PROFESSIONAL

TAXTALK

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THE HOW-TO GUIDE

BUILDING YOUR TAX RETURN PIECE BY PIECE

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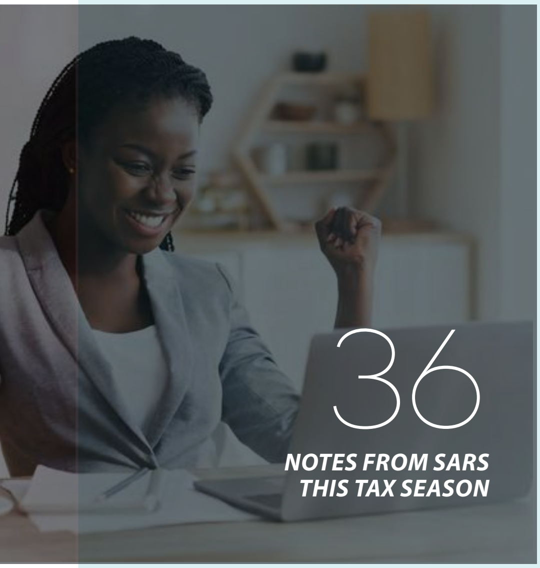

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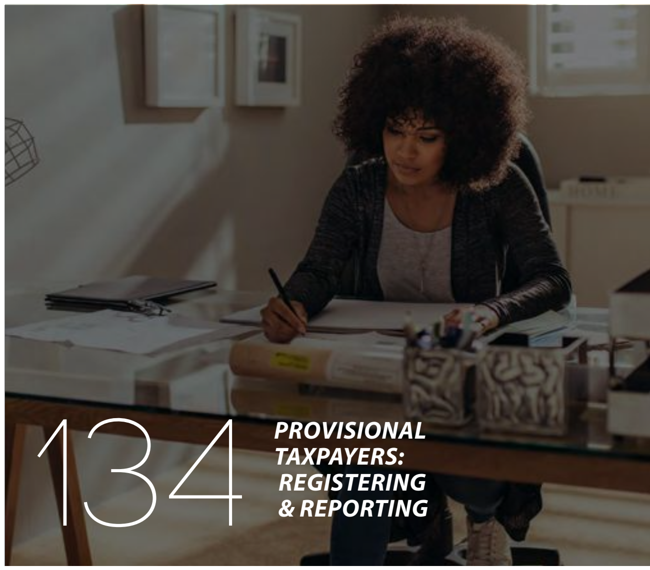

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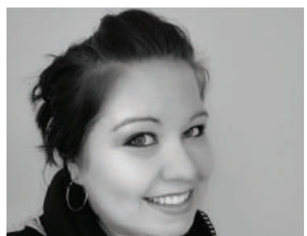

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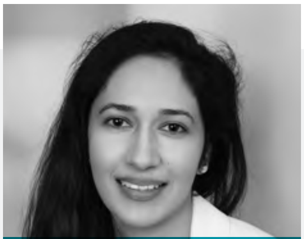

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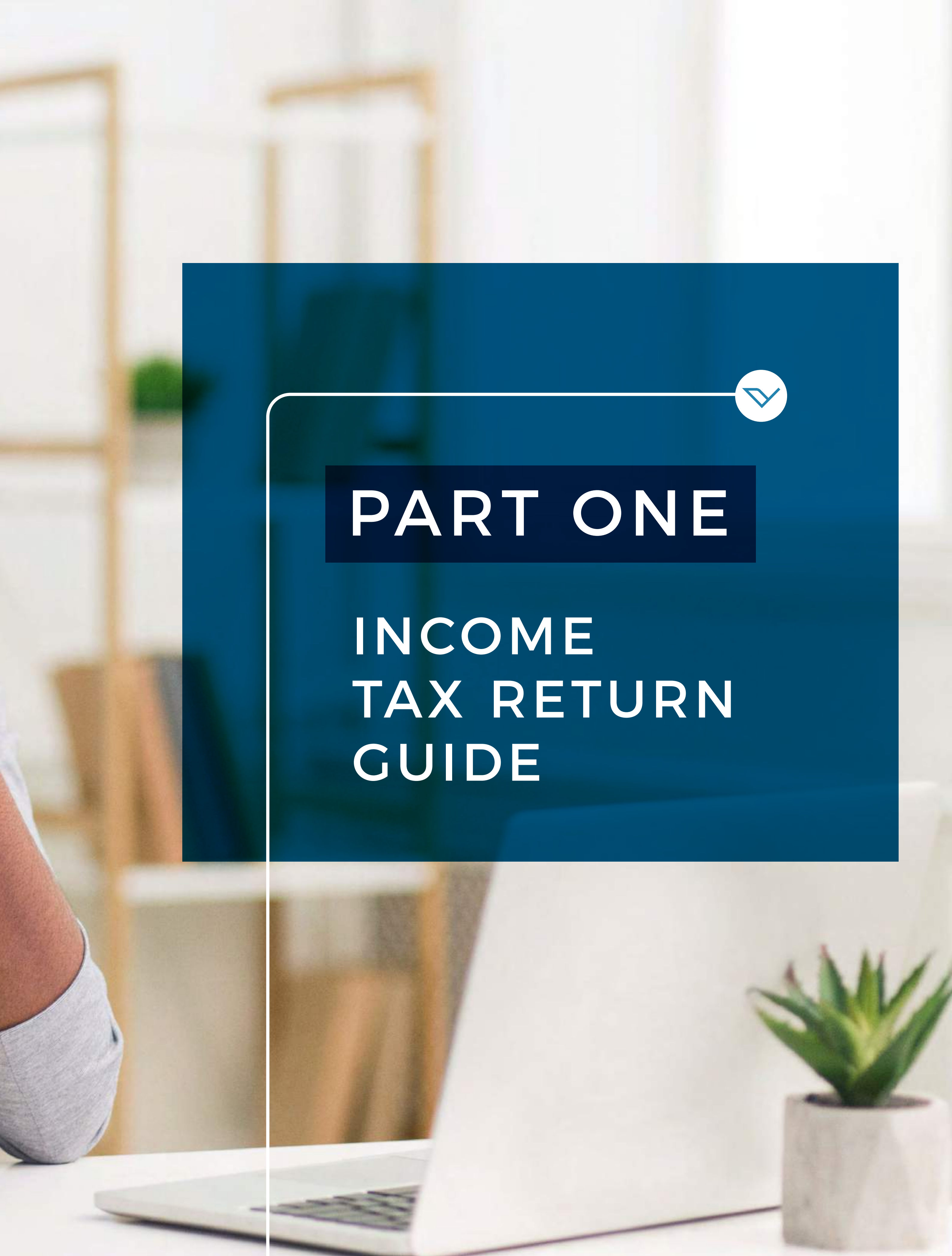
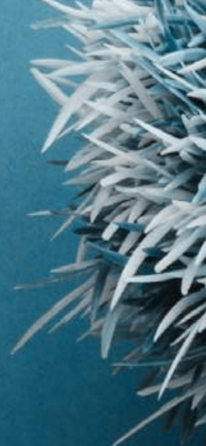


PART ONE

INCOME TAX RETURN GUIDE



NAVIGATING THE ITR12

▶ **WITH NOTES FROM KEITH ENGEL, SAIT CEO & THE TAXTIM TEAM**

TAX PAYER INFORMATION

Ensure 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.

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.

TAXPAYER INFORMATION: INCOME

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

LOCAL BUSINESS

The 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.

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.

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. eFiling 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, ID number, address and banking details.

Once you have registered, SARS will indicate on the eFiling page whether they need you to upload any supporting documents or if your profile is activated. The verification step is usually dealt with internally by SARS. Your profile should be active within a few 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, IT3C or even your IT3B, 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 2020 or the year ended on 29 February 2020.

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. 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.

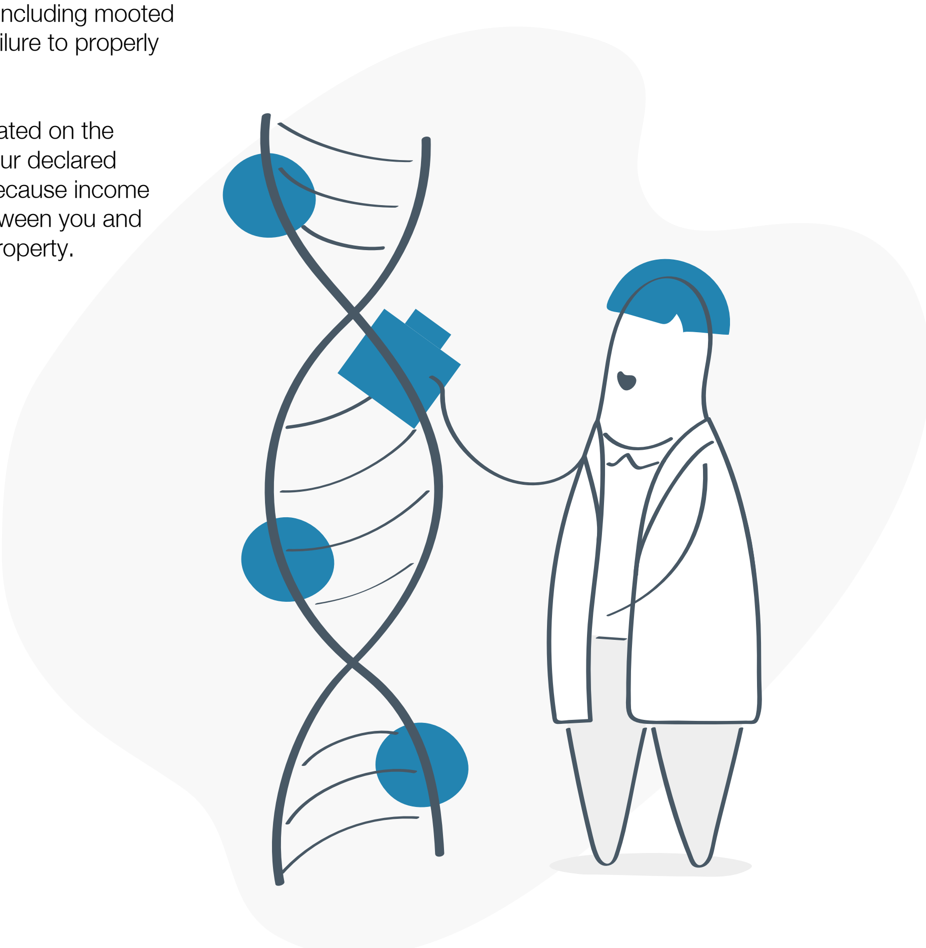
TAXPAYER INFORMATION

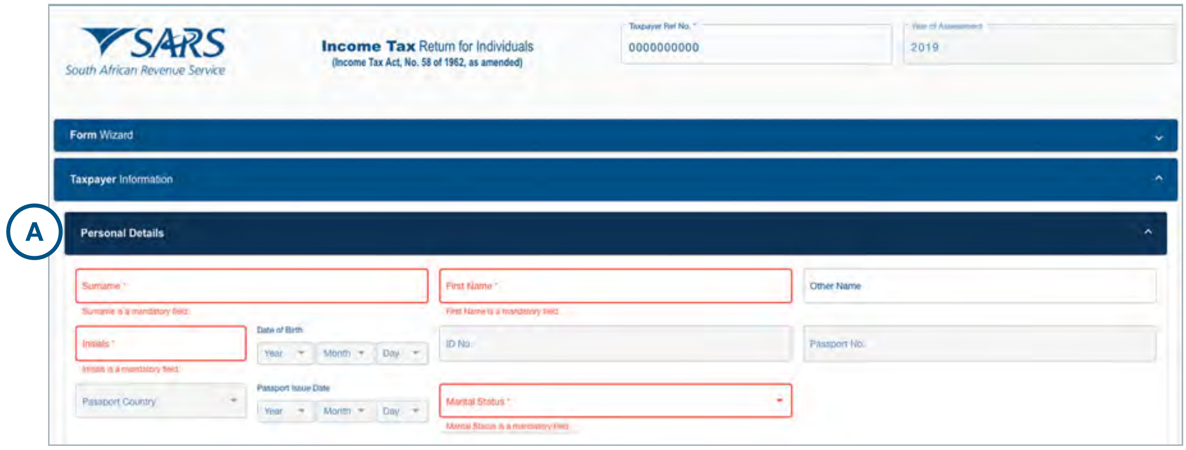
A

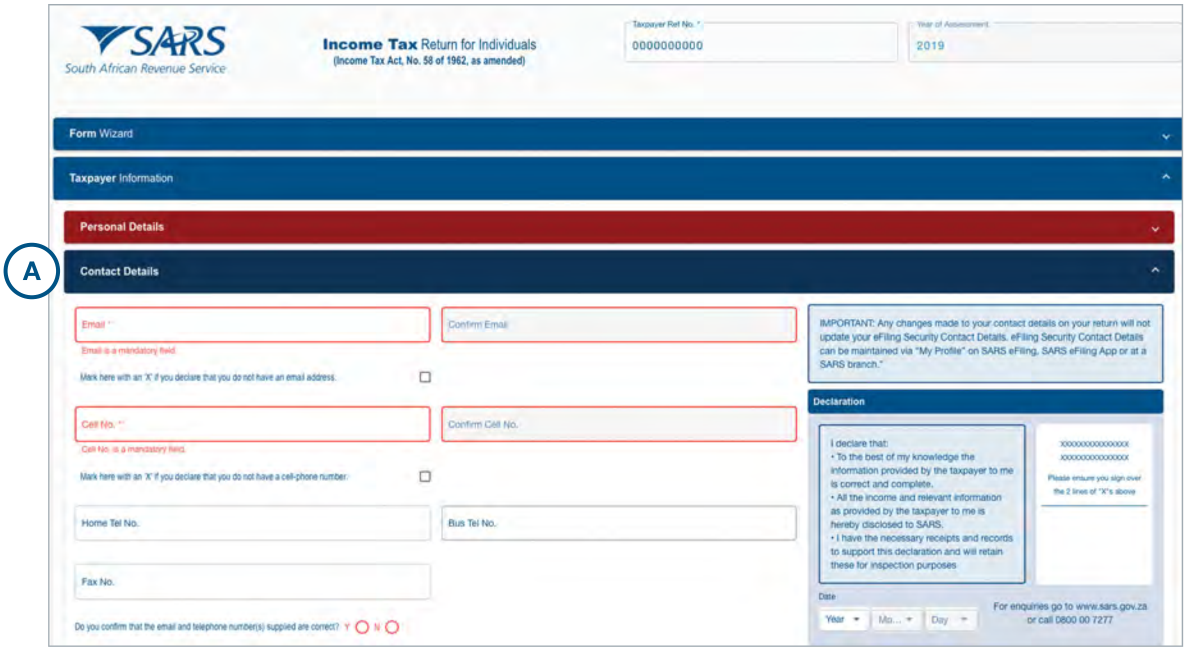
Personal details, contact details and address details

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. Any 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 married in community of property.




SARS
South African Revenue Service
Income Tax Return for Individuals
(Income Tax Act, No. 58 of 1962, as amended)
Taxpayer Ref No. *
0000000000
Year of Assessment
2019
Form Wizard
Taxpayer Information
A
Personal Details
Surname *
Surname is a mandatory field.
First Name *
First Name is a mandatory field.
Other Name
Initials *
Initials is a mandatory field.
Date of Birth
Year Month Day
ID No.
Passport No.
Passport Country
Passport Issue Date
Year Month Day
Marital Status *
Marital Status is a mandatory field.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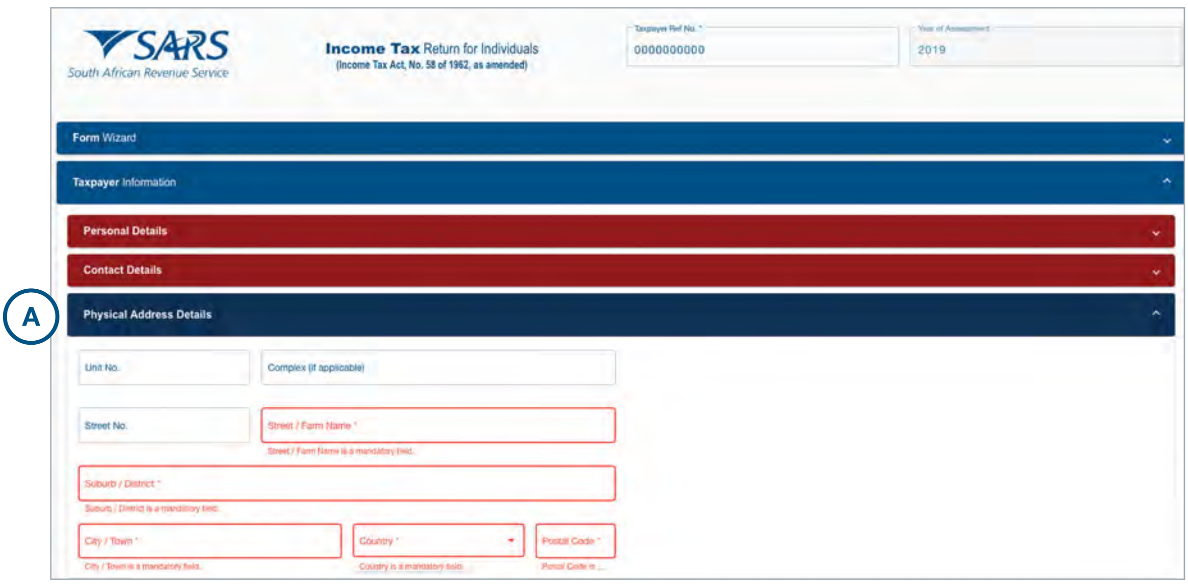
Taxpayer Ref No. *
0000000000
Year of Assessment
2019
Form Wizard
Taxpayer Information
Personal Details
A
Contact Details
Email *
Email is a mandatory field.
Confirm Email
Mark here with an 'X' if you declare that you do not have an email address.
IMPORTANT: Any changes made to your contact details on 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."
Declaration
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.
I declare that:
• To the best of my knowledge the information provided by the taxpayer to me is correct and complete.
• All the income and relevant information as provided by the taxpayer to me is hereby disclosed to SARS.
• I have the necessary receipts and records to support this declaration and will retain these for inspection purposes
Please ensure you sign over the 2 lines of "X"s above
Home Tel No.
Bus Tel No.
Fax No.
Date
Year Mo... Day
For enquiries go to www.sars.gov.za or call 0800 00 7277
Do you confirm that the email and telephone number(s) supplied are correct? Y N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Taxpayer Ref No. *
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Year of Assessment
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Form Wizard
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Personal Details
Contact Details
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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 *
City / Town is a mandatory field.
Country *
Country is a mandatory field.
Postal Code *
Postal Code is ...

B

Tax practitioner details

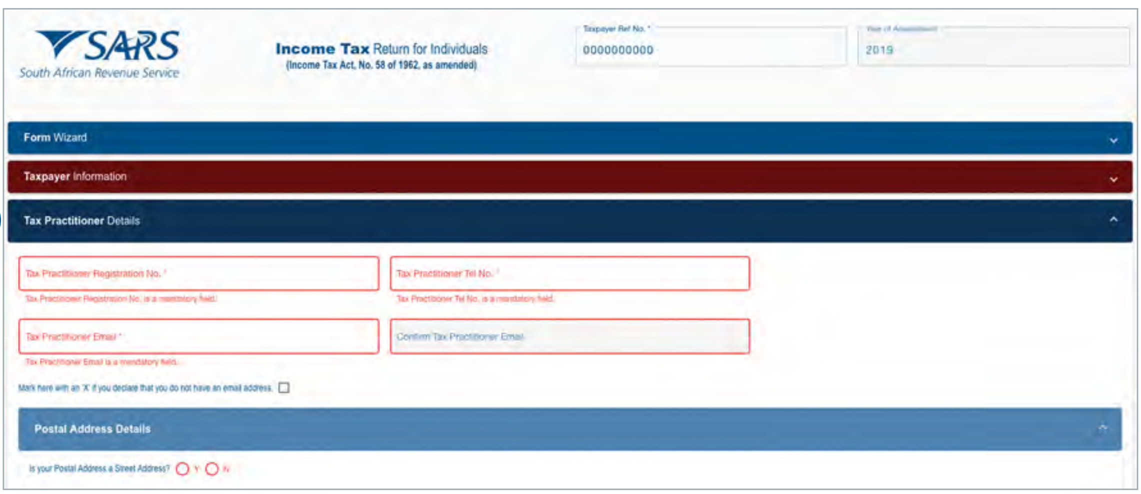
If you employ someone to submit your return for you, make sure that the practitioner is registered with a recognised controlling body (RCB) and SARS. You can check their registration status on the SARS website by entering their tax practitioner registration number; SARS should then confirm their full 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 a quick Google search by entering the practitioner's name and the word "tax". This should result in their member profile appearing with a link to the SAIT website.

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).

B



C

Banking details

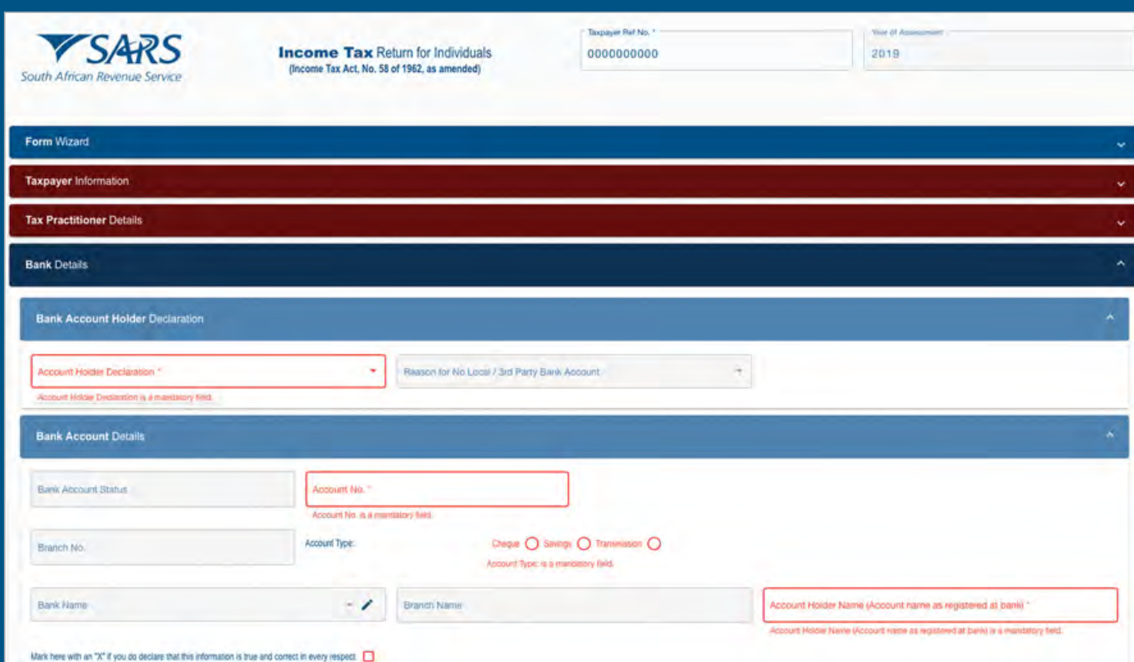
Outdated or incorrect banking details are prominent causes for both refund delays and taxpayers being asked to appear at a SARS branch to validate their credentials. Double check your banking details to ensure they are 100% accurate. Another useful tip is to ensure that your employer accurately captures 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 either go to a SARS branch or update these details via eFiling. However, if you choose to update these details via eFiling, you might still be required to go to a SARS office if SARS is unable to compare the details that you captured on eFiling to a third party, such as your IRP5 or the actual bank where you hold an account.

If you are having problems with your refund being paid out, you should check that your details on eFiling are valid. You can do this by clicking on the "Organisations" tab at the top of your eFiling screen; then you will then click on "SARS Registered Details" followed by "Maintain SARS Registered Details". Click on "I agree" and when the new page has loaded click on "My bank accounts". This page will inform you whether your banking details with SARS are valid. If they are not, you will need to contact SARS and rectify this before the refund will be paid.

Due to the COVID-19 pandemic, instead of visiting a branch, SARS has introduced a new way to verify banking details. If you receive a request from SARS to verify your banking details, you can submit the supporting documents electronically on eFiling or via the SARS website. Simply provide an image of yourself holding your proof of identity as well as a written note containing the case number and the date on which the documents are uploaded to SARS. It is important that your face, proof of identity and the note are clearly visible in the same picture. This should be accompanied by the necessary supporting documents.

C



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 his or her 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 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:

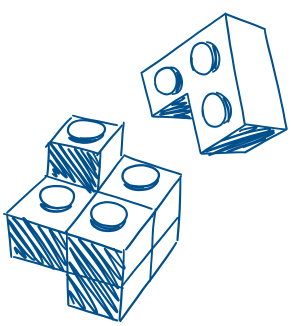
- A salary is source code 3601
- A bonus is source code 3605
- A travel allowance is source code 3701
- Other allowance is source code 3713
- Commission is source code 3606
- A medical fringe benefit is source code 3810

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.



B

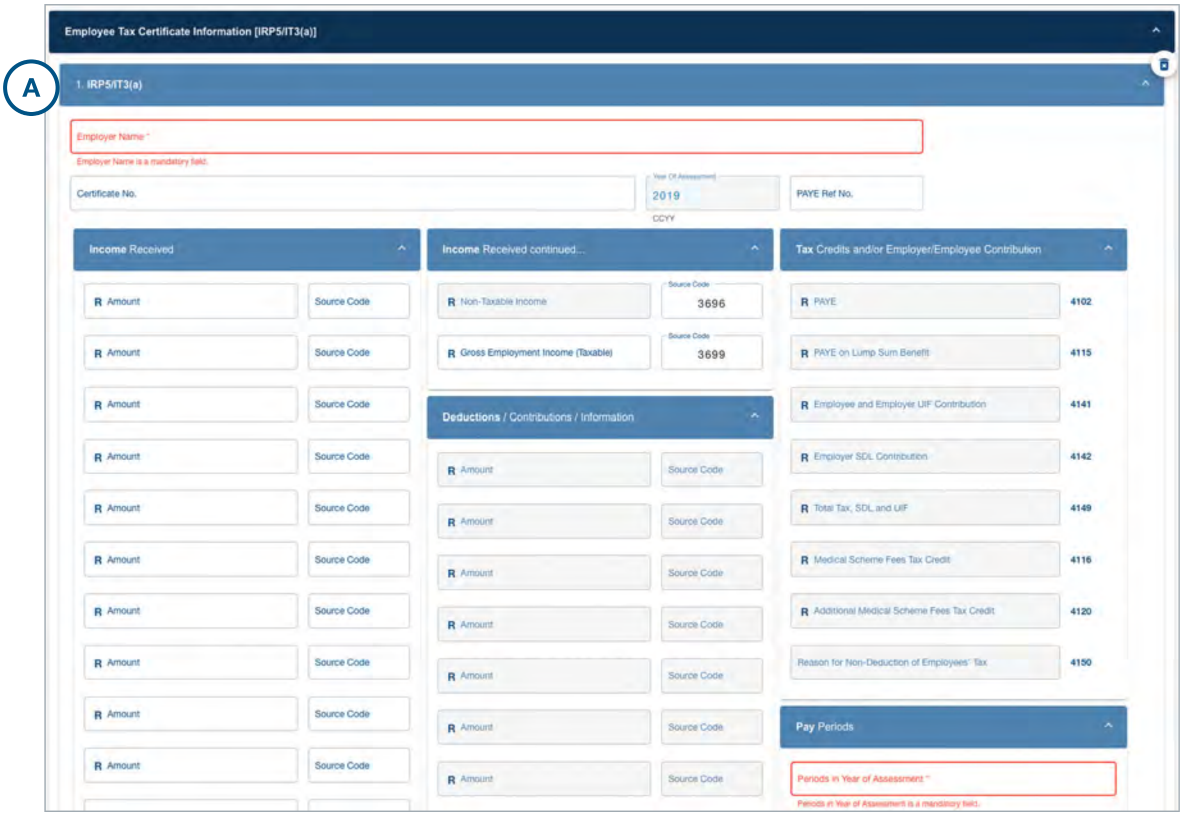
Directive numbers

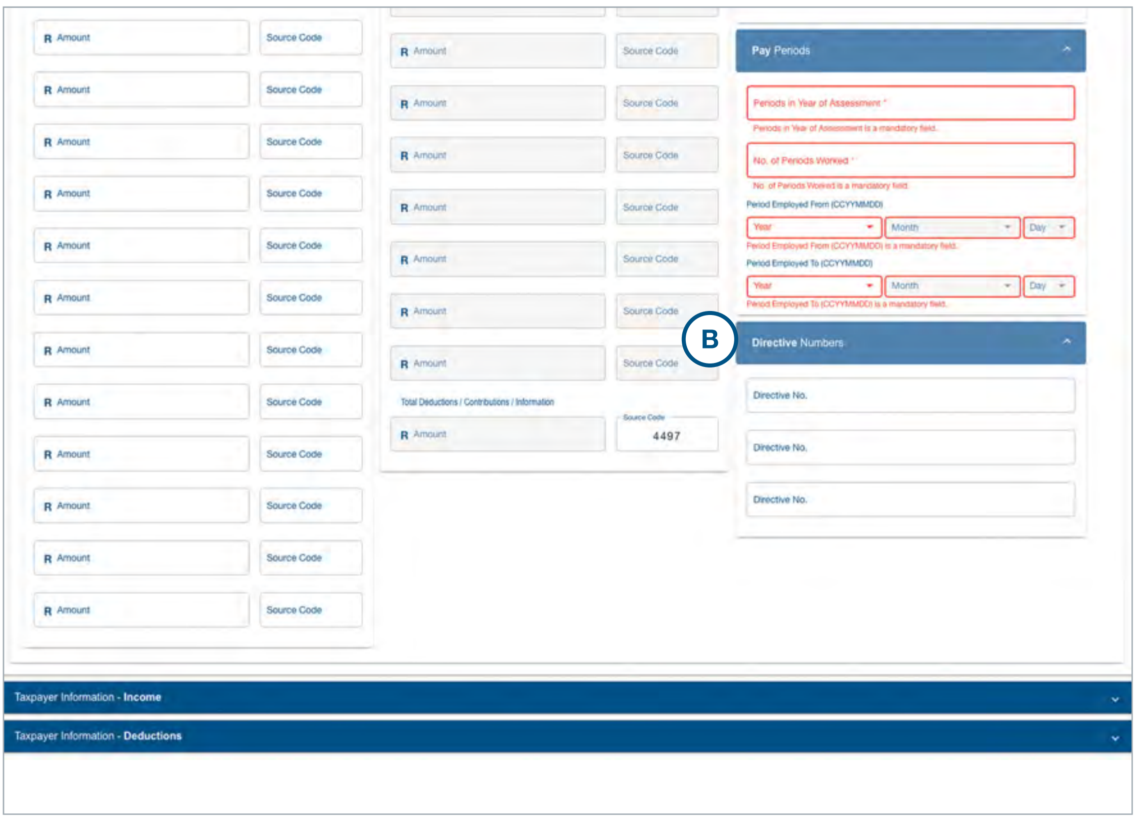
If you received a lump sum from a retirement fund during the tax year, you should have a directive number which is reflected at the bottom of your IRP5. If you are a commission earner, you may also have a directive number reflected at the bottom of your IRP5.

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.

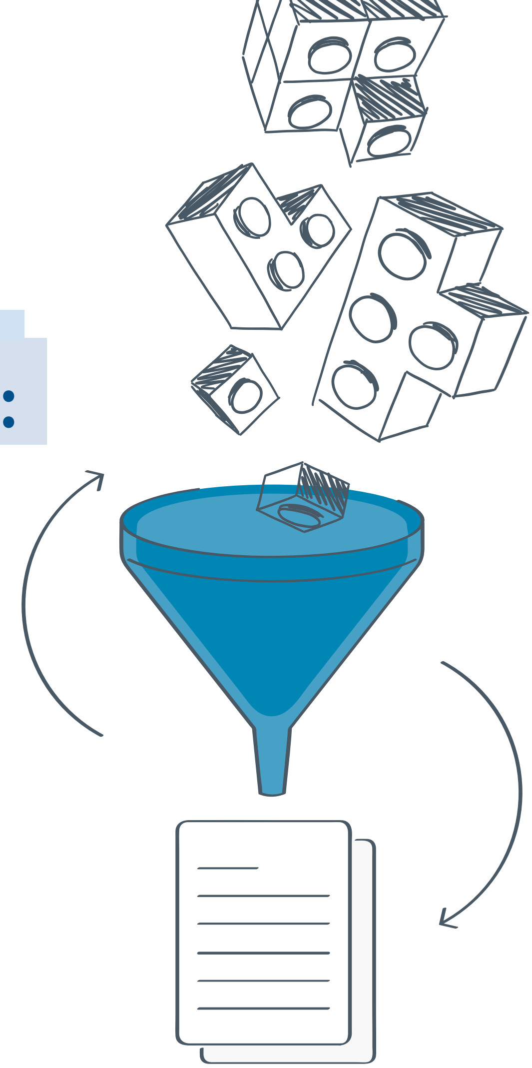
Other common instances where you may have received a tax directive:

- 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)
Employer Name *
Employer Name is a mandatory field.
Certificate No.
Year Of Assessment
2019
CCYY
PAYE Ref No.
Income Received
R Amount
Source Code
Income Received continued...
R Non-Taxable Income
Source Code
3696
R Gross Employment Income (Taxable)
3699
Deductions / Contributions / Information
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
Pay Periods
Periods in Year of Assessment *
Periods in Year of Assessment is a mandatory field.


R Amount
Source Code
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)
Year
Month
Day
Period Employed From (CCYYMMDD) is a mandatory field.
Period Employed To (CCYYMMDD)
Period Employed To (CCYYMMDD) is a mandatory field.
B
Directive Numbers
Directive No.
Total Deductions / Contributions / Information
4497
Taxpayer Information - Income
Taxpayer Information - Deductions

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 income

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.

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

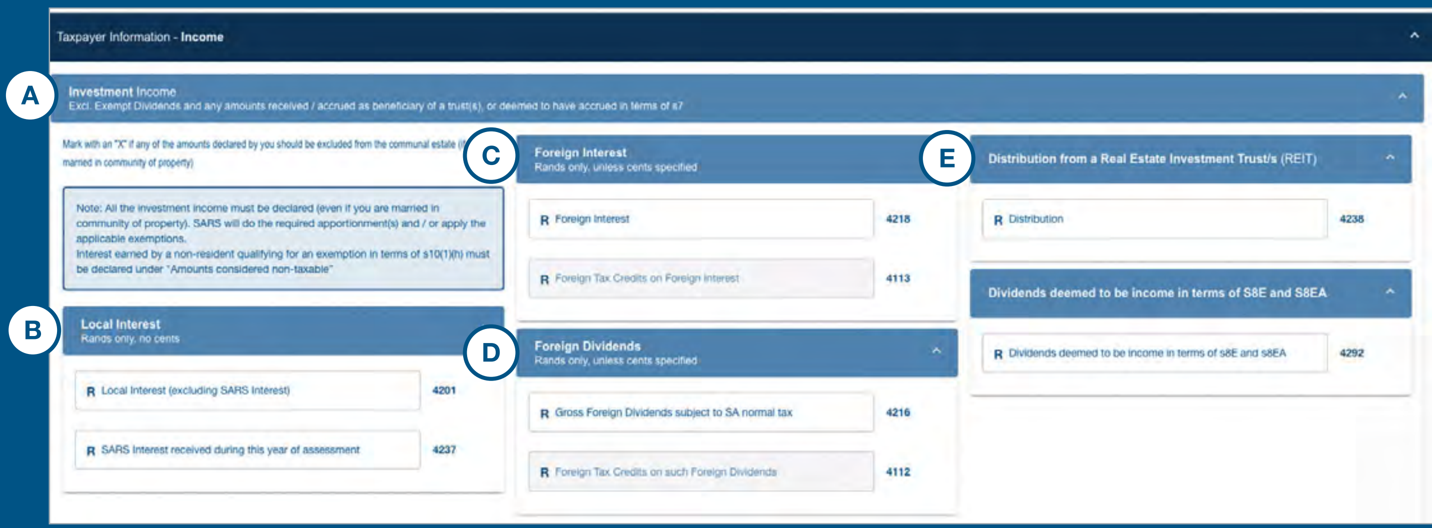
In terms of your tax return ending at the close of February 2020, there is a R23 800 annual local interest exemption (for those under 65 years of age) and a R34 500 exemption (for those 65 years of age and older).

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.

NOTE FOR 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.



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 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

Distributions 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.

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 the 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 2019 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 instead sold the land for R200 000, he would report a capital loss of R250 000 (R200 000 – R450 000).

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.

