreciation

Depreciation represents a non-cash outlay stemming from the decline in value of business assets (e.g. vehicles and machinery) arising from business use over time. Tax depreciation would include wear and tear to the assets used in the business.

Entertainment

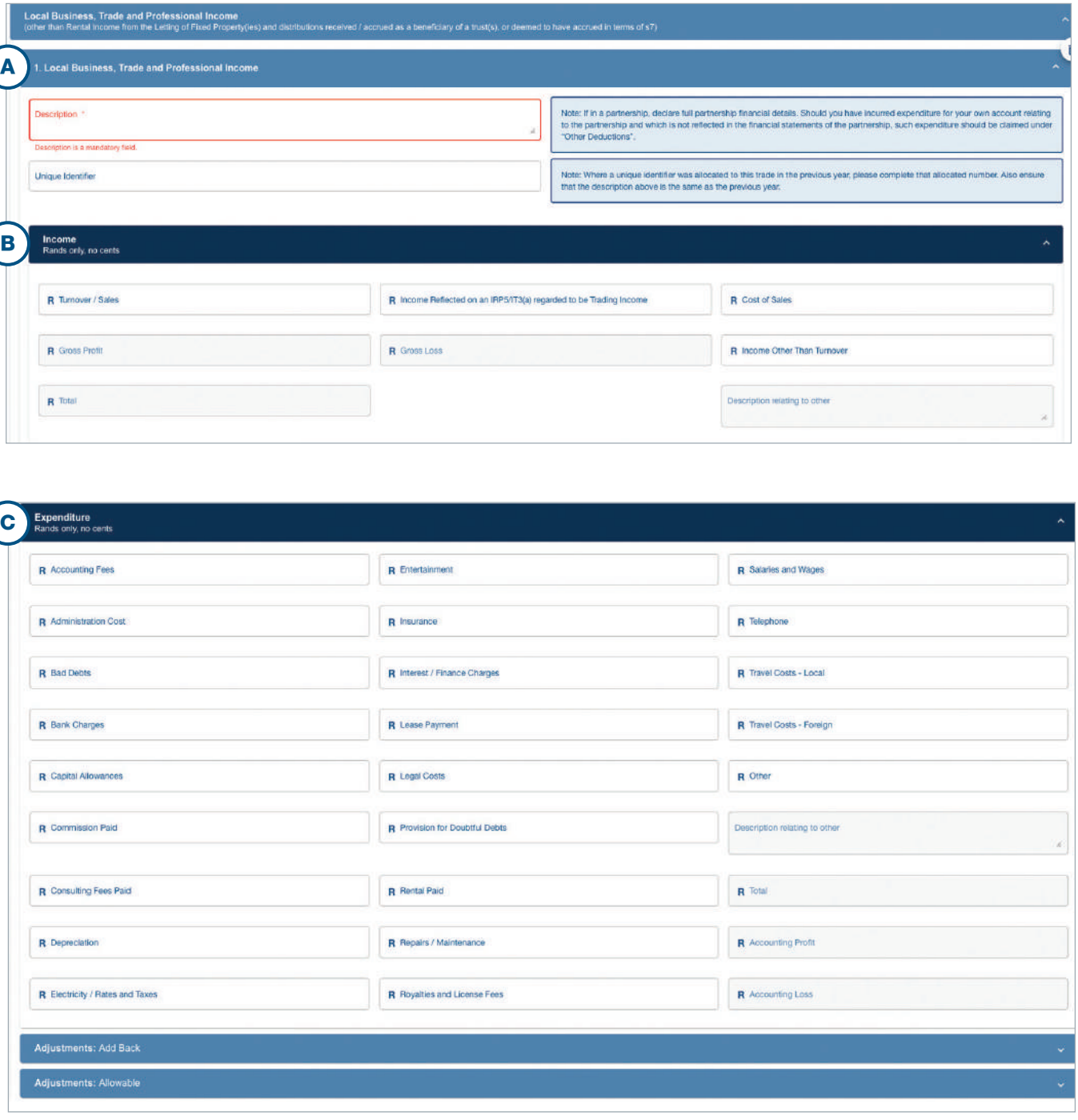
It is important to keep invoices as a backup (together with the names of the people and purposes of the meetings).

Salaries and wages

Salaries and wages paid to your staff should be captured here. Any payments to yourself will not constitute a salary.

Other

Some common expenditure items would include office supplies, internet costs, computer parts and software costs. Note that items less than R7 000 can be expensed as low-value assets, while assets above this amount should be capitalised and written off over their useful lives.


Local Business, Trade and Professional Income
(other than Rental Income from the Letting of Fixed Property(ies) and distributions received / accrued as a beneficiary of a trust(s), or deemed to have accrued in terms of s7)
A
1. Local Business, Trade and Professional Income
Description *
Description is a mandatory field.
Note: If in a partnership, declare full partnership financial details. Should you have incurred expenditure for your own account relating to the partnership and which is not reflected in the financial statements of the partnership, such expenditure should be claimed under "Other Deductions".
Unique Identifier
Note: Where a unique identifier was allocated to this trade in the previous year, please complete that allocated number. Also ensure that the description above is the same as the previous year.
B
Income
Rands only, no cents
R Turnover / Sales
R Income Reflected on an IRP5/IT3(a) regarded to be Trading Income
R Cost of Sales
R Gross Profit
R Gross Loss
R Income Other Than Turnover
R Total
Description relating to other
C
Expenditure
Rands only, no cents
R Accounting Fees
R Entertainment
R Salaries and Wages
R Administration Cost
R Insurance
R Telephone
R Bad Debts
R Interest / Finance Charges
R Travel Costs - Local
R Bank Charges
R Lease Payment
R Travel Costs - Foreign
R Capital Allowances
R Legal Costs
R Other
R Commission Paid
R Provision for Doubtful Debts
Description relating to other
R Consulting Fees Paid
R Rental Paid
R Total
R Depreciation
R Repairs / Maintenance
R Accounting Profit
R Electricity / Rates and Taxes
R Royalties and License Fees
R Accounting Loss
Adjustments: Add Back
Adjustments: Allowable

D

Amounts considered non-taxable

Amount accrued to you as an exclusive deemed resident of another country.

This is where you earn foreign income but due to a DTA between South Africa and the country where you work, you are seen as a resident of the other country and therefore the income you receive is exempt from tax in South Africa.

Donations (received by you)

If you receive a donation (i.e. a gift in cash or even a physical item), you need to disclose this gift on the return. You can safely assume that the receipt of a gift is tax free. But, the party providing the gift (i.e. the donor) may be subject to the Donations Tax of 20% (mainly if the donor has made gifts in excess of R100 000 over the course of the year). This tax should have been reported or paid separately by the donor via an IT144 return. This issue is not of concern in terms of your ITR12 return.

Exempt local and foreign dividends

Local dividends (i.e. dividends from South African companies) are exempt from income tax. However, they are subject to a 20% dividends withholding tax payable to SARS by the company declaring the dividend. The tax has already been taken from the dividend you received so the dividend is not of concern in terms of your ITR12 return.

Foreign dividends (especially from foreign unit trusts and other small shareholdings) are taxable, although they are subject to a partial exemption if certain conditions apply.

Inheritances

Like donations, these amounts are tax free in the hands of the recipient. However, the amounts should be disclosed (even though untaxed). There may be estate duty payable by the deceased's estate.

E

Tax-free investments

Tax-free savings accounts were introduced to encourage South African households to save by exempting interest and other forms of passive income in special tax-free investment accounts.

There is, however, an annual limit of R36 000 which a person can save and any shortfall you missed for the year cannot be carried over to the next year. A lifetime limit of R500 000 also applies. Should you exceed any of these limits, SARS could penalise you by up to 40% of the over-invested amount. Should your savings for the year be more than the R36 000 limit and the excess was caused by you reinvesting your return in the investment, you will not be penalised and you will still be able to invest R36 000 the following year.

You can also invest a maximum of R36 000 per year for your children. This will be deducted from their annual limit.

You would need to obtain the IT3(s) forms from the funds in which you invested. The details from the IT3(s) should be automatically populated in your tax return (like the IT3b and IRP5). If they are not there, you can manually add them.

TAXPAYER INFORMATION: DEDUCTIONS

A Medical deductions

The medical aid section ensures that your medical tax credit was calculated correctly by your employer. Medical aids now submit your data directly to SARS. So when you open your ITR12, the medical section should already be prepopulated with your medical aid details. You should check these details against your medical aid tax certificate to ensure they are correct.

In the 2022 tax year, you are given a credit of R332 for the main member and one additional member, and R224 for every member thereafter. Thus, if your employer paid your medical contributions over to the medical fund on your behalf and you have two other people that you support on your medical aid, your employer should pay you a medical tax credit of R332 + R332 + R224.

You must ensure that you include the total contributions made by yourself and your employer in your return. You must not just add the contributions that were paid directly by yourself.

You also need to ensure that you complete the number of members per month that belonged to the scheme, including yourself. If you paid for medical aid via your employer as a deduction from your salary, you would also need to complete this section, including the name and policy number of the scheme.

The medical aid section is split between your own scheme and any scheme you would also need to indicate to how many medical aid schemes you belong. for which you pay that relates to others who are not on your medical scheme. This situation typically arises when a taxpayer is covering the expenses of a separate medical aid scheme utilised by an elderly family member.

If you had out-of-pocket medical expenses for which you were not reimbursed from the medical aid scheme, you may seek to claim these expenses. This will potentially increase your medical tax credit, but this effort is only worth pursuing if these expenses are fairly large. In particular, these expenses must amount to more than 7.5% of your taxable income to receive a deduction against your tax liability. Note that more generous tax rules exist to assist those who are older than 65 years or who are disabled (or have dependants with a disability).

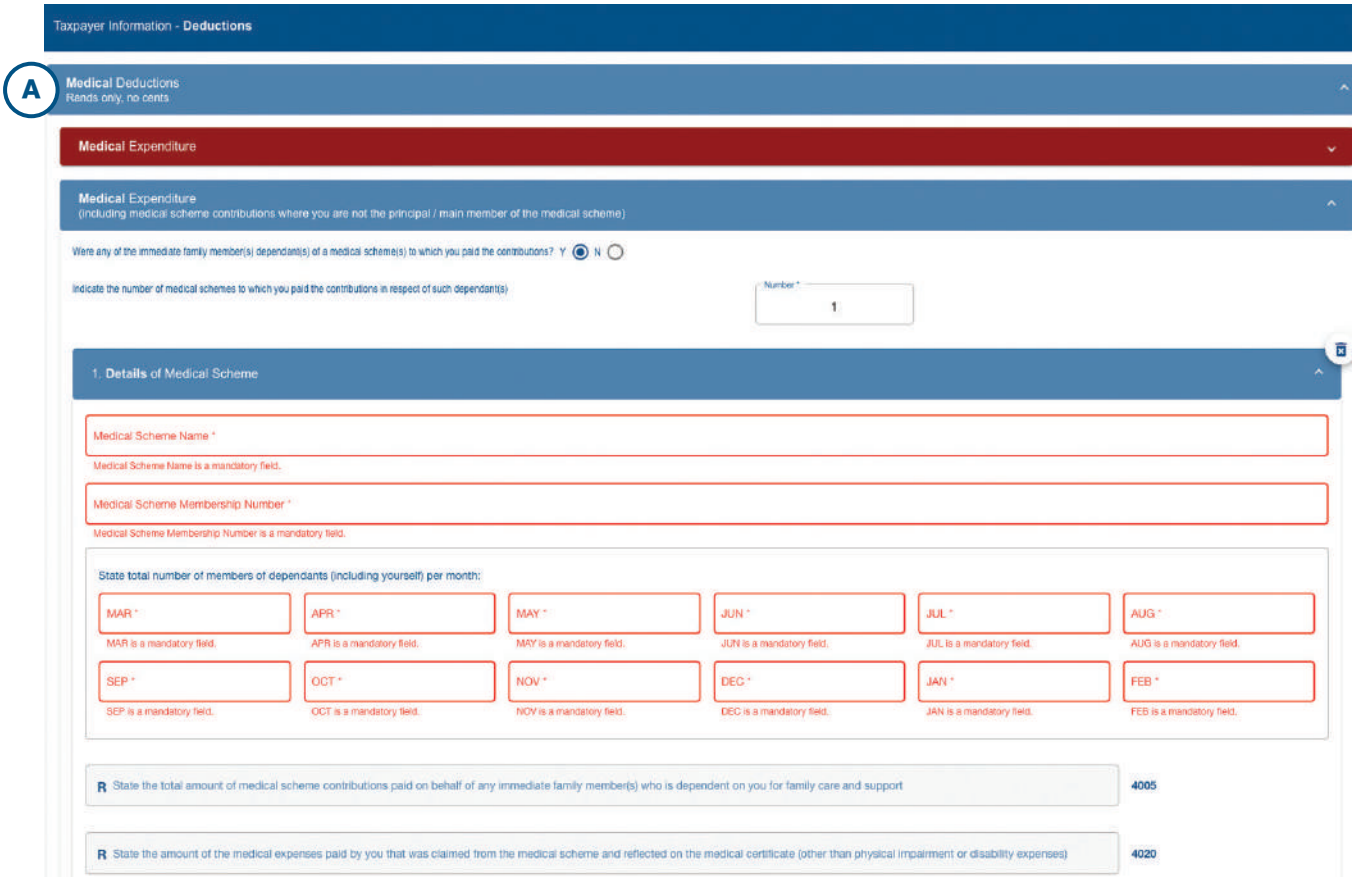
If you are unsure whether your out-of-pocket expenses exceed 7.5% of your taxable income, just include them in the relevant blocks and let SARS do the calculation.

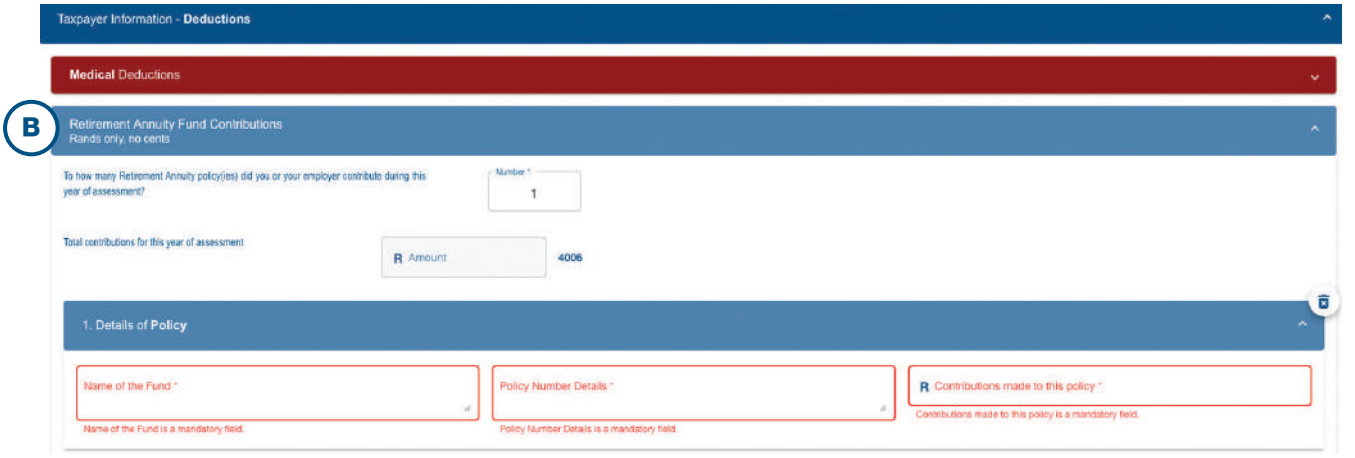
B Retirement contributions

Your retirement contribution details should already be prepopulated in your return. You should check these details against your tax certificate(s) to ensure that the information is correct.

Add all the contributions you made to a retirement annuity and put them on the return. You can retrieve these amounts from the tax certificate sent to you by your investment house. You need to include the name of the fund and your fund number when completing this section. Each retirement annuity policy must be captured separately, with the grand total added up at source code 4006. These contributions can also be reflected as part of your IRP5 if your employer so allows. The advantage of placing these contributions on the IRP5 is an immediate reduction of payroll tax instead of waiting for a refund from SARS after filing an ITR12 return.

Note, this section is for contributions to a retirement annuity fund only. It does not include contributions to a pension or provident fund, which appear on your IRP5 and do not need to be captured again in this section.


Taxpayer Information - Deductions
A
Medical Deductions
Rands only, no cents
Medical Expenditure
Medical Expenditure
(including medical scheme contributions where you are not the principal / main member of the medical scheme)
Were any of the immediate family member(s) dependant(s) of a medical scheme(s) to which you paid the contributions? Y N
Indicate the number of medical schemes to which you paid the contributions in respect of such dependant(s)
Number *
1
1. Details of Medical Scheme
Medical Scheme Name *
Medical Scheme Name is a mandatory field.
Medical Scheme Membership Number *
Medical Scheme Membership Number is a mandatory field.
State total number of members of dependants (including yourself) per month:
MAR *
MAR is a mandatory field.
APR *
APR is a mandatory field.
MAY *
MAY is a mandatory field.
JUN *
JUN is a mandatory field.
JUL *
JUL is a mandatory field.
AUG *
AUG is a mandatory field.
SEP *
SEP is a mandatory field.
OCT *
OCT is a mandatory field.
NOV *
NOV is a mandatory field.
DEC *
DEC is a mandatory field.
JAN *
JAN is a mandatory field.
FEB *
FEB is a mandatory field.
R State the total amount of medical scheme contributions paid on behalf of any immediate family member(s) who is dependent on you for family care and support
4005
R State the amount of the medical expenses paid by you that was claimed from the medical scheme and reflected on the medical certificate (other than physical impairment or disability expenses)
4020


Taxpayer Information - Deductions
Medical Deductions
B
Retirement Annuity Fund Contributions
Rands only, no cents
To how many Retirement Annuity policy(ies) did you or your employer contribute during this year of assessment?
Number *
1
Total contributions for this year of assessment
R Amount
4006
1. Details of Policy
Name of the Fund *
Name of the Fund is a mandatory field.
Policy Number Details *
Policy Number Details is a mandatory field.
R Contributions made to this policy *
Contributions made to this policy is a mandatory field.

C Travel claim

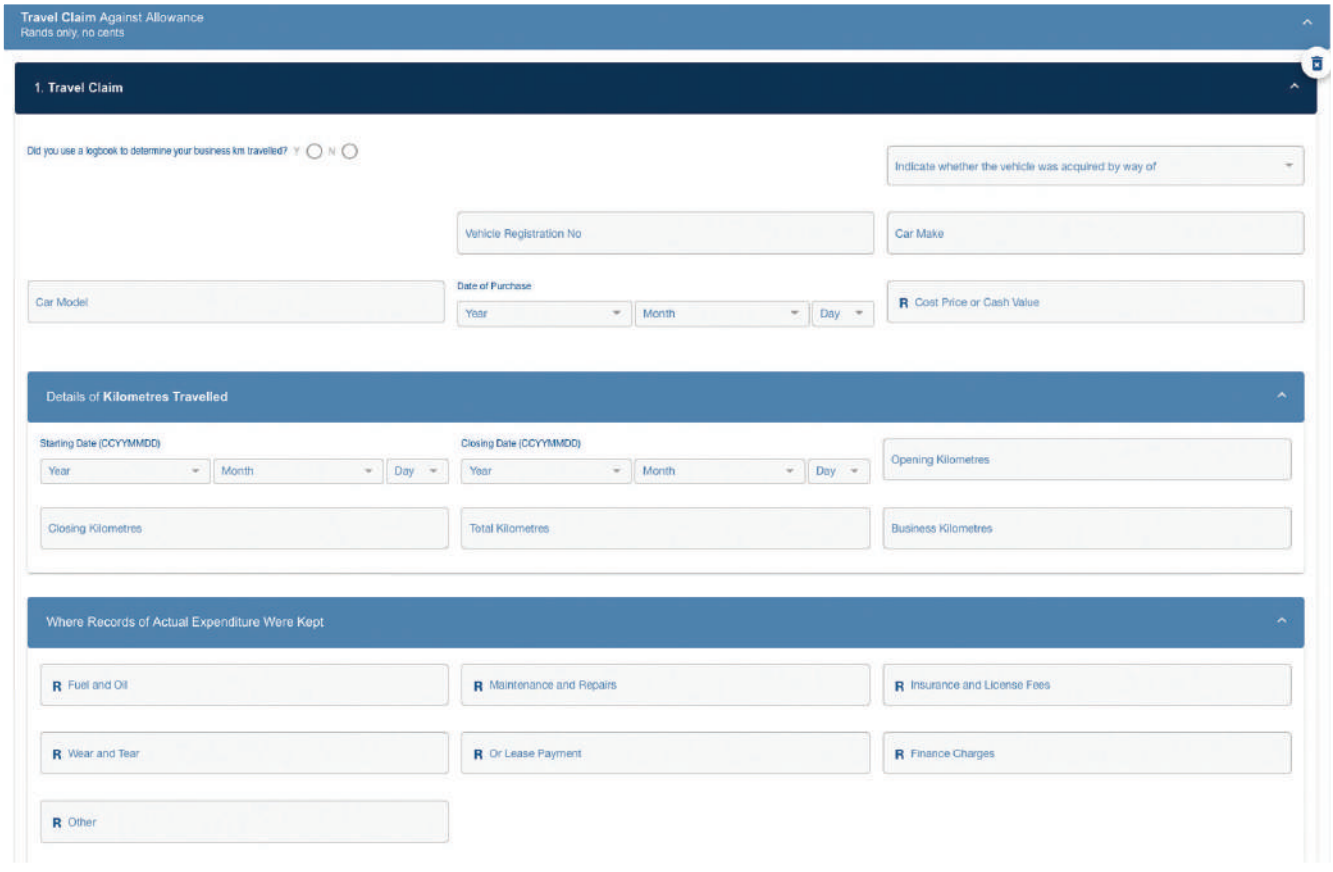
If your IRP5 has a source code 3701 or 3702 in the income section, you are receiving a travel allowance from your employer. You can claim the tax back for the kilometres you travelled for business purposes during the year.

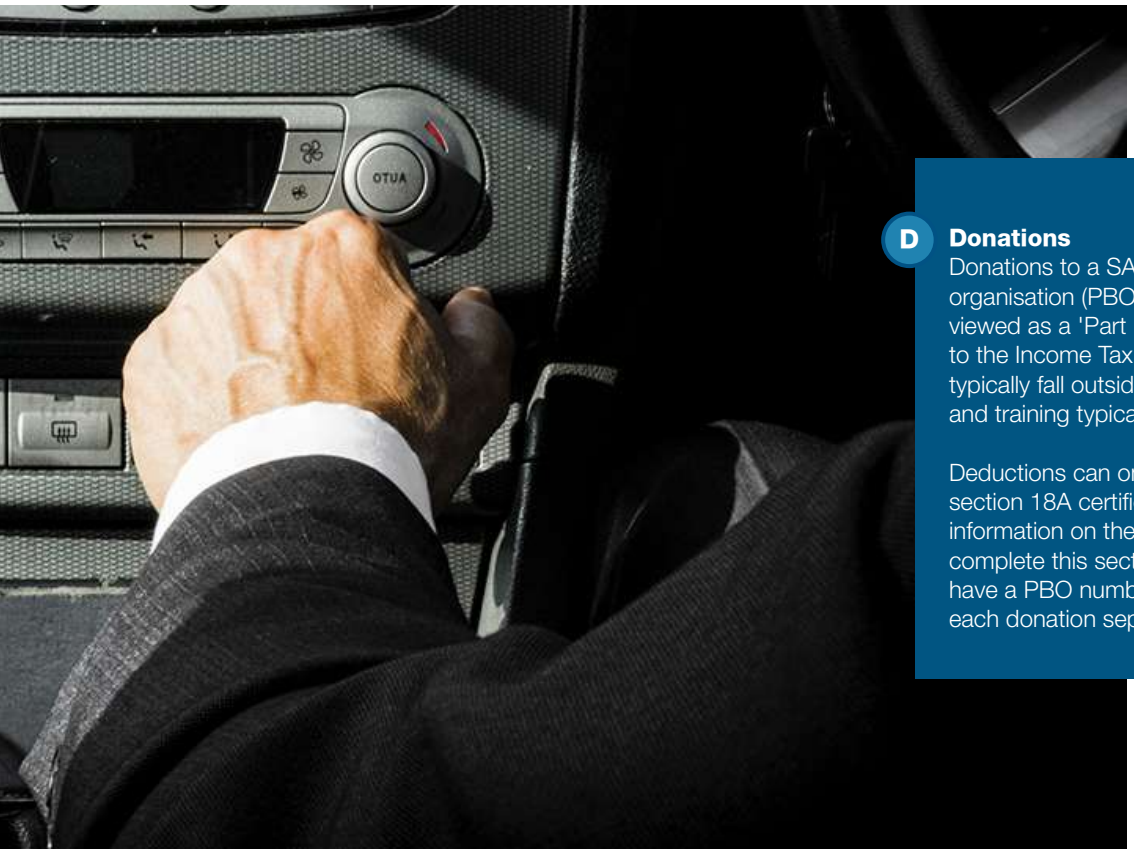
However, you need to ensure that you keep an accurate logbook with details of whom you went to visit and the opening and closing kilometre readings per trip.

You also need to make sure that you keep a record of the expenses you incurred (e.g. insurance, maintenance, and licence fees) and that you submit these invoices or slips if requested by SARS. Failure to keep proper records may result in these expenses being disallowed. As a conceptual note, many of the rules relating to these deductions are designed to ensure that travel allowances are not claimed for daily commuting expenses of employees mainly stationed in one location (i.e. travel between home and office is considered private travel and cannot be included in your business mileage claim).

If you claim expenses based on the 'actual' method, you must keep all invoices or slips as SARS can request them. If you claim based on the 'deemed' method, you don't need to provide travel expense slips to SARS.

C

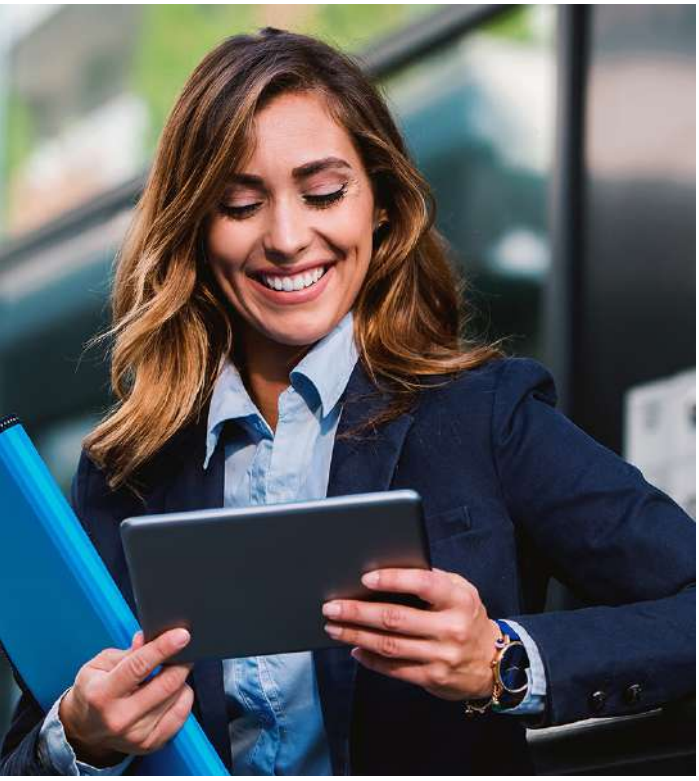




D Donations

Donations to a SARS-approved public benefit organisation (PBO) may be deductible if the PBO is viewed as a 'Part II' PBO under the 9th Schedule to the Income Tax Act. Religious organisations typically fall outside of 'Part II', whereas education and training typically falls within.

Deductions can only be claimed based on section 18A certificates issued by the PBO. The information on the certificates must be used to complete this section. These certificates need to have a PBO number, beginning with a 9. Include each donation separately.



E

Other deductions

Expenses against local taxable subsistence allowance

You can only enter an expense amount under this set of blocks if a local taxable subsistence allowance is part of your salary package (i.e. it appears under source code 3704 on your IRP5).

Only in these instances can you claim against the allowance and reduce the tax payable by providing proof of the travel expenditure and by entering the expense claim here. If, however, your employer reimburses you at the SARS 'deemed rate' the reimbursement is tax free and you cannot claim a deduction against it.

Expenses against foreign taxable subsistence allowance

As with expenses against local taxable subsistence allowances, taxpayers can only enter an amount if a foreign taxable subsistence allowance has been received and appears under source code 3715 on your IRP5. The rules in this area essentially operate the same as for domestic subsistence.

Exempt amount in terms of section 10(1)(o)

This relates to income earned by South African residents under a foreign employment contract. It does not apply to independent contractors or freelancers who work overseas.

If a taxpayer spends 183 days out of South Africa (with 60 days of these being continuous and unbroken), the foreign income may be exempt from South African tax if certain conditions are met. Due to the COVID-19 pandemic and the resultant nationwide lockdown in South Africa, the 183 days out of South Africa requirement has been reduced to 117 days for the 2022 year of assessment.

A proposal by the Finance Minister in February 2017 to limit the foreign employment exemption has been signed into law. This restricts the exemption (in effect as from 1 March 2020). From 1 March 2020, the exemption is limited to R1.25 million.

Depreciation

This would be for wear and tear on assets used by the taxpayer for tasks related to their job. Examples of these assets would include cell phones or laptops (provided these were purchased by the taxpayer). Only the portion of the asset that is used for business purposes may be claimed. Note that SARS will require a letter from the taxpayer's employer, confirming that the asset was used for the purpose of performing work.

Home office expenses

Owing to the COVID pandemic, there was a significant increase in home office claims. SARS were very strict with their document requirements - taxpayers should be aware that they may be required to produce floor plans of their house and 360 degree photos of their home office to ensure that it is used exclusively as an office and does not double up for another purpose (e.g. spare bedroom).

Salaried employees may be eligible to claim home office expenses, provided certain conditions are met. Examples of home office expenses include rent, water and electricity, and cleaning expenses. These expenses must generally be pro-rated appropriately based on the floor space (i.e. the square meterage).

Travel expenses

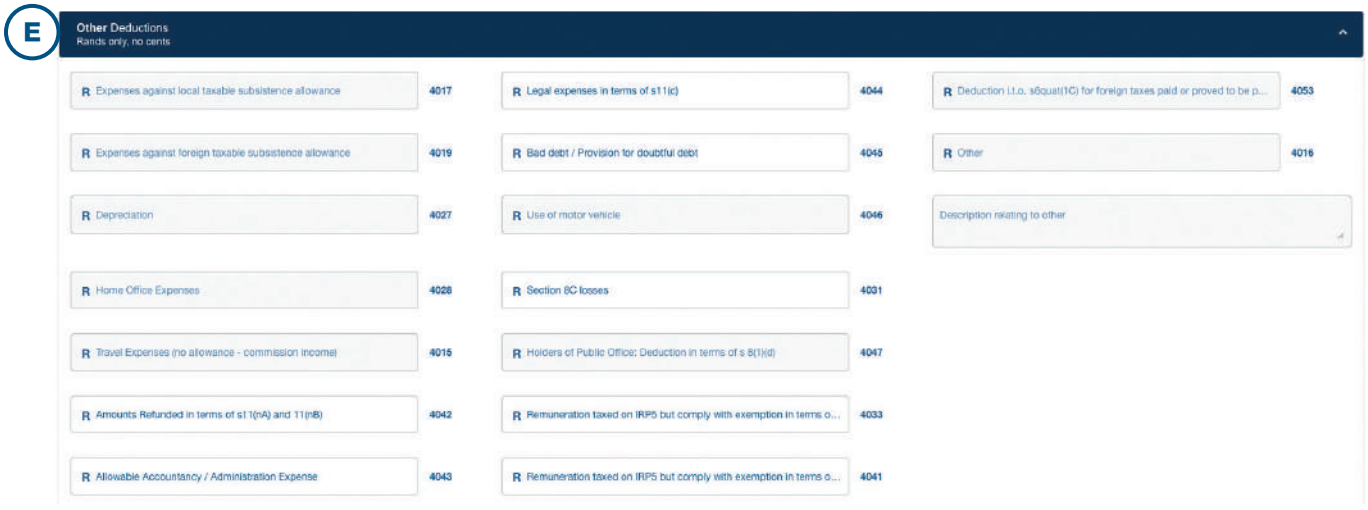
These are travel expenses for commission earners whose commission is reflected on their IRP5s under source code 3606. Note that the commission must be 50% or more of the total remuneration to qualify for this deduction. Taxpayers must also provide a logbook as proof of their business travels.

Taxpayers who earn a travel allowance, which is reflected under source code 3701 or 3702 on their IRP5s, must not complete this field.

Taxpayers need to disclose their travel expenses in the travel claim against the allowance section of the ITR12.

Amounts refunded in terms of sections 11(nA) and 11(nB)

This category relates to repayments to employers (i.e. taxed amounts which an employee received from an employer but subsequently had to repay to the employer, often due to a breach of an agreement).



Examples of such payments include maternity leave, restraint of trade payments and bonuses. This amount has already been taxed and therefore included as income on the employee's IRP5. In order to reverse the tax already paid, the employee can claim a deduction under section 11(nA) or (nB).

If SARS requests supporting documents, the taxpayer may need to provide a letter from their employer to confirm the amount was repaid, as well as proof of payment.

Allowable accountancy / administration expenses
You can deduct the costs of preparing your tax return as long as you are not a salaried employee.

Legal expenses in terms of section 11(c)
Legal expenses can only be claimed if they relate to a legal dispute in which the winnings will be declared as part of your income.

For example, if a Commission for Conciliation, Mediation and Arbitration (CCMA) settlement amount was paid out to you and taxed as normal income, the related legal fees would be allowed as a deduction. It would be best to consult a tax practitioner to discuss the nature of the legal fees incurred.

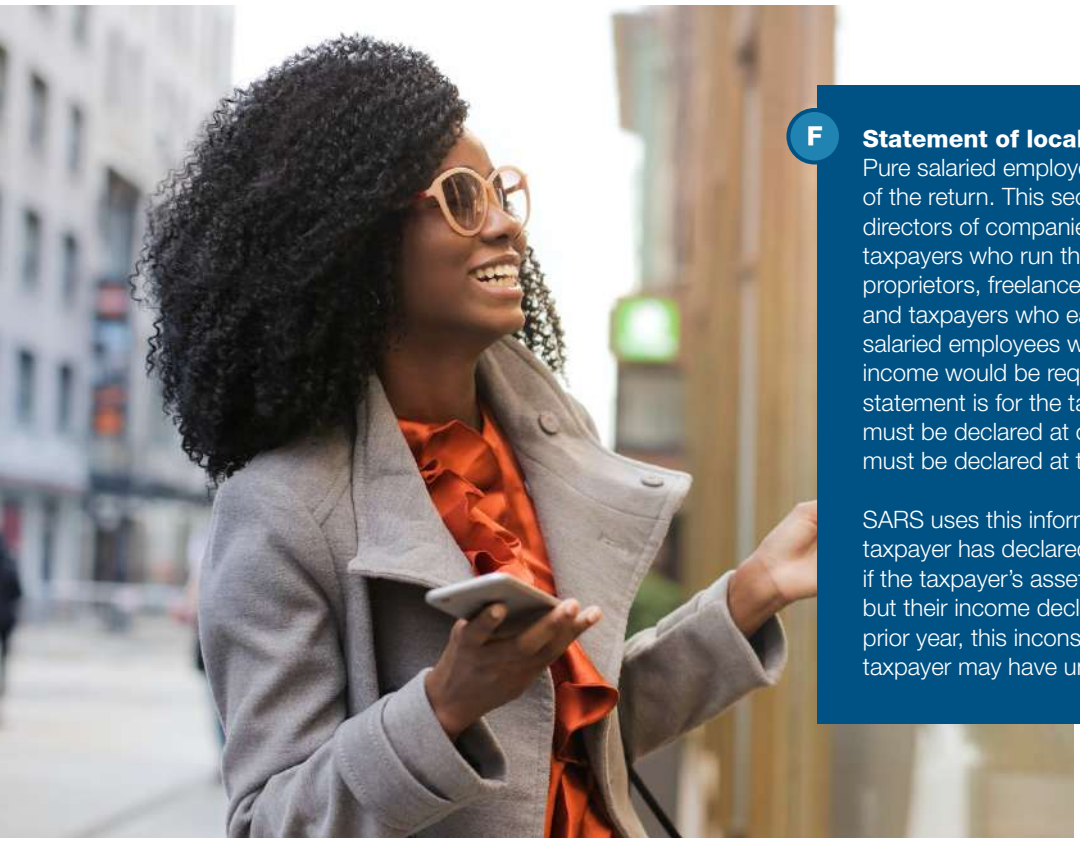
Bad debts / provision for doubtful debts
Usually, this field is only completed when your employer has included an amount on your IRP5 but has not paid the amount to you (and does not intend to do so).

Section 8C losses
These are losses on shares that have been vested in terms of an employee share incentive scheme. It would be best to consult a tax practitioner or the administrator running these share schemes to discuss the nature of these schemes.

Qualifying criteria for claiming section 10(1)(o)
This section must be completed by taxpayers who have earned income under a foreign employment contract and have, therefore, claimed a 4041 deduction (i.e. amounts taxed on IRP5, but which comply with exemptions in terms of section 10(1)(o) within the 'Other Deductions' section).

You will be required to complete the details of the foreign employment and the time spent inside and outside of South Africa.

Other
Under this heading, commission earners would claim any other expenses they had paid when earning commission.



F

Statement of local assets and liabilities
Pure salaried employees need not complete this section of the return. This section of the return is reserved for directors of companies, members of close corporations, taxpayers who run their own businesses (i.e. sole proprietors, freelancers and independent contractors) and taxpayers who earn foreign income. Therefore, salaried employees who earn after-hours consulting income would be required to complete this section. The statement is for the taxpayer's personal assets, which must be declared at cost, and personal liabilities, which must be declared at their current value.

SARS uses this information to determine whether the taxpayer has declared all of their income. For example, if the taxpayer's asset base increases by R800 000 but their income declared remains the same as the prior year, this inconsistency will flag to SARS that the taxpayer may have under-declared income.

G

Local assets

Fixed property
Fixed property amounts include the cost price of a primary residence and other properties used for investment purposes, including the cost of renovations and improvements.

Shares in a private company
Share amounts involve the cost price paid for shares purchased in a private company.

Loan accounts
This is the value of loans due to you (generally to be repaid over a period exceeding 12 months).

Financial instruments – listed shares and unit trusts (excluding cryptocurrency)
This is the cost price of shares or unit trusts purchased. Check the statements from the financial institutions for these details.

Financial instruments – cryptocurrency
This is the cost price of cryptocurrency purchased, e.g. Bitcoin or Ripple.

Net capital of business, trade, profession or farming
This amount is the assets less the liabilities of the taxpayer's business and is applicable to sole proprietors and freelancers.

Debtors
These are amounts due to you to be repaid in the short term, i.e. within 12 months.

H

Local liabilities

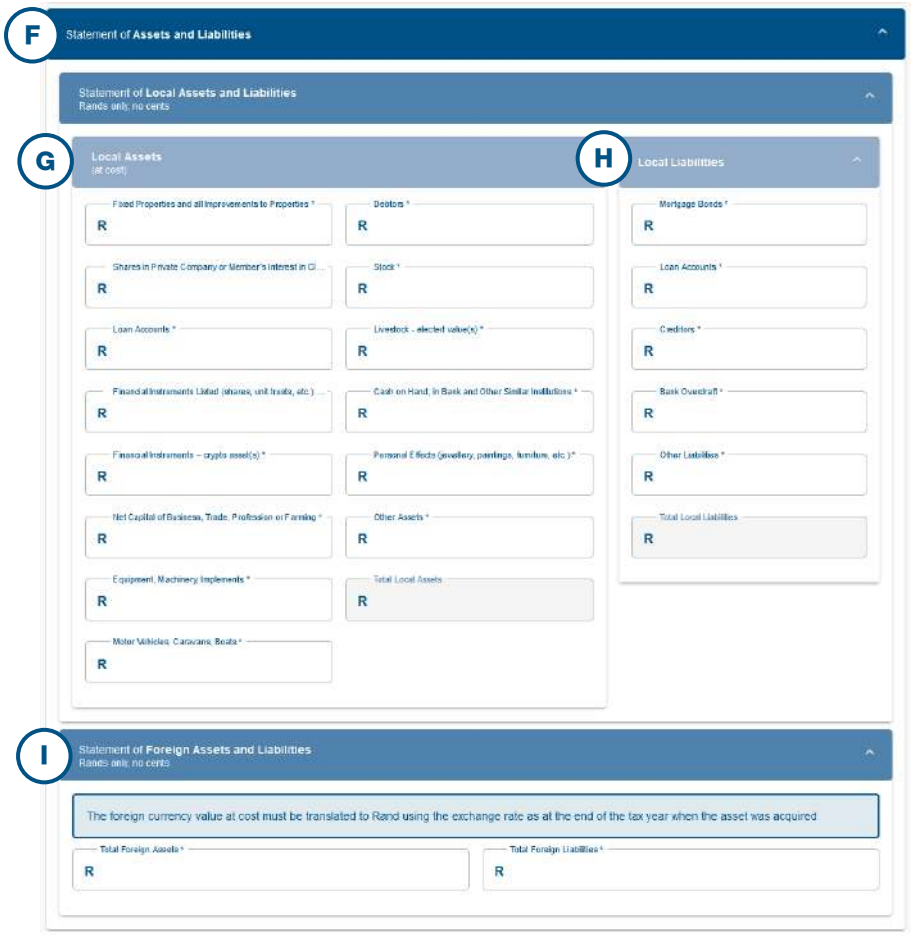
Mortgage bonds
This would be the balance of your house mortgage at the end of the year.

Loan accounts
This is the value of loans due by you (generally to be repaid over a period exceeding 12 months).

Creditors
These are amounts due by you to be repaid in the short term, i.e. within 12 months.

I

Statement of foreign assets and liabilities
Here you would give the Rand equivalent of any assets or liabilities you may have in another country.



J

Periods of unemployment

You need to indicate to SARS the number of unbroken periods for which you were unemployed. For example, if you worked from 1 July to 31 December only, then you would have two unbroken periods of unemployment: 1 March to 30 June and 1 January to 28 February. If you were not working on 1 March, then make this the first day of your unemployment. If you are still not working on 28 February, then make this date the last day in the return. SARS uses this information to check back to the periods covered in the IRP5s you have submitted. If you do not have an IRP5 which covers the full 12-month period of assessment and do not complete this section, they may gross up your IRP5 income on assessment so that it covers a full year.

PART TWO

A DEEPER INSIGHT

caseware adapt IT

Tx CloudTax

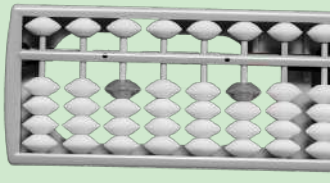
Your end-to-end tax processing management powerhouse

Finally, software that isn't taxing

CloudTax is a tax management platform that provides tax practitioners with an invaluable overview of their entire client base, and corporate tax teams with a unified view of all tax return related matters for all their taxpayers.

Direct integration with SARS efiling automatically synchronises all taxpayer details into a centralized location. Built-in dashboards ensure that you never miss a deadline, whilst users can collaborate directly with taxpayers from within the platform. CloudTax is always available from any location, on any device, at any time.

CloudTax includes complete support for IRP6, ITR14, ITR12 and ITR12T.



Sign up now for CloudTax and manage all your Corporate, Individual and Trust taxpayers in a single platform

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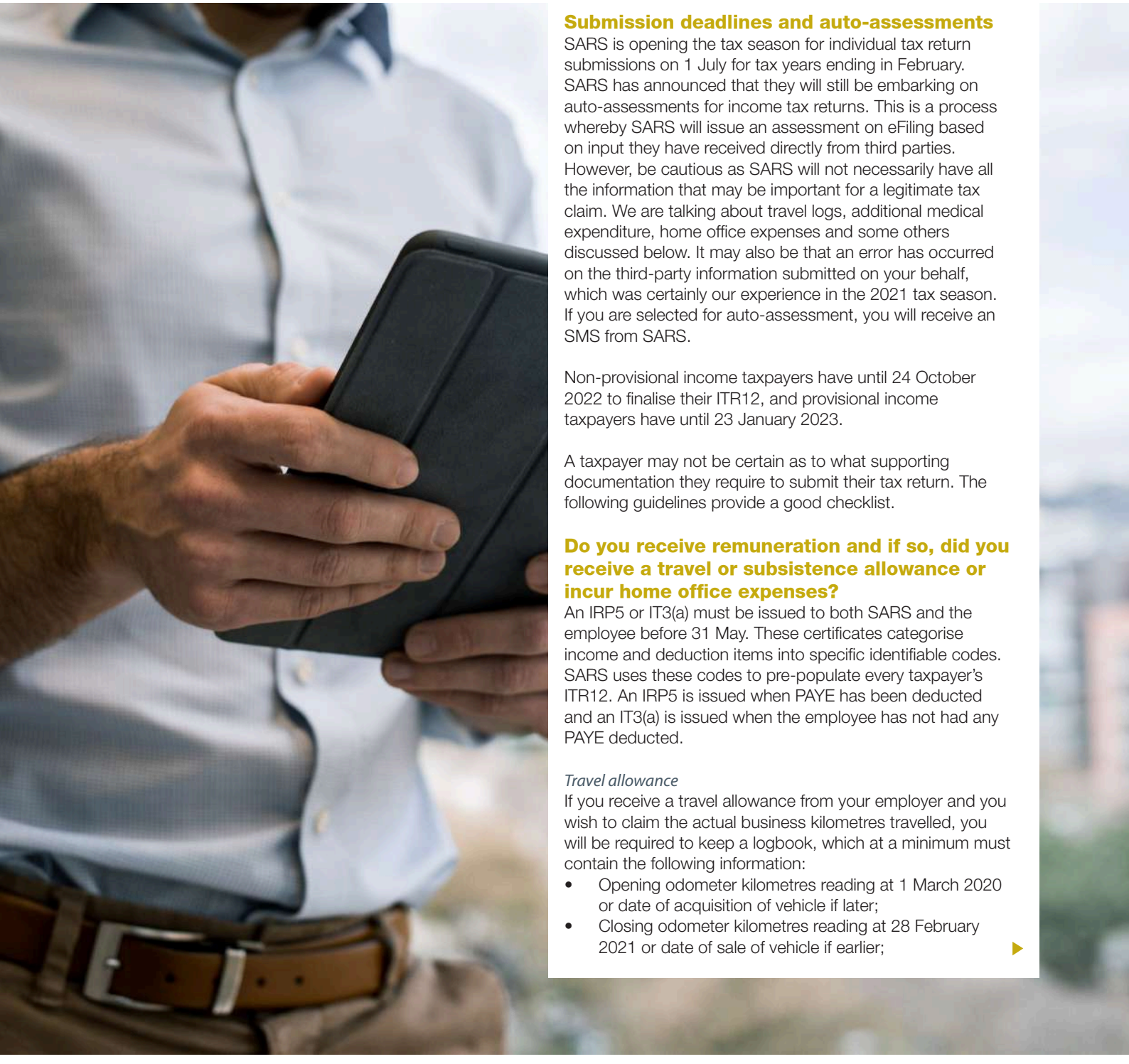
DOCUMENT CHECKLIST

30 minutes CPD

BEFORE YOU START

ANGELIQUE FOUCHÉ, Tax Specialist at The Tax House



Submission deadlines and auto-assessments

SARS is opening the tax season for individual tax return submissions on 1 July for tax years ending in February. SARS has announced that they will still be embarking on auto-assessments for income tax returns. This is a process whereby SARS will issue an assessment on eFiling based on input they have received directly from third parties. However, be cautious as SARS will not necessarily have all the information that may be important for a legitimate tax claim. We are talking about travel logs, additional medical expenditure, home office expenses and some others discussed below. It may also be that an error has occurred on the third-party information submitted on your behalf, which was certainly our experience in the 2021 tax season. If you are selected for auto-assessment, you will receive an SMS from SARS.

