PROFESSIONAL

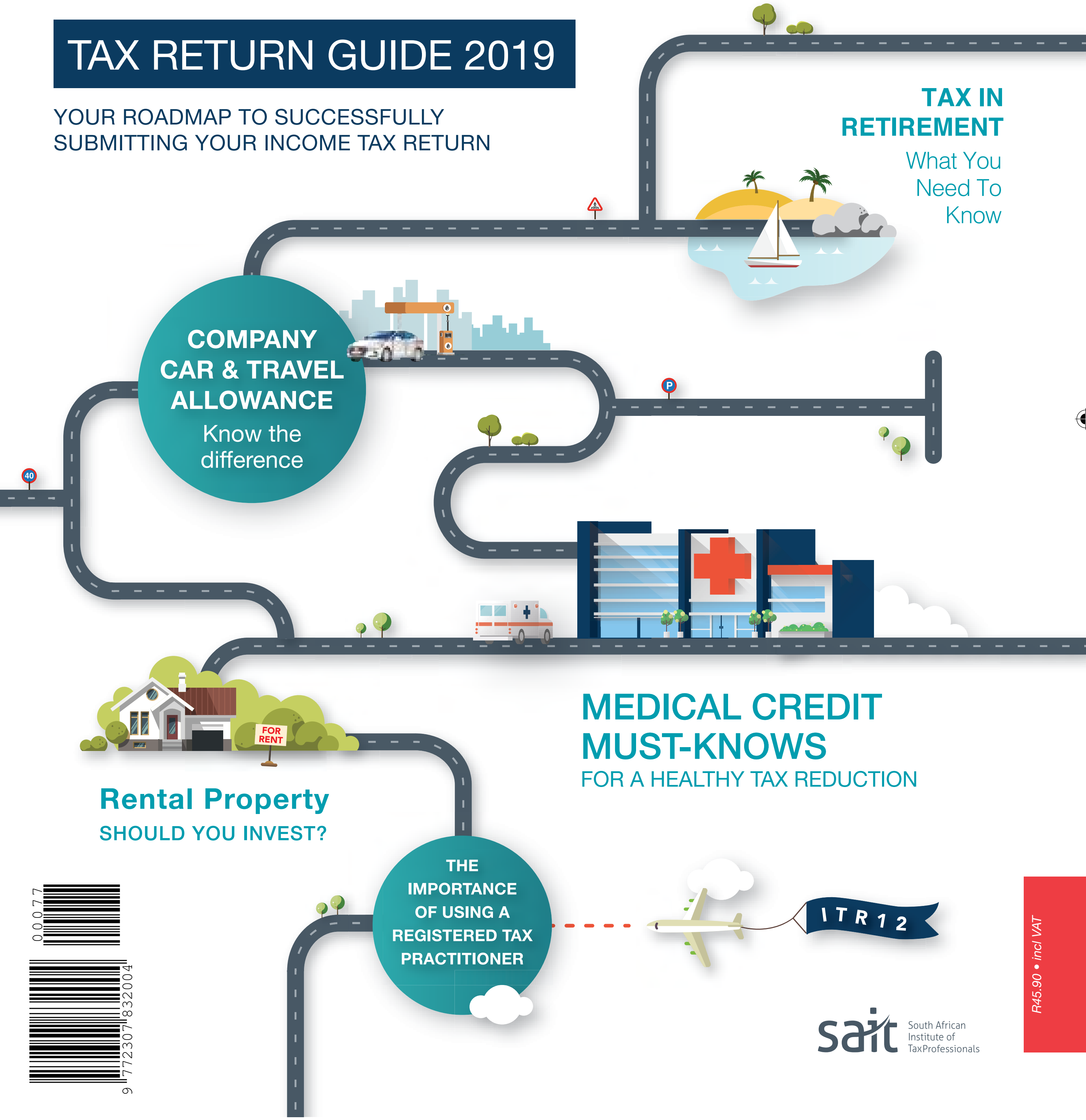
TAXTALK

South Africa's Leading Tax Journal

Issue 77 July/August 2019

TAX RETURN GUIDE 2019

YOUR ROADMAP TO SUCCESSFULLY SUBMITTING YOUR INCOME TAX RETURN



TAX IN RETIREMENT

What You Need To Know

COMPANY CAR & TRAVEL ALLOWANCE

Know the difference

MEDICAL CREDIT MUST-KNOWS

FOR A HEALTHY TAX REDUCTION

Rental Property

SHOULD YOU INVEST?

THE IMPORTANCE OF USING A REGISTERED TAX PRACTITIONER

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THE TAX FACULTY, IN ASSOCIATION WITH THE UNIVERSITY OF THE WITWATERSRAND (WITS), IS PROUD TO LAUNCH A SERIES OF SPECIALITY SHORT COURSES.

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

The Tax Faculty

COURSE IN PAYROLL TAXATION: CROSS-BORDER EXECUTIVES AND TECHNICAL EMPLOYEES

COURSE OUTLINE

This short course covers the various cross-border and fringe benefit concerns in terms of foreign employees working in South Africa and in terms of South African employees working abroad. Topics covered are an overview of global mobility and what it means for residency and exchange control considerations, South African taxation and other considerations of foreign employees working within South Africa, and Foreign earnings of South African expatriates

LECTURER: BEATRIE GOUWS

Beatrie has extensive experience in the tax industry and is an expert in employment related taxes. Beatrie has in-depth knowledge on tax policy, legislative interpretation, practical implementation, and operational structures. She represents KPMG on various industry bodies, and interacts frequently with National Treasury and SARS.

COURSE IN INTERNATIONAL BUSINESS TAX: FOREIGN INBOUND INVESTMENT INTO SOUTH AFRICA

COURSE OUTLINE

This short course covers the specific tax issues of foreign businesses with investments in South Africa, including the payment flows between foreign companies and their South African subsidiaries as well as the taxation of South African activities directly undertaken by foreign companies.

LECTURER: COR KRAAMWINKEL

Cor has experience in the application and interpretation of tax treaties, holding company regimes, withholding taxes, permanent establishments, international tax structuring for both in-bound and out-bound clients, exchange control regulatory matters and South African corporate tax. He has worked with clients across numerous industries and sectors, including agriculture, finance and banking, manufacturing, mining, entertainment, e-commerce, retail, insurance, energy and private equity houses.

COURSE IN TAX AND ESTATE PLANNING: TAXES ON DEATH

COURSE OUTLINE

This short course covers the legal modalities associated with property transfers on death (e.g., transfers from a natural person to an estate and then to an heir and /or testamentary trust). The course will also cover the tax issues upon death including estate duty, final return issues, as well as the deemed sale of all assets for income tax purposes.

LECTURER: PROF. PIET NEL CA(SA)

Piet has been fundamental in delivering courses for the Tax Faculty since the institution's inception. He is a visiting professor at Wits and was previously a lecturer in tax at UNISA and the University of Pretoria at postgraduate level. He was the project director for tax at SAICA for a period of three years. Prior to that, he was a member of SAICA's national tax committee. He is active in the development of tax legislation in South Africa by commenting on proposed legislation. Over a period of more than three decades, he presented numerous tax seminars and workshops to tax practitioners. He regularly speaks on radio and TV and publishes articles.

COURSE IN CORPORATE TRANSACTION TAX: COMPANY FORMATIONS, SHAREHOLDER WITHDRAWALS AND TERMINATIONS

COURSE OUTLINE

This short course focuses on corporate transaction taxation with a specific focus on shareholder/share level transactions, covering shareholder formations, dividends and other ongoing withdrawals to shareholders as well as outgoing payments on company termination. While the main focus is on taxation, relevant company law and commercial concepts will be covered in a business context.

LECTURER: MIKE BENETELLO CA(SA)

Mike is a Tax Executive at ENSafrica. He has a broad range of tax experience gained over a period of 24 years including: general corporate tax matters, merger and acquisition transactions, debt restructure and financing transactions, mining tax, international tax and treaty interpretation, dispute resolution as well as the structuring of BEE transactions.

Mike was the head of mergers and acquisitions tax at a big four accounting firm and before this he was the head of international tax at another big four accounting firm. He is also a former chairperson of the South African Institute of Chartered Accountants (SAICA) National Tax Committee, a guest lecturer on a number of tax masters courses offered by tertiary institutions in South Africa, and is a contributing author to Juta's Income Tax - a leading publication on taxation in South Africa.

COURSE FORMAT

Each course will run over twelve weeks and include:

- Weekly face-to-face lectures
- Two assignments and a formal exam

START DATE: 26 AUGUST 2019

FLEXIBLE PAYMENT OPTIONS

PAYMENT OPTION 1:
Once-off payment R11 500.00 (incl. VAT)

PAYMENT OPTION 2:
Debit order
Application fee
(non-refundable): R450.00 (incl. VAT)
3 instalments: R4 250.00 per month (incl. VAT)

CONTACT US FOR MORE INFORMATION

www.taxfaculty.co.za
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WE DO E-LEARNING SO YOU CAN DO LIFE

7hrs 30mins
CPD in this issue

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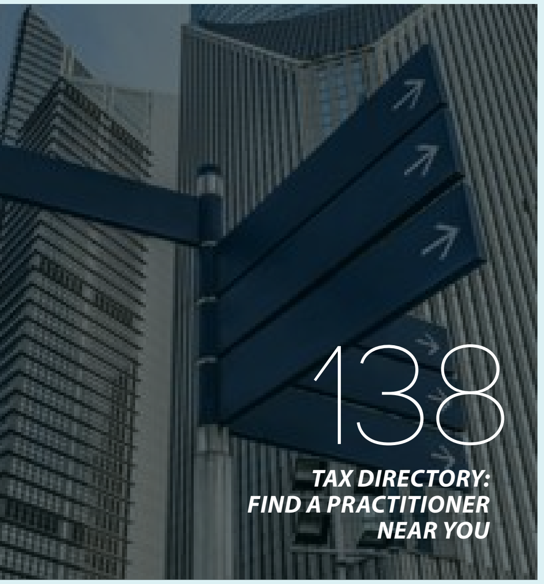
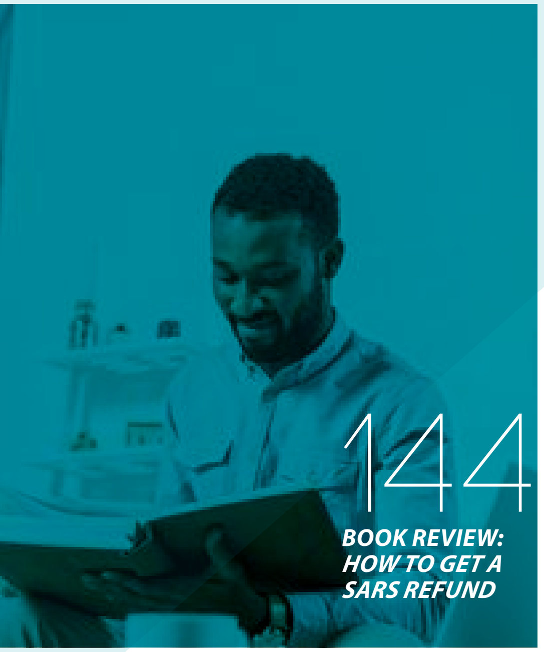
INCOME TAX RETURN ISSUE





PART ONE

This quick guide is designed to shine a light on completing the sections of the individual income tax return (ITR12) correctly. We take you through each section of the form with helpful notes. Let us show you the way!

PART TWO

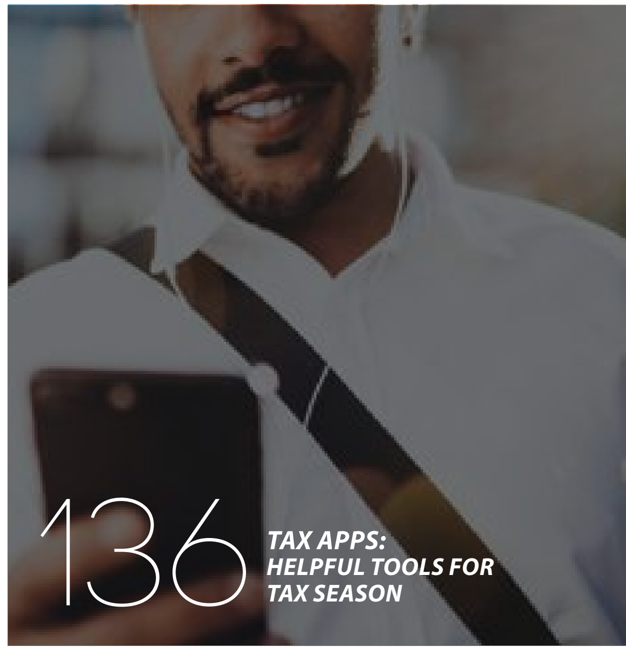
This part provides more information on specific aspects to be reflected on your ITR12. We aim to help you file confidently and correctly.

GENERAL OVERVIEW

INCOME STREAMS

COMMON DEDUCTIONS

INVESTMENTS



PROVISIONAL TAX RETURNS

POST-RETURN

GUEST CONTRIBUTORS

Annelie Laage
annelie.laage@gmail.com / 083 234 6755

Annelie is an independent Tax Consultant specialising in tax learning systems. She is a CA(SA) with an MCom (Tax).

Carien van Dijk
carien.vandijk@taxsupremacy.com

Carien is an Advocate and Tax Director at The Supremacy Group. She specialises in employees' tax, the Tax Administration Act, corporate tax, small business corporations, VAT and tax disputes. She holds an LLM: Taxation and is a Master Tax Practitioner.

Claire Abraham
claire.abraham@pwc.com / 011 797 417

Claire is a Senior Manager at PwC. She specialises in individual tax, global mobility, employees' tax, high net worth individuals, individual and employees' tax dispute resolution. She holds an MCom (South African and International Taxation).

Claire Gaul
claire.gaul@webberwentzel.com / 021 431 7346

Claire is a Partner at Webber Wentzel. She specialises in employment law and employee benefits. She holds an LLM.

Craig Hirst
Craig.hirst@trident-ta.com / 072 436 2536

Craig is the CEO of Trident Tax and Accounting Solutions. He is a general tax specialist with an MCom (Tax).

Daniel Baines
daniel.baines@mazars.co.za

Daniel is a Tax Consultant at Mazars Port Elizabeth where he specialises in individual tax, dispute resolution and emigration. He holds an MCom and is studying towards an LLD.

Darren Britz
darren@taxconsulting.co.za / 082 933 5953

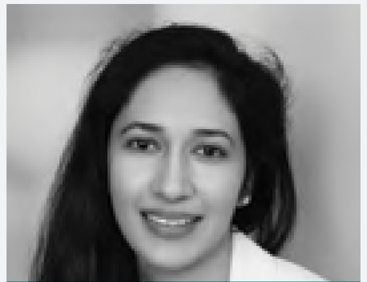
Darren is a Senior Attorney at Tax Consulting South Africa. He specialises in dispute resolution and penalty remission, and holds a BA LLB.

Doné Howell
dhowell@bdo.co.za / 010 590 7475

Doné is a Director at BDO. Her areas of tax expertise include individual, trust and estate tax. She holds the following qualifications: BCom (Acc), HDip Tax Law, HDip International Tax Law.