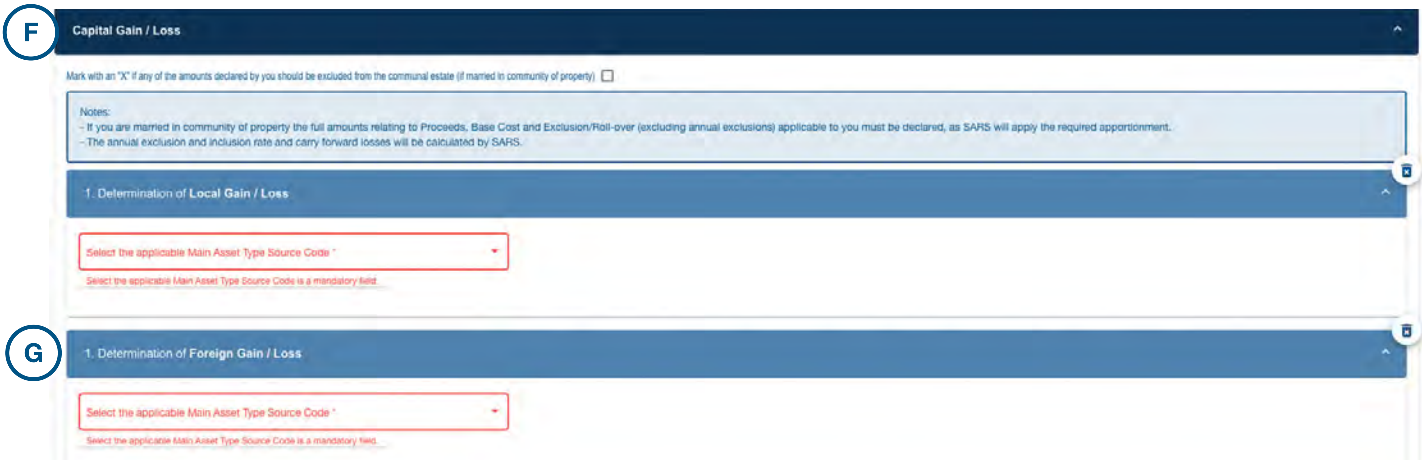
The CGT calculation takes into account all direct and indirect proceeds from the disposal. The sales proceeds would be reduced by estate agent's commission and other selling costs. The cost aspect of the calculation takes into account all acquisition costs associated with the property as well as any 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 below 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 the 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.


F

Capital Gain / Loss

Mark with an "X" if any of the amounts declared by you should be excluded from the communal estate (if married in community of property)

Notes:
- If you are married in community of property the full amounts relating to Proceeds, Base Cost and Exclusion/Roll-over (excluding annual exclusions) applicable to you must be declared, as SARS will apply the required apportionment.
- The annual exclusion and inclusion rate and carry forward losses will be calculated by SARS.

1. Determination of Local Gain / Loss

Select the applicable Main Asset Type Source Code *

Select the applicable Main Asset Type Source Code is a mandatory field.

G

1. Determination of Foreign Gain / Loss

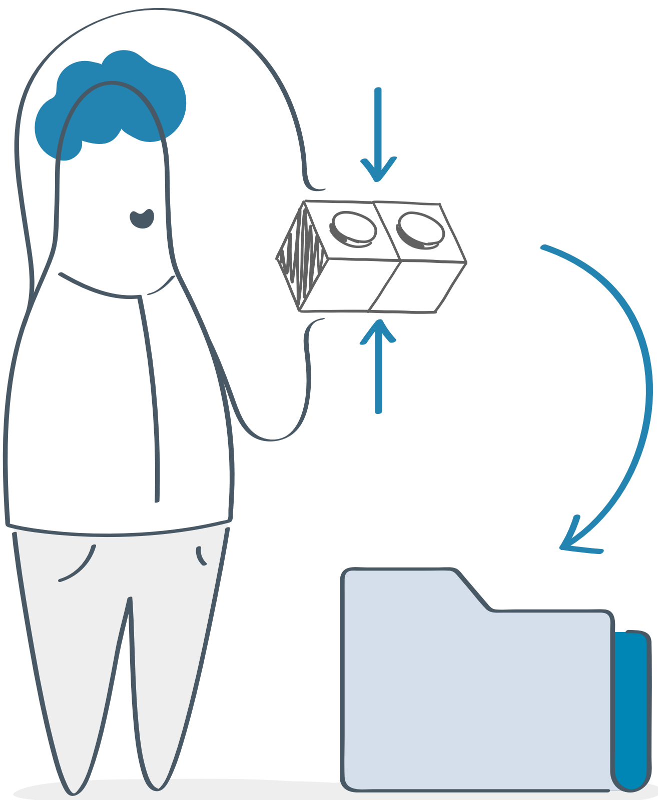
Select the applicable Main Asset Type Source Code *

Select the applicable Main Asset Type Source Code is a mandatory field.

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.



NOTE FOR 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.

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.

Income

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

Expenditure

Accounting fees

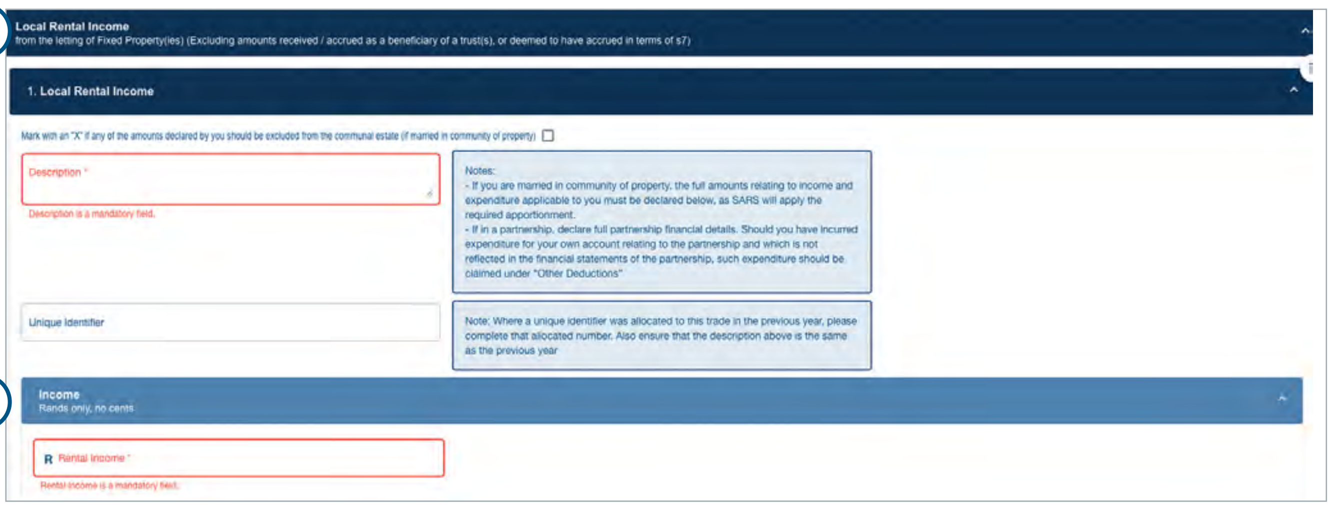
This includes the fees paid to an accountant or bookkeeper for services such as invoicing and cash collection. Invoices may be required as supporting documentation.

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.



H

Local Rental Income
from the letting of Fixed Property(ies) (Excluding amounts received / accrued as a beneficiary of a trust(s), or deemed to have accrued in terms of s7)

1. Local Rental Income

Mark with an "X" if any of the amounts declared by you should be excluded from the communal estate (if married in community of property)

Description *

Description is a mandatory field.

Notes:
- If you are married in community of property, the full amounts relating to income and expenditure applicable to you must be declared below, as SARS will apply the required apportionment.
- 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

I

Income
Rands only, no cents

R Rental Income *

Rental income is a mandatory field.

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.

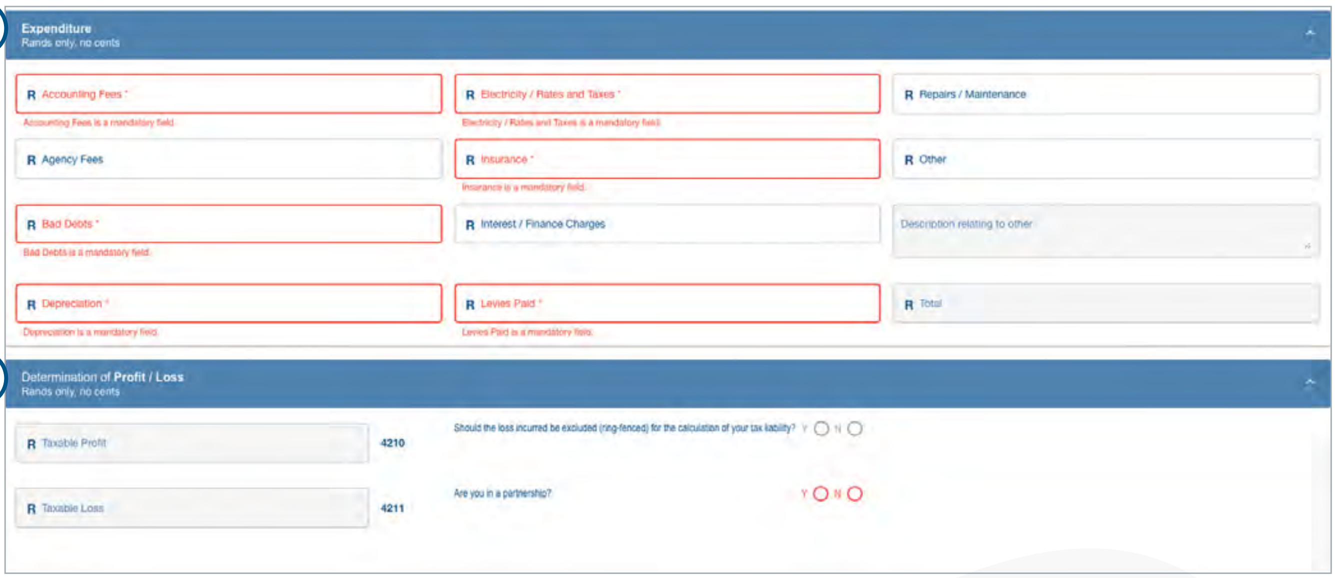
Repairs / maintenance
The expenditure allowed here is the money spent to restore something that was broken to its previous condition.

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.

J


Expenditure
Rands only, no cents

R Accounting Fees *
Accounting Fees is a mandatory field.
R Electricity / Rates and Taxes *
Electricity / Rates and Taxes is a mandatory field.
R Repairs / Maintenance
R Agency Fees
R Insurance *
Insurance is a mandatory field.
R Other
R Bad Debts *
Bad Debts is a mandatory field.
R Interest / Finance Charges
Description relating to other
R Depreciation *
Depreciation is a mandatory field.
R Levies Paid *
Levies Paid is a mandatory field.
R Total

K

Determination of **Profit / Loss**
Rands only, no cents

R Taxable Profit 4210
R Taxable Loss 4211
Should the loss incurred be excluded (ring-fenced) for the calculation of your tax liability? Y N
Are you in a partnership? Y N

K Determination of profit / loss

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 off-set if 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.

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 to be 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

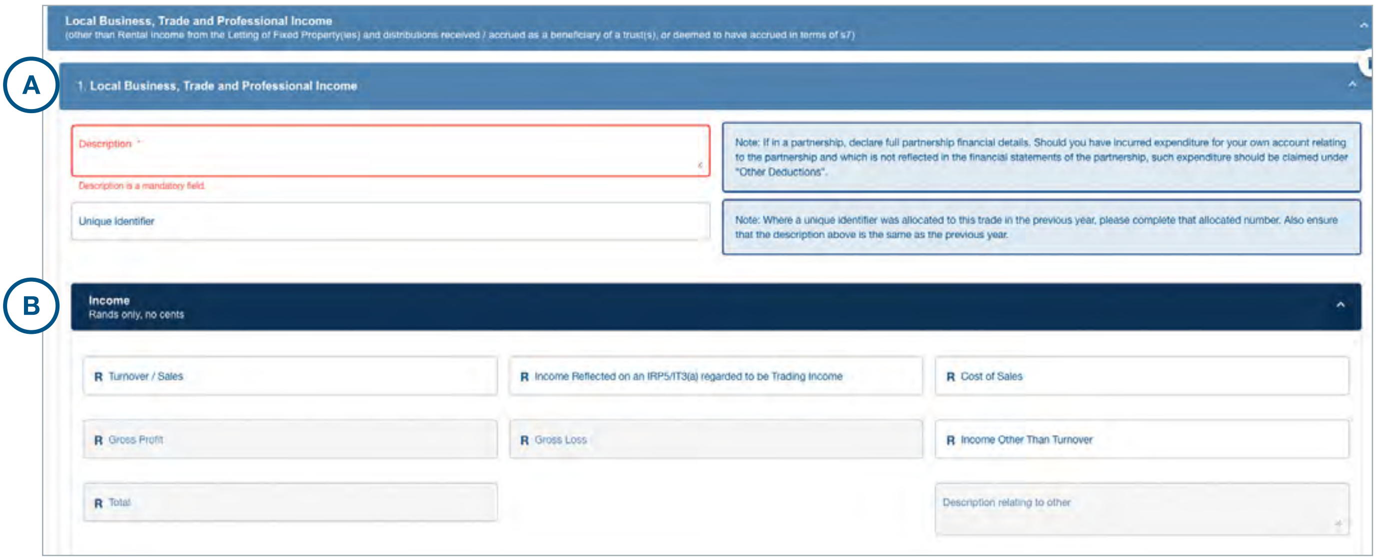
It is important to keep invoices as a backup (together with the names of the people and purposes of the meetings).

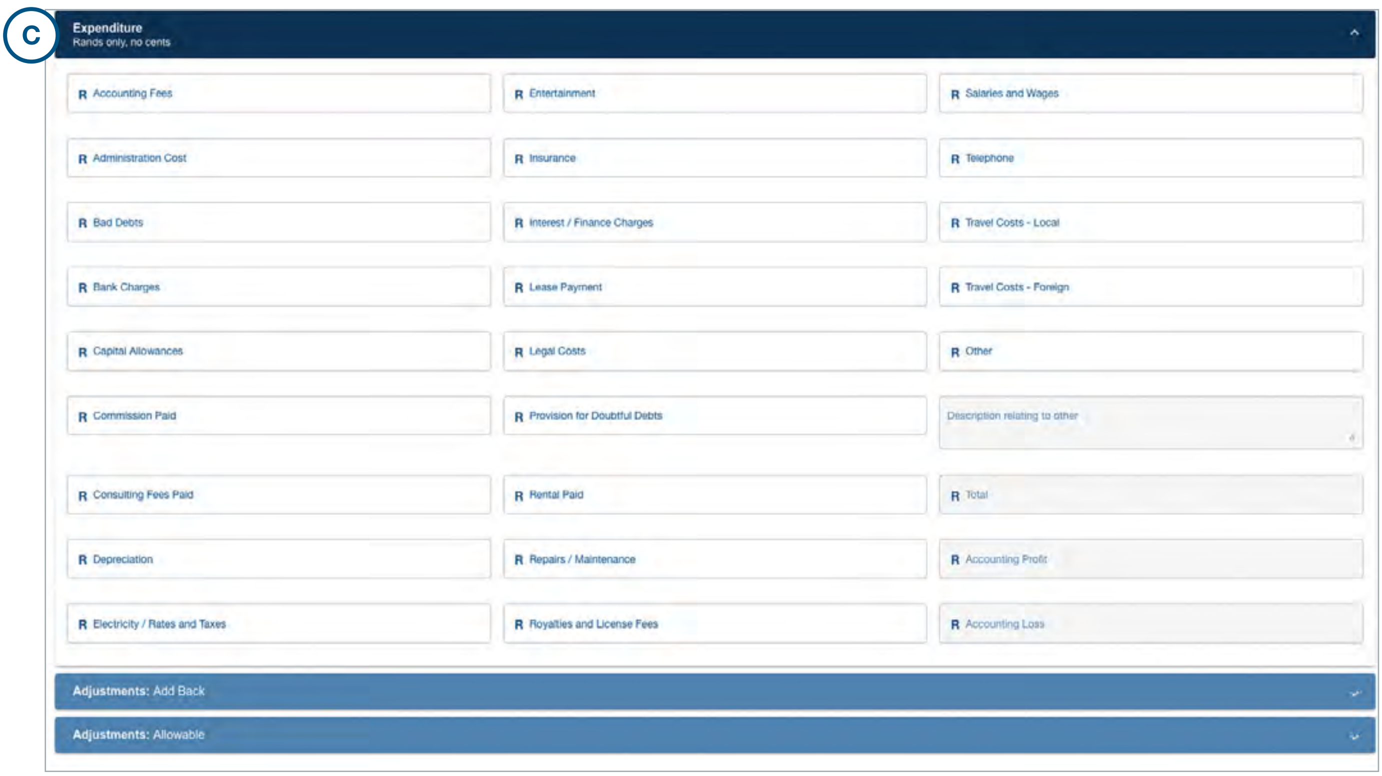
Salaries and wages

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

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.

A proposal by the Finance Minister in February 2017 to limit the foreign employment exemption has been signed into law. This will greatly restrict the exemption (in effect as from 1 March 2020).

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.

D

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 R33 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 R33 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 R33 000 the following year.

You can also invest a maximum of R33 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. Complete the details based on the IT3(s) in the ITR12 next to the appropriate columns.

E

TAXPAYER INFORMATION: DEDUCTIONS

A Medical deductions

The medical aid section ensures that your medical tax credit was calculated correctly by your employer.

In the 2020 tax year, you are given a credit of R310 for the main member and one additional member, and R209 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 R310 + R310 + R209.

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.

You would also need to indicate how many medical aid schemes you belong to.

The medical aid section is split between your own scheme and any scheme 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 worthwhile 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).

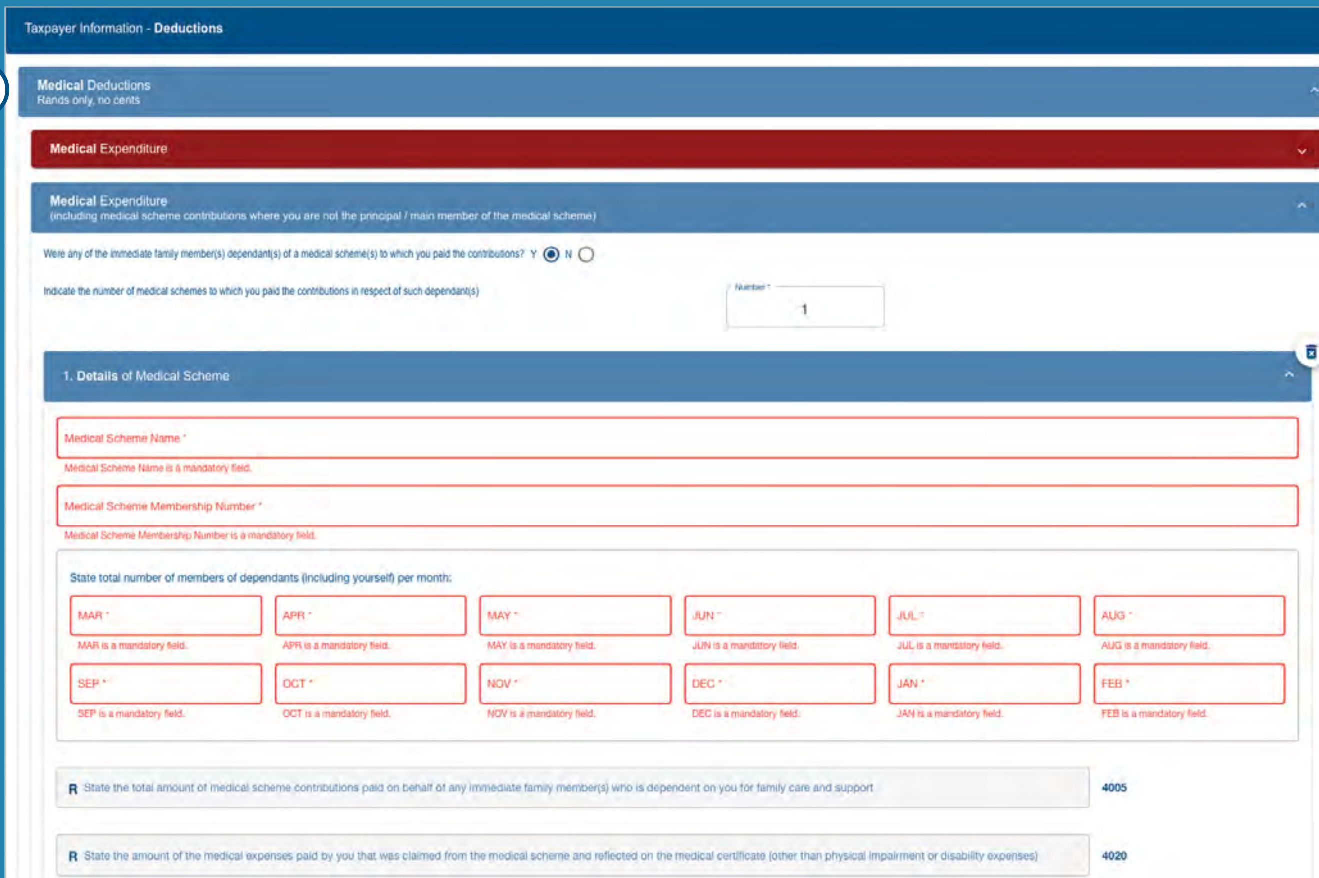
If you are unsure whether your out-of-pocket expenses exceed 7.5% of your taxable income, just include them in the relevant blocks and let SARS do the calculation.

B Retirement contributions

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 instead 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.

A


Taxpayer Information - **Deductions**

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.

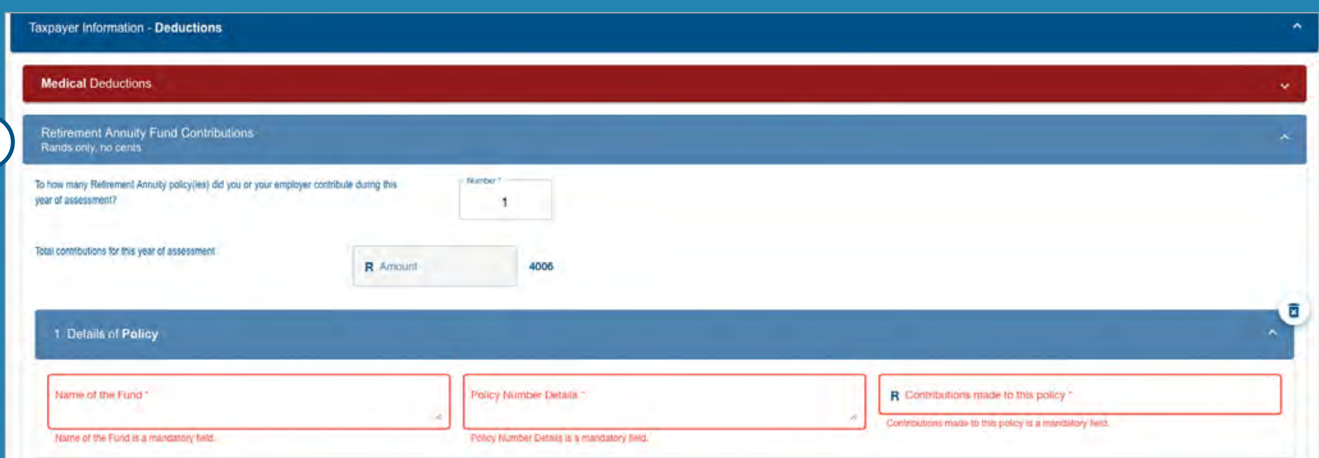
State total number of members of dependants (including yourself) per month:

MAR *	APR *	MAY *	JUN *	JUL *	AUG *
MAR is a mandatory field.	APR is a mandatory field.	MAY is a mandatory field.	JUN is a mandatory field.	JUL is a mandatory field.	AUG is a mandatory field.
SEP *	OCT *	NOV *	DEC *	JAN *	FEB *
SEP is a mandatory field.	OCT is a mandatory field.	NOV is a mandatory field.	DEC is a mandatory field.	JAN is a mandatory field.	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

B


Taxpayer Information - **Deductions**

Medical Deductions

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

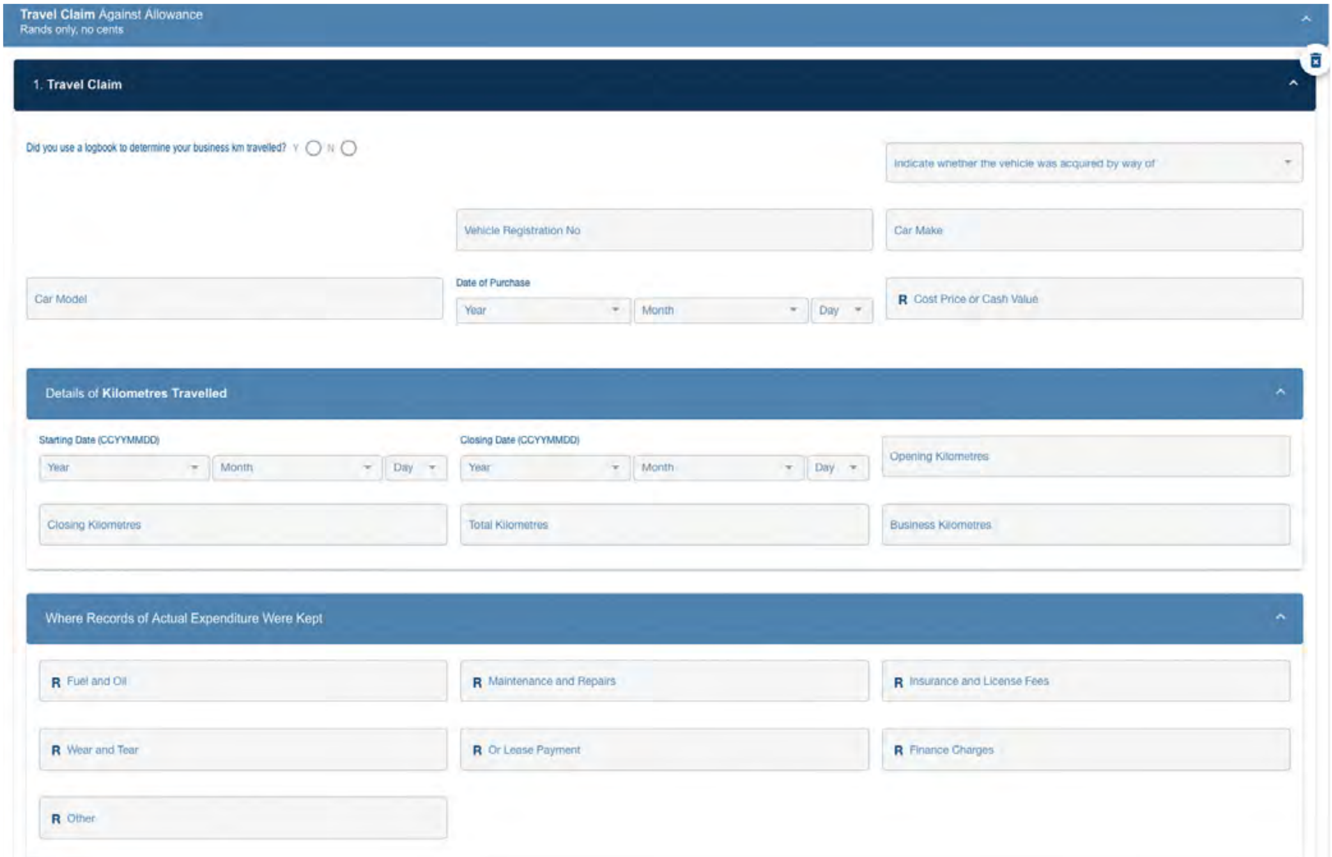
1. Details of **Policy**

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 Against Allowance
Rands only, no cents

1. **Travel Claim**

Did you use a logbook to determine your business km travelled? Y N

Indicate whether the vehicle was acquired by way of

Vehicle Registration No

Car Make

Car Model

Date of Purchase

Year Month Day

R Cost Price or Cash Value

Details of **Kilometres Travelled**

Starting Date (CCYYMMDD)

Year Month Day

Closing Date (CCYYMMDD)

Year Month Day

Opening Kilometres

Closing Kilometres

Total Kilometres

Business Kilometres

Where Records of Actual Expenditure Were Kept

R Fuel and Oil

R Maintenance and Repairs

R Insurance and License Fees

R Wear and Tear

R Or Lease Payment

R Finance Charges

R Other

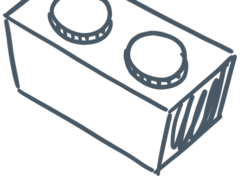
C

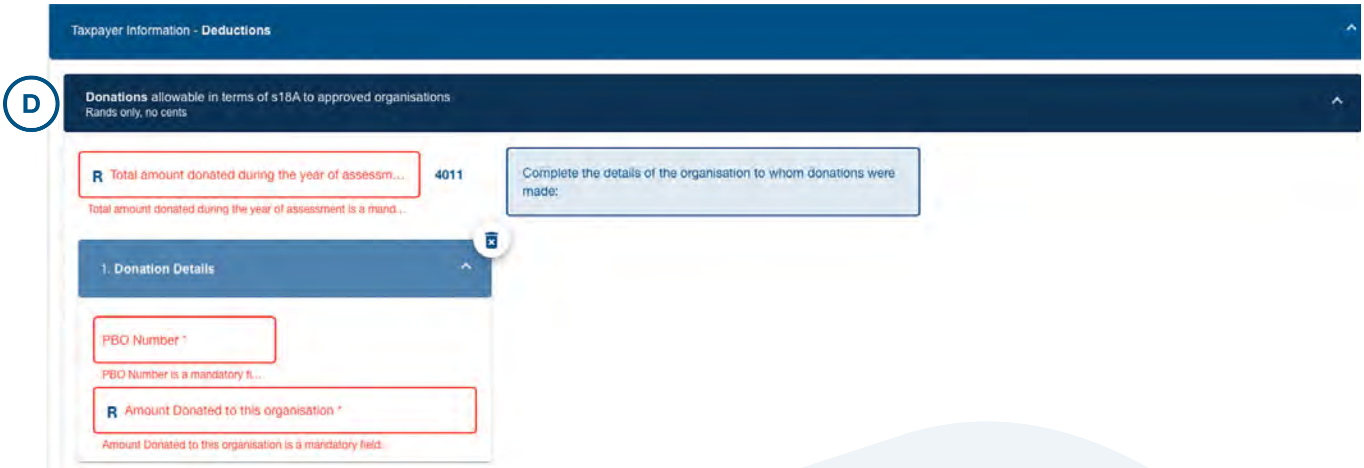
Travel claim

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 who 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).




Taxpayer Information - **Deductions**

D

Donations allowable in terms of s18A to approved organisations
Rands only, no cents

R Total amount donated during the year of assessm... 4011
Total amount donated during the year of assessment is a mand...

Complete the details of the organisation to whom donations were made:

1. Donation Details

PBO Number *
PBO Number is a mandatory fi...

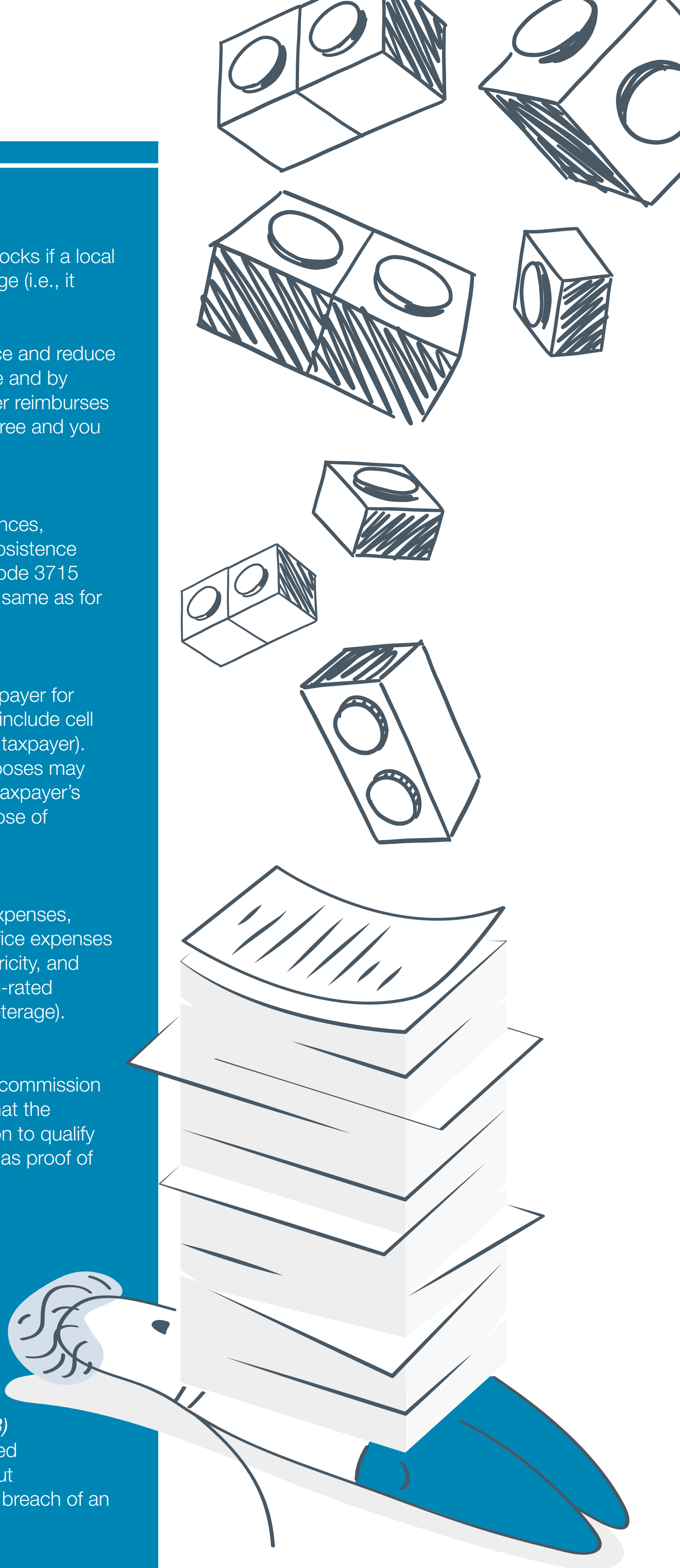
R Amount Donated to this organisation *
Amount Donated to this organisation is a mandatory field.

D

Donations

Donations to a SARS approved 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", while 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.



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.

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 may require a letter from the taxpayer's employer, confirming that the asset was used for the purpose of performing work.

Home office expenses

Salaried employees may be eligible to claim home office expenses, provided certain conditions are met. Examples of home office expenses include rent, interest on a mortgage bond, 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 IRP5 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.

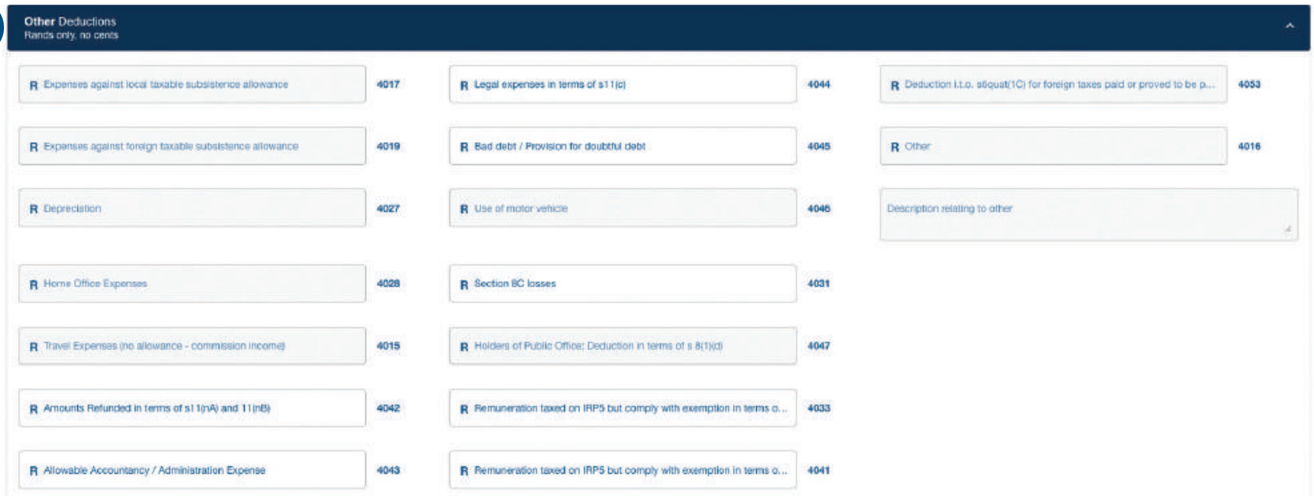
Taxpayers who earn a travel allowance, which is reflected under source code 3701 or 3702 on their IRP5s, must not complete this field.

Taxpayers need to disclose their travel expenses within 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).