Non-provisional income taxpayers have until 24 October 2022 to finalise their ITR12, and provisional income taxpayers have until 23 January 2023.

A taxpayer may not be certain as to what supporting documentation they require to submit their tax return. The following guidelines provide a good checklist.

Do you receive remuneration and if so, did you receive a travel or subsistence allowance or incur home office expenses?

An IRP5 or IT3(a) must be issued to both SARS and the employee before 31 May. These certificates categorise income and deduction items into specific identifiable codes. SARS uses these codes to pre-populate every taxpayer's ITR12. An IRP5 is issued when PAYE has been deducted and an IT3(a) is issued when the employee has not had any PAYE deducted.

Travel allowance

If you receive a travel allowance from your employer and you wish to claim the actual business kilometres travelled, you will be required to keep a logbook, which at a minimum must contain the following information:

- Opening odometer kilometres reading at 1 March 2020 or date of acquisition of vehicle if later;
- Closing odometer kilometres reading at 28 February 2021 or date of sale of vehicle if earlier;

- The dates on which business travel took place;
- Departure points and destinations, e.g. from office to ABD Chemicals (Pty) Limited;
- The total kilometres travelled per trip; and
- The reason for the travel, e.g. trip to marketing team.

When actual vehicle expenses are used (instead of fixed cost scales), the following should be maintained:

- Proof of expenses on fuel and oil;
- Maintenance and repairs;
- Insurance and licence fee;
- Wear and tear;
- Lease payments; and
- Finance charges.

Home office

A taxpayer is eligible to claim home office expenses if they meet the following requirements:

- The employer must allow the employee to work from home;
- The employee must spend more than half of their total working hours working in their home office;
- The employee must have an area of their home which is used exclusively for this purpose; and
- The office must be specifically equipped for the employee's trade.

If you are eligible to claim home office expenses, the deduction of the expenses is limited to the ratio of home office space used in relation to your total home and you will therefore be expected to provide proof of this ratio calculation. Supporting documentation that you will need to claim home office expenses includes:

- An employment contract that stipulates that you are required to work from your residence or a declaration confirming the use of the home office;
- Reasons why it is necessary to maintain a home office and proof that the home office is used regularly and exclusively for your work; and
- Supporting proof of expenditure for rent, interest on mortgage bond, repairs to the premises, rates and taxes, cleaning, wear and tear, telephone, stationery, Wi-Fi, repairs to a printer, and other expenses relating to the house if these are deducted against your remuneration.

Subsistence

When you are obliged to spend at least one night away from your home for business and you receive a subsistence allowance from your employer, a detailed schedule of your expenses should include when, where and how long you were away. You will also have to specify whether this was local or overseas travel. You need not provide proof of your travel expenses if you receive a subsistence allowance.

Note: If you receive a subsistence advance, then you will need to keep proof of your travel costs.

Do you contribute to a medical aid and were any medical expenses not refunded by your medical aid?

The medical aids are obliged to provide SARS and the taxpayer with duplicate income tax certificates summarising medical aid contributions, medical expenses not paid for by the medical aid and the number of dependants for each tax period.

Qualifying medical expenditures include the following but are only tax deductible if not refunded by your medical aid:

- For professional services rendered and medicines supplied by a registered medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist to you or any of your dependants;
- To a nursing home or hospital, or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person;
- For medicines prescribed by a registered medical practitioner and acquired from a pharmacist (over-the-counter medicines and without a prescription do not qualify); and
- Medical expenses incurred and paid outside South Africa.

All unclaimed medical expenses not mentioned on your tax certificate must be summarised in a list and supporting individual invoices detailing these medical expenses must be made available on request by SARS. You may also be required to provide proof of payment.

- If you or one of your dependants has a disability, an ITR-DD will have to be completed and signed by a medical practitioner. Do note that the ITR-DD has an expiration date.

Have you contributed to a retirement annuity, pension or provident fund?

An IT3(f) income tax certificate will be provided by a wealth or asset manager confirming the total contributions made for the year to a retirement, pension, provident or preservation fund.

Always provide your tax practitioner with historical records of accumulated lump sums received over your lifetime. Any previous deductions carried forward from previous years must also be communicated to ensure they are taken into account in your current year of assessment.

There have been some significant changes to legislation around pension, provident and retirement funds in recent years. It is best to seek the advice of a tax professional if you have received lump sum pay-outs from these funds.

Did you receive local interest income, foreign interest income or foreign dividends or did you have a capital gain from the sale of an asset?

Banks and financial institutions will issue you with an IT3(b) reflecting your investment income earned for the tax year.

Local dividends earned from a real estate investment trust (REIT) will need to be disclosed on your ITR12 under the source code 4238 and will be fully taxable.

When a capital asset is sold, supporting documentation is required to validate its base cost, such as:

- The sale agreement;
- Documents proving any costs associated with the acquisition, disposal or retention of the asset (such as stamp duty, advertising costs, sales commission, installation costs, evaluation costs, auctioneers, consultants, legal fees, transfer costs, electrical or borer certificates, title deeds); and
- Documents proving the cost of improvements or enhancements.

If you hold a share portfolio or a unit trust account and shares are sold, an IT3(c) will be issued to you from your financial institution listing the proceeds and base cost of the shares.

"When a cryptocurrency is sold or exchanged for another cryptocurrency, supporting documentation is required to substantiate the transaction details, such as proceeds and cost of the crypto"

Do you invest or trade in cryptocurrency?

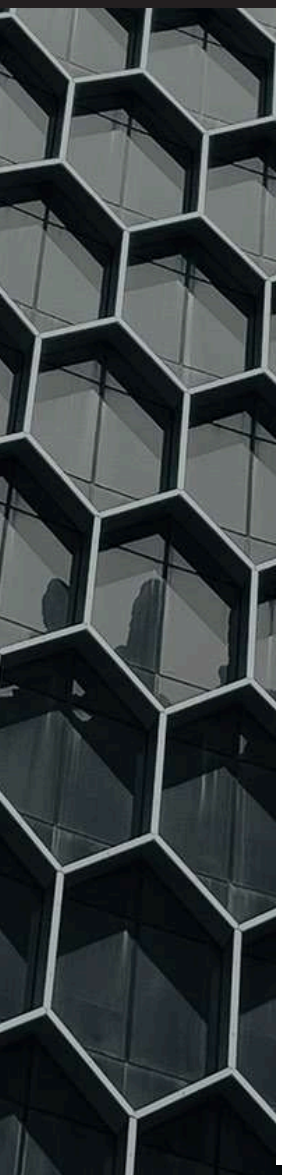
SARS is requesting information about cryptocurrency more frequently and therefore it is imperative that cryptocurrency transactions are disclosed in your ITR12 return. In order to disclose cryptocurrency correctly it is important to establish the purpose of acquiring the cryptocurrency as that will determine the tax treatment.

When a cryptocurrency is sold or exchanged for another cryptocurrency, supporting documentation is required to substantiate the transaction details, such as proceeds and cost of the crypto.

Cryptocurrency platforms do not all provide 'SARS-ready' documentation; however, statements can be downloaded from the platforms to substantiate the cryptocurrency details required. If the platform on which the cryptocurrency is held does not provide statements, an individual must keep record by either a spreadsheet listing transactions, screenshots and/or bank statements. It would be recommended that the following information be reflected on the statements, schedules or screenshots:

- Time and date of purchase or disposal;
- Amount paid or received for the purchase or disposal;
- Quantity you purchased or sold; and
- Total value of cryptocurrencies on the date of purchase or disposal.

SARS has created source codes to record capital gains/losses due to the sale of cryptocurrency. It is best to seek the advice of a tax professional if you are uncertain of the tax treatment.



Did you make a donation?

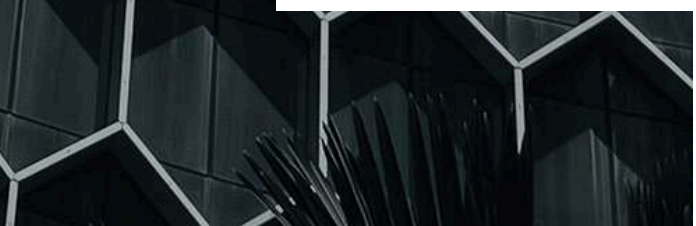
Not all donations made to non-profit organisations will result in a tax deduction. A deduction will be granted if a section 18A certificate is issued to the taxpayer for the period under review. This certificate must clearly state the amount and nature of the donation.

Did you receive any other income that should not be taxed?

The following is a list of income which is not taxable but is required to be included in your ITR12:

- Donations received;
- Any money or assets received as an inheritance;
- Local dividends received (they are already taxed at company level); and
- Some foreign employment income, provided all the requirements are met.

It is always wise to seek the advice of a professional when determining whether an amount is taxable or not.



Have you become tax non-resident during the tax year?

If your answer is yes to this question, the box 'Have you ceased being a resident of the RSA during the year of assessment?' must be ticked on your ITR12 and the date on which you became a tax non-resident must be indicated on your RAV01.

Did you trade or participate in farming activities?

A person trading or farming as a sole proprietor or partnership must include the income and expenses incurred from such business in his or her own ITR12 and is responsible for the payment of taxes thereon. Either financial statements should be prepared by an accountant or, in the case where no financial statements are available, a profit and loss schedule should be prepared. Proof of expenditure should be kept for all expenses incurred in the production of business income.

In the case of a partnership, the ITR12 provides fields to determine the ratio of profit share.

Have you invested in a venture capital company?

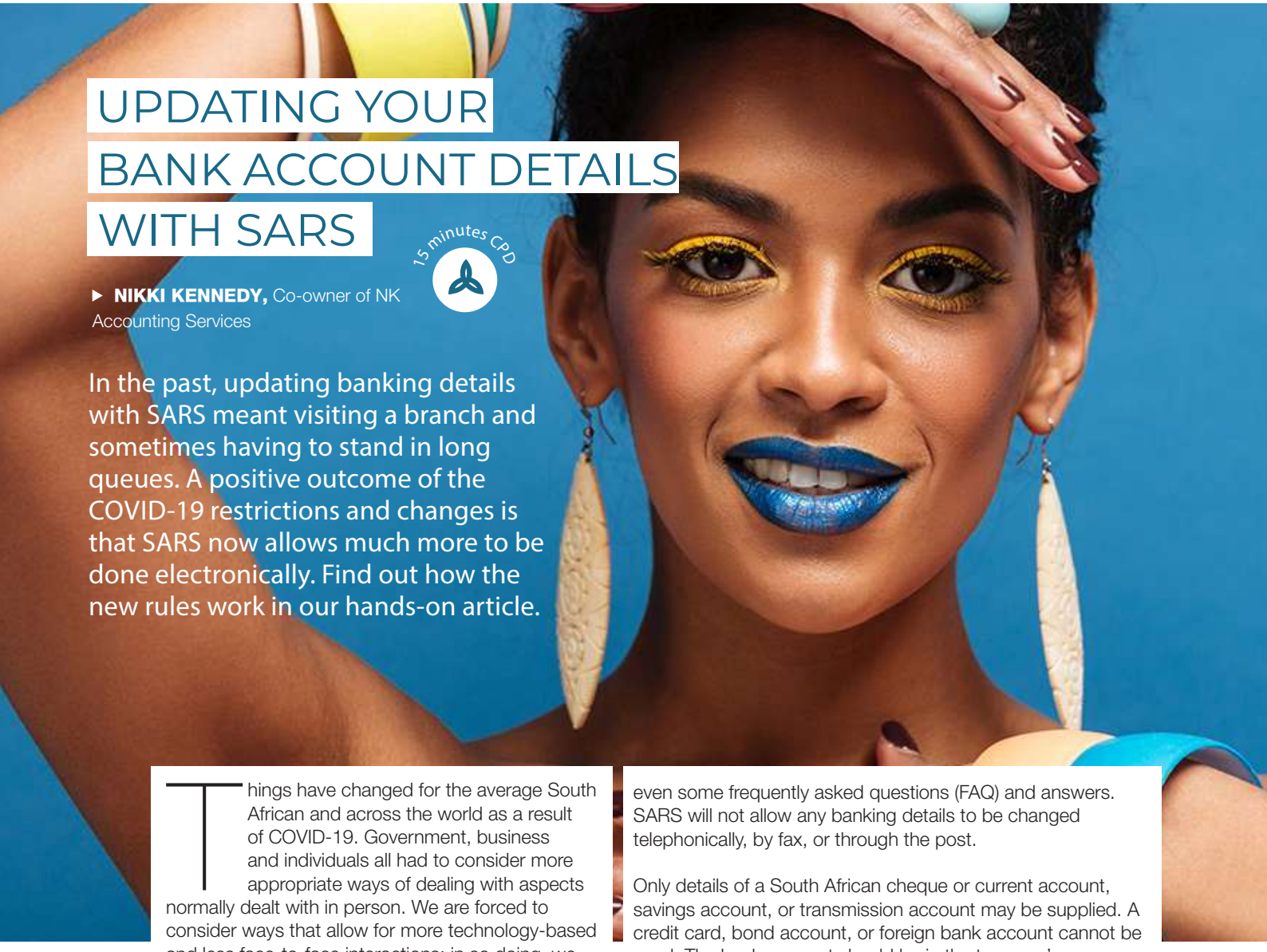
The investment you made as a natural person into a venture capital company (VCC) is tax deductible to a limit of R2.5 million per tax year. A valid VCC investment certificate must accompany your ITR12 to get a tax deduction.

It is important to note that the VCC regime came to an end on 30 June 2021, which falls into next year's income tax return (2022).

Final tips

The documentation required to submit an ITR12 is not always required by SARS; however, you are legally obliged to hold on to that information for a period of five years. Tax practitioners are, however, experiencing that SARS reviews are common and that, without the supporting documentation uploaded within the prescribed period of 30 days, the deduction is often disallowed. Therefore, it is prudent to have all documentation available when submitting your tax return and to upload the supporting documents as soon as SARS requests them.

You can never go wrong with approaching a trusted tax professional to assist in the submission of your return. They are familiar with all aspects of the tax Acts and are able to guide you in claiming all possible deductions and understanding the full implications of what you submit to the revenue service.



UPDATING YOUR BANK ACCOUNT DETAILS WITH SARS

15 minutes CPD

▶ **NIKKI KENNEDY,** Co-owner of NK Accounting Services

In the past, updating banking details with SARS meant visiting a branch and sometimes having to stand in long queues. A positive outcome of the COVID-19 restrictions and changes is that SARS now allows much more to be done electronically. Find out how the new rules work in our hands-on article.

Things have changed for the average South African and across the world as a result of COVID-19. Government, business and individuals all had to consider more appropriate ways of dealing with aspects normally dealt with in person. We are forced to consider ways that allow for more technology-based and less face-to-face interactions; in so doing, we could perhaps simplify some of our dealings with government departments such as SARS.

Updating banking details

At some stage in our lives, we will all have the need to update our banking details with SARS. This is to ensure that SARS has the latest details available when making refunds to us as taxpayers. To this end, SARS has provided an external guide that deals with the ways in which taxpayers can change their banking details without going to a SARS branch. This latest SARS guide was issued on 16 April 2020. The new SARS website also provides guidance on adding or changing banking details, changing banking details via email, as well as indicating what to do if you need to verify your banking details. By visiting sars.gov.za and by typing banking details in the search bar, you will find helpful information and even some frequently asked questions (FAQ) and answers. SARS will not allow any banking details to be changed telephonically, by fax, or through the post.

Only details of a South African cheque or current account, savings account, or transmission account may be supplied. A credit card, bond account, or foreign bank account cannot be used. The bank account should be in the taxpayer's name. In the instance where the bank account is shared with the taxpayer's spouse or life partner, it is necessary for the taxpayer to provide all supporting documents, including a certified copy of the marriage certificate or an affidavit for life partners.

For tax types other than VAT, SARS also allows a corporate saver type of account to be used. At this stage, these are Investec's Corporate Cash Manager current accounts, Standard Bank's Third-Party Fund Administration current accounts and Nedbank's Corporate Savers savings accounts. The list may change as SARS continues to work with the banks to identify appropriate account types.

With regard to foreign bank accounts and bank accounts in the name of a third party other than the taxpayer, there are certain very strict exceptions that may apply. These are briefly discussed later on.

How to go about it

The change of banking details may be done through one of the following channels:

- On SARS eFiling (the channel preferred by SARS)
  - » Using the Registration Amendments and Verification (RAV01) form: The RAV01 form shows a taxpayer's details such as their name, address, contact details, as well as banking details. This is accessed under 'SARS Registered Details / Maintain SARS Registered Details', once you have logged into SARS eFiling. It is possible to have different bank accounts per type of tax. Check in after a few days to confirm that the bank details show a valid status. When updating your records here, ensure that you use the exact account name in accordance with your bank confirmation letter. In this way, SARS will be able to easily verify with your bank that your bank details are valid. This is likely the quickest and easiest way in which to update your banking details with SARS.
  - » Where SARS has requested verification of details and provided a link for the case created: Once you have logged into SARS eFiling, go to 'SARS Correspondence' and find the relevant letter. There should be a button that will take you to a page where you can upload supporting documentation.
- On SARS MobiApp by tapping on the Profile Management tab.
- When submitting their personal income tax return in the case of individuals.
- SARS mobile tax units.
- Via email for exceptional circumstances, only as indicated below.
- In person at a SARS branch, where it is impossible for the requestor to use electronic means (make sure that you have an appointment at the SARS branch).
- On the SARS page (https://www.sars.gov.za/contact-us/send-us-a-query/), which explains how to use the online query system. Once you have a case reference number, you can upload the supporting documentation here: https://tools.sars.gov.za/SOQS/?queryType=5.

Who may make the changes?

The people listed below may change bank details:

- For individuals; the individuals themselves if they have access to their SARS eFiling profile or through the other available means mentioned above.
- For other legal entities; a person registered as a representative taxpayer for the relevant entity at SARS (typically the public officer, a director of a company, member of a CC, partner in a partnership, treasurer, accounting officer, curator, liquidator, and executor). Take note that the registered representative's details must match those on the SARS system.
- A tax practitioner, registered with a controlling body (such as SAIT) and SARS, with a SARS allocated PR number. The tax practitioner will also be required to have a valid power of attorney, confirming that they are allowed to update the taxpayer's banking details. Take note that the tax practitioner needs to be linked to the taxpayer's tax type on SARS eFiling.
- In exceptional circumstances (see below), a requestor with a written mandate. These are typically the personal assistant, clerk or administrative officer of the tax practitioner, tax consultant, director, fund administrator, secretary, attorney, advocate, legal advisor, auditor, or bookkeeper.
- A requestor will only be able to change banking details on SARS eFiling if linked on SARS eFiling.

The exceptional circumstances in which SARS will allow a request for a change of banking details to be made by a requestor with a mandate are:

- Any estate – in the case of a deceased estate, only the person appointed by the Master of the High Court with a letter of authority or a letter of executorship;
- Where the taxpayer is incapacitated, terminally ill, a non-resident (emigrant, expatriate, foreigner or SA citizen temporarily outside the Republic), imprisoned, or a minor child;
- Where a trustee is appointed to act on behalf of an insolvent individual or trust; and
- Where the taxpayer is more than 200 km from the SARS branch.
- If SARS does not have valid banking details for the taxpayer, the taxpayer will be informed via SMS or email.

Supporting documentation

A person submitting supporting documentation electronically to SARS in order to update or verify banking details must also provide an image. For example, where there is a SARS case number that can be provided or where details need to be updated as requested. In both instances, the image needs to include a clear image of the person who deals with the submission, holding their proof of identity, and a note that may be handwritten, which indicates the case number and date when the documents are uploaded to SARS.

The following supporting documentation needs to be supplied in order to update or verify banking details:

- A stamped letter from the bank; it can be electronically stamped, not older than three months, confirming the account holder, account number, account type and branch code, or
- An eStamped bank statement obtained from the bank, an ATM or electronically, not older than three months, confirming the account holder, account number, account type and branch code.
- For a holding company, subsidiary company or non-resident company for VAT, a VAT119i indemnity form is required in instances where the banking details of a third party are used.

Additional supporting documents
Apart from the above documentation, the supporting documentation indicated below is also required.

- **Individuals**
  - » A certified copy of a valid South African ID document (front and back in case of card ID), driver's licence, passport, temporary ID, asylum seeker certificate or permit. The certification should not be older than three months.
  - » A copy of proof of residential address (or completed CRA01 form that is available on SARS' website if another person confirms the taxpayer's residential address) not older than three months.
  - » If the banking details are those of a joint bank account shared by both spouses and a copy of a marriage certificate.
  - » If the banking details are those of a joint bank account shared by a life partner, an affidavit by both partners to confirm the shared account and the reason why the taxpayer is unable to have their own bank account (only for income tax purposes).
  - » A power of attorney where the request is done by a tax practitioner or a requestor with a mandate.

- **Companies**
  - » A copy of the Companies and Intellectual Properties Commission (CIPC) registration certificate and a notice of incorporation.
  - » A certified copy of a valid South African ID document (front and back in case of a card ID), a driver's licence, a passport and a temporary ID of the public officer or representative taxpayer. The certification should not be older than three months.
  - » A copy of proof of the residential address (not older than three months) of the public officer or representative taxpayer (or completed CRA01 form that is available on SARS' website if another person confirms the residential address).
  - » A copy of proof of physical business address (or completed CRA01 form), not older than three months.
  - » A letter of appointment from the company (signed by all directors) where the request is received from the representative taxpayer. If it is not possible for all directors to sign, the company's memorandum of incorporation (MOI) should be attached with a specific section dealing with how decisions are made and the quorum required to make decisions.
  - » For a deregistered or inactive company, the director's banking details are acceptable if the company does not have an active bank account. One director's banking details should be used when changing the details in the case where more than one director exists for the company.
  - » A power of attorney, signed by the public officer registered as per SARS records, where the request is made by a tax practitioner or a requestor with a mandate.
- For taxpayers other than individuals and companies such as a deceased estate, an insolvent estate, an asylum seeker/refugee, a tax-exempt institution, a trust, a main holding company or a subsidiary company, co-operatives, a body corporate, or a corporate executor, as well as taxpayers falling within the categories of exceptional circumstances, I would suggest referring to the SARS website for specific documentation required or to contact a registered tax practitioner to assist.

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FILING SEASON 2022

YOLISA DYASI, Tax Technical Consultant at SAIT

This document has been updated with the information contained in the following publication of SARS: Guide on Income Tax and the Individual (2021/22).

Due dates for submission and payments

PERIOD	TAXPAYER
1 July 2022 to 24 October 2022	• Taxpayers who file online • Taxpayers who cannot file online can do so at a SARS branch by appointment only.
1 July 2022 to 23 January 2023	Provisional taxpayers including Trusts may file via eFiling or SARS MobiApp.
31 January 2023	Payment due date for amounts due to SARS*.

**All information indicated accordingly must still be confirmed by SARS.*

What do I need to know?

Although there will be some procedural similarities to previous years, Filing Season 2022 will mostly operate differently. To indicate where the differences are, we have prepared a basic step-by-step process chart comparing the 2020 and 2021 years with Filing Season 2022.

1 SARS has identified a population of individual taxpayers about whom SARS has sufficient information based on third-party data received, to issue original estimated assessments to these taxpayers. Affected taxpayers are referred to as the 'auto-assessment population' (hereafter referred to as the 'AA population').

SARS identifies a population of individual taxpayers about whom SARS has sufficient information based on third-party data received, to 'auto-assess' these taxpayers.

There is no definition of the term 'auto-assessment'. This is a term used by SARS in taxpayer communication. However, when SARS refers to an 'auto-assessment' in Filing Season 2022, it means an 'original estimated assessment' in terms of section 95 of the TAA.

There is no definition of the term, an 'auto-assessment' is. This is a term used by SARS in taxpayer communication. However, when SARS refers to an 'auto-assessment' in Filing Seasons 2020 and 2021, SARS means the pre-populated tax return on eFiling.

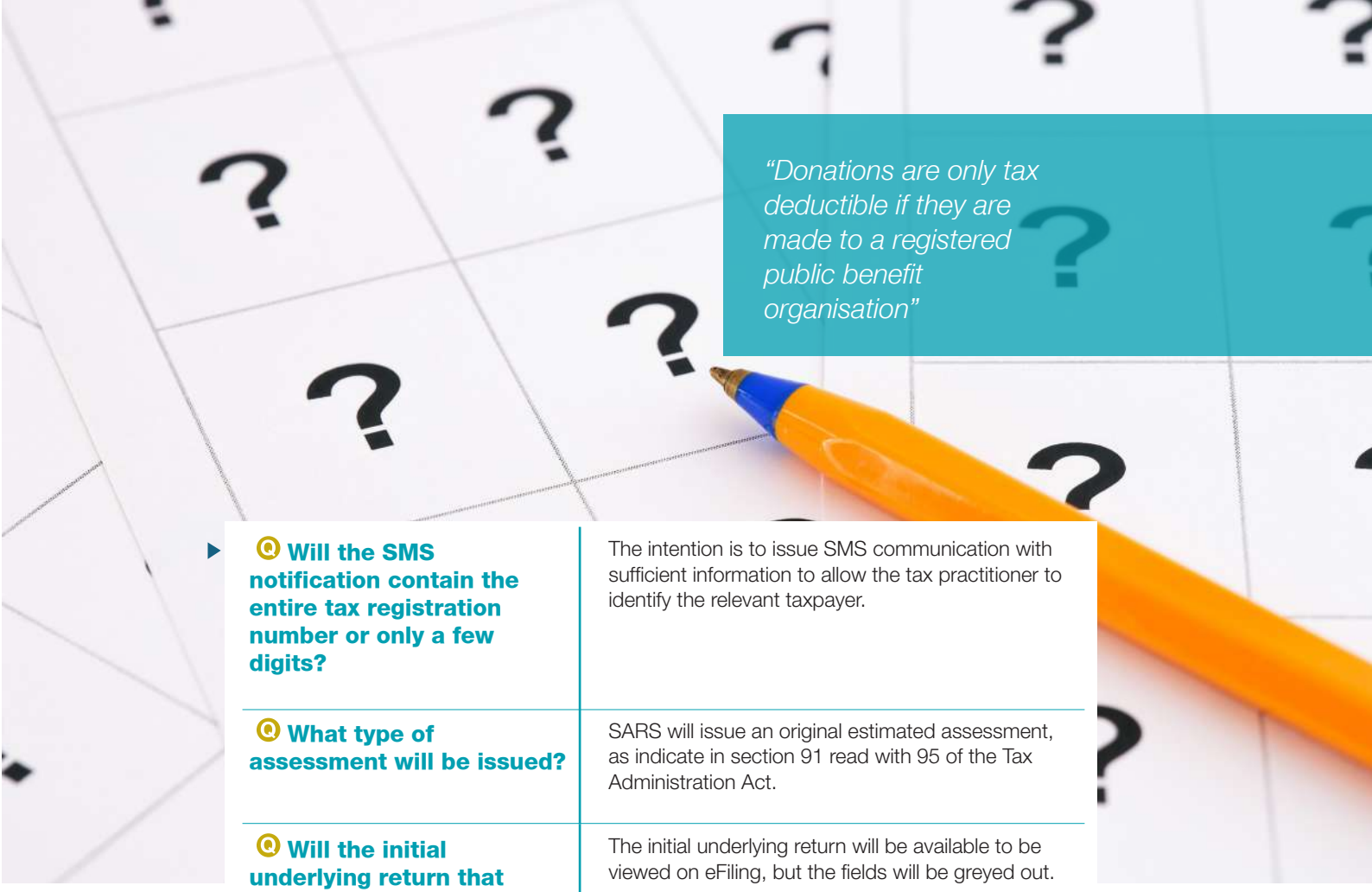
2 Taxpayers in the population receive an SMS from SARS that they have been selected to be 'auto-assessed' (i.e. to receive an original estimated assessment).

Taxpayers in the population receive an SMS from SARS that they have a tax return pre-populated by SARS on eFiling or on the SARS MobiApp.

3 Accepts the assessment: When the taxpayer receives the SMS, they must log into eFiling or MobiApp to view the original estimated assessment. The underlying original return will be greyed out. If the taxpayer agrees with the assessment, they must check if a refund is due or if tax is owed to SARS. If a refund is due, no further action is required. If a debt is due, the taxpayer must settle the debt by the due date indicated.	Accepts the tax return: Taxpayers that received the SMS and agrees with the 'auto-assessment' needs to 'Accept' and submit the pre-populated tax return (SARS: 'auto-assessment') by the 2020 or 2021 due dates if they are individual non-provisional taxpayers, which will result in SARS issuing an original assessment (section 91 of the TAA).
4 Disagrees with the assessment in 40 business days: If the taxpayer disagrees with the original automated assessment, the taxpayer has 40 business days from the date of issuance of the original estimated assessment (SARS 'auto-assessment') to 'submit a return'. This means that if the taxpayer wants to dispute any element contained in the original estimated assessment, they will need to edit the tax return. By editing the tax return, the taxpayer is effectively submitting a Request For Correction (RFC). SARS will then issue a revised assessment, which is a reduced or additional assessment should SARS accept the edits.	Disagrees with the tax return: Taxpayers who have received the SMS, but do not agree with the 'auto-assessment' need to 'Edit' and submit the prepopulated tax return (SARS 'auto-assessment') by the 2020 or 2021 due dates if they are individual non-provisional taxpayers, which will result in SARS issuing an original assessment (section 91 of the TAA).
5 Disagrees with the assessment, outside of the 40 business days: 1. The **Guide on Income Tax and the Individual (2021/22) states:** 2. If SARS receives the request for extension, together with reasonable grounds for requesting the extension before the expiry of the 40 business days - SARS may extend the period to submit the return. 3. If SARS receives a request for extension after 40 business days from the date of the estimated assessment, extension may only be granted if – 4. the individual's request is submitted to SARS within 21 business days after the expiry of the 40 business days and outlines reasonable grounds for not requesting the extension in time; or 5. the individual's request is submitted to SARS within three years after the expiry of the 40 business days, and outlines exceptional circumstances for not requesting an extension in time.	Taxpayers that have received an SMS, but do not accept, edit, or submit their tax returns within the specified time period, receive an estimated assessment from SARS, which is only subject to objection and appeal once a return has been filed.
6 The taxpayer can only access the dispute process on tax return, once the taxpayer has submitted an edited tax return (RFC). However, the taxpayer has access to the dispute process (objection and appeal) if SARS does not accept the edited return (RFC).	If the taxpayer wants to dispute anything on the estimated assessment, they have to submit the outstanding tax return.

Due to the different processes applicable during Filing Season 2022, we have attempted to provide members with as much clarity as possible based on the information available. We have indicated where matters are still uncertain.

Q What is an 'auto-assessment'?	There is no definition of the term, 'auto-assessment' is. This is a term used by SARS in taxpayer communication. In 2022: When SARS refers to an 'auto-assessment' in Filing Season 2022, SARS means an 'original estimated assessment' in terms of section 95 of the TAA. In 2020 and 2021: When SARS refers to an 'auto-assessment' in Filing Seasons 2020 and 2021, SARS means the prepopulated tax return on eFiling.
Q When will taxpayers be able to check the third-party data that will be prepopulated on their tax returns?	The 2022 third-party data will be available on eFiling from a date to be determined.
Q Will SARS select a taxpayer for verification or audit if auto-assessed?	No, SARS has already quality checked the auto-assessment; therefore, if the taxpayer agrees with the assessment, the taxpayer will not be selected for verification or audit.
Q What will happen if a third-party resubmits information and there is a change?	If a third-party resubmits information and there is a change in the information on the taxpayer's underlying tax return, after the issuance of the assessment, SARS will issue a letter to the taxpayer to submit a revised return (RFC) within 10 business days. If the taxpayer does not respond, SARS will issue a revised estimated assessment (IT34).
Q Will the tax practitioner and the taxpayer receive an SMS?	The intention is for both parties to receive the communication.* A letter (or extended SMS) will be sent with the original estimated assessment, that will explain the process.
Q When will the SMSs be sent?	The intention is to send the SMSs in batches, from the first week of July and ending by 24 July 2022.*



"Donations are only tax deductible if they are made to a registered public benefit organisation"

Q Will the SMS notification contain the entire tax registration number or only a few digits?	The intention is to issue SMS communication with sufficient information to allow the tax practitioner to identify the relevant taxpayer.
Q What type of assessment will be issued?	SARS will issue an original estimated assessment, as indicate in section 91 read with 95 of the Tax Administration Act.
Q Will the initial underlying return that was used to generate the original estimated assessment, be reflected as issued and assessed by SARS on eFiling and the SARS Mobi-App?	The initial underlying return will be available to be viewed on eFiling, but the fields will be greyed out.
Q Will a taxpayer be able to view the pre-populated income tax return as well as the ITA34 assessment notice (the original estimated assessment)?	It is anticipated that the initial underlying return and the linked original estimated assessment will both be available for comparison purposes.
Q How and when will SARS determine that the taxpayer agrees with the original estimated assessment?	In the case of the AA population, SARS will act on the basis that the original estimated assessment is complete and correct, unless otherwise indicated by the taxpayer. Therefore, once SARS issues the original estimated assessment, it will process any refunds within a 72-hour period.
Q What will the payment due date be in the case of outstanding amounts?	From examples, it appears that the payment due date for any debt due to SARS will be 31 January 2023.

Q When will any refund due be paid?

The intention is to process any refunds stemming from an original estimated assessment within 72-hours from the issuing of the assessment. In instances where the taxpayer has submitted an edited return (RFC), SARS will run the return through the SARS risk engine. The return may be identified for an audit or verification. However, once the processes have been completed, SARS will issue a revised assessment, which will be a reduced or additional assessment.* Again, 72-hour the period for a refund to be processed from the date when the assessment was issued, will apply.*

Q How must a taxpayer indicate that they disagree with the original estimated assessment?

The taxpayer must edit the return (RFC) via a button that is available once the taxpayer opens the original estimated return. The edited return will be a second version of the return, which must be accepted or rejected by SARS upon submission.

Q If the taxpayer disagrees with the original estimated assessment, when must an edited return (RFC) be submitted?

The timelines of section 95 indicate that the edited return (RFC) should be submitted within 40 business days from the date when the original estimated assessment was issued.

Q What is the intended process when the taxpayer wants to apply for an extension beyond the initial 40 business days, if the taxpayer applies before the expiry of the 40 business days?

According to the Guide on Income Tax and the Individual (2021/22), if SARS receives the request for extension, together with reasonable grounds for requesting the extension, before the expiry of the 40 business days, then SARS may extend the period to submit the return.

A specific button will be made available on eFiling for a taxpayer to apply for an extension beyond the 40 days (refer to section 95(7) of the TAA*): "95(7) If reasonable grounds for an extension are submitted by the taxpayer, a senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in section 99 (1) or forty business days, whichever is the longest."

The intention is to issue the taxpayer with a letter confirming the extension.* However, it appears unlikely that SARS will grant extension beyond the current deadline of 24 October 2022.

Q What is the intended process when the taxpayer wants to apply for an extension beyond the initial 40 business days, if the taxpayer applies after the expiry of the 40 business days?

According to the Guide on Income Tax and the Individual (2021/22), a request for extension that is received after 40 business days from the date of the estimated assessment, may only be granted if:

- the individual's request is submitted to SARS within 21 business days after the expiry of the 40 business days, and outlines reasonable grounds for not requesting the extension in time; or
- the individual's request is submitted to SARS within three years after the expiry of the 40 business days and outlines exceptional circumstances for not requesting an extension in time.

Q What is the maximum allowable extension period?

According to our understanding, section 95 currently indicates that a senior SARS official may extend the 40-business day period for a period not exceeding the relevant period referred to in section 99(1) (prescription of the return) or forty business days.

This would mean that the first 40 business days apply automatically, and that the second 40 business days (or less), may be granted should reasonable grounds exist (section 95(7) of the TAA). Thereafter, if 'exceptional circumstances' applies (refer to section 244(3)(b) of the TAA), SARS may grant additional extension.*
"244. Deadlines.—
(3) If SARS is authorised to extend a deadline, the application for extension must be submitted to SARS in the prescribed form before the deadline expires unless—
(b) the delay is due to a circumstance referred to in section 218(2) (a) to (e) or any other circumstance of analogous seriousness and the application is submitted within three years of the deadline."

Q What would happen if the taxpayer applied for extension but did not submit the return within the extended period granted?

It is anticipated that the original estimated assessment will apply.*

Q Will an edited return (RFC) be subject to manual intervention?

An edited return (RFC) will be run through the SARS risk engine. The return may be selected for verification or audit.*

Q How will a taxpayer know that the edited return (RFC) was accepted by SARS?

Should SARS accept the edited return (RFC), a revised assessment will be issued. If SARS does not accept the updates in the tax return, SARS will inform the taxpayer of the reasons why their updates are not accepted. If the taxpayer disagrees with the reason(s) why SARS did not accept the updates in the tax return, then the normal objection and appeal facility will be available.

Q How will a taxpayer be informed that SARS did not accept the edited return (RFC) and within what timeframe?

According to section 95(8) of the TAA: "If SARS decides not to make a reduced or additional assessment under subsection (6), the date of the assessment made under subsection (1) (a) or (c), for purposes of Chapter 9, is regarded as the date of the notice of the decision."
It is not clear how SARS will inform the taxpayer that the edited return (RFC) was unsuccessful. It is also not clear how much time SARS has to process the edited return (RFC).

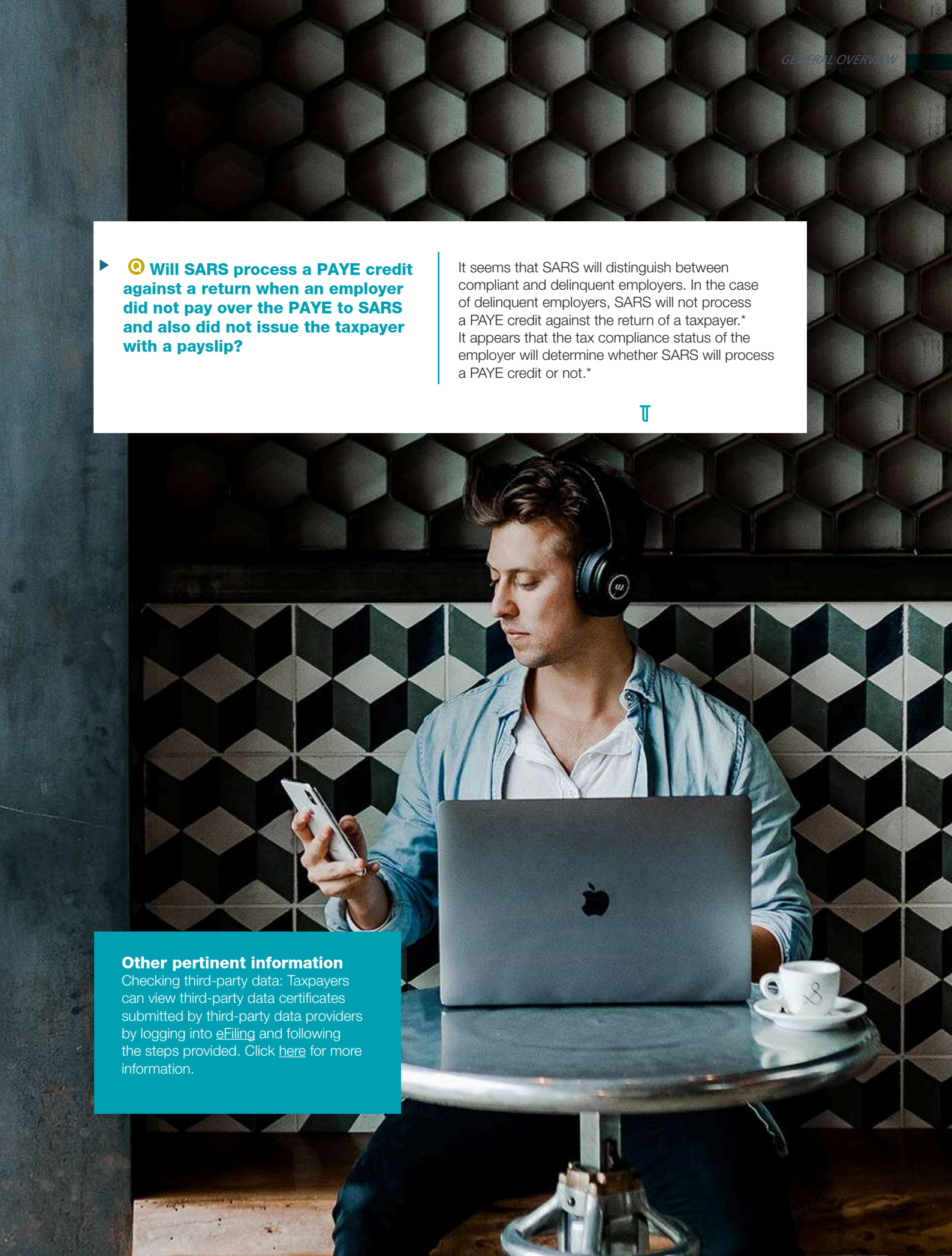
Q Will SARS issue all letters regarding audits on eFiling, and open links to upload supporting documents?

The intention is to issue all letters regarding audits on eFiling and to provide opening links to upload supporting documents.*

Q Can supporting documents be requested once the edited return (RFC) has been submitted?	The edited return (RFC) will be run through the SARS risk engine. The return may be selected for verification or audit. At that point in time, SARS may request supporting documentation. As is the case in the current process, it is anticipated that SARS will issue two letters should supporting documentation be requested.
Q What would happen if the supporting documents requested were not submitted?	It is unclear how delays in the process would affect the taxpayers' tax compliance status.
Q What type of assessment will be issued should SARS process the edited return (RFC) – revised assessment – additional or reduced?	The general variations of assessments will follow should SARS process the edited return (RFC).*
Q Will a taxpayer be able to dispute an assessment/rejection of an edited return (RFC)?	The taxpayer has access to the dispute process (objection and appeal) if SARS does not accept the edited return (RFC).
Q Can a taxpayer dispute an original estimated assessment?	No, the dispute channels are locked until the taxpayer has submitted an edited return (RFC), and the revised assessment has been issued.
Q What impact and time frames are applicable to a taxpayer who was issued with an original estimated assessment, but became a provisional taxpayer during the year of assessment?	The SARS system will flag any provisional taxpayer who has indicated that they are a provisional taxpayer, e.g. by way of submitting an ITR6. If it is not aware that the taxpayer is a provisional taxpayer, then SARS may include the taxpayer in the AA population. However, as long as the taxpayer is, in fact, a provisional taxpayer, the 23 January 2023 deadline, rather than the 24 October 2022 deadline will apply.
Q What is the impact of and time frames applicable to an executor of a deceased estate who was issued with an original estimated assessment?	The timeframes of deceased estates are generally differ from individual taxpayers. It is not clear how these timeframes will be reconciled.

Q Will SARS process a PAYE credit against a return when an employer did not pay over the PAYE to SARS and also did not issue the taxpayer with a payslip?

It seems that SARS will distinguish between compliant and delinquent employers. In the case of delinquent employers, SARS will not process a PAYE credit against the return of a taxpayer.* It appears that the tax compliance status of the employer will determine whether SARS will process a PAYE credit or not.*



Other pertinent information
Checking third-party data: Taxpayers can view third-party data certificates submitted by third-party data providers by logging into eFiling and following the steps provided. Click here for more information.

THE IMPORTANCE OF USING A REGISTERED TAX PRACTITIONER

15 minutes CPD

ADRIAN MODIKWE, Legal and Compliance Officer at SAIT

We highlight the key roles of a tax practitioner and the benefits of using a registered professional.

In this article, we revisit the importance of utilising registered tax practitioners and review some of the new amended eligibility and membership retention criteria as introduced by SARS, effective 1 July 2022.

The need for proper regulation

The tax profession and tax administration systems are highly specialised fields in which extensive proficiency and advanced technical training in tax administration procedures, and accounting practice principles, including the interpretation and application of complex tax legislation, are indispensable tools of the trade. While taxpayers ultimately determine their own tax risk profiles and bear the onus for their own tax affairs, they may not possess the essential tax administration and risk management skills to maintain proper tax compliance and avoid investigation/prosecution by SARS. Lack of these skills could result in considerable financial penalties or criminal charges being imposed for non-compliance.