Elle-Sarah Rossato
elle-sarah.rossato@pwc.com / 011 797 4938

Elle-Sarah is Lead: Tax Controversy and Dispute Resolution at PwC. She deals with SARS liaisons as well as all dispute resolution related matters. Her highest academic qualifications include: BCom (Law), LLB, LLM (Corporate Law), MCom (Tax) and MBA.



Faeeza Soni
faeeza.soni@wits.ac.za / 011 717 8025

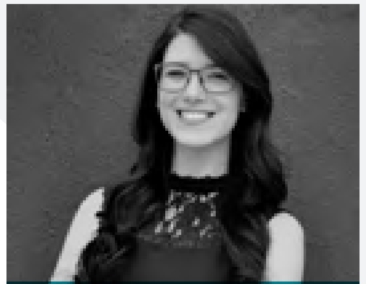
Faeeza is a Senior Lecturer in Tax at the University of the Witwatersrand. She is a CA (SA) with an MCom (Acc) qualification.

Isabeau Brincker
isabeau.brincker@sanlam.co.za / 021 947 3139

Isabeau is a Tax Advisor for Sanlam. Her areas of tax specialisation include corporate tax.
She is a CA (SA) with an MCom (Tax) qualification.

Johann Benadé
JBenade@taxombud.gov.za

Johann is Operational Specialist: Taxes at the Office of the Tax Ombud. He is a CA(SA) and specialises in all taxes. He holds an MCom Tax (cum laude).



Kelsey Jayes
kelsey@taxconsulting.co.za / 074 474 0505

Kelsey is an Attorney at Tax Consulting South Africa. She specialises in dispute resolution and penalty remission, and holds an LLB.

Kobus Muller
kobus@mwwacc.co.za / 012 803 7905

Kobus is a Master Tax Practitioner and a Consultant at Muller Webber & Wilsnach Accountants (a firm since 1977). His areas of speciality include: owner-managed SMEs, corporate and trusts planning, estate planning, farming and international tax. He holds a BCom (Tax) Hons degree.

Lizbé Murray
lizbe@contadorinc.co.za / 082 338 6362

Lizbé is the Director at Contador Accountants. She specialises in personal and corporate income tax. She is a CA(SA) with an HDip Tax.

Marc Sevitz
marc@taxtim.com / 021 461 5007

Marc is the Co-Founder & CFO of TaxTim. He specialises in individual & small business income tax. He is a CA (SA) and has completed the following degrees: BCom, PGDip (Tax Law) and PGDip (Accounting).

Martin de Kock
martin@ascor.co.za / 086 111 3187

Martin is a Member of Ascor Independent Wealth Managers CC. He is a general tax specialist with a focus on investments and retirement planning. He is a CA (SA) and Certified Financial Planner (CFP) and holds an Hons. BCompt.

Maya Nikolova MTP(SA) BAP(SA)
maya@taxadvise.co.za / 084 605 3388

Maya is the Founder of TaxAdvise. She specialises in South African tax compliance and advisory for resident and non-resident individuals and corporate entities – income tax, VAT and withholding tax. She holds a BCom and PGDip Tax.


Melissa Duffy
melissa.duffy@kpmg.co.za / 082 448 1989

Melissa is the Tax Director at KPMG. Her areas of tax expertise are expatriate taxation, employment taxes, exchange control, family business and private client. She holds a Btech: Taxation and HDip: International Taxation.


Natasha Wilkinson
natasha@taxconsulting.co.za / 011 467 0810

Natasha is an Admitted Attorney at Tax Consulting South Africa. She is a tax dispute resolution specialist with an LLB qualification.


Nicci Courtney-Clarke
nicci@taxtim.com / 021 461 5007

Nicci is a Tax Senior at TaxTim. She specialises in individual and company tax and is a CA (SA).


Nico Theron MTP(SA)
ntheron@unicustax.co.za / 012 944 8888

Nico is the Managing Partner at Unicus Tax Specialists SA. He specialises in income tax and VAT. He holds the following qualifications: BCom Law (cum laude), BCom Honours Taxation and MCom Taxation (SA and International Tax).


Nomawothi Bafana
Noma.Bafana@kpmg.co.za / 071 360 6543

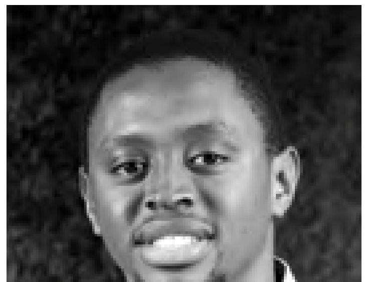
Noma is a Junior Tax Consultant at KPMG. Her areas of tax specialisation include expatriate and employee taxes. She holds a Masters in Taxation.


Nyasha Musviba
nyasha@sataxguide.co.za / 084 969 0510

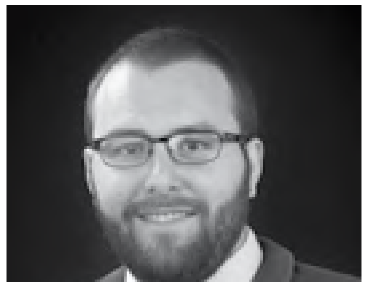
Nyasha is Founder and Tax Director at SA Tax Guide. He specialises in income tax for companies and individuals, international tax, VAT and employee taxes. He has an LLB and MCom in Taxation.


Suzanne Smit
suzanne@gmgfinancial.com / 081 409 0390

Suzanne is Senior Manager, Tax and Exchange Control at Geneva Management Group. She specialises in international tax and tax disputes. Her highest academic qualification is an LLM in Tax Law.


Thamsanqa Msiza
thamsanqa@taxconsulting.co.za / 011 782 5289

Thamsanqa is a Tax Consultant at Tax Consulting SA. His area of speciality is income tax for individuals. He has a BCom (Taxation) degree.


Wikus Swart TA(SA)
wswart@unicustax.co.za / 012 944 8888

Wikus is a Tax Consultant at Unicus Tax Specialists SA. He specialises in income tax and holds a BCom Accounting Sciences and BCom Honours Taxation.

Q Tell us what you think. Questions and suggestions can be sent to editor@thesait.org.za

FINDUS

Postal address
PO Box 712
Menlyn Retail Park
0063

Editorial head office
Riverwalk Office Park, Building A
C/o Garsfontein & Matroosberg Roads
Pretoria
South Africa
0081

Advertising sales consultant
Collette Evers
4Evers Marketing Solutions
collette@4evers.co.za
Cell: 082 349 9914

THETEAM

Editor at Large
Tania Wolson
editor@thesait.org.za

Supporting Editor
Jeanne Viljoen
taxtalk@thesait.org.za

Editorial Advisors
Keith Engel
Piet Nel

Design and Layout
Nastassja Hewitt
designer@thesait.org.za

Bianca Geater
bianca@sumstudio.co.za

Cover Illustration
Liesl Weber
www.catchatiger.co.za

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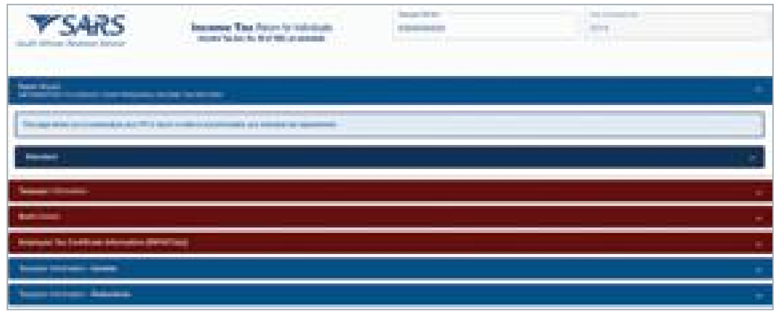
PART 1

INCOME TAX RETURN GUIDE

INNOVATIONS FROM SARS

SARS has invested in a simpler look and feel for the income tax return on eFiling which allows for easier navigation. A key feature on the enhanced online income tax return is the form Wizard that poses an introductory set of standard questions which also incorporates the legal changes applicable to this year's filing season. The screens below explore the form Wizard, as well as changes and enhancements that have been built into this year's income tax return.



Form wizard

The new look and feel of the HTML5 income tax return (ITR12) includes an introductory form wizard that requests the relevant information in order to customise the taxpayer's income tax return based on the responses completed by the taxpayer in the Standard wizard.

Acquisition or disposal of cryptocurrency

- The new legislation clarifies the tax treatment of cryptocurrencies.
- Section 20A of the Income Tax Act was amended by adding "the acquisition or disposal of any cryptocurrency" as an "identified trade". Where the taxpayer traded in cryptocurrency during the year of assessment, the new cryptocurrency trade source code introduced must be selected which will be subject to ring-fencing.
- New fields on the income tax return have been introduced to declare cryptocurrencies as an investment/asset value in the Statement of Assets and Liabilities or a profit/loss under capital gains tax (CGT).
- Where the taxpayer disposed of cryptocurrency during the year of assessment, the CGT disposal must be declared using the new Main Asset Type source code for cryptocurrency.

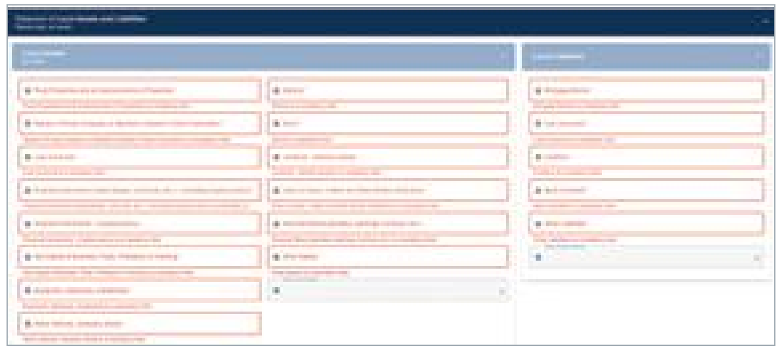
Income tax return fields referring to cryptocurrency amendments

Capital gain/loss

- The screenshot displays the question on the wizard form that prompts the taxpayer to indicate the disposal of cryptocurrency which will create the container for the capital gains transaction to be declared.
- When a taxpayer disposes of cryptocurrencies that they held, the value that they will capture in the Capital Gains Tax container will be the average price on the date of disposal or transaction.

Local business, trade and professional income

- If the taxpayer traded in cryptocurrency, the taxpayer will indicate yes to this question to enable the form to create the container "local business, trade and professional income" for declaration of this trade.



Local assets

- The definition of 'financial instruments' in the Income Tax Act has been extended to add cryptocurrencies.
- The taxpayer must capture the historic/initial cost of the cryptocurrency in Rand value in the statement of assets and liabilities container.
  It must be noted that the cryptocurrency is a non-depreciable asset.

Section 6quat – rebate or deduction in respect of foreign taxes on income

The amendment is consequential amendments as a result of the introduction of s11F (dealing with deduction in respect of contributions to retirement funds) and clarify the ordering rules for the deduction of section 11F, section 18A and section 6quat(1C) (foreign taxes paid or proved to be payable to a foreign government of any country on South African sourced trading income).

A new source code for section 6quat(1C) has been introduced on the income tax return.

SARS Interest - sections 7E and 7F

- New legislation (section 7E) specifies that as from the 2019 year of assessment, a taxpayer must declare SARS interest received in the year it was actually paid by SARS.
- Where the taxpayer in a subsequent year repays SARS interest, a deduction in terms of section 7F can be claimed on the SARS interest repaid, but SARS will limit this amount to the SARS interest previously included in taxable income.
- A separate line item with a new source code was introduced to cater for all SARS interest received (excluding interest from Customs and Excise).

Communal Estate Indicator

The Communal Estate Indicator was re-introduced to enable taxpayers married in community of property to exclude certain income types from the communal estate.

NAVIGATING THE ITR12

WITH NOTES FROM KEITH ENGEL, DANIEL BAINES AND THE TAXTIM TEAM

TAXPAYER INFORMATION / PG 14

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 / PG 18

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

TAXPAYER INFORMATION INCOME / PG 20

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

LOCAL BUSINESS / PG 26

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 / PG 30

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

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, you must log in to your profile and check whether you can access a tax form. If you cannot, your profile might first need to be verified by SARS. 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 go to a SARS branch with your FICA documents (i.e., copy of ID document and proof of address less than three months old).

We, however, suggest that you call SARS 48 hours after you created your eFiling profile to check if they need you to go into your nearest SARS office anyway. The verification process is normally triggered as a result of details provided during registration that differ from those on SARS' internal system..

How to submit your tax return

Once your profile has been activated, go to sarsefiling.co.za and click on the green "Login" button (located in the top right-hand side of the webpage). You will be asked to enter your eFiling username and password, which you should have received from SARS after registration. Once you are logged in to your eFiling profile, click on "Returns" (located on the left) > "Returns Issued" > "Personal Income Tax (ITR12)". Click on "Request Return" (located on the right of the screen) and then select the tax year, which is 2019 for the year ended on 28 February 2019.

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.

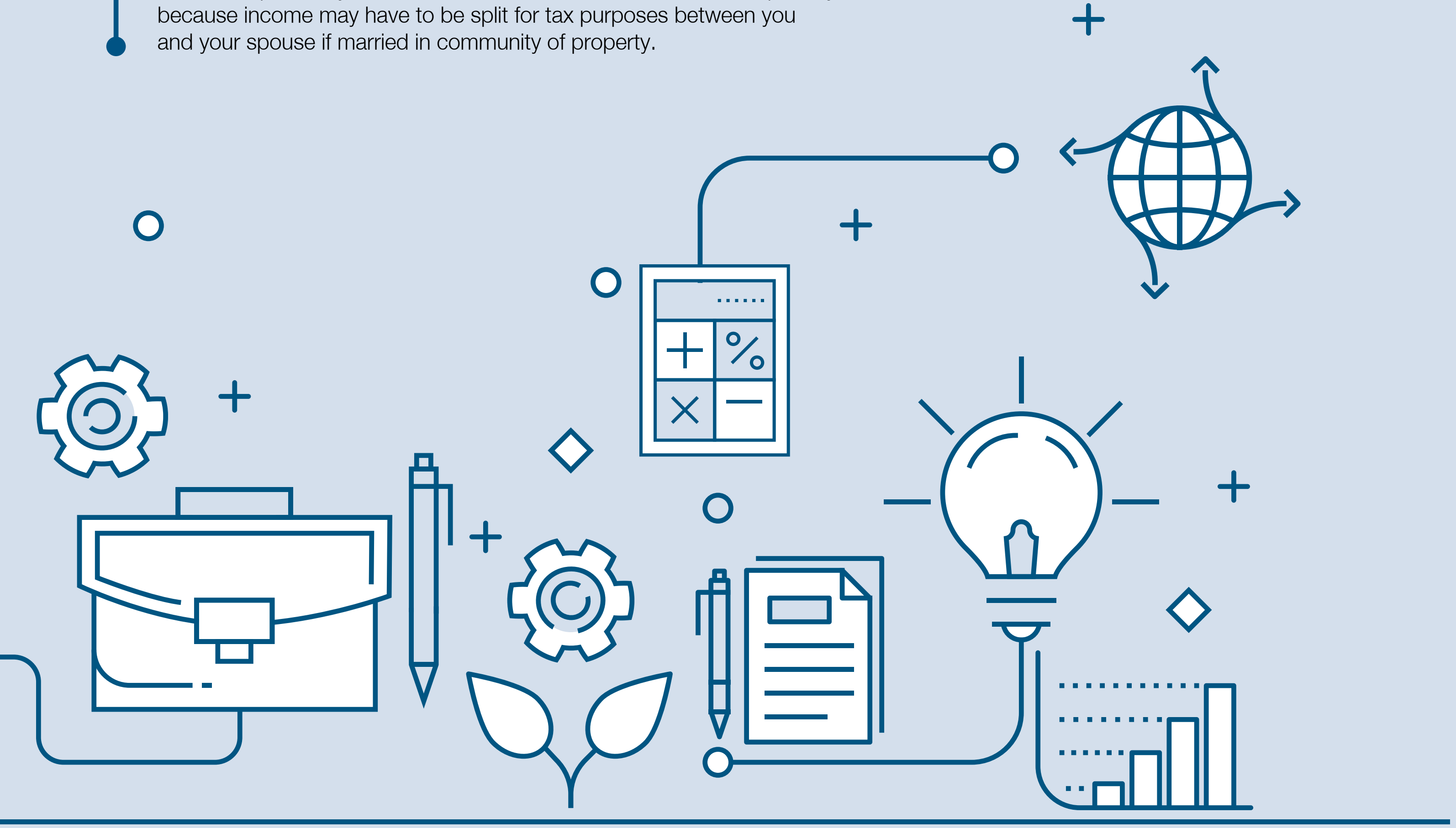
TAXPAYER INFORMATION

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.