E



Other Deductions
Rands only, no cents

R Expenses against local taxable subsistence allowance	4017	R Legal expenses in terms of s11(c)	4044	R Deduction i.t.o. s6quat(1C) for foreign taxes paid or proved to be p...	4053
R Expenses against foreign taxable subsistence allowance	4019	R Bad debt / Provision for doubtful debt	4045	R Other	4016
R Depreciation	4027	R Use of motor vehicle	4046	Description relating to other	
R Home Office Expenses	4028	R Section 8C losses	4031		
R Travel Expenses (no allowance - commission income)	4015	R Holders of Public Office: Deduction in terms of s 8(1)(d)	4047		
R Amounts Refunded in terms of s11(nA) and 11(nB)	4042	R Remuneration taxed on IRP5 but comply with exemption in terms o...	4033		
R Allowable Accountancy / Administration Expense	4043	R Remuneration taxed on IRP5 but comply with exemption in terms o...	4041		

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.

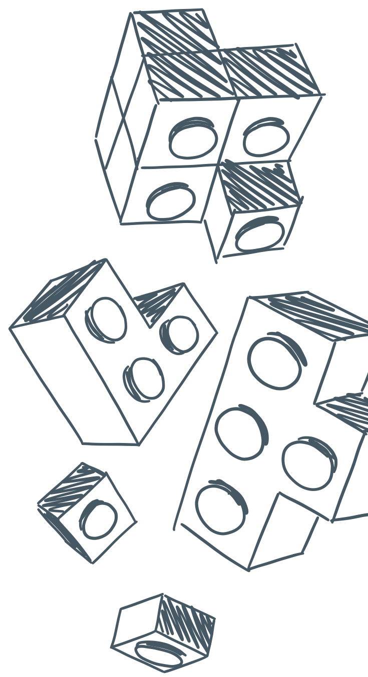
Bad debts / provision for doubtful debts
Usually, this field is only completed when your employer has included an amount on your IRP5 but has not paid the amount to you (and does not intend to do so).

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.

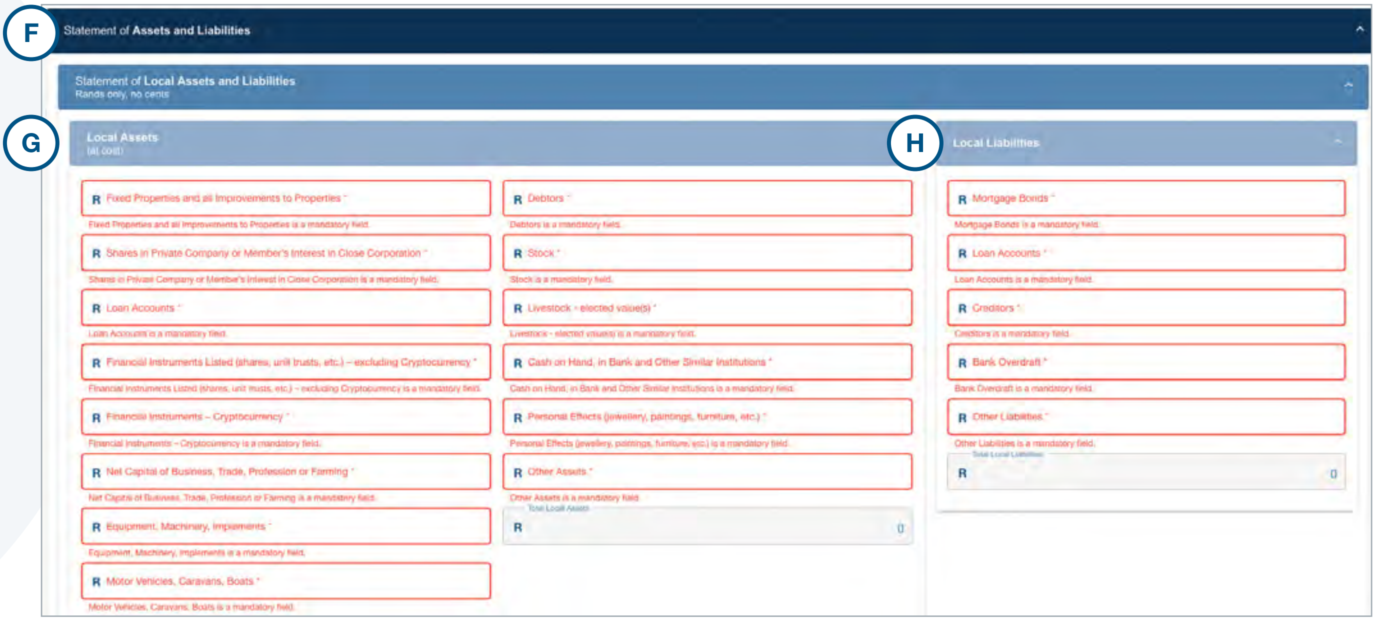
H

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.

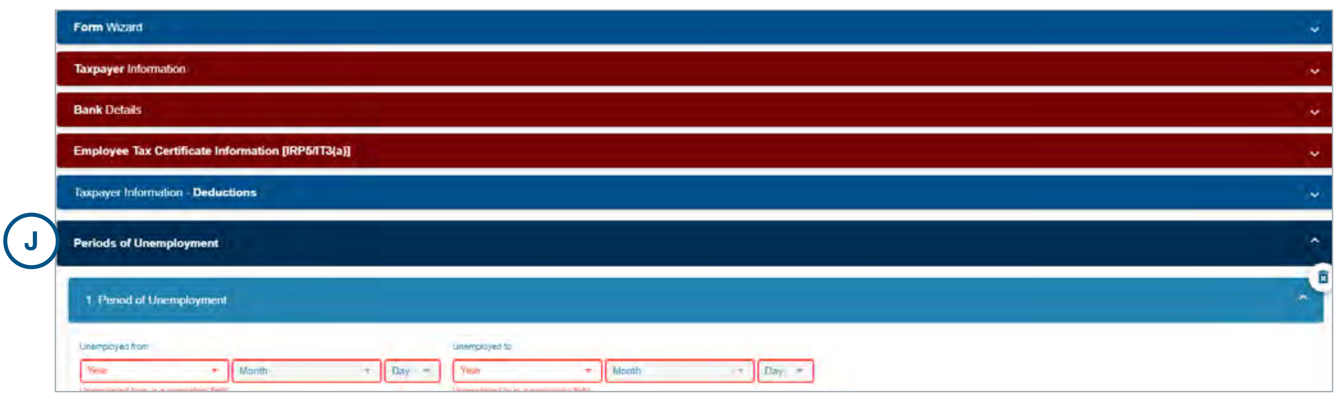


I

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

NOTES FROM SARS: TAX SEASON 2020

All you need to know about SARS services and the 2020 tax filing season.

With the COVID-19 pandemic, SARS has enhanced its digital platforms and enabled more services and tax transactions to be performed online to limit physical interaction. Where physical interaction is required, SARS has instituted stringent health and safety measures as prescribed by the Department of Labour and the Department of Health.

During this time, the SARS website will be an important source of current SARS and tax information, including updates on COVID-19 tax relief measures, while also providing direction on common tax transactions that can be performed online, via the SARS MobiApp and the eFiling portal.

The SARS contact centre (0800 00 7277) will support taxpayers with online transactions where necessary, while branch visits will only be available by booking an appointment on the SARS website (see our homepage).

Among the many innovations that have been implemented under the lockdown is a service through which taxpayers who register for eFiling can obtain a taxpayer number. Taxpayers can also request their tax reference number through the SARS website.

"A taxpayer will be eligible for auto-assessment if all third-party data has been filed by their respective third-party data providers."

The following tax transactions are available on eFiling and/or the MobiApp:

- Enquiring about debt outstanding and making a payment
- Enquiring about outstanding returns
- Checking tax compliance status and application
- Notice of registration (IT150)
- Filing tax returns
- Updating personal details (including bank details)
- Requesting a statement of account
- Registering for personal income tax
- Submitting supporting documents for an audit case
- Lodging a dispute
- Registering a tax type
- Tax Directive Management (for tax practitioners and individuals, this is limited to IRP3b and IRP3c)
- Lodging a complaint
- Retrieving a username and resetting a password

Filing season for personal taxes 2020

SARS has introduced one seamless filing season which started in April 2020 with the employer segment and closes at the end of January 2021. This approach places a stronger focus on the compliance of employers and third parties in supplying all data by the due date. The individual return filing process factors in a stringent data verification phase that is intended to provide a seamless filing and refund process.

Phase 1: Employer filing and third-party filing
(15 April – 31 May 2020)
During this period, employers are required to file payroll taxes (PAYE, UIF, Skills Development Levy, and Employee Tax) and issue IRP5 tax certificates for their employees. Also during this phase, third parties, such as banks, financial services companies that administer retirement fund and pension schemes and medical savings and insurance schemes, submit tax certificates. All these submissions go towards populating the individual's income tax return. Phase 1 determines whether an individual taxpayer will have an easy filing experience or a frustrating one.

Phase 2: Information verification, updating tax files and auto-assessments
(1 June – 31 August 2020)
In Phase 2, the important process of verifying taxpayer information and third-party submissions takes place.

During this phase, taxpayers are required to engage SARS about the accuracy of their tax files in terms of general hygiene checks, banking details, address changes, etc. The SARS digital channels are available to do most of these updates and checks. These checks will now be done mainly online before filing season.

Thereafter, automatic assessments of identified taxpayers can take place during Phase 2 in August. Taxpayers required to file will be notified in this period of when they can start filing, as will taxpayers who are not required to file. Also in Phase 2, SARS will pursue outstanding employer and third-party submissions.

Auto-assessments commencing 1 August 2020
Phase 2 auto-assessments commence on 1 August 2020. A significant number of taxpayers can expect to receive an SMS notifying them that SARS has prepared their tax returns for them and that an assessment is available on eFiling or MobiApp to consider. Taxpayers who accept the assessment need not complete and file a tax return, and can expect their refund if one is due. Individual taxpayers who disagree with the outcome of their auto-assessment will have an opportunity to resubmit their return from 1 September.

A taxpayer will be eligible for auto-assessment if all third-party data in respect of that taxpayer has been filed by their respective third-party data providers. During August, taxpayers who have not been auto-assessed, but for whom a complete set of third-party data is available, will be invited by SARS to file early.

Phase 3: Employee / individual filing
(1 September 2020 – 31 January 2021)

- Individuals who are required to file will be reminded.
- Individuals who are non-provisional taxpayers and/or have not accepted the outcome of an auto-assessment are required to file from 1 September to 16 November 2020 using SARS' online channels to minimise physical interaction at a branch.
- If visiting a branch, individuals who are non-provisional taxpayers have until 22 October 2020 to file.
- Provisional Taxpayers have until 31 January 2021 to file online.

Complaints process

A taxpayer may lodge a complaint:

- Using eFiling – the eFiling complaints form is an online / web-based form on the SARS website
- With the SARS complaints management office on 0860 12 12 16
- During an appointment booked at a branch

Once all of SARS' complaints channels have been exhausted, the Tax Ombud is the next complaints channel.

PREPARING FUTURE TAX LEADERS, TODAY

Few people would disagree that ongoing learning is more important than ever, but how does one make time for it? How do you fit studying into an already hectic schedule?

The answer lies in online learning. It's flexible and accessible – you can literally access learning programmes anywhere at any time – perfect for on-the-go tax professionals. New developments are occurring at a rapid rate, technology is evolving and information is becoming more readily available in real-time settings.

We caught up with Morongwa Kgadiete and Thabang Mamogobo who explain why they took the leap to upskill and empower themselves with "future-proof" skills by completing the Specialist Diploma: Tax Professional journey via SAIT and The Tax Faculty – ensuring that their skills are on par with their ambition.

Morongwa Kgadiete

Originally from Polokwane, Morongwa Kgadiete, obtained an Honours degree in Taxation from the University of Johannesburg. During the second year of study, she discovered taxation and instantly fell in love with it.

Fast forward a few years, Morongwa completed the conventional three-year journey of ITC, articles and EISA in under a year, and although it was taxing (pun intended) at times, the tax wunderkind's love for the subject matter is still going strong. She's a straight-talking digital influencer who can cut through tax jargon to make it fun and relatable. By printing her own custom-made "I love tax" T-shirts and creating her social media alter-ego "if Tax was a person," she uses her digital prowess to declare her love for tax to the world.

With the rise of digitisation as well as constant legislative and regulatory changes on the horizon for the tax profession, what do you think are practical ways to future-proof your career?

I believe, as a start, that it is important to attain a formal degree that gives you a competitive advantage in the job market. Then take up membership with a professional body. Professional bodies equip you to be formally recognised as a professional in your field. You are given the opportunity to stay abreast of legislation through CPD seminars and to create long lasting networks with your peers.

Our profession is evolving, and we are expected to keep up with the rise in technological changes and digitisation. The accounting and tax professions were traditionally dedicated to helping businesses and individuals balance the books and to keep their tax affairs in order. However, to remain relevant, the modern tax professional operates in a challenging world and they are expected to do much more than tax calculations. Clients and employers now expect us to help them achieve their goals and to become value adding business advisors.

You were selected to participate in the Specialist Diploma: Tax Professional qualification, which is funded through a bursary programme called Ithuba. How did you find the application process and the fact that the entire learning journey was online?

The application process was smooth, and it was finalised within a month. We wrote two online tests before being admitted to the programme. I would recommend this programme to anyone who is interested in pursuing a career in tax.

Online learning is becoming popular and may even become the prevalent form of learning someday. The Tax Faculty online platform was a national virtual classroom which gave bursary students from all over the country access to learning. It also offered flexibility. I had the freedom to juggle my career and studies without being tied down to a fixed schedule.

Given that tax is a very demanding profession, and that it can be challenging to dedicate time to obtaining a qualification, do you have any tips or words of encouragement for your fellow professionals currently busy with this course?

Take responsibility for your own learning and do not be afraid to ask for help. I was allocated a mentor who was always happy to assist me. I also reached out to tax professionals on LinkedIn who had passed the EISA board exam in previous years. I met a few of them for coffee and they were able to offer career advice as well as assist me with topics I struggled with.

Train your brain to keep a positive mindset. Turn your failures into lessons and remember to celebrate every milestone you achieve, even if it is small.

5 on the side with Morongwa Kgadiete

My number one study hack is to… Find out what you do not know. Pinpoint exactly where you stopped understanding something and then delve into it.

Most memorable moment during the course… Being invited to the 2019 Tax Indaba and meeting my virtual classmates for the first time.

Most awkward moment… When our mentors and course coordinator accidently received a link to our student WhatsApp group and joined it. I was requested to ask them to exit the group as we could not gossip freely.

You wouldn't know it but I'm good at… Making people laugh.

I believe the tax profession is… A career where communication skills are more valuable than numeracy because explaining complex jargon to your clients in simple terms comes with the territory.

Thabang Mamogobo

Thabang is passionate about education. In fact, she is so passionate that she has attended more short courses and obtained more degrees than I can count. She recently completed the Specialist Diploma: Tax Professional with The Tax Faculty and is an ardent believer that one should never become complacent and continuously take responsibility to invest in self-development.

Walking the talk, this tax extraordinaire's passion for education continues as she is currently in her third year of LLB studies with the University of South Africa (her fourth degree no less). To Thabang, keeping pace with industry is key and upskilling is no longer optional.

You are clearly an advocate of ongoing learning, what do you believe are the best ways to remain relevant through 4IR?

The future is here and we must guard against being left behind. The age of the internet of things, robotics and automation are no longer subjects of engineering invention but are a real threat to the workforce across all the different disciplines. As more skills are becoming automated and human resources are increasingly becoming obsolete, it becomes more important than ever to continue learning, re-skilling and upskilling to align the skills needed for today with those in the future.

I believe in constant self-improvement. Future-proof your career by diversifying your skill set by constantly furthering studies in tax, completing various certifications, regularly reading articles in the *TaxTalk* journal. Webinars provided by the South African Institute of Tax Professionals (SAIT) are useful and practical ways to future-proof your career as some of the constant legislative and regulatory changes in the tax profession are discussed to help professionals adapt to the industry.

Since you successfully completed the Specialist Diploma: Tax Professional qualification, can you see the programme aiding in your competencies at the office?

The experience of successfully undergoing the programme has been rewarding. The skills I have learnt are enhancing my efficiency and this benefits me and my employer. I am now able to add and create value to the small business clients I service with tax matters. My aspirations of becoming a well-regarded tax specialist are well on the way of being achieved.

I'm always recommending people to consider applying for the Ithuba bursary programme, because I have witnessed how it has helped me.

Pearls of wisdom for young professionals currently busy with this course?

When I decided to enrol for this course, I made the decision to sacrifice attending social events for tutoring classes that were offered and this has worked in my advantage.

The Ithuba programme had a clear study guide that was easy to follow, and the uploaded videos gave me an opportunity to watch the lessons at my own pace until the concept was well understood. I had to adapt to the new method of online learning.

My favourite mantra is “anything is possible.” When you desire something, you prioritise it and work on it continuously until you achieve it. When you set your mind to achieving a target in the tax field, the only way to achieve that target is through dedication, hard work and prioritization.

5 on the side with Thabang Mamogobo

I believe the tax profession is... A value-adding profession, because tax collection fuels development across the nations of the world.

Peeve hate... When someone says “no disrespect, but...” and proceeds to say something disrespectful.

Most memorable moment during the course... Attending the tutor classes to consult. I enjoyed interacting with peers and discussing challenges we face during the course of study.

Most awkward moment... Realising that I took my brother’s ID book instead of mine to the exam venue.

I wouldn’t have survived this learning journey without... My family and friends, their support has been amazing throughout this programme.

WANT TO KNOW MORE ABOUT THE SPECIALIST DIPLOMA: TAX PROFESSIONAL (ACCELERATOR PROGRAMME)?

The Specialist Diploma: Tax Professional (Accelerator Programme) is a formal structured online learning programme that leads to a professional occupational qualification that is registered on the National Qualification Framework (NQF 8). This 12-month bridging programme covers the knowledge and practical skills components of the qualification, and together with experience gained in the workplace, provides entry into the final external integrated summative assessment (EISA).

Course delivery

The qualification is delivered via The Tax Faculty’s virtual campus and webinar platforms whilst the final exam is administered by SAIT. The Tax Faculty recognises that learning is achieved through past experience and therefore the learning journey will begin with a diagnostic from which tailored learning journeys are implemented, giving you the best opportunity to gain your qualification without having to start from scratch.

Course programme

The occupational tasks of a Tax Professional include the demonstration of the following competencies at an advanced level:

- Registering a taxpayer, calculation and finalizing of income tax, payroll tax and VAT returns.
- Developing packs for audit purposes.
- Analysing assessments.
- Initiating disputes as part of dispute resolution.

Are you interested in taking the first step to become a Tax Professional as Morongwa and Thabang did? Applications for the 2021 bursary programmes are set to open early next year. Contact **taxprof@taxfaculty.ac.za** for more information or to apply.

HOW THE OFFICE OF THE TAX OMBUD can help you

What are the rights of tax practitioners who feel that SARS did not treat them fairly when they dealt with their tax matters? Read on to learn more.

Many tax practitioners do not know where, when and how to lodge a complaint if they are unhappy with how SARS handled their tax matters or those of the clients they are representing. Therefore, it is important that they learn about the Office of the Tax Ombud (OTO), which provides an impartial and independent process for resolving tax complaints against SARS.

The OTO provides a fair and simple avenue for taxpayers who have been unable to resolve a tax complaint by using SARS' complaint management processes.

The vision of the OTO is to strengthen taxpayers' confidence in the tax administration system. This is done by helping to resolve their tax complaints as follows:

- Quickly: So taxpayers can avoid long, drawn-out cases
- Amicably: So that complaints do not end up in court – rather, they use the court as the last resort
- Free of charge: So that all taxpayers have a cost-effective remedy

When can you lodge a complaint with the OTO?

To avoid a complaint being rejected, it is important to know when to contact the OTO for help.

If you are unhappy or dissatisfied with a service that SARS has provided to you, what do you do? Do you immediately lodge a complaint with the Tax Ombud?

The answer is a big no. You have to first lodge a complaint with SARS through its Complaint Management Office (CMO), unless there are compelling circumstances for not doing so, or your matter is a systemic issue. It is important to state clearly that you are lodging a complaint with the CMO and to state the nature and period of your complaint.

If you have lodged a formal complaint with SARS, does it mean that you can now approach the OTO and lodge a tax complaint against SARS?

The answer is still no. You have to give SARS a maximum of 21 working days after lodging your complaint for them to try to resolve your matter. If you do not give SARS 21 days, the OTO will reject your complaint, since the time period for SARS to resolve your complaint has not expired.

If the 21 days have passed and SARS has not responded to your complaint or you are unhappy with how the matter was finalised, do you then approach the Tax Ombud?

Yes, you do. Follow the process below.

Submitting a complaint form

Firstly, start with obtaining a complaint form, which can be downloaded from www.taxombud.gov.za. It can also be requested via email from complaints@taxombud.gov.za or via telephone from 0800 662 837. You can also collect the form from our office.

Your complaint form must detail the information in chronological order, and you can use additional paper if the form does not provide enough space to include all the information. Attach all supporting documents and sign the form before submitting it to the OTO.

A tax practitioner filing a complaint on behalf of a client should attach a power of attorney, signed by the taxpayer, the tax practitioner and witnesses, together with copies of the identity documents of both the tax practitioner and the taxpayer.

You must sign both the complaint form and the power of attorney, include all supporting documents and send all the documents via email to the OTO at complaints@taxombud.gov.za.

What happens once the OTO receives the complaint form?

The OTO will capture the completed complaint form into the system and send a letter of acknowledgement within two working days of receipt of a complaint. Thereafter, the OTO will investigate the complaint to establish whether it falls within the organisation's mandate. If your complaint falls within the Tax Ombud's mandate and authority and is valid, a letter of acceptance will be sent to you.

The OTO will send recommendations to SARS on how the matter should be resolved, and notify the complainant of the status of the complaint.

Recommendations have been sent to SARS, what happens next?

As per a signed memorandum of understanding, SARS has 15 business days to consider the OTO's recommendations and respond with a final report. Unfortunately, the Tax Ombud has no control over how long SARS will take to respond. However, follow-up is done to check how far SARS is with implementing the recommendations.

You will be provided with feedback on the progress of your complaint every 15 business days, until SARS has finalised the complaint.

The investigation has been done, and SARS has submitted the final report to the Tax Ombud. What happens next?

Within four days of receiving the final close-out report, the OTO verifies the actions detailed in the report against the recommendations sent to SARS and communicates with the tax practitioner about the outcome of the complaint. If the OTO does not agree with how SARS has implemented the recommendations, the close-out report is overruled and sent back to SARS, with an explanation of what was not done correctly. The matter is finalised when the OTO agrees with how SARS implemented the recommendations.

If your complaint is not accepted, a letter of evaluation outcome will be sent to you with the reasons why the complaint was not accepted. Note that the OTO has 10 working days to complete this stage from date of receipt of your complaint.

What are the common mistakes made by tax practitioners and taxpayers when submitting complaints?

Tax practitioners and individual taxpayers often make similar mistakes when submitting complaints to the OTO. Some examples are:

- Sending a complaint about SARS to the OTO without first exhausting SARS' internal complaints management process
- Submitting the same complaint multiple times
- Submitting a complaint form that is not fully completed or signed
- Forgetting to submit a signed power of attorney and copies of the identity documents
- Failing to submit the required supporting documents
- Asking the Tax Ombud to interpret the law

What can the OTO not do?

The OTO will not be able to assist you with a complaint based on the following:

- Legislation or tax policy
- A prevailing SARS policy or practice, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS
- A matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal
- A decision of, proceeding in or matter before the Tax Court

What happens if you do not agree with how your matter was resolved?

You have 30 business days from the date you receive an outcome to write to the OTO and indicate why you do not agree with the decision.

This matter will be treated as an OTO appeal. It will be re-evaluated by an independent specialist and presented to the OTO Appeal Committee, which is chaired by the CEO, Professor Legwaila. The decision made by this committee is final, and the complainant can pursue other avenues if he or she still feels aggrieved.

"If your complaint falls within the Tax Ombud's mandate and is valid, a letter of acceptance will be sent to you."

Contact info

- Queries can be sent via email to complaints@taxombud.gov.za or you can call our call centre on 0800 662 837
- If you prefer to visit the office,the address is Menlyn Corner, 87 Frikkie de Beer Street (please note COVID-19 lockdown restrictions)
- Mail can be posted to P O Box 12314, Hatfield, 0028
- Faxes can be sent to 012 452 5013

30 minutes CPD

DOCUMENTS NEEDED TO COMPLETE YOUR TAX RETURN

▸ **ANGELIQUE FOUCHÉ,** Tax Accountant at The Tax House
& TIAAN GRIMBEEK, Tax Accountant at The Tax House

Our article provides tips on the information and documents needed for a 2020 filing season that promises to be somewhat different from any other.

New submission deadlines and auto-assessments

Historically, SARS has opened the tax season for individual tax return submissions on 1 July for tax years ending in February. This year will be different in that the Income Tax Return (ITR12) filing season for individuals will commence on 1 August 2020. It is also the first time that SARS will be implementing auto-assessments. 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 there is an error in the third party information submitted on your behalf.

If the auto-assessment you receive is correct, you can simply accept the assessment after 1 August 2020. If, however, it is not correct, you can reject the assessment and edit the return, but only after 31 August 2020. It remains worthwhile to involve a tax practitioner in the process as they are able to assist in reviewing the auto-assessment for any errors or omissions and to advise on any additional tax claims that are not automatically populated in the auto-assessed income tax returns.

Non-provisional income taxpayers have until 30 November 2020 to finalise their ITR12, and provisional income taxpayers have until 29 January 2021.

The period 1 July 2020 to 1 August 2020 will now be used as a period for the individual to update their personal details. This can be done on the RAV01 form found under the "Maintain SARS registered details" option on SARS eFiling. During the updating process, SARS wants to know your marital status, residential and postal address, bank details and other contact information. This may require you having to upload supporting information, such as utility accounts and bank statements (not older than three months).

Emails and telephone numbers must be correct as you cannot use the excuse with SARS that you did not receive communication. The Tax Administration Act is unforgiving when it comes to this.

Taxpayers may not be certain as to what supporting documentation they require to submit their tax returns. 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 are receiving 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 2019 or date of acquisition of vehicle if later
- Closing odometer kilometres reading at 29 February 2020 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
- 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
- Finance charges

Home office

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
- Supporting proof of expenditure for rent, interest on mortgage bond, repairs to the premises, rates and taxes, cleaning, wear and tear, telephone, stationary, 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
- 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 historic 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.

"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."

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)
- 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.

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, the unique public benefit organisation (PBO) reference number, full name and registered address of the PBO. The tax deduction is limited to 10% of your taxable income.

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)
- 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.

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. We as 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.

A significant number of individual taxpayers will be selected for auto-assessment from 1 August 2020; so taxpayers should not be caught off guard when SARS notifies them via SMS that their auto-assessments are ready for review and acceptance or rejection.

Taxpayers can never go wrong with approaching a trusted tax professional to assist in the submission of their returns. They are familiar with all aspects of the tax Acts and are able to guide taxpayers in claiming all possible deductions and understanding the full implications of what is submitted to our revenue service.

15 minutes CPD

UPDATING YOUR BANK ACCOUNT DETAILS WITH SARS

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

In the past, updating banking details with SARS meant visiting a branch. In the time of the COVID-19 slowdown, things are quite different. Find out how the new rules work with our hands-on article.

Things changed for the average South African over recent months 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. During this time, we are forced to consider ways that allow for more technology-based and less face-to-face interactions. Some of these will likely last beyond the current COVID-19 restrictions to hopefully assist in faster and better ways of dealing with tax affairs.

Updating banking details

All taxpayers will have the need, at some stage in their lives, to update thier banking details with SARS. This is to ensure SARS has the latest details available when making refunds to taxpayers. To this end, SARS provided an external guide which deals with the ways in which taxpayers can change their banking details at SARS without going to a SARS branch. The guide was issued on 16 April 2020.

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 name of the taxpayer.

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 discussed in brief a bit 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 RAV01 form: The RAV01 form shows a taxpayer's details, such as name, address, contact details as well as banking details. This is accessed under "SARS Registered Details / Maintain SARS Registered Details", once logged in to SARS eFiling. It is possible to have different bank accounts per type of tax.
    - » Where SARS requested verification of details and provided a link for the case created: Once logged in to SARS eFiling, go to "SARS Correspondence" and find the relevant letter. There should be a button that will redirect to a page where supporting documentation can be uploaded.
- When submitting their personal income tax return in the case of individuals.
- SARS mobile tax units.
- Via email for exceptional circumstances (as per below) only.
- 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 (www.sars.gov.za/Contact/Pages/Send-us-a-Query.aspx), which explains how to use the online query system and provides the link to it (tools.sars.gov.za/soqs).

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).

- 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 he or she is allowed to update the taxpayer's banking details.
- 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.

The exceptional circumstances under which SARS will allow a request for change of banking details to be done 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 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.
- 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 by SARS via SMS or email.

"For taxpayers falling within the categories of exceptional circumstances, I would suggest referring to the SARS website for specific documentation required."

During this COVID-19 period, a person submitting supporting documentation electronically to SARS, in order to update or verify banking details, must also provide an image. Examples of such photographs are indicated on the following page. One example is where there is a SARS case number that can be provided, while the other is where the request is to update details. In both instances, the image needs to include a clear picture of the person dealing with the submission, holding his or her ID document, and a note (that may be hand written).

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

- A stamped letter from the bank (can be electronically stamped), not older than three months, confirming account holder, account number, account type and branch code.
- 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.

Proof of identity with case number

To update or verify banking details, taxpayers should take a photo of themselves holding the relevant documentation.

Proof of identity: Request to update details

Additional supporting documents

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

- Individuals
  - » A copy of a valid South African ID (front and back in case of card ID), driver's licence, passport, temporary ID or asylum seeker certificate or permit. Even though it is not specifically mentioned that these should be certified, it is suggested to do so wherever possible. 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 that of a joint bank account, shared by both spouses, a copy of a marriage certificate.
  - » If the banking details are that 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 his or her own bank account.
  - » A power of attorney where the request is done by a tax practitioner or a requestor with a mandate.
- Companies
  - » A copy of the CIPC registration certificate and notice of incorporation.
  - » A copy of a valid South African ID (front and back in case of card ID), driver's licence, passport, temporary ID of the public officer or representative taxpayer. Even though it is not specifically mentioned that these should be certified, it is suggested to do so wherever possible. The certification should not be older than three months.
  - » A copy of proof of 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.
  - » A power of attorney, signed by the public officer registered as per SARS records, where the request is done by a tax practitioner or a requestor with a mandate.

For taxpayers falling within the categories of exceptional circumstances, taxpayers should refer to the SARS website for specific documentation required; or they should contact a registered practitioner to assist.

FAQs

We present some of the most common ITR12 questions that pop up over Tax Season, with answers provided by the experts at TaxTim.

Q I receive a travel allowance from my employer. I know I cannot claim travel from my home to my office. However, sometimes I drive directly from my home to the client. How do I calculate my business mileage in this situation?

In this case, you would deduct the distance from your home to the office from the total distance driven to the client.

For example, assume the distance from home to the office is 10km and the distance from home to the client is 30km. The business distance would be 20km (30km – 10km).

Q I donated R30 000 to my domestic worker to pay for his daughters' education. Can I claim this donation as an expense in my tax return?

No, you would not be able to claim this as a deduction for tax. Donations are only tax deductible if they are made to a registered public benefit organisation (PBO) that is able to supply you with a section 18A tax certificate.

Q I am going to be without a salary for six months. During this time, my parents will be supporting me. Will this income from my parents be taxable?

No, it should not be taxable as SARS would view it as financial support. You do need to declare it, however, in the non-taxable income section of your return.

Q I receive a travel allowance and SARS has requested my documents for verification. The car I drive for work is in my husband's name. What do I do?

You can claim a travel deduction, even though the car does not belong to you, provided you are paying for the vehicle running costs and can prove this to SARS.

Q I am a freelancer and am therefore registered for provisional tax. I do not know how to calculate the tax due for my first provisional payment. Is it just for the six months' income from March to August? My income fluctuates and I do not know what I will earn for the rest of the year.

The provisional return that is due in August requires you to estimate your taxable income for the full tax year, even though you are only required to pay tax on the income you earned to August. If your income fluctuates and you cannot predict it for the full year, you can simply take the amount you have earned for the first six months and double it. For example, if you earned freelance income of R105 000 from March to August, you can provide an estimate of R210 000 (R105 000 x 2) for the full tax year so that you only pay tax on the R105 000 that you actually earned to the end of August.

Q I sold an investment property in January and made a large profit. Do I need to include this capital gain in my provisional return or do I only declare it in my tax return? I am a provisional taxpayer.

You need to include the taxable portion of this gain in your provisional return. You can work this out by taking the proceeds, less the base cost, less the R40 000 annual exclusion and then work out 40% of this amount. The resulting amount must be included in your estimate of taxable income. There is a field on the IRP6 for unusual or infrequent amounts, and you need to enter the taxable portion of the gain there.

Q I sold a property and earned a large capital gain. I am a salaried employee. Do I need to register as a provisional taxpayer now in order to pay the capital gains tax or can it wait until I file my annual return?

Since you are not currently registered as a provisional taxpayer, you do not need to do so for this once-off event. You can declare the capital gain in your ITR12.

Q I bought a new vehicle to drive my disabled child to and from school. Can I claim part, or all, of the vehicle cost as a tax deduction?

Unfortunately, you cannot claim a tax deduction for the vehicle that you purchased but you may be able to claim a deduction for the fuel expense that you incurred, as long as it is to a specialised school and such a school is not available within a 10km radius of where you live. Please enter your travel costs under the medical section on your return and indicate on there that one of your dependants is disabled so that SARS can take the travel costs into account when calculating your additional medical expenses tax credit.

Q Can I claim the insurance of my hearing aid as a medical expense? I have an ITR-DD certificate to confirm my hearing disability.

Yes, you can claim it as part of your disability expenses. If documents are requested from SARS, you will need to submit the ITR-DD form, the proof of the insurance agreement and your proof of payment.

Q My husband and I went for IVF and my husband paid all the medical bills. Can I claim the expenses on my tax return or must my husband claim them?

Your husband must claim them because he paid for them. Whoever claims the expense must be able to provide proof of payment in their name to SARS.

Q Why did I not receive a tax refund, even though I contributed to a medical aid through my employer?

Your employer is obligated to adjust your monthly employees' tax deductions by the medical tax credit. Therefore, you would have already received your medical tax credit throughout the year by means of reduced employees' tax on your salary.

COMMON MISTAKES WHEN FILING A RETURN

30 minutes CPD

▶ **NYASHA MUSVIBA,** Tax Director at SA Tax Guide

Before submitting your ITR12, check your tax return against this list of seven common errors, and save yourself the time and hassle of setting things right.

1 Completing the tax return without obtaining supporting documents

Many individuals wrongly believe that an IRP5 tax certificate is the only supporting document they need when completing the ITR12 for individual tax returns. Not only are there several other supporting documents you will probably need, depending on your tax affairs, but you are also required to keep them safely in your possession for at least five years. This is in case SARS needs access to them in the future.

Below is a list of some of the documents you may need:

- IRP5/IT3(a) certificate from your employer (if you had more than one employer in the tax year, you need an IRP5 from each employer)
- Medical aid certificate as well as documents reflecting amounts claimed in addition to those covered by your medical aid
- Pension and retirement annuity certificates
- Proof of your banking details (see below)
- Travel logbook if you received a travel allowance, and an accurate record of all vehicle expenses during the year, including fuel, maintenance, lease and insurance costs
- Tax certificates (IT3(b)) which you received in respect of investment income
- Completed confirmation of diagnosis of disability form (ITRDD) for taxpayers or dependants with a disability
- Taxpayers who receive foreign employment income must keep a schedule of days spent outside South Africa with copies of passport pages showing exit and entry into South Africa
- Financial statements for individuals who conduct a business as a sole proprietor, if applicable
- Information relating to capital gain transactions, if applicable
- Any other documentation relating to income you received or deductions you want to claim

As proof of banking details, you need a bank statement not more than three months old which must also be stamped by the bank. If you cannot provide a bank statement you must provide an original letter, on a letterhead from the bank, reflecting the bank account details and the date the account was opened. The bank statement or the bank letter should clearly show the name of the bank, the name of the account holder, the type of account, the account number, the branch code and the date.

An individual who incurred medical expenses that were not covered by the medical aid can deduct an additional rebate which reduces the normal tax payable to SARS.

However, you must ensure that you have the prescription or diagnosis or received services and medicines supplied by any duly registered medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist. You must also have actual proof of payment for the out-of-pocket medical expenses. Medical expense invoices or statements will not meet SARS' requirements. (Note that a diagnosis of disability must be done by a qualified medical practitioner to confirm the physical disability status of a taxpayer or dependants with a disability.)

Ensure that you have all the supporting documents before you file your tax return, including the ones pre-populated by SARS on your tax return. Should SARS require supporting documents, you must be able to provide them within the set time limits. If you fail to submit the supporting documents requested by SARS, you may receive an adverse assessment, and this might leave you owing money to SARS.