With the potential ramifications of tax non-compliance in mind, it becomes clear that a degree of certainty in the administration of tax affairs (personal or corporate) and proper regulation of the tax profession are crucial elements of the tax administration system.

The tax profession serves two primary roles in the intricate tax compliance and administration system:

- to foster tax morality and healthy compliance culture by providing expert and reliable tax advice and support services to the client-taxpayer; and thus
- contribute to a sturdier and more effective tax administration and revenue collection system.

Benefits of appointing a qualified and registered tax practitioner

Effective and consistent tax compliance

Members of the tax profession perform diverse functions/services to assist taxpayers in satisfying their tax compliance obligations by applying the necessary ethical standards and professional expertise to, among others:

- competently calculate taxpayer tax risk profiles to offer appropriate technical advice and planning strategies;
- lawfully resolve and alleviate overall difficulties in achieving and maintaining compliance;
- prepare and submit tax returns;
- interpret complicated tax practice and legal positions;
- evaluate and address official SARS inquiries in a procedurally effective manner; and
- effectively address any disputes against SARS administrative decisions (i.e. assessments) on behalf of the client-taxpayer.

Generally, practitioners are bound by the best interests principle in relation to the fiscus, SARS, their respective regulatory bodies, and the client-taxpayer in particular – this provides essential safeguards for taxpayers who do not have the necessary skills to administer their own tax affairs through various functions, checks and balances.

In South Africa, there are no ‘safe harbour’ principles upon which a taxpayer may escape liability for failure to submit accurate and reliable annual tax returns. By using unregulated tax practitioners, the various safeguards and avenues towards remedial action are relinquished and the taxpayer must bear liability; this is partially because the taxpayer has knowingly engaged the services of an unregulated practitioner and also because none of the existing recognised controlling bodies may have the records necessary to found regulatory and disciplinary jurisdiction.

- The latent criminal and financial risk implications of ratifying and filing misleading tax returns lacking in factual or sustainable basis are significantly increased. Potential attendant risks are:
  - the service and advice provided may be ineffectual;
  - the unregistered practitioner may employ unlawful, unethical, or otherwise illicit means and arrangements;
  - the unregistered practitioner may not have professional indemnity insurance; therefore;
  - any costs or penalties incurred to come back from incorrect, false or otherwise unreliable returns cannot be recouped;
  - any negligence, errors or fraud committed by the unregistered tax practitioner may be attributed to the imprudent taxpayer by SARS;
  - the taxpayer may have extremely limited countermeasures in cases of breach of contract; and/or
  - the taxpayer's personal information may be compromised or otherwise exploited for illicit ends.

New criteria for recognised controlling bodies

Section 240(1) of the Tax Administration Act of 2011 (the Act) establishes a framework for the proper screening, authorisation, and regulation of the tax profession by demanding registration with SARS, as well as a recognised controlling body to act as a tax practitioner. Aspirant tax practitioners must meet specific registration eligibility criteria and submit mandatory compliance documentation as determined by SARS and the respective controlling body.

SARS recently introduced new criteria for recognised controlling bodies (RCBs); among the proposed changes are entry criteria for new tax practitioners to ensure that, upon entering the profession, a practitioner is well versed in their professional obligations and standards in addition to the relevant knowledge and experience to practise. These new measures are part and resultant of joined efforts between SARS and relevant RCBs to better professionalise the tax profession.

Entry Criteria – New Members

The new criteria for new tax practitioners are effective 1 July 2022 and include the following:

An RCB may register an individual as a tax practitioner if the individual meets the following requirements.

a. Basic qualifications and experience standards:

- NQF level 6 and above with at least one accounting module and one tax module, plus at least 1 year's tax working experience;
- NQF level 5 plus at least 4 years' experience; or
- NQF level 4 plus 10 years' tax working experience.

b. Successful completion of the SARS Readiness Programme. The SARS Tax Practitioner Readiness Programme delivers important information to new tax practitioners in terms of professional expectations. Upon completion of eight short modules/learning sessions, new tax practitioners will understand their obligations and responsibilities, as well as applicable SARS processes and policies to be adhered to.

c. The tax practitioner is tax compliant.

d. The tax practitioner has submitted an independently verified criminal-free certificate in terms of section 240(3) of the Act to their RCB/s, e.g. a certificate issued by the SAPS.

Membership Retention Criteria – Existing Members

- Existing members remain subject to professional and compliance standards in terms of providing a criminal-free status report (criminal clearance certificate) and maintaining their personal and business tax compliance. A new standard applicable to existing members mainly comprises requirements and standards for Continued Professional Development; SARS requires members to complete 18 total hours of verifiable CPD:
  - 10 hours of tax learning;
  - 2 hours of ethics; and
  - 6 hours of profession-specific learning relevant to the member's day-to-day business.

Regarding individual controlling bodies, by the sole virtue of the high educational standards and other membership requirements, the taxpayer is assured that their tax affairs and personal information will be managed professionally. The South African Institute of Taxation (SAIT) enforces fundamental principles of acceptable professional and ethical conduct, the contravention of which may lead to disciplinary action by an objective, firm, and robust disciplinary board.

Verification of a tax practitioner

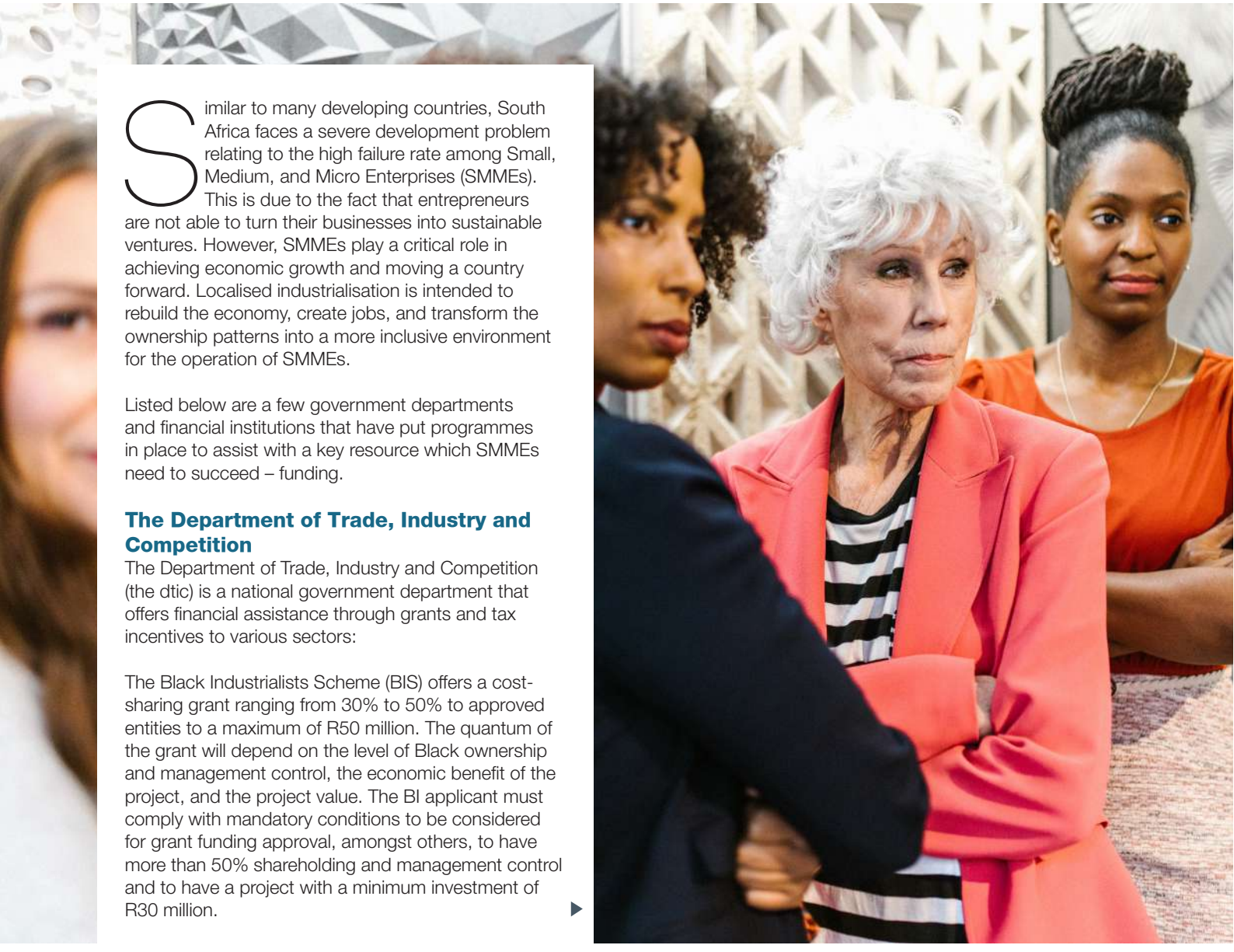
Each recognised controlling body has processes for verification of membership. Additionally, a taxpayer may verify registration with SARS directly through the SARS practitioner portal. SAIT membership verification inquiries may be lodged by email (membercompliance@thesait.org.za or compliance1@thesait.org.za) or via the official SAIT website under the member search or verification tabs.

Funding for small businesses in South Africa

30 minutes CPD

MARIETTA MEYBURGH, Incentives Manager at EY Cova

Our article provides a run-down of the measures and resources still in place or some put in place to assist mainly small and medium-sized businesses in weathering the storms of the COVID-19 impact and beyond.



Similar to many developing countries, South Africa faces a severe development problem relating to the high failure rate among Small, Medium, and Micro Enterprises (SMMEs). This is due to the fact that entrepreneurs are not able to turn their businesses into sustainable ventures. However, SMMEs play a critical role in achieving economic growth and moving a country forward. Localised industrialisation is intended to rebuild the economy, create jobs, and transform the ownership patterns into a more inclusive environment for the operation of SMMEs.

Listed below are a few government departments and financial institutions that have put programmes in place to assist with a key resource which SMMEs need to succeed – funding.

The Department of Trade, Industry and Competition

The Department of Trade, Industry and Competition (the dtic) is a national government department that offers financial assistance through grants and tax incentives to various sectors:

The Black Industrialists Scheme (BIS) offers a cost-sharing grant ranging from 30% to 50% to approved entities to a maximum of R50 million. The quantum of the grant will depend on the level of Black ownership and management control, the economic benefit of the project, and the project value. The BI applicant must comply with mandatory conditions to be considered for grant funding approval, amongst others, to have more than 50% shareholding and management control and to have a project with a minimum investment of R30 million.

The Aquaculture Development and Enhancement Programme (ADEP) is an incentive programme available to South African registered entities engaged in primary, secondary, and ancillary aquaculture activities in both marine and freshwater classified under SIC 132 (fish hatcheries and fish farms) and SIC 301 and 3012 (production, processing, and preserving of aquaculture fish). The programme offers a reimbursable cost-sharing grant calculated at 50% of qualifying cost of up to a maximum of R20 million, with respect to investment in qualifying costs in machinery and equipment; bulk infrastructure; owned land and/or buildings; leasehold improvements; and competitiveness improvement activities.

Small Enterprise Development Agency

The Small Enterprise Development Agency (Seda) is an agency of the Department of Small Business Development (DSBD) which provides non-financial support to small enterprises and cooperatives.

Seda offers the Small Enterprise Manufacturing Support Programme to build a manufacturing sector for an improved industrial base (productive economy) through a focused import replacement programme, and to build the industrial base for both the domestic and external market (in particular, the African Union market).

Funding projects through the Manufacturing Support Programme include:

- Financial and non-financial support to small enterprises in the manufacturing industry sub-sectors;
- Business infrastructure support to small enterprises;
- Route-to-market facilitation in the domestic public and private sectors, and export markets;
- Facilitation of aggregate input costs for raw materials;
- Offering technical skills, product certification, testing, and quality assurance; and
- Financial assistance of up to R15 Million (loans – blended funding).

Small Enterprise Finance Agency

Small Enterprise Finance Agency (SEFA) is an implementing agency of the Department of Small Business Development. The agency is a wholly-owned subsidiary of the Industrial Development Corporation Limited (IDC). SEFA's mandate is to foster the establishment, survival, and growth of SMMEs and to contribute toward poverty alleviation and job creation.

The Small Enterprise Manufacturing Support Programme (SEMSP) mainly targets resuscitating and growing townships, rural towns and villages' economies by providing financial and non-financial support to area-based small-scale manufacturers. The programme provides blended finance to enterprises in the manufacturing sector; its primary objective is to assist early-stage businesses that play in the localisation market.

Financial support includes:

- Funding to purchase machinery and equipment for the various manufacturing sub-sectors that will be supported;

- Working capital for the various manufacturing sub-sectors that will be supported; and
- Funding for product accreditation, certification, and testing.

Funding terms:

- Funding of up to a maximum of R15–million per small enterprise, up to 20% of the amount may be provided as a grant where necessary;
- The term of the funding will be determined by the business's cash flows, a repayment period of up to 84 months per small enterprise, as well as a capital and interest moratorium period of up to 6 months; and
- The loan will be repayable at prime lending rate.

SEFA also provides post-investment support through a network of experienced mentors who provide industry advice and high-level mentoring to SMMEs to help them improve their operational and financial performance.

Industrial Development Corporation

The Industrial Development Corporation (IDC) is a state-owned development financial institution that provides funding for the development of industry in South Africa and the rest of Africa. The IDC strives to, amongst others, promote entrepreneurial development and grow the SME sector, grow Black industrialists, transform impact on communities, and provide funding in support of industrial capacity development.

The IDC has a whole range of funding solutions like the Manufacturing Competitiveness Enhancement Programme (MCEP), SME Connect, SMEs and Midcap Companies, green energy, green tourism, and more.

The MCEP programme has a Working Capital Facility and a Plant and Equipment Facility. Both facilities offer a maximum of R3 million per applicant for pre- and post-business development. Funding is limited to R50 million per applicant at a fixed interest rate of 4% with a maximum term of 48 months. The finance is only available to Black Industrialists who are manufacturers under the Standard Industrial Classification Code 3.

National Empowerment Fund

The National Empowerment Fund (NEF) promotes and facilitates black economic participation by providing financial and non-financial support to black empowered businesses, and by promoting a culture of savings and investment among Black people. The NEF uses a combination of funding instruments ranging from secured (senior debt) to unsecured options (equity), and/or to a hybrid of the two to provide for different transactional needs.

The NEF's funding is currently obtainable from the following funds:

- The Women Empowerment Fund, which aims at accelerating the provision of funding to businesses owned by Black women;
- The iMbewu Fund, which supports Black entrepreneurs wishing to start new businesses as well as supporting existing Black-owned enterprises with expansion capital;
- The uMnotho Fund, which is designed to improve access to BEE capital and has five products, Acquisition Finance, Project Finance, Expansion Finance, Capital Markets Fund, and Liquidity and Warehousing; and
- The Rural and Community Development Fund, which provides funding to aspiring rural entrepreneurs and facilitates skills transfer and operational involvement by community groups.
- The Strategic Projects Fund, which is informed by government strategies and aims to support the government's economic growth strategy;
- The Arts and Culture Venture Capital Fund, which is designed to promote and develop the arts and culture sector by providing affordable loans to start and/or expand small businesses; and
- The Tourism Transformation Fund, which aims at driving transformation in the sector.

The National Youth Development Agency (NYDA)

NYDA offers a grant programme, which includes financial and non-financial support to small enterprises, specifically to South Africa's youth, to develop their businesses, to remove barriers to success, and to develop and deliver critical success factors. The non-financial services include mentoring, cooperative development and business management programmes, and consultancy services.

TAX COMPLIANCE

15 minutes CPD

FEMIDAH PHIRI & **NOSIBA NDLOVU,** Junior Tax Consultants at BDO Tax Services

What does it mean to be tax compliant or non-compliant? How do you know your status? And what are the effects on Government's ability to weather the storm of 'COVID-19' and beyond?

What is compliance?

'Compliance' can be defined as the act of adhering to laws or rules, which shows confidence in and acceptance of the laws and the lawmakers.

In the tax world, compliance means that taxpayers have met their legal obligations under the tax laws, which include ensuring that all tax returns are submitted and that tax liabilities are paid timeously.

If a taxpayer is non-compliant with the tax laws, punitive provisions, which include monetary and criminal sanctions, will be enforced by SARS. Being compliant is a legal requirement for all taxpayers, irrespective of the alert level, variant, or wave of the COVID-19 pandemic.

COVID-19 saw certain tax relief measures implemented to ease the financial strain on qualifying taxpayers. The main requirement for a qualifying taxpayer was that the taxpayer had to be compliant.

This encouraged taxpayers who wanted to benefit from the tax relief measures to ensure that they were compliant with their taxes.

Compliance status

The question is, then, how do taxpayers know whether they are tax compliant?

There are two ways in which taxpayers can check their tax compliance status; they can request a tax clearance certificate or they can confirm their compliance status directly with SARS.

Taxpayers can view their compliance status and request a tax clearance certificate on the 'Tax Compliance Status' (TCS) system on eFiling. This will allow taxpayers to identify whether any monies are due or tax returns are outstanding to remedy any non-compliance.

- Taxpayers will be compliant for TCS purposes if they:
  - do not owe SARS any money (unless a settlement plan or suspension of debt has been agreed to with SARS or the amount is less than R100);
  - have filed all tax returns;
  - are registered for all taxes for which they are liable;
  - have updated all registered particulars; and
  - have either merged or declared all registered tax reference numbers.

"Compliant taxpayers can tender for government work, remit monies offshore, obtain clearance when ceasing to be tax residents, and obtain good standing tax clearance certificates"

It is also important to note that the compliance status is fluid and subject to taxpayers' continued compliance with the tax laws.

The TCS system allows compliant taxpayers to apply for tax clearance certificates in respect of the following:
- tenders;
- foreign investment;
- emigration or cessation of tax residency; and
- good standing.

The TCS system allows authorised third parties to view taxpayers' compliance status through the eFiling system by using an electronic access PIN.

Benefits of being compliant during Covid-19

Being compliant ensures that taxpayers will avoid the possibility of penalties and interest charged on defaults, as well as falling foul of the offence provisions; this may result in a taxpayer being subject to a fine or even imprisonment. It also allows taxpayers to engage in business with the public sector, where it is essential that suppliers registered on the Central Supplier Database (CSD) are tax compliant.

Compliant taxpayers can tender for government work, remit monies offshore, obtain clearance when ceasing to be tax residents, and obtain good standing tax clearance certificates.

Unfortunately, the government did not extend or elaborate on the COVID-19 tax relief measures introduced last year.

Tax morality

The inclination (or disinclination) of taxpayers to be compliant by filing their tax returns, paying their taxes, and complying with their legal obligations under the tax laws has been a moral issue for most South Africans for a very long time.

Non-compliant taxpayers have attempted to justify their actions by blaming the government and the level of corruption; the mismanagement of funds; the lack of service delivery and transparency; and state-capture to name a few.

But a tax revolt owing to low tax morality implies a deliberate action by taxpayers to commit fraud, steal, or decide not to pay SARS for taxes administered, or not render a return required by SARS, or render a fraudulent return, is not the answer. Therefore, it cannot be justified.

The government continues to rely on tax collections from all taxpayers to meet its responsibilities toward the people of South Africa, to ensure our health and safety against this pandemic, and to grow our country's economy.

30 minutes CPD

GETTING TO KNOW THE IRP5

PENNY SMITH, Director at The Supremacy Group

We outline the various sections that make up an IRP5 and how to go about using the IRP5 to complete the individual tax return.

SARS auto assessments

Tax season for individuals opened on 1 July 2021. SARS will once again be doing auto assessments this year. You should request your IRP5/IT3(a) from your employer before the filing season opens.

If you are auto assessed by SARS, should you merely accept the assessment or should you rather verify all the information SARS used to produce this auto assessment?

What information do you require to do this verification?

1. Your IRP5 or IT3(a) received from your employer(s)
2. Retirement annuity certificates
3. Medical aid contribution certificate
4. Logbook – if you received a travel allowance or use a company
5. Proof of expenses – only if you are allowed to claim, e.g. commission earnings or independent contractors
6. Additional income information, e.g. interest received

What is an IRP5 and what information does it reflect?

If an individual was employed during the tax year (1 March 2020 to 28 February 2021), his/her employer will provide a tax certificate which can be an IRP5 or an IT3(a). This is a year to date summary of everything that appears on the payslips for the tax year. The IRP5 will only reflect the financial information that SARS requires for tax calculation purposes, e.g. all income, fringe benefits, company contributions and deductions.

The IRP5/IT3(a) provided to the individual by the employer is submitted to SARS. This certificate is uploaded onto the eFiling profile of each individual, providing SARS has enough information to identify the person.

The IRP5 will contain all the personal information together with the contact details, address and bank details of the individual. The individual must update all of this information at his/her place of employment in order for the employer to reflect the latest correct information on the certificate.

The difference between the two types of certificates is that an IRP5 reflects the tax deducted for the year while an IT3(a) reflects no tax but instead has a reason code as to why there was not tax deducted.

How to use the IRP5/IT3(a) when completing the ITR12 or verifying an auto assessment

When an individual receives an auto assessment from SARS, the IRP5 information should be verified on the eFiling profile. If an ITR12 must be completed, the information must be verified against the IRP5 that was uploaded by SARS.

On eFiling, the below options will be available once the individual has signed into his or her profile and opened the 2021 return:

- **Taxpayer** Information
- **Tax Practitioner** Details
- **Bank** Details
- **Employee Tax Certificate Information [IRP5/IT3(a)]**
- Taxpayer Information - **Income**
- Taxpayer Information - **Deductions**

"if you have income from different sources in a tax year, put a little money aside in case there is a shortfall on assessment"

Taxpayer information

This includes all the personal (demographic) information like name, surname, contact details, address, and bank details. This information is uploaded by SARS according to the IRP5 that the employer submitted and should therefore be correct, provided the individual kept his or her employer up to date with any changes.

If the individual receives an ITR12 it means that the assessment has been done and the IRP5 information must be verified to this. It will once again be reflected per source code and is therefore easy to verify.

Any additional information that does not reflect on the IRP5, for instance if the individual has a private retirement annuity policy, must be checked on the ITR12 as well. This can have an influence on the tax calculation done by SARS on assessment.

Due to limited space on an IRP5, SARS does not allow the financial income to have descriptions next to the amounts. SARS provides all payroll software companies with a list of source codes for each income, fringe benefit, company contribution or deduction (this is called the PAYE Business Requirement Specifications). To be able to identify the amounts, it is a good idea to compare the IRP5 with the final payslip for February. The information will be under the year-to-date accumulated figures and will show the description next to the amount. To complete the ITR12, use the source code with the amount.

Pay periods

The periods employed during the tax year is reflected as:

Pay Periods

ETI Employment Date (CCYYMMDD)	20190301	Certificate Tax Period Start Date (CCYYMMDD)	20200301	Certificate Tax Period End Date (CCYYMMDD)	20210228
Periods in Year of Assessment	12.0000	No. of Periods Worked	12.0000		
Voluntary Over Deduction	Y ☐ N ☐	Fixed rate Taxation Indicator	Y ☐ N ☐		

SARS directive

If the individual received a lump sum during the tax year, the employer would have applied for a directive from SARS which will appear on the IRP5 as per below:

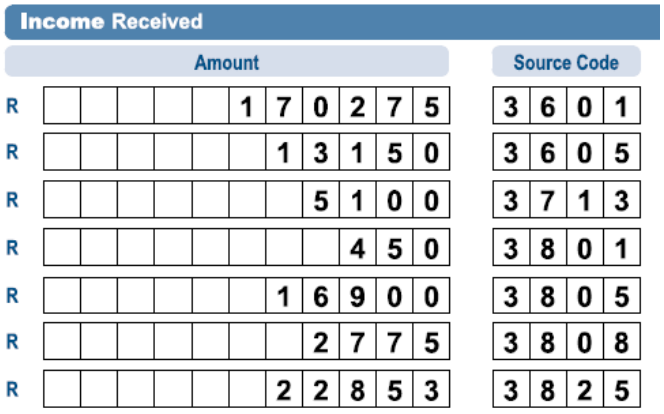
Directive Numbers

Directive No.	1234567/89	Directive No.		Directive No.	

Income source codes

The most important part of the IRP5 is the financial information as this is what SARS uses to do an assessment.

An example of some of the income source codes as per the above example is:



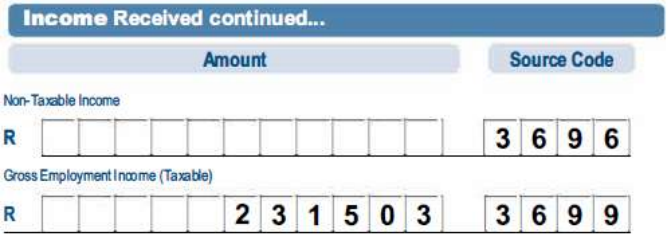
Income Received		
	Amount	Source Code
R	17 027.50	3601
R	1 315.00	3605
R	51.00	3713
R	4.50	3801
R	1 690.00	3805
R	27.75	3808
R	228.53	3825

3601 Normal salary or wage
3605 Annual bonus/13th cheque
3713 Taxable allowance, e.g. computer allowance or telephone allowance
3801 General fringe benefits e.g. group life policy
3805 Accommodation
3808 Fringe benefit – payment of debt
3825 Provident Fund taxable amount

Other frequently used source codes not reflected in the example are:
3606 Commission
3607 Overtime
3616 Independent contractor
3701 Travel allowance
3702 Reimbursed travel allowance
3810 Medical aid taxable amount
3817 Pension fund taxable amount

Total taxable income

The total taxable income is added together and reflected under source code 3699 as per the below:

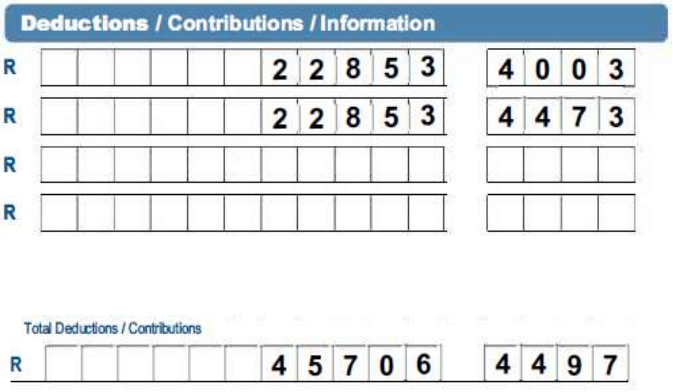


Income Received continued...		
	Amount	Source Code
Non-Taxable Income		
R	3696	
Gross Employment Income (Taxable)		
R	231 503	3699

The individual could wonder why the total is higher than the actual cash received. This is because any source codes starting with 38XX is a taxable amount which is not paid to the employee in cash, but paid to a third party, for example medical aid or a provident fund.

Deductions

The deductions and company contributions on the IRP5 are noted as follows:



Deductions / Contributions / Information		
	Amount	Source Code
R	22 853	4003
R	22 853	4473
R		
R		
Total Deductions / Contributions		
R	45 706	4497

All deductions start with source code 40XX and company contributions with 44XX.

As per the above example, this IRP5 reflects:
4003 Employee Provident Fund deduction
(this code will have the deemed employer contribution)
4473 Employer Provident Fund contribution
4497 Total deduction/contributions

The most frequently-used deductions are:
4001 Employee Pension Fund deduction
(this code will have the deemed employer contribution)
4006 Retirement Annuity amount
4005 Employee Medical aid deduction
(this code will have the deemed employer contribution)
(A deemed contribution is the amount that the employer contributes, and the employee is taxed on the amount.)

The most frequently-used contributions are:
4472 Employer pension fund contribution
4474 Employer medical aid contribution

A tip for individuals with regards to pensions, provident funds and medical aid: If the employer pays a contribution, then the IRP5 should reflect:

Pension Fund	3817, 4472 and 4001
Provident Fund	3825, 4473 and 4003
Medical Aid	3810, 4474 and 4005

PAYE, UIF, SDL and Medical Credits

The tax (PAYE), UIF contributions, Skills Development Levy (SDL) and Medical Tax Credits are shown under a separate section on the IRP5.

PAYE will be the total amount of tax paid for the year. UIF will be the employer contribution and employee deduction added together. SDL is an employer contribution. Medical aid credits will only reflect if the individual has a medical aid with the employer.

Tax Credits and / or Employer / Employee Contribution		
PAYE R	24361,44	4102
PAYE on Lump Sum Benefit R		4115
Employee and Employer UIF Contribution R	3569,28	4141
Employer SDL Contribution R	2086,50	4142
Total Tax, SDL and UIF R	30017,22	4149
Medical Scheme Fees Tax Credit R	0,00	4116
Additional Medical Scheme Fees Tax Credit R	0,00	4120
Reason for Non-Deduction of Employees' Tax		4150

The reason for the non-deduction of employees' tax (PAYE) will reflect a number for SARS to know why the individual had no tax (source code 4102) which means the individual will receive an IT3(a) and not an IRP5.

Tip: An IRP5 will always have an amount in source code 4102 and not in source code 4150, whereas an IT3(a) will have no amount in source code 4102 but will have a figure in source code 4150.

Why is my IRP5 not reflected on my eFiling profile?

SARS must verify that the correct IRP5 is loaded on the correct eFiling profile. To do this, there are a lot of ticks that need to be made for the upload to take place. These ticks include the first name, surname, initials, ID number, address, contact numbers and bank details, as an example. If the information on the IRP5 submitted by the employer and the details on eFiling is not the same, SARS will not upload the IRP5 but will keep it. The individual then must upload the complete IRP5 manually which SARS will verify against the IRP5 received from the employer.

What are the pitfalls when the IRP5 does not reflect the full picture?

The IRP5 will only reflect the information the individual earned from his or her employer. If the individual received any additional income of any sort, this must be added onto the financial information on the eFiling profile. This, for example, could be interest received, rental income or any additional income.

What if an individual receives more than one IRP5/IR3(a)?

If an individual was employed by more than one employer during a tax year, then he or she should receive an IRP5/IT3(a) from each of the employers. It could also happen that an individual receives a monthly pension amount, but he/she will be provided with an IRP5/IT3(a) as well.

Each IRP5/IT3(a) should be completed separately under the financial information on the eFiling profile. SARS will upload the multiple IRP5s/IT3(a)s if all the information is correct.

If a person did work for more than one company during the tax year or received a monthly pension it could result in the tax being under deducted for the year. SARS adds all the income received together to do the assessment and deducts the tax already paid; however, as income is added together the tax paid may not be enough and there could be an amount outstanding to SARS. Why will this happen? With the incomes added together, you may fall into a higher tax bracket which will then cause the shortfall.

Tip: If you have income from different sources in a tax year, put a little money aside in case there is a shortfall on assessment, or request one of the companies to deduct a little additional tax monthly.

HOW IS A SECOND INCOME TAXED?

15 minutes CPD

MAYA NIKOLOVA, Founder of Tax Advise

In today's debilitating and uncertain economic climate, many people exploit several opportunities to increase their income without necessarily realising the income tax consequences and the adverse effects on their disposable cash once they have met their tax obligations.

South African income tax is built on a progressive tax basis; this means that the more taxpayers earn, the higher the marginal tax rate, and the more tax is payable on assessment. A progressive tax system favours low-income earners by imposing lower income tax rates, which adversely affects higher income groups. Progressive tax is typically applied to personal income tax.

Taxable income is calculated by considering all gross income, in cash or otherwise, received by or accrued to a resident taxpayer after subtracting all allowable deductions under the South African tax laws.

An employer is liable, under the provisions of the Fourth Schedule to the Income Tax Act, to deduct employees' tax, pay as you earn (PAYE), on behalf of employees, and must pay the amounts so deducted to the South African Revenue Service (SARS). Furthermore, the Act requires all registered employers to issue IRP5 certificates to their employees for a relevant tax year in which all income, allowable deductions, and tax paid are stated.

Individuals who earn only remuneration or a salary from an employer are not allowed many deductions for tax purposes. An exception is when, for instance, the employee is granted a travel allowance. In that case, the employee must substantiate business travel to SARS with a logbook.

Some individuals supplement their remuneration from employment with income from a secondary source. This affects their income tax position and the additional gross income received must be declared to SARS.

Provisional taxpayers

The Fourth Schedule defines provisional taxpayers to include all taxpayers "who derive income by way of . . . any amount which does not constitute remuneration or an allowance or advance . . . ", as well as remuneration received from an employer who is not registered for employees' tax.

Taxpayers who earn supplementary income such as consultancy, teaching, or other services income in their own capacity as providers of the services, are therefore by definition categorised as provisional taxpayers.

Additional income sources

If a taxpayer receives additional income such as consulting fees or other service fees, this is considered as income from a trade. The Income Tax Act defines 'trade' to include "every profession, trade, business, employment, calling, occupation, or venture . . . ".

Many taxpayers who are employed and who earn additional income are resting upon the notion that if they pay income tax via their formal employment, they are not legally responsible for paying more tax on the supplementary revenue that they may earn. In the Income Tax Act, 'Gross income' is defined in relation to any year or period of assessment. In the case of any resident, it is defined as "the total amount, in cash or otherwise, received by or accrued to or in favour of such resident". Therefore, all gross income received by a resident taxpayer must be considered for income tax purposes, subject to relevant exemptions and deductions.

A person who is a teacher and who provides private tuition to students for a fee is a classic example of additional income earned by a taxpayer. Employed professionals may earn income from consulting their own clients who are not related to their employers, in their private time; these taxpayers also fall into the category of provisional taxpayers. A plumber or an electrician who works for an employer but who also provides related services privately (e.g. to neighbours) for a fee in their spare time, is another typical illustration of an income from trade. These services need to be declared by the relevant taxpayer for income tax purposes, in addition to their employment income.

An employed taxpayer may also earn a commission from selling in their private time, for instance, various products in a direct selling setting such as beauty and cosmetic goods or homeware products. Although commission earners are normally subject to PAYE deduction from their employers on a tax directive basis, many taxpayers receive commission without tax being deducted from that. Direct selling is a distinctive incidence.

It is not uncommon that taxpayers may earn additional revenue from a different profession, trade or from their own employment. A person could be employed as a bookkeeper and earn income on the side from selling homemade cookies.

Last but not least, taxpayers who are involved in any cryptocurrency trading but who are also formally employed, cannot escape the income tax liability of their supplementary income received from crypto trading.

As a rule, all revenue from any type of trade that a taxpayer may run on the side of their formal employment is considered as 'gross income' received from 'trade'.

According to section 11, the Act allows the deduction of "expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature". Taxpayers are therefore permitted to claim a deduction of their allowable expenses from their gross income from a trade, thus resulting in a taxable income which, combined with their income from employment, forms the basis on which income tax liability is calculated.

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Practical application

Only expenses related to taxpayers' additional income can be claimed as deductions in their income tax returns. These expenses would include, for instance, telephone and cell phone expenses if the taxpayer has made calls to clients; travel costs; computer, printing, stationery and communication and internet costs; and some home office expenses. The expenses must be typical to the nature of the taxpayer's trade and incurred in the production of the freelance income. It is crucial to highlight that the expenses must be proven by the taxpayer, as section 102 of the Tax Administration Act lays the burden of proof on the taxpayer to demonstrate that an amount is exempt or non-taxable; or that it may be deducted or set off.

Another significant aspect to consider is that the taxpayer may claim the relative expenses only in proportion to the additional income. For example, only cell phone calls made to the respective clients may be claimed for a billing period; not the total cell phone bill. The same would apply to other claimable deductions.

After considering the additional gross income received by or accrued to them, less the allowable deductions, the person arrives at their taxable second income, which must be considered to calculate the person's total tax liability.

The following example illustrates the practical application of the above explanation:

REMUNERATION INCOME	**R500 000**
Income from trade	R250 000
Allowable deductions	- **R30 000**
Computer expenses: R9 500 Printing and stationery: R1 900 Communication and internet costs: R12 000 Travel expenses: R6 600	
TOTAL TAXABLE INCOME	**R720 000**
Normal tax payable	R189 117*
Less: Tax paid (PAYE withheld by employer)	R106 725*
ADDITIONAL TAX TO BE PAID ON ASSESSMENT	**R82 392**

** Income tax rates for 2022 tax year*

In the said example, the taxpayer, pursuant to receiving the additional gross income from trade, escalated from the 36% tax bracket, relating to the remuneration income only, to 39%. The tax-deductible expenses sustained the taxpayer's taxable income within the 36% income tax bracket on which the total tax liability of R 204 831 is calculated. The taxpayer must pay additional tax of R 82 392 on assessment, as the PAYE deducted by the employer is insufficient to cover the full tax liability of the taxpayer.

In the case above, SARS is entitled to raise penalties and interest on assessment regarding the underpayment of provisional tax by the taxpayer.

How to avoid penalties and interest?

To avoid a situation, as discussed above, where SARS imposes penalties and interest, the person must register to become a provisional taxpayer and submit provisional tax returns in August and February each tax year, ensuring that adequate tax is paid. If income tax is overpaid, SARS will, on assessment, pay interest on the amount overpaid.

Paragraph two of the Fourth Schedule to the Income Tax Act allows a resident taxpayer to arrange with the relevant employer to deduct additional PAYE. This option is, however, mostly suited to employees who earn a second income from employment; it is reflected on an IRP5 certificate. In other words, the person receives remuneration from two or more employers. In that case, the person is exposed to higher income tax rates due to 'moving up' in the progressive tax rate table.

If taxpayers' second income is income from trade and not from remuneration, then they are, per definition, provisional taxpayers and they are obliged to be registered as such. They must then submit provisional tax returns twice a year and make two provisional tax payments for each year of assessment.

"Some individuals supplement their remuneration from employment with income from a secondary source. This affects their income tax position"

The Fourth Schedule to the Income Tax Act also requires taxpayers to estimate their taxable income in a specific manner; it provides for penalties for underpayment of provisional tax because of underestimation. Thus, it is vital that taxpayers with a second income such as consultancy or professional services rendered, must not only register as provisional taxpayers but also accurately estimate their total taxable income in their provisional tax returns; this will enable them to avoid unnecessary penalties and interest imposed by SARS.

Last points

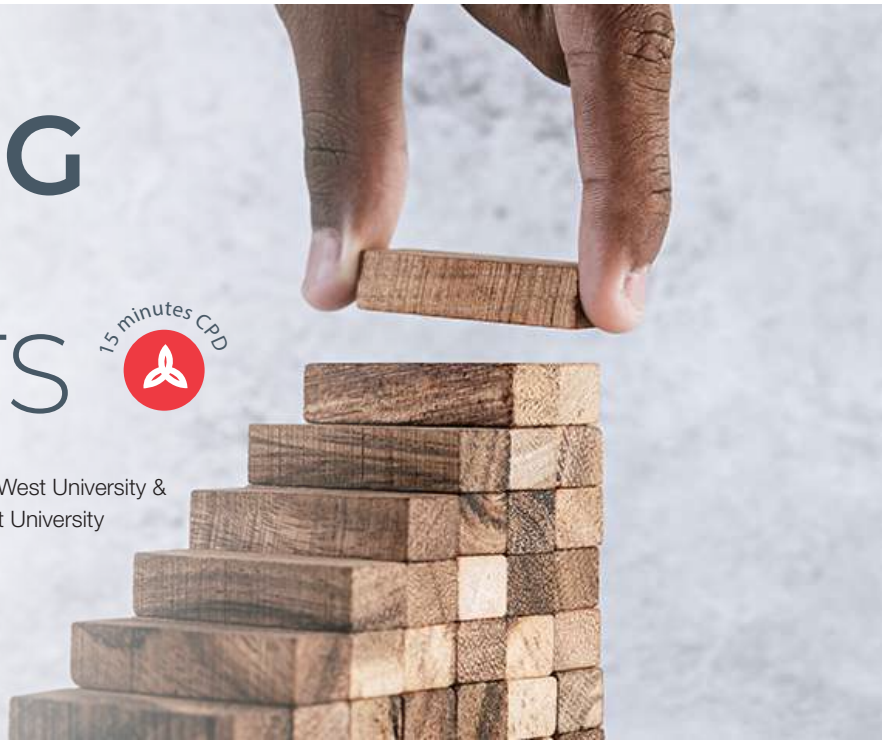
Taxpayers are advised to accurately complete the first page of the income tax return for individuals, Form Wizard, which consists of several questions. The tax return will be customised according to the answers to these questions provided by the taxpayer. This page allows taxpayers to personalise their ITR12 returns to accommodate their individual tax requirements.

Typically, the question whether income was derived from local business, trade, or profession, other than rental income from letting of fixed property, should be answered, 'Yes'.

It is always recommended that taxpayers use the services of a qualified tax practitioner who is registered with SARS and who will be able to provide professional quality tax services and advice on all tax-related matters. Tax practitioners' fees are also deductible for income tax purposes regarding taxpayers who earn income from trade. More than ever before, paying our taxes is ethically sustainable, especially in the context of the global financial challenges ensuing from the pandemic.

HANDLING SPECIAL PAYMENTS

15 minutes CPD



LEANIE GROENEWALD, Senior Lecturer at North-West University &
HERMAN VIVIERS, Associate Professor at North-West University

The article will clarify the treatment of bonuses, overtime, annual leave and other special payments when filing an ITR12 return.

Variable remuneration items (as defined in section 7B of the Income Tax Act) paid by an employer to an employee need to be reflected on the employee's IRP5 certificate issued by the employer. However, these payments are often made after year-end only because variable remuneration amounts such as overtime, commission, and performance bonuses, can only be correctly determined after the work has been completed or targets have been reached. Also, in the event of an employee leaving the employer's service, an IRP5 needs to be issued in terms of paragraph 13(2)(b) of the Fourth Schedule to the Act within 14 days after employment has ceased – usually a date prior to the date on which the employer can determine and make actual payment of the last variable remuneration still owing to such former employee. These timing differences make the correct tax treatment of variable remuneration tricky and challenging to apply in practice.

The purpose of this article is to take a closer look at and to explain these practicalities. Firstly, the working of section 7B is explained, as well as the reason behind the special timing rule for items that form part of 'variable remuneration' as defined in the article. In addition, the article discusses how these items need to be treated to be accounted for in the correct tax period when filing tax returns and when issuing IRP5 certificates.

Tax on variable remuneration

Section 7B was introduced into the Income Tax Act in 2013 with the purpose of matching the accrual and incurral of variable remuneration items with payment thereof. This means that employees will only be taxed on variable remuneration once it it has actually been received, whereas employers will only qualify for a deduction of variable remuneration expenditure once it has actually been paid. The special timing rule contained in section 7B only deems variable remuneration items to accrue and to be incurred only once they have actually been paid. Similarly, in terms of paragraph 2(1B) of the Fourth Schedule to the Income Tax Act, variable remuneration only becomes subject to employees' tax (PAYE) during the month of actual payment to the employee.

Reason for the special timing rule

Where an employee generally receives remuneration from an employer in respect of services rendered, for example, for a salary, both the accrual and the actual payment of such an amount occur within the same month. However, this is not always the case for variable remuneration items such as a bonus, accumulated leave, or overtime payments. For example, it is possible that a bonus could accrue to an employee during a different month (for instance, in February of the 2022 tax year) from the month in which it is actually paid by the employer (for instance, in March of the 2023 tax year). This means that, in the absence of the special timing rule, a mismatch would occur between the tax period during which the accrual of such a bonus takes place (i.e. during the 2022 tax year) and the tax period in which it was actually paid (i.e. during the 2023 tax year). This is because the bonus will only be declared on the employer's tax return (EMP201) and appear on the employee's IRP5 certificate after the 2022 tax year has ended. The mismatch creates the risk that employers might withhold employees' tax in the incorrect tax period. Differences between the EMP501 and IRP5 certificates could result in penalties and interest due to the underpayment of employees' tax.

In an attempt to resolve this issue, section 7B matches accrual and incurral with actual payment. Therefore, section 7B ensures that there is no mismatch between the time of accrual of an amount and the payment of employees' tax, as well as the subsequent issue of IRP5 certificates for various forms of variable remuneration items.

What items qualify as variable remuneration?

The definition of variable remuneration includes:

- Overtime pay, bonus or commission. These variable payments can typically only be correctly determined after work has been completed or targets have been reached.
- Fixed travel allowances or advances where record of expenditure incurred was not kept in terms of section 8(1)(b)(ii).
- Leave pay that could be paid to employees for leave days which they were entitled to but which they never used.
- Reimbursive travel allowances or advances qualifying for the simplified method in terms of section 8(1)(b)(iii). A reimbursive travel allowance is paid where an employee is required to travel for business purposes, after which the employer then refunds the employee based on actual business kilometres travelled. An advance could also be paid where an allowance for business travel is paid before the actual travel, but because the allowance varies from month to month, it also bears the characteristics of a variable remuneration item.
- Night shift allowances normally paid to employees who are required to render services between 18:00 and 06:00. These allowances are paid depending on the number of hours or night shifts worked and are therefore also variable in nature. This would typically apply to entities providing 24-hour essential services such as medical staff, security guards, and police officers.
- Standby allowances paid to employees who are required to be available to come in to work when they are needed. These allowances for standby would then vary depending on the number of hours that staff are required to work. They are also typically paid to emergency medical doctors, firefighters, or maintenance staff.
- Other reimbursive allowances or advances for expenditure incurred by an employee upon the employer's instruction, where proof of costs incurred must be furnished to the employer in terms of section 8(1)(a)(ii). For example, when an employee who is required to buy stationery or coffee for the workplace is reimbursed by the employer for expenditure incurred.

Practical implications for employers and employees

It is important to note that the regulations in terms of section 8(1)(b)(ii) and (iii) are aligned with the provisions of section 7B to match the actual business kilometres travelled by an employee to when the relevant travel allowance or advance is actually paid. This means, for example, that if a travel allowance or advance is received in March 2023 as consideration for business kilometres actually travelled during February 2023, then those kilometres will be deemed to have been travelled only during March 2023. Therefore, employees should not keep a logbook for a fixed period (e.g. from 1 March to the end of February each year) because if the travel allowance is received in a different tax year than when the actual travel took place, the employee should be able to match the kilometres travelled with the travel allowance to which it relates.