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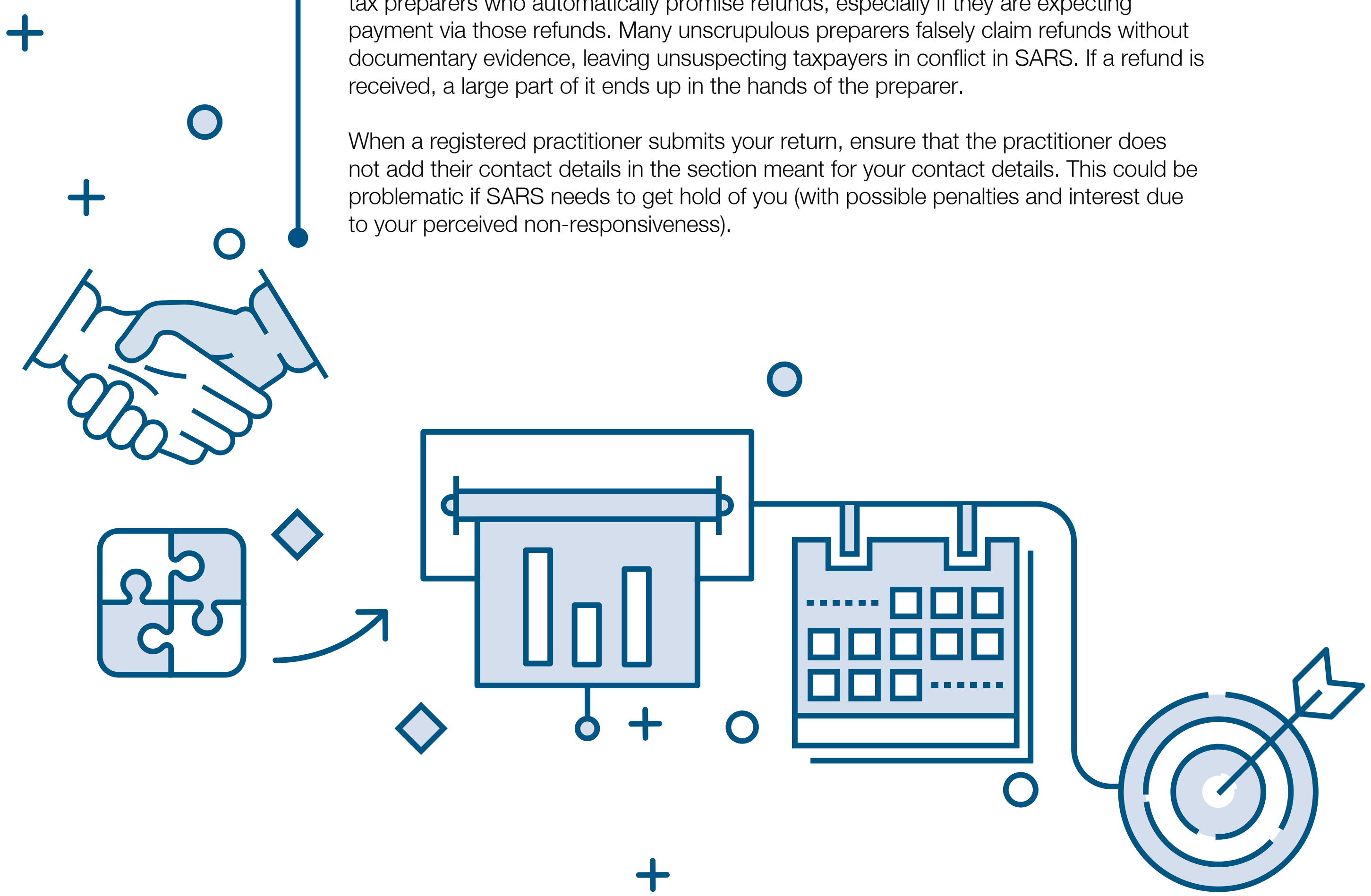
Tax practitioner details

If you employ someone to submit your return for you, make sure that they are 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 in SARS. If a refund is received, a large part of it ends up in the hands of the preparer.

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



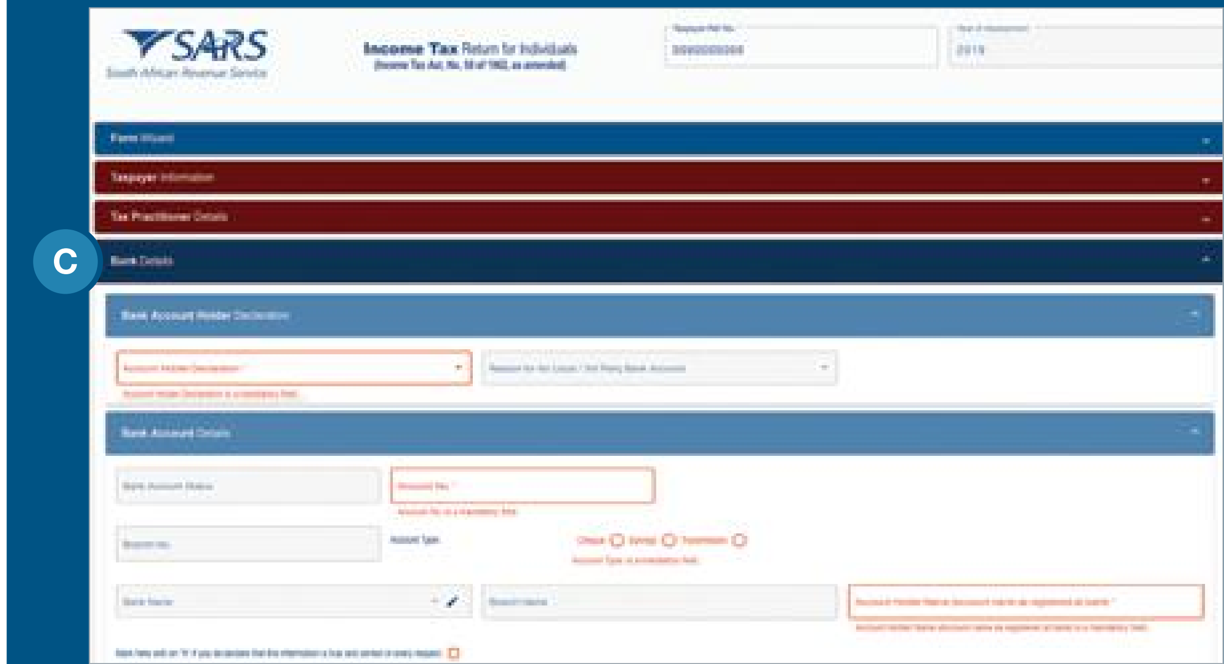
C

Bank 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 the 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 their 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 they are 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; 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.



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 from1 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. The 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.

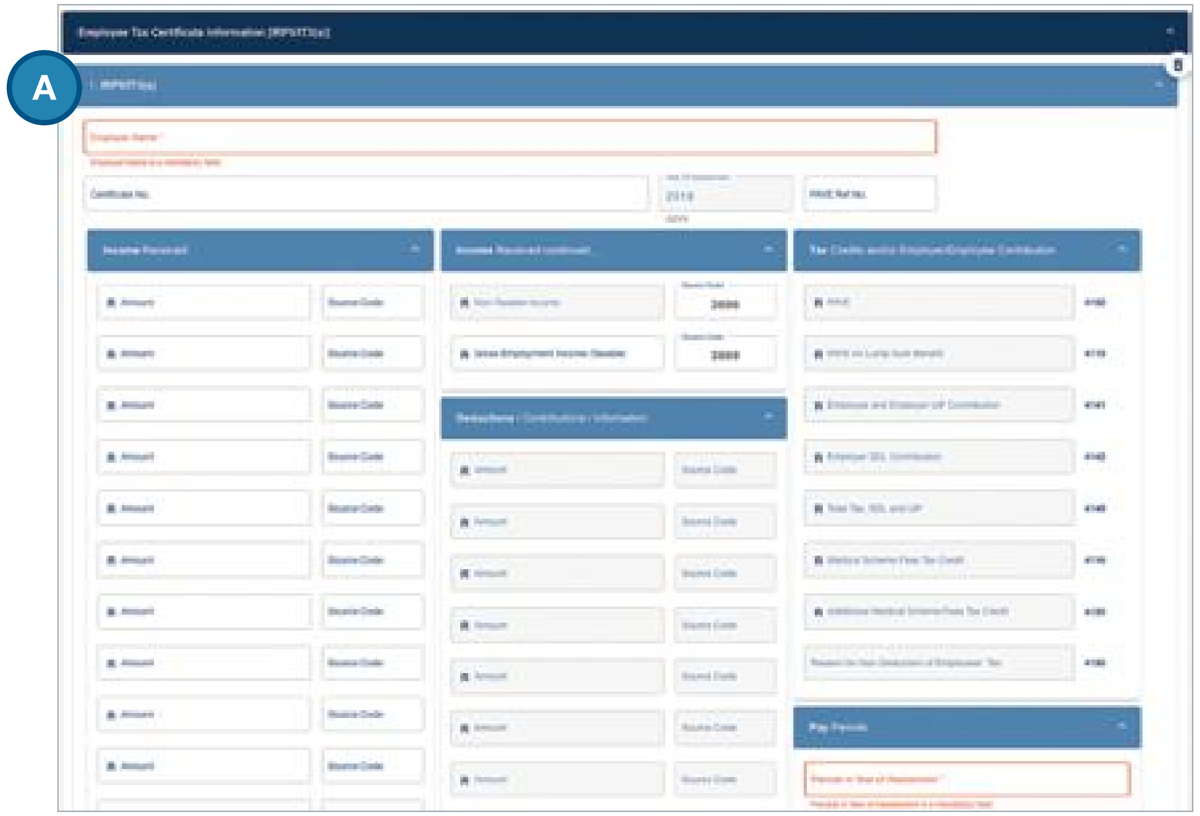
B

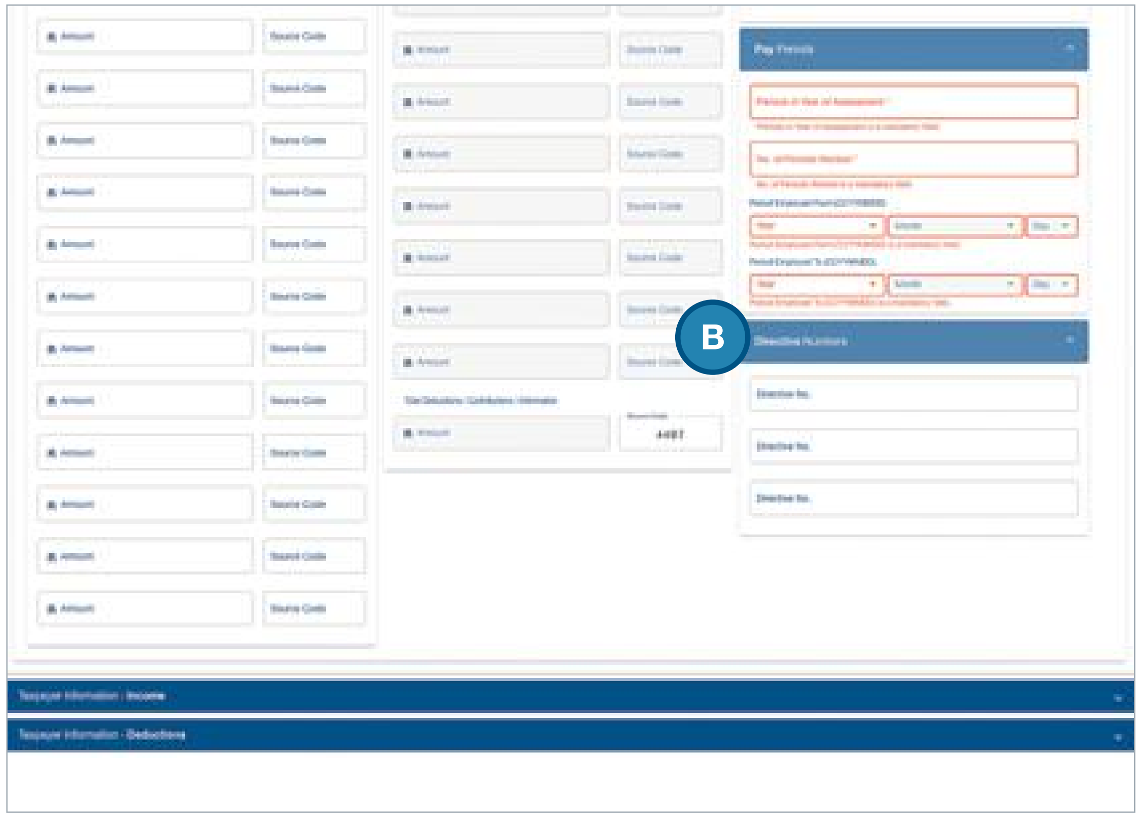
Directive numbers

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"





TAXPAYER INFORMATION: INCOME

A Investment income

This portion of the return is mainly directed toward local interest, foreign dividends and foreign interest 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.

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.