2 Assuming you will automatically get a refund

Most people are motivated to file their tax returns when they believe that they will get a refund from SARS. But taxpayers are required to file an ITR12 if they exceed a certain income threshold (for 2020, it is R500 000 for employees who received income from a single employer and did not receive an allowance, such as a travel, subsistence or office-bearer allowance) or if they have more than one employer.

Taxpayers should avoid using the services of people who guarantee a refund from SARS. An even worse situation is a taxpayer who understates or overstates income in their pursuit of a refund. This is a criminal offence.

3 Using the wrong source codes

Many adverse assessments are the result of the use of wrong source codes. You should take extra care when completing an ITR12 tax return because each source code has a different tax implication. For instance, certain income might be exempt from tax. However, if you use a source code for taxable income, you will be assessed for tax on this income.

If the wrong source codes are used, it will leave you with the burden of submitting a notice of objection. This process is technical in nature and, as a result, you might have to pay for the services of a tax practitioner.

Some employers issue employees with IRP5 tax certificates generated by the payroll systems instead of the ones exported from the SARS e@syFile system. There is, however, a danger that the payroll system might have a discontinued source code. An IRP5 with a discontinued or incorrect source code is not a valid supporting document when submitted as part of a SARS review or audit. It is particularly important to ensure that the IRP5 tax certificate contains the current source codes applicable to the filing season.

Source codes can be found on the SARS website by following this link: www.sars.gov.za/TaxTypes/ PIT/Tax-Season/Pages/Find-a-Source-Code.aspx

4 Not understanding the ITR12 return fields on eFiling

Taxpayers often complain that the online ITR12 has too few fields to complete all the information compared to the manual ITR12 tax return. It is important to note that the ITR12 tax return is generated on eFiling when starting a return on the return wizard. To generate a correct return, you must correctly answer the applicable questions on the first page. For example, the first page will ask if a taxpayer incurred medical expenses. If you select "no" to this question, the relevant medical expenses field will not be created.

- Some common questions asked on eFiling include:
  - How many certificates did you receive?
  - Do you want to claim expenditure against a travel allowance? (Select "Yes" or "No")
  - Did you receive remuneration for foreign services rendered? (Select "Yes" or "No")
  - Were there any transactions on any tax free accounts held by you? (Select "Yes" or "No")
  - Do you want to claim donations made to an approved organisation? (Select "Yes" or "No")
  - Did you make any retirement annuity fund contributions? (Select "Yes" or "No")

5 Not declaring other income received during the year of assessment

You must declare all the income received during a specific tax year on the ITR12 tax return. Employees usually only declare income reflected on IRP5 tax certificates and ignore income received from other sources, such as rental income.

If, in fact, you did earn other income not reflected in your IRP5 and do not declare it on the ITR12, you will be faced with a dilemma when SARS asks for bank statements as part of your supporting documents. Your bank statements will show that you received other income which was not declared to SARS and SARS will issue you with an adverse assessment. The adverse consequences of such an assessment include severe penalties for understating income.

Taxpayers have a tax obligation to ensure that a full and accurate disclosure is made of all their relevant information, including all income received, as required in the income tax return. Misrepresentation, neglect or omission to submit a return or supplying false information may result in penalties, additional assessments and, in some cases, criminal prosecution.

6 Provisional taxpayers failing to file provisional tax returns

Some taxpayers are automatically registered as provisional taxpayers. This, in turn, creates an obligation for them to file provisional tax returns as well as the final ITR12 tax return. Failing to file the provisional tax return when it becomes due will make the taxpayers liable for interest and penalties.

There is no formal registration needed to be a provisional taxpayer. A provisional taxpayer is any person who derives income other than from employment or any person who is notified by SARS that he or she is a provisional taxpayer.

> *"Many individuals wrongly believe that an IRP5 tax certificate is the only supporting document they need when completing the ITR12 for individual tax returns."*

Directors of private companies and members of close corporations are regarded as employees. Therefore they are not automatically registered as provisional taxpayers unless they have income that falls within the scope of provisional income.

Provisional tax is a method of paying the income tax liability in advance to ensure that the taxpayer does not remain with a large tax debt on assessment. A provisional taxpayer is required to submit two provisional tax returns (IRP6) in a year of assessment, based on estimated taxable income. The first return is due by 31 August and the second by 28 or 29 February. A provisional taxpayer can make an optional third provisional tax payment after the end of the tax year, but before the issuing of the assessment by SARS.

7 Choosing to manually submit

When completing an ITR12 return, you should use an electronic submission through eFiling. The easiest and quickest way to file ITR12 tax returns is online by using SARS eFiling. However, you must first register for eFiling on the SARS eFiling website.

There are a number of advantages to eFiling. For instance, you are given the opportunity to save your return and file it later when you are ready to do so. You also have the opportunity to use the tax calculator function to receive a pre-assessment, based on your submission, before a final assessment is done. Furthermore, a return filed via eFiling makes it easier to respond to a SARS audit or verification. Submitting a return through eFiling also gives taxpayers a full history of all submissions, payments and electronic correspondence available at the click of a button. In addition, submission via eFiling saves taxpayers time as they will no longer have to wait in long queues at a SARS office when the tax filing season commences.

The Tax Faculty

A 360-DEGREE VIEW OF INDIVIDUAL TAXPAYERS
JULY 2020

A 360-degree view of the issues affecting individual taxpayers including how items should be reflected and declared on the ITR12.

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4 HOURS

OVERVIEW

Personal income tax is relevant to salaried employees and self-employed individuals. In this comprehensive session we unpack and explore some of the following key questions and issues:

- Who is required to submit an ITR12?
- When will a natural person be a provisional taxpayer?
- How should non-taxable receipts be treated?
- How should exempt receipts be treated?
- When can home office expenses be claimed and how should the deduction be calculated?
- And much more.

PRESENTER

Karen van Wyk
CA (SA)

Areas of expertise:
Karen has lectured at a postgraduate level at the University of Johannesburg, the University of the Witwatersrand and the University of Pretoria. She has also been extensively involved in various initiatives of SAIT and SAICA.

DATES

8 July
15 July
22 July

Time: 09:00–13:00

IMPORTANCE OF USING A REGISTERED TAX PRACTITIONER

▶ **CRAIG HIRST,** CEO of Trident Tax and Accounting Solutions

Why is it important for a taxpayer to use the services of a registered tax practitioner? What are the benefits to a taxpayer of having professional assistance rather than going it alone on eFiling? This article provides some answers.

"A tax practitioner's job is to provide taxpayers with reliable advice, detailed preparation of returns and assistance with SARS verification and audit processes."

There is a fine line between filing your own taxes and seeking a professional's help. A wrong move could lead to an inaccurate return and the possibility of interest and penalties being charged. The cost to then try and rectify the situation is often very high. Such a situation is avoidable if a suitably qualified and registered tax practitioner is consulted at the start of the filing process.

What is a registered tax practitioner?

If someone files a tax return for a fee on behalf of a taxpayer, that person needs to be a tax practitioner registered with SARS through a registered controlling body (RCB) in terms of the Tax Administration Act.

How are tax practitioners controlled in order to protect taxpayers?

RCBs are member organisations. Before a tax practitioner can obtain a level of membership in an RCB, the RCB will ensure a required level of education in the field of tax. Once membership is established, the tax practitioner will receive a tax practitioner number from SARS via the RCB.

Through a system of continuing professional development (CPD) a tax practitioner is obliged by their RCB to keep up to date with changes to the Income Tax Act and other tax

Acts and the tax filing process. In that way, the RCB and SARS ensure a continued level of education throughout the community of registered fee-earning tax practitioners.

A tax practitioner must abide by the disciplinary codes of their RCB and in this way their behaviour is controlled to protect the taxpaying public.

Why is it important to have a properly registered tax practitioner representing a taxpayer?

Registered tax practitioners will know how to comply with the Tax Administration Act and the Income Tax Act.

Some unscrupulous tax preparers claim fraudulent refunds in order to maximise their fees. This is often done without the taxpayer's knowledge or understanding and the taxpayer is left exposed to face the possible audit, penalties and interest on their own. Using a registered tax practitioner, acting in accordance with the ethical code of their RCB, protects the taxpayer against this abuse.

A registered tax practitioner is the perfect middle contact between SARS and taxpayers, which often saves time and resources in resolving issues.

What are the benefits of using a properly registered tax practitioner?

The Income Tax Act is very complex and it is often impossible for taxpayers to understand the Act properly. Keeping up to date with all the amendments, effective from different dates, presents another challenge. Taxpayers lack tax knowledge and an understanding of how tax laws are applied. In filing their own tax returns they risk incorrectly filed tax returns and, in a review or audit situation, poorly structured and handled disputes with SARS.

A tax practitioner's job is to provide taxpayers with reliable advice, detailed preparation of returns and assistance with SARS verification and audit processes. In practice, we see major value in saving time and ultimately money for a taxpayer in using a registered tax practitioner to direct the tax filing process and communication with SARS.

The goal of a taxpayer is to receive the correct tax assessment and to pay the correct amount of tax. By supplying the correct and complete information in the correct format through a registered tax practitioner, the taxpayer can ensure the maximum refund possible or the correct amount of tax to pay legally.

How do you know if someone is a registered tax practitioner?

Taxpayers need to ask tax practitioners the following questions before employing their services:

- What is your tax practitioner number at SARS?
- What is the name of your RCB?
- What is your membership number at the RCB?
- What are your qualifications in tax?
- What experience do you have in the specific area where tax help is needed?

Taxpayers can then call the RCB to check if the tax practitioner is properly registered with both the RCB and SARS.

Efficiency gains

In conclusion, the registration and control of registered tax practitioners has benefit not only for the taxpaying public but also for SARS. SARS gains efficiency in the deployment of their resources through the time saved in dealing with suitably qualified tax practitioners. Tax practitioners therefore play a vital and invaluable role in the taxpaying and tax collection system as a whole.

WHAT IS THE POINT OF AN IRP5?

30 minutes CPD

▶ **CARIEN VAN DIJK,** Advocate & Tax Director at The Supremacy Group

With the opening of the 2020 Tax Season creeping up on South Africans, some people are faced with these burning questions: "What is the point of an IRP5?" and "How do I go about using my IRP5 to complete the individual tax return?" Read on to find the answers.

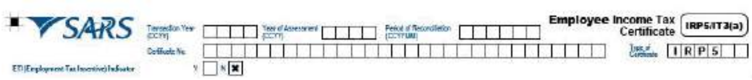
"An employer is obliged by law to issue IRP5 certificates to all its employees after payroll reports have been submitted to SARS (in the form of an EMP501)."

Getting to know the IRP5

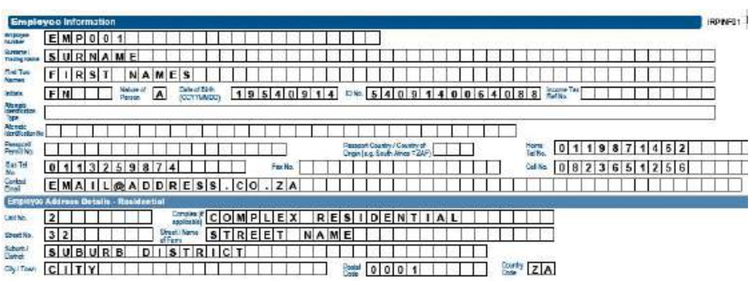
It is important to get introduced to the IRP5 certificate to understand how it works and the pitfalls to watch out for.

The IRP5 certificate is a summary of all the remuneration (including allowances and benefits) provided to an employee by an employer during a tax year. This will exclude amounts paid outside the payroll, for example, the reimbursement of a pure non-travel business expense that is paid to the employee via the general ledger.

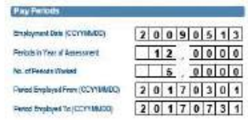
The following screenshots offer quick navigation guides to a general IRP5.


SARS
Employee Income Tax Certificate
IRP5/IT3(a)
Certificate No.
IRP5

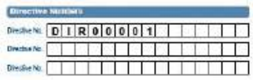
Certificate number is generated by the employer.


Employee Information
EMP001
SURNAME
FIRST NAMES
FN
A
19540914
5409140064088
0119871452
0113259874
0823651256
EMAIL@ADDRESS.CO.ZA
Employee Address Details - Residential
2
COMPLEX RESIDENTIAL
32
STREET NAME
SUBURB DISTRICT
CITY
0001
ZA

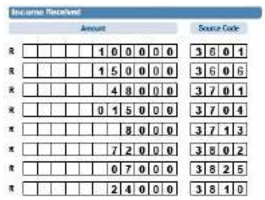
The employee information is entered by the employer. Information should be kept updated and accurate to avoid admin penalties from SARS. Taxpayers should therefore update their information with their employer and SARS.



This reflects the start date of employment and the period of employment at the specific employer in the relevant tax year.



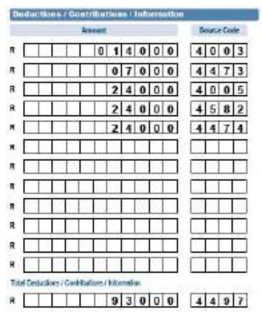
Directives are obtained to determine the tax on payments, such as gratuities, retrenchments, commission and retirement fund withdrawals.



Each income / allowance / benefit paid to the employee has its own unique source code determined by SARS in a BRS Guideline issued annually.

Source codes have specific requirements and trigger certain tax implications.

This section indicates the totals of all the remuneration earned and divides income into taxable and non-taxable.



This section indicates the employer and employee contributions, such as retirement funds and medical aid funds.

The specific source code will trigger allowable pre-tax deductions / tax credits.

In this section, the totals of PAYE and SDL are indicated.

The PAYE determined by a tax directive will be included under source code 4102 unless it relates to a lump sum benefit (source code 4115).

Medical tax credits are indicated separately.

Note that screenshots are for illustrative purposes only.

- An employer is obliged by law to issue IRP5 certificates to all its employees after payroll reports have been submitted to SARS (in the form of an EMP501 declaration). The information from the IRP5 will then be prepopulated when compiling an individual's ITR12 on eFiling. However, sometimes there are issues that arise in practice, which require caution. SARS has the right to hold a taxpayer (in this case an employee) liable for any outstanding tax debt or tax returns, regardless of the circumstances.

There are two common issues that arise: Information from the IRP5 is not prepopulated on eFiling or the IRP5 certificate has not been received by the employee from the employer.

The information from the IRP5 is not prepopulated on eFiling
This is mostly the result of non-submission or unsuccessful submission of an EMP501 by the employer. The employer's payroll practitioner needs to be informed to take the necessary steps to rectify. This must be done in time to ensure that submission can occur within the Tax Season.
Often, the demographic information reflected on the IRP5 and the information on the SARS systems are not the same (changes might have occurred since the previous assessment). SARS then cannot match enough information to prepopulate the ITR12.

The IRP5 prepopulates on eFiling, but no IRP5 certificate has physically been received by the employee from the employer
The submission of the EMP501 might have resulted in errors on the e@syFile system or the employer may be in the process of doing a resubmission to correct certain errors. Although the IRP5 is prepopulated on eFiling, SARS may still require verification by requesting submission of the IRP5 received from the employer. The payroll practitioner must again be notified to rectify the problem in time for submission before Tax Season ends. However, in the case where the employer is not able to provide the IRP5, it is advisable for the employee to provide SARS with an affidavit and to attempt to complete the tax return using payslips or bank statements as a method of declaring the income accordingly.

The IT3(a) certificate

The difference between an IRP5 and an IT3(a) is that the latter does not reflect a tax deduction and instead reflects a reason code as to why no PAYE was deducted. The IT3(a) is intended to summarise all payments made to deemed employees (in the tax sense and not necessarily in the labour law sense), to employees earning non-taxable remuneration or to other parties as indicated by SARS. An example of this would be individual contractors supplying services to a company. All payments to them must be declared to SARS via the IT3(a). It is therefore evident that an employment relationship is not always required. A reporting responsibility may be placed by SARS on the company or employer to enable SARS to obtain information on earnings by such persons for audit and other purposes.

Numerous IRP5s

Circumstances can lead to persons receiving more than one IRP5, for example, when they have worked for more than one employer in the same tax year. Why would this ever be a dreadful situation? Mainly because the PAYE calculated and deducted by each respective employer is based on the remuneration paid by them separately. This could lead to insufficient PAYE deducted and a shortfall due on assessment.

When an employer calculates the PAYE monthly, it uses the progressive tax table and determines the relevant tax rate on the remuneration it pays. Once the employee moves to a second employer, the PAYE calculated by that employer may be at a different tax rate. During assessment, SARS will combine all the income received by the taxpayer, calculate the PAYE and deduct the PAYE already paid. If there is a shortfall, it will result in the employee being liable to pay additional tax to SARS on assessment.

This problem can be managed upfront by requesting the new employer to increase the PAYE deduction monthly or by keeping a monthly provision to cover the eventual shortfall.

Source codes and the ITR12

As mentioned in the first section, certain source codes (and answers provided on your questionnaire in the first part of the ITR12) will trigger sections for completion, and possible submission of documents for verification purposes. It is therefore imperative that the contents of your IRP5 be reviewed before completing the ITR12 to ensure that the IRP5 accurately indicates the remuneration you received and that the correct source codes were used accordingly.

The most common source codes that will trigger additional sections for completion include the following:

SOURCE CODE	DESCRIPTION
3651	Income earned whilst working abroad
3810/4005	Medical aid contributions
4006	Retirement annuity contributions (on payroll)
3701	Travel allowance
3702/3703	Reimbursement for travel
3704/3715	Subsistence allowance (local or foreign)

Below is an indication of the documentation that SARS might request for verification or audit purposes:

- IRP5 / IT3(a)
- Medical aid certificate
- Retirement annuity certificate
- Investment income certificate / IT3(b)
- Completed logbook
- Other reports to confirm rental or
- trade income or expenses claimed

In light of the COVID-19 disaster relief, any payments that you received as an employee from the disaster relief fund (paid to you by your employer) will be reflected on your IRP5 certificate under code 3724. Although this amount will be exempt from PAYE, it will be subject to normal tax. Therefore, should it be above the threshold you will have to pay tax on this amount when submitting your tax return.

After submission

After submission of the ITR12 to SARS an IT34 assessment will be issued which will indicate whether an amount of tax is payable to SARS or a refund is due to the taxpayer. Ensure that your personal details registered with SARS are accurate and up to date, as failure to do so may lead to SARS imposing penalties or withholding refund payouts. Any disputes arising afterwards can be submitted for resolution within a prescribed timeframe.

THE TAX CONSEQUENCES OF ADDITIONAL INCOME

15 minutes CPD

▶ **MAYA NIKOLOVA,** Managing Partner at Tax Advise

Our article sets out the consequences for personal income tax of earning a second income. It also touches on the need for taxpayers to pay all taxes due at a time when revenue is needed to fund much needed government services.

South African income tax is built on a progressive tax basis, meaning 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, and adversely affects higher income groups. Progressive tax is typically applied to personal income tax.

Taxable income is calculated by taking into consideration 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 (PAYE) on behalf of employees and must pay the amounts so deducted to 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 if, 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 income 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 aforementioned 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. Trade is defined in the Income Tax Act and "includes every profession, trade, business, employment, calling, occupation or venture". 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 income from a trade.

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 made calls to clients; travel costs; computer, printing, stationery 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 very important 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 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. That is, for example, only cell phone calls made to the respective clients may be claimed, not the total cell phone bill for a billing period. The same would apply to other claimable deductions.

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

The following example illustrates the practical application of the above:

REMUNERATION INCOME	R400 000
Income from trade	R165 000
Allowable deductions	- **R21 150**
Computer expenses: R3 250	
Printing and stationery: R2 800	
Telephone costs: R4 600	
Travel expenses: R10 500	
TOTAL TAXABLE INCOME	**R543 850**
Normal tax payable	R129 441*
Less: Tax paid (PAYE withheld by employer)	R78 819*
ADDITIONAL TAX TO BE PAID ON ASSESSMENT	**R50 621**

** Income tax rates for 2020 tax year*

In the said example, the taxpayer, pursuant to receiving the additional gross income from trade, escalated from a 31% tax bracket, relating to the remuneration income only, to 39%. However, the tax deductible expenses brought the taxable income to the 36% income tax bracket, on which total tax liability is calculated. The taxpayer must pay additional tax on assessment, as the PAYE deducted by the employer is insufficient to cover the full tax liability of the taxpayer.

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

How to avoid penalties and interest?

To avoid a situation where penalties and interest are imposed by SARS, as discussed above, 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 2 of the Fourth Schedule to the Income Tax Act allows a resident taxpayer to arrange with the respective employer to deduct additional PAYE. This option is, however, mostly suited to employees who earn a second income that 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 the taxpayer's second income is income from trade and not from remuneration, then he or she is a provisional taxpayer, per definition, and is obliged to be registered as such."*

If the taxpayer's second income is income from trade and not from remuneration, then he or she is a provisional taxpayer, per definition, and is 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.

The Fourth Schedule to the Income Tax Act also requires taxpayers to estimate their taxable income in a specific manner and provides for penalties for underpayment on provisional tax as a result of underestimation. It is thus vital that taxpayers with a second income, such as consultancy or professional services rendered, 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 Form Wizard section of the ITR12 return, which contains essential information to create the taxpayer's personal income tax return. This page allows taxpayers to personalise their ITR12 returns in order 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 and registered tax practitioner, who will be able to provide quality tax services and advise on all tax-related matters. Tax practitioners' fees are also deductible for income tax purposes in respect of taxpayers who earn income from trade.

Getting a supplementary income in today's debilitating times of COVID-19 is considered fortunate, as many people lose their jobs and primary sources of income because of the strained economic conditions worldwide.

We have to stay tax compliant and continue to pay our taxes, as our Government needs the tax revenue to provide much necessary relief to businesses and individuals. More than ever before, paying our taxes is ethically sustainable, especially in the context of the present-day pandemic and financial challenges.

BONUSES, OVERTIME & OTHER SPECIAL PAYMENTS

15 minutes CPD

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

We provide clarity on how to treat 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 only made after year-end since these 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 within 14 days after employment ceased (in terms of paragraph 13(2)(b) of the Fourth Schedule to the Act), which is usually a date prior to the date on which the employer is able to 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 practically.

The purpose of this article is to take a closer look at and explain these practicalities. The working of section 7B is explained, as well as the reason behind the special timing rule for variable remuneration items. In addition, the items that form part of "variable remuneration", as defined, are indicated and the items that were recently added to this definition are highlighted. Hereafter, the article discusses how these items need to be treated in order 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 their payment. This means that employees will only be taxed on variable remuneration once it is actually received, while employers will only qualify for a deduction of variable remuneration expenditure once it is actually paid. Thus, the special timing rule contained in section 7B deems variable remuneration items to accrue and to be incurred only once they are actually 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 remuneration is generally received by an employee from an employer in respect of services rendered (like 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 example, in February of the 2020 tax year) from the month in which it is actually paid by the employer (for example, in March of the 2021 tax year). This means that, in the absence of the special timing rule, a mismatch would occur between the tax period during which accrual of such bonus takes place (i.e., during the 2020 tax year) and the tax period in which it was actually paid (i.e., during the 2021 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 2020 tax year has ended. The mismatch created 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 was introduced to match accrual and incurral with payment. This will ensure that there is no mismatch between the time period of accrual of an amount and the payment of employees' tax (and the subsequent issuing of IRP5 certificates) for various forms of variable remuneration items.

What qualifies as variable remuneration?

The definition of "variable remuneration" included:

- Overtime pay, bonuses or commission
- Fixed travel allowances or advances where a record of expenditure incurred was not kept (in terms of section 8(1)(b)(ii))
- Leave pay

However, the scope of items included in the definition of "variable remuneration" was very limited. Some remuneration items with variable remuneration characteristics did not form part of "variable remuneration", as defined, which means that these items were still exposed to the tax risk of timing differences. Consequently, the limited definition was broadened to also include the following (effective from 1 March 2020):

- Reimbursive travel allowances or advances qualifying for the simplified method (in terms of section 8(1)(b)(iii)). A reimbursive travel allowance is paid when 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 that are 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 that are 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 on the employer's instruction, where proof of costs incurred must be furnished to the employer (in terms of section 8(1)(a)(ii)). An example is an employee who is required to buy stationery or coffee for the work place, with the employer then reimbursing such employee for expenditure incurred.

Practical implications for employers and employees

It is important to note that section 8(1)(b)(ii) and (iii) of the Income Tax Act has also been amended in order to match the actual business kilometres travelled by an employee to when the relevant travel allowance or advance is actually paid. This means that if a travel allowance or advance is received in March 2021 as consideration for business kilometres actually travelled during February 2021, those kilometres will be deemed to have been travelled only during March 2021. Therefore, it would no longer be correct for employees to keep a logbook for a fixed period of 1 March to end of February each year. Without this amendment an employee would not have been able to claim the business kilometres travelled in February 2021 against his travel allowance or advance received in March 2021.

> *"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)."*

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 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. This will ensure that there is no mismatch between the two during the EMP501 reconciliation process. A mismatch would result in penalties and interest being automatically raised by the SARS system due to the under-payment 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 amendments made to the definition of "variable remuneration" to ensure that employees' tax is withheld and IRP5 certificates are correctly issued for variable remuneration 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.

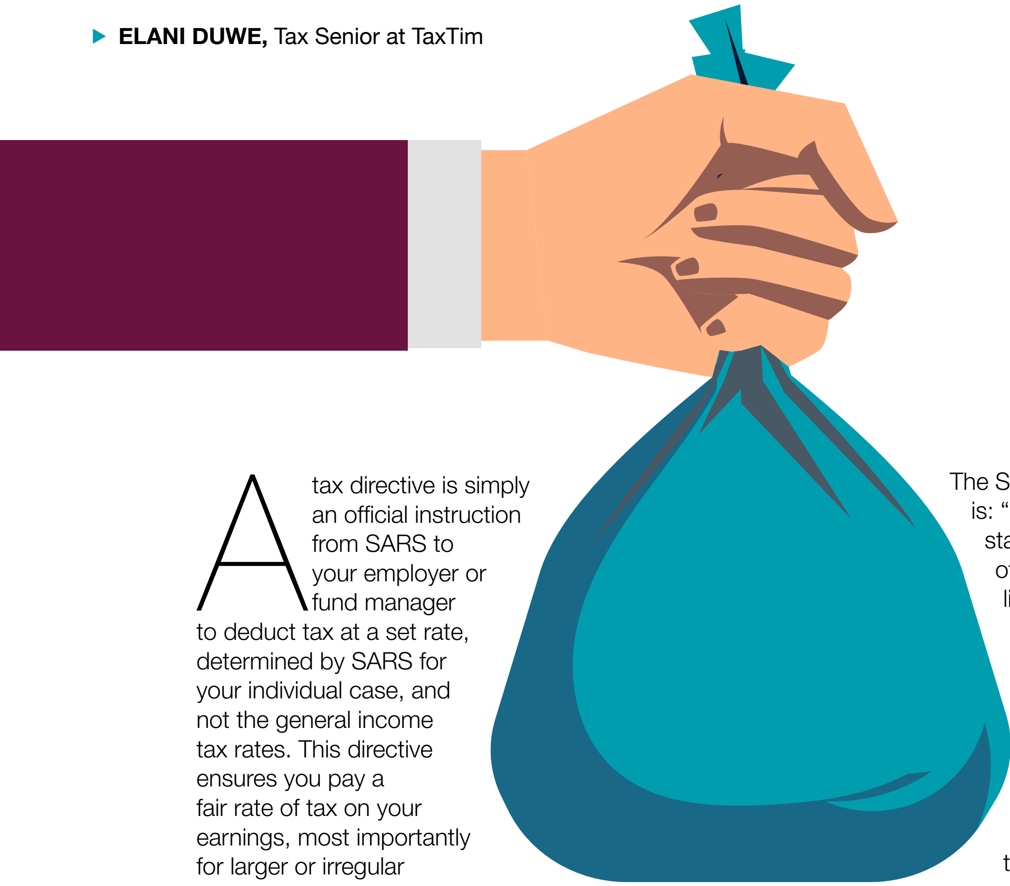
Employees must also take note of how a logbook needs to be kept and business kilometres need to be declared going forward. One must make sure to match and claim the business kilometres travelled to the tax year in which the related travel allowance or advance was actually received. If this is not done, an employee might run the risk of forfeiting a deduction, resulting in a higher tax liability.

WHAT IS A TAX DIRECTIVE?

15 minutes CPD

▶ **ELANI DUWE,** Tax 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 the general income tax rates. This directive ensures you pay a fair rate of tax on your earnings, most importantly for larger or irregular payments.

An approved tax directive is only valid for the tax year or period that was applied for. It is also important to note that the tax calculation according to the tax directive is only an estimate according to the information SARS has on the system. It is possible that the taxpayer may receive a refund or still need to pay in on 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 take a 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
- "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 and personal service companies and trusts. It instructs tax 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.

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

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.

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

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

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
- Amounts in terms of paragraph (kk) of the proviso to section (10)(1)k)(l) dividends

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)
- Provident fund deemed retirement
- Transfer on retirement under paragraph 2(1)(c) of the Second Schedule

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

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 that is a member
- Divorce – transfer
- Divorce – spouse that 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 "gross income"

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
- Withdrawal due to visa expiry

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
- Next generation annuitant commutation

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

Recognition of transfer between approved funds

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

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).

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 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.

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PRESENTER

Mark Andrew Korten
BCom, LLB, H Dip Tax

Areas of expertise:
Independent legal advisor on financial, tax and commercial issues relating to cross-border transactions.

DATES

8 July 2020

Time: 15:00–17:00

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EMPLOYMENT TERMINATION BENEFITS

15 minutes CPD

Lump sum payments upon termination of employment are subject to special tax exemptions and rates. Our article explores different scenarios.

▶ **CLAIRE GAUL,** Director at Fairbridges Wertheim Becker

Employees who receive lump sum payments when their employment is terminated must disclose to SARS the amount of the receipts. An employer must obtain an income tax directive from SARS that indicates the amount of income tax to be deducted from the lump sum amount payable to the employee on termination of employment. The employer must also provide the (former) employee with an IRP5 reflecting these amounts. If this process is followed, the relevant information will generally be pre-populated in an individual's income tax return. It is, however, imperative that employees procure their IRP5s from their employers because the disclosure obligation remains with the individual.

How much goes to SARS?

Employees facing termination of employment are naturally keen to understand the taxation of the lump sum amounts payable to them. These payments (depending on the circumstances of termination of employment) may include both contractual or statutory amounts (such as accrued leave or severance payments upon retrenchment) and so-called gratuitous payments made to an employee on an agreed basis as compensation for loss of employment.

Applying for a tax directive

Employers and employees are often uncertain what employees' tax deductions are required to be made from such lump sum payments and what processes must be followed to determine the amounts to be deducted. As stated above, the Income Tax Act provides that an employer intending to make any lump sum payment to an employee upon termination of employment must first ascertain from SARS the amount of employees' tax to be deducted from the lump sum. This is done by applying for a tax directive from SARS (in the prescribed form IRP3(a)).

Special tax rates for severance payments

Special tax rates, based on the retirement lump sum tax table, apply specifically to severance payments made to an employee.

Currently, the first R500 000 is not subject to tax, the next R200 000 is taxed at 18%, the subsequent R350 000 is taxed at 27%, and all amounts above R1 050 000 are taxed at 36%.

In which circumstances may an employee lawfully claim an entitlement to the tax benefit specified above? Clearly, from an employment law perspective, the benefit will apply to severance amounts paid to employees on account of their retrenchment. We are often asked, however, whether other types of lump sum payments may qualify for the same benefit? This situation arises, for example, when the employer and the employee are negotiating a mutual termination of employment and one of the benefits sought by the employee during negotiations is that the payment be characterised as a "severance" payment for purposes of employees' tax deductions. The short answer is that employers are not permitted to misconstrue the nature of the payments in order to assist employees in obtaining tax relief.

To qualify for the severance tax rate, the employee's employment must have been terminated because:

- The employer stops or is intending to stop operations
- The employer embarks on a retrenchment exercise in order to reduce its headcount
- The employee has become incapacitated due to sickness, accident or injury

Any lump sum payment made to an employee who has attained the age of 55 years at termination of employment (irrespective of the underlying reason for the payment) will also be subject to the tax concessions contained in the retirement tax table.

> *"An employee who is retrenched and receives this benefit cannot claim it again in any subsequent retrenchment by another employer."*

The tax benefit is, however, only available to employees once. An employee who is retrenched and receives this benefit cannot claim it again in any subsequent retrenchment by another employer. Notably, an employee who holds or held more than 5% of the issued share capital or member's interest in the employer does not qualify for the retrenchment concession.

What about voluntary severance?

Related to the above, another question that we are often asked is whether a "voluntary severance" payment will also qualify for the special tax rate? There is a view that if a severance payment is made pursuant to an agreement between an employer and an employee, the payment does not qualify for the tax benefit. This is because the benefit only contemplates a scenario where the employee is forced to leave because of the employer's operational requirements.

Whilst each set of circumstances is different (and the facts surrounding the termination of employment will have a direct bearing), in our view, the tax benefit may be available to employees who conclude voluntary severance agreements with their employers. This only applies if such agreements are concluded after the employer has already made a decision, in principle, to implement retrenchments. During this process, an employee may choose to accept a voluntary severance and conclude a voluntary severance agreement with the employer. Then there is no reason, in our view, that the severance payment made to the employee should not receive the same treatment as ordinary severance payments made pursuant to a compulsory retrenchment exercise.

Permanent incapacity

Finally, apart from a retrenchment scenario, the income tax concession described above will also apply where the termination of an employee's employment is due to permanent incapacity either through mental or physical illness or injury.

DISTINGUISHING BETWEEN **INDEPENDENT CONTRACTORS & EMPLOYEES**

45 minutes CPD

▶ **KOBUS MULLER,** Professional Tax Specialist (SA) and Consultant at Muller Webber & Wilsnach Accountants

For tax and legal purposes, it is important to distinguish between employees and independent contractors. Let us demystify the 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 director and employee, and rendered the same service under the same conditions to the ex-employer. Before rebates, the employee paid R45 000 in tax on gross remuneration of R100 000 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 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 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, and will not deal with companies, non-residents or labour brokers.

To fully understand the extent of this topic, one must first read and understand some of the definitions in the Income Tax Act.

"Employee", "employer" and "remuneration"

It is the responsibility of the employer 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.

> *"There is a big difference between the tax treatment of independent contractors that prevailed before 1999 and what is allowed in 2020."*

- 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.

"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 which 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 qualifies as 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, while 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 would 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

In this day and age, 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 above rules were made for the current pandemic, even though many employees did work from home. The question can be asked if this 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 and 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 2020. 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.

TAXATION OF NON-EXECUTIVE DIRECTORS

15 minutes CPD

FAYE NAIR, Senior VAT Consultant at BDO Tax Services

The taxation of non-executive directors saw some changes when two binding general rulings came into effect in June 2017. Our article looks at the current situation and highlights some practical problems.

On 10 February 2017, SARS issued two binding general rulings (BGRs 40 and 41) expressing its view in respect of the employees' tax (PAYE) and VAT consequences of income earned by non-executive directors. The rulings have been effective from 1 June 2017. SARS issued BGRs 40 and 41 to provide clarity and bring conclusion to the much debated and often conflicting views surrounding whether non-executive director fees were subject to PAYE, VAT or both.

The current situation

BGRs 40 and 41 essentially culminated in the following outcomes:

- Non-executive directors are not common law employees nor are they deemed employees under the Income Tax Act.
- Consequently, non-executive director fees earned by South African tax-resident non-executive directors do not constitute remuneration subject to PAYE, and the limitation of income tax deductions under section 23(m) of the Income Tax Act does not apply. Non-executive director fees are, however, still subject to normal tax.
- Non-resident non-executive directors who serve on boards of tax-resident companies are not affected by the rulings and their non-executive director fees will remain subject to PAYE.
- Non-resident non-executive directors are also subject to the income tax deduction limitations under section 23(m) of the Income Tax Act.
- Both resident and non-resident non-executive directors are independent contractors under the VAT Act
- Consequently, if any non-executive director physically performs non-executive director services in South Africa or through a fixed or permanent place in South Africa on a continuous or regular basis, that non-executive director is regarded as carrying on an "enterprise" for VAT purposes.
- As a result, a non-executive director who was entitled to receive non-executive director fees in excess of R1 million after 1 June 2017 became liable to register as a VAT vendor from the date of appointment or re-appointment, levy VAT on those non-executive director fees and comply with other administrative requirements under the VAT Act.

Plight of the non-resident non-executive director

BGRs 40 and 41 have been effective for three years and a number of non-executive directors have duly registered as vendors without issue. However, enforcing the rulings on non-resident non-executive directors remains a challenge.

It has been argued that the position of non-resident non-executive directors is punitive in comparison to their resident counterparts as non-resident non-executive director fees remain under the ambit of PAYE and these non-executive directors are, additionally, required to determine whether they have a VAT registration liability in South Africa. If so, they must register and bear the costs of all the ongoing VAT compliance associated with being a vendor in South Africa.