In the absence of the aligned provisions between section 7B and section 8(1)(b)(ii) and (iii), an employee would not have been able to claim the business kilometres travelled in February 2023 against his travel allowance or advance received in March 2023. Furthermore, when an employer calculates monthly employees' tax that should be withheld on travel allowances, the employer must use the deemed kilometres travelled relating to that specific month's payment and not to the actual kilometres, to correctly determine whether employees' tax on such travel allowance must be withheld on 20% or 80% of the allowance.

For reimbursive travel, night shift, or standby allowances, employers must ensure that employees' tax is withheld in, and the relevant IRP5 certificate issued for, the tax year during which these amounts are actually paid. The latter will ensure that there is no mismatch between the two during the EMP501 reconciliation process. A mismatch would result in penalties and in interest being automatically raised by the SARS system due to the underpayment of employees' tax. Furthermore, the deduction for an employer will only be allowed in the tax year during which these amounts are actually paid. If the employer claims the deduction in the tax year of accrual instead of the tax year of actual payment, it may also result in penalties and interest.

Takeaway

Employers should take cognisance of the items included in the definition of 'variable remuneration' to ensure that employees' tax is withheld and that IRP5 certificates are correctly issued for these items in the correct tax period (i.e. when payment is made) and that it correctly reflects on the EMP201 reconciliation. Employers must also ensure that the deduction for variable remuneration paid to employees is claimed in the correct tax year (i.e. when payment is made). This will reduce the risk of being subject to the payment of interest and penalties.

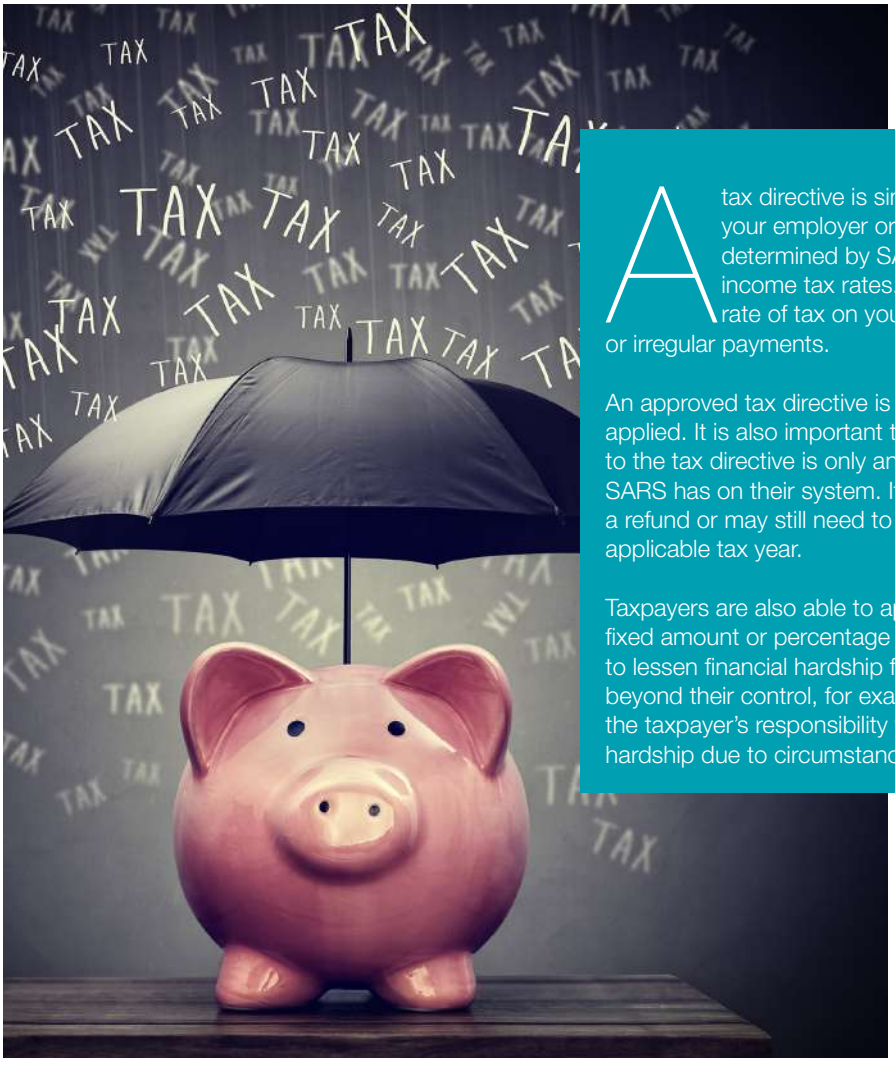
Employees must also take care when keeping a logbook and when declaring business kilometres. Be sure to match and claim the business kilometres travelled to the tax year in which the related travel allowance or advance was actually received. If this is not done, an employee might run the risk of forfeiting a deduction which results in a higher tax liability. Therefore, employees need to verify that their variable remuneration items have been correctly included in, or excluded from, their IRP5 certificates obtained for a specific tax year. If not, errors need to be rectified directly with their employers.

TAX DIRECTIVES FOR LUMP SUMS

15 minutes CPD

ELANI DUWE, Tax Technical Senior at TaxTim

Employers may be required to re-evaluate the position of certain payments relating to an employee's tax. We look at cases where employers must approach SARS and obtain a tax directive for classes of remuneration before an amount is paid to an employee.



A tax directive is simply an official instruction from SARS to your employer or fund manager to deduct tax at a set rate, determined by SARS, for your individual case and not general income tax rates. This directive ensures that you pay a fair rate of tax on your earnings and, most importantly, for larger or irregular payments.

An approved tax directive is only valid for the tax year or period for which applied. It is also important to note that the tax calculation according to the tax directive is only an estimate according to the information that SARS has on their system. It is possible that the taxpayer may receive a refund or may still need to pay in on the final assessment for the applicable tax year.

Taxpayers are also able to apply for a hardship directive by submitting a fixed amount or percentage tax directive. A hardship directive is meant to lessen financial hardship for taxpayers caused by circumstances beyond their control, for example, the current COVID-19 pandemic. It is the taxpayer's responsibility to prove to SARS that they suffered financial hardship due to circumstances beyond their control.

The SARS definition of financial hardship is: "Inability to meet minimum living standards/ depriving the taxpayer of the ability to maintain minimum living expenses if ignored / or extraordinary circumstances beyond taxpayer's control." It should be remembered that SARS has the final decision with regard to what is deemed to be hardship. Cases are reviewed on an individual basis to determine whether the taxpayer qualifies for a tax directive under these circumstances.

There are several types of tax directives available based on the purpose and the type of income earned. Let us look at these types.

Gratuities

The gratuities tax directive is used when a company makes a payment to an employee, or their dependants, in the case of the following:

- Death;
- Retirement;
- Early retirement due to ill health;
- Retrenchment / severance package;
- Shares;
- Arbitration / CCMA award; and
- "Other" payments such as leave pay cash out.

The corresponding SARS form is IRP3(a): Application for a Tax Directive: Gratuities.

Fixed percentage

The fixed percentage directive is issued to commission earners, freelancers, personal service companies and trusts. It instructs taxes to be deducted at a pre-determined set rate each month, irrespective of the amount earned. This is beneficial when earnings fluctuate from month to month. A set fixed percentage will help to 'normalise' tax payments across the full tax period and may alleviate a hefty tax liability at the end of a tax year. This application can only be submitted by an individual or tax practitioner on eFiling.

The corresponding SARS form is IRP3(b): Application for a Tax Directive: Fixed Percentage.

The corresponding SARS form is Form A & D: Request for a Tax Deduction Directive: Pension and Provident Funds on Retirement/Death Before Retirement.

Fixed amount

The fixed amount directive applies to sole proprietors who have been assessed to be running at a loss or taxpayers experiencing financial hardship due to extenuating circumstances beyond their control.

This application can only be submitted by an individual or tax practitioner on eFiling.

The corresponding SARS form is IRP3(c): Application for a Tax Directive: Fixed Amount.

Foreign tax credit

Under paragraph 10 of the 4th Schedule of the Income Tax Act.

This directive is issued to employees where circumstances arise that they must work in a foreign country. Only applicable if the:

- employees are above the tax threshold;
- the employees' foreign remuneration is more than R1.25 million; and
- he employees are taxed in the foreign country.

This application can only be submitted through eFiling.

The corresponding SARS form is IRP3(q): Request for a Tax Deduction Directive: *Variation in Withholding of Employees' Tax*

Share option gains

This directive is issued when gains were made in respect of rights to acquire marketable securities and for amounts in respect of the vesting of equity instruments.

This includes:

- Revenue gain in respect of rights to acquire marketable securities in terms of section 8A;
- Revenue gain in respect of the vesting of equity instruments in terms of section 8C;
- Amounts in terms of paragraph (dd) of the proviso to section (10)(1)(k)(l) dividends;
- Amounts in terms of paragraph (ii) of the proviso to section (10)(1)(k)(l) dividends;
- Amounts in terms of paragraph (jj) of the proviso to section (10)(1)(k)(l) dividends; and
- Amounts in terms of paragraph (kk) of the proviso to section (10)(1)(k)(l) dividends.

This application can be submitted either through eFiling or ISV.

The corresponding SARS form is IRP3(s): Application for a Tax Directive: Section 8A or 8C amount.

Provident or pension fund lump sum payment (after retirement or death)

This directive is issued when a taxpayer withdraws a lump sum from a provident or pension fund due to:

- Death;
- Retirement (including retirement due to ill health); and
- Provident fund – deemed retirement Transfer on retirement under paragraph 2(1)(c) of the Second Schedule.

This application can be submitted either through eFiling or ISV.

Provident or pension fund lump sum payment (before retirement or death)

This directive is used when a lump sum needs to be paid by a provident or pension fund in the following cases:

- Resignation;
- Involuntary termination of employment – retrenchment;
- Withdrawal;
- Future surplus;
- Transfer – unclaimed benefit;
- Transfer – inactive member with insufficient information;
- Divorce – spouse who is a member;
- Divorce – transfer;
- Divorce – spouse who is not a member;
- Security of mortgage bond order / housing loan;
- Emigration withdrawal;
- Withdrawal due to visa expiry;
- Transfer or payment of an amount referred to in paragraph (eA) of the definition of; and
- 'gross income'.

This application can be submitted either through eFiling or ISV.

The corresponding SARS form is Form B: *Request for a Tax Deduction Directive: Pension and Provident Funds – Events Before Retirement or Death.*

Retirement annuity fund lump sum payment

This directive is used when a retirement annuity fund needs to make a payment to a member. This will be in the case of:

- Death before retirement;
- Retirement (including retirement due to ill health);
- Transfer prior to retrenchment;
- Discontinued contributions;
- Future surplus;
- Divorce – spouse that is a member;
- Divorce transfer;
- Divorce – spouse that is not a member;
- Emigration withdrawal; and
- Withdrawal due to visa expiry.

This application can be submitted either through eFiling or ISV.

The corresponding SARS form is Form C: Request for a Tax Deduction Directive: Retirement Annuity Funds.

Annuity commutations (after retirement)

This directive is used for commutation of annuities or other exit events after retirement, such as:

- Transfer;
- Living annuity commutation referred to in paragraph (c) of the definition of 'living annuity';
- GN16: Existing annuity;
- Death – member / former member after retirement;
- Death – next generation annuitant; and
- Next generation annuitant commutation.

The corresponding SARS form is Form E: Request for a Tax Deduction Directive: After Retirement and Death – Annuity Commutations.

"There are several types of tax directives available based on the purpose and the type of income earned"

- **Recognition of transfer between approved funds**
  This tax directive is used when a fund transfers any lump sum benefit from one fund to another fund before a member retires and when a member has reached retirement age and has elected to transfer their retirement interest to a preservation fund or retirement annuity fund in terms of paragraph 2(1)(c) of the Second Schedule.

  This application can be submitted either through eFiling or ISV.

  The corresponding SARS form is ROT01: *Recognition of Transfer between Approved/Public Sector Funds.*

- **Recognition of GN18 purchase of a member/ beneficiary owned pension**
  This tax directive is used when a pension fund, provident fund, pension preservation fund or retirement annuity fund purchases an annuity from a long-term insurer or a long-term insurer purchases an annuity from another long-term insurer (transfer between long-term insurers).

  This application can be submitted either through eFiling or ISV.

  The corresponding SARS form is ROT02: *Recognition of GN18 Purchase of a Member/Beneficiary Owned Pension/Annuity.*

WHEN AND HOW TO APPLY FOR A TAX DIRECTIVE

If you find yourself in any of the situations above, it is recommended that you seek out a tax directive from SARS to help ease tax calculation and payment. Tax practitioners are now able to request hardship tax directives on behalf of taxpayers. In instances where the payments are made from funds or employers, the fund or employer will request the tax directive on behalf of the taxpayer. For further information on how to apply, you can refer to the tax directive guidelines on the SARS website.

INDEPENDENT CONTRACTORS AND EMPLOYEES

45 minutes CPD

▶ **KOBUS MULLER,** Founding Member of Muller Webber & Wilsnach Accountants

The prevalence of remote work since the inception of the national lockdown in March 2020 has necessitated the distinction between an employee and an independent contractor. For tax and legal purposes, it is important to make this distinction.

Does being an independent contractor (as opposed to a salaried employee) make it possible to have a huge legal saving on income tax? This question taxed the minds of employers, employees and independent contractors alike for several years until the judgment in court case *ITC 1718 64 SATC 43* and Circular Minute No. 22 of 1999 was issued by SARS.

Before 1999, employers employed staff, some at the maximum tax rate of 45% while the corporate rate was 30% at that time. Many structures were put into place in which employers and employees would agree that the employees would resign and on the same date be appointed as 'independent contractors'. An ex-employee then formed a company of which he or she was the only shareholder, director and employee, and rendered the same service under the same conditions to the ex-employer. Before rebates, the employee paid R45 000 per month in tax on gross remuneration of R100 000 per month and the 'independent contractor' company paid R30 000 in tax on the same amount of R100 000.

By implementing this structure, there was a R15 000 per month tax saving for the ex-employee, and the new company could also reduce its taxable income by claiming certain tax-deductible expenses (these expenses could not be deducted by salaried employees).

This practice came to an end after SARS issued Circular 22 and several changes were made to the Fourth Schedule to the Income Tax Act. These were aimed at preventing employees from operating in the guise of independent contractors. Whilst the aim of flushing out employees from the thickets of so-called independence is both understandable and laudable, in doing so the legislation has made life difficult for thousands of genuine independent contractors and employees who have to work remotely because of lockdown and those who use their services. The latest changes were issued by SARS in Interpretation Note 17 (issue 5), dated 5 March 2019.

This article will specifically focus on individuals who are South African residents but will not deal with companies, non-residents or labour brokers.

To fully understand the extent of this topic, it is recommended to read and understand some of the definitions in the Income Tax Act.

'Employee', 'employer' and 'remuneration'

It is the employer's responsibility to determine whether the provisions of exclusionary subparagraph (ii) of the definition of 'remuneration' are applicable and whether payments are subject to employees' tax. Not only is this responsibility set by the provisions of the Fourth Schedule, but it is also the employer that is in the best position to evaluate the facts and the actual situation.

An employer that has incorrectly determined that a worker is an independent contractor is liable for the employees' tax that should have been deducted, as well as concomitant penalties and interest. The employer has the right to recover the tax paid from the employee.

There are two statutory tests to determine whether a person is rendering services as an employee or as an independent contractor. The tests are both conclusive. Note that the second test overrides the first test.

The first test

The first test deems a person not to carry on a trade independently if both parts of the test are satisfied.

The first part

The first element is that the services or duties are required to be performed mainly (more than 50%) at the premises of the client. The client referred to must be carefully considered. The statutory tests refer to the premises of either the person:

a. by whom the amount is paid or payable; or
b. to whom such services are rendered or will be rendered.

This means that if the services are rendered mainly at the premises of either of these parties, who are not necessarily the same person, this part of the statutory test is satisfied. This type of arrangement may, for example, occur with third-party arrangements, such as waitrons receiving tips, or with labour brokers.

The second part

The second element of the test is whether the worker is subject to the:

a. control of any other person as to the manner that the worker's duties are or will be performed or as to the hours of work; or
b. supervision of any other person as to the manner that the worker's duties are or will be performed or as to the hours of work.

This control-or-supervision part of this test refers to 'any' person. This is wide and could include the payer of the amount, the recipient of the service, or any other person who has a contractual right to control or supervise the person in respect of those specific services.

If either point above applies (that is, control or supervision), the second element of the first test is satisfied. Both control and supervision do not need to be applicable in a particular situation.

A reporting regime indicates that a measure of supervision exists, albeit indirect and historic in nature. The existence of a reporting regime, depending on factors such as content, detail, regularity and obligation, can be persuasive in favour of an employer-employee relationship. A reporting regime that amounts to the manner that work is done is sufficient to satisfy the control requirement in exclusionary subparagraph (ii) of the definition of 'remuneration'.

If the first test is met, the person is deemed not to be carrying on a trade independently, with the result that the amount paid is deemed to be remuneration and will be subject to employees' tax, unless the second test is met.

The second test

A person who employs three or more full-time employees, who are not connected persons in relation to him or her and are engaged in his or her business throughout the particular year of assessment, is deemed to be carrying on a trade independently.

This test is the overriding test in subparagraph (ii) of the exclusions from the definition of 'remuneration'. It will take precedence over the first test, even if the requirements of the first test have been satisfied, and over the common law position.

A 'connected person' in relation to a natural person means any relative and any trust (other than a portfolio of a collective investment scheme) of which the natural person or the relative is a beneficiary.

'Relative' in relation to any natural person means the spouse of the person or anybody related to him or her or the spouse within the third degree of consanguinity or any spouse of anybody so related. To determine the relationship between any child referred to in the definition of a 'child' in section 1(1) of the Income Tax Act and any other person, the child is deemed to be related to its adoptive parent within the first degree of consanguinity.

"There is a big difference between the tax treatment of independent contractors that prevailed before 1999 and what is allowed in 2021"

- 'Spouse', in relation to any person, means a person who is the partner of such person:
  a. in a marriage or customary union recognised in terms of the laws of the Republic; or
  b. in a union recognised as a marriage in accordance with the tenets of any religion; or
  c. in a same-sex or heterosexual union that is intended to be permanent.

If the second test is satisfied, the person will be deemed to be carrying on a trade independently, and the amount earned will not be remuneration as defined and will consequently not be subject to employees' tax.

It is possible that a person could meet the first test and be deemed not to be carrying on an independent trade, but also meet the second test and then be deemed to be carrying on an independent trade. As stated previously, the second test overrides the first test.

The following points flow from the above.

Qualifying as an independent contractor

A person rendering services to an employer is a person who qualifies to be an independent contractor if he or she also renders a service to another company (employer) and he or she:

a. does not have to perform the service mainly at the premises of the client;
b. is not subject to the control of any person as to how the duties are or will be performed, or as to the hours of work;
c. employs three or more full-time employees, who are not connected persons in relation to him or her and are engaged in his or her business throughout the particular year of assessment.

If all three of these conditions are met, the independent contractor will qualify as such and no employees' tax should be deducted from the amount paid to him or her.

- If neither a. nor b. are satisfied but c. applies, the conditions for an independent contractor are still met.

  If a. is satisfied but not b., the conditions are still met because both a. and b. must be met. The first test is a provision deeming that a person will not carry on a trade independently if both parts of the test are satisfied.

Working part time for two or more employers

Should someone render services to more than one employer or client, the above test must be applied to each separate client.

It might happen that for one client someone might qualify as independent but for some of the other clients not. One client might insist that the work must be done on the client's premises and that the contractor is subject to control. If the contractor does not have three or more full-time employees, the contractor is deemed not to be independent and for this client, he or she will be an employee, and employees' tax must be deducted from the payment for the services rendered. Other clients might not insist on work being done at their premises and they also do not have control over the work. For such clients, the independent contractor provisions will apply, and no employees' tax must be deducted.

Retired and semi-retired persons rendering services

Currently, people live longer and so it happens that many people are still capable of doing very good work after 'retirement age'. If such a person is rendering services to one or more clients or employers, the same test per employer must be done as mentioned before (refer to the "qualifying as an independent contractor" section).

Information that must be kept by the employer

If independent contractors undertook the work, the names of the contractors, their addresses, and the amounts paid to them must be retained. The nature of the work done by the contractor must be available on request. It is suggested that the agreement between the employer and the independent contractor be in writing.

Court rulings

During the 2020 year of assessment, on 7 November 2019, a court ruling was issued whereby Judge Vally J ruled in favour of SARS, confirming the above rules.

In the Tax Court held at Johannesburg Case No. IT 14157 with the appellant XYZ CC and the Commissioner of the South African Revenue Service as the respondent, it was ruled that, inter alia, the documents the appellant produced were so incoherent that they raised numerous questions. Some of these questions were posed to the contractors when they each testified but none of them were able to enlighten the court as to what the true nature of the relationships was. Instead, they were evasive in their answers. The judge did not doubt that none of the witnesses were candid with the court.

The duration of this case was 10 days and one can just imagine how much it cost the appellant in legal fees, employees' tax, interest and penalties.

COVID-19 implications

No changes to any of the aforementioned rules were made for the current pandemic, but many employees did work from home. The question can be asked if this remote working from home will not become the norm whereby the employer saves on rent payments. If one looks at the first element test whereby the services or duties are required to be performed mainly (more than 50%) at the premises of the client, this might change in the future. An employee might be required to work from home mainly, not at the premises of the employer. The question might be asked if the legislation should be changed.

There is a big difference between the tax treatment of independent contractors that prevailed before 1999 and what is allowed in 2021. For that reason, expert advice should always be sought before employers do their planning. Because Interpretation Note 17 (last updated 5 March 2019) issued by SARS is updated regularly, it is recommended to review this Note each time an independent contractor is appointed.

CONSIDERATIONS FOR NON-EXECUTIVE DIRECTORS

15 minutes CPD

GERHARD BADENHORST, Director at Cliffe Dekker Hofmeyr &
JEROME BRINK, Director at Cliffe Dekker Hofmeyr

We discuss the tax implications of non-executive directors' remuneration relating to two binding general rulings.

The Companies Act stipulates that the business of a company must be managed by or under the direction of its board of directors. No distinction is drawn between executive and non-executive directors (NEDs). The statutory duties of NEDs are therefore exactly the same as that of executive directors. However, the VAT and pay-as-you-earn (PAYE) implications of the remuneration paid to executive directors and NEDs are completely different.

The King III Report on Corporate Governance for South Africa stipulates that an NED must act independently of management on all issues (e.g. strategy, performance, resources, diversity) in the best interests of the company. The independency requirement for an NED, and certain amendments in 2007 to the definition of 'remuneration' in the Fourth Schedule to the Income Tax Act, caused some confusion regarding the VAT and PAYE treatment of NED remuneration. SARS then issued Binding General Ruling 40 (BGR 40) and Binding General Ruling 41 (BGR 41) in 2017 which set out the PAYE and VAT implications, respectively, of NED remuneration.

VAT implications

Proviso (iii)(aa) to the definition of 'enterprise' in the Value-added Tax Act provides that the rendering of services by an employee to his or her employer or the rendering of services by an office holder is deemed not to be carrying on an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of 'remuneration' in the Fourth Schedule is paid to such employee or office holder.

However, proviso (iii)(bb) to the definition of 'enterprise' provides that the exclusion in proviso (iii)(aa) does not apply in relation to any employment or office in carrying on any enterprise independently of the employer or concern paying the remuneration.

SARS stipulates in BGR 41 that, for VAT purposes, an NED is not a common law employee of the company as contemplated by proviso (iii)(aa) and is treated as an independent contractor as contemplated in proviso (iii)(bb) to the definition of 'enterprise'. Accordingly, an NED is required to register as a vendor for VAT with effect from 1 June 2017 if the NED's remuneration exceeds the VAT threshold of R1 million for a consecutive 12-month period.

The reasoning of SARS in BGR 41 does not seem to be correct. Proviso (iii)(bb) only applies to services rendered by employees or office holders as contemplated by proviso (iii)(aa) to the extent that the amount payable constitutes 'remuneration' as defined in the Fourth Schedule. SARS ruled in BGR 40 that remuneration paid to an NED does not comprise 'remuneration' as defined in the Fourth Schedule and therefore proviso (iii)(bb) is not applicable.

An NED is only required to register for VAT if the NED carries on an 'enterprise' as contemplated by the definition of that term in the VAT Act. This definition seems to contemplate some form of business activity. Does the NED carry on a business when the NED performs his or her statutory duties as a director of the company? A director is appointed in terms of the Companies Act and is responsible for the management of the company. It does not seem that the performance of statutory duties in managing a company comprises the carrying on of a business as contemplated by the definition of 'enterprise'.

It is therefore arguable that the activities of an NED do not comprise an 'enterprise' as contemplated in the VAT Act. However, it would be best for an NED to comply with BGR 41 until our courts rule otherwise. Various VAT issues then need to be considered.

- Firstly, the VAT registration threshold of R1 million applies to the total value of all taxable supplies made by the NED in a 12-month period. Accordingly, if the NED serves on the board of more than one company and the annual remuneration received exceeds R1 million in aggregate, the NED is obliged to register for VAT. If the total annual remuneration does not exceed R2.5 million, the NED can register on the payments' basis.

Once registered for VAT, the NED is entitled to deduct VAT on expenses incurred that are attributable to the activity of acting as NED. However, such expenses are normally minimal and are generally incurred for a dual purpose, in which case only a portion of the VAT is deductible.

The NED remuneration, in terms of the Companies Act, is determined by a special resolution of the company's shareholders. Such amount is deemed to include VAT if the resolution is silent on VAT. If an NED registers for VAT after the remuneration has been determined, the company cannot add VAT to the determined amount until a new resolution is passed. The NED will nevertheless be required to account for VAT. Expenses incurred by the NED on behalf of the company for which the NED is reimbursed are not subject to VAT. However, allowances paid to an NED to defray expenses form part of the remuneration and are subject to VAT.

An NED may elect for PAYE to be deducted from the remuneration. SARS has stated in Interpretation Note 17 that where the remuneration is subject to both PAYE and VAT, the VAT included in the remuneration must be excluded when determining the PAYE amount.

Non-resident NEDs who serve on the board of South African companies will not be required to register for VAT in South Africa unless they attend meetings physically in South Africa. However, the remuneration paid to non-resident NEDs could comprise imported services on which the company may be required to account for VAT.

PAYE implications

While section 11 of the Income Tax Act sets out the general deduction formula and special deduction provisions for claiming income tax deductions, section 23(m) of the Income Tax Act prohibits the deduction of certain expenses for employees and office holders.

The two requirements that initiate the application of this section are firstly that the expenditure, loss or allowance must relate to an office held (e.g. holding of office as a director), and secondly the taxpayer must derive 'remuneration'in respect of that office. BGR 40 ruled that director's fees received by a resident NED for services rendered as such on a company's board is not 'remuneration' and is not subject to the deduction of PAYE. The limitation rules in section 23(m) therefore generally do not apply and resident NEDs may thus be able to claim a broader range of expenses against their director's fees in terms of the ordinary principles.

In terms of section 11(a) of the Income Tax Act, resident NEDs will need to show that any expenses are actually incurred in the production of income in the form of director's fees and that such expenses are not of a capital nature. In particular, in considering whether an expense would qualify for a deduction under section 11(a), resident NEDs would be well advised to consider the principles laid out in (amongst others) *Port Elizabeth Electric Tramway Co Limited v CIR 8 SATC 13,* in which it was indicated that the question of deductibility of expenditure in a general sense should be approached by applying the following enquiries:

- Is the act, to which the expenditure is attached, performed in
- the production of income?
- Is the expenditure linked closely enough to such act?

In *KBI v van der Walt* 48 SATC 104, the court held that in order to establish the necessary connection between expenditure and income, the taxpayer should show that he/she had bona fide incurred the expenditure for the more efficient discharge of the duties of his/her employment. It was thus not necessary to show that he/she was contractually obliged to incur the specific expenses. Ultimately, the deductibility of expenses is a factual enquiry with reference to the relevant principles and resident NEDs should not forget that they bear the onus of proving whether an expense is deductible for income tax purposes. NEDs would therefore be well advised to seek professional advice as to whether expenses are deductible against their director's fees and to ensure they keep proper records for purposes of discharging their onus.

Over and above this, it is worth specifically mentioning that resident NEDs may be able to claim home office expenses subject to the limitations in section 23(b). SARS recently issued an updated draft Interpretation Note 28 on home office expenses particularly given the marked increase in working from home arrangements due to the global COVID-19 pandemic. Many NEDs perform services for various entities and hence would not be able to claim all home office expenses against one source of income and an appropriate and reasonable apportionment would need to be considered including whether all relevant requirements have been met.

Finally, it should be noted that non-resident NEDs are on a different footing as their director's fees are still considered 'remuneration' with PAYE thus deductible. Their deduction of expenses will thus be limited by section 23(m) of the Act which generally disallows most expenses incurred in relation to earning 'remuneration' unless specifically allowed in section 23(m) as an exception to the general rule.

TAX IN RETIREMENT

NICCI COURTNEY-CLARKE, COO and Head of Tax at TaxTim

We look at why retired taxpayers may be required to pay in tax on pensions or annuities on assessment and how they can avoid a repetition of this each year.

Why do I have to pay in if I earn a small pension annuity?

During the tax filing season, many tax practitioners receive numerous queries as to why pensioners and those who have retired are now suddenly required to pay in money to SARS. Retired taxpayers who are settling into their retirement and no longer receive monthly payslips that show PAYE deductions. When, as is increasingly happening, they are asked to settle an amount with SARS every year, it is usually an unexpected financial shock. Pensioners who find themselves in this situation are often forced to pay in money which they thought belonged to them; consequently, they are at a loss as to why this happens.

Before we continue to explain why this occurs, let us take one step back to clarify how this pension annuity income arises in the first place. Taxpayers can save for retirement by contributing to a pension, provident, or retirement annuity fund (or even a combination of these funds). These taxpayers will enjoy a tax benefit whereby their contributions will qualify for a tax deduction of up to 27.5% of the greater of their taxable income or remuneration (limited to R350 000 per year).

On retirement, those taxpayers who contributed to a pension fund or retirement annuity fund may withdraw up to one-third of their savings as a lump sum. They must use the remaining two-thirds to buy a monthly pension or annuity (provident fund members can withdraw their entire benefit as a lump sum). The exception is that when the total value of the fund is R247 500 or less, the taxpayer can withdraw the balance in full and is not obliged to purchase the annuity.

- We explore the monthly pension or annuity that the taxpayer receives on retirement in more detail below.

Pensioners often receive several annuities, pensions, or some other form of monthly income from their previous employer or from a fund each month. In most instances, each amount received (when looked at individually) falls below the tax threshold, especially if the taxpayer is older than 65 years. However, when all the amounts are added together, taxpayers find themselves having earned more than the tax-free threshold. Therefore, they owe tax to SARS.

Suddenly, such taxpayers then find that they have to pay SARS on assessment. Many of these taxpayers who rely on their monthly income do not have the money to pay the tax owed and thus find themselves in financial trouble, as the example below illustrates.

"Taxpayers must always be aware that if they receive income from multiple funds or entities, they need to add up all the income received to determine whether any tax will be owed to SARS"

Example of multiple annuities resulting in tax owed

Taxpayer A is 67 years of age in the 2022 tax year and receives three different IRP5s or IT3(a)s based on her monthly income from the following sources:

	MONTHLY INCOME	ANNUAL INCOME	TAX DEDUCTED	REASON FOR NO TAX DEDUCTION
RETIREMENT ANNUITY FUND	R5 000	R60 000	R0	Under the tax threshold
PENSION FUND	R3 000	R36 000	R0	Under the tax threshold
LIVING ANNUITY	R4 000	R48 000	R0	Under the tax threshold
TOTAL INCOME	R12 000	R144 000	R0	
TAX DUE ON ASSESSMENT		R1 593		

The entity behind each of these funds does not withhold any tax to be paid to SARS. This is because each fund is not aware that the taxpayer also receives other amounts; each fund then assumes that the annuity paid is the only income received. However, when all the amounts received are added together, the taxpayer actually earned R144 000 throughout the financial year. This is greater than the tax-free threshold for a 67-year-old taxpayer, i.e. R135 150.

Thus, according to the tax tables, R1 593 in tax should be paid on the total annual income for the tax year 2022.

As a result, when Taxpayer A files her tax return for the tax year that ended on 28 February 2022, she is required to pay R1 593 in tax. At this stage, she is unsure why this is the case as none of the funds withheld any tax.

Takeaway

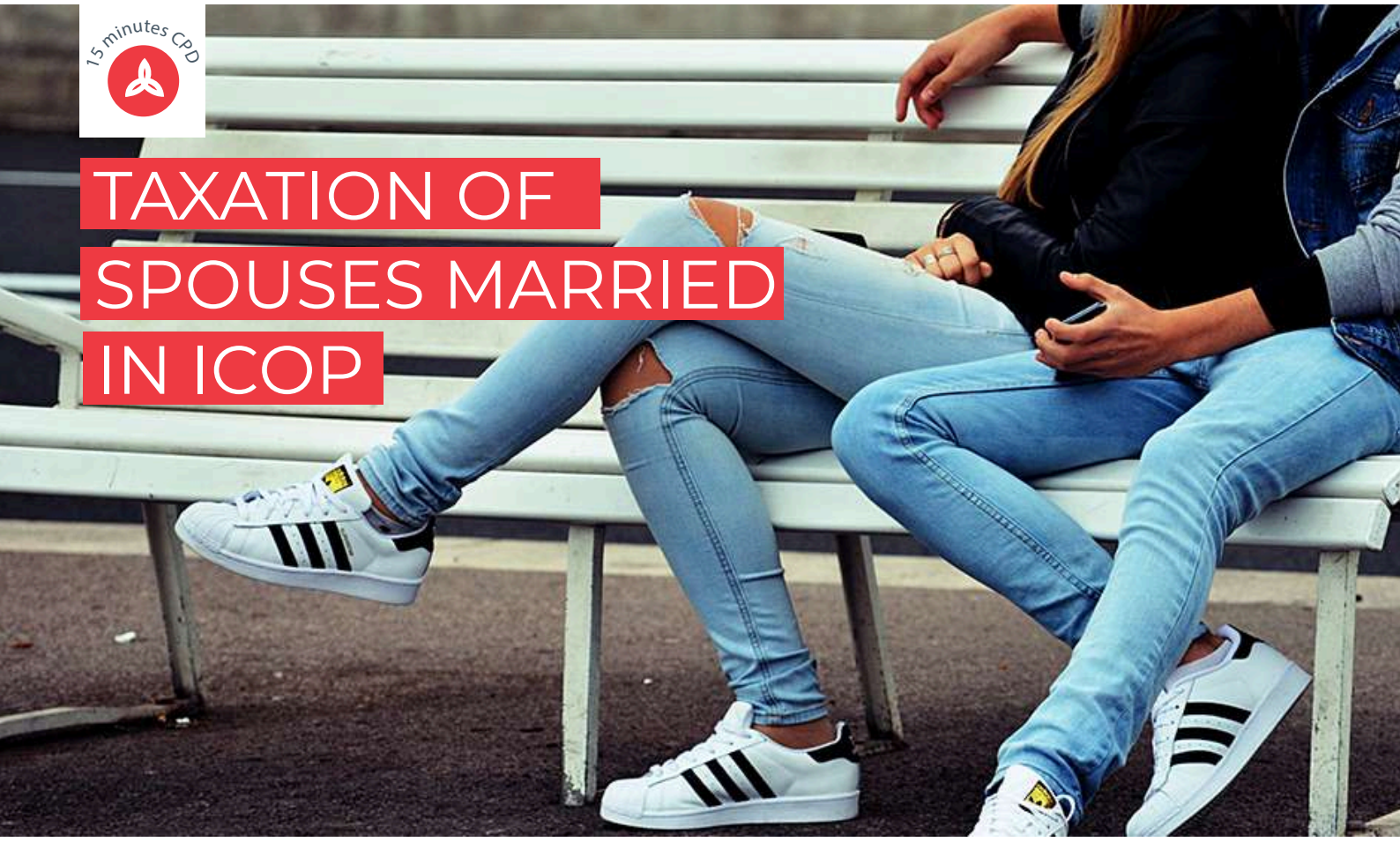
Taxpayers must always be aware that if they receive income from multiple funds or entities, they need to add up all the income received to determine whether any tax will be owed to SARS.

Below are three methods which can be used to avoid facing a nasty tax bill at the end of the financial year:

1. Advise one or more of the funds that you receive other income and ask them to withhold a portion for tax before making the monthly payment.
2. Calculate how much tax would be owed on the total amount received and put away a monthly amount yourself in the bank so that you can easily pay SARS when the amount is due. If you choose this option, you will benefit from the interest that the money you set aside will accumulate before you have to make the payment to SARS.
3. Register as a provisional taxpayer and settle an amount with SARS every six months based on the eventual tax owed.

By following any of the above methods, taxpayers will not be caught off guard and will be able to pay the taxes owed to SARS without any hassle.

15 minutes CPD



TAXATION OF SPOUSES MARRIED IN ICOP

CLAUDINE BOUWMEESTER, Senior Tax Manager: Global Mobility Services and Employment Tax Advisory at KPMG

The correct apportionment of assets and income is important when couples who are married in community of property fill in their income tax returns.

The assets and liabilities of a couple married in community of property are considered to be a joint estate in which each spouse holds a 50% interest. Any income earned from assets held in the joint estate accrues equally to each spouse. However, there are circumstances where this will not apply.

Assets, as well as income earned from such assets, can specifically be excluded from the joint estate. An example of this is where an asset is left to one of the spouses in terms of a will, which specifically states that the asset, as well as any income earned from the asset, may not form part of any joint estate.

Income from trade

A distinction is made between trade and non-trade income to determine in which spouse's hands income will be taxed.

In terms of section 7(2A)(a) of the Income Tax Act, any income which has been earned from the 'carrying on of a trade' is deemed to accrue to the spouse who carries on that trade. Where both spouses jointly continue the trade, the income is deemed to accrue to both in the proportions determined by their trade agreement. If no such agreement is in place, each spouse is entitled to the portion of the income relative to the nature of the trade, the extent of their participation, the services rendered and to any other relevant factor. Although the letting of fixed property is included in the definition of 'trade' in section 1, it is excluded, for the purposes of section 7(2A), from the rule regarding the income earned from the carrying on of a trade; therefore, it is non-trade income.

There are certain other types of income that are deemed to be earned exclusively by a spouse from the carrying on of a trade:

a. benefits payable from a pension fund, pension preservation fund, provident fund, provident preservation fund, benefit fund, retirement annuity fund and any other fund of a similar nature (both lump sum payments as well as annuities);
b. an annuity amount, as per section 10A, due under an annuity contract and any amount payable in consequence of the commutation or termination of an annuity contract (i.e. a purchased annuity); and
c. income earned from patents, designs, trademarks, copyrights and property of a similar nature.

Income deemed to accrue to both spouses

The following types of income are deemed to accrue to both spouses in equal portions:

- Income earned from the letting of fixed property
- Local interest
- Foreign interest
- Local dividends
- Foreign dividends
- Real Estate Investment Trust (REIT) distributions
- Annuities other than those referred to in section 10A
- A capital gain or loss made on the disposal of an asset that falls within the joint estate is also treated as having been made in equal proportions by both spouses

If the spouses happen to divorce during a tax year, non-trade income is only split fifty-fifty up to the date of divorce.

Income earned from the letting of fixed property and other non-trade income that does not fall within the joint estate is deemed to accrue to the spouse who is entitled to it.

Donations made by couples married in community of property

An exemption of R100 000 per year is available in terms of donations made by natural persons. Any donations made more than this amount are subject to donations tax at 20%, provided the total value of all property donated does not exceed R30 million. Should the total value exceed R30 million, the first R30 million is taxed at 20%, whereas the excess is taxed at 25%.

Where a spouse donates property that forms part of the joint estate, each spouse is deemed to have made 50% of the donation.

For example: Spouse A donates R200 000 of property which forms part of the joint estate. Spouse A and Spouse B are each deemed to have donated R100 000. As the donation equals the annual exemption of R100 000, no donations tax liability arises.

A donation of property that is excluded from the joint estate will be regarded as having been made by the spouse who is entitled to the property.

Completion of the annual income tax returns

Couples married in community of property need to bear the following points in mind when completing their annual income tax returns (forms ITR12):

- The return must reflect that they are married in-community-of-property. This declaration is entered under 'Marital Status' when populating the return.
- The personal details of the other spouse (initials, ID/passport number) must be reflected.
- Hundred per cent of the income earned from assets held in the joint estate (interest, dividends, rental, and capital gains) must be declared in each spouse's return. SARS will do the necessary apportionment and apply any exemptions that are available to each spouse.
- When completing the statement of assets and liabilities, each spouse must declare the cost/value of their portion of assets held in the joint estate (e.g. 50% of the cost of the primary residence held in the joint estate).
- Should SARS request the submission of copies of supporting documentation, copies of documentation for both spouses relating to income earned from assets held in the joint estate must be submitted.

CRYPTO CURRENCIES

JOON CHONG, Partner at Webber Wentzel &
LUMEN MOOLMAN, Senior Tax Manager at Webber Wentzel

SARS is tightening tax collection on cryptocurrency transactions, which highlights the importance of events that will trigger tax at income tax or CGT rates.

Have you (1) sold your cryptocurrencies (crypto); (2) exchanged one crypto for another crypto; (3) purchased goods and services using crypto; (4) mined or forked for crypto; (5) received staking rewards in crypto; (6) then sold your staking rewards; (7) received airdrops of crypto; or (8) used crypto as collateral for loans? If you answered yes to any of these questions, remember your taxes!

SARS is increasingly auditing taxpayers' crypto holdings and trading activities. It has also requested information from certain South African crypto exchanges, including 0, about users on the platform and their transactions.

The gain when one crypto (A) is exchanged for another (B) is the difference between the market value of B and the acquisition cost of A. If A were held or acquired on revenue account, the difference would be taxed as income (45%). Otherwise, if held on capital account, the difference would be subject to CGT (18%).

SARS has not issued an interpretation note on the tax implications of crypto assets. Crypto is defined as a 'financial instrument' in the Income Tax Act as opposed to 'currency' which would have excluded crypto gains from the ambit of capital gains tax (CGT). This means that the taxpayer's intention, supported by objective factors such as length of holding and frequency of trades, would determine whether the crypto gains are revenue (taxed at a maximum of 45%) or capital (taxed at a maximum of 18%).

Disposal of crypto

A disposal of crypto as a financial instrument is a taxing event. It may, however, be hard for taxpayers to prove that their crypto investment gains fall within the CGT net, as there are no capital deeming rules in the Income Tax Act for crypto, such as the three-year rule for equity shares.

In determining the intention of the disposal, SARS may be guided by cases involving the disposal of Krugerrands. In ITC 1525, the taxpayer held Krugerrands for 12 years and the purchase was made with the intention to provide funds for a rainy day. The Krugerrands were sold to inject capital into a new business. In ITC 1526, the taxpayer held Krugerrands from eight months to nine years. These were purchased to provide a store of wealth for the taxpayer's children and protection from inflation. They were also sold for various reasons, including to make improvements on and purchase properties. The Tax Court held in both cases that the Krugerrands were held on revenue account and that they were subject to income tax rates.

It may thus be practical to use different wallets for trading cryptos and for holding cryptos for long-term gains.

Barter transactions

It can be difficult to determine the market value and acquisition cost of crypto in ZAR. We suggest using the spot rate for the transactions. Schedules of rates and transactions should be compiled on the calculated gains or losses on the tax return.

The same principles would apply where the taxpayer has purchased goods or services with crypto. The difference between the market value of the goods or services and the acquisition cost of the crypto would be subject to income tax (45%) or CGT (18%), depending on whether the crypto was held on revenue or capital account.

"SARS is increasingly auditing taxpayers' crypto holdings and trading activities"

- Assessed losses from trading in crypto may be ring-fenced. It might not be possible to offset these losses against any other income of the taxpayer, if the taxable income and losses of that taxpayer (adding back assessed losses from the current and prior year) are more than R1 577 300 for the 2021 tax year. There are, however, exceptions to this rule.

Staking / mining / forking / airdrops

If a taxpayer derived crypto from mining or forking, then the gains would be subject to income tax (45%) because they were derived from conducting a trade. If the taxpayer intended to hold the crypto as a long-term investment, then they would be subject to CGT (18%) on any gains.

Staking rewards are also taxed at income tax rates and are, for now, unlikely to meet the definition of 'interest' in the Income Tax Act. This means that the annual interest exemption for individuals cannot be set off against staking rewards.

Further complexities arise when staking rewards are sold. For example, first assume that a taxpayer received staking rewards with a market value of 80 at the time of receipt. That 80 would be subject to income tax as it is akin to interest (without the annual interest exemption). Next, assume that the staking reward is sold for 450 after five years. The difference between 450 and 80 is the gain on the disposal. This gain may be taxed at CGT rates (18%), not at income tax rates (45%), again depending on the intention of the taxpayer at disposal.

If the taxpayer receives new crypto through airdrops on existing crypto held, this is akin to the distribution of new financial instruments based on existing financial instruments held. Once again, the taxpayer's intention in holding the existing crypto, frequency of trading, how long they were held, etc. would determine whether the new airdropped crypto would be held on revenue or capital account. If held on revenue account, the market value of the new airdropped crypto would be subject to income tax (45%); if on capital account, it would be subject to CGT (18%). It is irrelevant that the value of the crypto airdropped was not converted to ZAR. Income is subject to tax when received or accrued. There there is accrual when there is an unconditional entitlement to the crypto / income.

Crypto used as collateral

In our view, when crypto is used as collateral for a loan, there is no disposal of the crypto and no taxing event. Where the taxpayer is the lender and receives interest in crypto, then the market value of the crypto would be subject to income tax (45%). In this situation, we would argue that the annual interest exemption should apply.

We recommend that taxpayers seek advice to ensure that their crypto gains are reported correctly in their tax returns. The volatility and high-risk nature of this asset class should not be compounded by an unexpected tax bill!