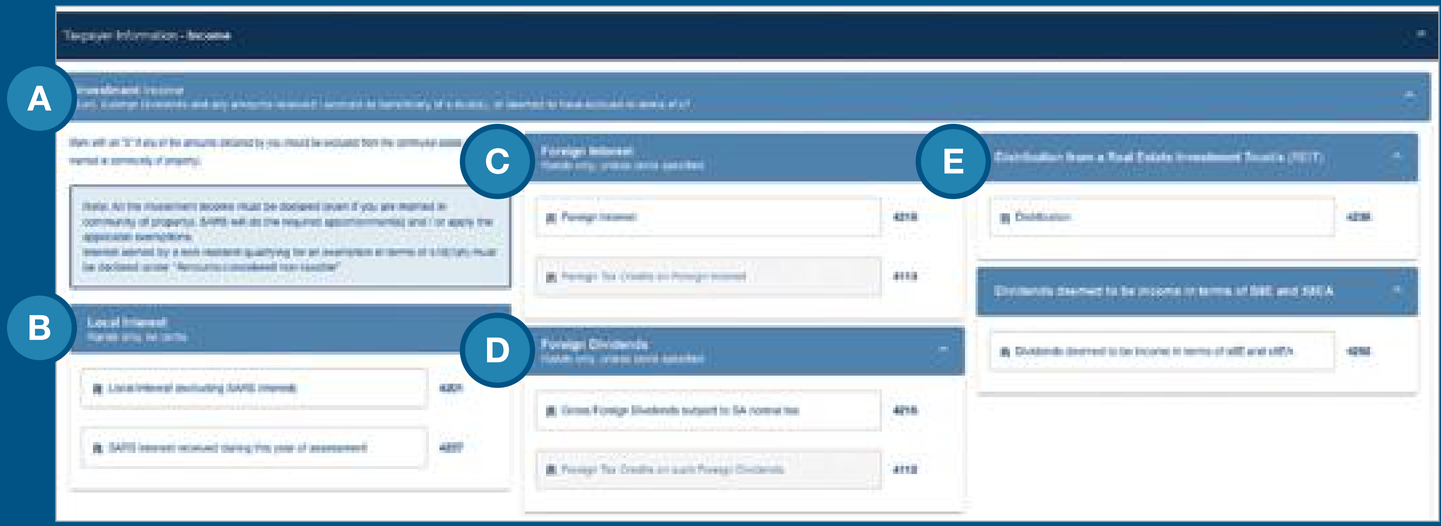
B Local interest income

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 latter is new for 2019). 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 2019, 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 their systems). Moreover, even if you earn less than the exempt amount, you still need to report all the interest that you earned on the ITR12 as reflected on the IT3(b). To repeat, SARS will fully apply the exemption during the assessment.



C Foreign interest

Foreign interest

This is the interest received from a foreign investment. The interest must be converted to Rands using the average exchange rate for the year, and 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 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 2018 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.

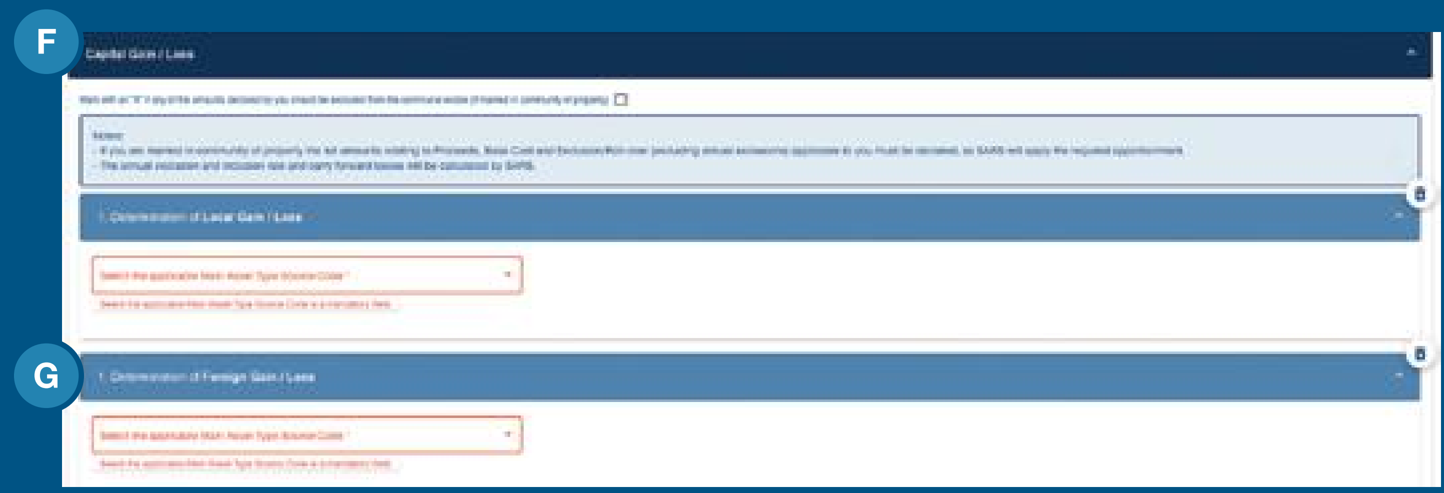
The CGT calculation takes into account all direct and indirect proceeds from the disposal. The sales proceeds would be reduced by estate agent's commission and other selling costs. The cost aspect of the calculation takes into account all acquisition costs associated with property as well as any improvements.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



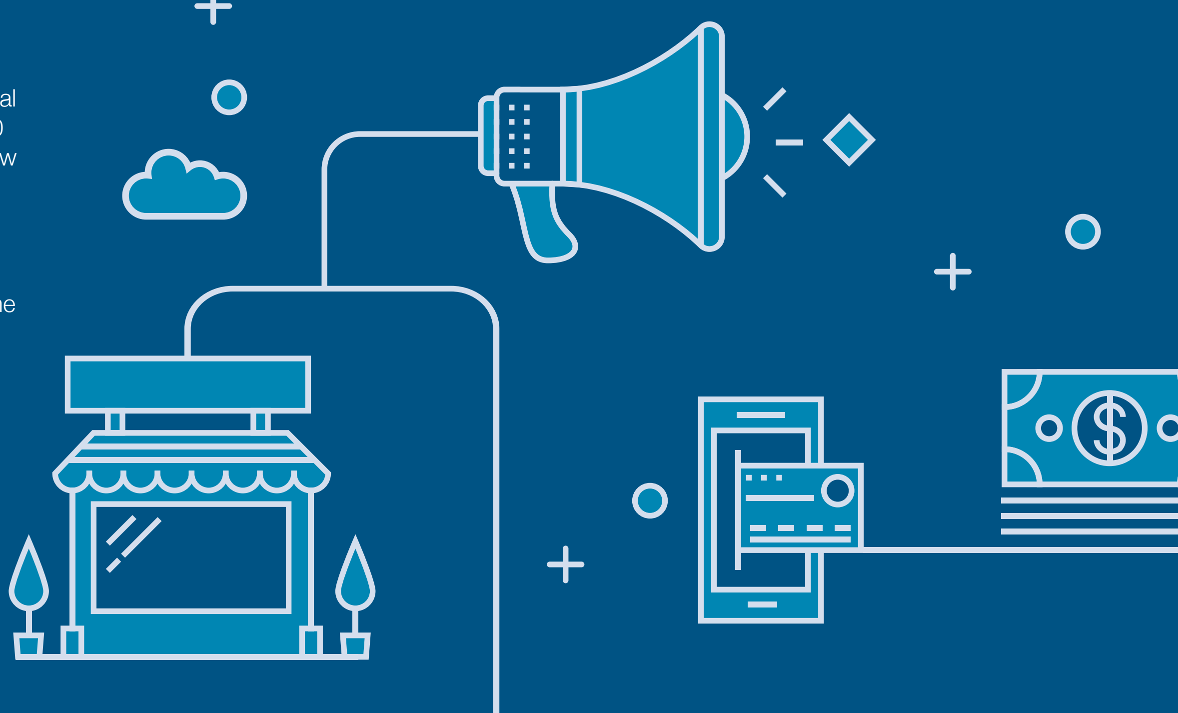
G Determination of foreign gain / loss

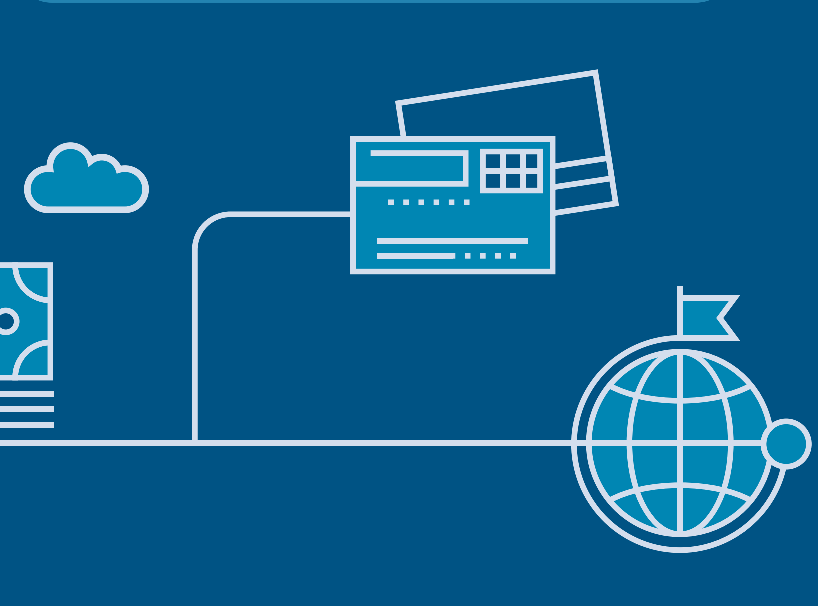
This section applies to the sale of foreign properties and investments that the taxpayer may hold offshore. The proceeds and costs related to the disposal of these assets need to be converted to Rands and disclosed. The same rules will apply here as those that pertain to the disposal of local assets.

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.





H

Local rental income

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

Description / Unique Identifier

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

I

Income

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

J

Expenditure

Accounting fees

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

Agency fees

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

Bad debts

If rental income (accrued) has not been collected and it is very unlikely that it will be paid by the tenant, the rental income can be written off as bad debt (i.e., an expense). You can only capture an amount here if the corresponding rental income is also captured. Emails or lawyers' letters between the taxpayer and the debtor may be required as supporting documentation to prove the amount is uncollectable.

Depreciation

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

Insurance

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

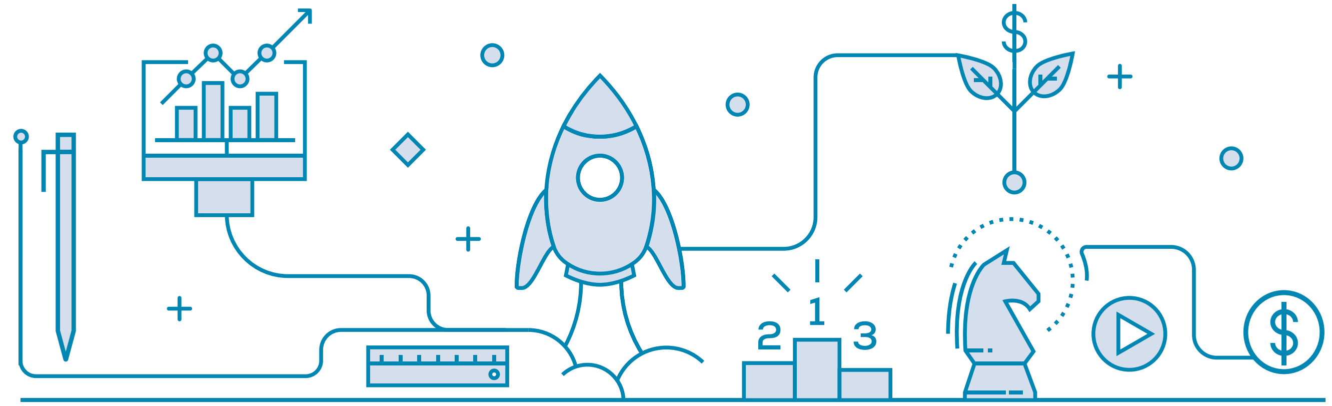
Some examples of other expenses include software expenses, marketing costs and low value assets.