It is not always clear whether a non-resident non-executive director, who may visit South Africa as infrequently as once a year to attend a board meeting, will nevertheless be pulled into the South African VAT net. In the context of the full tenure of their appointment, even attendance of a single meeting may constitute supplies of non-executive director services for consideration partly in South Africa on a regular basis. In the absence of place of supply rules, there is certainly room for interpretation.

In some instances, non-resident non-executive directors have taken a short-term view and followed the path of least resistance by ignoring their potential liability to register for VAT — potentially opening themselves up to significant VAT exposure later down the line. Others have bitten the bullet and registered, paying for in-country tax advice and ongoing VAT compliance.

It is not clear whether National Treasury has considered the punitive impact on non-resident non-executive directors in light of its negative impact on the freedom of companies to appoint foreign resources for the objective steering of a board of directors.

Uncertainty may also arise in respect of South African non-executive directors who serve on boards of foreign companies and who physically perform a portion of their activities in South Africa. Non-executive director fees of this nature may be eligible for zero rating, but the burden of registering and submitting VAT returns will remain.

VAT compliance related issues

Other points of contention relating to non-executive directors arise in respect of input tax.

The general principles of claiming VAT incurred as input tax have not changed.

- Input tax is only deducted insofar as the supplies are used for the purposes of making taxable supplies in the course or furtherance of the enterprise.
- No VAT may be deducted when goods or services are acquired for private purposes, exempt supplies or other non-taxable purposes.
- All input tax claims must be supported by prescribed documentation.

Scarce input tax claims

In practice, non-executive directors may have very few expenses on which VAT incurred will qualify for deduction as input tax. In its quick reference guide, SARS suggests the following expenses, on which VAT has been incurred, that may qualify as input tax:

- Water, electricity and telephone charges
- Administrative overheads, such as audit and accounting fees
- Marketing and advertising expenditure
- Movable assets, such as office furniture, computer equipment and cell phones
- Rental charges for office space
- Fees charged by VAT registered consultants and other independent contractors (but not salaries and wages of employees)
- Repairs to a motor vehicle
- Travel expenses for business purposes, for example, an air ticket

The following are typical examples of expenses incurred on which input tax may generally not be deducted by a non-executive director:

- Acquisition or rental of a motor vehicle
- Accommodation in a hotel or business lunches, including for business purposes, except if required to be away from home for more than one night
- Personal computer used by the family
- Travel expenses for private purposes
- Membership fees or subscriptions of clubs, associations or societies of a sporting, social or recreational nature — not including professional membership fees

Most non-executive directors will not incur many expenses in the course of fulfilling their roles, resulting in VAT liabilities equating output tax charged on non-executive director fees, which may in any event be claimed back as input tax by the company. The fisc will not have increased its revenue unless most VAT-registered companies apportion their input tax claims.

Change-in-use adjustments and apportionment issues

Additional issues arise in respect of change-in-use adjustments. Where an expense has been incurred wholly for the purpose of making taxable non-executive director supplies, the associated VAT may be claimed as input tax in full. However, where the same has been incurred partly for personal or non-taxable purposes, the VAT incurred must be apportioned.

The only pre-approved method that may be used to apportion VAT incurred for mixed purposes without specific prior written approval from the Commissioner is the turnover-based method, which SARS accepts will generally not be appropriate for non-executive directors. Accordingly, non-executive directors have been advised to apply for a VAT ruling in order to obtain approval to use an alternative method of apportionment.

Where a non-executive director has claimed input tax in respect of an asset used partly for taxable and non-taxable purposes and subsequently disposes thereof, VAT must be levied on the full consideration of that sale. In instances where a non-executive director may have suitably equipped a so-called "home office" in their residence and claimed income tax deductions and the related VAT incurred as input tax, an onerous tax exercise will arise on the sale of their home.

The primary residence exclusion of R2 million will only apply to the portion of proceeds that can be attributed to use as the ordinary residence, which may result in a taxable capital gain on the portion of the property used as a home office. From a VAT perspective, if a non-executive director purchased a property whilst registered as a vendor and then claimed any portion of the VAT incurred thereon as input tax in the course of his or her non-executive director enterprise activities, VAT may need to be levied on the subsequent sale of that property.

Since the global pandemic of COVID-19 has changed the way we all work, it is expected that the costs associated with working remotely (e.g., telecommunication services) will present an opportunity for registered non-executive directors to claim slightly higher input tax claims. It may not make up for the significant tax cost borne over the past three years, but it is nevertheless a small reprieve.

It is clear that non-executive directors do not find themselves in an enviable tax position since the issuance of BGRs 40 and 41. Being required to register as vendors and account for output tax on non-executive director fees is the easiest step in compliance. However, limited eligibility of input tax claims, applying for apportionment rulings and a significantly increased tax compliance burden appear to be an overburdening of a single class of taxpayers.

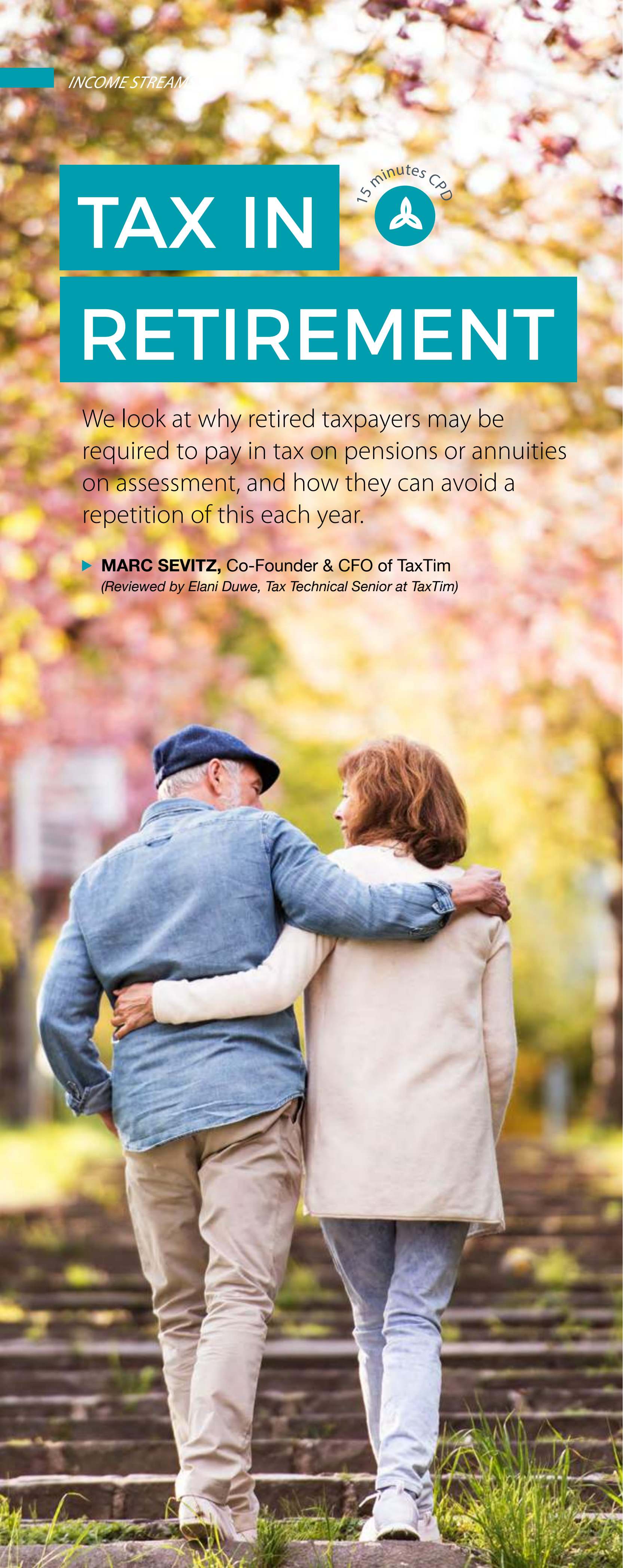
It is not clear whether SARS has seen an increase in VAT registrations of non-executive directors and whether this has translated to significantly higher net revenue to the fisc. At any rate, it cannot be denied that any increase is certainly at the cost of a significantly burdened class of taxpayers — even considering the slight reprieve of pandemic-related increases in input tax claims.

TAX IN RETIREMENT

15 minutes CPD

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.

MARC SEVITZ, Co-Founder & CFO of TaxTim
(Reviewed by Elani Duwe, Tax Technical Senior at TaxTim)



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 no longer receive monthly payslips which show PAYE deductions. When they are asked to settle an amount with SARS every year, as is increasingly happening, it is usually an unexpected financial shock. Pensioners who find themselves in this situation are often forced to pay over money they thought belonged to them and are at a loss as to why this happens.

Before we go on to explain why this occurs, let's just 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). 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 and 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.

It is the monthly pension or annuity that the taxpayer receives on retirement that we will explore in more detail below.

Pensioners often receive several annuities, pensions or some other form of monthly income from their previous employer or 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 actually find themselves having earned more than the tax-free threshold and therefore tax is owed to SARS. Such taxpayers then find themselves having to suddenly pay SARS on assessment. Many of these taxpayers, relying on their monthly income, do not have the money to pay the tax owed and thus find themselves in financial trouble.

> "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."

Example of multiple annuities resulting in tax owed

Taxpayer A is 67 years of age 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 tax threshold
PENSION FUND	R3 000	R36 000	R0	Under tax threshold
LIVING ANNUITY	R4 000	R48 000	R0	Under tax threshold
TOTAL INCOME	**R12 000**	**R144 000**	**R0**	
TAX DUE ON ASSESSMENT		R144 000	R3 906	

The entity behind each of these funds does not withhold any tax to pay it over to SARS. This is because each fund is unaware that the taxpayer also receives other amounts and assumes that the annuity it pays 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., R122 300.

Thus, for the tax year 2020, using the tax tables, R3 906 in tax should be paid on the total annual income.

As a result, when Taxpayer A files her tax return for the tax year ended 29 February 2020, she is required to pay tax of R3 906. At this stage, she is unsure as to 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 COUPLES MARRIED IN COMMUNITY OF PROPERTY

▶ **SALOME SMIT,** Associate Director: Global Mobility Services and Employment Tax Advisory at KPMG &
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.

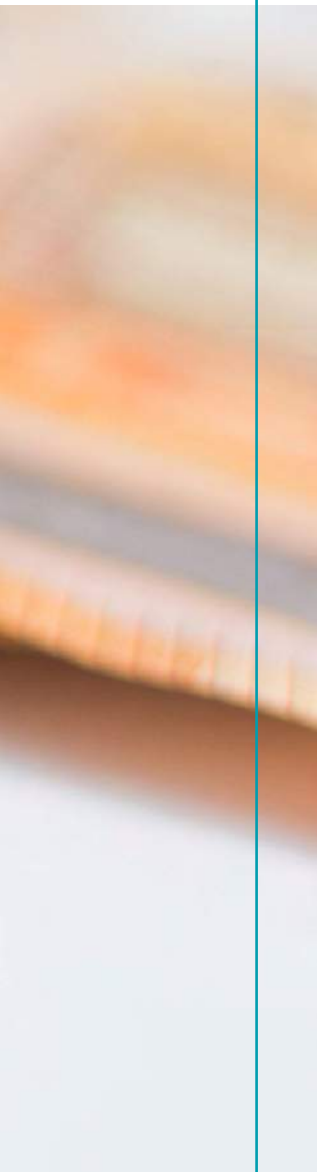
The assets and liabilities of a couple married in community of property are considered to be a joint estate in which each spouse holds a 50% interest. Any income earned from assets held in the joint estate accrues equally to each spouse. However, there are circumstances where this will not apply.

Assets, as well as income earned from such assets, can be specifically 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

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

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 carry on 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 any other relevant factor.

Although the letting of fixed property is included in the definition of "trade" in section 1 of the Act, it is for the purposes of section 7(2A) excluded from the rule regarding the income earned from the carrying on of a trade and is considered to be 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:

- 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)
- 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)
- 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 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 are 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 in excess of 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% and the excess is taxed at 25%.

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

For example, Spouse A makes a donation of R200 000 of property which forms part of the joint estate. Spouse A and Spouse B are each deemed to have made a donation of 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:

- The return must reflect that they are married in community of property. This is entered under "Marital Status" when populating the return.
- The personal details of the other spouse (initials, ID/passport number) must be reflected.
- 100% 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.

15 minutes CPD

MEDICAL EXPENSE CREDITS

▶ **NICCI COURTNEY-CLARKE,** Tax Senior 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
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. The main member as well as the first dependant on the medical aid will receive a monthly tax credit of R310 (for the 2020 tax year) and any additional dependants will receive a monthly tax credit of R209 (for the 2020 tax year).

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
2. Excess medical aid contributions

Out-of-pocket medical expenses are expenses you had to pay that were not claimed from the medical aid, but 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 it is supplied by a nursing agency
- Midwife
- Prescription medicine

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 to use 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 contributes R50 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 2020 tax year will be as follows:

Medical scheme fees tax credit

(R310 + R310 + R209 + R209) x 12 = R12 456

Additional medical expenses tax credit

Excess medical aid contributions:

R50 000 - (R12 456 x 4) = R176

Out-of-pocket expenses:

R36 000 - (R200 000 x 7.5%) = R21 000

Additional medical expenses tax credit:

(R176 + R21 000) x 25% = R5 294

Total medical credit: R12 456 + R5 294 = R17 750

Example 2

Jane is 68 years old and 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 2020 tax year will be as follows:

Medical schemes fees tax credit

R310 x 12 = R3 720

Additional medical expenses tax credit

Excess medical aid contributions:

R24 500 - (3 x R3 720) = R13 340

Out-of-pocket expenses:

33% x (R13 340 + R40 000) = R17 762

Total medical credit: R3 720 + R17 762 = R21 482

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 the medical tax credit disallowed, which will result in you having a whole lot more tax to pay.

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

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 (showing you made the contributions directly to the medical aid) as well as 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 of your medical invoices and receipts as backup.

How travel allowances work

60 minutes CPD

▶ **THAMSANQA MSIZA,** Head of Individual Tax Returns at Tax Consulting South Africa &
JEAN-LOUIS NEL, Tax Attorney at Tax Consulting South Africa

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 not being able to travel during the COVID-19 lockdown period.

COVID-19 has far-reaching effects for the South African taxpayer and, unbeknown to many, may be silently increasing their tax liability for the 2021 year of assessment. There is a causal link between travel allowances (and the same applies to company vehicles) received by employees in the current tax year and for which business travel was not possible. In this article, we revisit the general taxing principles of a travel allowance and reimbursement of travel expenses claims, as well as consider how COVID-19 may increase the tax burden of an employee.

The general taxing principles of a travel allowance and a reimbursive travel allowance

Travel allowance

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)). In summary, private travel is taxable and business travel is not taxable. Interestingly, the term "travel", whether for business or private, refers to travel by "an engine powered road going vehicle", as contained in SARS Interpretation Note 14.

The SARS External Guide for Employers in Respect of Allowances specifically states that:

> *"A travel allowance is any allowance paid or advance given to an employee in respect of travelling expenses for business purposes. Any allowance or advance in respect of travelling expenses not to have been expended on business travelling … shall be deemed not to have been actually expended on travelling on business.*
>
> *Where the employer is satisfied that at least 80% of the travel appertains to business mileage then only 20% of the allowance is subject to the deduction of employees' tax. Should this not be the case then the allowance should be taxed at 80% on the payroll."*

There are currently only two inclusion percentages that should be applied on the payroll, namely the 80% or 20%. Since the release of the 2019 SARS BRS Change – Patch Phase 3, it should be noted that the 100% inclusion rate is no longer applicable and should therefore not be implemented on payroll.

To explain this by way of a practical illustration:

- Should an employee incur 80% or more on business mileage per annum, the allowance should be taxed at 20%, i.e., where it is proven that 20% or less of the total mileage will be attributed to private use.
- Should an employee incur less than 80% business mileage per annum, irrespective of what that amount is, the allowance should be taxed at 80%, i.e., where it is proven that more than 20% the total mileage is attributed to private use.

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 R3.98 per kilometre from 1 March 2020 – 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 the employee's PAYE liability will increase which 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 R3.98 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. This means one's opinion is only valid once one has done the actual computation on what gives the tax optimal outcome.

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.

On 5 May 2020, the Commissioner for SARS gave taxpayers valuable insight into what can be expected in the coming months in light of COVID-19. Although not stated expressly, with a grim outlook on the decrease in revenue collection, SARS will look to extract every cent possible from the tax base. Building on SARS' 2019 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 the taxpayer own the vehicle or motorcycle?

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 vehicle in question should be owned by the employee. Section 8 of the Income Tax Act does not limit nor does it disallow the claim against the travel allowance in this instance. Obviously, this can lead to an enquiry by the SARS auditor, perhaps to check that no-one else is claiming on the same vehicle, in which case there would be some questions to answer.

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 when 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 on the latter.

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 so far as it is expended on business travel.

"Maintaining a logbook can be an administrative burden on the taxpayer. Similarly, a vague travel logbook may add to a SARS auditor's already complex process of verifying or assessing a taxpayer's travel claim."

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 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 Income Tax 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 through keeping a logbook and recording the necessary information related to business travel (see

SARS IN14, paragraph 5.4.2). SARS has provided an acceptable format. According to the *SARS eLogbook Guide for 2019/2020* 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)

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 Guide for 2020/2021* continues 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 employee during the same period will also be considered as valid business kilometres. This 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.

1. 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 R595 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 2020 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.

2. 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. 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 (as per the SARS eLogbook for 2019/2020). Figures below are relevant for a vehicle fitting into the R255 0001 to R340 000 cost bracket.

Fuel costs per kilometre	*R1.248*
Maintenance costs per kilometre	*R0.519*
Fixed costs component	*R2.896 (R92 683 ÷ 32 000 km)*
Total cost per kilometre	***R4.663***

In using this method, Mr X would be able to claim R37 304 (8 000 km x R4.663 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.

COVID-19 and travel allowances

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, under the levels of restriction. Consequently, employees will be required to take extra care in preparing their logbooks.

In determining the taxing rate of the travel allowance – that is whether taxes should be withheld on 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 2021 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 2021 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 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 2021 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.

In addition, it is best practice that the employer's resolution to tax more of the allowance should 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 R595 000 limit for wear-and-tear and finance costs per section 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), and 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.

Key take-aways

- Maintaining an accurate logbook remains imperative. For verifications and audits on the 2020 tax returns, it appears that SARS will look to build on the stance adopted during 2019, 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 under the levels of restriction.
- Similarly, in light of the COVID-19 travel restrictions, 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 themself more efficient come 2021 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 COVID-19 restrictions, the employer should consider adjusting their tax withholding strategy to align to 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. Conversely, failure by the employer to withhold the correct employees' tax does not absolve the employee from a tax liability.

15 minutes CP

CHOOSING BETWEEN A COMPANY CAR & TRAVEL ALLOWANCE

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. These include things like 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.

In simple terms, an employee benefit is any favourable treatment an employee gets from the employer as a reward for 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 this value is calculated has changed over the years, but for 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 bought the vehicle, the determined value is the purchase price, including VAT.
- If the employer 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 that the employee can choose from, 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 was 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 has been 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, and 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, then employees' 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, an employee can claim a tax deduction for the portion that the car was used for business purposes. That is calculated by reducing the fringe benefit in the same proportion as business kilometres travelled to the total distance travelled.

Calculation
Assume 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).

"If you do have a choice, it is best to ask your employer to calculate different scenarios for you so that you can make an informed decision."

Note that you can only claim a deduction if you kept a detailed logbook, showing (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, and 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. That all 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, a company car is almost always better. However, this is not always the case, and 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 since 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, 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 crisis, open conversations are crucial.

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CLAIRE ABRAHAM, Senior Manager: Employees Tax & Global Mobility 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 find out.

If you are an employer who is reimbursing employees for business travel, or granting a travel allowance, have you considered how much it is actually costing you? In this article we look into the financial impact of a travel allowance and travel reimbursement on employers. In order 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 around on your business 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 incur on your behalf after the fact or to pay an allowance on a monthly basis or a combination of the two. There is also the option of a company car, which we will not go into in this article. Garage cards are also discussed later on in the article.

In practice, we often see that employers will, as a matter of course, reimburse employees for business travel and many also give the employee the 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 means 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 a travel allowance really for?

According to Interpretation Note 14, issued by the Legal and Policy Division of SARS, an allowance is considered by SARS 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 the use of their private vehicle for business purposes. The make-up of the travel allowance includes considering what additional costs there will be to the employee, for instance for petrol and wear and tear, but only insofar as that 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 actually go towards funding private expenditure, which is taxable. This is why employers are required to withhold employees' tax (PAYE) from a portion of the travel allowance, thereby presuming that portion was taxable as it related to private expenditure.

Historically, SARS estimated that roughly 25% of a travel allowance would be used to fund private expenditure, and PAYE must be withheld from that 25%, which would then be reconciled on assessment. But due to historical deemed private kilometres and inaccurate logbooks, this benefit was open to abuse. So SARS gradually increased the percentage subject to PAYE to 40%, then 50%, then 60% and finally 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.

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, and so a portion of those costs may be reimbursed as well. Again, this will depend on how much travel the employee does and the nature of the job (see the discussion below). Any excessive reimbursement of costs that 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 whether or not 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 in excess of the prevailing SARS rate (currently R3.98 per km, regardless of the kilometres travelled and whether a travel allowance is also granted) is subject to PAYE. Again, the presumption this creates is that any reimbursement in excess of this rate is for private expenditure. This goes against the theory that employers should only be reimbursing employees for actual business travel.

Some employers get around this problem by faithfully sticking to the SARS published rate of reimbursement, which is R3.98 with effect from 1 March 2020. However, depending on the circumstances, although easier to administer and less risky from a tax point of view, this may negatively affect an employee if the actual expenditure incurred is more than this limit.

"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."

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 since 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 and potential PAYE and 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 travel, and total travel, the employee expects to do in the coming year in order to calculate the applicable allowance. This estimate can be difficult to do accurately and can also be administratively burdensome.

Most employers rely on the employee's estimation of how much travelling 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, in theory, an employee could overstate their logbook and claim a higher deduction than the business travel they actually undertook. 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 is established, this travel must be converted into a Rand amount. This can be done taking into account an estimate of 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 that would be a matter between SARS and the employee, but that 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 employers remunerate their staff?

When granting a travel allowance, the employer needs to consider whether employees are remunerated on a CTC or 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 taken into account the additional cost of quantifying and administering the allowance.

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 the 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 that question is likely "yes", if they are not being reimbursed. The employee is presumed to be using 20% of their allowance for business, so they are not subject to tax on that 20%. Nevertheless, if the employer is not refunding him/her, that 20% still comes out of their CTC. Although they can deduct their business expenditure and therefore pay less income tax, they are 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 so as to increase their CTC, where extensive travel is required.

It is not uncommon for employers to provide a combination of both 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 that 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 is relating to a travel allowance and 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 is now R620 000 and not R500 000 as on a CTC model.

How often do staff need to travel?

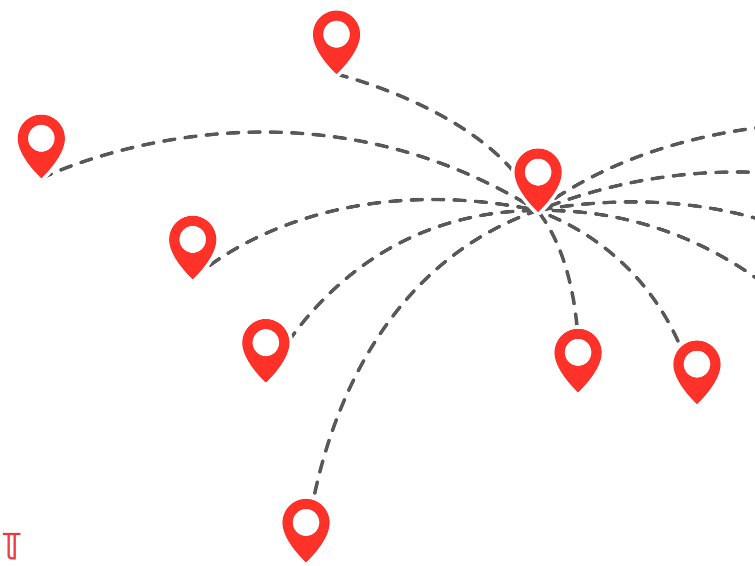
Employers need to consider the industry they are in and which categories of staff they have. A sales company, for example, will need a robust travel allowance and reimbursement policy. These companies will have sales representatives that need suitable compensation for the amount of travelling they do. Again, depending on the remuneration structure they are on, 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 a reimbursement. However, a receptionist at that same company will not require any allowance, nor should this be considered since that person is largely desk-bound. Any travelling by such an employee should rather be compensated for on a reimbursement basis.

COVID-19 considerations

Please note that there are no special amendments to the tax legislation for people who cannot claim as a result of the 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. Employers must always be as clear as possible as to the purpose of either option, taking into account the industry, the business requirements to travel and the costs involved.



15 minutes CPD

CLAIMING FOR HOME OFFICE EXPENSES

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

Salaried employees who work from home may be able to claim a home office deduction if certain conditions apply. We explain these conditions.

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 productive time being lost due to the daily commute to an office. This is especially relevant at the moment, when many employees have had no option but to work full time from home due to the global COVID-19 outbreak.

SARS allows such salaried employees to deduct their home office expenses. However, it is important to highlight that SARS only allows this under certain limited conditions.

The situation is different for sole proprietors or freelancers who also work from home. They can automatically deduct all their home office expenses and do not need to work through the same stringent set of conditions applied to employees to see whether they qualify for a deduction. The relevant portion of home office expenses can simply be reflected within 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 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 specifically for the employee’s work, must be maintained to qualify for the deduction.
- The office must be specifically equipped for the employee’s trade, i.e., it must be specially fitted with the relevant instruments, tools and equipment required for the employee to perform his or her work.

Following from the above, it is safe to conclude that those employees who normally work from their employer’s office, but who have been “locked-down” and working from home due to COVID-19, 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, and provided they have an area of their home exclusively set up and used for this purpose.

What expenses can be deducted?

Firstly, one must look at the employee’s remuneration structure to confirm whether he or she:

- Earns more than 50% of total remuneration either from commission or some other variable form based on work performance; or
- Is a normal salaried employee with variable payments or commission making up less than 50% of his or her total remuneration.

The first group (i.e., commission earners) can claim pro-rated 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. In addition, they can 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 pro-rated 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.

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 portion that is deductible.

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, which is fitted with a computer and printer which she uses exclusively for her graphic design job. The computer and printer were purchased two years ago for R12 000 and R8 000, respectively. Her office is 20m^2 and 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.

Also, during the 2020 tax year, she incurs the following expenditure:

- R120 000 interest on mortgage bond
- R36 000 rates and electricity
- R36 000 cleaning costs
- R5 000 roof repairs
- 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).

Therefore, Lesedi's home office deduction for the tax year can be calculated as follows (note that since she is not a commission earner, her cell phone expenses are not deductible):

10% x (R120 000 + R36 000 + R36 000 + R5 000) = R19 700

Since Lesedi is a salaried employee, she would enter her home office expense claim within 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 what percentage of time is spent 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.

"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."

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

While people are eager to claim the home office tax deduction in order to reduce their taxable income (and ultimate tax liability), few people understand the negative tax impact a home office will have on the calculation of their capital gains tax when they sell their properties one day.

When a taxpayer sells 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 worked from home and 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 length of time that 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 2008 for R1.2 million. In February 2016, she carried out renovations for R300 000 to add on an office from where she worked until she sold her home in February 2020. The office space made up approximately 10% of her total house space (i.e., it was 10 m^2, while her entire home was 100 m^2) and she therefore claimed 10% of her house running costs as a tax deduction against her business income.

She lived in this home until February 2020 when she sold it for R3.5 million. Her taxable income for 2020 was R500 000.

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 due 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 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 up 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 pro-rate the proceeds and the base cost for each disposal, so as to reflect the primary residence portion separately from that of the non-primary residence portion.

REPAYING YOUR EMPLOYER

15 minutes CPD

▶ **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, it 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, 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 two 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.

Note that these monetary amounts apply in the 2018, 2019 and 2020 years of assessments. In previous years, the amounts may differ.

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.

COVID-19 PAYE relief
If the benefit is received by or accrues to the employee between 1 April 2020 and 31 July 2020, an employer who is a qualifying SME may defer payment to SARS of 35% of the PAYE payable by paying it in six equal monthly instalments from 7 September 2020. This relief will affect the employer's PAYE liability only and the employee will not be affected as the employer will still withhold the full amount of PAYE from the employee's remuneration when paid.

A qualifying SME is a tax compliant individual, partnership, company or trust with gross income that is less than R100 million, and where less than 20% of the gross income is passive income.

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.

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 only needs to prove 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 the Interpretation Note No. 88 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 No. 88 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 been refunded.

15 minutes CPD

DEDUCTIBLE **DONATIONS**

▶ **KUBASHNI MOODLEY,** Tax Partner at PKF Durban

Donations to approved public benefit organisations may be deducted from income for tax purposes. Donations to the Solidarity Fund qualify for an additional 10% tax deduction. We look at how to contribute towards the fight against the COVID-19 pandemic and simultaneously reduce 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 donationsAmade 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 public benefit organisation. This certificate must be issued by the public benefit organisation in the tax year when the donation is received by the organisation.

"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."

The section 18A tax certificate must contain the following details:

- The public benefit organisation 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 public benefit organisation
- 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 public benefit organisation 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 public benefit organisation, the person confirms that the public benefit organisation is approved by checking the list of approved public benefit organisations 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 is 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 public benefit organisation or the Solidarity Fund on the same level of taxable income in the 2020/2021 tax year is illustrated as follows:

	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 public benefit organisations 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 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.

TAX DEDUCTIBLE BUSINESS EXPENSES

15 minutes CPD

▶ **NICCI COURTNEY-CLARKE,** Tax Senior at TaxTim

What counts as a business expense and when can you claim it as a deduction? Our article provides a hands-on explanation.

The type of business expenses that individuals 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

The first two types of taxpayers have a fair amount of leeway with regard to the business expenses they can claim, while 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 around the business expenses 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 the office building
- 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: Normally 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 equipment use
- 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 the business related to products, services or sales
- 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 made up primarily 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 of 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 and 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:

- Wear and tear on personal assets
- Home office expenses
- Vehicle costs only if a travel allowance (source code 3701 or 3702) is received

How to calculate the deduction

Many entrepreneurs may have expenses that are part business and part personal – such as cell phone usage costs, rent and petrol – and 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 make sure only business expenses are claimed. In order to do this, you will need to identify exactly what portion relates to business use and which portion is personal. If you are claiming vehicle costs, for example, 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. It is very likely that SARS will want to review these in order to verify the business expenses that you claimed.

Wear and tear (depreciation)

This is a common deduction that is available to all types of taxpayers. For entrepreneurs and commission earners, the rules are fairly straightforward. If they use business assets that decrease in value, 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 purchased and maintained in their personal capacity for work purposes, they too may be able to claim the depreciation as a tax deduction.

Their deductions are subject to a letter from their employer, 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 device 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 within 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. They can therefore claim wear and tear on such items valued above R7 000, also using the SARS prescribed rates. Note that low-value items below R7 000 are usually expensed in the year they are purchased.

Supporting documents

After a taxpayer submits their tax return, SARS may request certain documents for verification purposes. As a general guide, please note that SARS will not accept schedules or lists of expenses alone. 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 back to the tax return, SARS may well disallow the tax deduction altogether and issue a revised assessment with a whole lot more tax to pay. It will then be up to the taxpayer to dispute the assessment and submit documents again, which will delay the finalisation of their tax return and can take many months to resolve. It is therefore very important to be as thorough as possible when submitting supporting documents to SARS.

To clear up any confusion, please check the table below, which lists the most common business expenses and the exact documents that SARS requires, based on the type of taxpayer that is claiming the expense.

"Typical business expenses is a rather broad category and could include anything from purchasing stock to paying for coffee and parking while attending a business breakfast."

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 you can use 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 and 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*
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 and purpose of meeting • Restaurant invoices/receipts	• Schedule of entertainment expenses, showing details for each claim, e.g., names of people and 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.*

30 minutes CP

RETIREMENT CONTRIBUTIONS & RECORDS FOR TAX RELIEF

▶ **ISABEAU BRINCKER,** Group Tax Advisory Specialist at Sanlam

Certain tax relief measures encourage saving for retirement. We take a closer look at how this works in practice.

With effect from 1 March 2016, National Treasury implemented a number of retirement fund and tax reforms with the aim of harmonising and simplifying the retirement savings regime. At the time, the annuitisation of benefits for provident and preservation funds was postponed by two years, and subsequent progress on this matter has been slower than anticipated. Parliament once again postponed the effective date for the aforementioned annuitisations to 1 March 2021, following continued negotiations with the National Economic Development and Labour Council.

The Income Tax Act was nevertheless amended with effect from 1 March 2016, with the possibility, as stated at that time, of a revision of these provisions if agreement was not reached by the end of the two-year period. No such amendments were made. Rather, further amendments were introduced to encourage annuitisation of benefits from provident and preservation funds. The intention remains 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.

In order to calculate the taxable income of a natural person for the year of assessment ended 29 February 2020, 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 2020 year of assessment or not.

A deduction for contributions made to retirement funds

The income tax deduction in relation to contributions to a pension fund, provident fund and 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.

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 taking into account 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.

Step two

As a second step, taxpayers must determine the aggregate amount of retirement fund contributions made by them or for their benefit 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").
- 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").

Excess contributions

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 manner in which 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. 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.

If the aggregate qualifying contributions in a year of assessment exceed the annual available deduction, then such excess is carried forward and will be taken into account as carried forward contributions for purposes of

determining 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 circumstances include a loss of employment due to an employer having ceased to carry on 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 in excess of the annual available amount (effectively a post-tax saving) is an effective saving mechanism depends on the particular 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 fund 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 taken into account in deciding whether to make contributions in excess of the annual available deduction. These factors include 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 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.

"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."

Documentary proof

Likewise, contributions made by taxpayers to a retirement annuity fund will be reflected on a tax certificate issued by the relevant fund to the taxpayer. A copy of the certificate must be provided by the fund to SARS from which the taxpayer's ITR12 will be pre-populated.

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.

Carried-forward contributions are automatically calculated by SARS' assessment system and reflected as "amount brought forward 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 against the assessment (following the normal process for objections). 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 and even more so against the background of the expected impact of the COVID-19 pandemic on employment in South Africa. 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

▶ **MELISSA DUFFY**, Partner: Tax and Legal Global Mobility Services and Employment Tax Advisory at KPMG & **SALOME SMIT,** Associate Director: Global Mobility Services and Employment Tax Advisory at KPMG

This article provides a breakdown for each type of investment income, with source codes, to guide taxpayers through reporting their investment income on the ITR12. We also outline some tax efficient investments which taxpayers may wish to consider.

Income from investments must be reported in an annual income tax return. The tax residence status will dictate the extent of the disclosure of investment income. A tax resident in South Africa has to report his or her worldwide income and worldwide capital gains. A non-tax resident has to 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 of typical investment income revenue streams (not an exhaustive list):

- Collective investment schemes income
- Interest income from tax-free savings accounts
- Real estate investment trust income
- Section 12J dividend income
- Interest earned on positive credit card balances
- Interest from medical aid savings account
- Interest income from from bank accounts
- Dividend income from shares held
- Interest income from SARS

Collective investment schemes

The Collective Investment Schemes Control Act 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 which they might not otherwise be able to access in their individual capacities. Through a collective investment scheme, an investor may achieve a spread of investments in assets such as shares, bonds, deposits, money market instruments and real estate. 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 is usually comprised of interest and dividends.

Tax-free savings accounts

Section 12T of the Income Tax Act 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 R33 000 per tax year to such funds and 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 operates, income-producing property. Our focus is on the tax aspects of REIT distributions. Shareholders typically receive dividend income from REITs.

In relation to 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% dividends 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, create employment and support the economy. These investments are considered "high risk". A taxpayer's funds are locked in for a minimum period of five years in order 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). The sunset clause applicable to section 12J investments is 30 June 2021. It is anticipated that this period may not be extended. The revenue stream from section 12J investments is usually dividend income which is subject to dividends withholding tax.

What documentation is needed to complete the tax return?

Taxpayers will require certificates for tax purposes in order 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
- Proof of foreign taxes paid

"It is envisaged that SARS will prepopulate investment income using third party data for the 2020 Filing Season."

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.

Historically, only employment income from South African employers was pre-populated on the ITR12. It is envisaged that SARS will prepopulate investment income using third party data for the 2020 Filing Season.

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 provided to be payable in the other jurisdiction.