In most cases, an individual who is emigrating will reasonably acquaint themselves with the pertinent tax considerations when transferring funds abroad to fund their lives outside of South Africa; it is prudent to ensure that the correct advice is sought beforehand in every case.

MEDICAL EXPENSE CREDITS

NICCI COURTNEY-CLARKE,
COO and Head of Tax at TaxTim

Taxpayers may qualify to be refunded for medical expenses incurred. The medical scheme fees tax credit and additional medical expenses tax credit are explained.

Taxpayers who contribute to a medical aid qualify for a tax credit which is deducted from their overall tax liability. The medical tax credit consists of the following two amounts:

1. The medical scheme fees tax credit; and
2. The additional medical expenses tax credit

What is the medical scheme fees tax credit?

This rebate applies to the fees paid by a taxpayer to a registered medical scheme for benefits to the taxpayer and their dependants. For the 2022 tax year, the main member on the medical aid as well as the first dependant, will receive a monthly tax credit of R332; additional dependants will receive a monthly tax credit of R224.

If you are paying your contributions via your employer, i.e. as a deduction from your salary or wages, your employer is obliged to use the credit system to adjust your monthly PAYE tax accordingly. If you contribute to a medical aid independently from your employer, you will receive the tax credit on assessment when you complete your tax return.

Note that the tax credit applies only to registered medical aid funds – medical insurance or gap cover does not count.

What is the additional medical expenses tax credit?

This tax credit comprises the following two parts:

1. Out-of-pocket medical costs; and
2. Excess medical aid contributions.

Out-of-pocket medical expenses are expenses that you had to pay which were claimed from the medical aid or not reimbursed fully by the medical aid.

The types of expenses that would qualify include amounts paid for the following medical bills: registered medical practitioner, hospital, nursing home, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor, orthopaedist, home nursing by a registered nurse or when supplied by a nursing agency, midwife, and prescription medicines.

If these expenses were incurred outside South African borders and you still have proof of the expenses paid; you can also declare them under the 'out-of-pocket expenses' section.

It is important to note that over-the-counter medicines such as cough syrups, headache tablets or vitamins, do not qualify as medical expenses, unless specifically prescribed by a registered medical practitioner and acquired from a pharmacist.

To calculate the additional medical expenses tax credit, special formulas are used. The specific formula depends on your age and whether you or one or more of your dependants have a disability.

Calculations for additional medical expenses tax Credit

AGE AND DISABILITY STATUS	FORMULA
UNDER 65, WITHOUT DISABILITY	25% of (total contributions paid to medical scheme - 4 x medical scheme fees tax credit) + (qualifying medical expenses paid - 7.5% of taxable income)
UNDER 65, WITH DISABILITY	33.3% of (total contributions paid to medical scheme - 3 x medical scheme fees tax credit) + (qualifying medical expenses paid)
65 OR OVER, WITH OR WITHOUT DISABILITY	33.3% of (total contributions paid to medical scheme – 3 x medical scheme fees tax credit) + (qualifying medical expenses paid)

Below are some examples.

Example 1

Richard is 60 years old and he contributes R60 000 to a medical aid per year for himself, his wife and their two children. Neither he nor any of his dependants have a disability. His taxable income for the year was R200 000. He paid R36 000 for medical treatments, which were not claimed from his medical aid for the year as his medical aid savings had run out.

The calculation of his total medical credit for the 2022 tax year will be as follows:

Medical scheme fees tax credit

(R332 + R332 + R224 + R224) x 12 = R13 344

Additional medical expenses tax credit

Excess medical aid contributions: R60 000 - (R13 344 x 4) = R6 624

Out-of-pocket expenses: R36 000

Additional medical expenses tax credit:

((R6 624+ R36 000) – (R200 000 x 7.5%)) x 25% = R6 906

Total medical credit: R13 344+ R6 906 = R20 250

Example 2

Jane is 68 years old and she contributed R24 500 to a medical aid for the year for herself only, as she has no dependants. Her out-of pocket expenses were R40 000.

The calculation of her total medical credit for the 2022 tax year will be as follows:

Medical schemes fees tax credit

R332 x 12 = R3 984

Additional medical expenses tax credit

Excess medical aid contributions: R24 500 - (3 x R3 984) = R12 548

Out-of-pocket expenses: R40 000

Additional medical expenses tax credit: (R12 548 + R40 000) x 33% = R17 516

Total medical credit: R3 984 + R17 516= R21 500

Beware of your medical credit being rejected by SARS

If you do have medical expenditure included on your tax return, it is very likely that SARS will request supporting documents from you to back up your medical claim.

It is extremely important that the correct documents are submitted to ensure your medical claim is not rejected by SARS and, consequently, that the medical tax credit is disallowed, which will result in you having a whole lot more tax to pay.

If you have indicated that you belong to a medical aid, you need to submit the medical aid tax certificate, which you received from the fund, for the relevant tax year.

If you have indicated that you contribute to a medical aid on behalf of someone who is financially dependent on you and where you are not the main member, then you need to submit the relevant medical aid tax certificate, along with proof of payment, which shows that you have made the contributions directly to the medical aid. You also need to submit a letter indicating why you are making payment for someone else and whether they are financially dependent on you.

If you have indicated that you have out-of-pocket expenses paid by you personally, which were not submitted to the medical aid, you need to submit all your medical invoices and receipts as backup.

CLAIMING MEDICAL CREDITS

NICCI COURTNEY-CLARKE, COO and Head of Tax at TaxTim

If you or a dependant has a disability, you may be able to reduce your tax liability by claiming applicable disability-related expenses on your annual tax return. Section 6B of the Income Tax Act defines a dependant as any of the following:

1. A person's spouse;
2. A person's child or child of a spouse (i.e. stepchild);
3. Any other family member in respect of which the person is liable to take care of; or
4. Any other person who is dependent on that person's medical aid.

Section 6B also defines the term 'disability' as follows: "disability" means a moderate to severe limitation of any person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation –

a. has lasted or has a prognosis of lasting more than a year; and
b. is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

The amount of additional medical credit that you may be entitled to because of incurring disability-related expenditure will depend on one primary factor: whether you, your spouse or your child (or stepchild) has a disability or whether another dependant has a disability (for example, a parent or sibling).

Generally speaking, if your dependant is not your spouse or your child and if you do not have a disability, you would have incurred significant medical expenses, which were not recovered from medical aid, in order to obtain additional medical credit. This is not, however, the case if you, your spouse, or your child has a disability; in such circumstances, you should be able to access far more significant relief without necessarily incurring out-of-pocket expenses than if your dependant is a parent or sibling. For example, you may be able to access an additional medical credit just by having contributed to a medical aid scheme.

This is because the additional medical credit that is available to taxpayers in terms of section 6B of the Income Tax Act (in terms of s 6B(3)(b) differentiates between taxpayers who have disabilities (or their spouse or child) and other taxpayers who fall outside this category, such taxpayers are entitled to the additional medical credit as per s6B(3)(c), which is far more restrictive.

If you, your spouse, or your child has a disability, you also need to request a medical practitioner to complete a SARS ITR-DD form that details the disability. The ITR-DD will last for ten years for a permanent disability case; it will need to be renewed yearly for a temporary disability.

The recommended approach is to keep track of all disability-related expenses (and keep the invoices) that were not covered by your medical aid; include these on your annual income tax return. You will then also need to mark the 'disability' section of your tax return if you, your spouse, or your child has a disability. SARS will then automatically perform a calculation to determine whether you are entitled to a credit.

Examples of the types of disability-related expenses that you can claim are as follows (provided they were not recovered from your medical aid):

- A portion of special needs school fees;
- Medical expenses;
- Personal care attendant; and
- Aids that assist a disabled person in performing daily activities.

SARS has a complete list of disability-related expenditures available on its website.

HOW TRAVEL ALLOWANCES WORK

60 minutes CPD

▶ **THOMAS LOBBAN,** Head of Crypto Asset Taxation at Tax Consulting

We look at how travel allowances work, which method of calculation is best, and also provide a heads-up of how to manage the unforeseen consequences of the COVID-19 pandemic.

COVID-19 has far-reaching effects for the South African taxpayer and, unbeknownst to many, may be silently increasing their tax liability for the 2022 year of assessment. In some cases, the purpose for granting a travel allowance to employees (and the same applies to company vehicles) has been subverted by the pandemic, where business travel may no longer be required or possible. In this article we revisit the general taxing principles of a travel allowance and the reimbursement of travel expenses claims. We also consider how COVID-19 may increase the tax burden of an employee in this context.

The general taxing principles

The SARS Guide for Employers in Respect of Allowances (2022 Tax Year) defines a travel allowance as 'any allowance paid or advance given to an employee in respect of travelling expenses for business purposes.'

Fundamentally, the legislative framework makes provision for two scenarios:

1. A travel allowance given to an employee to finance transport, which in the ordinary course would be a set rate or amount per pay period ('travel allowance')
2. A reimbursement given to an employee based on actual business travel ('reimbursement')

The travel allowance 'deduction' operates on the premise that an allowance is included in a person's taxable income (see section 8(1)(a)(i) of the Income Tax Act), to the extent that the allowance has not actually been expended on business travel (see section 8(1)(a)(i)(aa)). The general position is that private travel is taxable and business travel is not taxable.

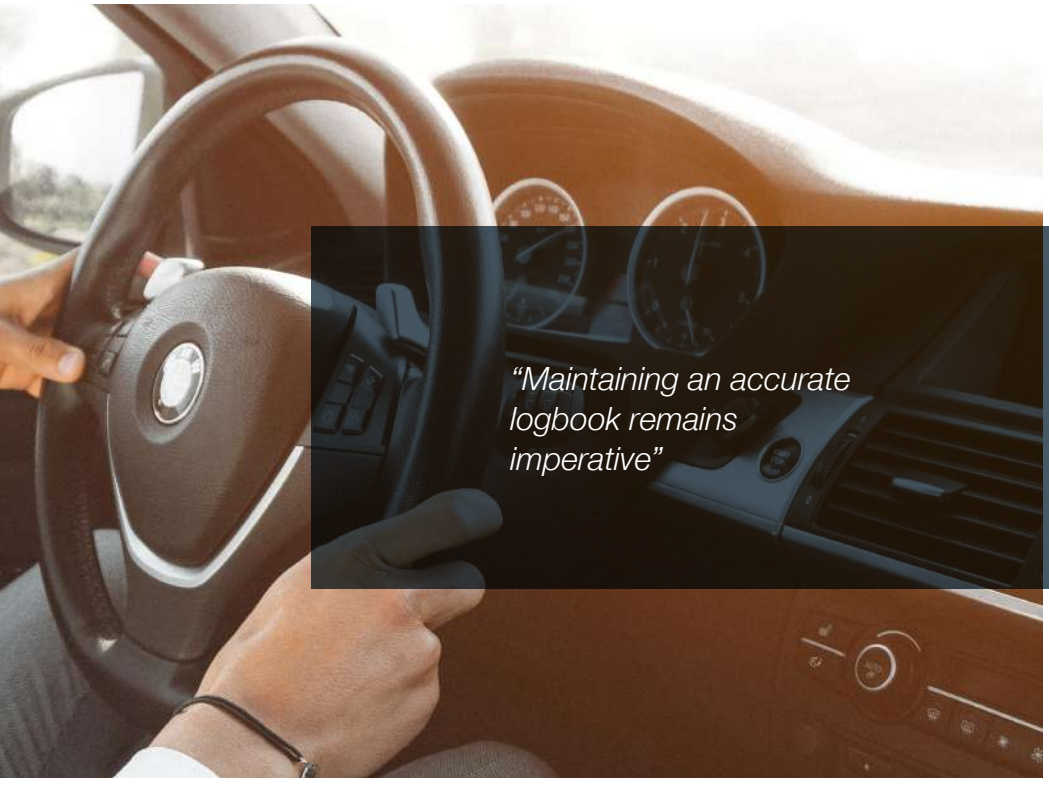
Travel allowance

Where the employee is granted a travel allowance, paragraph (cA) of the definition of 'remuneration' under the Fourth Schedule to the Income Tax Act provides for two inclusion rates for purposes of deducting employees' tax (PAYE), namely 80% or 20%.

The standard withholding rate is 80%, unless the employer is satisfied that at least 80% of the use of the motor vehicle in question will be for business purposes, in which case the inclusion rate is only 20%.

In certain cases, employers are cognisant that the employee will not expend their travel allowance on business travel to any degree, which prompts a 100% withholding rate. It is important to note, however, that since the release of the 2019 SARS BRS Change – Patch Phase 3, the 100% inclusion rate is no longer applicable and should therefore not be implemented on payroll.

This position aligns with the purpose of a travel allowance, which is to defray costs of business travel. Technically, where it is known at the outset that the employee will not use the allowances for business travel expenses, the amount is not a 'travel allowance' as envisaged by section 8(1)(a)(i)(aa) read with the definition of 'remuneration'.



"Maintaining an accurate logbook remains imperative"

Reimbursive travel allowance

An alternative to providing an employee with a monthly travel allowance amount is to provide the employee with a reimbursive travel allowance. A reimbursive travel allowance is an allowance paid to an employee for actual business kilometres travelled, according to either the SARS determined rate – which is R3.82 per kilometre from 1 March 2021 (down 4% from R3.98) – or as determined by the employer.

The taxing of the reimbursive allowance has fundamentally changed from 1 March 2018. Where an employee is reimbursed using a rate higher than the SARS prescribed rate, the differential between the SARS prescribed rate and the rate utilised by the employer will be subject to employees' tax (PAYE), regardless of the number of business-related kilometres travelled.

It is advisable that employers prudently consider their reimbursement rates against the prescribed rate. An unintended consequence of reimbursing an employee on a higher rate is that it will increase the employee's PAYE liability and may result in lower employee take-home pay. An alternative to avoid this possible occurrence would be for the employer to reimburse the employee at a rate below the prescribed rate of R3.82 per kilometre. The reimbursement will not attract PAYE and will not be taxable on the employee's personal tax return.

In our practice we have a golden rule when it comes to employee travel debates, i.e. company car vs travel allowance vs reimbursive structure: An apples-with-apples computation must always be done. Each employee's factual matrix will be different, and one can only determine the most optimal outcome once calculations for every scenario has been done.

Although the reimbursive changes have not altered an employee's ability to claim against a travel allowance, they have introduced an additional record-keeping requirement. This especially becomes complex where travel reimbursive rates have changed during the tax year.

The Commissioner for SARS is alive to the fact that most employees' circumstances have changed as a result of the pandemic, where business travel would generally have decreased to a great extent. Building on their 2020 tax season approach, SARS will most likely enhance its robust stance on verifications and audits of tax returns. It is now, more than ever, particularly important to maintain an accurate and detailed travel logbook and to adopt good tax filing and compliance strategies.

Must I own the vehicle?

In certain circumstances, employees who receive travel allowances can find themselves travelling with a vehicle that is not self-owned, for example a relative's motor vehicle. Will this disqualify the employee from claiming against the travel allowance? No, it is not imperative that the car in question should be owned by the employee. Section 8 of the Income Tax Act does not limit or disallow the claim against the travel allowance in this instance.

Obviously, this can lead to an enquiry by the SARS auditor, possibly to check that there is only one person claiming against the same vehicle.

Travel allowance with the right of use of motor vehicle

Where an employee receives a travel allowance and has made use of a company-provided car, a tax claim against the travel allowance (in terms of travel for business purposes) will not be allowed (see section 8(1)(a)(i)(aa)).

This will raise a concern with the employee, as the use of a company motor vehicle is considered a taxable fringe benefit, according to paragraph 7(2)(b) of the Seventh Schedule to the Income Tax Act. Taxes on the fringe benefit may also be withheld at either 80% or 20% of the benefit. Does this mean that even where the employee travels for business, he or she may not claim against taxes on the travel allowance and the company car fringe benefit? No, there is a way out.

Tax deduction against a right of use of motor vehicle

Although a deduction against a travel allowance is not possible under section 8, a reduction of the fringe benefit constituted by the use of an employer-provided vehicle can still be claimed. Like section 8(1)(a)(i), the claim against a fringe benefit under paragraph 7(2)(b) of the Seventh Schedule has been worded similarly. The reduction of the fringe benefit operates on the premise that the fringe benefit should be excluded from a person's taxable income to the extent that it is expended on business travel.

In other words, the fringe benefit can be reduced to the extent that the benefit has been actually expended on travelling on business and not on private travel. To reiterate: Private travel is taxable and business travel is not taxable. Similarly, the COVID-19 restrictions will have a direct impact on the business claim lodged against the fringe benefit. This may very well create an employee's tax exposure for those employers who apply the 20% rule or otherwise will cause an unwelcome surprise in relation to the employee's tax liability.

How does one prove or illustrate that travel was for business vs private?

Section 8(1)(b)(iii) provides that "where such allowance or advance is based on the actual distance travelled by the recipient in using a motor vehicle on business … or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient … the amount expended by the recipient on such business travelling shall … be deemed to be an amount determined on such actual distance at the rate per kilometre fixed … in the Gazette for the category of vehicle used".

It is interesting to note that the word 'logbook' is not specifically mentioned in the Act. Rather, reference is made to a travel allowance claim being allowed to a taxpayer that proves business distance travelled to the satisfaction of the Commissioner.

Nonetheless – and in practice – a taxpayer can discharge the onus of proof that travelling with a private vehicle was travel for business purposes by keeping a logbook and recording the necessary information related to business travel (see SARS Interpretation Note 14, paragraph 5.4.2). SARS has provided an acceptable format.

According to the SARS eLogbook Guide for 2021/2022 on the acceptable format, the bare minimum information required to claim a tax deduction is the following:

- The date of business travel
- The business kilometres travelled
- The business travel details (where to and the reason for the trip)

It is not necessary to keep record of the details of private travel. This format and the requirement to record only business kilometres travelled have remained consistent since the 2018 year of assessment. This was not the case during the 2015, 2016 and 2017 years of assessments, as per the respective 2015, 2016 and 2017 SARS eLogbook Guides. Furthermore, the SARS eLogbook Guides for 2020/2021 and 2021/2022 continue the same chorus and requires record of business travel only – continuing to provide taxpayers with administrative relief.

Whilst the law does not specifically require a format in which the onus must be discharged, the SARS logbook format is generally recommended as the path of least resistance. Nonetheless, as long as the logbook can discharge the taxpayer's onus of proof it will be acceptable.

What is defined as business travel?

The Income Tax Act does not define what is regarded as travel for business purposes and what constitutes private use of a travel allowance. The "travel between home and work" exclusion has caused interpretation problems for as long as can be remembered. The law clearly determines that private travelling includes "travelling between … place of residence and … place of employment or business" (see section 8(1)(b)(i)). In alleviating any further uncertainty, SARS has published Interpretation Note 14, noting the examples below to distinguish between business and private travel. (These should only be used as a guideline. It must be noted that SARS is not bound by Interpretation Notes and may deviate from them.)

Examples of business travel include:

- Where an employee travels from the office to attend a conference
- Travelling from home to a client and the travel after the meeting to the office
- Travelling from a home office to a client's premises
- Travelling from home to another branch of your employer where you are not ordinarily working

Examples of private travel include:

- Travel between the home and office
- Travelling from a friend's house to the office
- Regularly travelling from home to different places of work on different days

Could the current context of COVID-19 restrictions introduce an added interpretation problem on what constitutes business travel? Where an employee falling under the essential services category has travelled for business purposes during the lockdown periods, one would not anticipate any dilemma in claiming against a travel allowance. Considering that the restrictions announced by Government were legally binding, it will be interesting to see whether a claim for business kilometres travelled by a non-essential service employee, during the same period, will also be considered as valid business kilometres. This may only find application in the periods where the country operated under very strict lockdown restrictions but may very well become an added SARS audit requirement.

Calculating the claim

There are two methods of calculating the deductible amount against the travel allowance: The actual costs method and the deemed costs method. Each method has its own set of requirements.

The actual costs method

This method requires accurate information in the form of receipts, tax invoices and other relevant source documents. For the purpose of finance charges (section 8(1)(b)(iiiA)(bb)(B)) and wear-and-tear expenses (section 8(1)(b)(iiiA)(bb)(A)) the maximum vehicle value is R665 000.

The qualifying deduction is based on computing actual expenditure per kilometre and multiplying it with the business kilometres. To illustrate this, let us consider the below example:

Mr X owns a vehicle valued at R280 000 and incurred the following expenses:

Fuel costs	R18 000
Wear-and-tear expenses	R40 000 (R280 000 ÷ 7)
Maintenance costs	R8 000
Insurance costs	R2 400
Finance charges	R17 500
Licence cost	R650
TOTAL COSTS	R86 550

Mr X travelled a total of 32 000 km, of which 8 000 km were for business purposes, as evidenced by his logbook. Mr X received a total travel allowance of R48 000 for the year of assessment. As a result, Mr X would be able to claim R21 637.50 (8 000 km ÷ 32 000 km x R86 550) as a deduction against his travel allowance.

The deemed costs method

The deemed costs method comprises three components: the fixed costs, the fuel costs and the maintenance costs. SARS provides a table from which the taxpayer determines the appropriate deemed cost elements based on the vehicle value. The table can be found on SARS' website and is revised annually, per notice in the Gazette. Taxpayers who want to claim using this method must bear maintenance costs and fuel costs themselves.

Considering the information provided in the previous example, the fixed cost, fuel cost and maintenance cost components can be referenced

as follows. Figures below are relevant for a vehicle fitting into the R285 000 to R380 000 cost bracket.

Fuel costs per kilometre	R1.358
Maintenance costs per kilometre	R0.581
Fixed costs component	R2.964 (R94 871 ÷ 32 000 km)
TOTAL COST PER KILOMETRE	R4.903

In using this method, Mr X would be able to claim R39 224 (8 000 km x R4.903 per km) as a deduction against his travel allowance.

In our experience, the deemed costs method requires less administration and is almost always more favourable than the actual costs method. It is critical to note that the fuel and maintenance components can only be factored in where the employee has borne the full costs of fuel and maintenance. Where these are reimbursed to any degree, the relevant component cannot be factored in to calculate the cost per kilometre.

COVID-19 and travel allowance

The travel allowance will become a contentious item where employees are receiving a travel allowance for business travel and such business travel is not possible or required as a result of the pandemic. In the initial stages of the pandemic, travelling was prohibited to a large extent. Since then, the restrictions have eased significantly, but this does not mean that the situation has changed. Company culture and practices have changed considerably, where employees are still precluded from working at the office or are given the option to work from home. The result is that meetings are held virtually and the need to travel to clients have diminished. The upshot is that business travel is, for the most part, no longer required. This reality was reflected in the 2021 Budget Review, where government noted that the efficacy of travel allowances will be reviewed:

Reviewing tax provisions for travel and working from home in light of the large-scale migration to working at home over the past year, the National Treasury will review current travel and home office allowances to investigate their efficacy, equity in application, simplicity of use, certainty for taxpayers and compatibility with environmental objectives. In recognition of the potential effect on salary structuring, this will be a multi-year project, starting with consultations during 2021/22.

Consequently, employees will be required to take extra care in preparing their logbooks and employers must consult with their employees on how their allowances should be structured and taxed.

In determining the taxing rate of the travel allowance – that is whether taxes should be withheld at a rate of 80% or 20% of the travel allowance – the employer and employee would have adopted a rate based on the actual travel performed in previous years, and on which much anticipation has been placed for the 2022 year of assessment. Regardless of the rate adopted by the employer, the sudden impact of COVID-19 and the limitations placed on the employee's business travel may translate into a 2022 tax liability for the employee on submission of the related return.

Employers that have resolved to taxing 20% of a travel allowance paid to an employee who is not an essential services employee, or one that will no longer travel as normal, should perhaps consider adopting the 80% rate. This will likely assist the employee to 'prepay' the pending tax liability resulting from an expected reduced travel allowance claim.

In case of a reimbursive travel allowance, the above dilemma appears to be conveniently avoided, even where a tax liability arises. A reimbursive allowance is paid to an employee at a rate multiplied by business kilometres travelled. This thus creates a relationship between the allowance and the business kilometres travelled. Employees will find that the risk of a deferred 2022 tax liability is eliminated, as their business travel claim will be directly aimed at the reimbursive allowance. The importance of a well-maintained travel logbook, for such employees, must be emphasised.

It is best practice that the employer's resolution to tax more of the allowance be performed on a case-by-case basis and based on the factual circumstances of the employee, as opposed to a blanket approach. The change in withholding taxes will reduce take-home pay and will be felt immediately in the employee's pocket, although preventing a cash flow burden in the long run.

Travel allowance deduction: The independent contractor perspective

What is the difference between employees' and independent contractors' deductions?

Due to the nature of the contract between an independent contractor and a client, the provision of a travel allowance would be unusual. An independent contractor would usually recover business travel costs incurred by invoicing or charging a disbursement fee.

An independent contractor, as explained in Interpretation Note 17, is an individual or person similar to an entrepreneur – someone clearly distinguishable as an 'employer' and not an 'employee'.

Implications of travel costs deduction

Section 8 does not cater for an independent contractor. Consequently, an independent contractor can rely on section 11(a) to obtain a deduction for travel costs as well as section 11(e), in terms of claiming a capital allowance on the wear-and-tear incurred on his or her vehicle. The burden of proof is placed on the independent contractor (section 102 of the Tax Administration Act). This means relevant source documents, including a logbook, would need to be provided. The position may be summarised as follows:

- The independent contractor does not need a travel allowance or reimbursement to claim, and any amounts received by the independent contractor for business travel will form part of their gross income.

- The tax deduction is effectively claimed in the same way as an employee would claim against a travel allowance by using the actual costs method, with a logbook indicating the portion of business travel.

Further to the above, the R665 000 limit for wear-and-tear and finance costs per sections 8(1)(b)(iiiA)(bb)(A) and (B) is not applicable to an independent contractor. As mentioned above, the vehicle wear-and-tear expense is claimed separately as a capital allowance under section 11(e).

Example (based on the details provided above):

Mr X owns a vehicle valued at R280 000 that he bought on 1 March 2018. He incurred the following expenses:

Fuel costs	R18 000
Wear-and-tear expenses (claimed under section 11(e) – see below)	
Maintenance costs	R8 000
Insurance costs	R2 400
Finance charges	R17 500
Licence cost	R650
TOTAL COSTS	R46 550

Mr X travelled a total of 32 000 km, of which 8 000 km were for business purposes, as evidenced by his logbook. As a result, Mr X would be able to claim R11 637.50 (8 000 km ÷ 32 000 km x R46 550) as a business travel expense against his gross income. In addition, Mr X would be able to claim a R14 000 wear-and-tear capital allowance – according to section 11(e), read together with Interpretation Note 47.

The wear-and-tear capital allowance is calculated as follows:
(R280 000 ÷ 5 × (12 months ÷ 12 months)) × (8 000 km ÷ 32 000 km) = R14 000

It is important to note that in this instance – as per section 11(e), read with Interpretation Note 47 – an independent contractor who seeks to claim this capital allowance needs to be the owner of the vehicle or should have borne the cost of purchasing the vehicle. Contrary to section 8, the ownership of the vehicle is one of the important factors that need to be adhered to in order to claim the section 11(e) capital allowance.

"The general position is private travel is taxable and business travel is not taxable"

Key takeaways

- Maintaining an accurate logbook remains imperative. For verifications and audits on the 2021 tax returns, it appears that SARS will look to build on the stance adopted during 2020 and scrutinise the information included on a travel logbook. A taxpayer must retain a logbook for at least five years, and SARS reserves the right to audit and query the content and information recorded in it. Where documents are not kept for five years, it is a criminal offence.
- Considering that the COVID-19 travel restrictions announced by Government are legally binding, it might be expected for an essential services employee to further support their essential service designation to SARS, in addition to providing a logbook.
- An employee might be facing a tax liability on assessment where the employee is receiving a travel allowance or company vehicle for business travel and such business travel is not possible or no longer required.
- Similarly, in light of the restrictions and changes brought on by the pandemic, a reimbursive travel allowance might be viewed as a more apt option and suited to the circumstances. Even where an employer withholds taxes on the reimbursive allowance, an employee will be able to align their business travels to the reimbursive allowance and will find themselves more efficient come the 2022 tax submission.
- Where an employer is withholding taxes on 20% of the travel allowance paid to an employee whose business travel will be substantially limited due to the pandemic, the employer should consider adjusting their tax withholding strategy to align to the circumstances, where possible. It should be noted that generally SARS will legally come after the employer (and so they should for collection efficiency) where the 20% withholding is incorrectly applied. In saying that, failure by the employer to withhold the correct employees' tax does not absolve the employee from a tax liability.

THE PERKS OF A COMPANY CAR

15 minutes CPD

LIZBÉ MURRAY, Director at Contador Accountants

Is the use of a company car always a perk? We explore how tax is calculated on this fringe benefit and the effect this may have on an employee's PAYE situation.

One of the perks employees may be offered as part of their employment package is the use of a company car. Although most people see this as a great bonus, many employees do not realise that they will be taxed on this perk. In simple terms, employees are taxed on the right to use the vehicle for private purposes, for instance, to go shopping or to get to and from work.

In this article, we look at how the employee benefit is calculated, deductions allowed, exceptions where the use of a company vehicle will not be taxed, and the duties of the employer.

Tax treatment of employee benefits

An employee benefit, also called a fringe benefit, is any payment made to an employee in a form other than cash. This includes purchasing an asset from the company at a lower price than market value, using residential accommodation for free or at a fee lower than market rental, medical aid contributions made to the employee's medical scheme, free holidays and, of course, using a company vehicle.

Simply put, an employee benefit is any favourable treatment that employees get from the employer as a reward for their services rendered. The employee is taxed on this benefit as if they received the benefit in cash. It is the employer's responsibility to determine the value of the fringe benefit, include it on the employee's payslip, and deduct PAYE for it every month.

Using a company car for private purposes

Determining the value of the vehicle

First, the employer needs to determine the value of the vehicle. This is called the determined value. The way in which this value is calculated has changed over the years, but in this article we only focus on the current treatment to avoid any confusion.

As a general rule, the retail market value of the car is used, including VAT but excluding finance charges and interest.

- If the employer has bought the vehicle, the determined value is the purchase price, including VAT.
- If the employer has acquired the vehicle under a lease, the retail market value should be used.
- For vehicle manufacturers, dealers, and rental companies, the dealer billing price, including VAT, is taken as the determined value. In other words, the recommended selling price of a motor vehicle as determined by the manufacturer or importer is used. These companies acquire the vehicles at much lower costs than retail, which is why the dealer billing price, and not the cost to the company, is used to promote fairness.
- If the employer places a limit on the vehicle value from which the employee can choose but the employee requests a more expensive car and makes a contribution to cover this difference each month, the determined value of the vehicle is the original value or limit set by the employer.
- If the employee starts using the vehicle 12 months or more after the vehicle has been acquired by the company, a depreciation allowance can be deducted to decrease the value. The depreciation allowance is calculated according to the reducing balance method at 15% for each completed period of 12 months.

Example
Employee A is granted the right to use an employer-provided vehicle 30 months after the company bought the vehicle. The vehicle was purchased for R200 000 (including VAT). The value of the vehicle is calculated as follows:

Step 1: Calculate the depreciation allowance
Year 1: (R200 000 x 15%) = R30 000
Year 2: (R200 000 - R30 000) x 15% = R25 500
Total depreciation allowance = R55 500

Step 2: Calculate the value of the vehicle
Purchase price less total depreciation allowance
R200 000 - R55 500 = R144 500

Note that depreciation is only calculated on 24 months. The remaining six months are disregarded.

Calculating the employee benefit
Once the value of the vehicle is determined, the next step is to calculate the benefit on which the employee is taxed. That is calculated as 3.5% of the determined value per month or 3.25% of the determined value per month, if the purchase price includes a maintenance plan.

The employee benefit can be apportioned if the vehicle was used for less than a full month.

Example
Employee A started using the company vehicle on 10 April. The vehicle was purchased without a maintenance plan. The employee benefit for April is calculated as follows:

Determined value x 3.5% x 21/30
= R144 500 x 3.5% x 21/30
= R3 540.25

The fringe benefit of R3 540.25 should be included in the employee's payslip for April.

The taxable portion of the employee benefit
The next step is to calculate the portion on which PAYE should be deducted. Remember that the employee is taxed on the personal use of the vehicle; since the employee would typically use the vehicle for business purposes as well, PAYE is not calculated on the total benefit.

As a general rule, PAYE is calculated on only 80% of the benefit. From our example above, PAYE will only be calculated on R2 832.20 (R3 540.25 x 80%).

Should the employee use the vehicle primarily for business purposes, the percentage on which PAYE should be calculated may be reduced. If the employer is satisfied that at least 80% of the use of the vehicle is for business purposes, the employee's tax' tax can be calculated on only 20% of the fringe benefit. From our example above, PAYE will be calculated on R708.05 (R3 540.25 x 20%).

The employer should include the benefit on the payslip every month and PAYE should be deducted as shown above. The total amount of the fringe benefit for the tax period should be included in the IRP5.

The relevant tax codes are as follows:

- For an employer-owned vehicle: 3802
- For a vehicle acquired under an operating lease: 3816

Deductions allowable against the employee benefit

When employees submit their yearly tax returns, the employee can claim a tax deduction for the portion that the car was used for business purposes. This is calculated by reducing the fringe benefit in the same proportion as business kilometres travelled to the total distance travelled.

Calculation

Assume that the total fringe benefit for the year is R80 000. The employee travelled a total of 50 000 km, of which 40 000 km was for business purposes. The deduction that can be claimed against the fringe benefit is R64 000 (80 000 x 40 000 / 50 000).

Note that you can only claim a deduction if you have kept a detailed logbook that shows as a minimum the date, purpose of travel, and the business kilometres travelled. Travel between your house and place of work is regarded as private travel, and not for business.

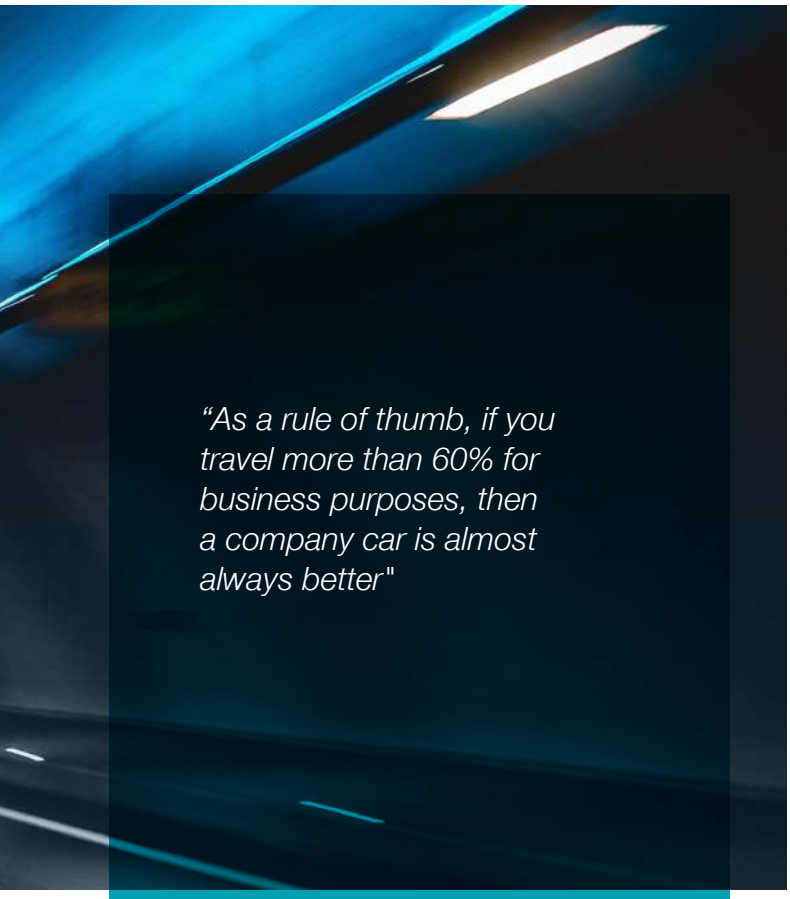
Exceptions to the rule

In certain cases, no fringe benefit needs to be calculated:

- The vehicle is available and used by other employees.
- Private use is infrequent.
- The vehicle is not usually kept at or near the employee's residence outside of business hours.
- The employee's duties require the use of the vehicle for work purposes after hours.
- The employee is not allowed to use the vehicle for private purposes, other than travelling between home and work.

Is a company car always beneficial to an employee?

An employer-provided vehicle may not always benefit an employee. Sometimes, you may pay more tax on the use of a company vehicle than on a travel allowance; it depends on the price of the vehicle and the number of kilometres travelled.



"As a rule of thumb, if you travel more than 60% for business purposes, then a company car is almost always better"

As a rule of thumb, if you travel more than 60% for business purposes, then a company car is almost always better. However, this is not always the case; it is advisable to calculate and compare different options.

Other factors to consider are whether the employee already has a vehicle that can be used and, if not, if they want to purchase their own vehicle or not. Also keep in mind that if you travel extensively for business, wear and tear on the vehicle will increase and you may need to replace it sooner than anticipated. Additionally, the type of company vehicle available may not be to your taste. For instance, you may be offered a bakkie but because you have children you prefer a family vehicle instead.

Making the right choice

If we have learned anything from the COVID-19 pandemic, it is that it is important that we make smart choices when it comes to our finances. Choosing between a company-provided vehicle and a travel allowance is no different.

As an employee, you may not have the financial means right now to purchase your own vehicle, which makes a company car more attractive. If you already have a personal vehicle which you can use for business travel, then a travel allowance may be the best option for yourself and your employer.

That said, an employee does not always have the option to choose – it mostly depends on the employer. If it is standard practice to provide their employees with company cars, you may be expected to go for this option. Many employers do not offer company cars at all or they may only offer these to their executive team or to their reps who frequently travel for business purposes.

If you do have a choice, then it is best to ask your employer to calculate different scenarios for you so that you can make an informed decision. If their policy puts you in a difficult financial position, have a frank conversation with them. In times of crises, open conversations are crucial.

TRAVEL ALLOWANCE VS REIMBURSEMENT

45 minutes CPD

▶ **CLAIRE ABRAHAM,** Senior Manager at PwC

How much does a travel allowance cost an employer? Is it cheaper to reimburse employees for actual business travel after it has been undertaken? What are the administration costs involved in managing the tax and other risks? Read on to learn more.

If you are an employer who reimburses employees for business travel or who grants a travel allowance, have you considered how much it is costing you? In this article, we look into the financial impact of travel allowance and reimbursement on employers. To do this, we must first consider the purpose of both.

The basic premise is that, as an employer, you need your employee to travel for your business while using their private vehicle and you need to compensate them for it. But how to go about it is not a one-size-fits-all approach. The options are to reimburse the employee for the expenses they have incurred on your behalf after the fact, or to pay a monthly allowance, or to follow a combination of the two. This article will not discuss the option of using a company car, whereas a discussion about garage cards will be discussed later in the article.

In practice, we often see that employers will, as a matter of course, reimburse employees for business travel and that many give the employee a choice to structure a travel allowance into their package. This option may or may not have been provided without the employer fully considering what impact the cost of the above could mean to them. We delve into some of the questions to be asked so that, as an employer, you can manage your costs accordingly.

What is the purpose of a travel allowance?

According to Interpretation Note 14 (updated on 31 March 2021) issued by the Legal and Policy Division of the South African Revenue Service (SARS), an allowance is considered to be an amount of money paid by the employer to the employee in anticipation of business expenditure that the employee will incur in circumstances where the employee will not be required to account to the employer for that money. As a side note, employees will still have to account for business travel when they submit their income tax returns by way of a logbook. The Interpretation Note further states that the allowance must be provided and calculated in anticipation of the employee's actual business expenditure.

Although this may seem simple enough; in practice, the true nature of a travel allowance becomes murky. It is often difficult to isolate the costs of the vehicle relating to business travel from the costs that the employees incur in their private capacity on purchasing and running a vehicle. According to Interpretation Note 14, a travel allowance is not meant to fund private employee expenditure incurred. It is simply a means to compensate the employees for using their private vehicles for business purposes. The make-up of the travel allowance includes considering additional costs to the employee, for instance for petrol and wear and tear, but only insofar as this directly relates to business expenditure.

It could be argued that if a travel allowance is only meant to fund business travel, it is not a private expense paid for by the employer and should not be taxable at all. (Allowances are taxable under section 8(1)(a) of the Income Tax Act, unless, among other things, they are expended for business purposes). Despite this, SARS seems to have acknowledged that a portion of the travel allowance employers pay would go towards funding private expenditure, which is taxable. Therefore, employers are required to withhold employees' tax (PAYE) from a portion of the travel allowance, thereby presuming that portion was taxable because it related to private expenditure.

Historically, SARS estimated that roughly 25% of a travel allowance would be used to fund private expenditure and that PAYE must be withheld from the 25%, which would then be reconciled on assessment. However, this benefit was open to abuse due to historically deemed private kilometres and inaccurate logbooks. Consequently, SARS gradually increased the percentage subject to PAYE to 40%, then to 50%, then to 60% and finally to the 80% we have today. This applies unless the employer is satisfied that 80% of the travel allowance is for business purposes, in which case 20% can be used. By subjecting such a high percentage to PAYE, SARS has, whether intentionally or not, created a presumption that 80% of the allowance can be used to fund private expenditure. Despite these measures to avoid abuse, we are of the view that this presumption was not intentional. SARS appears, according to the Interpretation Note, to remain of the view that a travel allowance should purely be for business-related travel, even though such a high percentage is subject to PAYE.

During and after the COVID-19 pandemic, there have been some suggestions to provide employees with a travel allowance to compensate them for the inconvenience of returning to their employer's place of work. From a tax perspective, a travel allowance is meant to be provided in anticipation of actual business travel and, according to the Interpretation Note, travel from home to work is considered private travel. Therefore, additional compensation can be provided by the employer, but if it is exclusively for travel from home to the employee's place of work, it must be subject to PAYE withholding at 100%, not 80%, and no deduction can be claimed for this travel on assessment; the amount should not be coded as a travel allowance on the IRP5 certificate.

What is a reimbursement and how is it calculated?

In contrast to an allowance, a reimbursement is an 'after-the-fact' reimbursement of actual costs incurred on travel. Again, although the concept is relatively simple, a problem arises when trying to calculate how much should be reimbursed. In using a private vehicle, the employee has not only incurred petrol costs but potentially also depreciation on the vehicle, additional mileage, higher insurance premiums, and related costs. The employee may have purchased a vehicle because it was a necessary part of the job description; so, a portion of those costs may be reimbursed as well. Again, this will depend on how much travel the employee does and on the nature of the job (see discussion below). Any excessive reimbursement of costs, which were not actually related to the employer's business, are private costs and must be taxed.

Historically, reimbursements were often only taxable on assessment (depending on the reimbursement rate and on whether the employee was also in receipt of any other travel benefit, e.g. a fixed travel allowance or a garage card). This has also changed with effect from 1 March 2018. Currently, any reimbursement above the prevailing SARS rate of R4.18 per km is subject to PAYE, regardless of the kilometres travelled and whether a travel allowance is also granted. Again, the presumption that this creates is that any reimbursement more than this rate is for private expenditure. This goes against the theory that employers should only reimburse employees for actual business travel.

Some employers address this problem by faithfully sticking to the SARS published rate of reimbursement, which is R4.18 with effect from 1 March 2022. However, depending on the circumstances and from a tax point of view, easier to administer and less risky, this may negatively affect the employee if the actual expenditure incurred is more than this limit.

"SARS requires that travel logbooks must provide additional details related to the reason for the trip taken by the employee"

How does the tax treatment impact my costs?

Some employers are of the view that the tax treatment of the travel allowance versus reimbursement does not directly affect the employer's costs because the tax is withheld from the employee's remuneration; so, it is an employee cost. However, the employer also needs to consider the additional administration costs, the potential PAYE, and the financial risks of reimbursing an employee or structuring a travel allowance into a package.

Firstly, a travel allowance needs to be granted only in instances where employees travel for business. To do this, the employer, in conjunction with the employee, needs to estimate how much business and total travel the employee expects to do in the coming year to calculate the applicable allowance. This estimate can be difficult to do accurately and it can be administratively burdensome.

Most employers rely on the employee's estimation of how much travel for business and in total took place in the previous year. This can be risky if the travel allowance is not calculated correctly. If the allowance is completely out of kilter with the business travel actually performed, SARS can seek to recover under-deducted PAYE as well as raise penalties and interest on the portion of the travel allowance not subject to PAYE. Some employers do not see this as a risk because the PAYE withholding is so high.

Nevertheless, if the employer has coded an amount as a travel allowance on an employee's IRP5 certificate, an employee could, in theory, overstate their logbook and claim a higher deduction than the business travel undertaken. SARS could then look to hold the employer accountable for enabling the employee to overstate their travel claim by paying an excessive travel allowance.

Once the estimated business travel has been established, this travel must be converted into a Rand amount.

This can be done by considering an estimate of the actual costs associated with the kilometres expected to be travelled. This could include fuel, wear and tear, and toll fees. Since SARS estimates that 80% of the travel allowance is taxable, there is a view that, in theory, the estimated business could be seen to make up 20% of the actual allowance. In other words, if the estimated business travel is R2 000 per month, the employee could be entitled to a maximum travel allowance of R10 000 per month. This approach may, however, be challenged by SARS. If a R10 000 allowance is granted and coded under 3701, the risk is that the employee could, by artificially inflating their logbooks, fictitiously claim, say, R5 000 as a deduction for business expenditure when, in fact, they were only entitled to claim a deduction of R2 000.

Some employers take the position that it would be a matter between SARS and the employee, but their view would not necessarily be shared by SARS. For this reason, it would be more appropriate to stick to the R2 000. Further, R10 000 is a significant additional cost to the employer unless, which is typically the situation in these circumstances, the travel allowance is structured as part of the employee's total cost to company (CTC).

How do you remunerate your staff?

When granting a travel allowance, the employer needs to consider whether staff are remunerated on a CTC or on a basic-salary-plus-benefits model. This is important from a costing perspective because employers need to know whether a structured travel allowance will end up costing the employer additional money. If the employer remunerates on a CTC model, then the travel allowance could either be structured into the employee's existing CTC or granted as an increase in CTC.