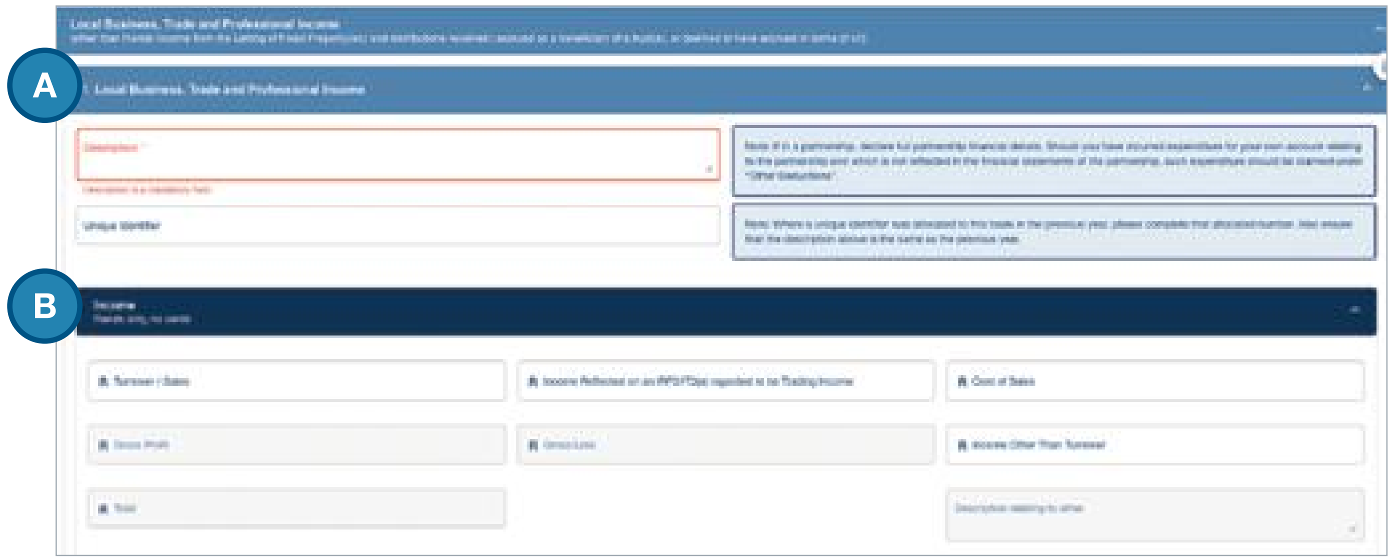
K

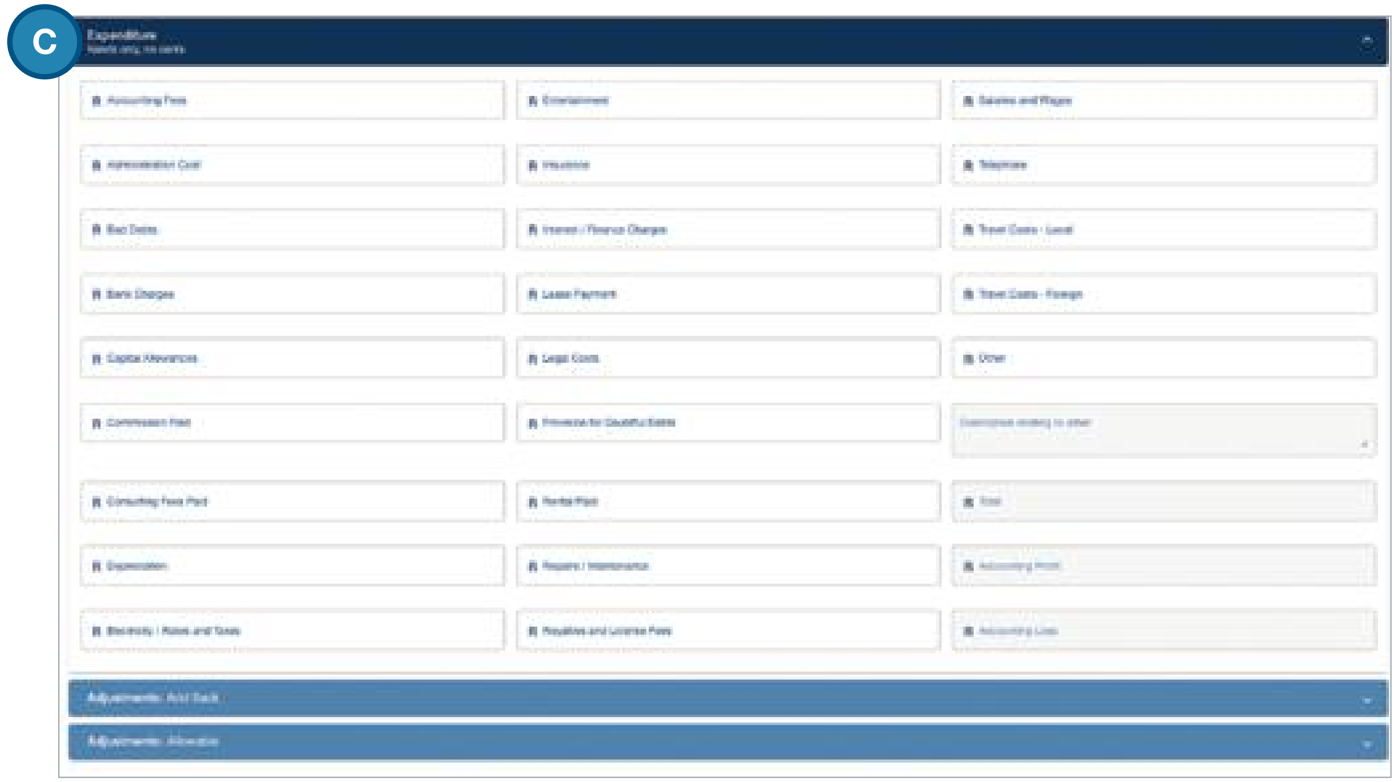
Determination of profit / loss

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 laternatively tgey may allow the loss to be set off against other invome earned in the current year by the taxpayer. SARS will apply the complicated ring-fencing provisions of the Income Tax Act when making this decition.

LOCAL BUSINESS







A — Local Business

This section typically applies to individuals who run their own business (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 back-up (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 cost, 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.

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.

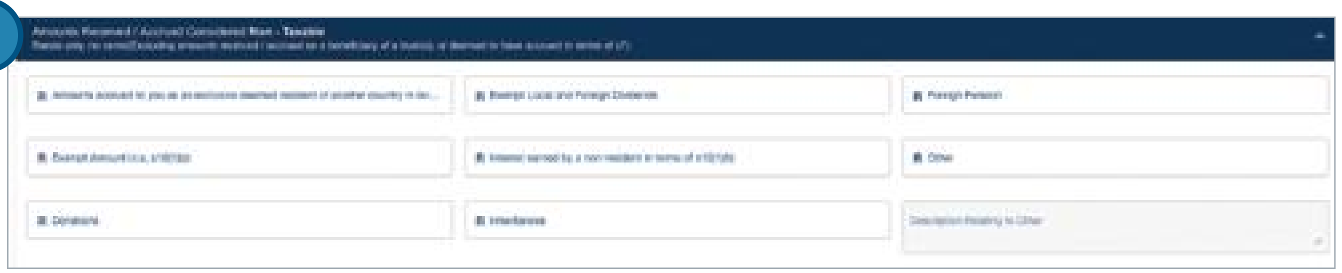
A proposal by the Finance Minister in February 2017 to limit the foreign employment exemption has been signed into law. This will greatly restrict the exemption but will only come into effect as of 1 March 2020.

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. However, 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

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.

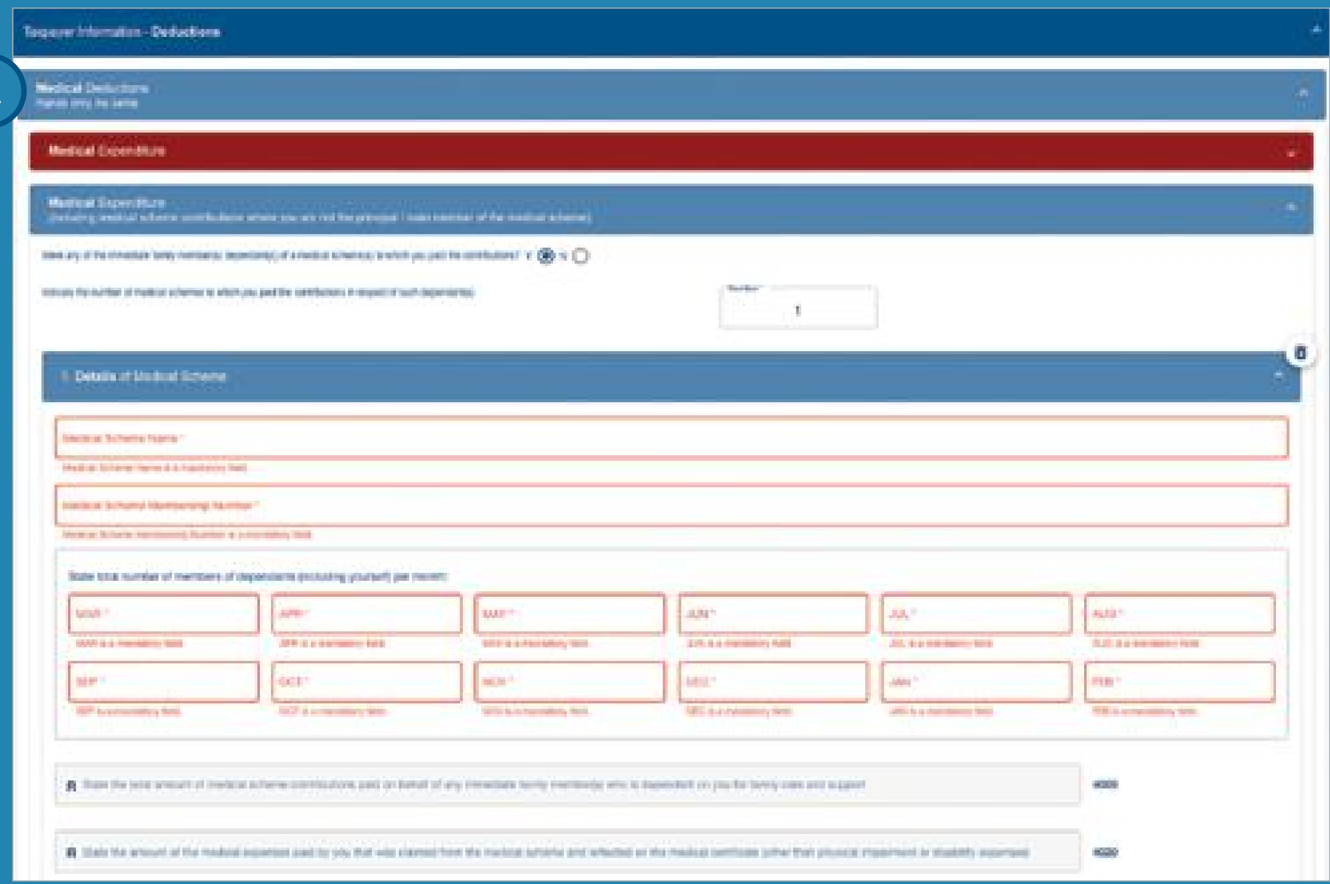
You can also invest a maximum of R33 000 per year for your children. This will be deducted from their annual limit.

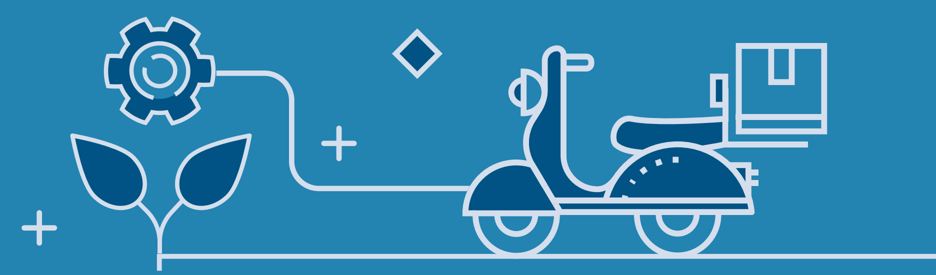
You would need to obtain the IT3(s) forms from the funds in which you invested. Complete the details based on the IT3(s) in the ITR12 next to the appropriate columns.

TAXPAYER INFORMATION: DEDUCTIONS

A

A





Medical deductions

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

In the 2019 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 if you had three members on your medical aid.

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

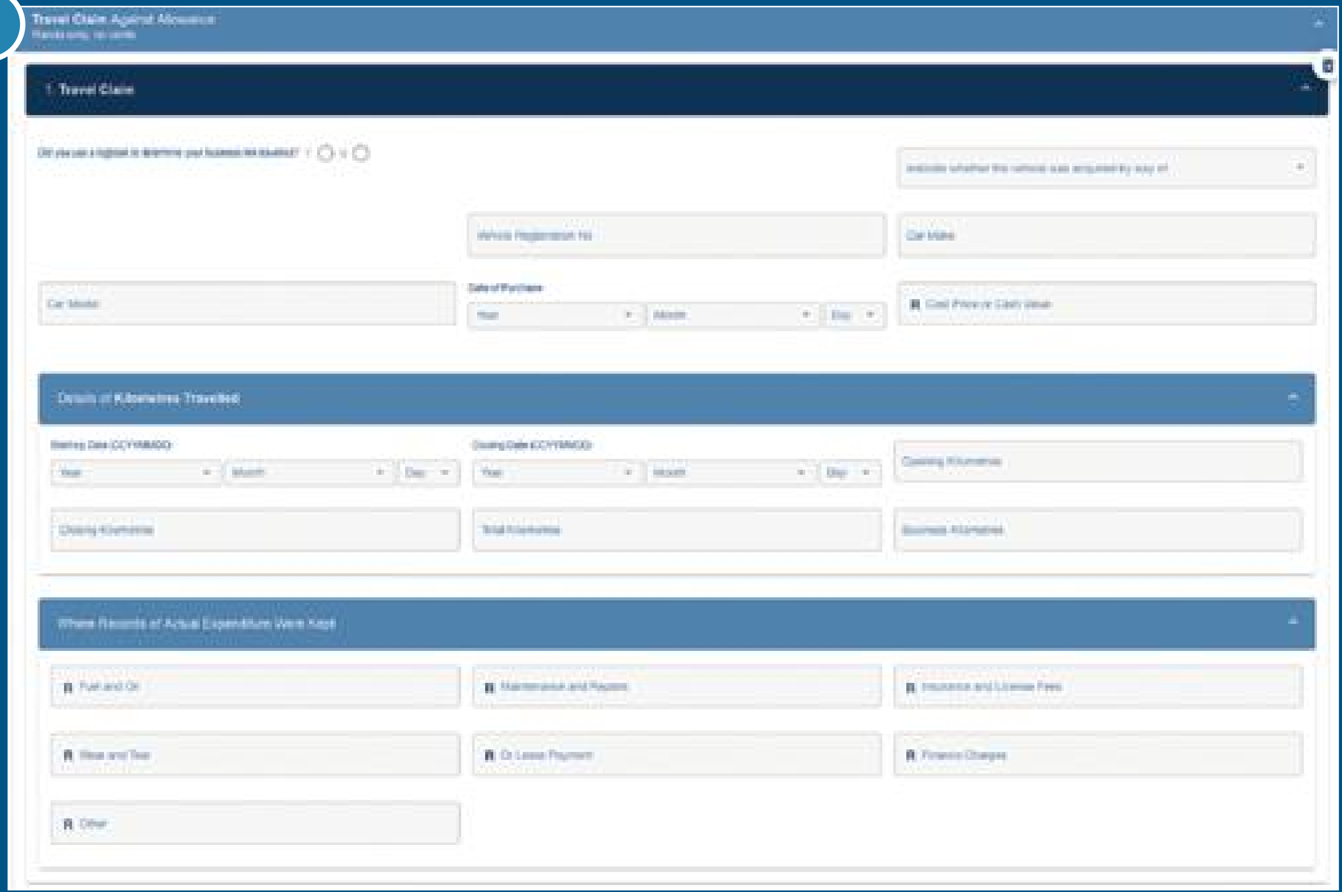
Retirement contributions

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.

B

C



D

D

Donations

Donations to SARS approved PBOs 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" and 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.

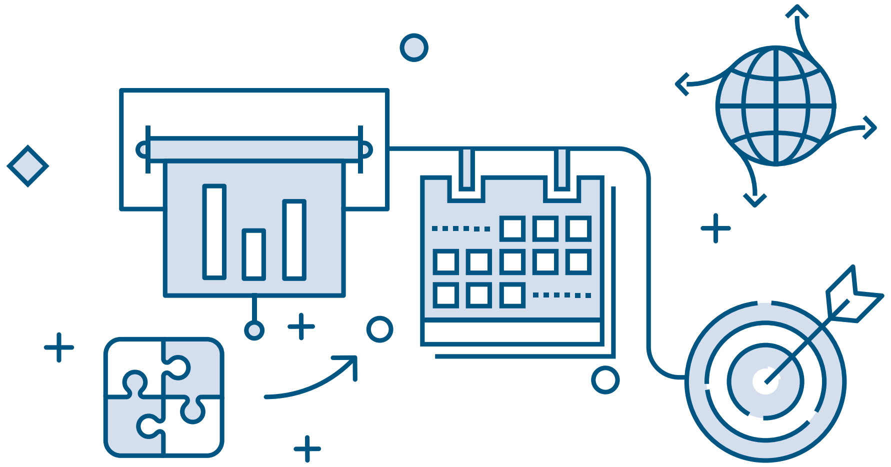
C

Travel claim

If your IRP5 has a source code 3701 or 3702 on 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 have kept a record of the expenses you incurred (e.g., insurance, maintenance, licence fee) 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).



E Other deductions

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

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

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

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 an 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 IRP5 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 section 11(nA) and section 11(nB)
This category related to repayments to employers (taxed amounts which an employee received from his or her employer but subsequently had to repay to his or her employer, often due to a breach of an agreement).

Examples of these 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 section11(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 to discuss the nature of these schemes or the administrator running these share schemes.

Qualifying criteria for claiming section 10(1)(o)
This section must be completed by those 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 business (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, unit trusts (exclude crypotcurrency)
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.