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. Dividends 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 dividend income	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 interest income	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 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. Taxpayers should consult their financial advisors 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 R33 000 in a tax year and receive interest free of income tax.
- One could make a lump sum payment into a section 12J VCC. Minimum investments are usually R100 000. A taxpayer (resident and non-resident) will receive a tax benefit of 45% of the investment made (assuming that the taxpayer is in the maximum tax bracket). For example, a taxpayer that invests R100 000 in a VCC will receive R45 000 back in tax in the year of investment. You have to remain invested in the VCC for at least five years. One earns tax-free dividend income from these investments. With effect from 21 July 2019, the maximum deduction claimable is limited to R2.5 million in a year of assessment.

What about provisional taxes?

If one earns taxable income from (local and foreign) passive sources (interest income, dividend income and rental income) that 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).
- A voluntary additional 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 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.

SELLING YOUR PRIMARY RESIDENCE

30 minutes CPD

▶ **STEVE CURR**, Corporate Tax Consulting Director at BDO Tax Services

Our article looks at the special rules that apply to selling a home and points to the capital gains tax implications if the home has not been exclusively used for residential purposes throughout.

Selling a residential property in South Africa is typically a big-ticket item for middle-income workers in terms of their savings. The tax law has special rules to exclude from taxable income a large portion of this sales income for most middle-income and upper-income households. This exclusion, however, comes with a number of special rules. Certain recurring situations may arise, such as home offices and temporary movement out of the home. The purpose of this article is to focus on the exclusion and recurring issues for middle-income and upper-income households. It is assumed for the purposes of this article that the owner of the residence is a South African tax resident individual or natural person who owns all or a portion of a residence.

Recap of South African capital gains tax

In the case of South African tax resident individuals, 40% of capital gains arising during the tax year (ending at the end of February) is included in taxable income. This results in a maximum effective tax rate on the gain of up to 18% (individual maximum marginal income tax rate of 45% x 40%), subject to an annual exclusion of R40 000 and R300 000 in the year of death. Capital losses are not deductible in determining taxable income and may in general be set off against capital gains. If, after setting off capital losses against capital gains, there is an overall capital loss, the capital loss can also be reduced by the annual exclusion.

A disposal for capital gains tax (CGT) purposes generally arises upon sale or donation of the asset or upon death of the owner of the asset; so CGT on gains in relation to family residences is relatively certain. This is subject to a limited exclusion if the residence is used as a primary residence.

Primary residence exclusion

What is a residence?
A residence is any structure, boat, mobile residence or caravan used as a place of residence by a natural person.

What is a primary residence?
A primary residence is a residence in which a natural person holds an interest and in which that person or a spouse of that person ordinarily resides or resided in as his or her main residence and which is used mainly for domestic purposes.

An interest in a residence is widely defined. It includes a real or statutory right, a share in a share-block company and a right of use or occupation. However, it excludes a right under a mortgage bond or a limited right or interest in a trust or trust asset other than a right of a lessee who is not a connected person in relation to that trust. For example, a usufruct (right of use) in a residence held by a widow should qualify as an interest, provided that the bare dominium in the residence is not owned by a trust.

SARS indicates (at page 444 of their Comprehensive CGT Guide, Issue 8) that in *SBI v Lourens Erasmus (Eiendoms) Bpk*, Botha JA held that the word "mainly" prescribed a purely quantitative standard of more than 50%.

Although a holiday residence is used for domestic purposes, it is not regarded as the main residence and therefore not regarded as a primary residence.

There can never be an overlapping period during which a person owns two primary residences. Where a taxpayer has two residences, e.g., one in Cape Town and one in Johannesburg, only one residence may be a primary residence. In this case, it will be necessary to determine which is the main residence to be regarded as the primary residence.

What is the available exclusion?
Where a natural person disposes of an interest in a primary residence:

- If the residence is sold for R2 million or less, the whole capital gain or loss is disregarded.
- If the residence is sold for more than R2 million, up to R2 million of the capital gain or loss is disregarded.

As mentioned above, the exclusion is therefore not available where the residence is owned by a trust or company.

There is no limit on the number of times a taxpayer may qualify for the primary residence exclusion even during the same year of assessment, and there is no lifetime limit either (SARS Comprehensive CGT Guide at page 448). This applies provided the seller is not a property dealer, i.e., the residence is not held for speculative purposes.

Are there any specific circumstances to be taken into account when claiming the exclusion?
Co-ownership: Where the residence is owned by more than one individual (e.g., husband and wife are co-owners), the R2 million exclusion is apportioned in relation to their respective interest – R2 million/2 = R1 million exclusion each.

Smallholdings: If the residence is located on land in excess of 2 hectares, the exclusion only applies to the gain in relation to the residence and up to 2 of the hectares on which the residence is built, provided that the entire extent of the land is used for private or domestic purposes and is disposed of at the same time and to the same purchaser.

Are there any exceptions to the exclusion?
The exclusion does not apply to the extent that the owner or spouse:

- Did not use the residence as a primary residence for the whole period of ownership (after CGT was introduced on 1 October 2001); or
- Used the residence or any part of it for the purposes of carrying on a trade after 1 October 2001, while owning the residence.

Apportionment of exclusion for not being resident in the residence from 1 October 2001
A person need not be residing in the residence at the time of disposal in order to qualify for the primary residence exclusion. However, the profit subject to the exclusion is apportioned.

An individual is entitled to a partial exclusion if he or she or their spouse only lived in the residence for a part of the time that they owned it since 1 October 2001. It is the gain arising from the disposal of the residence which is apportioned, with the residential portion being subject to the primary residence exclusion.

There are instances in which certain absences by the owner from the residence are ignored for purposes of apportionment. In other words, the owner is still regarded as having been ordinarily resident in the residence despite the period of absence, provided the period of absence does not exceed two years.

These circumstances are if:

- The residence has been offered for sale due to the acquisition or intended acquisition of a new primary residence; or
- The residence is being erected on land acquired to build a primary residence; or
- The residence has been accidentally rendered uninhabitable; or
- The owner has died.

Apportionment of exclusion for residence where it is not used for residential purposes
The requirement for apportionment outlined above relates to the period of occupation of the residence, whereas the apportionment discussed below arises in situations in which a residence is not used for residential purposes.

If the residence is wholly or partly used for carrying on a trade during any period of ownership after 1 October 2001, the gain qualifying for the primary residence exclusion applies only in respect of the period during which the residence is used by the owner or their spouse for domestic purposes since 1 October 2001 and also only in respect of that part of the residence that is not mainly used for carrying on a trade. In this regard, SARS is of the view at page 464 of their CGT Guide that *"any trade usage by the spouse of a person will result in apportionment of any capital gain or loss into primary residence and non-primary residence portions".*

For example, if an area in a residence covering say 25% of the total residence floor area is mainly used for work-related activities by either a business owner, director or employee (or their spouses) after 1 October 2001, it is necessary to reduce the portion of the gain qualifying for the residential exclusion.

The requirements for reducing the exclusion do not entirely align with those set out in section 23(b) regarding claims for home office expenses by employees or office holders. On a strict interpretation of the legislation, an adjustment should be made to the primary exclusion amount where an area of a residence is mainly used for employment-related activities even if the employee's duties are not mainly performed at the residence (i.e., even if the home office expenses do not qualify for income tax relief). Business owners are not subject to the same restriction as employees in section 23(b).

The implication is that time spent by business owners and employees in a part of their residence that is mainly used for work, e.g., a dedicated home office, during the COVID-19 lockdown in April and May, requires an adjustment to be made to the primary residence exclusion. Where, however, the area of the residence in question is still mainly used for domestic purposes, e.g. a dining-room, no such adjustment is required.

It should be borne in mind that the overall requirement for the residence to be a primary residence still remains. Considering the entirety of the residence, it should be used mainly for domestic purposes, i.e., more than 50% of the residence must be used for domestic purposes.

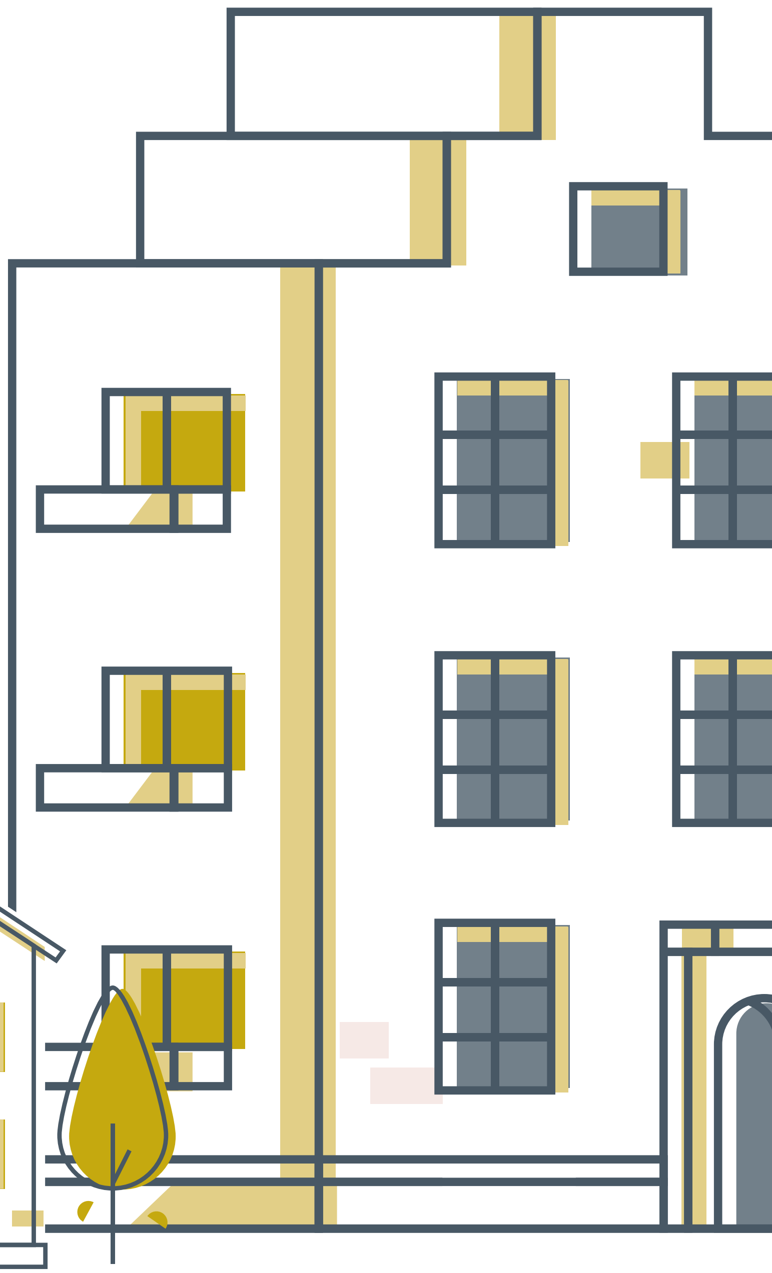
There is an instance in which non-residential use of a residence is deemed to be regarded as residential use. If a person is absent from their residence for a continuous period of five years or less and lets the residence during that time, this absence will be ignored and the person will be regarded as having used the residence as their primary residence if:

- the person or their spouse stayed in the residence for a continuous period of at least one year before and after it was let; and
- no other residence was treated as a primary residence during the period; and
- the person or spouse was temporarily absent from South Africa or was employed or carrying on a business in South Africa at least 250 km from the residence.

Points to consider

In most cases, sales of domestic residences by South African residents should qualify for the primary residence exclusion. However, when one is considering buying or letting a residence or secondary residence, it is advisable to give consideration to how the residence is to be owned, used and occupied since this may impact the availability of the primary residence exclusion. This may be worth up to R360 000 in cash tax (R2 million x 18%) to a South African resident individual on the maximum marginal rate of 45%.

"In most cases, sales of domestic residences by South African residents should qualify for the primary residence exclusion."



15 minutes CPD

RISKS & REWARDS OF RENTING OUT PROPERTY

▶ **NATASHA WILKINSON,** Admitted Attorney at Tax Consulting South Africa

Should the tax consequences of renting out a garden flat deter homeowners from earning some extra income? We weigh up the risks and rewards of residential rentals.

In an economy under significant pressure, more individuals are seeking ways to earn additional income by renting out property.

While the additional income is welcomed, there are tax consequences (both positive and negative) for the additional rental income earned. Where our tax laws are not properly applied, the renting of property may be seen to rather carry more risks than rewards. But is this really the case?

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 so 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 by the landlord for the year of assessment in question. It is not only the rental income that is subject to tax, but also any other amounts earned by the landlord from the property rental (such as lease premiums paid upfront by a tenant).

When a landlord applies a deposit to, for example, repair any damage to the property rented, the deposit amount must also be disclosed to SARS as part of the rental income earned by the landlord.

"The rewards can be substantial and, where our tax laws are applied correctly, the rewards outweigh the risks."

Therefore, the total rental income earned from the property must be disclosed to SARS, regardless of whether there are expenses which can be claimed or are, in fact, claimed.

The (many) 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. To avoid such penalisation, the landlord should ensure that this position is corrected ugently with SARS through the Voluntary Disclosure Programme.

Increased taxable income

While 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 and are not for the maintenance of the landlord, his or her family or establishment
- Claimed in the correct year of assessment and that there is proof 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, resulting in higher taxable income than anticipated.

It is also important to bear in mind that the proof of the expenses must not only be available at the time that the landlord's income tax return is completed but must also be kept for a period of at least five years thereafter.

This ensures that there is compliance with the Tax Administration Act, and also that the expenses are not disallowed by SARS if an audit or verification is done a number of 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 to a tenant), the area which is leased must be divided by the total area of the whole property in order for an apportionment percentage to be calculated.

If an expense is incurred in respect of any remaining bedroom, this expense cannot be allowed as a deduction because it does not relate to the area which is rented out and cannot be said to 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 own calculated apportionment ratio after adding penalties and interest. The landlord will then need to dispute this apportionment ratio (if it is not correct), which may take substantial time 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 a landlord is not merely using the rented property as a way to incur losses and reduce the tax payable. In order to prevent the ring-fencing provisions in the Income Tax Act from applying, the landlord must prove that she or he is conducting a bona fide trade. This is usually a very involved process and SARS is often reluctant for the ring-fencing provisions not to apply, due to the rental of residential accommodation being 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 she or he has made additional income and is taxed solely on profit (after allowable and proven rental expenses have been deducted from the income).

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.

INVESTING IN VENTURE CAPITAL COMPANIES: KNOW WHAT YOU'RE BUYING!

15 minutes CPD

MARTIN DE KOCK, Director of Ascor Independent Wealth

Our article looks at the tax breaks and risks involved when investing in a section 12J venture capital company.

If you are thinking of investing in a venture capital company (VCC), it is important to consider how this investment will fit into your investment portfolio and complement your existing investment strategy.

Recently, there has been a lot of discussion about these types of investments and most commentators place undue emphasis on the tax benefits of these investments. As with any investment, the tax implications should never be the primary focus influencing your investment decisions.

The reason for allowing the tax break when investing in these shares is to encourage taxpayers to provide capital for the financing of new businesses in a concerted attempt to boost economic growth and job creation.

Risk

Investing in a venture capital fund can be risky. When you Google the term "venture capital", the first definition you find states that venture capital is defined as capital invested in a project in which there is a substantial element of risk, typically a new or an expanding business.

As an adviser, the words "substantial element of risk" raise a red flag. Are investors aware that these investments do not provide capital guarantees and that investors could lose their capital?

Liquidity risk is another consideration that should not be overlooked. When investing in unit trust funds, the fund manager guarantees the buy-back of your unit trusts when you sell. When selling your shares in a section 12J venture capital company, the investment manager needs to find a buyer for your shares to be sold. There might not be a secondary market for your venture capital company shares. There is no tax benefit for the second buyer of the shares which will, in all likelihood, make investing in a risky asset less attractive.

Tax treatment

Let us look at the reason why so many market commentators mention the tax benefit of section 12J investments. The different taxes applicable to this type of investments are:

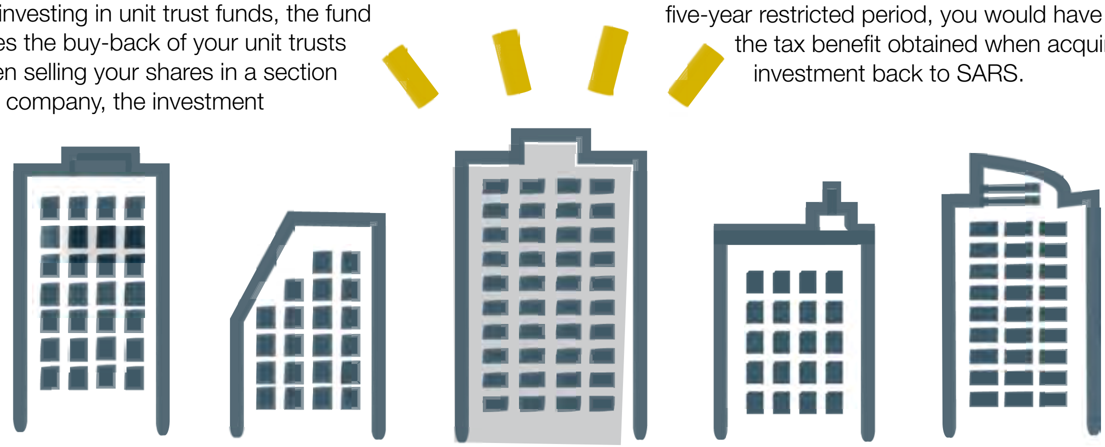
- Income tax
- Dividends withholding tax
- Capital gains tax

Income tax

When investing, the full investment amount is deductible from taxable income. Therefore, it is an option provisional taxpayers utilise to avoid paying tax on earnings for which they have not provided sufficient savings to pay tax.

This means that a taxpayer paying tax at the marginal rate of 45% effectively pays 55 cents for every R1 invested as a result of the tax break or, put differently, the cost of a R1 000 000 investment is R550 000 after utilising the R450 000 tax benefit.

Always keep in mind that this investment is not liquid as the investment must remain invested for a five-year period to qualify for the tax deduction. If you were to sell the investment within the five-year restricted period, you would have to pay the tax benefit obtained when acquiring the investment back to SARS.



Dividends withholding tax
Any dividends received from this investment will be subject to the statutory 20% dividends withholding tax. Typically, venture capital companies will invest in start-up businesses, which will most likely reinvest capital into the business and not pay dividends during the first few years.

Capital gains tax
You should also keep in mind that when you sell your section 12J investment, the full proceeds will constitute a capital gain. The reason for this is that the base cost will be zero since the initial purchase price was allowed as a tax deduction in the tax year in which the investment was purchased.

This is best explained using the example of the R1 000 000 invested above.

Cost of R1 000 000 investment after utilising tax benefit	*R550 000*
Assuming ZERO growth, proceeds of investment (base cost of nil)	*R1 000 000*
Taxable gain (R1m x 40% inclusion rate x 45% tax rate)	*R180 000 **
After-tax return (R40 000 exemption not accounted for)	*R820 000*
Effective annual return is	*8.3%*

How much capital can you afford to lose?
Seeing that this type of investment is not guaranteed and is a risky asset type, there is always a chance that you can lose capital. If the same assumptions are used as in the previous example:

Cost of R1 000 000 investment after utilising tax benefit	*R550 000*
Proceeds of investment (base cost of nil)	*R670 732*
Taxable gain (R670 732 x 40% inclusion rate x 45% tax rate)	*R120 732 **
After-tax return (R40 000 exemption not accounted for)	*R550 000*
Effective annual return is	*0%*

This example illustrates that the tax break does leave room for some capital losses, but nobody invests to make a ZERO return.

** For the above calculations, the annual R40 000 capital gains tax exemption for individuals is disregarded.*

Points to note

While it is always advisable to discuss your investments with an investment professional, here are a few pointers to remember when considering a section 12J investment:

- What is the minimum contribution? This often requires quite a substantial investment.
- The maximum contribution has been limited with effect from 21 July 2019 to R2.5 million and 5 million for individuals and companies, respectively.
- You will need to remain invested for the prescribed period of five years. If there is a chance you may need the funds before the end of the five-year period, you need to consider an alternative investment.
- Do not invest if your investment decision is based solely on the tax deduction and not on a sound investment case.
- What are the fees involved in the product? These could typically include initial (upfront) fees, ongoing management fees, performance fees and exit fees.
- This investment does not have a capital guarantee. Can you afford to lose your capital?
- Are you comfortable with the high risk involved in this type of investment product?
- Can you exit the investment after the prescribed five-year holding period? In other words, how tradeable are these shares?
- Typically, these investee companies are new companies that do not have a track record, which is another factor that increases the potential risk of capital loss.

Beware the advice trap

The Financial Advisory and Intermediary Services (FAIS) Act states that advice on insurance and investment products can only be given by an adviser who is accredited and licensed to provide advice on the specific product. Accountants and tax practitioners may propose that clients can utilise the tax break associated with section 12J investments but may not proceed to propose which specific investments be used for this purpose – this would constitute giving advice in terms of FAIS.

Be careful of accepting referral commissions from product providers as this could infringe on your independence as an accountant.

The details of the type of investment to invest in would require advice from a registered financial services provider who is registered as such with the Financial Sector Conduct Authority (FSCA), with the relevant accredited product category.

Providing advice on investment products entails numerous compliance requirements, which include assessing the client's risk profile, ascertaining the appropriateness of the investment and determining the financial acumen of the client.

COMPLETING A PROVISIONAL TAX RETURN

30 minutes CPD

▶ **NICCI COURTNEY-CLARKE,** Head of Tax at TaxTim

Everything you need to know about provisional tax and how to complete the return easily and accurately.

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 that is subject to monthly PAYE deductions.

This includes taxpayers who earn income from:

- Running their own business (i.e., freelancers, sole proprietors and independent contractors)
- Property rental
- Investments (i.e., dividends and interest)
- 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 (2021: R83 100) you must always be registered as a provisional taxpayer (even if you earn a salary as well).

If you do not carry on a business but you earn rental income, investment income or income from an unregistered employer and your taxable income exceeds the annual tax threshold, you will also be a provisional taxpayer unless your taxable income from these sources is less than R30 000 per year.

Documents needed 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 the documents that 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 you hold
- Supporting documents (e.g., invoices) for any other non-salary income you earned for the tax year to date

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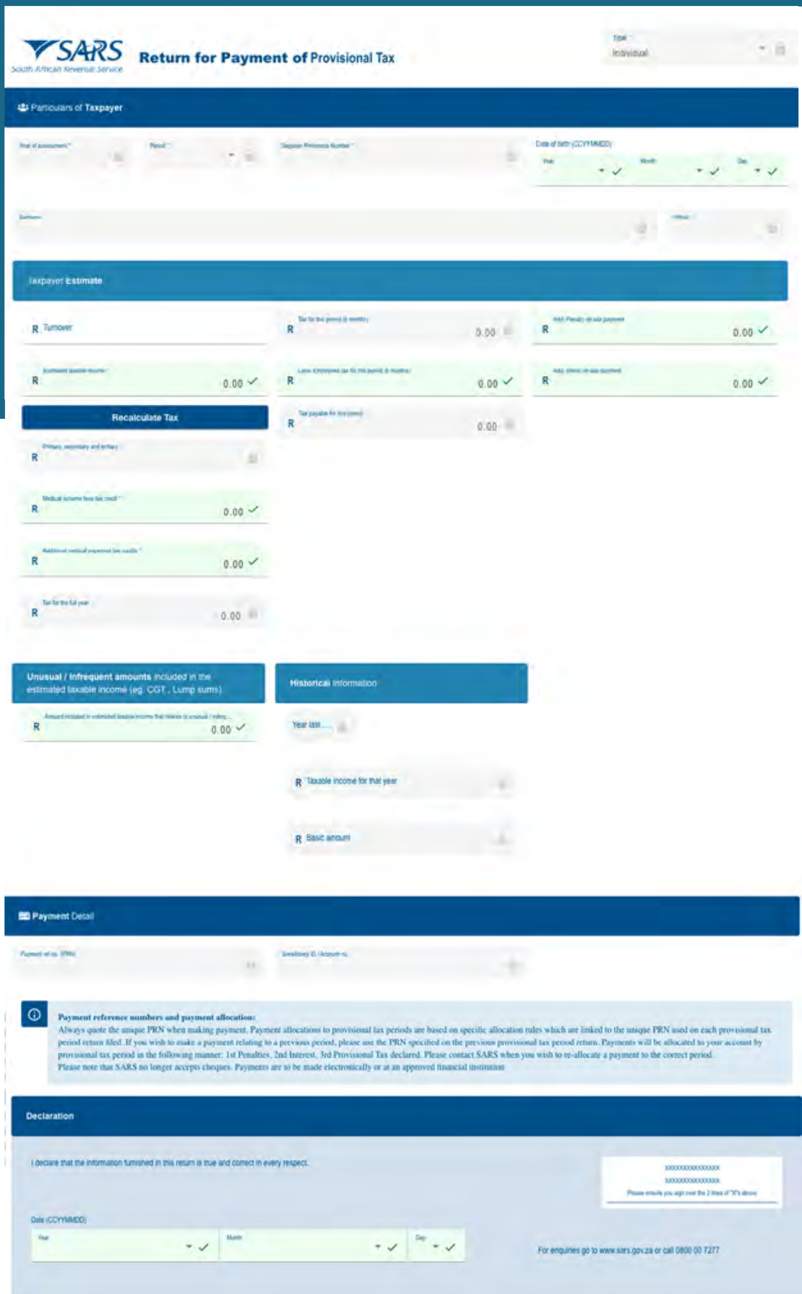
The deadline for the first provisional tax return for 2021 is 31 August 2020. This means that both the return (IRP6) as well as your tax payment (if applicable) must be submitted to SARS by this date.



"Many taxpayers get confused when doing their first provisional return and enter the turnover and estimated taxable income for the first six months of the year only."

How to complete the first provisional tax return

Particulars of taxpayer
This will already be completed. Check the details to make sure they are correct.

Period
Ensure the first period is checked. The first period for 2021 is for the six months ending 31 August 2020.

Turnover
This is the estimated gross income for the whole year (1 March 2020 – 28 February 2021) which includes the 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 the gross income ("Turnover" above) minus the estimated business-related expenses for the whole year. You must include the taxable portion of your capital gains here too. 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. (2021: R319 per month for the first two members and R215 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 4x the above medical scheme credit (3x 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).

Employees' tax for this period (six months)
If you earned a salary, add up all the PAYE you paid per your payslips for the first six months of the year and enter the amount here.

Foreign tax credits for this period (six months)
If you 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 make your first payment after the deadline (i.e., after 31 August 2020) SARS will automatically levy a penalty of 10% of your tax due. You need to calculate this amount and enter it here.

Interest on late payment
SARS charges interest at 9.75% 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
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 you underestimate your second provisional payment (see below).

Tips and common pitfalls

Turnover and taxable income estimate for the full year
Many taxpayers get confused when doing their first provisional return and 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. Since you know what you earned at 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 a day late). Not only that, SARS will lump on interest at the prescribed rate (currently 9.75% per annum) as well. Be sure to check the deadline on SARS' website for both the August and February payment and set an alert on your calendar so 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.

Don't overlook investment income and capital gains
If you own investments, you should request a provisional statement from the financial institution in August to ensure 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 and then it is already too late to avoid the underestimation penalty on their second provisional payment.

"If you file your IRP6 more than four months after the deadline, SARS considers you to have submitted a 'nil' return."

Underestimation penalty (only relevant for second provisional return)
You need to ensure 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 and therefore less estimation is required.

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 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 the actual taxable income
- Tax on the 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% 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 you submitted is incorrect, you can pull it up for correction at any time in SARS eFiling. To do this, you need to navigate to the return by selecting the menu item "Returns" and then "Returns History" and then click on the button "Request for Correction". You can then make the changes to your IRP6 and resubmit.

PROVISIONAL TAXPAYERS: REGISTERING & REPORTING

15 minutes CPD

▶ **DONÉ HOWELL**, Head of Individual Trusts & Estates at BDO

When do you become a provisional taxpayer and what are your tax obligations? Read on to find out.

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 it serves 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.

This is why the tax relief measures proposed as part of Government's response to the economic plight caused by the COVID-19 pandemic, especially the deferral of provisional tax payments, should be commended. It constitutes a difficult balancing act to ensure revenue collection while allowing some financial relief for qualifying taxpayers, by deferring payment of 35% of the provisional tax liability for the twelve-month period commencing on 1 April 2020 and ending on 31 March 2021.

The proposed measures allow for the payment of only 15% of the estimated tax liability in respect of the first provisional tax period from 1 April 2020 to 30 September 2020, while payment of the second provisional tax liability – in the period 1 April 2020 to 31 March 2021 – will be 65%. Although no penalties and interest will be imposed on the deferred amounts, taxpayers are obliged to settle these amounts by their respective effective dates in order to avoid any interest being charged. This is discussed later in this article.

"Any company qualifies as a provisional taxpayer and is required to register as such."

Importantly, this tax relief is not available to every taxpayer. A qualifying taxpayer is specifically defined as a business conducted by a tax compliant company, partnership, individual or trust with a gross income not exceeding R100 million for the year of assessment from 1 April 2020 to 31 March 2021 and where such gross income does not include more than 20% passive income.

Do you qualify as a provisional taxpayer?

Any company qualifies as a provisional taxpayer and is required to register as such.

With respect to an individual or trust, the type of income earned as well as the amount of such income would determine whether these taxpayers are provisional taxpayers. 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 a trade, rental 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 a 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
- Any small business funding entities
- Deceased estates

Furthermore, individuals are excluded from the provisional taxpayer definition if they do not derive income from a trade, and during the year of assessment their:

- Taxable income does not exceed the tax threshold (for the 2021 tax year the thresholds are: R83 100 for individuals under the age of 65 years, R128 650 for persons 65 to below 75 years of age, and R143 850 for individuals 75 years of age and older)
- Combined taxable income from the following sources does not exceed R30 000, 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 qualify as a provisional taxpayer

Taxpayers must determine whether they qualify as provisional taxpayers and, if so, are obliged to apply for registration within 21 days of becoming so obliged.

With the advent of eFiling there is no longer a need to complete and submit manual forms to SARS in order to apply for registration or deregistration as a provisional taxpayer. This functionality is now catered for on 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.

How to register as a provisional taxpayer

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.

How reporting and payment works

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 2021 year of assessment is due by 31 August 2020. For a company with a year of assessment ending December 2020, the first provisional tax estimate is due by 30 June 2020.
- 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 2021 year of assessment, the second provisional tax estimate is due by 26 February 2021 (being the last business day of the month). For a company with a year of assessment ending December 2020, the second provisional tax estimate is due by 31 December 2020.

A recent addition to the tax legislation now makes it clear that no estimate is required to be made at the date of death of an individual.

Where a taxpayer fails to submit the second provisional tax estimate within four months from the due date, the taxpayer will be deemed to have submitted an estimate of nil taxable income.

A voluntary provisional tax payment can be made by the effective date. This payment will reduce or eliminate 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.

Where SARS increases the estimated taxable income submitted by a provisional taxpayer, any additional tax payable must be settled within a period determined by SARS. 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 or via 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.

The COVID-19 pandemic has necessitated certain changes to the provisional tax filing norm which qualifying taxpayers should take note of.

As various penalties and interest are at play for falling foul of one's provisional tax obligations, it is certainly advised to give this tax its due respect!

AVOIDING PENALTIES AND INTEREST RISKS

45 minutes CPD

▶ **DARREN BRITZ,** Senior Attorney at Tax Consulting South Africa & **JUALEEN OOSTHUIZEN,** Tax Attorney at Tax Consulting South Africa

Provisional taxpayers must comply with all requirements for filing returns and making payments in order to avoid penalties and interest. Our article provides guidance on the risks attendant on being a provisional taxpayer, and how to mitigate them, as well as a short insert regarding COVID-19 tax relief.

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, failing which 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, being the first and second periods.

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 make timeous payment of their provisional tax. 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 by a provisional taxpayer to make payment on time will result in 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.

By way of a simple example, 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, being R70 000.

Interest on overdue provisional tax as a result of late or non-payment

Interest is levied, in terms of section 89bis(2) of the Income Tax Act, on provisional tax due by the taxpayer as a result of late or non-payment and 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*.

Whilst the prescribed rate of interest fluctuates over time, the *Government Gazette* dated 27 March 2020 published an interest rate of 9.75% as of 1 March 2020. The varying interest rates levied since 1 July 1982 have been tabulated by SARS and are available on the SARS website.

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. Failure by a taxpayer to make payment on time, typically 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 actual taxable income, after taking into account 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 taking into account 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 a 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. The taxpayer in this example estimated an amount that is less than 90% of the 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 the tax payable was R300 000 but, based on the taxpayer's estimate, the tax paid was R180 000, the penalty payable by the taxpayer in this example will be 20% of the difference between R300 000 and R180 000, i.e., 20% of R120 000, being 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.

- The amount of the underestimation penalty is calculated as 20% of the difference between:
  - The amount of normal tax payable for the year of assessment on 80% of actual taxable income, after taking into account 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, therefore, accrue only from 1 October.

Avoidance and remittance of penalties and interest

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. However, taxpayers are able to reduce their risk of having interest levied by submitting a third provisional tax return within seven months after the last day of the second period and pay the provisional tax shortfall.

That being said, 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 Act as well as in Chapter 15 of the Tax Administration Act. Each category of penalty and interest comes with its own requirements for remission and taxpayers must therefore be mindful of this when making a request for remission to SARS.

COVID-19 provisional tax relief

Together with the general principles on provisional tax discussed above, Government has implemented COVID-19 temporary provisional tax relief measures to assist with alleviating cash flow problems for tax compliant small- to medium-sized businesses (SMEs) as a result of the COVID-19 outbreak.

The first tax measures were announced by the Minister of Finance in the 2020 Draft Disaster Management Tax Relief Bill, governed according to the 2020 Draft Disaster Management Tax Relief Administration Bill. Following the publication of the Bills for comment on 1 April 2020, proposed amendments were incorporated in the 2020 Disaster Management Tax Relief Bill, dated 1 May 2020.

Requirements to claim provisional tax relief

Taxpayers who are required to submit provisional tax returns during the period 1 April 2020 to 31 March 2021 must meet the following requirements in order to qualify for provisional tax relief:

- The taxpayer must be a company, trust, partnership or individual who is conducting a trade.
- Gross income must be R100 million or less for the year of assessment ending on or after 1 April 2020 but before 1 April 2021.
- Gross income must not include more than 20% in aggregate of interest, dividends, foreign dividends, royalties, annuities, any remuneration received from an employer, and rental from the letting of fixed property, unless it is the primary trading activity of the taxpayer and rental income is substantially the whole of its gross income.
- The qualifying taxpayer must be fully tax compliant, i.e., returns across all tax types must be filed with SARS and tax debts paid, or payment arrangements made with SARS regarding any outstanding tax debts.

"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."

Provisional tax relief

Qualifying taxpayers may defer a portion of the payment of their first and second provisional tax liability to SARS, without SARS imposing administrative penalties and interest on the deferred amounts for the first and second period:

- The first provisional tax payment due from 1 April 2020 to 30 September 2020 will be based on 15% of the estimated total tax liability.
- The second provisional tax payment due from 1 April 2020 to 31 March 2021 will be based on 65% of the estimated total tax liability (after deducting the 15% payment amount received from the first period).
- Provisional taxpayers with deferred payments will be required to pay the remaining 35% of their tax liability when making the third provisional tax payment to avoid interest charges on assessment.

By way of example, we can consider an SME with a February 2021 year end, with the first provisional tax payment due by 31 August 2020. If we assume the estimated total tax liability is R2 million, the first provisional tax payment amounts to R300 000, which is 15% of the estimated total tax liability. On the second provisional tax payment due by 28 February 2021, a payment of R1 million is required, which is 65% of the estimated total tax liability less the R300 000 already paid.

The remaining balance of R700 000 is payable during the third provisional tax period, without interest charges accruing.

Consequences of claiming provisional tax relief and not meeting the requirements

If a qualifying taxpayer is not tax compliant, or where it is later discovered that the taxpayer did not qualify for the provisional tax relief measures, no tax relief will be granted and normal penalties and interest will apply to the provisional account. The qualifying taxpayer should therefore rectify their tax compliance status before submitting the relevant returns 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 published merely for guidance and information purposes, and 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.

DEALING WITH A SARS REQUEST FOR INFORMATION

30 minutes CPD

▶ **ELLE-SARAH ROSSATO,** Lead: Tax Controversy & Dispute Resolution at PwC
& **RICHARD WILKINSON,** Manager: Tax at PwC

This article summarises the powers of SARS with respect to gathering information, sets out a range of responses that are generally available to recipients of requests for information and highlights other useful mechanisms that are available to taxpayers during the COVID-19 pandemic.

What SARS can request from you — the legislative authority for requesting information

Section 46(1) of the Tax Administration Act regulates requests for information which are issued by SARS to taxpayers. It provides as follows:

"(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."