For example, the employee earns a CTC of R500 000 per annum, consisting of a basic salary of R480 000 and R20 000 for other benefits such as pension and medical aid. If the employee wants to structure R120 000 as a travel allowance into their existing CTC, their basic salary will be reduced to R360 000 per annum. This will not end up costing the employer more money in respect of the employee's CTC, because it is fixed at R500 000. However, we have not considered the additional cost of

Now, if we consider that the allowance is meant for the purpose of travelling on business, employees may not be that excited about this approach. If the travel allowance is coming out of the employee's package and they are not being reimbursed, is the employee not funding their employer's expenses? This is notwithstanding the potential monthly cash flow advantage of only 80% of the travel allowance being subject to PAYE.

The answer to the question above is probably 'yes' if they are not being reimbursed. The employee is presumed to be using 20% of their allowance for business, so the employee is not subject to tax on this 20%. Nevertheless, if the employer is not refunding the employee, 20% still comes out of the employee's CTC. Although the employee can deduct their business expenditure and therefore pays less income tax, the employee is still effectively using their own funds to cover the employer's expense. Therefore, the employee may insist that they also be refunded for their business expenditure from the employer, or that the travel allowance be granted to increase their CTC, where extensive travel is required.

It is not uncommon for employers to provide a combination of both, namely a fixed allowance as well as reimbursing employees for actual business travel. Where this does happen, it is important that the employer considers the total which the employee will receive for travel to ensure that it does not reach a point where it is excessive, given the kilometres that the employee does travel for business purposes. The employer must be clear on what the policy relates to a travel allowance and a reimbursement and must ensure that costs can be managed.

In the case of an employee on a basic-plus model, the employee will have a basic salary of R480 000 per annum, plus R20 000 for pension and medical aid. If the employer agrees to structure the maximum travel allowance of R120 000, the cost to the employer will be R620 000 and not R500 000 as on a CTC model.

How often do your staff members need to travel?

Employers need to consider the industry in which they are and the staff categories which they have. For example,

A sales company will need a robust travel allowance and reimbursement policy. This company will have sales representatives that need suitable compensation for their travel. Again, depending on the remuneration structure on which they are, they may require a travel allowance to address their cash flow issues, particularly if a large portion of their package is variable remuneration as well as reimbursement. However, a receptionist at that same company will not require any allowance, nor should this be considered since this person is largely desk-bound. Any travelling by such an employee should rather be compensated for on a reimbursement basis.

COVID-19 considerations

There are no special amendments to the tax legislation for people who cannot claim because of the past national lockdown or for people who cannot travel for business purposes during this time. This means the normal provisions and rules continue to apply.

Employer/employee considerations

When considering the issue of a travel allowance or reimbursement, the employer and employee need to be clear on whether the intention is to provide an additional benefit or whether the purpose is to reimburse the employee, where they travel extensively for business or a combination of both. Always be as clear as possible about the purpose of either option, considering the industry, the business requirements to travel and the costs involved.

SARS' requirements for travel logbooks

SARS requires that travel logbooks must provide additional details related to the reason for the trip taken by the employee. More specifically, details (including contact details) of the person visited and with and for whom the engagement was undertaken must be recorded. SARS requires that as much detail as possible be provided to enable them to verify the claim for a deduction. This detail is now also required for reimbursements for ride-hailing service claims (such as Uber). As mentioned above, this requirement has been introduced to eliminate the possibility of a higher deduction against a travel allowance being claimed.

15 minutes CPD

CLAIMING FOR HOME OFFICE EXPENSES

▸ **NICCI COURTNEY-CLARKE,** COO and Head of Tax at TaxTim

This article explains conditions for employees with salaries, who work from home may be able to claim home office deductions.

Work culture has evolved massively, and 'flexible employment' has become the new buzz term. Many workers are given the option to work from home to avoid the loss of productive time due to their daily commute to an office. This is especially relevant since the 2021 tax year, when many employees who had no option but to work full time from home for most of the year due to the global COVID-19 outbreak, had the privilege to continue working from home as the COVID-19 alert levels decreased.

It is important to highlight, however, that SARS allows salaried employees to deduct their home office expenses only under certain limited conditions.

The situation is different for sole proprietors or freelancers who also work from home. They can automatically deduct all home office expenses and they do not need to work through the same stringent set of conditions applied to employees, to know whether they qualify for a deduction. The relevant portion of home office expenses can simply be reflected in the 'Local Business, Trade and Professional Income' section of the ITR12 form.

What are the requirements to deduct home office expenditure?

- The employer must allow the employee to work from home.
- The employee must spend more than half of their total working hours while working from their home office.
- The employee must have an area of their home which is used exclusively for this purpose. For example, employees who meet clients in their dining room at home would not qualify. A separate office, which is used exclusively for the employee's work, must be maintained to qualify for the deduction.
- The office must be equipped explicitly for the employee's trade, i.e. it must be specially fitted with the relevant instruments, tools, and equipment required to perform work.

Based on the above requirements, it is safe to conclude that those employees who usually work from their employer's office but who received permission to work from home while there was still an alert on the COVID-19 pandemic, will only be able to claim a home office deduction if they end up working from home for more than six months of the tax year, provided that they have an area of their home exclusively set up and used for this purpose.

What expenses can be deducted?

One must look at the employee's remuneration structure to confirm whether:

- more than 50% of total remuneration is earned either from commission or from some other variable form based on work performance; or
- the person is a typical salaried employee with variable payments or commission making up less than 50% of their total remuneration.

The first group (i.e. commission earners) can claim prorated deductions based on rent, interest on a mortgage bond, repairs to the premises, rates and taxes, cleaning, wear and tear, and all other expenses relating to their house. In addition, they can also take other commission-related business expenses, such as telephone, stationery and repairs to the printer, into account.

The second group (i.e. salaried employees with variable payments or commission making up less than 50% of their total remuneration) can only claim prorated deductions based on rent, interest on mortgage bond*, repairs to the premises, rates and taxes, cleaning, wear and tear, and all other expenses relating to their house.

*SARS interpretation note 28 excludes interest on bonds from the list of allowable property expenses. SAICA has challenged this and the institute is waiting for a response from SARS.

How to calculate the home office deduction

First, calculate the total square meterage of the home office in relation to the total square meterage of the house and then convert this to a percentage. Then, apply this percentage to the home office expenditure to calculate the deductible portion.

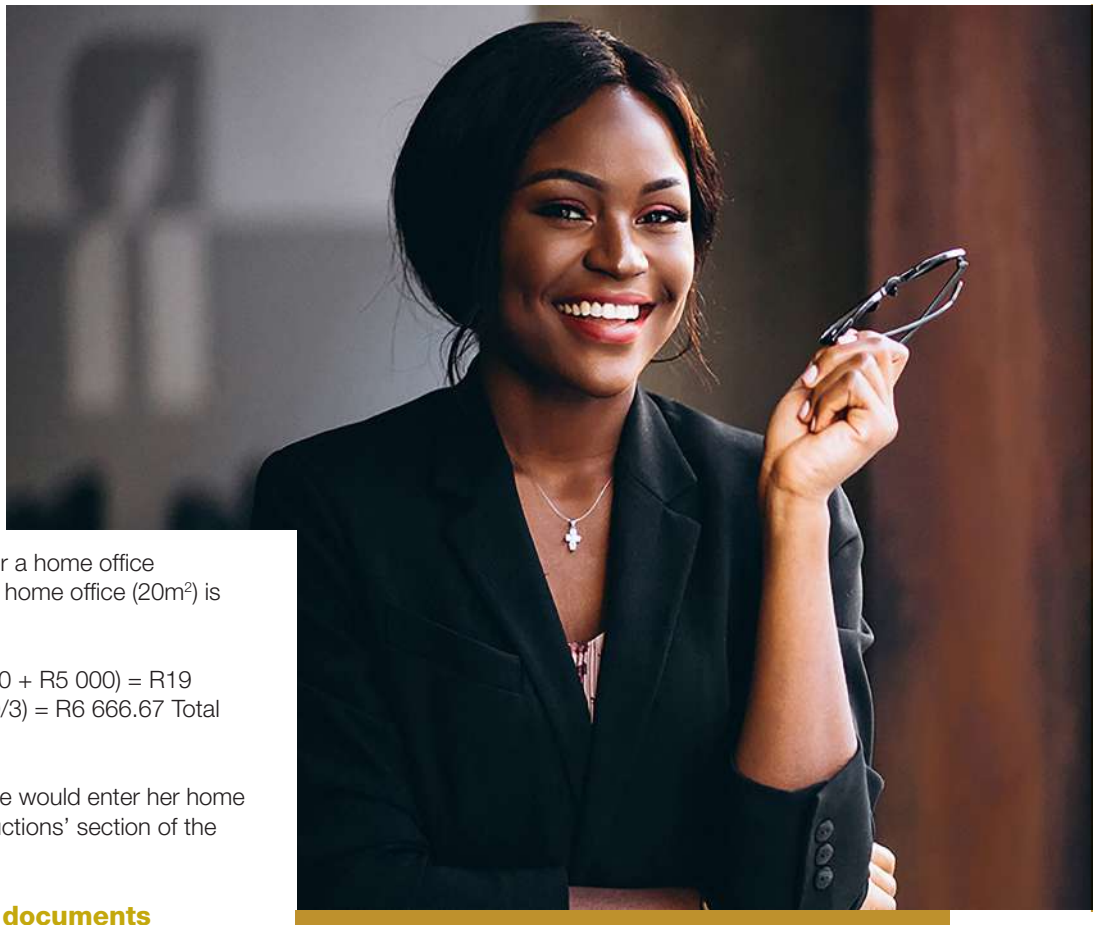
Example

Lesedi is a graphic designer who works for Company A. Her remuneration only consists of a salary. Her company promotes a flexible work culture and allows Lesedi to work from home three days a week. She has a separate office at home, fitted with a computer and printer, which she uses exclusively for her graphic design job. Two years ago, she purchased the computer and printer for R12 000 and R8 000 respectively. Her office is 20m^2; the floor space of her entire home, including the office, is 200m^2.

Let us assume that SARS allows for a three-year depreciation period for the computer and printer.

During the 2022 tax year, she also the following expenditure:

- R120 000 interest on mortgage bond;
- R36 000 rates and electricity;
- R36 000 cleaning costs;
- R5 000 roof repairs; and
- R12 000 cell phone expenses.



Based on the above, Lesedi qualifies for a home office deduction. The square meterage of her home office (20m^2) is 10% in relation to her house (200m^2).

10% x (R120 000 + R36 000 + R36 000 + R5 000) = R19 700 Wear and tear: (R12 000 + R8 000/3) = R6 666.67 Total deduction = R26 366.67

Since Lesedi is a salaried employee, she would enter her home office expense claim in the 'Other Deductions' section of the ITR12.

The importance of supporting documents

SARS often requests supporting documents from taxpayers to back up their home office deductions. Taxpayers must be aware that they have to submit scanned copies of invoices as well as all relevant calculations to substantiate the percentage of home office expenses claimed (a spreadsheet or list of expenses will not suffice). They will also need to submit a letter from their employer stating that they can work from home and the percentage of time spent when working from home.

Taxpayers must also ensure that the supporting documents can easily be reconciled with the home office claim on their ITR12. If the backup is unclear or insufficient, SARS will disallow the deduction altogether.

Beware of the impact of your home office deduction on capital gains tax

While people are eager to claim the home office tax deduction to reduce their taxable income and ultimate tax liability, few people understand the negative tax impact of a home office on the calculation of their capital gains tax when they want to sell their property.

When taxpayers sell the home in which they live, there is a primary residence exclusion of R2 million. This means the first R2 million of the capital gain (or loss) is excluded for the purposes of working out capital gains tax. All individual taxpayers receive an additional R40 000 capital gains exclusion per year.

However, if the taxpayer has worked from home and has used part of the house as an office, the Income Tax Act requires the capital gain to be apportioned between primary residence use and business use. This apportionment must take into account the period when the home office was used as a portion of the entire period of ownership, as well as the size of the home office compared to the size of the entire property.

Example

Isabel purchased a home in February 2010 for R1.2 million. In February 2018, she carried out renovations for R300 000 to add on an office from where she worked until she sold her home in February 2022. The office space comprised approximately 10% of her total house space (i.e. it was 10 m^2, whereas her entire home was 100 m^2). Therefore, she claimed 10% of running her household expenses as a tax deduction against her business income.

She lived in this home until February 2022 when she sold it for R3.5 million. Her taxable income for 2022 was R500 000.

"Taxpayers must be aware that they have to submit scanned copies of invoices, as well as all relevant calculations to substantiate home office expenses claimed"

The capital gains calculation

Proceeds:	R3 500 000
Base cost:	*R1 200 000 + R300 000 = R1 500 000*
Capital gains (proceeds – base cost):	R3 500 000 – R1 500 000 = R2 000 000
Portion of the capital gains attributable to the property's use as a home office (10% for 4 years out of 12 years):	**R2 000 000 × 4/12 × 10% = R66 666**
Portion of the capital gains attributable to the property's use as a primary residence:	**R2 000 000 – R66 666 = R1 933 334**
Less primary residence exclusion:	R1 933 334 – R2 000 000 = nil
Total capital gains:	R66 666
Less annual capital gains exclusion:	R66 666 – R40 000 = R26 666

The inclusion rate for capital gains is 40% for individuals. This means that 40% of the gains (i.e. R26 666 × 40% = R10 666) is added to Isabel's taxable income and will be taxed at her marginal rate of tax.

If we assume her marginal tax rate is 36%, then approximately R3 840 capital gains tax will be payable (i.e. R10 666 × 36%).

If Isabel had not used part of her residence as a home office, the capital gains tax on the disposal of her property would have been nil owing to the primary residence exclusion being applied to the total gain of R2 million.

Isabel would have to compare the amount of capital gains tax (R3 840) with her annual tax saving from the home office deduction to decide which is more advantageous from a tax perspective. It seems likely that it would be worthwhile for Isabel to claim home office expenditure annually, because the tax benefits would outweigh the capital gains tax that she would need to pay on disposal.

Note that on Isabel's ITR12, she must report the details of the property sale as two separate transactions. This is done by indicating in the opening wizard that two disposals took place. This will open two capital gains/loss sections so that the details of each can be captured separately. For the primary residence exclusion to be correctly applied, she must prorate the proceeds and the base cost for each disposal to reflect the primary residence portion separately from the non-primary residence portion.

15 minutes CPD

REIMBURSEMENTS TO YOUR EMPLOYER

▶ **FAEEZA SONI,** Senior Lecturer in Tax at Wits University

Sometimes employees receive taxable benefits that later have to be repaid to their employer. Can the tax already paid on this benefit be refunded?

An employee may receive a benefit from an employer with conditions attached. Failure to meet the conditions associated with a benefit may result in the employee having to refund their employer.

Examples of refunds made to an employer include:

- A scholarship or bursary, where the qualification is incomplete
- Amounts relating to maternity leave, where the employee does not return to work
- A retention bonus, where the employee resigns before the agreed term

Tax treatment of benefit when received

Study assistance

The tax treatment of the receipt of study assistance depends on the agreed terms with the employer.

If the employer contributes towards the employee's qualification, the contribution made by the employer is included in the employee's taxable income as a fringe benefit. If an employer contributes towards the studies of an employee's relative then this will also be included in the employee's taxable income as a fringe benefit. However, these inclusions may qualify for the section 10(1)(q) exemption and have no impact on taxable income overall. If the amount qualifies for an exemption then the employee would not pay tax on the amount when the benefit is granted.

A study loan granted by the employer to an employee, on market-related terms related to its repayment, will not be taxed when the employee receives it. If the loan is waived subsequently, however, the employee may be taxed on the capital portion of the amount waived.

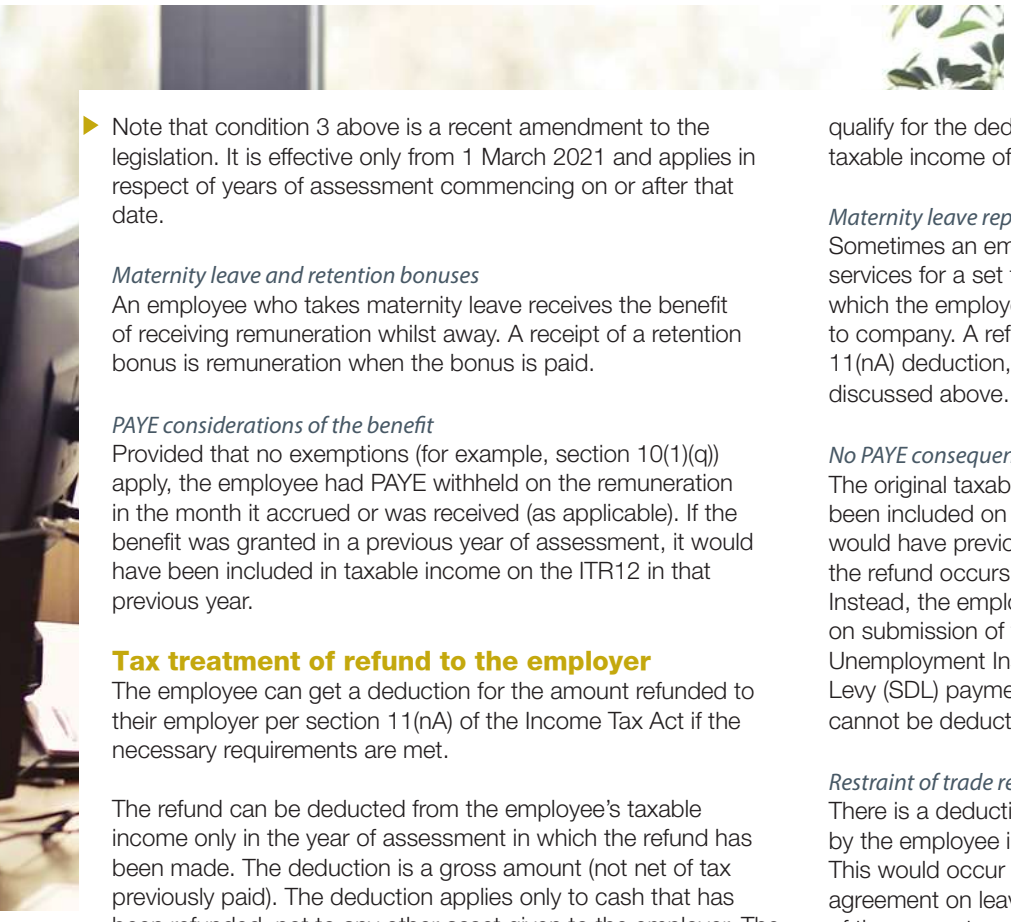
Section 10(1)(q) exemption

If the employer contributes towards the employee's qualification, then the benefit can qualify for the exemption only if the employee agrees to refund the employer for the scholarship or bursary in the event that the employee fails to complete his or her studies.

The exemption may also apply to a bursary or scholarship given to a relative of an employee.

The following conditions apply:

1. The employee's remuneration proxy (remuneration in the last year of assessment) must not exceed R600 000.
2. The scholarship or bursary is limited to R20 000 (per year) for school years grade R to grade 12 or NQF level 1 to level 4 qualifications, and the scholarship or bursary is limited to R60 000 (per year) for NQF level 5 to level 10 qualifications.
3. The scholarship or bursary must not be subject to an element of salary sacrifice. Salary sacrifice schemes include one where the employee does not receive a portion of their salary and that portion is paid directly to the relative's school or educational institution.



- Note that condition 3 above is a recent amendment to the legislation. It is effective only from 1 March 2021 and applies in respect of years of assessment commencing on or after that date.

Maternity leave and retention bonuses

An employee who takes maternity leave receives the benefit of receiving remuneration whilst away. A receipt of a retention bonus is remuneration when the bonus is paid.

PAYE considerations of the benefit

Provided that no exemptions (for example, section 10(1)(q)) apply, the employee had PAYE withheld on the remuneration in the month it accrued or was received (as applicable). If the benefit was granted in a previous year of assessment, it would have been included in taxable income on the ITR12 in that previous year.

Tax treatment of refund to the employer

The employee can get a deduction for the amount refunded to their employer per section 11(nA) of the Income Tax Act if the necessary requirements are met.

The refund can be deducted from the employee's taxable income only in the year of assessment in which the refund has been made. The deduction is a gross amount (not net of tax previously paid). The deduction applies only to cash that has been refunded, not to any other asset given to the employer. The deduction is limited to the contractual amount that was agreed to be refunded.

The original benefit must have been previously included in taxable income, i.e. the employee had to pay tax on the amount when it was received in a previous year of assessment. Taxable income is the amount remaining after taking into account any income exemptions and deductions. It follows that where an amount is exempt, it would not be included in taxable income and a deduction for the employee's subsequent refund will not be allowed. Accordingly, it is necessary to consider if the amount qualified for an exemption when received, to determine if the employee qualifies for the section 11(nA) deduction. A refund of a bursary that qualifies for an exemption per section 10(1)(q) would not qualify for the deduction.

In the case of study assistance, it is our view that the section 11(nA) deduction will more commonly apply to situations where study assistance is given to a relative of an employee rather than when it is given for the employee's studies. This is because contributions granted for an employee's studies are usually subject to the condition that the employee will refund the employer and would have been subject to a section 10(1)(q) exemption when received (there was a nil effect on taxable income).

The section 11(nA) deduction is also limited to the amounts previously included in taxable income. This implies that if the refund made by an employee includes an amount of interest charged on an original study loan granted, the interest would not qualify for the deduction as it was not previously included in the taxable income of the employee.

Maternity leave repayments

Sometimes an employer may require its employee to render services for a set time after returning from maternity leave, failing which the employee has to refund the employer a pro rata cost to company. A refund of this nature will also qualify for a section 11(nA) deduction, subject to the requirements and limitation discussed above.

No PAYE consequences for the refund

The original taxable receipt from the employer would have been included on the employee's IRP5 and the employer would have previously withheld employees' tax (PAYE). When the refund occurs, the employer will not change the IRP5. Instead, the employee must claim the section 11(nA) deduction on submission of their return for the year in the ITR12. Unemployment Insurance Fund (UIF) and Skills Development Levy (SDL) payments related to the remuneration received cannot be deducted in terms of section 11(nA).

Restraint of trade repayments

There is a deduction that deals specifically with refunds made by the employee in terms of a restraint of trade agreement. This would occur if an employee breached the restraint of trade agreement on leaving employment and had to repay any, or all, of the amount received. The employee would be allowed to claim a deduction in terms of section 11(nB) in respect of the amount that was previously included in the employee's gross income. The deduction differs from section 11(nA) by the reference to gross income rather than taxable income. This means that exemptions for income need not be considered.

How to indicate the section 11(nA) or section 11(nB) deduction on your ITR12

The amount of the repayment must be completed next to the code 4042, found under the Deductions section of the ITR12.

Documentation required as proof that the refund occurred

The employee must have satisfactory proof that the amount was previously included in taxable income and refunded thereafter. The onus is on the employee to prove that this is the case. The documentation will be required if SARS conducts a compliance verification. An employee needs to prove only that the amount was taxed previously (this can be seen on the IRP5 relating to the benefit granted) and that a refund was made.

In Interpretation Note provided by SARS, it is stated that for purposes of the section 11(nA) deduction, a letter provided by the employer will be acceptable evidence. Annexure A of the Interpretation Note provides an example of such a letter. The letter should detail that the refund was made.

SARS will also consider other documentation. This includes bank statements and payslips to prove that the amount was included in taxable income previously but has now been refunded.

15 minutes CPD

DONATIONS THAT PROVIDE A TAX BENEFIT

KUBASHNI MOODLEY,
Tax Partner at PKF Durban

We look at potential tax savings based on donations made to either a public benefit organisation or the Solidarity Fund.

"Whether you choose to donate to the Solidarity Fund or directly to a public benefit organisation, it is imperative that you obtain the relevant tax certificate to be able to claim your tax deduction and reduce your tax liability"

On 21 April 2020, the President's address advised of further tax measures to combat the effects of the COVID-19 pandemic. One of these measures is an additional 10% tax deduction on donations made to the Solidarity Fund, which has been approved for deductions under section 18A of the Income Tax Act.

It is important to note that in the case of:

- an individual, this additional relief will apply to donations made from 1 April 2020 to 30 September 2020, and
- a company, the additional relief is for donations made from 1 April 2020 to 31 July 2020.

Whilst this is rather generous, it is important to understand the basics of this deduction in order to apply this additional 10% relief.

When taxpayers donate to an approved public benefit organisation (PBO) they can claim a deduction limited to 10% of their taxable income in that tax year. Taxpayers can be individuals, companies or trusts. It is important to note that in order to claim this deduction the person must be in possession of a valid section 18A tax certificate issued by the PBO. This certificate must be issued by the PBO in the tax year when the donation is received by the organisation.

- The section 18A tax certificate must contain the following details:
  - The PBO reference number of the organisation as issued by SARS for the purposes of section 18A
  - The date of the receipt of the donation
  - The name and address of the PBO
  - The name and address of the donor
  - The amount or nature of the donation if not in cash
  - Certification that the receipt is issued for the purpose of section 18A and that the donation will be used exclusively for the activities which are approved for section 18A purposes

The PBO reference number is also required to be completed on the tax return when the taxpayer claims the donation deduction. It is recommended that, prior to donating to a PBO, the person confirms that the PBO is approved by checking the list of approved PBOs on the SARS website.

The taxable income upon which the 10% is determined includes capital gains but excludes any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.

As from 1 March 2014, donations in excess of the 10% threshold may be carried forward to the next tax year.

Employees may request a reduction in their employees' tax (PAYE) where regular donations are made by way of salary deductions not exceeding 5% of net remuneration. Where this is adopted, the employee's tax certificate (IRP5) must reflect the amount of donations made in order for the deduction to be claimed by the employee on assessment.

Where the employer contributes to the Solidarity Fund on behalf of the employee, this 5% limit is increased to 33.3% for three months or 16.66% for six months, depending on the employee's circumstances. This relief was applicable from 1 April 2020 until 30 September 2020.

Where a taxpayer has a high marginal rate of tax, the reduction will have a greater impact in reducing their tax payable.

The potential tax savings based on donations made to either a PBO or the Solidarity Fund on the same level of taxable income in the 2020/2021 tax year is illustrated in the table below.

	NO DONATION MADE	DONATION MADE TO A PBO	DONATION MADE TO THE SOLIDARITY FUND
TAXABLE INCOME	R1 500 000	R1 500 000	R1 500 000
DONATION	R0	R200 000	R200 000
DEDUCTION THRESHOLD – PERCENTAGE	10%	10%	20%
MAXIMUM DEDUCTION	R0	R150 000	R300 000
DEDUCTION CLAIMED	R0	(R150 000)*	(R200 000)
REMAINING TAXABLE INCOME	R1 500 000	R1 350 000	R1 300 000
TAX LIABILITY (AFTER REBATE – TAXPAYER BELOW 65 YEARS)	R512 813	R451 313	R430 813
TAX SAVING VS NO DONATION	R0	R61 500	R82 000
PERCENTAGE TAX SAVING	0%	12%	16%

** The additional R50 000 (R200 000 – R150 000) which exceeds the maximum amount deductible of R150 000 in the 2020/2021 tax year is carried forwarded and deemed to be a donation made in the next year.*

We are currently in a time of great crisis with the COVID-19 pandemic, the effects of which will be felt for a long time to come. This puts great strain on the ability of companies and PBOs to keep their doors open. Government has set up the Solidarity Fund to help sustain these entities. Therefore, whether you choose to donate to the Solidarity Fund or directly to a PBO, it is imperative that you obtain the relevant tax certificate to be able to claim your tax deduction and reduce your tax liability.

15 minutes CPD

MISCELLANEOUS BUSINESS EXPENSES

▶ **NICCI COURTNEY-CLARKE,** COO and Head of Tax at TaxTim

What counts as a business expense and when can you claim it as a deduction? We provide a hands-on explanation.

The type of business expenses that an individual can claim as a deduction depends on the type of taxpayer they are or, in other words, the nature of their income. There are broadly three types of individual taxpayers:

1. Self-employed entrepreneurs
2. Commission earners
3. Salary earners

Generally, the first two types of taxpayers have a fair amount of leeway regarding the business expenses that they can claim, whereas the deductions allowable for salary earners are relatively limited.

Let us now look at each type of taxpayer in more detail to understand the nature of their income as well as the rules about the business expenses that they can claim.

Self-employed entrepreneurs

These are taxpayers who work for themselves and do not earn a salary. They run their own businesses (or sole proprietorships) and may also call themselves freelancers or independent contractors. All of their business income and expenses are included within the local business section of their personal tax return.

This type of taxpayer can claim all typical business expenses incurred in the production of their business income. This is a rather broad category and could include anything from purchasing stock to paying for coffee and parking while attending a business breakfast. Essentially, the rule of thumb is that in order to claim, they will have to have incurred expenses in direct relation to earning income.

Typical business expenses could include:

- Accounting and bookkeeping costs;
- Internet: costs to run and maintain the system or send emails;
- Insurance costs: professional indemnity
- insurance or insurance on your office building (life insurance is not claimable);
- Licences: those that apply to the business;
- Maintenance and repairs of business equipment or the office;
- Motor vehicle costs: maintenance, repairs and licences (costs should be allocated between personal and business usage based on mileage recorded in a logbook);
- Printing and stationery: letterheads and business cards;
- Delivery and freight;
- Depreciation or wear and tear: for business assets that lose value while in use by a business, e.g. computers;
- Entertainment: food and beverages paid for by the business to entertain people important to the business such as customers and suppliers
- Electricity and water: costs associated
- with the business's premises and the usage of equipment;
- Rent or rates and taxes for leasing your business's premises;
- Rent for any leased equipment or signage used by the business;
- Security: costs for security services such as alarm monitoring, armed response, or armed guards;
- Subcontractors: other parties that have provided services to your business
- related to products, services, or sales; and
- Telephone and fax or communication: fixed line and cell phone costs.

Commission earners

These taxpayers work for someone and are thus employed. However, their income is primarily made up of commission; this means that on the IRP5, their commission income (source code 3606) is more than 50% of their total remuneration (source code 3699).

SARS will allow commission earners to deduct all their commission-related expenses against their commission income. These expenses may include telephone, travel costs, stationery, employee costs, depreciation (wear and tear) and entertainment. Be warned that SARS may flag your return for verification; you will have to prove the legitimacy of each expense – they are particularly strict on entertainment expenses as this can be a 'grey' area, which can be abused.

Salary earners

Unlike self-employed entrepreneurs and commission earners, salaried employees are very limited by tax law in terms of what business expenses they can deduct from their income. The main expenses they may be able to deduct are the following, but only if certain conditions are met such as:

- Wear and tear on personal assets that are used for work purposes, e.g. cell phone and laptop;
- Home office expenses;
- Vehicle costs – only if a travel allowance (source codes 3701 or 3702) is received.

How to calculate the deduction

Many entrepreneurs may have expenses that are part business, part personal such as cell phone usage costs, rent, and petrol – they try to claim these in their entirety as a deduction. SARS is on the lookout for these claims and will heavily punish any chancers; so, be sure to claim business expenses only. To do this, you will need to accurately identify the business-related and personal-related portions.
For example, if you are claiming vehicle costs, then be sure to keep a logbook where you record all business mileage. Keep a record of all your calculations as well as all invoices and receipts. SARS would most likely want to review these in order to verify the business expenses that you have claimed.

Wear and tear (depreciation)

Wear and tear is a common deduction that is available to all types of taxpayers. For entrepreneurs and commission earners, the rules are straightforward. If they use business assets that decrease in value, then SARS allows this reduction in value to be expensed based on the prescribed rates per SARS Interpretation Note 47.

If salaried employees make use of personal devices (e.g. laptops and cell phones) that they have purchased and maintained in their personal capacity for work purposes, then they may also claim the depreciation as a tax deduction.

Their deduction is subject to a letter from their company stating that they have express permission to use the device for work purposes and that they are not being compensated by an allowance to maintain such a device. Taxpayers will have to estimate the ratio of business to personal use for their devices and then claim the business portion only in their tax return.

Rental property owners can also reduce the tax payable on their rental income by depreciating furniture used in the property. If they have fitted it out with tables, chairs and beds, for example, these items will need to be replaced eventually at a future cost to them. Therefore, they can claim wear and tear on such items valued above R7 000 by also using the SARS prescribed rates. Note that low-value items below R7 000 are usually expensed in the year of purchase.

Supporting documents

After taxpayers have submitted their tax returns, SARS may request certain documents for verification purposes. As a general guide, SARS will not accept schedules or lists of expenses only. They will require scanned copies of all invoices and receipts (proof of payments) to back up each expense that is claimed. Taxpayers must make sure that they reconcile their supporting documents back to the total expense claimed in their tax return. They also need to submit all calculations and make sure they are clear and easy for SARS to review, e.g. home office and wear and tear.

If the supporting documents are incomplete or do not tally with the tax return, then SARS may well disallow the tax deduction altogether and issue a revised assessment with far more tax to pay. It will then be up to the taxpayer to dispute the assessment and to resubmit documents, which will delay the finalisation of their tax return; this could take many months to resolve. very important to be as thorough as possible when submitting supporting documents to SARS.

To clear any confusion, please check the table below; it lists the most common business expenses and the exact documents that SARS requires, based on the type of taxpayer who is claiming the expense.

"If the supporting documents are incomplete or do not tally back to the tax return, SARS may well disallow the tax deduction altogether"

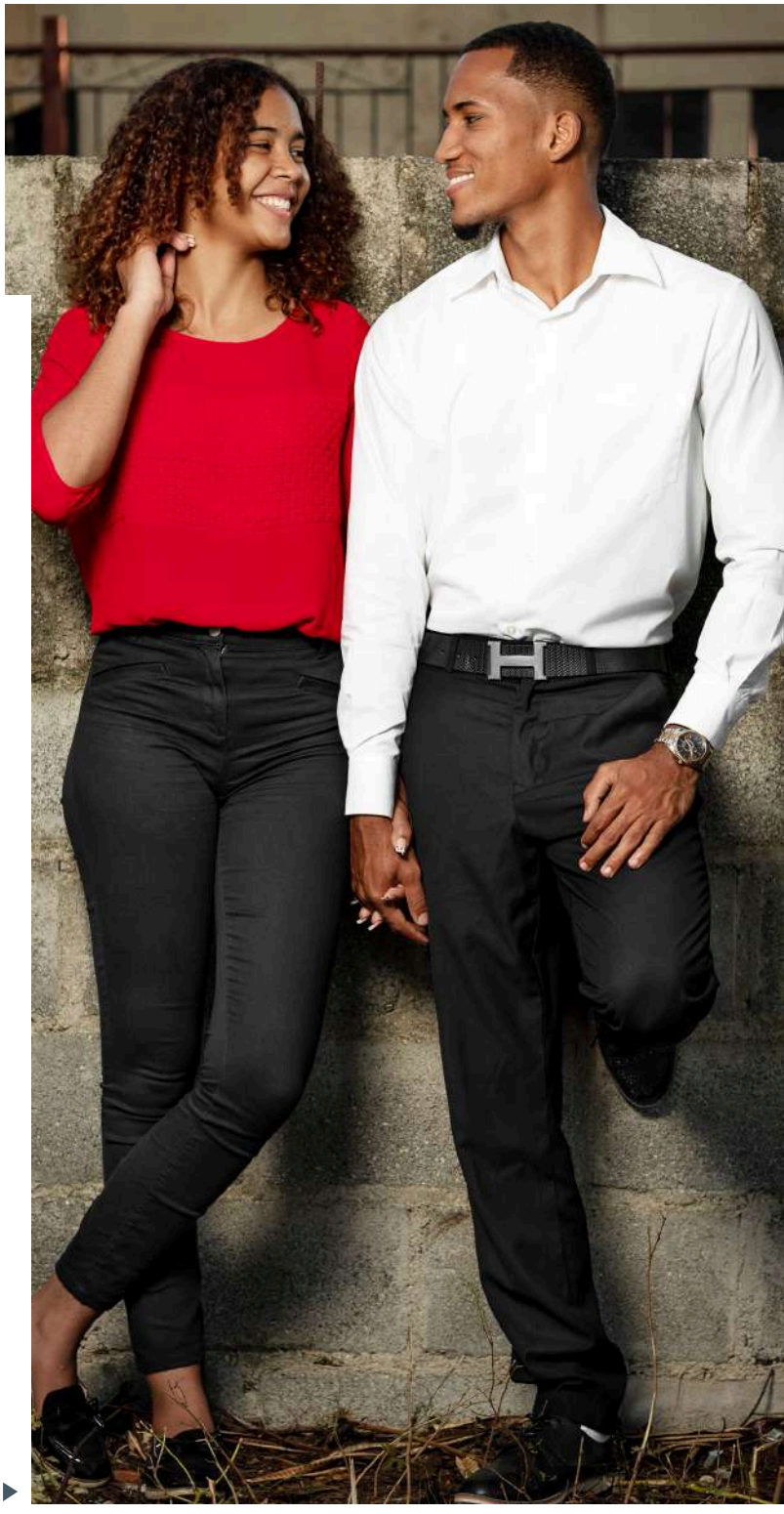
EXPENSE	SELF-EMPLOYED ENTREPRENEURS (Sole proprietor / freelancer / independent contractor)	COMMISSION EARNERS (commission income makes up more than 50% of the remuneration)	SALARY EARNERS
DEPRECIATION ON BUSINESS ASSETS (E.G. LAPTOP)	• Proof of purchase (invoice) • Calculation showing how wear and tear was calculated and apportioned between business and personal use	• Proof of purchase (invoice) • Calculation showing how wear and tear was calculated and apportioned between business and personal use • Letter from employer stating that you can use your personal laptop for work	• Proof of purchase (invoice) • Calculation showing how wear and tear was calculated and apportioned between business and personal use • Letter from employer stating you can use personal laptop for work
TRAVEL	• Logbook with details of business mileage • Vehicle purchase invoice (if applicable) • Fuel, maintenance, licence, insurance invoices	• Logbook with details of business mileage • Vehicle purchase invoice (if applicable) • Fuel, maintenance, licence, and insurance invoices	• Logbook with details of business mileage • Vehicle purchase invoice (if applicable) • Fuel, maintenance, licence, insurance invoices (if claiming travel based on '"actual costs")
UBER COSTS	Uber receipt (email)	Uber receipt (email)	Cannot claim
BANK CHARGES	Bank statement reflecting bank charges for your business account	Bank statement reflecting bank charges for your business account	Cannot claim
ENTERTAINMENT	• Schedule of entertainment expenses, showing details for each claim, e.g. names of people, purpose of meeting • Restaurant invoices/receipts	• Schedule of entertainment expenses, showing details for each claim, e.g. names of people, purpose of meeting • Restaurant invoices/receipts	Cannot claim
TELEPHONE	• Sample of actual monthly invoices • Calculation showing how the total expense was apportioned between business and personal use	• Sample of actual monthly invoices • Calculation showing how the total expense was apportioned between business and personal use	Cannot claim

** Salaried employees can only claim travel expenditure if a travel allowance (source codes 3701 or 3702) or use of a company car (source codes 3802 or 3816) fringe benefit is received.*

RETIREMENT CONTRIBUTIONS AND RECORDS

30 minutes CPD

ISABEAU BRINCKER, Tax Advisor Specialist at Sanlam



The article takes a closer look at how certain tax relief measures encourage saving, in practice.

National Treasury implemented with effect from 1 March 2016, a number of retirement fund and tax reforms to harmonise and simplify the retirement savings regime. Following much debate and negotiations, the annuitisation requirements for provident and preservation funds have been introduced into law and became effective on 1 March 2021. This resulted in all retirement funds (i.e. pension, provident, and retirement annuity funds) being treated similarly, subject to certain exceptions, in as far as the annuitisation of benefits is concerned.

So-called 'grandfathering provisions' were introduced to ensure that the restrictions relating to the amounts that may be taken as lump sums only apply in relation to amounts contributed after 1 March 2021 to a provident or provident preservation fund. However, these would not apply to members who are close to retirement. In terms of the grandfathering provisions, the annuitisation rules do not apply in relation to:

- the credit of all members in a provident or provident preservation fund as on 1 March 2021 and all returns on such amount (the 'credit amount'); and
- members who are 55 years and older on 1 March 2021, in addition to the credit amount, all contributions and return thereon after 1 March 2021 (i.e. these members are not subject to the annuitisation of benefits).

Despite the postponement of the annuitisation of benefits for provident funds, the Income Tax Act was nevertheless amended with effect from 1 March 2016 to align the tax treatment of contributions to pension funds, provident funds, and retirement annuity funds (collectively referred to as 'retirement funds') and to encourage retirement savings.

To calculate the taxable income of a natural person for the year of assessment ended on 28 February 2022, the legislation as amended since 2016 is relevant and it is important to properly record all retirement fund contributions, whether they qualify for a deduction in the 2022 year of assessment or not. Excess contributions not qualifying for a deduction in the 2022 year are effectively carried forward to reduce taxable income in subsequent years (either as a deduction, and/or as an exemption or reduction of the benefit amounts included in gross income).

Deduction for contributions made to retirement funds

The income tax deduction in relation to contributions to a pension fund, a provident fund and a retirement annuity fund is standardised as one uniform deduction applying across all funds. Section 11F of the Income Tax Act contains the provisions for allowing this deduction and determining the amount of the deduction, which requires a few steps.

Step one

The maximum deduction available to a taxpayer must be determined in accordance with the formula prescribed by section 11F. In terms of this formula, the annual deduction available during a year of assessment is limited to the lesser of the following three amounts (the 'annual available deduction'):

1. R350 000
2. 27.5% of the higher of that person's:
   a. remuneration, excluding any retirement lump sum benefit or severance payment; or
   b. taxable income, excluding any retirement lump sum benefit or severance payment, before considering the deductions under sections 6quat(1C), 11F and/or 18A (donations to public benefit organisations).
3. The amount of taxable income (see 2b above) less taxable capital gains:

Note that taxable capital gains are included for purposes of calculating the amount of taxable income in paragraph 2b above but are specifically excluded from the calculation in paragraph 3 above. Paragraph 3 effectively limits the amounts calculated under paragraphs 1 and 2 so that the deduction under section 11F cannot create an assessed loss. The maximum deduction possible is R350 000.

As a second step, taxpayers must determine the aggregate amount of retirement fund contributions made by them or for their benefit that may qualify for a deduction during that year of assessment. The following amounts contributed to a retirement fund (collectively, the 'aggregate qualifying contributions') may qualify for a deduction from the taxpayer's taxable income in a particular year of assessment:

- Amounts contributed by the member in terms of the relevant rules of the retirement fund during the current year of assessment ('own contributions');
- Amounts contributed by the member's employer for the benefit of the member, which have been treated as a taxable fringe benefit to that member during the current year of assessment ('deemed contributions'); and
- Own contributions and/or deemed contributions which in any prior year were not allowed as a deduction in terms of section 11F, were not deducted in calculating the taxable lump sum on retirement or withdrawal from a retirement fund by that member; and did not result in annuity income being exempt, in other words, contributions not yet utilised to reduce taxable income ('carried forward contributions').

Using the full annual available deduction

If the amount of aggregate qualifying contributions in a year of assessment is less than the annual available deduction for that year of assessment, then the taxpayer could consider making an additional contribution to a retirement annuity fund, provided that the contribution is paid before the end of February. The annual available deduction is a tax-efficient way to save for retirement since all contributions up to this amount constitute an investment for the benefit of the taxpayer on a pre-tax basis. Therefore, it is advisable that taxpayers consider their position annually and well in advance of end February should they want to make any retirement annuity fund contributions to qualify for a deduction of the full annual available deduction in situations where the aggregate qualifying contributions do not exceed the limit.

"The accurate recording of retirement fund contributions and any carried-forward contributions are of critical importance to receive tax relief"

Excess contributions

If the aggregate qualifying contributions in a year of assessment exceed the annual available deduction, then such excess is carried forward and will be considered as carried forward contributions to determine the succeeding year's aggregate qualifying contributions. Otherwise, the excess will be treated as a deduction in determining the taxable portion of any lump sum payments from a retirement fund to a taxpayer. The lump sum payments from which such an excess can be deducted include retirement fund lump sum benefits paid in consequence of termination or loss of employment in specific circumstances. These include a loss of employment due to an employer having ceased to continue the trade in which the taxpayer was employed or the taxpayer having become redundant as part of a general personnel reduction or a reduction of a particular class of personnel.

It follows that contributions in excess of the annual available deduction will ultimately be taken into account to reduce taxable income (in the form of a deduction or exemption) for income tax purposes.

Whether or not an annual contribution more than the annual available deduction (effectively a post-tax saving) is an effective saving mechanism, depends on the circumstances. Although such excess contributions are funded from after tax earnings in the year of payment, they are nevertheless carried forward for deduction in the succeeding years of assessment. This is done either by way of a section 11F deduction or by way of deduction from lump sum payments on retirement or withdrawal from the fund or an exemption of certain annuities. As is the case with contributions that qualified for a deduction, any growth on such contribution will accumulate on a tax-exempt basis in the retirement funds up to retirement or withdrawal, when lump sum benefits and annuity payments to the member from the fund will be subject to income tax.

Factors other than tax should also be considered in deciding whether to make contributions more than the annual available deduction, such as the cost-effectiveness of the retirement saving product, the balanced risk profile which such product is required to have due to applicable regulations and limited access to the funds.

Accurate filing

Taxpayers must take due care to correctly disclose retirement fund contributions in their income tax return (ITR12). This is important not only for purposes of correctly calculating the deduction under section 11F, but also to ensure that carried forward contributions are registered on the SARS system for automatic carry forward.

Contributions administered through the payroll system of a member's employer will be included on the taxpayer's employee income tax certificate (IRP5). A copy of the IRP5 is submitted directly to SARS by the employer and it is used to pre-populate the taxpayer's ITR12 in as far as employment income and deductions are concerned. Own and deemed contributions to a pension fund or provident fund will be reflected under the 'Deductions / Contributions' section on the IRP5, respectively under source codes 4001 and 4003. Deemed contributions to any retirement fund (i.e. contributions by the taxpayer's employer which are taxed as a fringe benefit) will also be disclosed as a taxable fringe benefit (source codes 3817, 3825 or 3828) under the 'Income received' section on the IRP5.