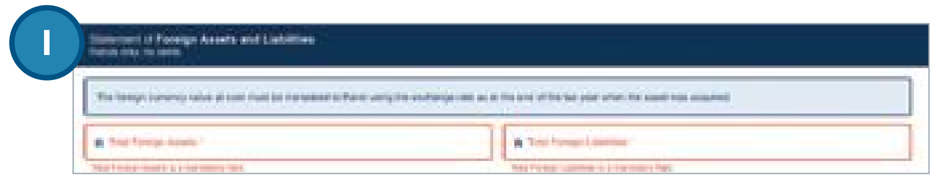
Loan accounts
This is the value of loans due by you (generally to be repaid over a period exceeding 12 months).

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

Period 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 2

A DEEPER INSIGHT

NOTES FROM SARS FOR TAX SEASON 2019

What is new in the 2019 filing season? Read on to find out.

The focus for the 2019 Tax Season is to simplify the income tax return and make the process more convenient for taxpayers who need to file. Several exciting innovations have been introduced, including the issuing of customised notices and the introduction of a mobile app for cellphone-filing.

A priority area for SARS is to make it convenient for taxpayers to use digital online channels to submit tax returns - via the eFiling platform or the SARS MobiApp. The following have been put in place:

- Taxpayers who visit a SARS branch to file returns will be encouraged to register as users of eFiling or the MobiApp. Once registered, SARS staff will demonstrate how to use these online channels to file a simple, non-complex income tax return.
- Tutorials offering step-by-step guidance will be available on the SARS website and social media channels.
- Training will also be available at SARS branches, which now offer free wi-fi to facilitate the transition to online filing. In addition, 23 mobile tax units will be deployed nationwide, clad withwi-fi for taxpayers to file their own returns.

"Several exciting innovations have been introduced to make the process of filing an income tax return simpler and more convenient."

SARS MobiApp

In addition to the eFiling platform, the enhanced SARS MobiApp now offers convenient, intuitive features including biometric authentication and easy navigation. The app also facilitates the upload of supporting documents (with a capacity of up to 5MB), meaning the entire submission can be done quickly and easily.

Filing criteria for taxpayers who do not need to submit a return (all criteria must apply)

This year, taxpayers who meet all of the following criteria need not submit a tax return:

- Their total employment income before tax for the year is not more than R500 000 (the threshold has been increased from R350 000)
- They only receive employment income from one employer for the full tax year
- They have no other form of income (e.g., rental income or a car allowance)
- They do not have any additional allowable tax-related deductions to claim (e.g., medical expenses or retirement annuity contributions)

Note to employers

Employers need to fulfil their obligations of timely PAYE submissions. It is crucial for employers to submit their annual reconciliation within the deadline and issue their employees with IRP5 or IT3(a) certificates. These are the main documents that individual taxpayers need to file their personal income tax returns during tax filing season for personal income tax.

There are elements on the EMP501 that must reconcile for the reconciliation submission to be successful. These are:

- Monthly employer declarations (EMP201s) reflecting monthly Pay As You Earn (PAYE) deductions, Unemployment Insurance Fund (UIF) contributions and Skills Development Levy (SDL)
- Payments made (excluding penalty and interest payments)
- Employee tax certificates (IRP5/IT3(a)s) generated
- Employment tax incentive calculations, if applicable for the period

By requesting a Statement of Account after a submission on eFiling, employers are able to view any outstanding debt, outstanding returns and unallocated payments. Declarations can be submitted via e@syFile™ Employer or eFiling. Manually completed payroll tax forms are no longer accepted. Employers are encouraged to avoid the last-minute rush and ensure time for corrections, if required.

Copies of all declarations submitted must be kept for a minimum period of five years.

Note to employees and individual taxpayers

Since SARS uses the information declared by employers to prepopulate personal income tax returns, employees are reminded to check the information on their IRP5/IT3(a) certificates as well as the information submitted on tax certificates from third party institutions such as medical schemes. If information on the tax return is incorrect, the employee is required to approach their employer or third party institution to correct the information.

SARS tax education workshops on the use of e@syFile™ and employer annual reconciliation declarations are available before the deadline at various branches around the country. The schedule is available on the SARS website homepage under "Useful Tools, Learn about Tax".

Note to tax practitioners and tax preparers

Ensure correctness and completeness. False declarations amount to fraud and will have serious consequences. Tax practitioners are expected to use eFiling to file their clients' submissions. Support is provided through the contact centre on 0800 00 7277 and Help-You-eFile which is available on the eFiling platform.

Fraudulent activity

Any fraudulent activity will be subject to penalties. High-risk taxpayers will include those who:

- Miss deadlines and make late submissions
- Do not make payment when due
- Submit mismatched information to that supplied by third parties
- Make incorrect or inaccurate declarations
- Are involved in corruption

Tax Season dates

Start

1 July 2019: eFiling and online conversions at SARS branches
1 Aug 2019: Branch filing (where a taxpayer relies on a branch agent to submit their income tax return)

Close

31 October 2019: SARS branch filing
4 December 2019: All online filing (eFiling and mobile app filing)
31 January 2020: Provisional taxpayers using eFiling

DOCUMENTS NEEDED TO COMPLETE YOUR TAX RETURN

▶ **ANNELIE LAAGE,** Independent Tax Consultant

Use our handy checklist of information and documents needed to submit your income tax return accurately.

Some of you might have heard of the adage “a fine is a tax for doing wrong, a tax is a fine for doing well.” Each tax season it’s the same thing: Random documents suddenly become important, dates on documents have a deeper meaning and acronyms like IRP5, IT3(b) and PAYE are all the rage. And each year it’s the same scramble to find documentation and receipts, kilometres travelled and supporting documentation. The following checklist will help prepare you for your next ITR12 submission.

Details of your banking particulars

Without accurate banking details, SARS is unable to issue you with a refund.

Checklist

✓ Bank confirmation letter

IRP5/IT3(a) Employee tax certificate

These certificates are issued if you received remuneration-related income, such as a salary and travel allowance, and incurred typical remuneration-related expenditure such as pension fund contributions, medical aid contributions and retirement annuity contributions. Your employer has a legal obligation to provide you with an employees’ tax certificate. The IRP5/IT3(a) information is submitted to SARS by your employer via the EMP501 employer reconciliation process, therefore the required information will be pre-populated on your return. You need to compare the IRP5/IT3(a) certificates against the pre-populated information to ensure that the information is correct. The medical schemes tax credit is also included in the IRP5 next to source code 4116 if your medical contributions were paid by your employer or if you provided proof to your employer of medical aid contributions made by you.

Checklist

✓ IRP5/ IT3(a) documents

Prior year tax return and assessment

To ensure completeness and accuracy, use the prior year tax return submitted as a base for determining code sections applicable to your tax calculation for the current year.

Checklist

✓ ITR12 and ITA34 (prior year)

Investment income (local interest income, foreign interest income, foreign dividends)

You will receive an IT3(b) certificate from financial institutions that will reflect investment income earned by you. Although individual taxpayers qualify for a local interest exemption of R23 800, or R34 500 if you are older than 65 years, you need to declare the full amount of local interest earned on your ITR12 return and SARS will apply the interest exemption on assessment.

Checklist

✓ IT3(b) documents

Travel allowance

Taxpayers claiming against a travel allowance are required to keep a logbook of actual business kilometres travelled. You can refer to the SARS website for a logbook that you can use to record distances travelled. The following minimum information relating to business kilometres travelled needs to be maintained:

- Opening kilometres (refer to prior year submitted tax return closing kilometres)
- Closing kilometres
- Date on which the travel took place
- The to and from destinations
- The kilometres travelled
- The reason for the travel

Remember: Expenses incurred to travel to and from your place of residence are considered private expenses and are not deductible.

Travelling expenses may be claimed either on actual expenses incurred or a fixed cost rate (based on the purchase price of your vehicle as well as kilometres travelled).

You are required to maintain accurate records relating to the following costs if you choose to base your travelling expenses on the actual expenses incurred:

- Fuel and oil
- Maintenance and repairs
- Insurance and licence fee
- Wear and tear (limited to purchase price of R595 000 over seven years) or lease payments
- Finance charges
- Other

If your employer provided you with a vehicle, the value of the fringe benefit can be reduced on the date of assessment by maintaining an accurate logbook of distances travelled for business purposes and by maintaining accurate records of the costs for fuel and oil, maintenance and insurance paid by you.

Checklist

✓ Logbook

✓ Proof of invoices for qualifying costs incurred

▶

Your medical scheme fees and qualifying medical expenses

You need to obtain a statement from the medical scheme indicating the following:

- Your portion paid on contributions
- The number of beneficiaries per month
- The total amount of claims submitted to the fund that were not refunded to you

If you have incurred qualifying medical expenses that were not submitted to (or recoverable from) your medical scheme you need to prepare a list and maintain the proof that these amounts were incurred and paid. Refer to the definition in the Income Tax Act of a "qualifying medical expense".

Should you claim medical expenses based on a disability then an ITR-DD (Confirmation of Disability) form needs to be completed and signed.

Checklist

✓ Medical scheme statement

✓ A list of qualifying medical expenses (retain proof of payment)

✓ ITR-DD form in case of a disability

Married in community of property

If you are married in community of property, it is important that you indicate your marital status correctly on the first page of your return. Investment income (interest income and dividend income), rental income from letting of property and capital gains accrue 50:50 to you and your spouse. However, on your tax return, you need to declare the full amount of interest, dividends, rental income and capital gains earned by you and your spouse and SARS will perform the apportionment.

Income tax certificates for retirement annuity contributions made

The institution to which your contributions are made will issue a certificate (e.g., an IT3(f) income tax certificate) confirming the total contributions made for the year. You must retain proof of your retirement annuity contributions made.

Checklist

✓ IT3(f) certificate

✓ Proof of retirement annuity contributions made

Capital gains transactions

To support the calculation of the base cost of a capital asset sold, the following documents need to be maintained.

Checklist

✓ Documentation supporting the acquisition cost

✓ Invoices supporting valuation costs incurred

✓ Invoices supporting direct costs of acquisition or disposal

✓ Invoices in support of costs to defend legal title

✓ Costs incurred with regards to improvements or enhancements to the value of the asset

✓ Purchase agreement

✓ Invoices supporting valuation costs, invoices supporting direct costs of acquisition or disposal (such as remuneration paid to valuer, auctioneer, consultant, legal advisor, transfer costs, certificate of electrical installation, stamp duty, advertising costs to find a seller or a buyer, sales commission, installation costs)

✓ Invoices in support of legal fees incurred in resisting expropriation, invoices in support of alterations and improvements provided that the improvements are still reflected in the state of the asset on the date of disposal

✓ To support the proceeds of the asset sold, the sales agreement needs to be retained

Commission-related expenditure

Checklist

✓ Documents and receipts for commission-related expenditure (including a logbook to claim business travel expenses)

"You are required to keep all supporting documentation for five years from the date of submission of the return"

Trading and farming activities

Checklist

✓ Financial statements

Donations

Checklist

✓ Section 18A certificates for all qualifying donations made

Expenses against local and/or foreign subsistence allowance

If you incurred expenses in respect of which you received a subsistence allowance you need to maintain a detailed schedule.

Checklist

✓ A detailed schedule contains the following information:
- The period in respect of which the expenses were claimed
- The destination where the money was spent
- The total number of days for which expenses were claimed
- Specify whether local or foreign expenditure
- Receipts for the expenses must be retained in support of the claim, should they be requested by SARS

Home office expenses

The deduction of any expenses in respect of any residence or domestic premises is prohibited, except where a part of the residence or premises is occupied for purposes of trade. In order to substantiate such a claim for home office expenses, supporting documentation needs to be maintained.

Checklist

✓ A service contract with your employer that stipulates that you must, in terms of the requirements of the service contract, maintain a study at your private residence.

✓ A schedule detailing the following must be prepared and retained for a period of five years, should SARS request it:
- The nature of the occupation and why it is necessary to maintain a study at home
- Does your employer place an office at your disposal at the workplace?
- Full details of any restrictions in the use of this office are to be furnished, as well as a letter of confirmation from your employer
- Is the work of such a nature that you are expected to work at home after hours?
- Full details of how frequently the home study is used as well as a statement confirming the use thereof is required from your employer
- Are you required to use the home study to interview or supply information to clients or employees after hours?
- Is the home study specifically equipped for purposes of the trade?
- Is the study used regularly and exclusively for your work?
- To what extent is the study indispensable to the proper carrying out of your tasks?

Accounting or administration fees for the completion of your income tax return

These fees can be claimed when business income or any of the following income sources are applicable: commission, local interest, royalties, other receipts and accruals, foreign dividends, foreign interest, other foreign income, pension annuity, retirement annuity, purchased annuity.

Checklist

✓ Invoice for professional fees which were actually paid or are payable for the completion of the income tax return

Although this information is needed to complete your tax return, no documentation needs to be attached to the return when submitting it to SARS. You are required to keep all supporting documentation for five years from the date of submission of the return.

Let's take the "pain" out of "painful" this tax season by getting all the needed documents ready before taking to eFiling.

IMPORTANCE AND BENEFITS 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.

There is a fine line between filing your own taxes and seeking a professional's help. The 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, but 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 then the 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 not possible 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 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.

"While the appointment of a registered tax practitioner is often seen as an unnecessary expense, the day will come when you are glad to have him or her on your side."

In practice we see major value in saving time and ultimately money for the taxpayer in using a registered tax practitioner to direct the tax filing process and communication with SARS.

The goal of the 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?

The taxpayer needs to ask a tax practitioner 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?

The taxpayer 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 tax paying and tax collection system as a whole.

PERSPECTIVES FROM THE OFFICE OF THE TAX OMBUD

▶ **JOHANN BENADÉ,** Operational Specialist: Taxes at the OTO

Many taxpayers, including individuals and corporate taxpayers, believe that it is unnecessary to employ the services of a registered tax practitioner to complete and submit their income tax, VAT and other tax returns. This view is not entirely correct.

In terms of section 240 of the Tax Administration Act, every natural person who provides advice on the application of a tax Act or completes or assists in completing a return for another person must register with or fall under the jurisdiction of a recognised controlling body (e.g., SAIT) and must be registered with SARS as a tax practitioner. The registration must be done within 21 business days of that person for the first time providing advice or completing or assisting in completing a return.

The above provisions do not apply in respect of a person who only provides advice on the application of a tax Act or completes or assists in completing a return for no consideration for that person, or his or her employer or a connected person in relation to that employer or that person.

Thus, an individual who completes a friend or family member's income tax return for no consideration need not register as a tax practitioner. Similarly, an individual who is employed by a corporate taxpayer, or by a connected person in relation to a corporate taxpayer, does not need to register as a tax practitioner. An accountant may complete and submit his or her employer's tax returns, as well as the tax returns of the companies forming part of the same group, as his or her employer company. ▶

- In practice, however, it is strongly recommended that properly qualified and experienced registered tax practitioners are engaged to assist with the completion and submission of more complex tax returns.

In addition, a decision to appoint a specific tax practitioner should only be made once satisfactory answers have been obtained to the following questions.