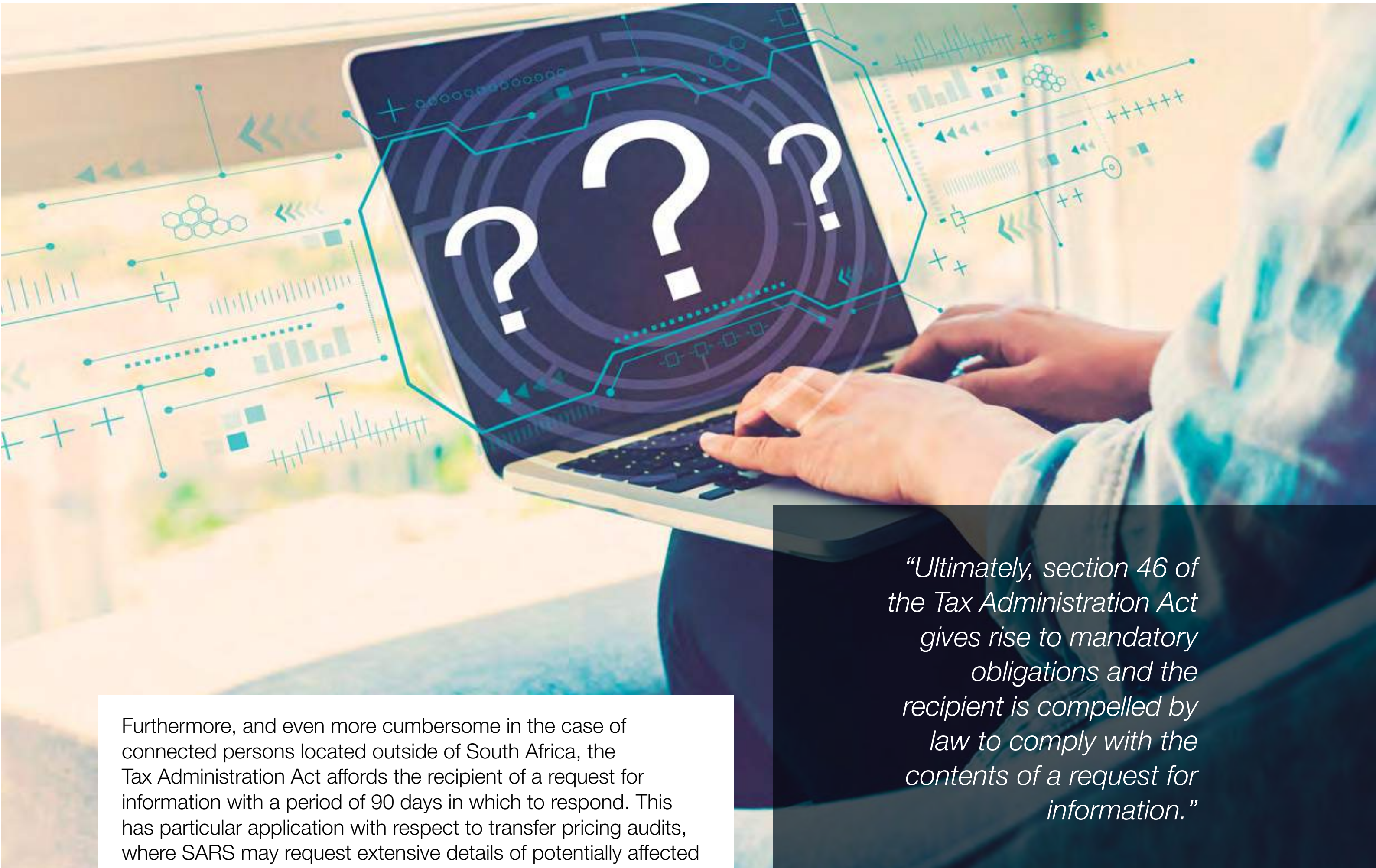
Firstly, the phrase "administration of a tax Act" is defined very broadly in section 3(2) of the Tax Administration Act and includes obtaining "full information in relation to anything that may affect the liability of a person for tax in respect of a previous, current or future tax period".

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 investigation. 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) of the Tax Administration Act 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. Indeed, the *Short Guide to the Tax Administration Act* indicates that the purpose of this construction is to avoid protracted debates as to SARS' entitlement to information. Ultimately, this leaves recipients of requests for information in a "provide now, argue later" position.

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". This wording is derived from that contained in the Commentary to Article 26 of the OECD Model Tax Convention which concerns the exchange of information between tax authorities. In any event, section 46(8) of the Tax Administration Act specifically permits a senior SARS official to "request relevant material that a person has available for purposes of revenue estimation".

Section 46(3) of the Tax Administration Act does provide some limits on the demands that can be placed on recipients of a request 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.



> *"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."*

Furthermore, and even more cumbersome in the case of connected persons located outside of South Africa, the Tax Administration Act affords the recipient of a 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
- Commercial invoices between the tested party and its customers and suppliers

Nevertheless, these provisions cast the net very wide and provide SARS with sweeping investigative powers. 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.

The impact of the national lockdown on *dies non*

The period between 26 March 2020 and 30 April 2020 (both days inclusive) has been defined in the Revised Draft Disaster Management Tax Administration Bill ("Revised Draft Bill") as the period of "national lockdown". The national lockdown must be considered as being *dies non* for certain purposes, meaning that the counting of days in terms of the Tax Administration Act is suspended.

This period of *dies non* applies to dispute resolution timeframes (i.e., the period of time during which a taxpayer may submit an objection or appeal). In addition, it applies to the following:

- The production of relevant material in person or for SARS to attend to an interview of the taxpayer
- The deadlines that regulate field audits and criminal investigations
- Notices that require attendance at SARS tax inquiries
- Warrants issued in respect of search and seizure
- Applications for advance rulings
- The period of limitations for issuance of assessments

However, it is important to note that it does not apply in respect of requests for relevant material issued by SARS in terms of section 46 of the Tax Administration Act. Therefore, where a request for relevant material coincides with the national lockdown, the taxpayer must not assume that the counting of days is suspended. To the extent that the taxpayer requires additional time to respond to the request, the taxpayer must request an extension in terms of section 46(5) of the Tax Administration Act. Such a request must demonstrate that reasonable grounds exist which justify the proposed extension.

Possible responses available to the recipient of a 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. Arguing that 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.

3. Arguing 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.

4. Arguing that 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 Tax Administration Act) and the Companies Act (which is seven years as per section 24 of the Companies Act).

5. Arguing that 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.

Potential alternative protection afforded by public law

An important initial question when considering a request for information concerns whether SARS has properly furnished the taxpayer with a notice indicating that it has commenced an audit and, thereafter, regular status reports issued at 90-day intervals which set out the progress that has been made in the audit.

This is required by section 42 of the Tax Administration Act and case law demonstrates that a failure by SARS to comply with these provisions is potentially very serious.
In *IT 13726*, the Tax Court held that:

"[SARS'] non-compliance with sections 40 and 42 of the Tax Administration Act clearly offends both the Constitution and the principle of legality. Accordingly, [SARS'] decision to conduct an additional assessment without notice must be set aside as it does not comply with the peremptory prescripts of the applicable legislation and it is also constitutionally unsound. In the circumstances, the assessment is found to be invalid. The entire assessment must therefore be set aside."

Furthermore, a recipient of a request may be able to use constitutional remedies to challenge SARS' conduct. In addition to the right to just administrative action contained in section 33 of the Constitution (which contemplates a definition of administrative action that is broader than that contained in the Promotion of Administrative Justice Act), the right to privacy contained in section 14 as well as the right to equality contained in section 9 of the Constitution provide promising grounds on which a challenge to capricious and unreasonable requests for information may be based.

Nevertheless, the case of *CSARS v Brown* demonstrates that taxpayers are not permitted to simply ignore requests for information which have been issued by SARS. In this case, 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.

So how do you deal with SARS queries?

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. 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) of the Tax Administration Act. 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.

Even more seriously, section 234(h)(i) of the Tax Administration Act provides that *"a person who wilfully and without just cause refuses or neglects to furnish, produce or make available any information, document or thing … as and when required in terms of [the Tax Administration Act] … is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years".*

Conclusion

COVID-19 has taken centre stage over the past two months and is likely to be at the top of the priority list for both SARS and taxpayers for the rest of 2020 or possibly longer. However, it is important for taxpayers to remain fully up to date with respect to any ongoing audits or requests for information received from SARS.

Dies non has not been suspended with respect to section 46 of the Tax Administration Act. Furthermore, although specific relief may be granted with respect to the timeframes for paying provisional tax and employees' tax, SARS remains as active as ever with respect to the enforcement of tax legislation. Therefore, taxpayers are urged to approach tax administration experts immediately after receiving contact from SARS.

Replies furnished to SARS must be carefully considered and questions meticulously replied to if the taxpayer is to stand the best chance of avoiding a negative assessment and a potentially lengthy, complicated and expensive dispute resolution process.

ALL ABOUT **SARS ASSESSMENTS**

30 minutes CPD

▶ **SUZANNE SMIT,** Tax Specialist at Nubis Tax

Find out about the SARS assessments process and how to approach the assessment to everyone's benefit.

"Know your worth, then add tax." A wise quote from an unknown author, but how true both figuratively and literally? In laymen's terms, an assessment confirms a taxpayer's taxable income together with tax liability or refund as a result, or "your worth" with the "added tax".

Chapter 9 of the Tax Administration Act, specifically sections 91 to 100, provides the legal framework for assessments. As an assessment determines a taxpayer's tax position, it is crucial to understand its composition, the process and remedial actions available in certain instances.

This article focuses on individual taxpayers. Personal income tax is a normal tax which is levied on the following:

- Income from employment
- Profits (or losses) from a business or trade (in personal capacity)
- Income or profits arising from an individual being a beneficiary of a domestic or offshore trust
- Director's fees
- Rental income or losses

What is an assessment and when does it take place?

Section 1 of the Tax Administration Act defines an "assessment" as "the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS".

An "additional assessment" is incorporated in the definition of an assessment. "Self-assessment" is defined in section 1 of the Act as follows:

"a determination of the amount of tax payable under a tax Act by a taxpayer and –

a. *Submitting a return which incorporates the determination of tax; or*
b. *If no return is required, making a payment of the tax."*

With reference to section 96 of the Tax Administration Act, an assessment should reflect at least the following requirements:

- The name of the taxpayer
- The taxpayer's taxpayer reference number (provided it has been allocated, failing which any other form of identification should be stated)
- The date of assessment
- The amount due by or refundable to the taxpayer
- The tax period relevant to the assessment
- The due date for payment in the case of a tax liability
- A summary of the process to submit an objection should a taxpayer be aggrieved by the assessment

Summarily assessments determine a taxpayer's tax liability or refund due in a specific tax year, i.e., 1 March to 28 (or 29) February. Assessments are issued upon submission of the taxpayer's tax return via eFiling. This year, non-provisional income taxpayers have until 30 November 2020 to finalise their ITR12 and provisional income taxpayers have until 29 January 2021.

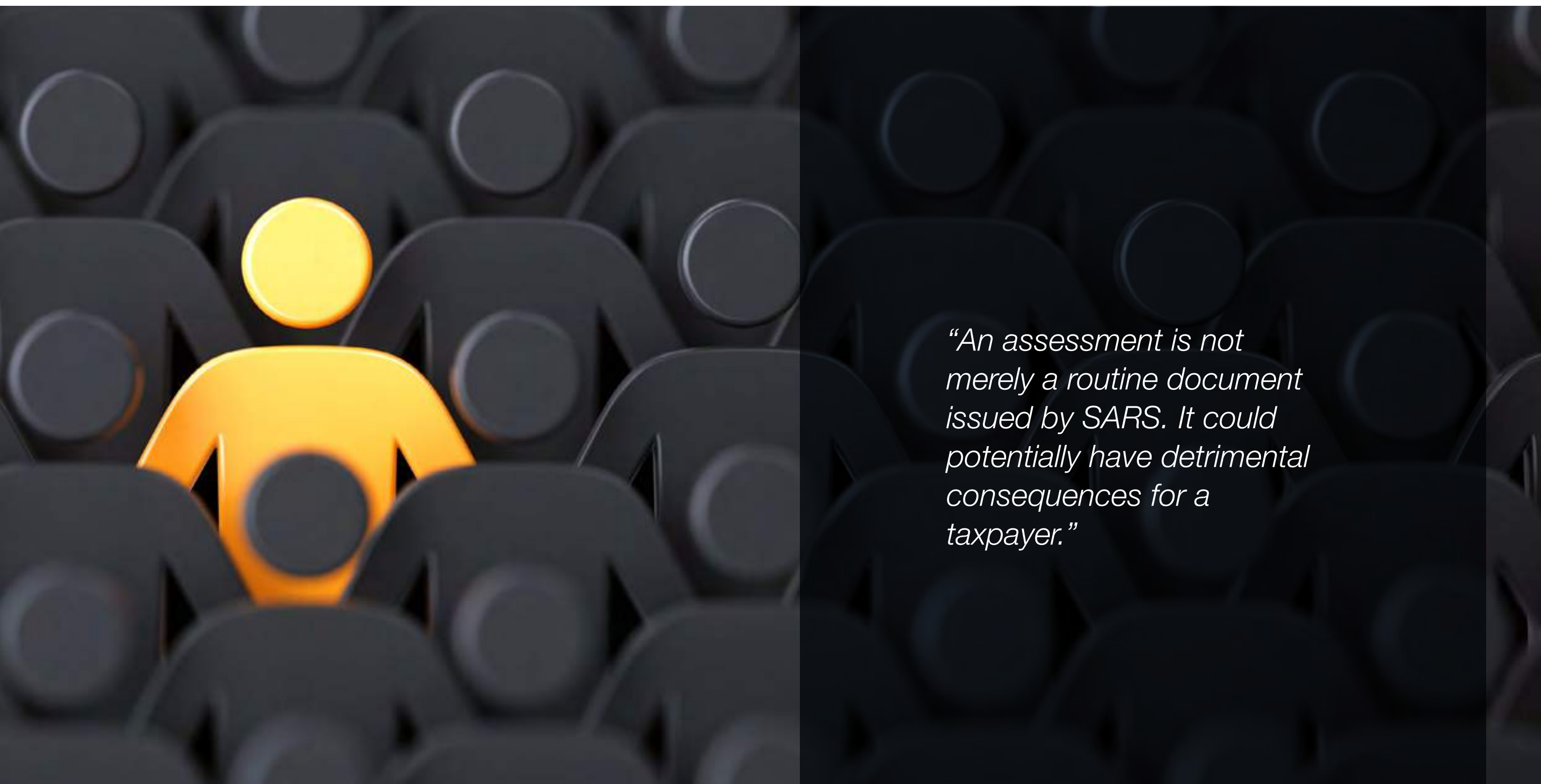
In which circumstances can SARS change an individual's assessment?

There are several circumstances in which SARS can impose an additional tax liability on a taxpayer, but the focus of this article is on selection for verification, additional assessments and reduced assessments.

Selection for verification

Chapter 5 of the Tax Administration Act contains the information gathering provisions and section 40 of the Act provides a broad scope for any taxpayer to be selected for, *inter alia*, verification on a random or risk assessment basis.

SARS normally notifies a taxpayer by means of a formal letter confirming the selection for verification. In this letter, SARS may request more information and documentation from the taxpayer. The verification process entails comparing information declared in the tax return against financial statements, accounting records and other supporting documents. Ultimately, SARS wants to



"An assessment is not merely a routine document issued by SARS. It could potentially have detrimental consequences for a taxpayer."

confirm that the tax return reflects the taxpayer's tax position accurately by being able to scrutinise the source and supporting documents underpinning the information declared in the tax return.

SARS may issue an additional assessment based on the information obtained during the verification process. It is therefore important to respond to SARS' requests as thoroughly as possible and to seek tax advice if necessary. By ignoring SARS' requests, a taxpayer may aggravate the consequences as SARS has far-reaching powers in terms of which it may collect tax debt due from third parties (Part D of Chapter 9 of the Tax Administration Act), including banks and employers.

Additional assessments

In terms of section 92 of the Tax Administration Act, SARS is obliged to issue an additional assessment if it is satisfied that an assessment does not reflect the correct application of, in this instance, the Income Tax Act and that this is to the detriment of SARS or the fiscus. The additional assessment will therefore be issued to increase a taxpayer's tax liability in order to correct the prejudice to SARS or the fiscus.

SARS cannot, however, issue an additional assessment without sufficient grounds to do so.

In the *Nondabula* case, the applicant submitted an application to interdict SARS from invoking section 179 of the Tax Administration Act (i.e., issuing a notice to a third party which could include an employer to settle a taxpayer's tax liability) whilst the applicant's objection to an additional assessment was under consideration. SARS also issued a third party order to ABSA to withhold and pay the additional tax liability due to SARS. The applicant, in addition, requested an order from court that SARS withdraw this notice.

The court carefully considered sections 92, 95 and 96 of the Tax Administration Act and how they interact with each other. In broad strokes, before SARS can issue an additional assessment, it must comply with the provisions of section 95. Section 95(2) specifically states that in order for SARS to issue an additional assessment, it should determine an estimate based on information readily available to it. SARS complied with this requirement in this instance. Next, the court considered whether SARS complied with section 96 of the Act. Section 96 sets out the formal requirements (as set out above) to be reflected in an assessment and, in this instance, SARS was required to set out the grounds supporting the additional assessment (due to the fact that it relied on an estimate), which it failed to do. The court therefore ruled in favour of the applicant with a cost order against SARS.

The crux of this case is that just as much as taxpayers have a duty to pay tax, SARS ought to comply with the Tax Administration Act and the relevant prescribed formalities in order to be entitled to collect tax.

Reduced assessments

SARS may also issue a reduced assessment in terms of section 93 of the Tax Administration Act in five different circumstances to reduce a taxpayer's liability. Notable applications of section 93 include the following:

- If SARS is satisfied that there is a readily apparent undisputed error in the assessment either by SARS or the taxpayer in a return.
- If a senior SARS official (as defined in the Act) is satisfied that an assessment was based on either the failure to submit a return, or the submission of an incorrect return by a third party or an employer, a processing error by SARS, or if a return was fraudulently submitted by a person not authorised by the taxpayer.

It is only prudent to mention that a request for a reduced assessment submitted by a taxpayer to SARS is not subject to the dispute resolution process set out in Chapter 9 of the Tax Administration Act, as this instance is not specifically stated in section 104 of the Tax Administration Act. A taxpayer could potentially submit an application for judicial review to the High Court of South Africa within 180 days after becoming aware of SARS' decision. In broad terms, an application for judicial review is submitted in terms of the Promotion of Administrative Justice Act, provided that the decision by SARS was not lawful, not reasonable and / or procedurally unfair.

In the *Rampersadh* case, the court considered an application for judicial review subsequent to SARS deciding not to issue reduced assessments in terms of section 93 of the Tax Administration Act. The applicants requested the court to review SARS' decision not to issue the requested reduced assessments. The court therefore had to take the application of section 93 into account. The court held that, if a taxpayer wants to submit an application for judicial review, it is crucial to submit documentary proof to support the arguments made in the application.

In this instance, the applicants did not substantiate their arguments with documentary proof and the court ruled in favour of SARS with a cost order against the applicants.

Prudent tax advice is vital right at the start of a request to SARS to ensure due processes are followed and a complete and water-tight submission is made.

When can SARS do their own estimate to replace a provisional tax estimate?

As background, provisional tax is a form of personal tax which is paid to SARS in advance (twice per relevant year of assessment, with an additional third option should there be a shortfall due to SARS) based on estimated taxable income.

A provisional taxpayer, as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, includes any person who derives income other than remuneration or an allowance or advance, as mentioned in section 8(1), or who derives remuneration from an employer who is not registered for employees' tax (PAYE).

With reference to paragraph 19(2) of the Fourth Schedule to the Income Tax Act, if the taxpayer does not make any estimate (i.e., the taxpayer does not submit the two required IRP6s per year of assessment), SARS has the discretion to estimate the taxpayer's taxable income for the relevant tax period. Paragraph 19(3) also provides that SARS can increase the taxpayer's estimate if not satisfied with the estimate of taxable income made by the taxpayer.

With reference to paragraph 19(6) of the Fourth Schedule to the Income Tax Act, if the provisional taxpayer does not submit the final provisional tax return within four months after the last day of the year of assessment, the the provisional taxpayer is deemed to have submitted an estimate of nil taxable income, leading to the imposition of administrative penalties and interest.

In each instance, it is important to keep penalties in mind, including underestimation, late payment and late submission penalties. It is also crucial to keep calculations and source documents on record in the event that IRP6 submissions have to be substantiated (e.g., verification or disputing additional assessments).

As discussed above, SARS must take sections 92, 95 and 96 of the Tax Administration Act into account collectively and comply with each of these sections in order to be in a legitimate position to impose and collect additional tax. If an additional assessment is issued and the taxpayer is aggrieved it, the then the taxpayer may follow the dispute process as set out in Chapter 9 of the Act, i.e., firstly by objecting and then, if the objection is disallowed, appealing the decision with sufficient grounds.

A provisional taxpayer cannot rely on Chapter 9 of the Tax Administration Act if SARS issues a revised estimate in respect of provisional tax. However, if SARS issues an additional assessment, Chapter 9 still applies. This will, for instance, apply to administrative penalties imposed (as per paragraph 19 of the Fourth Schedule).

Conclusion

Based on SARS' far-reaching powers to make an estimate, issue additional assessments and issue notices to third parties to collect alleged tax debt due – along with the potential protracted process to dispute imposed tax liabilities – it is clear that a taxpayer should not only know its worth, but be certain of it.

Calculations, financial statements and accounting records should be accurate and on record if SARS requests these. Any other relevant information and documents may also be requested, including but not limited to agreements, invoices and bank statements.

An assessment is not merely a routine document issued by SARS. It could potentially have detrimental consequences for a taxpayer. It should therefore be scrutinised to ensure that the tax liability is fair in comparison to the taxpayer's actual taxable income.

THE SARS REFUND PROCESS

15 minutes CPD

▶ **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 him or her that they 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 – like telling a child they can have an ice cream, only to put it out of their reach.

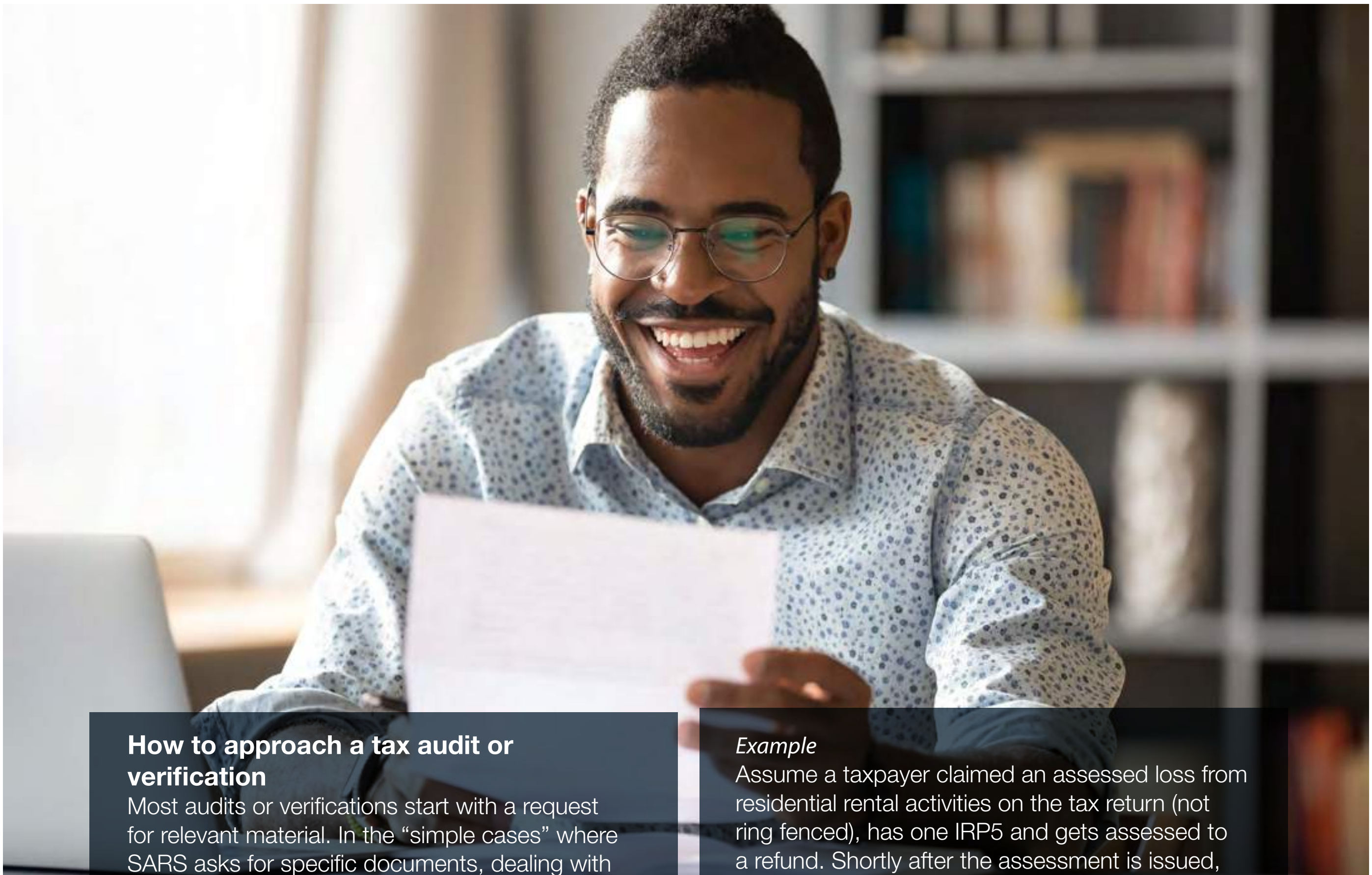
In this article, we discuss the link between refunds and audits, how a taxpayer can approach an audit or verification to ensure its expeditious finalisation and when taxpayers are entitled to interest on income tax refunds. We will also look at when a refund is due despite a pending audit or investigation 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 a 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
- 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 a 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 provide SARS with the information that has been requested (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 where 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 and what is a taxpayer supposed to provide?

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
- Any other documents relevant to the declaration

Whilst 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 say 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

> "If the security is acceptable to SARS, the refund must be released despite the audit or verification not being concluded at such time."

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) that extinguish the refund and also results 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 detail of repairs and maintenance, reflecting the amount incurred, date incurred and the nature of the repairs and maintenance. The typical "incorrect" response would be 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 5.75% (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?

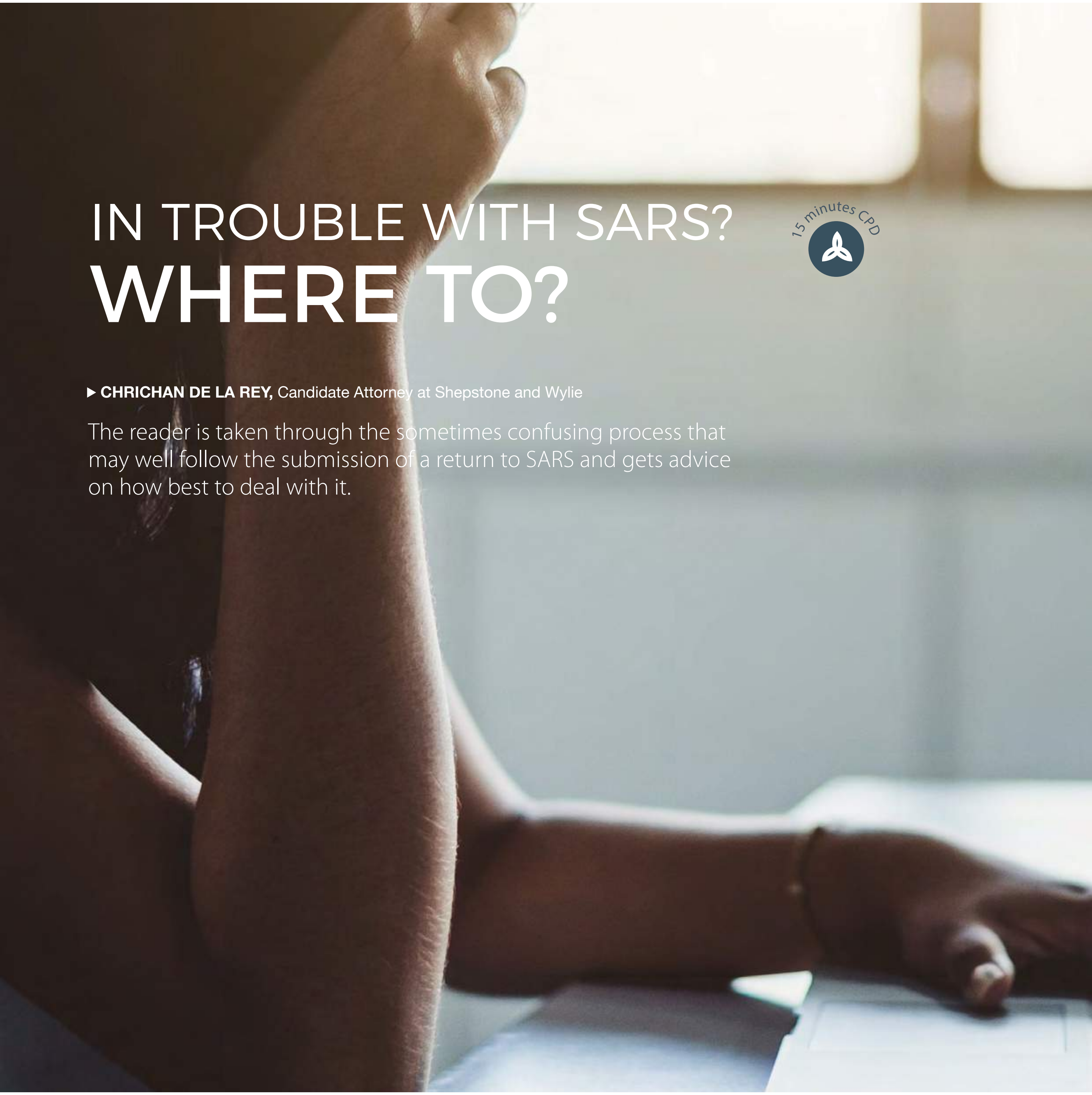
As stated above, if SARS is conducting an audit on the refund in respect of which a taxpayer seeks payment, SARS is not required to pay the refund yet. In these circumstances, however, taxpayers could try to provide SARS with acceptable security. If the security is acceptable to SARS, the refund must 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.



IN TROUBLE WITH SARS? WHERE TO?

15 minutes CPD

▶ **CHRICHAN DE LA REY,** Candidate Attorney at Shepstone and Wylie

The reader is taken through the sometimes confusing process that may well follow the submission of a return to SARS and gets advice on how best to deal with it.

Tax returns generally make the average taxpayer nervous. Individuals are not provided any training or explanation in completing their ITR12s, and for the most part 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

Once the taxpayer has jumped through all the hurdles and tick-boxes placed in the tax return and remembers 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, is referred to as an "original assessment" and is based on the return submitted by the taxpayer or other information available or obtained in respect of the taxpayer only (such as an employee's IRP5).

Therefore, should the original assessment be incorrect because the taxpayer included the incorrect interest amount received for the tax year, for example, the taxpayer has 30 business days within which 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 remains 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 next what the dreaded "Y" means.

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 uploaded.

Taxpayers will immediately know whether they have been selected for verification, and 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 their objectives. This selection can be random and is often risk based.

After the small "Y" is populated on the original 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 (in the event that all the information is correct)
- A request for correction (in the event that the information was not correct)

Should the taxpayer not respond within that timeframe, a second letter will be sent. After this, SARS will contact the taxpayer telephonically. In the event that 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", and is often an inaccurate reflection of the tax position. Many tax disputes arise from estimated assessments being made, where SARS does not have all the facts at their disposal when making the assessment.

Our recommendation is to respond as soon as possible and, where all the information requested is not available, to be transparent, engage with SARS and provide the best alternative evidence available. The taxpayer's conduct here can contribute to the efficiency of a dispute process, should it occur. Transparency could also prevent an estimate assessment.

The required documents can be uploaded on eFiling or they can be submitted at a SARS branch. As with a tax return, when uploading documents online, it is imperative that the taxpayer click "submit".

- Should the taxpayer have been selected for a verification, and a refund was due to them, the refund will be withheld until the verification process is finalised. The verification process ought to be finalised within 21 business days from the date SARS receives the requested documents. However, if the documents uploaded by the taxpayer are found not to be sufficient, SARS can request further supporting documents in order to verify the taxpayer's tax position.

Once the verification process is finalised and 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).

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 a 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 and a taxpayer burying his or her head in the sand will only frustrate the process which may lead to an inaccurate additional assessment being raised.

Once the audit is concluded, SARS will issue the taxpayer with an audit findings letter, identifying 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 as to why understatement penalties ought not to be levied.

After this, SARS will provide a finalisation of audit letter, either concluding the audit where no findings made or detailing grounds for an additional assessment, if SARS is not in agreement 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

"Engagement with SARS should not only commence once the taxpayer wishes to dispute an additional assessment."

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, 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 provide the SARS officials with all the relevant information, enabling them to come to a reasonable decision.

This transparency simplifies any future dispute arising, as the tax consultant can highlight SARS' unreasonable decisions. Where SARS' decisions and actions are not reasonable, it must be brought to SARS' attention, as taxpayers have a legal right to reasonable administrative action by SARS. If the problem persist, 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.

ACCESSING YOUR LIVING ANNUITY IN A POST-COVID WORLD

▶ **JENNY GORDON,** Head: Technical Advice at Alexander Forbes Financial Services

15 minutes CPD

Our article looks at the changes in the rules for annuity amounts intended specifically to assist holders of living annuities in the economic wake of COVID-19.

In difficult times, annuity recipients may wish to change their annuity amounts outside of the normal window of opportunity presented by the contract anniversary. Annuitants may also wish to cash out the balance of an annuity to provide emergency funding. Immediate interim relief for holders of living annuities has been provided. This article focuses on the revised rules and revised practical options for annuity recipients.

Resetting annuity amounts

Living annuities, as defined in section 1 of the Income Tax Act, require annuitants, in terms of Government Notice 290 (GN 290) of 11 March 2009, to reset their income payments to a level between 2.5% and 17.5% of the capital value of the annuity once per year on contract anniversary.

GN 290 was promulgated in terms of paragraph (b) of the definition of "living annuity" in the Income Tax Act, which prescribes that the amount of the annuity is determined in accordance with a method or formula prescribed by the Minister by notice in the *Gazette*.

By living annuities we mean all the different types, being a member-owned living annuity provided by an insurer or an in-fund or fund-owned living annuity.

During March 2020, the COVID-19 virus brought about great financial distress to fund members in the build-up phase of their retirement fund membership as well as to pensioners in the draw-down phase who are invested in living annuities. A sharp drop in asset values of equities, bonds and property occurred, arising from the economic impact which COVID-19 had caused and is expected to cause on the economies of the world. These are asset classes in which living annuitants are invested.

Reducing income

Conventional wisdom for investors in the build-up stage of investments is to discourage disinvestment from assets that have lost value so that investors do not "lock in their losses". Instead, investors are encouraged to wait for a market recovery. Research has shown that the ability of a pensioner to reduce their income immediately after a market crash is a key strategy to help protect the longevity of the annuity, meaningfully reducing annuity failure rates. Once markets have recovered, there is also value in enabling annuitants who reduced their income in order to protect capital to revert to income levels drawn previously, without having to wait for their policy anniversary date to do so. However, pensioners who are living on the income derived from living annuity assets are unable to stop or reduce their income from a living annuity before contract anniversary due to the provisions of GN 290. This could be damaging to their investment values and the long-term sustainability of their retirement income.

Many living annuitants requested administrators to reduce their draw-down rate before contract anniversary in order to protect their underlying assets. Administrators were unable to assist as this is not permitted by GN 290.

Increasing income

There is another class of living annuitants who have only been partially dependent on their living annuity income because they had another source of income, such as a small business or a spouse's employment income. Due to the lockdown and the failure of their businesses or loss of spouse employment, their other income sources dried up. This class of annuitant has a need to increase the draw-down rate to survive or for emergency situations, which cannot await the next anniversary date. Again, administrators were unable to come to their assistance due to the prescriptive provisions of GN 290.

In FSCA communication 11 of 2020, the FSCA acknowledged the hardship that COVID-19 has caused for employers and employees in the build-up phase of retirement funds. The FSCA had already provided employers with temporary relief from making payment of contributions in terms of section 13A of the Pension Funds Act. Similar provisions were required for living annuitants in the draw-down phase.

ASISA was approached by a number of its members to urgently appeal to National Treasury to provide emergency relief during this crisis period. Flowing from this request, on 23 April 2020 National Treasury announced that it would provide immediate interim relief for a period of four months with effect from 1 May 2020 to 31 August 2020. However, due to unexpected delays in issuing the *Gazette* it was finally published on 1 June 2020. The interim relief is provided for a four-month period from 1 June 2020 to 30 September 2020.

"Many living annuitants requested administrators to reduce their draw-down rate before contract anniversary in order to protect their underlying assets."