It should be noted that the amounts disclosed as retirement fund contributions on the IRP5 will be the full amount contributed. For IRP5 disclosure purposes, the amount is not limited to the annual available deduction amount. This is necessary to ensure a proper audit trail of carried forward contributions. For taxpayers using eFiling, the retirement fund contributions included on the IRP5 will be pre-populated under the employee tax certificate section on the ITR12. Provided that the information on the ITR12 agrees with the IRP5 (which should generally be the case), no additional disclosure or documentation should be required from the taxpayer in relation to employment retirement fund contributions.

Documentary proof

Similarly, contributions made by taxpayers to a retirement annuity fund will be reflected on a tax certificate issued by the relevant fund to the taxpayer (IT3(f)), a copy of which must be provided by the fund to SARS from which the taxpayer's ITR12 will be prepopulated.

It should be noted that separate disclosure of retirement annuity fund contributions by the taxpayer in the ITR12 is required irrespective of whether an employer has taken such contributions into account for employees' tax purposes. In such case, contributions will be reflected under the 'Deductions / Contributions' section of the IRP5 under source code 4006.

It is recommended that taxpayers who have made retirement annuity fund contributions ensure that such contributions are reflected when requesting an ITR12 on eFiling. If these contributions have not been pre-populated, the taxpayer must (when requesting the ITR12) indicate that a contribution was made to a retirement annuity fund. In this case, the ITR12 will be issued containing a retirement annuity fund contribution section to be completed by the taxpayer. If contributions were made to more than one retirement annuity fund, the details of each policy must be disclosed separately. SARS normally subjects retirement annuity fund contributions to verification and the taxpayer will be required to submit the contribution certificate to SARS.

Keeping record

Importantly, only contributions to retirement funds made in the current year are disclosed in the ITR12 and the taxpayer must disclose the total contribution, irrespective of the limitations in section 11F. SARS' assessment system automatically calculates the deduction allowable under section 11F by applying the deduction formula to the aggregate qualifying contributions for the relevant year of assessment. It automatically brings forward from the preceding year of assessment any carried-forward contributions (i.e. contributions which did not qualify for deduction in prior years) and carries forward to the succeeding year of assessment any contributions that did not qualify for deduction in the current year.

reflected as 'amount b/f from previous year' or 'amount c/f to next year' in the retirement fund contributions section of the notice of assessment (ITA34). It is advisable for the taxpayer to confirm that the carried forward amount as reflected on the ITA34 agrees with the taxpayer's own records and calculations. This is the amount that will be used by SARS to determine the aggregate qualifying contributions in subsequent years, as well as the deduction available when determining the taxable portion of lump sum payments from retirement funds. If this amount does not agree with the taxpayer's records and calculations, the taxpayer should object to the assessment by following the normal process for objections.

For the 2022 year of assessment, SARS will be increasing the number of auto-assessments. Previously, a taxpayer was required to accept an auto-assessment for it to become final. For the 2022 year, an auto-assessment will become final if the taxpayer has not submitted a return (ITR12) within 40 business days of such assessment, in instances where the taxpayer disagrees with such an assessment. Auto-assessments are based on third-party data submitted to SARS by, amongst others, employers, retirement funds, and banks. The taxpayer will be able to view the third-party data on SARS' e-filing system by selecting the 'Third Party Data Certificate' search button on the menu bar. It is important for taxpayers to confirm that the retirement fund contribution information, including carried-forward amounts, is correctly reflected on these assessments.

Should the carried-forward contributions not be accurately captured as part of the return and assessment process, the taxpayer will have to keep accurate records and adequate proof of such amounts for ultimate deduction against lump-sum payments or to exempt annuities.

The accurate recording of retirement fund contributions and any carried-forward contributions are of critical importance to receive tax relief. As mentioned, carried-forward contributions are available for deduction against lump-sum payments from retirement funds pursuant to a loss of employment in qualifying circumstances.

HOW TO REPORT YOUR INVESTMENT INCOME

30 minutes CPD

CLAUDINE BOUWMEESTER, Senior Tax Manager: Global Mobility Services and Employment Tax Advisory at KPMG

This article provides a breakdown of each type of investment income, with source codes to guide you through reporting investment income in the ITR12. We also outline some tax efficient investments which taxpayers may wish to consider.

Income from investments must be reported in your annual income tax return (form ITR12). Your tax residence status will dictate the extent of your disclosure of investment income. If you are a tax resident in South Africa, you must report your worldwide income and capital gains. If you are a non-tax resident, you must only report income from a South African source and capital gains on the disposal of immovable property held in South Africa.

Types of investment income

Below is a list, though not exhaustive, of typical investment income revenue streams.

- Collective investment schemes income
- Interest income from tax-free savings accounts
- Section 12J dividend income
- Interest earned on positive credit card balances
- Interest from medical aid savings accounts
- Interest income from bank accounts
- Dividend income from shares held
- Interest income from SARS
- Real estate investment trust income

Collective investment schemes

The Collective Investment Schemes Control Act No. 45 of 2002 governs the creation and administration of collective investment schemes in South Africa.

A collective investment scheme is a type of investment vehicle used by investment managers to pool investors' money to enable them to access investments that they might not otherwise be able to access in their individual capacities.

An investor may achieve a spread of investments in assets such as shares, bonds, deposits, money market instruments, and real estate through a collective investment scheme. One of the main characteristics of a collective investment scheme is that investors get to share the risks and benefits of their investment in a scheme in proportion to the participatory interests in the scheme.

An example of a collective investment scheme is a unit trust fund or an exchange-traded fund. The revenue stream usually comprises interest and dividends.

Tax-free savings accounts

Section 12T of the Income Tax Act No.58 of 1962 (as amended) provides that amounts received by or accrued to a natural person from a tax-free investment will be exempt from normal tax. A natural person may contribute up to R36 000 per tax year (from 1 March 2020) to such funds; lifetime contributions are capped at R500 000.

Real estate investment trusts

A real estate investment trust (REIT) is a company or a trust that owns and often manages the income-producing property. Our focus is on the tax aspects of REIT distributions. Shareholders typically receive dividend income from REITs. Concerning resident natural persons, these dividends are not subject to dividends withholding tax.

However, the dividend income is subject to normal tax. In relation to non-resident natural persons, the dividend will be exempt from normal tax but subject to a 20% dividend withholding tax unless the percentage is reduced in terms of a double tax agreement in place.

Venture capital companies

Venture capital companies (VCCs) are special investment vehicles created in terms of section 12J of the Income Tax Act to generate financial support for start-ups, to create employment, and to support the economy. These investments are considered 'high risk'. A taxpayer's funds are locked in for a minimum period of five years to retain the tax deduction from year one. What makes these investments immensely attractive from a tax perspective is that a taxpayer will get 45% back in tax when the initial investment is made (assuming that the taxpayer is taxed at the maximum tax bracket). For investments made from 21 July 2019, the deductions will be limited to R5 million per year if the taxpayer is a company and to R2.5 million per year if the taxpayer is a person other than a company. The sunset clause applicable to section 12J investments was 30 June 2021. The revenue stream from section 12J investments is usually dividend income subject to dividends withholding tax.

What documentation is needed to complete the tax return?

You will require certificates for tax purposes to report investment income. Examples of these certificates include:

- IT3(s) – Tax-free savings account certificate;
- IT3(b) – Interest and dividend certificate;
- IT3(c) – Capital gains tax certificate for reporting capital gains and losses;
- Tax certificates from, e.g. foreign banks or asset managers; and
- Proof of foreign taxes paid.

What information is prepopulated on the ITR12 by SARS?

When filling in an annual income tax return for the first time, a taxpayer needs to complete the income tax wizard so that the appropriate fields are created on the ITR12 for completion.

With effect from the 2020 tax filing season, the ITR12s were prepopulated by SARS with the taxpayer's investment income information using third-party data. Taxpayers are cautioned to review the accuracy of the prepopulated information against the tax certificates received to ensure that it is correct and to include any missing information.

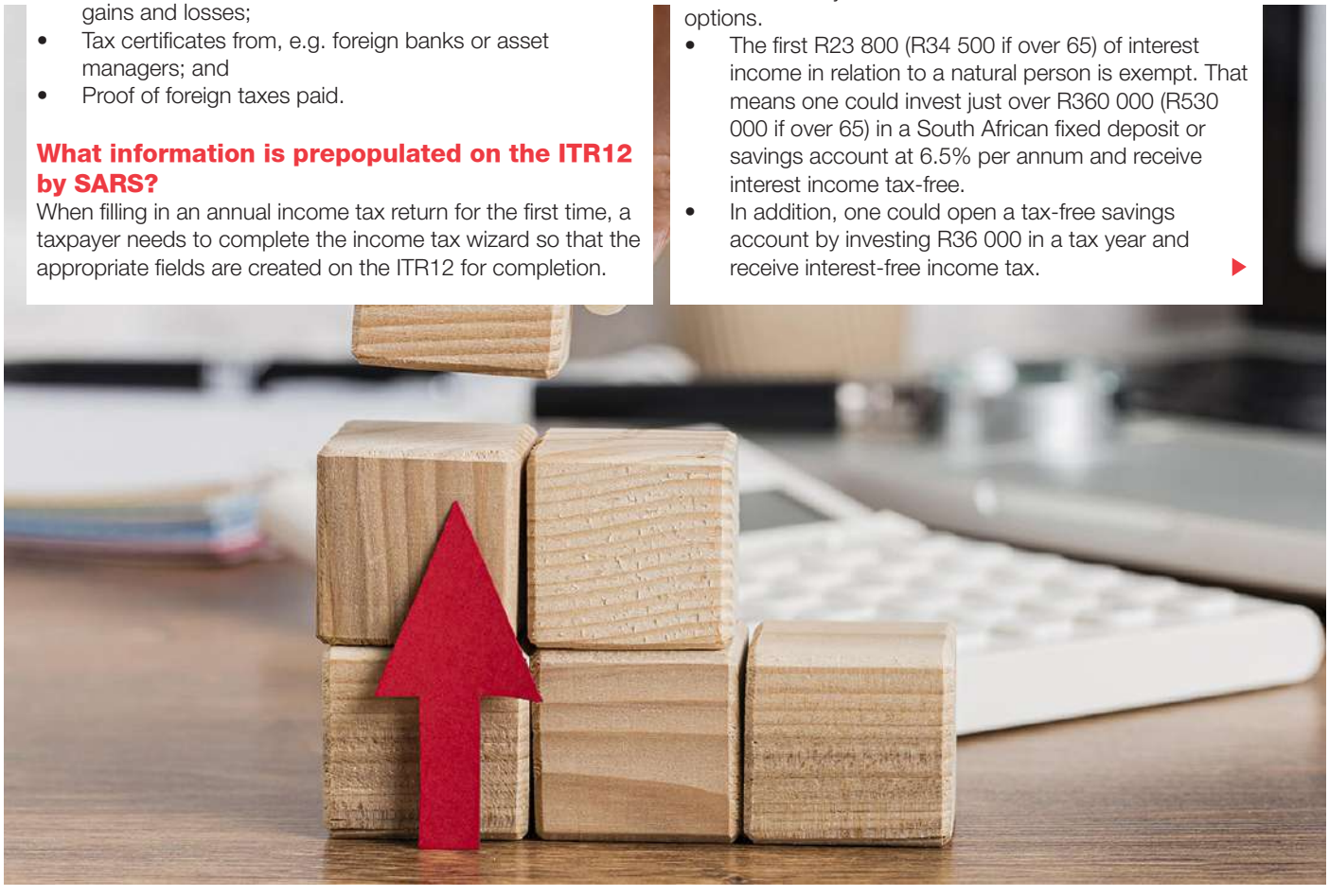
A note about foreign tax credits

Foreign tax credits may be claimed in terms of section 6quat of the Income Tax Act to ensure that a taxpayer who is a South African tax resident does not suffer a tax burden twice on the same income. Section 6quat allows a taxpayer to reduce the South African tax liability by offsetting taxes paid to the Revenue Authority of another tax jurisdiction on the same income. The taxpayer must have adequate proof of the taxes paid or payable in the other jurisdiction.

What are the benefits of different investment vehicles when it comes to a person's tax position?

To the extent that one has surplus cash to invest, it may be worthwhile investing in the following investment vehicles to generate returns with a beneficial tax impact. Please consult your financial advisor for more investment options.

- The first R23 800 (R34 500 if over 65) of interest income in relation to a natural person is exempt. That means one could invest just over R360 000 (R530 000 if over 65) in a South African fixed deposit or savings account at 6.5% per annum and receive interest income tax-free.
- In addition, one could open a tax-free savings account by investing R36 000 in a tax year and receive interest-free income tax.



Which investments qualify for rebates and exemptions?

TYPE OF INVESTMENT INCOME	DOES A REBATE OR EXEMPTION APPLY?	APPLICABLE SECTIONS OF THE INCOME TAX ACT	ITR12 DISCLOSURE CODE(S)
Local interest income	R23 800 is exempt for taxpayers under the age of 65 R34 500 is exempt for taxpayers 65 and older	Gross income definition in S1 and S10(1)(i)	4201
Local dividend income	100% exempt from income tax. Dividend withholding tax would have already been applied to the amount received by the taxpayer	Gross income definition in S1 and S10(1)(k)	No source code
Foreign dividends	Partial exemption by formula	Gross income definition in S1 and S10B	4216 for gross income 4112 for foreign tax credits on this income
Foreign interest income	No exemption applies	Gross income definition in S1	4218 for gross income 4113 for foreign tax credits on this income
REIT income	No exemption applies	S25BB	4238
Tax-free savings accounts	Income is exempt	S12T	4219 for contributions made 4239 for net return on investment – profit 4240 for net return on investment - loss 4241 for interest earned 4242 for dividends tax-free investments 4243 for capital gain 4244 for capital loss 4246 for TFI – transfer in 4247 for TFI – transfer out 4248 for TFI – withdrawal
VCC income	Tax break on initial investment Income is exempt from dividends tax	Section 12J	4051 for amount invested 4245 for amount recouped on sale of VCC shares

What about provisional taxes?

If one earns taxable income from (local and foreign) passive sources (interest income, dividend income and rental income) which is less than R30 000 (definition of the 'provisional taxpayer' in the Fourth Schedule to the Income Tax Act), one does not have to register and file provisional tax returns.

The dates for provisional tax returns and payments are as follows:

- First provisional tax return (form IRP6) and payment: due by 31 August (six months prior to the tax year-end).
- Second provisional tax return (form IRP6) and payment: due by the last day of February (tax year-end).
- An additional voluntary topping-up tax payment may be made by 30 September (seven months after the tax year-end). This payment should be made to the extent that the employees' tax credits, foreign tax credits, and the first and second provisional tax credits paid and remitted to SARS are insufficient to cover the anticipated annual liability. The top-up payment by 30 September will prevent the accrual of interest on any outstanding amount from 1 October.

Even if one does not have provisional tax obligations, the taxable income remains subject to tax. For example, if a taxpayer has taxable rental income for the year of R25 000, the taxpayer does not have to file provisional tax returns, but the R25 000 will be subject to income tax upon assessment of the ITR12. So best one makes provision for the tax liability.

The impact of auto-assessments

With effect from the 2020 tax filing season, SARS implemented an automatic ('auto') assessment system; they will auto-assess the tax filing based on the data received from employers, financial institutions, medical aid schemes, retirement annuity fund administrators, and other third-party data providers. This applies to certain taxpayers only, who will be notified via an SMS from SARS that they have been selected for auto-assessment.

"Amounts received by or accrued to a natural person from a tax-free investment will be exempt from normal tax"

It is important to note that individuals should not accept the auto-assessment without reviewing the input data used by SARS carefully.

An individual is not required to submit an annual income tax return where SARS issues an auto-assessment to the extent that the declarations reflected on the assessment are accurate. Regarding the 2022 tax year, there is no need for the taxpayer to actively 'accept' the auto-assessment if in agreement.

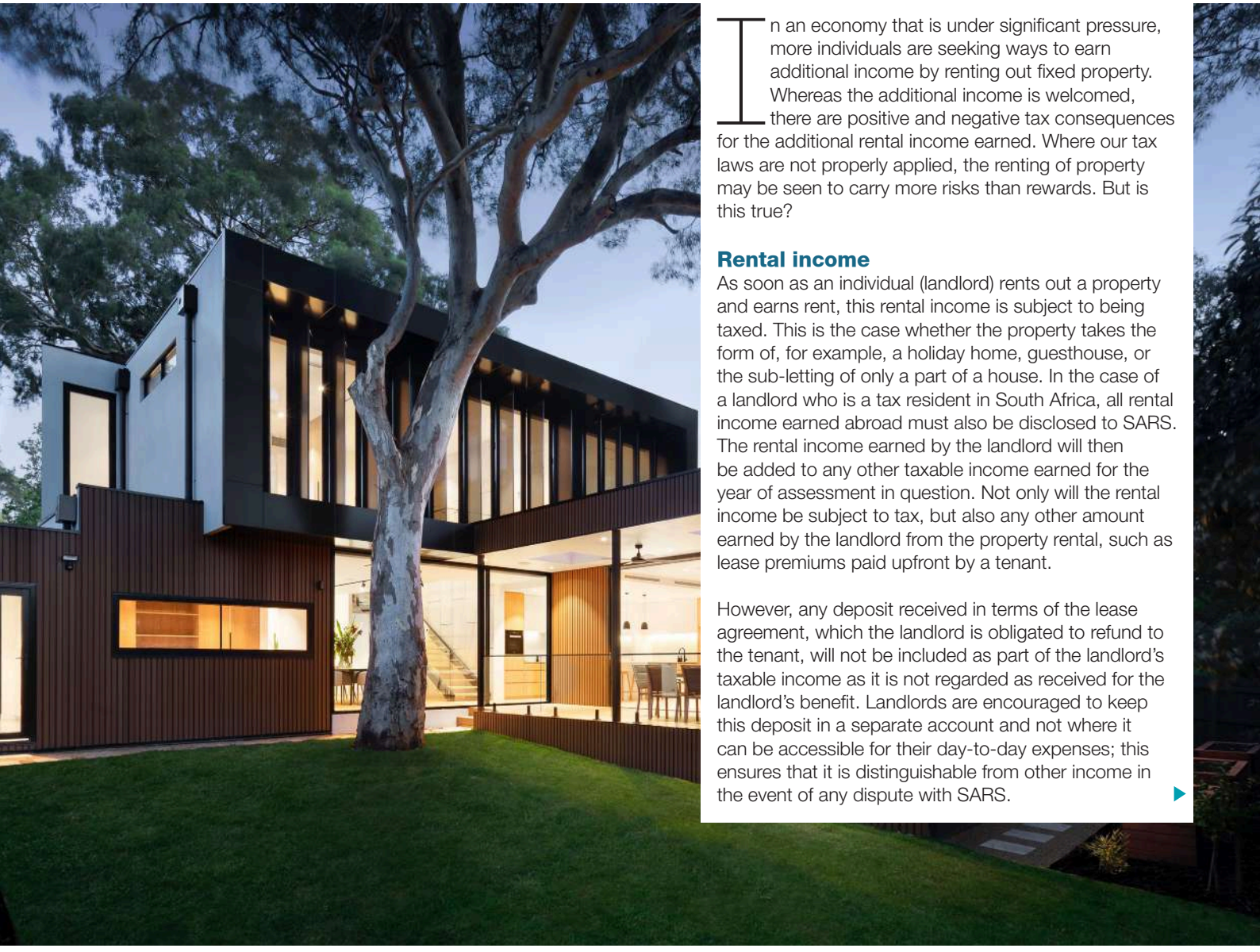
Where the data reflected on the auto-income tax assessment is not complete nor correct, the taxpayer must complete a tax return and submit it to SARS; thus, this results in an amended assessment. The tax return must, however, be submitted within 40 business days from the date that the auto-assessment was issued.

RISKS AND REWARDS OF RENTING OUT PROPERTY

15 minutes CPD

NATASHA WILKINSON, Head of Tax Disputes & Legal Strategy Tax Consulting South Africa
Updated by **SIMANGALISO MANYUMWA**, Tax Technical Assistant SAIT

Should the tax consequences of renting out a property deter homeowners from earning some extra income? We weigh the risks and rewards of residential rentals.



In an economy that is under significant pressure, more individuals are seeking ways to earn additional income by renting out fixed property. Whereas the additional income is welcomed, there are positive and negative tax consequences for the additional rental income earned. Where our tax laws are not properly applied, the renting of property may be seen to carry more risks than rewards. But is this true?

Rental income

As soon as an individual (landlord) rents out a property and earns rent, this rental income is subject to being taxed. This is the case whether the property takes the form of, for example, a holiday home, guesthouse, or the sub-letting of only a part of a house. In the case of a landlord who is a tax resident in South Africa, all rental income earned abroad must also be disclosed to SARS. The rental income earned by the landlord will then be added to any other taxable income earned for the year of assessment in question. Not only will the rental income be subject to tax, but also any other amount earned by the landlord from the property rental, such as lease premiums paid upfront by a tenant.

However, any deposit received in terms of the lease agreement, which the landlord is obligated to refund to the tenant, will not be included as part of the landlord's taxable income as it is not regarded as received for the landlord's benefit. Landlords are encouraged to keep this deposit in a separate account and not where it can be accessible for their day-to-day expenses; this ensures that it is distinguishable from other income in the event of any dispute with SARS.

The risks

Imprisonment, penalties, and interest

Where the total rental income earned by the landlord is not fully disclosed to SARS, the landlord may face criminal prosecution, penalties, and interest for the incorrect disclosure of information to SARS. If this is the case, then the landlord should ensure that this position is urgently corrected with SARS through the Voluntary Disclosure Programme.

Increased taxable income

Whereas the total rental income must be disclosed to SARS, the landlord's ultimate taxable income (and therefore tax payable to SARS) may be reduced by the expenses incurred. These expenses may be claimed as a tax deduction, provided that the expenses are:

- Wholly incurred in the production of the rental income;
- Not capital in nature;
- Not of a private or domestic nature;
- Not for the maintenance of the landlord, his family, or establishment; and
- Claimed in the correct year of assessment with proof that such expenses were incurred by the landlord.

Where expenses are claimed that do not comply with the above requirements, the landlord faces the risk of the expenses being disallowed as a deduction from taxable income; this results in higher taxable income than anticipated. This risk is especially present given that SARS considers renta+l trades to be 'suspect trades' and therefore subject to greater SARS scrutiny. For instance, some taxpayers have had all of their rental expenses disallowed during a SARS audit; consequently, they needed to prove to SARS through a formal dispute (for example, an objection) that these rental expenses were correctly claimed.

It is also important to bear in mind that proof of the expenses must not only be available at the time when the landlord's income tax return is completed, but that proof must also be kept for at least five years thereafter. This ensures that there is compliance with the Tax Administration Act; it also ensures that SARS does not disallow the expenses should an audit or verification be conducted several years after the submission of the income tax return.

Apportionment

Where the whole property is not rented out, for example, where only one bedroom is rented out to a tenant, the area which is leased must be divided by the total area of the whole property for an apportionment percentage to be calculated.

If an expense is incurred in respect of any remaining bedroom, then this expense cannot be allowed as a deduction because it does not relate to the area which is rented out. For example, it cannot be incurred in the production of rental income.

If SARS discovers that an apportionment has not already been applied by the landlord, SARS will apply its calculated apportionment ratio and add penalties and interest thereafter. The landlord will then need to dispute this apportionment ratio (if it is not correct), which may take a substantial period to finalise.

Ring-fencing

Often, landlords are faced with a situation where their expenses exceed the income earned. This resultant loss is generally available to be set off against other income earned by the landlord unless the loss is ring-fenced.

Ring-fencing is a specific anti-avoidance mechanism used by SARS to ensure that the landlord is not merely using the rented property as a way to incur losses and reduce the tax payable. To prevent the ring-fencing provisions in the Income Tax Act from applying, the landlord must prove that they are conducting a *bona fide* trade. This is usually a very involved process and SARS is often reluctant not to apply the ring-fencing provisions because the rental of residential accommodation is viewed as a suspect trade for tax purposes.

The rewards

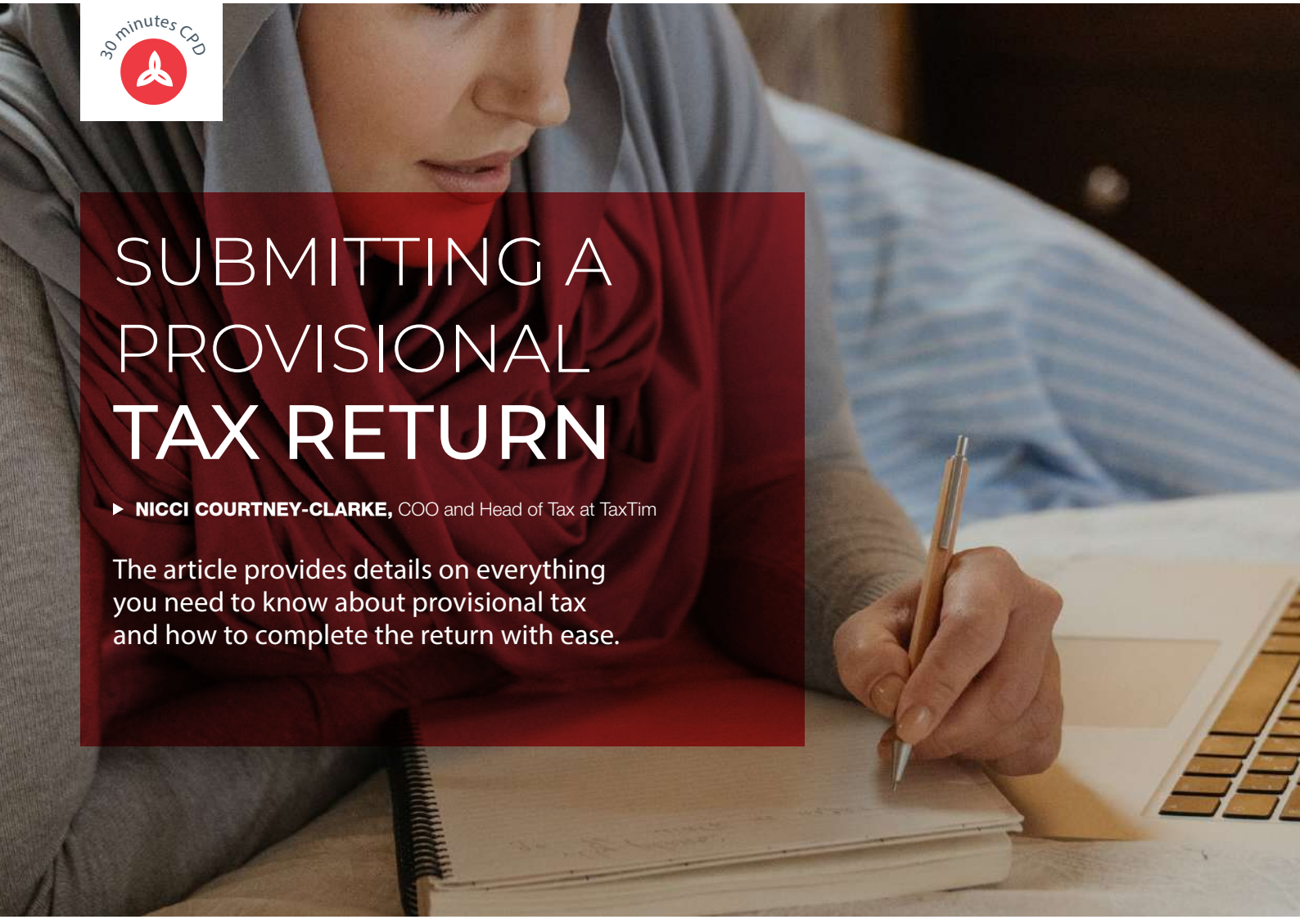
Where all of the above risks are averted, the landlord can sleep well at night knowing that they have made additional income and that they are taxed solely on profit after allowable and proven rental expenses have been deducted from the income. In the event that a landlord is renting out property at a loss, offsetting such losses against other income is also a significant benefit that could materially decrease the landlord's tax liability. However, landlords should be careful of the potential ring-fencing of losses as previously discussed.

The outcome

The rewards can be substantial and, where our tax laws are applied correctly, the rewards outweigh the risks.

A general overview of our tax laws shows that there are many risks involved in renting out property. However, to the well-informed landlord who adheres to all tax law requirements, the rental of property becomes far less tedious and risky. Landlords are therefore always advised to seek thorough advice from a tax professional to ensure that they reap the just reward of renting out property.

30 minutes CPD



SUBMITTING A PROVISIONAL TAX RETURN

▶ **NICCI COURTNEY-CLARKE,** COO and Head of Tax at TaxTim

The article provides details on everything you need to know about provisional tax and how to complete the return with ease.

Who qualifies as a provisional taxpayer?

The provisional tax payment system applies to all taxpayers who receive income that is not a salary or remuneration from an employer, which is subject to monthly PAYE deductions.

This includes taxpayers who earn income from:

- Running their own business (i.e. freelancers, sole proprietors, independent contractors);
- Property rental;
- Investments (i.e. dividends and interest); and
- An unregistered employer (i.e. an employer who does not deduct PAYE from salaries).

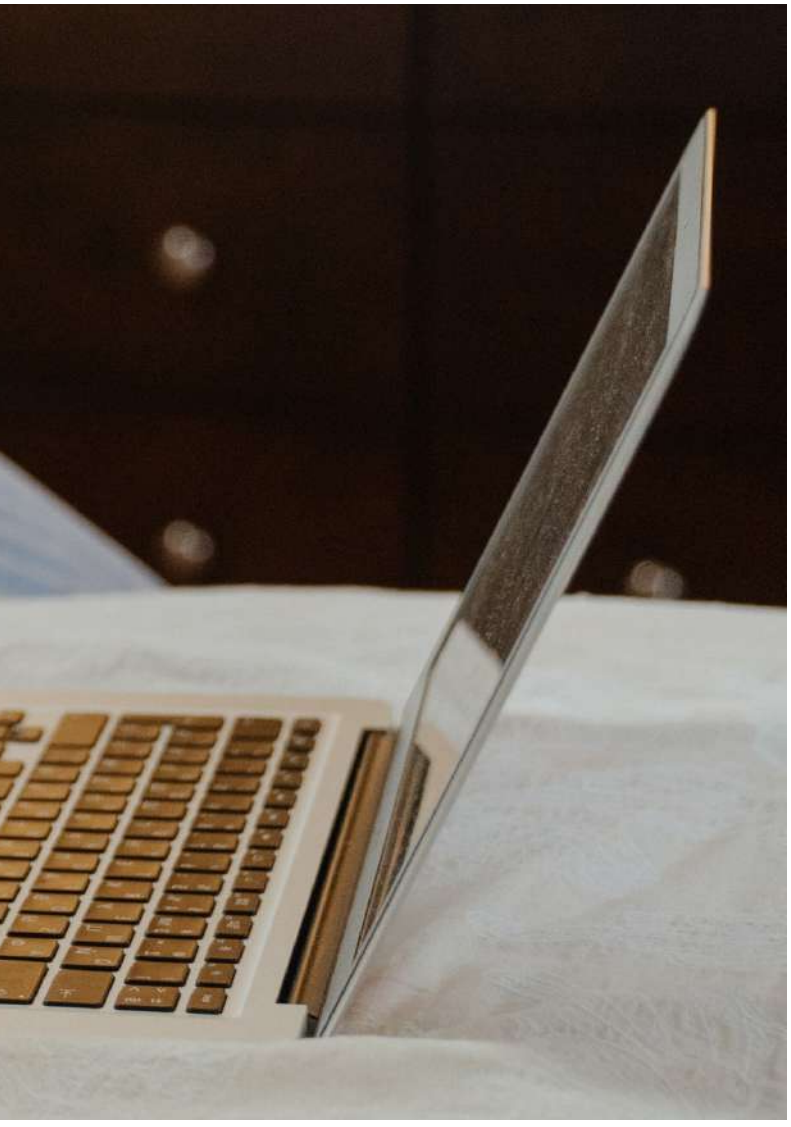
If you are self-employed and earn taxable income above the annual tax threshold (2023: R91 250 for taxpayers under the age of 65), then you must always be registered as a provisional taxpayer, even if you earn a salary as well. If you do not continue the business but earn rental income, investment income or income from an unregistered employer and our taxable income exceeds the annual tax threshold, then you will also be a provisional taxpayer unless your taxable income from these sources is less than R30 000 per year.

The deadline for the first provisional tax return for 2023 is 31 August 2022. This means that both the return (IRP6) as well as your tax payment (if applicable) must be submitted to SARS by this date.

Documents you need in order to prepare the IRP6

Below is a list of documents that may be needed in order to prepare your first provisional tax return. Make sure you have thefollowing documents, which are relevant to your return, handy.

- Your business's income statement which reflects the total income and expenses for the first six months of the tax year.
- Payslips for the first six months of the tax year.
- A schedule of your rental income and expenses for the first six months of the tax year.
- Statements from financial institutions where you hold investments which show the interest and capital gains earned on any investments that you hold.



- Supporting documents (e.g. invoices) for any other non-salary income you earned for the tax year to date.

How to complete your first provisional tax return

Particulars of taxpayer
This will already be completed. Check the details to confirm that they are correct.

Period
Ensure that the first period is checked. The first period for 2023 is for six months ending on 31 August 2022.

Turnover
This is your estimated gross income for the whole year, that is, 1 March 2022 to 28 February 2023, which includes: total business income, royalties, dividends, interest, and all other income, including employment income (salary). Retirement fund lump sums, retirement fund withdrawal benefits, and severance benefits must be excluded because these are taxed according to their own special tax tables.

Estimated taxable income
This is your gross income ('Turnover' above) minus your estimated business-related expenses for the whole year. You must also include the taxable portion of your capital gains here. You can subtract retirement fund contributions, donations to section 18A public benefit organisations, and any exempt income (e.g. the annual interest exemption and local dividends).

Tax on estimated taxable income
This amount will automatically calculate when you hit the recalculate button.

Rebates (primary, secondary, and tertiary)
Depending on your age, this amount will already be populated on your tax return.

Medical scheme fees tax credit
This is a tax credit you receive if you contribute to a private medical aid (2023: R347 per month for the first two members and R234 per month for every additional member). You will need to calculate this amount and enter it in this field.

Additional medical expenses tax credit
If your medical aid costs exceed four times the above medical scheme credit and three times if you are over 65, then a portion of your costs plus out of pocket medical expenses can be claimed here as a credit.

Tax for the full year
This will automatically calculate and will equal the tax due ('Tax on estimated taxable income' above), less rebates and tax credits.

Tax for this period (six months)
This will automatically calculate and will equal half the annual tax due ('Tax for the full year' above).

Foreign tax credits for this period (six months)
If you have earned money offshore and tax was withheld or paid on this foreign income, include the foreign tax here.

Tax payable for this period
This amount will automatically calculate.

Penalty on late payment
If you pay your first payment after the deadline (i.e. after 31 August 2022) SARS will automatically levy a penalty of 10% on your tax due. You need to calculate this amount and enter it here.

Interest on late payment
SARS charges interest at 7.25% on payments after the deadline. If applicable, you need to calculate this amount and enter it here.

Total amount payable
This amount will automatically calculate.

Unusual/infrequent amounts included in the estimated taxable income (e.g. CGT, lump sums)
You need to enter any capital gain or lump sum that you have included in your estimate of taxable income.

Basic amount
This is your taxable income in your most recent, previous assessment. You need to be aware of this amount and how it impacts the penalty calculation in the event that you you underestimated your second provisional payment (see below).

Tips and common pitfalls

Turnover and taxable income estimates must be for the full year
Many taxpayers get confused when doing their first provisional return; they enter the turnover and estimated taxable income for the first six months of the year only. This is incorrect. You need to estimate what your earnings will be over 12 months. As you know what you have earned by the end of August (six months since 1 March), you can simply double the amounts if you think your earnings will be consistent for the rest of the year.

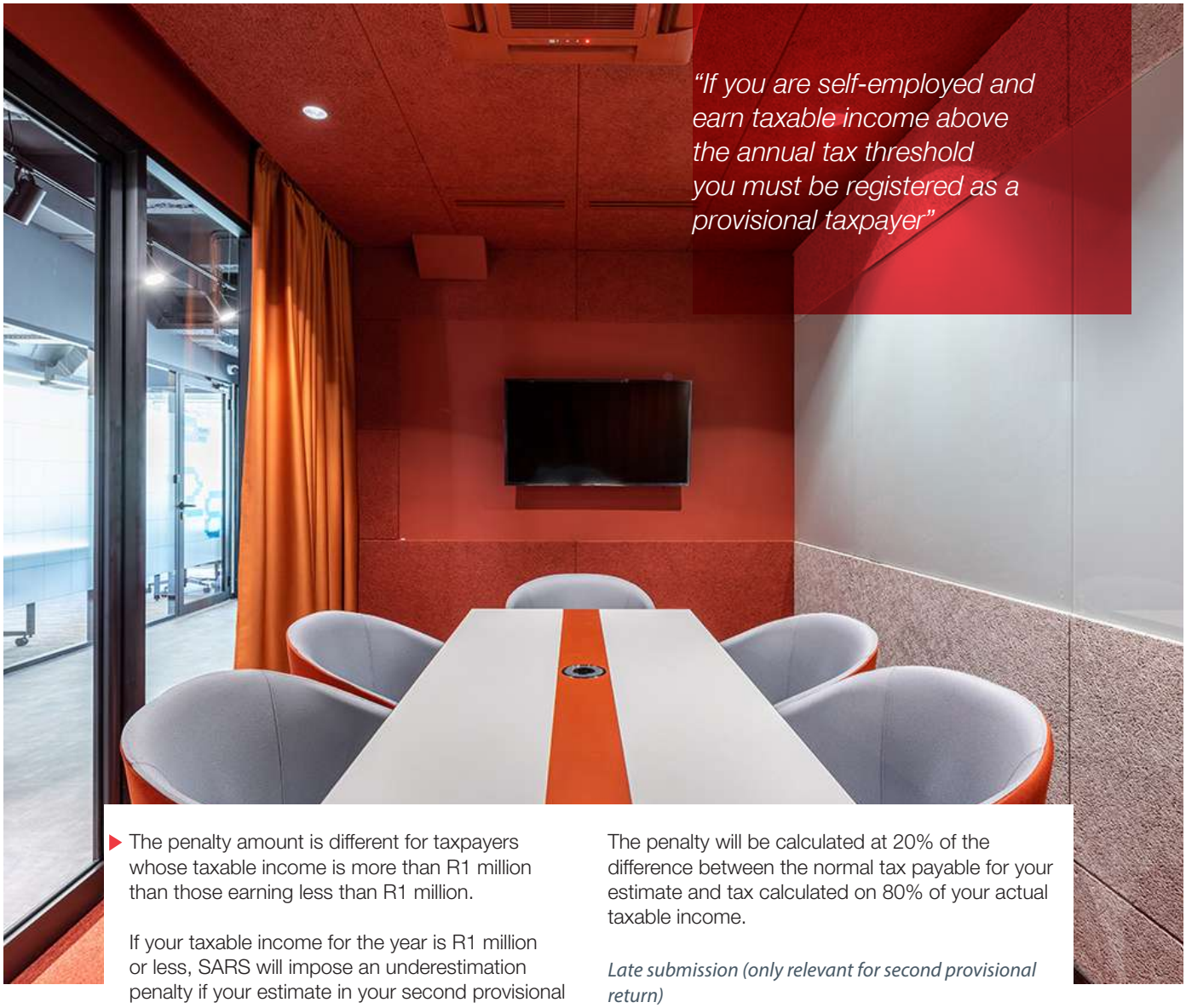
Late payments
SARS is very quick to levy a late payment penalty equal to 10% of the total tax payable – even if you are only one day late. Not only that, SARS will also add interest at their prescribed rate (currently 7.25% per annum). Be sure to check the deadline on their website for both the August and February payment and set an alert on your calendar so that you never pay late. Also, bear in mind that if the last day for submission falls on a public holiday or weekend, the submission must be made on the last working day prior to the public holiday or weekend.

Always submit a return
If you fail to submit a return, SARS may estimate your tax liability due based on prior returns. Therefore, even if you owe no tax, you must still submit a provisional ('nil') return.

Keep supporting calculations
SARS may ask you to justify your estimate and can increase it if they are dissatisfied with the amount. The increase of the estimate is not subject to an objection or appeal.

Do not overlook investment income and capital gains
If you own investments, you should request a provisional statement from the financial institution in August to ensure that you include your interest and capital gains in your estimate of taxable income. Too often, taxpayers are surprised by unexpected capital gains and interest when they receive their IT3(b) and IT3(c) after year end; then it is already too late to avoid the underestimation penalty on their second provisional payment.

Underestimation penalty (only relevant for second provisional return)
You need to ensure that the estimate of taxable income in your second return is reasonably accurate to avoid an underestimation penalty. This estimate should be more accurate than the one in your first provisional return because by year end you should know your taxable income for the year; therefore, less estimation is required.



"If you are self-employed and earn taxable income above the annual tax threshold you must be registered as a provisional taxpayer"

The penalty amount is different for taxpayers whose taxable income is more than R1 million than those earning less than R1 million.

If your taxable income for the year is R1 million or less, SARS will impose an underestimation penalty if your estimate in your second provisional return turns out to be less than 90% of your actual annual taxable income on your ITR12 and if it is also less than your 'basic amount'.

The penalty amount will be calculated at 20% of the difference between the normal tax payable on your estimate and the lesser of:

- Tax on 90% of your actual taxable income; or
- Tax on your basic amount.

If your taxable income is more than R1 million, you need to ensure that your estimate of taxable income on your second provisional return is no less than 80% of your actual taxable income. SARS does not consider the basic amount when a taxpayer's taxable income is more than R1 million.

The penalty will be calculated at 20% of the difference between the normal tax payable for your estimate and tax calculated on 80% of your actual taxable income.

Late submission (only relevant for second provisional return)

If you file your IRP6 more than four months after the deadline, SARS considers you to have submitted a 'nil' return (i.e. taxable income is equal to zero). Unless your actual taxable income is, in fact zero, this will result in the 20% underestimation penalty being imposed.

How to correct a mistake after submission

If you realise that the provisional return which you have submitted is incorrect, then you can access it for correction at any time on SARS eFiling. To do this, you need to navigate to this return by selecting the menu item 'Returns' and then 'Returns History', then click on the button 'Request for Correction'. You can make the changes to your IRP6 and resubmit.

WHEN TO REGISTER AND REPORT

15 minutes CPD

DONÉ HOWELL, Director Tax at BDO

When do you become a provisional taxpayer and what are your tax obligations? Read on to find out how to manage this situation.

Provisional tax is neither a new nor an additional tax imposed on a taxpayer. Rather, it is an advance payment towards one's income tax liability, the payments serving as credits to the final determined income tax liability on assessment.

SARS touts the provisional tax dispensation as beneficial to taxpayers as a means of managing their tax obligations and cash flow, thereby avoiding large payments on assessment. It is certainly also true that it serves as a substantial and much needed cash injection for SARS throughout the tax year.

Do you qualify as a provisional taxpayer?

Any company qualifies as a provisional taxpayer and is required to register as such.

With respect to a natural person or trust, the type of income earned as well as the amount of such income would determine whether these taxpayers meet the definition of 'provisional taxpayer'. Taxpayers in the following two cases qualify as provisional taxpayers:

- If income is derived by way of any amount which is not remuneration or a qualifying allowance or advance, such as income derived from the carrying on of any business, rental from letting of fixed property or the return on investment both from a local and foreign source.
- If an employee's employer is not registered with SARS. This is typical to employees rendering services in South Africa on behalf of a foreign employer.

If the taxpayer does not qualify as a provisional taxpayer under the above provisions and a capital gain is realised on the disposal of an asset during the year of assessment, the capital gain does not cause the taxpayer to qualify as a provisional taxpayer.

Directors of private companies and members of close corporations no longer automatically qualify as provisional taxpayers due to their designation.

The following taxpayers are excluded from the definition of a provisional taxpayer:

- Approved public benefit organisations and recreational clubs;
- Qualifying body corporates, share block companies or associations of persons;
- Non-resident owners or charterers of ships and aircraft who are already required to make payments under the tax legislation;
- Small business funding entities;
- Deceased estates; and
- Approved associations as defined in section 30B of the Income Tax Act.

Furthermore, natural persons are excluded from the provisional taxpayer definition if they do not derive income from the carrying on of any business and during the year of assessment their:

- taxable income does not exceed the tax threshold (for the 2023 tax year the thresholds are R91 250 for individuals under the age of 65 years, R141 250 for persons 65 to below 75 years of age and R157 900 for individuals 75 years of age and older);
- combined taxable income from the following sources does not exceed R30 000 (as legislation currently reads), namely interest, dividends, foreign dividends, rental income from letting fixed property and remuneration from an employer that is not registered for PAYE.

What to do if you fall into one of the qualifying categories

Taxpayers must determine whether they qualify as provisional taxpayers and, if so, should register within 21 days of qualifying as such.

Utilising eFiling negates the need to complete and submit manual forms to SARS in order to register or deregister as a provisional taxpayer, as this process is now catered for on eFiling. Once registered for provisional tax, taxpayers simply request, complete and submit the IRP6 return via eFiling.

If you are unsure whether you qualify to register as a provisional taxpayer, for example due to your variable return on investments, it is recommended that you contact a tax practitioner to assist you in order to mitigate the risk of penalties and interest for any non-compliance.

Where and how to register

If you have an existing eFiling profile, registering for provisional tax is as easy as clicking a button or two. Simply follow the SARS guide, *How to eFile your provisional tax return*.

If a taxpayer does not use or have access to eFiling, the prescribed forms should be available at a SARS branch.