Are you a registered tax practitioner?
By selecting a registered tax practitioner, the taxpayer will have the comfort of knowing that the person is a qualified member of a controlling body, attends the compulsory continuing professional development training sessions offered by such body and is in good standing with SARS.

What relevant tax experience do you have?
The South African tax system is becoming increasingly complex and it will serve no good purpose if a person is appointed that lacks the specific expertise and experience to deal with your particular problem.

Have you previously dealt with a situation like mine?
Once again, it is essential that a person with the appropriate level of relevant experience is engaged. This is particularly true if the subject matter is complex. Even in simple objection and appeal cases, we are seeing at the Office of the Tax Ombud that elementary mistakes are made. This results in disputed assessments becoming final and conclusive without being corrected, to the obvious prejudice of the taxpayer involved.

What documents will you require from me?
It is important to establish this upfront. If the relevant documentation is only requested at the last minute this causes delays in resolving disputes with SARS. Timeous communication of this information will also enable the taxpayer to maintain the correct records right from the outset, e.g., a detailed logbook of business travel.

On what basis do you calculate your fees?
The need to establish the basis for fees right at the outset is self-explanatory. Many a professional relationship has turned sour due to this not being addressed timeously. You do not want to get into a dispute about fees with the very person on whom you depend to resolve a major tax issue on your behalf.

Will you submit my tax return on eFiling?
The submission of all tax returns on eFiling is now effectively mandatory and it is almost impossible to effectively communicate with and submit returns and disputes to SARS in any other way. The person you appoint must be an experienced eFiler.

What happens if I get audited?
While the submission of tax returns on eFiling is a fairly simple and straightforward process, the real fun starts when your return is selected for verification or audit. This is a tightly defined process, with prescribed timelines for both taxpayers and SARS alike. Your tax practitioner needs to be aware of the relevant requirements, as failure to do so could be costly.

What is the best way to get hold of you, and where are your offices located?
You should preferably engage a person who operates from established business premises and has staff that can assist you in urgent circumstances when he or she is not personally available to assist you. Proper offices and systems are also essential for record-keeping of your files and documents. SARS often decides to carry out an audit, or to send a query, relating to previous tax years. A person operating from the boot of a car will not be able to support you appropriately.

In conclusion, while the appointment of a registered tax practitioner is often seen as an unnecessary and unjustified expense, the day will come when you are glad to have him or her on your side. After all, you would not allow an unqualified person to work on the electrical system at your house. You need to exercise the same care when it comes to dealing with your tax affairs. In this regard, the appointment of a registered tax practitioner is essential and highly recommended.

Q&A

The Tax Helpline service is available exclusively to SAIT members. Log your tax-related technical queries via www.thesait.org.za

SAIT & TAXTIM

We present some of the most frequently asked questions about ITR12s and the answers supplied by the experts.

Q How do I file if I am unable to obtain an IRP5 from my employer?

The problem that you face, where your employer failed to submit the employer reconciliation to SARS and to issue you with an IRP5, is that SARS will not have populated the return of income (the ITR12) with the employment income. The system allows you to complete the return, by capturing the information of the income received from your employer. You can obtain this information from your pay slips for the year.

SARS will, as a matter of course, test the information captured against the information provided by the employer. If the employer still has not submitted the employer reconciliation, SARS will request you to provide supporting documentation. This happens after SARS has issued an assessment. The problem for you is then that the employees' tax withheld by the employer will not be available as a credit on your assessment.

According to SARS, where you have requested an IRP5 or IT3(a) certificate from the employer (typically an ex-employer) and the employer has failed to provide the certificate, you must visit the nearest SARS branch or call the Contact Centre for advice about the steps to be taken. Where the employer is insolvent, in liquidation, untraceable, deceased or not registered as an employer, you must, when visiting SARS and in order to be assessed, provide the following documentation to SARS:

- All payslips issued by the employer for the year of assessment in question;
- Bank statements to show the movement of salary into your account from the employer, and if applicable a copy of a service contract;
- Name and contact details of the employer; and
- Physical address of the employer.

Q How can I pay SARS?

You can pay SARS via an electronic funds transfer. You cannot add SARS as a personal beneficiary on your account. However, they are listed as a predefined beneficiary on all local banks. You can make once-off payments to SARS, depending on the type of tax you need to pay (provisional tax or assessed tax).

In order to find the exact payment details, you must draw a Statement of Account from the SARS eFiling system and then scroll down to the remittance advice at the bottom which will contain the outstanding amount as well as the payment details. It is very important to use the correct payment reference number as reflected on the Statement of Account so that SARS can allocate your payment correctly to your account. This is always a 19-digit number which starts with your 10-digit tax reference number and then the figures or letters that follow will depend on the type of tax you are paying.

Q My parents donated R200 000 to me during the 2019 year of assessment. How do I declare this in my income tax return (the ITR12)?

Whilst such a donation does not constitute gross income for you as donee, you need to declare the amount of R200 000 in your return. This is done under the "Amount Considered Non-Taxable" part of the ITR12.

Your parents must declare the donation in IT144 return (declaration by donor) and donations tax, at 20%, will be payable by each of them on an amount that exceeds R100 000. If the cumulative amount donated by each of them for the year of assessment is below R100 000 the annual exemption will apply (section 56(2)(b) of the Income Tax Act).

Q How is my Airbnb rental income taxed?

Income received from Airbnb is not taxed as rental income. In this instance there is no contract of letting and hiring between the owner of the house and the people who occupy a room or rooms in the house. The owner retains control of the house (and rooms) and gives the lodger a very limited right of use. Although this right is an exclusive one, it is not comparable to the extensive rights of a lessee under a contract of letting and hiring.

Such income is therefore declared under the heading "Local Business, Trade and Professional Income (other than Rental Income from the Letting of Fixed Property(ies)" in the part of the ITR12 return. Turnover and related expenses must be declared there as well.

Expenditure incurred in earning or producing this income can be deducted if it meets the requirements of the Income Tax Act. This could include Airbnb platform expenses, accountant fees, agent's commission, electricity, water, rates and taxes and levies. Interest on a mortgage bond to fund the original acquisition of the house may well not be expenditure in connection with the domestic premises if a part of the house is used for the Airbnb and it is not exclusively used. It is very important to remember that the full amount of the expenses for the year or period for which the house or rooms were used as an Airbnb does not qualify to be deducted. An adjustment must be made to account for private use by the owner and family of the house and the expenditure relating to that cannot be deducted.

Amounts spent on repairs of the property can also be deducted. A repair is, of course, different from an improvement to or renovation of the property. Expenditure on improvements and renovations will be added to the base cost of the property when it is later disposed of and will then reduce the capital gain.

Q I pay the contributions to a medical aid for my grandmother. She is the main member of the fund, but I pay the fees monthly. Can I claim this?

In terms of section 6A(2)(a)(i) of the Income Tax Act, the medical scheme fees tax credit applies in respect of fees paid by the person (by you) to a medical scheme registered under the Medical Schemes Act. From the facts provided, your grandmother is not a person who is recognised as a dependant of yours in terms of the rules of your medical scheme or fund. This is because she not a member of your "immediate family" – "immediate family" is limited to a person's spouse or life partner, parents (including adoptive and step-parents), children (including adopted and step-children) and siblings.

You will be entitled to the credit if your grandmother is "any other member of a person's family in respect of whom he or she is liable for family care and support". SARS, in their guide, states that the "definition of "dependant" in section 6B(1) has been widened and now

- includes any other member of a person's family in respect of whom the person is liable for family care and support." In relation to the word 'family', it is stated that the phrase "any other member of a person's family" includes relations by blood, adoption and marriage. You and your grandmother are relations by blood, within the third degree of consanguinity.

The contributions that you paid for the benefit of your grandmother will therefore qualify for the medical scheme fees tax credit.

Q I do not belong to a medical aid but I have claimed for medical expenses. Why do I not see these reducing my tax on assessment?

The legislation relevant to "the additional medical scheme fees tax credit", is relatively complex, particularly where a person is under 65 years and not disabled. Your "out-of-pocket expenses" must in the first place be "qualifying medical expenses", as defined in section 6B of the Income Tax Act. The rebate is only available if the total of these expenses, together with the excess fees, exceeds 7,5 per cent of your taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit). If the total exceeds 7,5 per cent, the rebate will be 25 per cent of the excess (above the 7,5 per cent).

It may well be that in your case the total did not exceed the 7,5 per cent threshold.

Q Will my Bitcoin profits be taxed?

Yes, taxable income derived from trading in Bitcoin will indeed be added to your other taxable income and will be taxed.

For the 2019 year of assessment two changes to the legislation are relevant to accounting for transactions relating to crypto currency. The first is that, for purposes of normal income tax, any cryptocurrency is a "financial instrument" (as defined in section 1(1) of the Income Tax Act).

The second is that, for purposes of the ring fencing of assessed losses, under section 20A of the Income Tax Act, acquisition or disposal of any cryptocurrency is a suspect trade. If your taxable income exceeds R1,5 million, before taking into account a loss from the acquisition or disposal of any cryptocurrency, you will have to indicate on your ITR12 that the loss should be ring fenced. This will be so unless that trade constitutes a business from which you have a reasonable prospect of deriving taxable income (other than taxable capital gain) within a reasonable period, having special regard to the factors listed in section 20A(3).

Q I work for an overseas company that does not have an office or branch in South Africa. They pay me my gross salary in Euros. How do I manage my tax affairs?

The fact that you are being paid in a foreign currency is irrelevant, other than that you have an option of converting the amount to RSA currency by using the spot rate at transaction date or by applying the average exchange rate for the relevant year of assessment.

An employer that is not resident in South Africa will not be required to register as an employer in South Africa and the detail of this remuneration will consequently not be populated to your return of income. You should therefore pay provisional tax on your salary.

Any taxes on income proved to be payable to any sphere of government of any country other than South Africa, without any right of recovery, will qualify for the foreign tax rebate and will reduce your tax liability in South Africa.

Q Where do I claim my medical GAP cover contributions in my tax return?

Payments in respect of "GAP cover" do not constitute fees as envisaged in section 6A(2)(a)(ii) of the Income Tax Act. As such, they will also not qualify for a rebate under section 6B(3).

These GAP contributions help you to cover the hospitalisation and medical costs that your medical aid does not pay out or pay out in full when a claim is made. They are not qualifying medical expenses for purposes of section 6B.

They are therefore not to be included in the amounts declared in the ITR12.

GENERAL OVERVIEW

COMMON MISTAKES WHEN FILING A RETURN

15 minutes CPD

NYASHA MUSVIBA, Founder and Tax Director at SA Tax Guide

As challenging as filing your tax return can be, be sure to take the time to avoid the typical recurring mistakes. Check your tax return against this list of the seven most common errors.

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 a number of 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 the requirements of SARS. (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.)

If you fail to submit supporting documents requested by SARS, you may receive an adverse assessment and this might leave you owing money to SARS. Individuals must ensure that they have the supporting documents before they complete and submit the ITR12 tax return.

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. On the contrary, taxpayers are required to file an ITR12 if they exceed a certain income threshold (for 2019, it is R500 000.00 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.

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

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

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 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 is liable to 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.

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.

INCOME STREAMS

WHAT IS THE POINT OF AN IRP5?

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

IRP5s can be somewhat like family: they can cause you a lot of headaches but you can't live without them. This article aims to provide logical guidance to enable you to make 2019 the year in which you conquer the unavoidable "family reunion" which is the Tax Season.

With the opening of the 2019 Tax Season creeping up on South Africans, some people are faced with the burning question of "What is the point of an IRP5?" and others wonder "How do I go about using my IRP5 to complete the Individual Tax Return?" Some people tend to avoid the question and related anxiety of dealing with their tax returns altogether. This is much the same as trying to avoid those yearly family reunions and trying to manoeuver through the cheek pinches and the extremely personal questions.

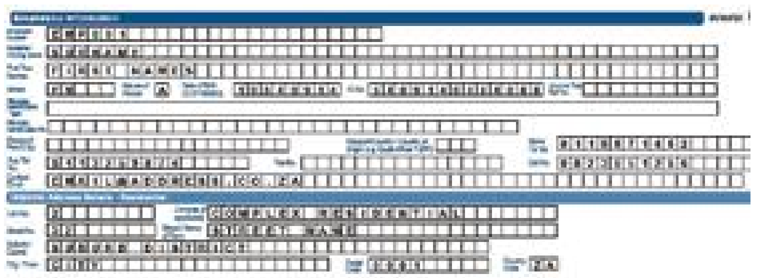
Getting to know the family tree

Before attending a family reunion, it is wise to catch up on recent family history. Similarly, 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.

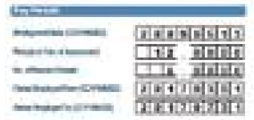
The following screenshots offer quick navigation guides to a general IRP5.

Certificate number is generated by the employer.



The employee information is entered by the employer. Update your information with your employer and SARS.

Information should be kept updated and accurate to avoid admin penalties from 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.

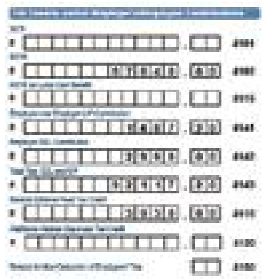
Each income / allowance / benefit paid to the employee has their own unique source code determined by SARS in a BRS Guideline issued annually.

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.

Screenshots are for illustrative purposes only. This year, SARS has launched a simpler format on eFiling which allows for easier navigation (refer to Part 1 of this edition).

"The IRP5 certificate is a summary of all the remuneration provided to an employee by an employer during a tax year."

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 the 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 no IRP5 certificate has 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). Then SARS 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 sibling called IT3(a) certificate

The difference between an IRP5 and an IT3(a) is that the latter does not reflect a tax deduction but 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.

Meet the dreadful IRP5 twins

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.

"After submission of the ITR12 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."

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 additional tax to be paid 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.

The ITR12 family dinner

Sitting down for a family dinner and exposing yourself to all the personal questions by your curious family members is similar to the completion of the ITR12 return. 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

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. Any disputes arising afterwards can be submitted for resolution within a prescribed timeframe.

WHAT HAPPENS WHEN YOU HAVE A SECOND INCOME?

15 minutes CPD

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

In difficult times it seems a good idea to supplement your salary by earning additional income. But what are the income tax implications for taxpayers who earn supplementary income? We consider these in the context of a progressive tax system and additional tax filing obligations.

The month of July is traditionally portrayed as the coldest time of the year, but it also heralds the beginning of the tax filing season in South Africa and we once again start pondering on preparing our income tax returns.

In today's economic climate many people exploit several opportunities to increase their income without necessarily realising the income tax consequences.

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 affecting 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.

"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."

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.

Enter provisional tax

The Fourth Schedule also defines provisional taxpayers, which includes all taxpayers "who derive income by way of– (ii) 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.

This article looks at the income tax implications for taxpayers who earn supplementary income in addition to remuneration.

SARS issued a publication on their website (http://www.sars.gov.za/TaxTypes/PIT/Pages/Income-from-two-sources.aspx) relating to income from two sources. In this publication, taxpayers are effortlessly guided on the tax consequences of receiving income from more than one source, as well as on options available to them to arrange for additional tax payments. The basis considered is an individual who receives both remuneration and pension incomes, where PAYE was deducted from both incomes.