Government Notice No 618 of 1 June 2020

The gazetted notice states the following:

"I, Tito Titus Mboweni, Minister of Finance, hereby prescribe that–
(a) at the election of the annuitant, from 1 June 2020 to 30 September 2020, the amount referred to in paragraph (b) of the definition of "living annuity" in section 1(1) of the Income Tax Act, 1962 (Act 58 of 1962), may be determined to be not less than 0,5 per cent and not greater than 20 per cent of the value of assets referred to in paragraph (a) of that definition, irrespective of the date on which the living annuity contract was concluded;

(b) in addition to the election contemplated in paragraph (a), for the purposes of the amount referred to in paragraph (b) of the definition of "living annuity" in section 1(1) of the Income Tax Act, 1962 (Act 58 of 1962) as prescribed by Government Notice 290 published in Government Gazette 32005 of 11 March 2009, an annuitant may elect a different draw-down percentage at the anniversary date of inception if that anniversary date falls within the period 1 June 2020 to 30 September 2020."

Relief intended

Although the notice on its own does not contain the complete details of the intended relief, ASISA has clarified with National Treasury that the intention which is reflected in a combined reading of the notice and the explanatory memorandum is as follows:

- There will be a temporary relief period for four months, from 1 June 2020 to 30 September 2020 ("the relief period").
- During this period, all living annuitants will be able to change their annuity draw-downs to an amount that is not less than 0.5% and not greater than 20% of the value of the annuity assets.
- Individuals will be allowed to adjust their draw-down rates at any time during this period, without having to wait for contract anniversary (irrespective of whether or not the contract anniversary date falls within the said period).
- Any election made will only be applicable for the relief period.
- At the end of the relief period, from 1 October 2020, any election made during this period will cease and the draw-down rate will automatically revert to the rate applicable before the said adjustment.
- In all other respects, GN 290 will continue to apply.

"When increasing the draw-down rate, it is always recommended that annuitants assess the long-term effect on the sustainability of their long-term retirement income with their financial adviser."

Anniversary dates within the relief period

- If, during the relief period, a contract anniversary occurs and the relief period percentage rate has been selected, the annuitant must also select a draw-down percentage rate that will apply on termination of the relief period.
- If, in the case of new living annuities starting within the relief period, the relief period percentage rate has been selected, the annuitant must also select a draw-down percentage rate that will apply on termination of the relief period.
- The rate that shall apply after the relief period must fall within the percentages prescribed by GN 290 of 2009 (2.5% – 17.5%).
- Where a contract was taken out before 21 February 2007 and no changes were made until the relief period, the rate is between 5% and 20%.

Asset values

- In all cases, as provided by GN 290, the draw-down amounts must be calculated based on the value of the assets (net of costs) at inception of the contract or the value used at the last contract anniversary, whichever is the later date.

When increasing the draw-down rate, it is always recommended that annuitants assess the long-term effect on the sustainability of their long-term retirement income with their financial adviser.

Change to the *de minimis* commutation values on living annuities

During the lifetime of the living annuitant, the annuitant has no access to the underlying capital outside of the annual draw-down percentage. The remaining capital may only be paid out on death. An exception exists in paragraph (c) of the definition of "living annuity" in the Income Tax Act, which prescribes that "the full remaining assets of a living annuity may be paid as a lump sum when the value of those assets become at any time less than the amount prescribed by the Minister of Finance by notice in the *Gazette*".

GN 1164, published in *Government Gazette* 31554 of 30 October 2008, prescribed the amount contemplated in paragraph (c) to be the following:

- R50 000, where a fund member had withdrawn/commuted any amount in cash from a retirement fund before purchasing a living annuity.
- R75 000, where there was no previous lump sum commutation from the fund.

GN 1164 has been replaced by GN 619 of 1 June 2020. The dual threshold mentioned above has been replaced by a single threshold of R125 000 to be applied as the "new" *de minimis* amount. Although this is also a COVID-19 relief measure, unlike the draw-down relief, this will apply indefinitely from 1 June 2020 and not for an interim period.

30 minutes CPD

Assistance for SMMEs in a time of crisis

▶ **ANSA DU PREEZ,** Customs Manager at Cova Advisory & **MARIETTA MEYBURGH,** Incentives Manager at Cova Advisory

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

COVID-19 has had a disruptive impact on the economy and has ultimately led to the declaration of a state of national disaster in South Africa. As a result, the South African Government has made measures available to support SMMEs in distress. These measures include tax deferrals, grant funding, concessionary loan funding and procurement of essential goods from SMMEs. These are discussed below.

Tax breaks for small- and medium-sized enterprises

Entities with a turnover of less than R100 million will be allowed to defer tax without SARS imposing penalties or interest.

Provisional tax liability

Payment of a portion of the first and second provisional tax liability to SARS is deferred.

- The first provisional tax payment for the period from 1 April 2020 to 30 September 2020 will be based on 15% (not 50%) of the estimated total tax liability (an effective 35% deferral).
- The second provisional tax payment for the period from 1 April 2020 to 31 March 2021 will be based on 65% of the estimated total tax liability.

Provisional taxpayers with deferred payments will be required to pay the full tax liability when making the third provisional tax payment in order to avoid interest charges. The proposed amendments are deemed to have come into effect on 1 April 2020.

PAYE

Tax compliant small- to medium-sized businesses qualify for deferral of payment of 35% of their PAYE liability for four months. The deferred PAYE liability must be paid to SARS in equal instalments over the six-month period commencing on 1 August 2020, i.e., the first payment must be made on 7 September 2020. Annual turnover must not exceed R100 million for the 2020/2021 year.

The proposed amendments are deemed to have come into operation on 1 April 2020 and end on 31 July 2020. Therefore, they impact the PAYE payable from 7 May to 7 August.

Skills development levy contribution holiday

Government implemented a four-month holiday (non-payment, i.e., not a deferral) for skills development levy (SDL) contributions made by all employers (no turnover limit) for the period from 1 May 2020 to 31 August 2020. Therefore, this is a real cash saving and is effective from 7 June when SDL and PAYE are payable to SARS.

Grant funding support

Temporary employer/employee relief scheme

Temporary employer/employee relief scheme (TERS) is available from April to June 2020 to employees who have lost income (unpaid leave or a salary cut) or have been required to take annual leave due to the COVID-19 pandemic.

Either the employer, employee or bargaining council can apply for benefits on behalf of the employee.

The benefit is determined on a sliding scale. Employees may get a percentage of their salary (between 38% and 60%). For this calculation, the benefit caps out on an employee salary of R17 712 per month with a maximum benefit of R6 730 per employee.

Employment Tax Incentive

The Employee Tax Incentive (ETI) aims to provide a subsidy of up to R500 per month for private sector employees earning below R6 500. This amount has been increased to R750 per month for the next four months.

Expanding of the ETI programme is operational from 1 April 2020 until 31 July 2020 for employers qualifying for ETI in terms of the Employment Tax Incentive Act.

To claim the ETI, there must be an employment contract between the employer and the qualifying employee.

Government and private sector loan funding

Debt relief fund

This fund is aimed at providing relief on existing debts and repayments. To qualify, SMMEs need to demonstrate the impact or potential impact of COVID-19 on their business operations. The facility is a soft loan facility for a period of six months starting from April 2020 for small entities. SMMEs may apply for this funding through the SMME platform (www.smmesa.gov.za).

Business Growth/Resilience Facility

The Business Growth/Resilience Facility is targeted at SMMEs that locally manufacture or supply high-demand hygiene and medical products.

This facility will offer working capital, stock, bridging finance, order finance and equipment finance. The funding amount has limits due to its target market of SMMEs and will be based on the funding needs of the actual business. SMMEs may apply for this funding through the SMME South Africa platform (www.smmesa.gov.za).

Industrial Development Corporation and the Department of Trade, Industry and Competition

The IDC, together with the DTIC, has established a fund of more than R300 million for industrial funding to address the situation of vulnerable firms and fast-track financing for companies critical to Government's efforts to fight the virus and its economic impact.

The fund has the following two initiatives:

1. *IDC MCEP Loan – COVID-19 essential product manufacturers*

The funding is applicable to manufacturers of COVID-19 essential goods. The funding is capped at R30 million per entity for working capital and plant and equipment requirements. Interest will be charged at a fixed rate of 2.5% per annum for a maximum term of 48 months, including moratorium.

Qualifying criteria:

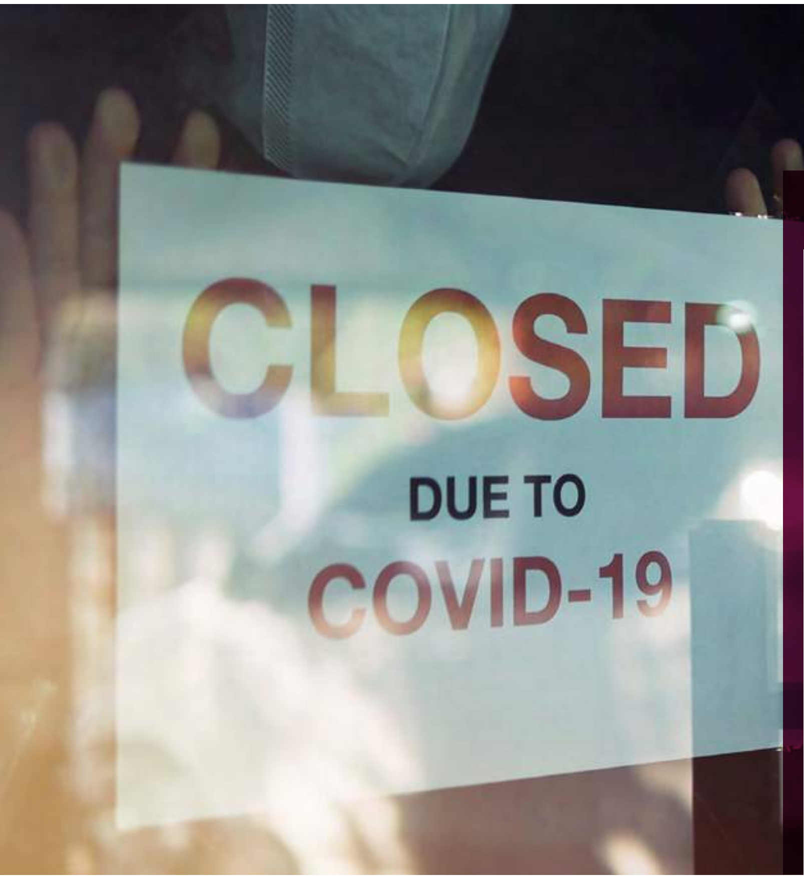
- Must be a registered legal entity in South Africa and operational for at least a year.
- Must submit a valid contract/purchase order or letter of intent.

At least Level 4 B-BBEE status is encouraged.

2. *IDC COVID-19 Fund – essential product manufacturers and suppliers*

This is a short-term loan for once-off contract finance or import funding, revolving credit or guarantees for imports.

Finance cost will be priced at prime +1% per annum, guarantees 2% per annum and the maximum term is three months, including moratorium.



- Qualifying criteria:
  - Needs to submit a track record in the manufacture or supply of comparable products to demonstrate ability to deliver, and show profitability prior to application.
  - Must be registered as a vendor with Government, multinationals or retailers.
  - Must be a registered legal entity in South Africa and operational for at least a year.
  - Must submit a valid contract/purchase order or letter of intent.
  - At least Level 4 B-BBEE status is encouraged.

National Empowerment Fund

A R200 million facility is on offer by the DTIC and National Empowerment Fund (NEF) for Black entrepreneurs to purchase machinery, raw materials and other items. They offer loans between R500 000 and R10 million, offered at 0% interest in year 1 and fixed at 2.5% thereafter.

Qualifying criteria:

- Must produce hand sanitisers, disinfectants, hand soaps, facial masks, gloves, medical protective clothing, steel beds, maize meal, flour, beans and cooking oil among other items.
- Must be a registered supplier for retailers or institutions that have agreed to purchase the manufactured products.
- Tax compliance and commercial viability is a prerequisite.

COVID-19 SME Fund

The fund is administered by Business Partners (Rupert Foundation & Remgro), and made available for working capital.

The fund size is R900 million (R100 million for sole proprietors and partnerships administered by PwC). It offers loans between R250 000 and R1 million. The fund will make monthly disbursements towards working capital requirements.

“Smaller VAT vendors that are in a net refund position will be temporarily permitted to file monthly instead of once every two months, thereby unlocking the input tax refund faster and improving cash flow.”

- Month 1 – month 12: 0%, payment holiday for first 12 months, no early payment implications
- Month 12 – month 60: prime interest, no early payment implications

Qualifying criteria:

- February 2019 signed Annual Financial Statements (non-negotiable).
- Fully compliant entity.
- Formally registered entity.
- Ownership does not have to be South African citizens.
- Excludes direct agriculture, non-profit organisations, underground mining and on-lending.

Tourism relief fund
This fund provides once-off capped grant assistance to SMMEs in the tourism value chain to ensure their sustainability during and after the lockdown. Capped at R50 000 per entity, grant funding can be utilised to subsidise expenses towards fixed costs, operational costs, supplies and other pressure costs items.

Categories eligible to apply include:

- Accommodation establishments: hotels, lodges, B&Bs, guest houses and backpackers.
- Hospitality and related services: restaurants (not attached to hotels).
- Conference venues (not attached to hotels), professional catering and attractions.
- Travel and related services: tour operators, travel agents, tourist guiding, car rental companies and coach operators.

SARS assistance

Fast-tracking of VAT refunds
Smaller VAT vendors that are in a net refund position will be temporarily permitted to file monthly instead of once every two months, thereby unlocking the input tax refund faster and improving cash flow.

Proposed amendments are deemed to have come into operation on 1 May 2020 and relate to the tax period from 1 April 2020 until the end of July 2020.

Excise taxes deferral
Due to the restrictions on the sale of alcoholic beverages and tobacco products, excise payments due in May and June 2020 will be deferred by 90 days for excise compliant businesses to more closely align tax payments with retail sales.

Carbon tax submission and payment deferral
To provide cash flow relief and to alleviate some of the compliance burden on taxpayers, a three-month deferral of the first period for submission of accounts and carbon tax payments was announced. Thus, the 2019 period's submission of accounts and carbon tax payments move from 31 July 2020 to 31 October 2020.

Penalties
Larger businesses (with gross income of more than R100 million) that can show they are incapable of making payment due to the COVID-19 disaster may apply directly to SARS to defer tax payments without incurring penalties.

Businesses with gross income of less than R100 million can apply for an additional deferral of payments without incurring penalties.

Extension of time periods for direct and indirect exports
Generally, for direct exports the vendor must obtain the required documentary proof and export the goods within 90 days of the earlier of the date of invoice or any payment.

Generally, for indirect exports goods must be exported within 90 days of the date of invoice or payment, and the foreign purchaser must claim the VAT refund from the Vat Refund Administrator within 90 days of the date of export.

For both direct and indirect exports BGR 52 extends the 90-day period by an additional three months.

15 minutes CPD

WHAT HAPPENS IF YOUR EMPLOYER FAILS TO PAY YOUR PAYE?

▶ **ANERIA BOUWER,** Partner at Bowmans

Some employers may argue that desperate times call for desperate measures. Employees should be aware that this may place them in a situation of liability towards SARS, even though PAYE was seemingly deducted from their pay.

South Africa, like most other countries, has been hit hard in recent months, not only by the COVID-19 pandemic, but also by the lockdown measures imposed to slow down the spreading of the virus.

While various assistance and relief measures have been made available, in many instances, struggling businesses cannot comply with their financial obligations.

In some instances, in order to keep the business afloat and prevent hardship to employees, an employer will pay employees their net salaries, after deducting retirement fund and other contributions and employees' tax (also referred to as pay-as-you-earn or PAYE) but without actually paying the amounts so deducted to the intended recipients (retirement fund and SARS, respectively). Employers who are desperate to keep their businesses afloat could argue that it is better in the short term to use available cash to pay those amounts that allow them to continue operating, such as rental and salaries, rather than to comply with their obligations in respect of retirement fund contributions and PAYE.

While the intention at the time would most likely be to pay the arrear amounts as soon as possible, in some instances this does not happen as the business never recovers. The amounts so deducted are thus never paid over to the intended recipients, such as the retirement fund and SARS. This article focuses on the considerations for the employer and the employee in respect of unpaid PAYE.

PAYE not paid to SARS

Denel, the state-owned arms manufacturer, was in the news in August 2019 when union Solidarity approached the North Gauteng High Court in Pretoria to obtain a ruling to compel Denel to urgently pay over PAYE and UIF contributions to SARS. The Court granted the judgment on 20 August 2019. It is assumed that Denel complied with the order and paid the amounts to SARS. However, what is the position where the employer does not pay the arrear PAYE to SARS?

It is trite that employees' tax is not a separate form of tax, but that the employer is obliged to withhold employees' tax in respect of the employee's liability for normal tax. The employee will then, on assessment, be able to set off the employees' tax so withheld against his or her liability for normal tax.

The obligation to withhold employees' tax is provided for in paragraph 2 of the Fourth Schedule to the Income Tax Act, which reads as follows:

> *"Every (a) employer who is a resident … who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount … by way of employees' tax an amount … in respect of the liability for normal tax of that employee".*

The employees' tax so withheld must be paid over to SARS by no later than the seventh day of the next month. Should the full amount due not be paid to SARS by this date, the employer will be subject to a 10% penalty as well as interest, unless a deferral arrangement is in place. For example, employers with a turnover of less than R100 million per year may, in terms of the COVID-19 tax relief measures, be able to defer 35% of their PAYE liability in respect of April to July 2020 until later in the year.

In terms of Chapter 10 of the Tax Administration Act, an employer is personally liable for an amount of tax withheld and not paid to SARS or which should have been withheld in terms of the Fourth Schedule but was not so withheld. In terms of paragraph 5(2) of the Fourth Schedule, the employer may request to be absolved from such liability where the failure to withhold PAYE was not due to an intent to postpone payment of the tax or to avoid the employer's obligations under the Fourth Schedule and if the Commissioner is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee.

The employer could also be held criminally liable for failure to withhold and pay PAYE. In terms of section 234(p) of the Tax Administration Act, if an employer wilfully and without just cause fails or neglects to withhold and pay PAYE to SARS, the employer is guilty of an offence and, upon conviction, subject to a fine or imprisonment for a period not exceeding two years.

In our experience, SARS generally prefers to recover any unpaid PAYE from the employer: It is far simpler to pursue a recovery against one employer than to attempt to recover the tax in question from a multitude of employees. Logic would also dictate that SARS should not absolve the employer from its PAYE liability where the employee received only his or her net remuneration, after the deduction of PAYE.

Unfortunately, this is not necessarily the case. The reality is often that, although the employee's payslip reflects PAYE as having been deducted, the employer does not have sufficient funds in order to pay employees' tax to SARS. Take the example of an employee who earns remuneration of R10 000 per month with a PAYE liability of R2 000. If the employer only has R8 000 available and the employer uses that R8 000 to pay the employee's net salary, then the reality is that even though the employee's payslip may reflect a R2 000 PAYE deduction, the employer never had the R2 000 available and cannot pay this amount to SARS.

Accordingly, even though the employer would be personally liable for the PAYE which it failed to pay to SARS, the reality may be that it cannot pay these amounts to SARS.

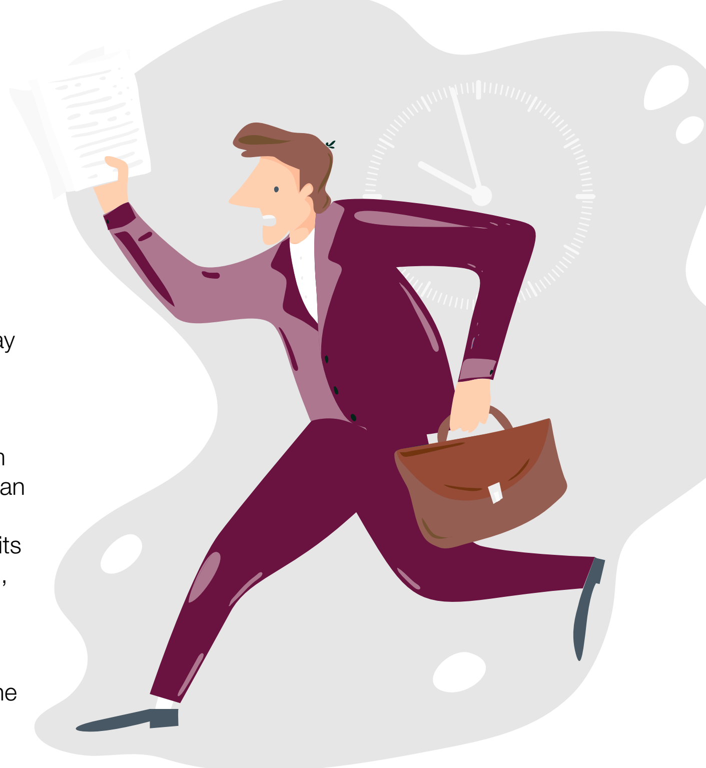
The employee's position

What does this mean for the employee? Could SARS still hold the employee liable even if the employer was the defaulting party?

The answer, unfortunately, is yes, as the ultimate income tax liability resides with the employee. The 2002 case of *Estate Late G A Pitje v CSARS* considered the scenario where no PAYE was paid to SARS in respect of remuneration paid to the late Mr Pitje. While the facts are not very clear, it appears that the IRP5s issued to the late Mr Pitje reflected his gross remuneration less PAYE deducted by his employer. However, it appears that such PAYE was never paid over to SARS. On submission of the late Mr Pitje's income tax returns, assessments were issued which reflected an outstanding income tax liability and SARS sought to recover this amount from Mr Pitje.

It is unclear whether the PAYE was, in fact, withheld from the remuneration paid to Mr Pitje or why it was not paid over to SARS. The late Mr Pitje was an advisor in the Office of the Premier of the Northern Province and there was no mention of any kind of financial distress which could result in the non-payment of PAYE.

The executrix of his estate argued that SARS should recover any underpayment of employees' tax from the employer, not from Mr Pitje's estate. The Court assumed that SARS, by not attempting to recover the PAYE from the employer, absolved the employer from liability. The Court further held that the ultimate liability to pay income tax rests with an employee. The collection mechanism created by the Income Tax Act does not extinguish the liability of the employee.



This case raises a number of concerns and queries:

- If the PAYE was, in fact, withheld by the employer, why did SARS not seek to recover the PAYE from the employer?
- If the employee received only the after-tax amount and no PAYE was paid over to SARS, what is the employee's remedy? The employee would have a claim against the employer in respect of the PAYE which had not been paid to SARS, but what if the employer is bankrupt? The August 2019 court order obtained by Solidarity against Denel to pay PAYE in arrears to SARS makes perfect sense in this context.
- Another possibility could be for the employee to claim a bad debt deduction against his or her remuneration in respect of the unpaid PAYE, in his return. In other words, if we refer to the example above, the employee's IRP5 would reflect gross remuneration of R10 000, but the employee claims the R2 000 unpaid PAYE as bad debt, thus reducing the taxable amount to R8 000. While this is obviously not as beneficial as procuring the payment of the PAYE to SARS or recovering the R2 000 from the employer, it will at least soften the blow in respect of the unpaid PAYE. Whether or not this is the correct course of action for a taxpayer will depend on his or her specific circumstances.

Mind the risk

The above is a very unfortunate position for an employee to be in. Whilst the employer is primarily liable for the PAYE shortfall, employees may find themselves at risk. It is thus advisable for employees, especially where their employer is in financial distress, to keep monitoring the situation in order to protect their (the employees') position to the extent possible.

15 minutes CPD

TAX COMPLIANCE

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 storms of COVID-19 and beyond?

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

What is compliance?

"Compliance" can be defined as the act of adhering to or conforming with laws or rules. It shows confidence in and acceptance of the laws and the law-makers.

Compliance in the tax world means that taxpayers have met their legal obligations under the tax laws and includes ensuring that all tax returns are submitted and tax liabilities paid. SARS has numerous punitive provisions which it can use to enforce compliance by taxpayers. Monetary and criminal sanction can follow non-compliance with the tax laws.

Being tax compliant is a legal requirement for all taxpayers. It was a legal requirement pre-COVID-19, it is a legal requirement during COVID-19 and it will be a legal requirement post-COVID-19. However, due to COVID-19 tax relief measures have been proposed in order to ease the financial strain on qualifying taxpayers. A main requirement for the definition of a qualifying taxpayer is that the taxpayer must be compliant. Without a doubt, taxpayers would want to and need to benefit from the tax relief measures and this has put pressure on taxpayers to ensure that they are compliant with their taxes.

Compliance status

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

SARS launched the Tax Compliance Status (TCS) system in 2015 to enable taxpayers to view their compliance status and request a tax clearance certificate. The system allows taxpayers to identify if there are any monies due or tax returns outstanding in order to remedy any non-compliance.

Taxpayers will be compliant for purposes of the TCS 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
- Have either merged or declared all registered tax reference numbers

It is also important to note that the compliance status is fluid and is 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
- Good standing

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

Taxpayers are also able to confirm their compliance status directly with SARS.

Benefits of being compliant during COVID-19

Being compliant ensures that taxpayers will avoid the possibility of penalties and interest being charged on defaults as well as falling foul of the offence provisions which could see taxpayers 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.

Taxpayers who are compliant can tender for government work, remit monies offshore, formally emigrate from South Africa and obtain good standing tax clearance certificates.

The COVID-19 tax relief measures, which are only available to compliant qualifying taxpayers, include the deferral of 35% of the PAYE liability for the months of 1 April to 31 July 2020; and the deferral of 35% of the tax liability for the first and second provisional tax payments due from 1 April to 30 September 2020 and 1 April 2020 to 31 March 2021, respectively. Where taxpayers are or become non-compliant, they will be subject to penalties and interest on the deferred amounts and may find themselves guilty of a criminal offence. They will also not be able to continue to benefit from the tax relief measures.

Therefore, a double blow for non-compliant taxpayers: penalties and interest payable to SARS while no tax relief can be enjoyed.

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 Government and the level of corruption, mismanagement of funds, lack of service delivery and transparency, and state-capture to name but a few.

Commissioner Kieswetter, shortly after his appointment as the Commissioner for SARS, warned of a "tax revolt" amongst taxpayers, suggesting there could be withholding of tax payments and a rise in levels of tax avoidance and fraud. He attributed such action to years of corruption experienced by taxpayers and the failing trust in SARS. "When public trust wanes, as is the current case, then taxpayers feel morally justified to withhold or manipulate their taxes."

Tax revolt due to low tax morality implies a deliberate action by taxpayers to commit fraud, to steal. It requires taxpayers to take a decision to not make payment to SARS, of whatever taxes are administered by SARS, to not render a return required to be rendered to SARS, or to render a fraudulent return.

Yes, there is much that needs to be done to restore taxpayers' trust in SARS and in Government, to rebuild the respective brands and to improve tax morality. However, non-compliance cannot be justified, notwithstanding the reasons for the low tax morality, notwithstanding COVID-19 and the hardships it brings.

It is most definitely not the time to be non-compliant, with the realities currently faced by many South Africans as businesses are closing down due to the financial impact of not being operational since the national lockdown was imposed mid-March 2020. Now, more than ever, Government needs to rely on tax collections from all taxpayers in order to meet its responsibilities towards the people of South Africa, to facilitate the country's economic "rebirth" and to ensure renewed growth and development.

Helping (ex)workers obtain **unemployment benefits**

▶ **JOON CHONG**, Partner at Webber Wentzel

Most domestics and gardeners found themselves unable to work during the initial COVID-19 lockdown period and many were retrenched as a result of their employers' financial difficulties. Our article guides employers through the processes of claiming unemployment benefits for these vulnerable people.

The COVID-19 pandemic resulted in a Level 5 hard lockdown from 27 March 2020 to 30 April 2020, easing to Level 4 from 1 May 2020 to 31 May 2020, and easing again to Level 3 from 1 June 2020. By and large, only individuals and companies providing essential services or those involved in the sale of essential goods could work during the Level 5 lockdown.

Domestics, gardeners and persons looking after children could not work if they were required to travel from their homes to their places of employment. Private homes and parents faced multiple difficulties of having to balance working from home, home schooling and cleaning their homes and gardens.

During the Level 4 lockdown between 1 May 2020 and 31 May 2020, domestics and gardeners were largely still unable to work. Fortunately, under Level 3 lockdown, domestic workers and gardeners could return to work.

Most employers paid their domestics and gardeners in March, and many continued to do so in April. However, many domestics and gardeners that could not work were not paid in May. Many in this vulnerable group were also retrenched as their employers, faced with devastating financial pressures themselves, had no choice but to terminate their services.

This article discusses the benefits available for domestics and gardeners during the lockdown under the Temporary Employer/Employee Relief Scheme (TERS) administered by the Unemployment Insurance Fund (UIF) where they could not work and received no or reduced income under the no work, no pay policy. In addition to the TERS benefits, domestics and gardeners can also claim for illness benefits if they were ill or required to self-isolate and could not work. If they were retrenched, then they can also claim for unemployment benefits under the Unemployment Insurance Act.

Purpose of the Unemployment Insurance Act and TERS

The UIF was set up in terms of the Unemployment Insurance Act and provided for the payment of unemployment, illness, maternity, parental and adoption benefits to certain employees, and commissioning parental and dependant's benefits related to the unemployment of such employees.

The purpose of the TERS was to enable the UIF to assist employers to pay their employees who had no income, lost some income or were required to take annual leave during the lockdown. The TERS was a special benefit introduced in a directive issued by the Minister of Employment and Labour (TERS directive).

The UIF recognised that allowing each employee to apply for UIF benefits would be inefficient. Thus employers were allowed to claim for their affected employees in an online process. Employers would then administer the TERS benefit payments to their employees, in certain instances in the tens of thousands. The payments to the employees could be facilitated much faster by the employers, as banking information and payroll processing were already in place for normal monthly payrolls. Employers were requested to pay the TERS benefits as advances to avoid delays and for employers to recover those advances from the TERS benefits received from the UIF.

The TERS benefit has since been amended to allow employees to apply for TERS benefits themselves, including in instances where their employers did not register, provide their details or pay the employees' contributions to the UIF as required in the Unemployment Insurance Act.

How to claim TERS

Applying as employees

Employees who wish to apply for TERS benefits themselves can do so by registering their profiles on uFiling, the secure UIF website provided to employers to register, declare and pay monthly UIF contributions.

An employer will still need to complete the employee declaration to be submitted as part of an employee's TERS application on uFiling. Therefore, the TERS benefits submission process by an employee is not completely without the employer's involvement.

Applying as employers

An employer who wishes to claim TERS benefits should do so by registering online (www.uifecc.labour.gov.za/covid19/). Employers should first send an email to covid19ters@labour.gov.za to receive an autoreply which sets out the online application process and template spreadsheet to be populated. Notably, the column for remuneration during shutdown for the March/April applications in the template spreadsheet should exclude any TERS benefit advances or leave pay. For the May applications, this column requires the remuneration for work done or work to be done in May 2020, also excluding leave pay and payments in advance.

The completed spreadsheet will then need to be converted to a very specific CSV format file which will then be uploaded online. Alternatively, employers can upload details of their employees one at a time using the "Add employee" function online. The manual uploading of employees is the preferred method of submission by the UIF, has a higher success rate and results in much faster payments.

Some of the reasons why employees submitted online by employers have been rejected include foreign individuals without South African identity numbers, individuals with historic or ongoing UIF claims reflected on the system, and where employers or employees are not registered and have not submitted the relevant declarations. All these issues will first need to be dealt with on uFiling before the TERS benefits will be processed on the UIFECC website.

Employers must also check that the CSV file which was uploaded results in the employee details being captured on the website. All too often, even though the CSV file reflects as uploaded and the employer received an email confirming this, the employee details are not captured on the website to be processed and no payment can be made by the UIF.

Employers should check the website every day after uploading the CSV file to ensure that the employee details are captured. It may take a few days before the employee details are captured. In the interim, the employer should check the format of the CSV file and, where this is correct, continue to upload the files. The employer should also send emails to the various UIF support email addresses. However, these are not currently responded to. The employer should also try to contact the call centre number at 0800 030 007 and request that the issue be escalated.

Differences between TERS and other UIF benefits

Illness and reduced work time benefits

The Unemployment Insurance Act provides for employees to claim illness benefits where the contributor is unable to perform work due to illness for at least seven days. The TERS directive has expanded the scope of the illness benefits to allow domestics and gardeners to claim this benefit even when they are not sick but are quarantined for 14 days due to the COVID-19 pandemic. A confirmation letter from the employer and employee may

> *"Ideally, employers should assist their domestics and gardeners to claim TERS benefits, and if they are retrenched, unemployment benefits on eFiling."*

be submitted as proof that the employee was in agreed precautionary self-quarantine for 14 days. If the employee is quarantined for more than 14 days, a medical certificate from a medical practitioner should be submitted. (The recent health and safety guidelines suggest that paid sick leave should be exhausted first before requiring quarantined employees to apply for illness benefits.)

Likewise, domestics and gardeners can also apply for reduced work time benefits where they have lost income due to their inability to work or work normal days due to the lockdown. However, this should only be done if their employers are not successful with a TERS benefits claim for them.

The above benefits are calculated using a sliding scale formula in Schedule 2 of the Unemployment Insurance Act where any remuneration paid by their employers will effectively reduce the calculated Unemployment Insurance Act benefit.

Only one UIF benefit possible in a period

Notably, domestics and gardeners can only apply for one type of UIF benefit in the same period. The UIF uses the South African identity number to check for applications and payments in a period. As a result, if an employer applies for TERS benefits for an employee and the employee also applies for the TERS benefits in the same period, it will result in either or both TERS applications being rejected. Further, the employee can only receive one type of UIF benefit for one period. Therefore, the employee can receive either the TERS benefit or the reduced work time or illness benefits in the same period.

The TERS benefits provide better benefits to employees

An employer should ideally apply for TERS benefits for a domestic worker or gardener as this will result in payments and greater amounts of benefits as any top up payment by the employer does not reduce their calculated benefit. This is provided that any additional payment by the employer plus the TERS benefits received by the domestic or gardener do not exceed their remuneration ordinarily received.

Further, the TERS benefit is de-linked from the UIF's normal benefits and therefore payment of the TERS benefit will not use any credit days accumulated (i.e., one credit day for every four days worked). The domestic and gardener will also receive the national minimum wage of R3 500 as the minimum TERS benefit, which is not available for other UIF benefits.

The maximum salary benefit taken into account in the sliding scale formula is R17 712 per month per employee, and the benefit payable will be calculated using the income replacement sliding scale of between 38% and 60%. Effectively, this means that the domestic or gardener can earn a minimum of R3 500 and a maximum of R6 638.40.

An employer should then also download the payment allocation schedule for the breakdown of payments for all its employees and process the payments on the payslips. The proof of payment of the TERS benefits will need to be provided to the UIF.

Applying for unemployment benefits

Where domestics and gardeners are retrenched, they will need to apply for unemployment benefits on uFiling. The illness benefits, unemployment benefits and reduced time benefits will be applied in the same manner, which is on the "Benefit Application and Payments" section and "Apply for Benefits" tab. The employee will need to verify bank details, with part of the UI2.8 form being completed by the employee's bank and the other part by the employee. The completed UI2.8 bank form and contact details will then need to be emailed to VOsupport@labour.gov.za.

Personal details, including physical and postal addresses, will need to be confirmed or updated. Information on occupation and qualifications will need to be updated, and work seeker information will also need to be updated. The application history can be viewed at the "View Application History" section. An employee can lodge a notice of appeal if their application for benefits was declared by selecting "Notice of Appeal" and completing the section accordingly.

Payments

Ideally, employers should assist their domestics and gardeners to claim TERS benefits and if they are retrenched, unemployment benefits on uFiling. Payments can be made directly into the bank accounts of the domestics, gardeners or to the employers if the employers paid the TERS benefits as advance payments. Payments for unemployment benefits can only be made to the bank accounts of the domestics and gardeners.

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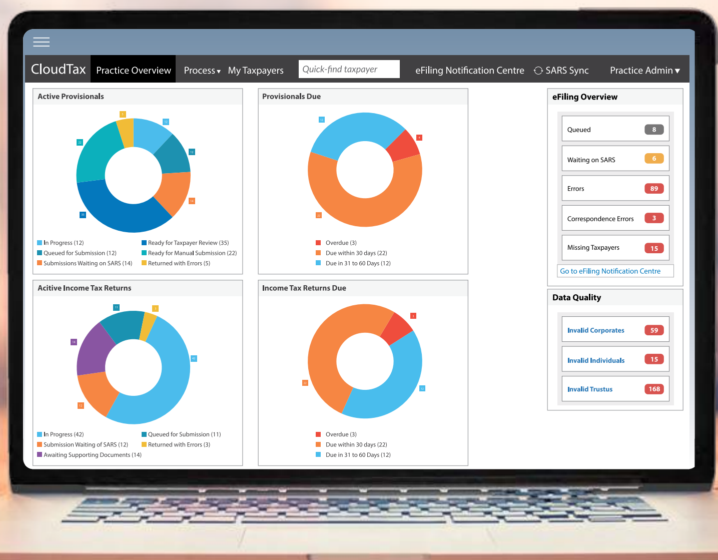

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