When and how you need to report and pay

A provisional taxpayer must submit two provisional tax estimates in a year of assessment, namely one six months into the year and one at the end of the year of assessment. As an example:

- The first provisional tax estimate for individuals and trusts in respect of the 2023 year of assessment is due by 31 August 2022. For a company with a year of assessment ending December 2022 the first provisional tax estimate is due by 30 June 2022.
- The second provisional tax estimate coincides with the end of the year of assessment, i.e. six months after the first period. For individuals and trusts in respect of the 2023 year of assessment the second provisional tax estimate is due by 28 February 2023. For a company with a year of assessment ending December 2022 the second provisional tax estimate is due by 31 December 2022.

Tax legislation now clarifies that no estimate is required to be made in respect of the period ending on the date of death of a natural person.

Where a taxpayer fails to submit an estimate for any period, SARS may estimate the taxable income and determine the tax payable. Furthermore, where a taxpayer fails to submit the second provisional tax estimate within four months from the relevant due date, the taxpayer will be deemed to have submitted an estimate of nil taxable income.

SARS may also call upon any taxpayer to justify an estimate or furnish any particulars including the taxpayer's income and expenditure. Where SARS is dissatisfied with the taxpayer's response, it can increase the estimate to an amount considered reasonable. This decision by SARS is not subject to objection and appeal and any additional tax payable must be settled within the period determined by SARS.

A voluntary third provisional tax payment can be made by the effective date. This payment will reduce or avoid the interest charge should the first and second provisional tax payments not be sufficient to cover the full tax liability on assessment. For taxpayers with years of assessment ending on the last day of February the effective date is seven months later, while in all other cases it is six months later.

SARS can also agree to an "instalment payment agreement" which will allow a taxpayer to settle the provisional tax liability in instalments.

Payment of the provisional tax can be made at banks, via eFiling and electronic funds transfer (EFT). One should be aware of banks' cut-off times to ensure the clearance period is before the actual due date of the payment. It is important to quote the correct 19-digit payment reference number and the SARS beneficiary ID or account reference number when making payment in order to avoid any misallocation of the payment.

45 minutes CPD

PENALTIES AND INTEREST RISKS

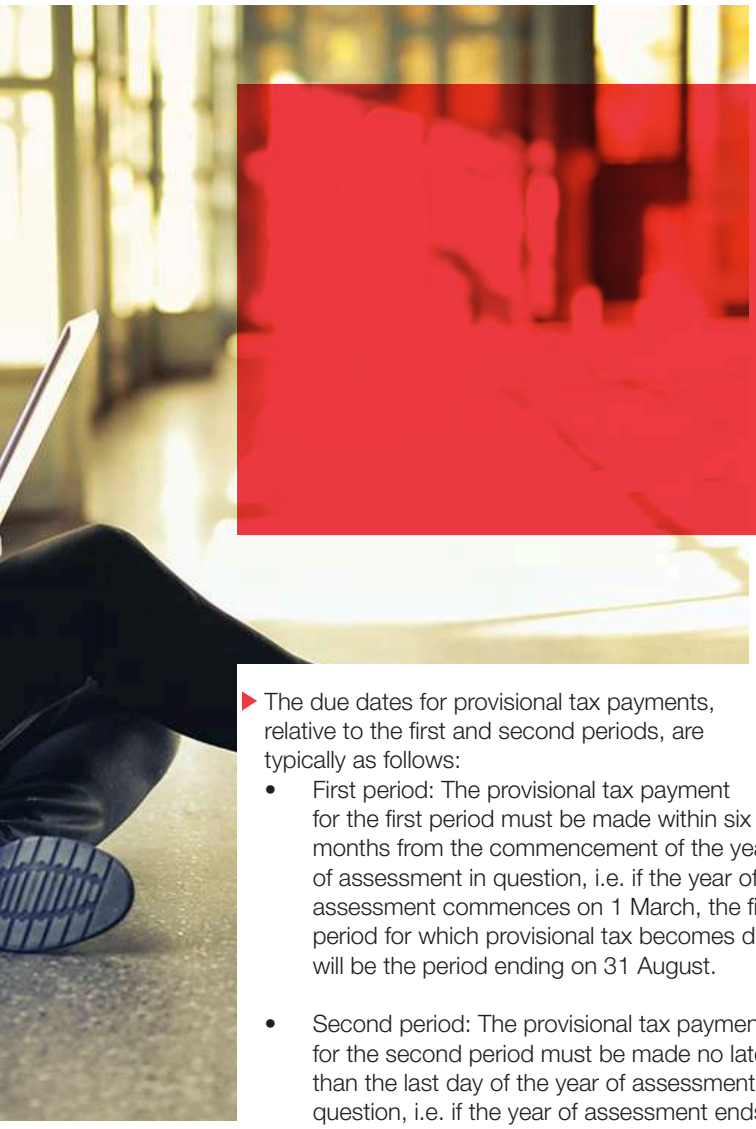
DARREN BRITZ, Senior Attorney at Tax Consulting South Africa & **ANDRÉ DANIELS,** Legal Manager: Tax Controversy & Dispute Resolution at Tax Consulting South Africa

Provisional taxpayers must comply with all the requirements for filing returns and making payments in order to avoid penalties and interest. Our article provides guidance on the risks associated with provisional tax and how to mitigate them.

Taxpayers who are required to pay provisional tax must comply with additional tax filing obligations, together with their usual obligation to file an annual income tax return. As provisional taxpayers, they must quickly become familiar with their provisional tax obligations; should they fail to do this, they are at risk of paying interest and penalties in addition to the income tax payable.

Provisional tax obligations

In brief, provisional taxpayers must accurately estimate their taxable income for the year of assessment in question and pay income tax on this in advance. The estimate of taxable income is declared by completing and submitting a provisional tax return (IRP6) twice per year and simultaneously paying the corresponding amount of tax (if any). Provisional tax obligations are, therefore, separated into obligations in respect of each period, namely the first and second periods.



"Provisional taxpayers must accurately estimate their taxable income for the year of assessment in question and pay income tax on this in advance"

The due dates for provisional tax payments, relative to the first and second periods, are typically as follows:

- First period: The provisional tax payment for the first period must be made within six months from the commencement of the year of assessment in question, i.e. if the year of assessment commences on 1 March, the first period for which provisional tax becomes due will be the period ending on 31 August.

- Second period: The provisional tax payment for the second period must be made no later than the last day of the year of assessment in question, i.e. if the year of assessment ends on 28 or 29 February, the second period for which provisional tax becomes due will be the period ending on 28 or 29 February.

Where any provisional taxpayer fails to comply with their provisional tax obligations, the penalties and interest which may be imposed will depend on whether the non-compliance was in respect of the first or second period.

First period

Penalty for late payment of provisional tax

Provisional taxpayers are obliged to pay their provisional tax timeously. In the case of an individual (or trust), the due date would typically fall on 31 August and, in the case of a company, payment is due within six months from the date of commencement of its financial year.

Failure of a provisional taxpayer to pay on time will result in the imposition of what is known as 'a penalty for late payment of provisional tax', which is imposed in terms of paragraph 27 of the Fourth Schedule to the Income Tax Act, read with Chapter 15 of the Tax Administration Act. This penalty is calculated at 10% of the provisional tax amount not paid.

If a provisional tax amount of R700 000 was not paid or is paid late, the penalty that is levied will be 10% of R700 000, namely R70 000.

Interest on overdue provisional tax because of late or non-payment

According to section 89bis(2) of the Income Tax Act, interest is levied on provisional tax due by the taxpayer as a result of late or non-payment and it will continue to accrue until the taxpayer has paid the tax in full. Interest on overdue provisional tax is calculated at the 'prescribed rate', which is the rate of interest fixed by the Minister of Finance by notice in the *Government Gazette*.

While the prescribed rate of interest fluctuates over time, the *Government Gazette* publishes the relevant 'prescribed rate'. SARS has tabulated the varying interest rates levied since 1 July 1982 and these are available on the SARS website, with the latest interest rate being published at 7.75% as on 1 July 2022.

Second period

Penalty and interest for late payment of provisional tax

The penalty imposed and interest levied for late payment of provisional tax, as discussed relative to the first period, are equally applicable to the second period. A failure by a taxpayer to pay on time, typically on 28 or 29 February, will result in the imposition of a 10% penalty and interest thereon at the prescribed rate until payment of the tax in full.

Penalty for underpayment of provisional tax as a result of underestimation

A provisional taxpayer is at risk of a second type of penalty imposed in terms of paragraph 20 of the Fourth Schedule to the Income Tax Act, read with Chapter 15 of the Tax Administration Act, where the taxpayer's actual taxable income for the year of assessment in question is more than the estimate of taxable income declared by the taxpayer to SARS on their provisional tax return. The taxpayer's actual taxable income is determined on assessment of their normal income tax return, which is submitted subsequent to the filing of their provisional tax return.

The calculation of this penalty (known as an 'underestimation penalty') depends on whether the taxpayer's actual taxable income is more than R1 million or whether the actual taxable income is equal to or less than R1 million. This will determine both the room for error, i.e. how much the taxpayer must have underestimated for the penalty to arise, as well as the amount of the penalty payable.

a. Actual taxable income equal to or less than R1 million

If the taxpayer's actual taxable income for the year of assessment was equal to or less than R1 million, an underestimation penalty will be levied if the taxpayer's second-period estimate of taxable income was less than 90% of the taxpayer's actual taxable income and the estimate was less than the 'basic amount' applicable to the second period.

The basic amount is the taxable income assessed for the preceding year of assessment less certain prescribed amounts as detailed in SARS' Interpretation Note 1, titled 'Provisional Tax Estimates' (issue 3). A penalty will, therefore, not be levied if the taxpayer's second period estimate of taxable income was greater than the applicable basic amount.

The amount of the underestimation penalty is calculated as 20% of the difference between the lesser of:

- the amount of normal tax payable for the year of assessment on 90% of the actual taxable income, after considering any amount of a rebate deductible in the determination of normal tax payable; and

- the amount of normal tax payable on a taxable income equal to the basic amount, after considering any amount of a rebate deductible in the determination of normal tax payable and the total amount of tax paid by the taxpayer by the end of the year of assessment.

By way of an example, let us say that the taxpayer's basic amount is R800 000 and, in the 2019 year of assessment, the taxpayer estimates (in the second period) a taxable income of R400 000 for the year of assessment but his actual taxable income was R700 000. In this example, the taxpayer estimated an amount that is less than 90% of his actual taxable income and which is also less than the basic amount, thereby triggering an underestimation penalty. The tax on R700 000 is less than the tax on R800 000. If we assume that the tax payable was R300 000 but, based on the taxpayer's estimate, the tax paid was R180 000, then the penalty payable by the taxpayer will be 20% of the difference between R300 000 and R180 000, i.e. 20% of R120 000, namely R24 000.

b.Actual taxable income is more than R1 million

If the taxpayer's actual taxable income for the year of assessment exceeded R1 million, an underestimation penalty will be levied if the taxpayer's second period estimate of taxable income was less than 80% of the taxpayer's actual taxable income, calculated as 20% of the difference between:

"The only way for taxpayers to avoid triggering provisional tax penalties is to ensure that they correctly calculate their estimated taxable income for the year of assessment and that payment of the provisional tax is made on time"

- the amount of normal tax payable for the year of assessment on 80% of the actual taxable income, after considering any amount of a rebate deductible in the determination of normal tax payable; and
- the total amount of tax paid by the taxpayer by the end of the year of assessment.

The calculation of the penalty payable in this instance is thus much simpler than where the taxpayer's actual taxable income is equal to or less than the R1 million threshold, as the basic amount does not play a role in the calculation of this penalty.

Interest on underpayment of provisional tax as a result of underestimation

Interest will, subject to the applicable taxable income threshold (R20 000 in the case of a company and R50 000 in any other case), be levied on provisional tax due by the taxpayer as a result of underpayment of provisional tax, according to section 89quat(2) of the Income Tax Act. Interest on underpayment of provisional tax is calculated at the prescribed rate. Interest will accrue from seven months after the last day of the second period until the date of assessment of the taxpayer's income tax return. For most taxpayers who should have paid provisional tax in full by 28 or 29 February, interest will consequently accrue only from 1 October.

Avoidance and remittance of penalties and interest

The only way in which taxpayers can avoid triggering provisional tax penalties is to ensure that they correctly calculate their estimated taxable income for the year of assessment and that payment of the provisional tax is made on time. However, taxpayers can reduce their risk of having interest levied when they submit a third provisional tax return within seven months after the last day of the second period and pay the provisional tax shortfall.

Where penalties and interest have already been imposed and levied, taxpayers may request SARS to remit all or a portion of such penalties and interest, provided that certain requirements are met.

These requirements are laid down in the Fourth Schedule to the Income Tax Act as well as Chapter 15 of the Tax Administration Act. Each category of penalty and interest comes with its own requirements for remission; taxpayers must therefore be mindful of this when making a request for remission to SARS.

Conclusion

A detailed explanation of the law relating to provisional tax, including the consequences of non-compliance, is provided in SARS' Interpretation Note 1. A simplified and more practical explanation is available in the form of SARS' External Guide for Provisional Tax.

Both documents are expressly caveated as they have been published merely for guidance and information purposes; these documents are not meant to replace expert advice. Provisional taxpayers are ultimately responsible for their own tax affairs and must comply to avoid the risk of penalties and interest.

REQUEST FOR INFORMATION

30 minutes CPD

ELLE-SARAH ROSSATO, Lead: Tax Controversy and Dispute Resolution at PwC &
LOUISE SWART, Consultant at PwC

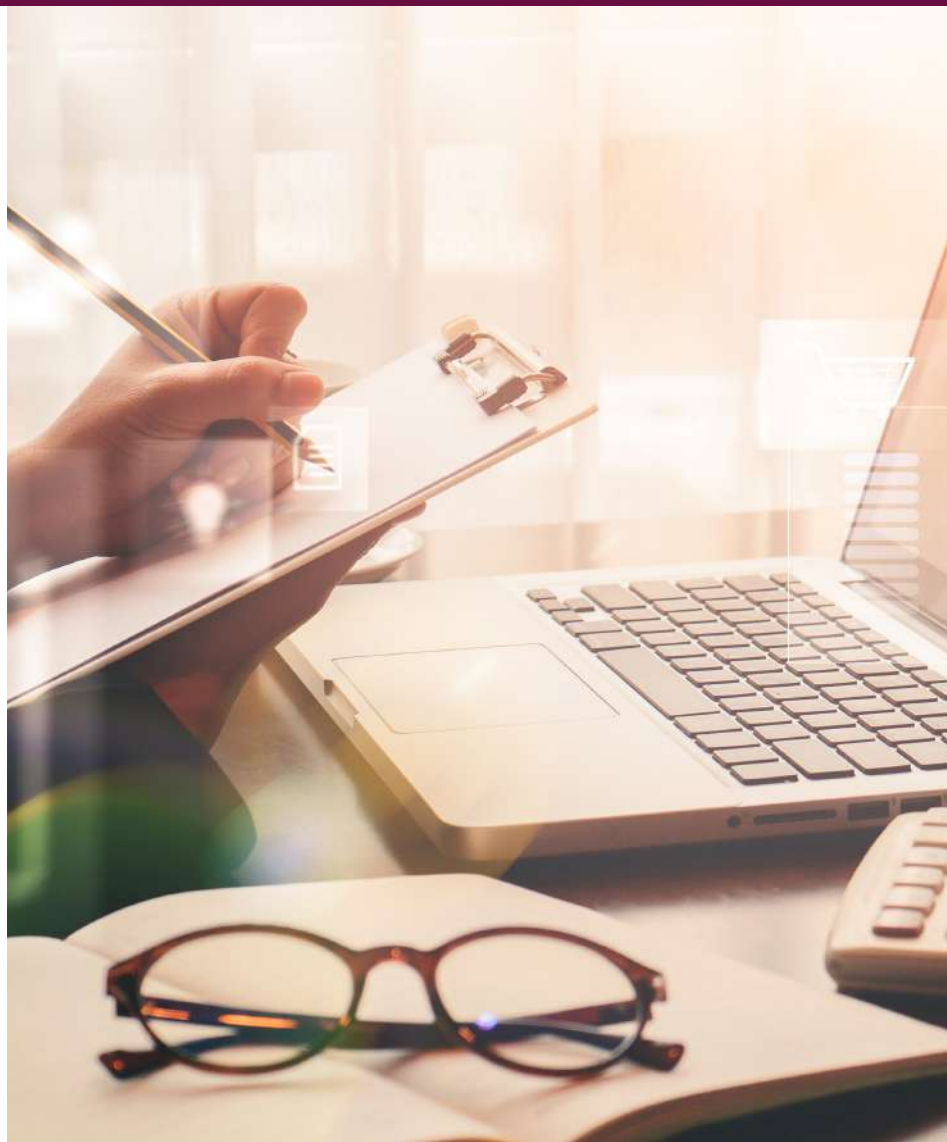
This article deals with the powers of SARS with respect to gathering information and sets out a range of responses that are generally available to recipients of requests for information. We also highlight other useful mechanisms that are available to taxpayers during SARS' audit processes.

Why does SARS request information and material from taxpayers?

The Commissioner of SARS (and by extension the officials in the employ of SARS) must administer tax acts, such as the Income Tax Act and the Value Added Tax Act. Section 6 of the Tax Administration Act provides that: "The powers and duties of SARS under this Act may be exercised for purposes of the administration of a tax Act."

To enable SARS to perform its functions, the Tax Administration Act makes provision for an array of powers and processes, such as:

- Section 45 inspections, without prior notice, of the business premises of taxpayers;
- Section 46 requests for relevant material;
- Section 47 interviews;
- Section 48 field audits, with prior notice;
- Tax inquiries; and
- The execution of search and seizure warrants.



In exercising its information gathering powers, SARS must act reasonably and employ the most appropriate means of gathering information.

Section 46 requests for relevant material

Section 46 requests for relevant material is the most common process followed by SARS during its verification and audit processes and requires a closer look. This article therefore discusses the legal framework regulating the process for requesting relevant material from taxpayers, the rights of taxpayers and the consequences for non-compliance.

What SARS can request from you?

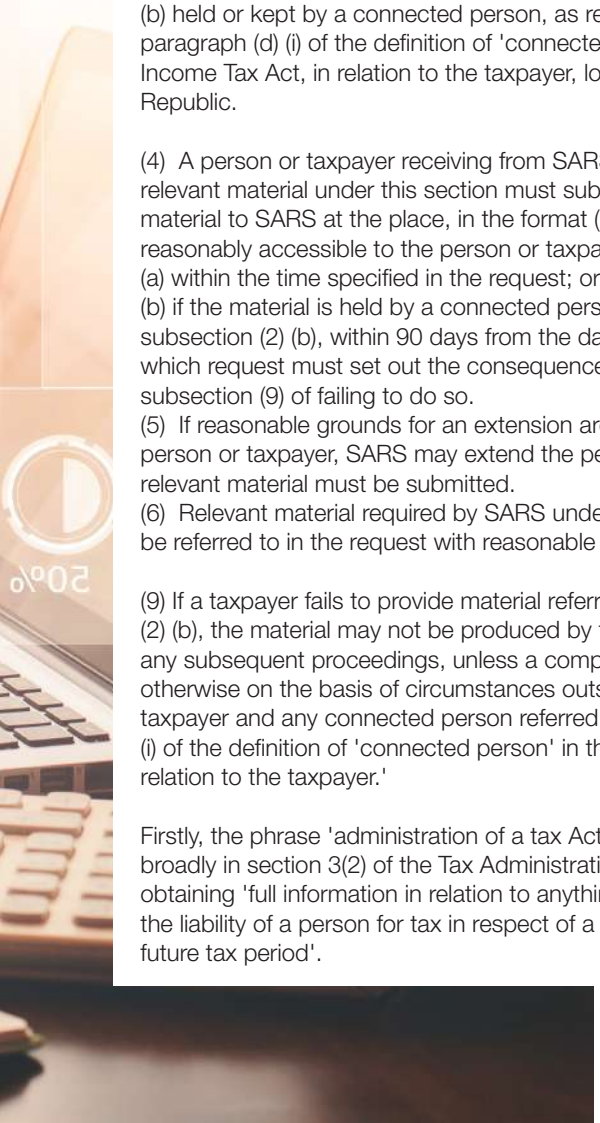
Section 46(1) of the Tax Administration Act regulates requests for information which are issued by SARS to taxpayers. It provides as follows:

'Request for relevant material.—(1) SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.
(2) A senior SARS official may require relevant material in terms of subsection (1)—
(a) in respect of taxpayers in an objectively identifiable class of taxpayers; or
(b) held or kept by a connected person, as referred to in paragraph (d) (i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer, located outside the Republic.

(4) A person or taxpayer receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place, in the format (which must be reasonably accessible to the person or taxpayer) and—
(a) within the time specified in the request; or
(b) if the material is held by a connected person referred to in subsection (2) (b), within 90 days from the date of the request, which request must set out the consequences referred to in subsection (9) of failing to do so.
(5) If reasonable grounds for an extension are submitted by the person or taxpayer, SARS may extend the period within which the relevant material must be submitted.
(6) Relevant material required by SARS under this section must be referred to in the request with reasonable specificity.

(9) If a taxpayer fails to provide material referred to in subsection (2) (b), the material may not be produced by the taxpayer in any subsequent proceedings, unless a competent court directs otherwise on the basis of circumstances outside the control of the taxpayer and any connected person referred to in paragraph (d) (i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer.'

Firstly, the phrase 'administration of a tax Act' is defined very broadly in section 3(2) of the Tax Administration Act and includes obtaining 'full information in relation to anything that may affect the liability of a person for tax in respect of a previous, current or future tax period'.



"Ultimately, section 46 of the Tax Administration Act gives rise to mandatory obligations and the recipient is compelled by law to comply with the contents of a request for information"

Importantly, section 46(1) of the Tax Administration Act does not restrict SARS to requesting information only from the specific taxpayer forming the subject of its audit. This means that any person who may hold relevant information in relation to a taxpayer may be required by SARS to submit such information. This could include, for example, an employer, customer or even a banking institution. Furthermore, section 46(2) authorises a senior SARS official to request relevant material in relation to the taxpayer which is held by a connected person that is located outside of South Africa.

'Relevant material' is defined in section 1 of the Tax Administration Act as meaning 'any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act'. The first point to note is that this statutory construction provides clear precedence to SARS' subjective opinion of the relevance of the material. In the absence of irrationality or perhaps a 'fishing expedition' on the part of SARS, such discretion cannot be easily challenged.

According to the Memorandum on the *Objects of the Tax Administration Laws Amendment Bill* published in 2014, the test of what is 'foreseeably relevant' has a low threshold and concerns 'whether at the time of the request there is a reasonable possibility that the material is relevant to the purpose sought'.

Section 46(3) does provide some limits on the demands that can be placed on recipients of requests for information where the recipient is someone other than the taxpayer in question. In these circumstances, relevant material is 'limited to material maintained or kept or that should reasonably be maintained or kept by the person in relation to the taxpayer', which in most cases would be limited to a period of five years.

Section 46(4) places a duty on any person receiving such a request for material to produce the material. In addition, the section does not prescribe a specific period within which a person must respond, other than to state that the response

should be within a reasonable period. In practice, SARS will indicate in the request that a response is due within 21 days. Of course, SARS may (depending on the nuances of the case under audit) and the volumes of material requested, indicate a shorter time frame within which a person must respond.

In the case of connected persons located outside of South Africa, the Tax Administration Act affords the recipient of the request for information with a period of 90 days in which to respond. This has particular application with respect to transfer pricing audits, where SARS may request extensive details of potentially affected transactions. This could include the following:

- Copies of contracts and agreements;
- Governance and regulatory documents (such as board minutes);
- Detailed allocations of revenue, costs, expenses and profits between connected persons; and
- Commercial invoices between the tested party and its customers and suppliers.

These provisions cast the net of who may be requested to provide material and the scope of such a request wide.

In so far as the request for material itself is concerned, SARS may only request the material that is relevant to the audit or verification. The issue was recently raised in the matter of *Carte Blanche Marketing CC and Others v Commissioner for the South African Revenue Service*. At paragraph 51 the Court explained the purpose and the scope of a request for material:

"The documents called for in the audit notifications are of the kind that would prove the correctness of the VAT and income tax returns filed by a taxpayer. Put differently, they are typical of the documents which section 29 of the TAA enjoins a taxpayer to keep; are typical of the documentation with reference to which the applicants' VAT and income tax returns would have been prepared."

Ignoring a request for material from SARS, or taking a nonchalant approach to such a request, could have dire consequences. We highlight some of the more serious implications for non-compliance below.

Possible responses available to the recipient of the request for information

There are five possible responses available to a taxpayer who disputes the obligation to comply with a request for information.

1. Invoking legal privilege

Recipients of requests for information are permitted to withhold information that is subject to legal privilege. However, advice should be sought in this regard as the standards and criteria that must be met before legal privilege can be successfully invoked are numerous and strictly interpreted.

2. The request is too broad or constitutes a 'fishing expedition'

SARS is not permitted to request information on a random basis in an attempt to uncover items of interest. Such a request would not be "foreseeably relevant for the administration of a tax Act" and thus the information concerned would not constitute 'relevant material' as contemplated in section 1 of the Tax Administration Act.

The request should be made by SARS with a particular purpose in mind and such a purpose must be for the administration of a tax Act.

3. Lack of reasonable specificity

Similarly, section 46(6) of the Tax Administration Act requires that "relevant material required by SARS under this section must be referred to in the request with reasonable specificity." Therefore, requests for a generic body of documentation (such as all emails relating to interactions with a client or a possible transaction such as a merger or acquisition) would fall foul of this requirement.

Put differently, a person who receives a request for relevant material must understand what is expected of them. Ambiguous and unclear requests will only result in the wrong material being produced, which delays the finality of the audit.

4. The requested information lies beyond document retention requirements

Recipients of requests for information are not expected to have retained information outside of the periods stipulated in the Tax Administration Act (which is five years as per section 29 of the Act) and the Companies Act (which is seven years as per section 24 of the Companies Act). This may prove to create an anomaly in that SARS may, if it believes that a taxpayer has committed fraud, made misrepresentations or failed to disclose material facts, audit and assess tax periods beyond the date of finality as provided for in section 99 of the Tax Administration Act. Taxpayers are often frustrated in defending themselves in cases where a period older than the five-year retention time frame has been assessed by SARS since the taxpayer may no longer possess the evidence or documents to support their case.

5. The third-party requests are unreasonable

As set out above, section 46(3) of the Tax Administration Act requires that requests for information relating to another taxpayer must be limited to material that could reasonably be expected to be in the possession of the recipient of the request for information.

The seriousness of these inquiries is amplified by provisions which empower a senior SARS official to direct that the relevant material be provided under solemn oath or affirmation. The making of an intentionally false statement under oath or affirmation can give rise to perjury, a criminal offence which may result in a jail sentence.

Just and fair administrative actions by SARS

Any administrative actions taken by SARS must pass constitutional muster, specifically section 33 of the Constitution, 1996: 'Everyone has the right to administrative action that is lawful, reasonable and procedurally fair'.

Taxpayers have the right to approach a High Court to seek relief in instances where SARS' actions may be irrational, unfair or unjust.

The consequences of non-compliance with a request for material

The inability to provide all the material is often seen as a refusal to submit the material and the audit of a taxpayer's affairs is completed without regard to the taxpayer's records.

Seeking clarity from SARS as to the scope of the request, the time frame allowed within which to respond and any concerns regarding the purpose of the request will go a long way to avoiding the consequences of non-compliance with section 46. Very often a discussion with SARS helps to align SARS' expectations with the ability of the taxpayer to satisfy the requests.

Failure to respond fully to a request for material under section 46 could result in consequences of a civil and/or criminal nature.

The case of *CSARS v Brown* demonstrates that taxpayers are not permitted to simply ignore requests for information which have been issued by SARS. SARS approached the High Court and sought to compel the taxpayer to respond to SARS' request for relevant material. The court emphasised that the provisions of section 46 of the Tax Administration Act are peremptory. Provided that information sought is 'relevant material', that it is reasonably specific and that the questionnaire is issued in the course of the 'administration of a tax Act', then it is clear that SARS will be entitled to undertake the expeditious acquisition of the relevant material.

From a criminal perspective SARS may refer the non-compliance with section 47 (or any other information gathering process for that matter) for criminal investigation and prosecution.

Sections 234 and 235 of the Tax Administration Act provide for several tax offences:

- Criminal offences relating to non-compliance with tax Acts
- Evasion of tax and obtaining undue refunds by fraud or theft

The threshold for proving the unlawful intentions of the taxpayer has recently been amended. Prior to the amendment, SARS had to show that non-compliance with the provisions of the Tax Administration Act was wilfully and without just cause, i.e. intentional and unreasonably. The amendments to the Tax Administration Act proposed in the 2020 Taxation Laws Amendment Act were promulgated on 20 January 2021.

It now provides that in some instances and where a taxpayer's non-compliance with the Tax Administration Act was due to negligence (as opposed to intentional non-compliance) such a person could be found guilty of a criminal tax offence. Such a conviction could result in a fine or imprisonment of up to two years.

Section 234(2)(f) relates specifically to section 46 requests for relevant material. It provides for a criminal offence if a taxpayer negligently fails to 'furnish, produce or make available any information, document or thing, excluding information requested under section 46 (8), as and when required under this Act'.

Prosecution of tax offences – What does the future hold?

Currently SARS relies on the prosecuting ability of the National Prosecuting Authority to prosecute tax offences.

Lately, SARS has made known its intentions to create an internal prosecuting function. The Davis Tax Commission is preparing an advisory report to outline the process for SARS to conduct criminal prosecutions itself.

So how do you deal with SARS queries?

Ultimately, section 46 gives rise to mandatory obligations and the recipient is compelled by law to comply with the contents of requests for information. However, despite the extensive powers afforded to SARS, its discretion is not entirely unfettered in that requests for information must concern material that is foreseeably relevant for the purposes of SARS administering a tax Act. Requests that are frivolous, over-zealous or patently irrelevant may require closer review instead of merely complying.

The importance of seeking professional advice is highlighted by section 46(9). This provision generally prohibits a taxpayer from producing, in subsequent proceedings, material that is held by a connected person and that the taxpayer had previously failed to provide to SARS when requested to do so in terms of section 46. Therefore, an error at this preliminary stage of proceedings can be highly prejudicial later on.

Conclusion

Replies furnished to SARS must be carefully considered and questions meticulously replied to in order to avoid unnecessary litigation with SARS, unwanted outcomes on audits and being subjected to criminal investigations.

15 minutes CPD

THE REFUND PROCESS

NICO THERON, Founder at Unicus Tax Specialists SA &
WIKUS SWART, Tax Consultant at Unicus Tax Specialists SA

Our article takes readers through the SARS refund process and the uneasy relationship between qualifying for a refund and becoming subject to verification or audit.

Being assessed to a refund only to then be selected for an audit or verification can be compared to giving a child an ice cream only to tell her she cannot have it yet and that you may decide to take it back.

Since SARS is within its rights to withhold a refund of a particular tax year if that year is under audit or verification, the ice cream analogy above will ring true for many taxpayers. Sometimes, however, SARS also incorrectly withholds refunds.

In this article, we discuss the link between refunds and audits, how a taxpayer can approach an audit or verification to ensure its expeditious finalisation and when taxpayers are entitled to interest on income tax refunds. We will also look at when a refund is due despite a pending audit or investigation and what can be done to have a refund paid out when it is incorrectly withheld.

The link between tax audits and tax refunds

A tax refund arises simply as a result of the overpayment of tax by the taxpayer through the employees' tax or provisional tax systems. In our experience, when taxpayers overpay tax it is for one of the following reasons:

- Fear of penalties for underestimating provisional tax;
- Employers or taxpayers take an overly prudent approach when calculating employees' tax or provisional tax;
- Employees claim medical tax credits or deductions (e.g. for retirement annuity fund contributions) that employers did not take into account when calculating their PAYE;
- Employees claim deductions for business travel;
- Taxpayers set off assessed losses from trading activities against employment income; and
- On the final return there is an exemption or deduction that was not taken into account under the provisional tax or employees' tax system.

SARS can select the taxpayer for audit on any consideration relevant to the proper administration of a tax Act, including on a random or risk assessment basis. Suffice it to say that a taxpayer in a refund position will arguably always be a consideration relevant to the proper administration of a tax Act or at least present a risk. Best be prepared to deal with the audit.

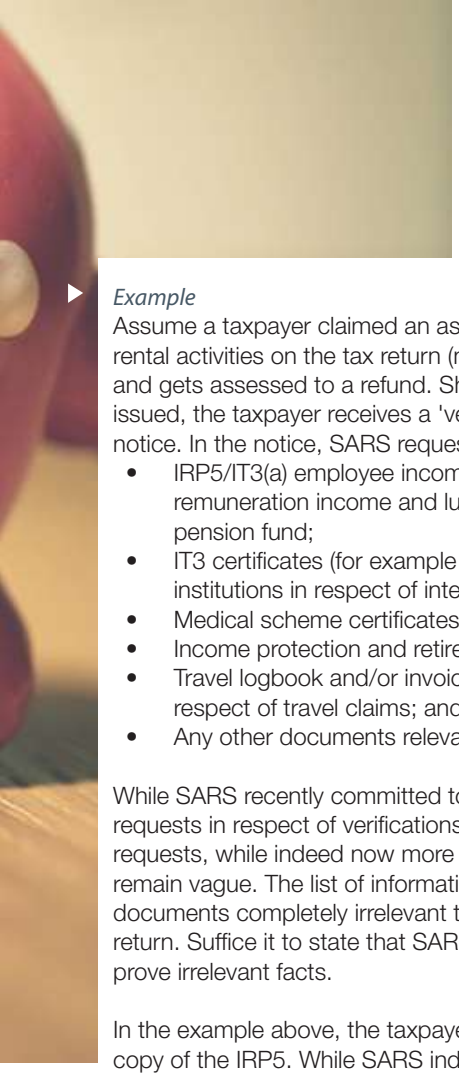
How to approach a tax audit or verification

Most audits or verifications start with a request for relevant material. In the 'simple cases' where SARS asks for specific documents, dealing with the audit or verification is a simple exercise. In this instance, you can simply give SARS the information they are asking for (assuming it actually exists and is available). In our experience, it also helps to prepare an easy-to-follow index and to properly cross reference the documents provided in response to SARS' request – almost like preparing an audit file.

While providing something like an audit file may be considered by some as 'marking your own homework', doing so has various benefits, including benefits associated with bigger picture dispute resolution strategies.

Problems arise when SARS does not ask for specific documents, such as in standard verification requests where the taxpayer is asked to provide 'any other documents relevant to your declaration'. What is SARS asking for? What are you supposed to give them?

Stated simply, they are asking the taxpayer to give them the documents or material necessary to discharge the taxpayer's onus of proof in respect of declarations made in the tax return. What relevant material the taxpayer would have to give SARS will depend on the particular return and particular facts. The following example serves to illustrate a typical response to a vague request.



Example

Assume a taxpayer claimed an assessed loss from residential rental activities on the tax return (not ring fenced), has one IRP5 and gets assessed to a refund. Shortly after the assessment is issued, the taxpayer receives a 'verification of income tax return' notice. In the notice, SARS requests the following:

- IRP5/IT3(a) employee income tax certificates in respect of remuneration income and lump sums from your employer/ pension fund;
- IT3 certificates (for example IT3(b) and IT3(c)) from financial institutions in respect of interest and capital gains;
- Medical scheme certificates and receipts;
- Income protection and retirement annuity certificates;
- Travel logbook and/or invoices or detailed calculation in respect of travel claims; and
- Any other documents relevant to your declaration.

While SARS recently committed to providing more specific requests in respect of verifications, in our experience the requests, while indeed now more specific, at the same time remain vague. The list of information requested often includes documents completely irrelevant to the declarations in the return. Suffice it to state that SARS cannot call on a taxpayer to prove irrelevant facts.

In the example above, the taxpayer must obviously provide a copy of the IRP5. While SARS indeed has a copy of the IRP5, employers often make corrections to the certificates, resulting in mismatches. SARS did not ask for anything in particular relating to the loss from rental activities. Does that mean the taxpayer does not have to give SARS anything in that regard? Some might argue the taxpayer would indeed not have to provide anything or that the information request is unlawful. In our experience, however, unless the taxpayer is prepared to litigate or enter into a dispute with SARS, the path of least resistance would be to give SARS something.

The typical approach in this example would be to provide SARS with at least an income statement that actually ties in with the figures in the return. A typical 'incorrect' response would be to bury SARS in paperwork: invoices, bank statements and schedules with no or confusing headings that relate to invoices included somewhere in a pile of papers uploaded to eFiling, in between other irrelevant documents. More often than not, this approach results in additional assessments (whether rightly or wrongly so) which extinguish the refund and also in the imposition of understatement penalties.

Providing SARS with an income statement may, and normally does, result in more specific requests from SARS. For example, SARS may request details of repairs and maintenance, reflecting the amount incurred, date incurred and the nature of the repairs and maintenance. The typical 'incorrect' response is a pile of invoices that do not tie into the repairs and maintenance expense on the income statement.

A better response is a schedule that actually ties in with the income statement, breaking down the repairs and maintenance expenses with cross referenced invoices in support of each item on the schedule. Laborious indeed but, in our experience, arguably the quickest way to expedite the audit or verification and to secure the refund or at least to prevent or limit issues in a subsequent dispute.

What about interest on delayed refunds?

Natural persons who are provisional taxpayers are entitled to interest on overpayment of provisional tax, provided the taxable income for the year exceeds R50 000 or the excess provisional tax paid is at least R10 000. This applies even if the refund is being withheld as a result of an audit or verification. Interest should be calculated from the last day of September (in the majority of cases) following the tax year in question up to the date that SARS pays the refund. Interest must be calculated at 3.00% (as at the date of drafting this article).

Natural persons who are not provisional taxpayers are not entitled to interest on refunds arising in consequence of over deduction of employees' tax.

When is a refund due despite an audit or verification?

As stated above, if SARS is conducting an audit on the refund in respect of which a taxpayer seeks payment, SARS is not required to pay the refund yet. In these circumstances, however, taxpayers could try to provide SARS with acceptable security. If the security is acceptable to SARS, the refund must be released despite the audit or verification not being concluded at such time.

If, however, SARS is conducting an audit on a different tax year than the one in which the refund arises, SARS may not withhold payment of the refund on the basis of the audit on the other tax year alone.

What if SARS does not pay a refund that is required to be paid?

Obvious remedies include approaching the Complaints Management Office or the Tax Ombud. In our experience, however, these remedies are sometimes not fruitful. In these cases, a more drastic option would be to institute litigation proceedings against SARS which, in our experience, yields better results.

In conclusion, if you get assessed to a refund only to be selected for audit or verification, do not be surprised. In fact, be prepared. If the matter is dealt with effectively and efficiently, you will get to have the ice cream sooner rather than later. But you should also know when SARS is simply placing the ice cream out of your reach by unlawfully withholding the refund. In this case you would be wise to seek help.

AUDITS AND ENGAGEMENT WITH THE REVENUE SERVICE

▸ **CHRICHAN DE LA REY,** Tax Candidate Attorney at Shepstone and Wylie

The reader is taken through sometimes confusing processes that may well follow the submission of a return to SARS and is provided with advice on how best to deal with it.

Tax returns generally make the average taxpayer nervous. Individuals are not provided with any training or explanation in completing their ITR12s and for the most part, they would rather pay someone to complete the return on their behalf.

However, these days it is not necessarily the tax return and its unexplainable boxes that ought to make the taxpayers nervous. It is eFiling's instant responses that cause problems if not understood and dealt with appropriately.

We set out below a typical handful of such responses, explain the nature of each, and provide practical ways in which to navigate what can be a nerve-wracking experience.

An original assessment

Generally, once the taxpayer has crossed all the hurdles and tick-boxes placed in the tax return and has remembered to click 'submit' as opposed to 'save', SARS will issue an assessment. This first assessment is governed by section 91 of the Tax Administration Act; it is referred to as an 'original assessment' and it is based on the return submitted by the taxpayer or on other information available or obtained in respect of the taxpayer only (such as an employee's IRP5). We differentiate between an 'original assessment' based on a taxpayer's return and an 'original estimated assessment' based on an auto-assessment issued by SARS.

Should the original assessment be incorrect because the taxpayer has, for example, included the incorrect interest amount received for the tax year, the taxpayer has 30 business days to correct the information on the tax return themselves. Generally, this would not be a dispute but rather a 'request for correction' (ROC). The original assessment will indicate the taxpayer's liability, i.e. what is due to SARS or it will reflect a refund due to the taxpayer. As in all things, the devil is in the details. The original assessment contains a section headed 'Compliance Information'. Within this section, SARS provides a line that reads, 'Selected for audit or verification' and a simple 'Y' or 'N' is populated next to it. We discuss later what the dreaded 'Y' means.

The original assessment and original estimated assessment are different. SARS tried to make the filing process even smoother for taxpayers with straightforward tax affairs when they introduced the auto-assessment – original assessments based on an estimate. The auto assessment will be based on third-party information readily available to SARS. The information may be received from multiple institutions such as banks, fund administrators, insurers, medical aid schemes, and employers. A taxpayer should always scrutinise an auto-assessment before merely accepting it because SARS may not have all the required information. If the auto assessment is correct, no action is required from taxpayers. Should the auto assessment be incorrect, the taxpayer has 40 business days from the date of the assessment to submit their original return (in the ordinary course) if they do not agree with the assessment raised by SARS.

Verification

Being selected for an audit and being selected for verification are two different processes. Verification is a mere corroboration of the information declared by the taxpayer on the return. This is not an examination, as is the case with an audit.

SARS compares the tax return against the financial and accounting records and other supporting documents to ensure that the taxpayer's return is correct and accurate. This will, for example, entail requesting an employee's IRP5 to verify what the employer has uploaded.

Taxpayers will immediately know whether they have been selected for verification; not every taxpayer will be selected for verification. This selection is to ensure that SARS verifies the proper administration of revenue collection in line with its objectives. This selection can be random and is often risk-based. Arguably, SARS would not verify an auto assessment. This discussion is therefore only limited to taxpayers who were not chosen for auto assessments or who disagreed with the auto assessment and submitted their original returns.

After the small 'y' has been populated on the assessment, the taxpayer will receive a letter from SARS, requesting that within 21 business days the following must be submitted:

- The requested relevant material, being supporting documents if all the information is correct and
- A request for correction (if the information was not correct).

Should the taxpayer not respond within that time frame, a second letter will be sent. After this, SARS will contact the taxpayer telephonically. If SARS does not receive any response following the telephone call, SARS may raise an assessment based on information readily available or obtained from a third party. This is referred to as an 'estimate assessment', which is often an inaccurate reflection of the tax position. Many tax disputes arise from estimated assessments, where SARS does not have all the facts at its disposal when making the assessment.

"Engagement with SARS should not only commence once the taxpayer wishes to dispute an additional assessment"

- Our recommendation is to respond as soon as possible and, where all the information requested is not available, to be transparent, to engage with SARS and to provide the best alternative evidence available. Here, the taxpayer's conduct can contribute to the efficiency of a dispute process, should it occur. Transparency could also prevent an estimate assessment.

  Once the verification process has been finalised and if there is a discord between what was submitted on the tax return versus the supporting documents, SARS will either increase the taxpayer's tax liability (additional assessment) or it will reduce the tax liability (reduced assessment). Where applicable, SARS will also increase the taxpayer's tax liability (additional assessment) or it will reduce the tax liability (reduced assessment) in line with the taxpayer' original return in order to correct an incorrect auto assessment. Should there be no discord and SARS is satisfied with the verification process, the taxpayer will receive a notification that the verification has been finalised and refund (if applicable) will be paid out to the taxpayer. Where there was a discord, but SARS does not identify it as a risk, an additional assessment is raised. We discuss this type of assessment below.

  The worst-case scenario would involve SARS making a finding and identifying risks. In this scenario, the taxpayer will then be referred for an audit. Our recommendation is to approach a tax consultant under these circumstances, as a fair audit could prevent and negate the need for a burdensome future dispute.

Audit

Over and above the worst-case scenario, a taxpayer may also be selected for audit on a random or recurring basis.

Only upon receipt of a formal notification of audit will the audit commence, as opposed to the referral for audit. A specific auditor will be allocated to the taxpayer's matter. This process could take up to 120 business days. As said before, clear communication with the SARS auditor is critical; a taxpayer who buries their head in the sand will only frustrate the process and lead to an inaccurate additional assessment being raised.

Once the audit has been concluded, SARS will issue the taxpayer with an audit findings letter that identifies the potential adjustments and reasons. Taxpayers are provided 21 business days to respond to the letter, setting out the reasons why the audit findings are incorrect. This is also the opportunity for taxpayers to make representations about why understatement penalties ought not to be levied.

After this, SARS will provide a finalisation of the audit letter, which either concludes the audit where no findings were made or which details grounds for an additional assessment, if SARS does not agree with the taxpayer's response.

Additional assessment

Section 92 of the Tax Administration Act provides for additional assessments. If, at any time, SARS is satisfied that an assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the fiscus, SARS will raise an additional assessment to correct the prejudice. SARS can make more than one additional assessment for a tax year.

An additional assessment can be raised due to a verification process, an audit, or an estimated assessment, should the taxpayer not be forthcoming. This assessment increases the taxpayer's tax liability.

A taxpayer may lodge an objection against this assessment which signals the start of the dispute process.

Engagement with SARS

Tax season is daunting and there is a perception that SARS will collect as much as possible. However, taxpayers are given various opportunities to engage with SARS.

This engagement is made available from the submission of the return, throughout the processes and until an additional assessment is raised.

Despite the above perception, SARS' decisions and actions must always remain reasonable. Taxpayers are therefore urged to cooperate with SARS and to provide the SARS officials with all the relevant information, enabling them to come to a reasonable decision.

This transparency simplifies any future dispute that may arise, as the tax consultant can highlight SARS' unreasonable decisions. Where the decisions and actions are not reasonable, these must be brought to attention, as taxpayers have a legal right to reasonable administrative action by SARS. If the problem persists, taxpayers should consult a tax attorney.

Engagement with SARS should not only commence once the taxpayer wishes to dispute an additional assessment. SARS' active systems provide taxpayers with a bigger platform and more opportunities for discussion. Making use of these to properly deal with an issue could prevent an unnecessary dispute.

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