We will, however, examine circumstances where a taxpayer receives a second income but no PAYE is deducted therefrom because the second income is not remuneration.

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

The practical application of this is that 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, 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	R300 000
INCOME FROM TRADE	R120 000
ALLOWABLE DEDUCTIONS	*- R19 150*
COMPUTER EXPENSES: R2 750	
PRINTING AND STATIONERY: R3 100	
TELEPHONE COSTS: R4 800	
TRAVEL EXPENSES: R8 500	
TOTAL TAXABLE INCOME	**R400 850**
NORMAL TAX PAYABLE	R79 236*
LESS: TAX PAID (PAYE WITHHELD BY EMPLOYER)	R22 707*
ADDITIONAL TAX TO BE PAID ON ASSESSMENT	**R56 529**

** Income tax rates for 2019 tax year*

In the said example, the taxpayer, pursuant to receiving the additional income from trade, migrated to a higher income tax bracket. This results in additional tax to be paid 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, as defined, 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 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 precisely complete the first page of their personal income tax returns (ITR12) on SARS' eFiling platform, and to provide the required information accurately as this will determine the relevant sections which will be generated on the income tax return. Typically, under the heading "Local Business, Trade and Professional Income" 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 qualified and registered tax practitioners, who will be able to provide quality tax services and advise on all tax-related matters. Tax practitioners' fees are also expense-deductible for income tax purposes in respect of taxpayers who earn income from trade.

WHAT IS A
TAX DIRECTIVE?

▸ **MARC SEVITZ,** Co-Founder & CFO of 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 it 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.

There are several types of tax directives available based on the purpose and the type of income earned. Let's 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 SARS definition of financial hardship is: “Inability to meet minimum living standards / depriving the tax payer 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 regards to what is deemed to be hardship and cases are reviewed on an individual basis to determine whether the taxpayer qualifies for a tax directive under these circumstances.

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

Deemed remuneration
The deemed remuneration directive is issued to instruct a company on the remuneration amount (which may differ from actual remuneration amount) to be used to calculate tax liability for one of the following:
- An employee assessed as under financial hardship
- The director of a company where the formula for tax liability on remuneration is not complete, due to remuneration information for the preceding year of assessment being undetermined

The corresponding SARS form is IRP3(d) – *Application for a Tax Directive: Directors’ Remuneration.*

Provident or pension fund lump sum withdrawal
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

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

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

Provident or pension fund lump sum payment
This directive is used when a lump sum needs to be paid by a provident or pension fund for:
- Resignation or retrenchment
- Withdrawal from fund
- Winding up (fund closing)
- Transfer
- Future surplus
- Unclaimed benefit
- Transfer of a lump sum in the case of a divorce
- Divorce settlement for a spouse (who is or is not a member of the fund)
- Housing loan
- 2/3 of capitalised amount as gross income when transferring or changing pension funds - paragraph (eA) of the definition of "gross income" in section 1

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

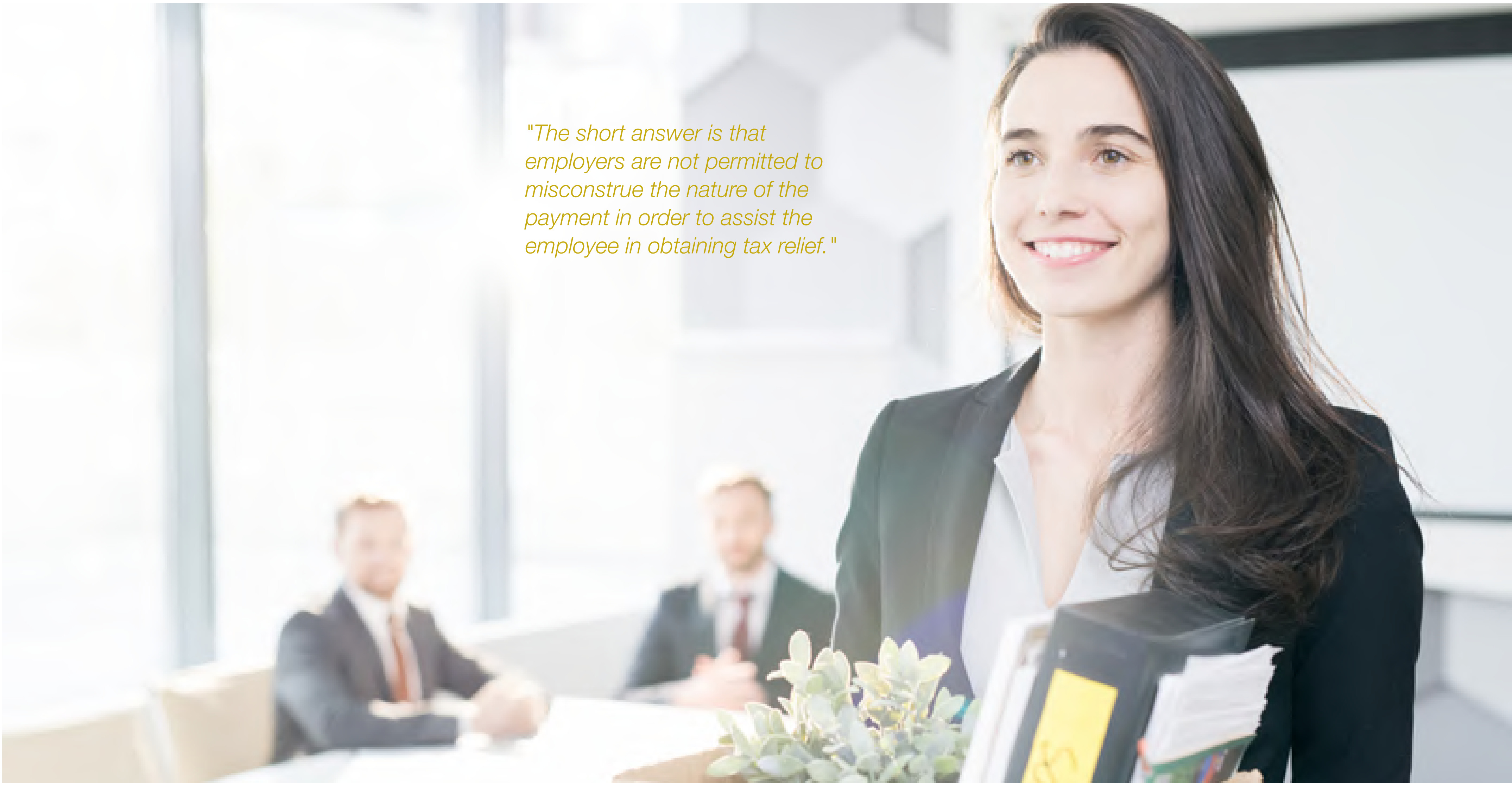
Retirement annuity fund lump sum payment
This directive is used when a retirement annuity fund needs to make a payment to a member. This will be in the case of:
- Death before retirement
- Retirement due to ill health
- Transfer from one retirement annuity fund to another
- Unclaimed benefits
- Discontinued contributions
- Future surplus
- Divorce transfer
- Divorce settlement for a spouse (who is or is not a member of the fund)
- Emigration

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

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. In the instances where the payments are made from funds or employers, they will request the tax directive on your behalf. For further information on how to apply, you can refer to the tax directive guidelines on the SARS website (www.sars.gov.za).

EMPLOYMENT TERMINATION BENEFITS

15 minutes CPD



"The short answer is that employers are not permitted to misconstrue the nature of the payment in order to assist the employee in obtaining tax relief."

▶ **CLAIRE GAUL,** Partner at Webber Wentzel

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

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.

Employees facing termination of employment are naturally keen to understand the taxation of 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.

Employers and employees are often uncertain what employees' tax deductions are required to be made from such lump-sum payments and the processes that 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, 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, where 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 payment in order to assist the employee in obtaining tax relief. To qualify for the severance tax rate, the employee's employment must have been terminated because (i) the employer stops or is intending to stop operations; (ii) the employer embarks on a retrenchment exercise in order to reduce its head-count; or (iii) 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. 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 five percent of the issued share capital or member's interest in the employer does not qualify for the retrenchment concession.

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 payments made to the employee should not receive the same treatment as ordinary severance payments made pursuant to a compulsory retrenchment exercise.

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.

30 minutes CPD

DISTINGUISHING BETWEEN INDEPENDENT CONTRACTORS & EMPLOYEES

▶ **KOBUS MULLER,** Master Tax Practitioner and Consultant at Muller Webber & Wilsnach Accountants

For tax and legal purposes, it is important that employers 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 court case ITC 1718 64 SATC 43 and the Circular Minute No. 22 of 1999, was issued by SARS.

Before 1999, employers employed employees, 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. 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 operators. 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 but will not deal with companies, non-residents or labour brokers.

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

"Employee", "employer" and "remuneration"

It is the 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 in nature. Note that the second test overrides the first test.

The first test

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

The first part

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

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

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

The second part

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

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

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

If either point above applies (that is, control or supervision), the second element of the first test is satisfied. It is not necessary for both control and supervision 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. ▶

"An employer that has incorrectly determined that a worker is an independent contractor is liable for the employees' tax that should have been deducted."

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 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 to the spouse within the third degree of consanguinity, or any spouse of anybody so related. For the purpose of determining 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.

In the event that 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 above, the second test overrides the first test.

The following three points flow from the above.

1. Qualifying as an independent contractor

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

a. does not have to perform the service mainly at the premises of the client; and
b. is not subject to the control of any person as to the way in which 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.

2. Working part time for two or more employers

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

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

3. Retired and semi-retired persons rendering services

In this current 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 in paragraph 1 above.

There is a big difference between the tax treatment of "independent contractors" that prevailed before 1999 and what is allowed in 2019. For that reason, expert advice should always be sought before employers do their planning.

HOW TO MANAGE TAX IN RETIREMENT

15 minutes CPD

▸ **MARC SEVITZ,** Co-Founder & CFO of TaxTim

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

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

During the tax filing season, many tax practitioners will 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, as is increasingly happening, they are asked to settle an amount with SARS every year it is usually an unexpected financial shock. Pensioners who find themselves in this situation are often forced to pay over money they thought belonged to them and they 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 from the following sources based on her monthly income:

Retirement annuity fund	R5 000 per month
Pension fund	R3 000 per month
Living annuity	R4 000 per month
Total income	**R12 000 per month**
Annual income	**R144 000**

The tax threshold for Taxpayer A is R121 000, given her age. However, on each individual IRP5 or IT3(a), the annual amount received is less than R121 000. See below:

Annual retirement annuity fund	R60 000
Annual pension fund	R36 000
Annual living annuity	R48 000

The entity behind each of these funds does not withhold any tax to pay it over to SARS. This is because each fund is not aware 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., R121 000.

Thus, for the tax year ended 2019, using the tax tables, R4 140 tax should be paid on the total annual income.

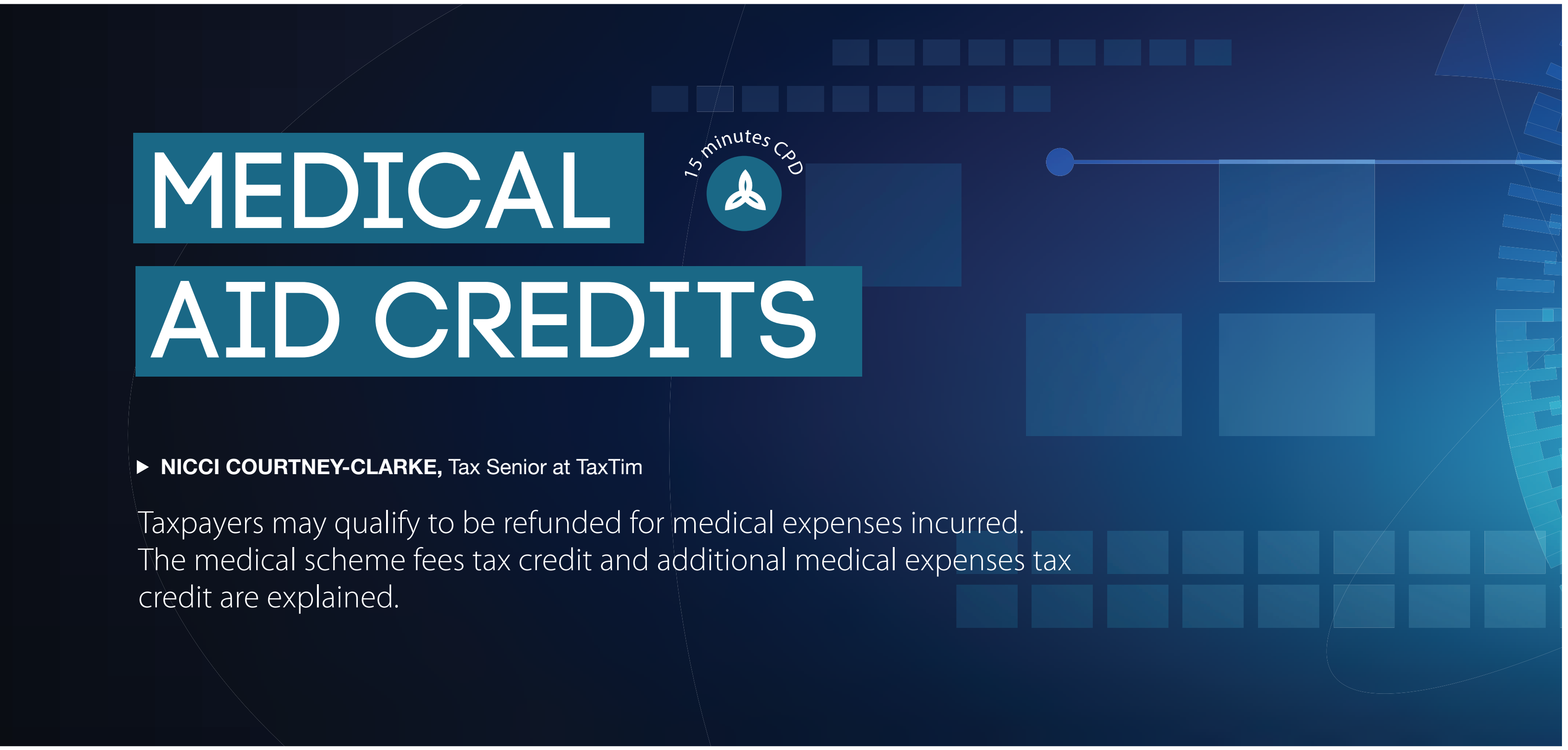
As a result, when Taxpayer A files her tax return for the tax year ended 28 February 2019, she is required to pay tax of R4 140. At this stage, she is unsure as to why this is the case as none of the funds withheld any tax.

Takeaway

Taxpayers must 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.



MEDICAL AID 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 2019 tax year) and any additional dependants will receive a monthly tax credit of R209 (for the 2019 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.

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 reimbursed fully or claimed from the medical aid. The types of expenses that would qualify include amounts paid for the following medical bills:

- Registered medical practitioner
- Hospital
- Nursing home
- Dentist
- Optometrist
- Homeopath
- Naturopath
- Osteopath
- Herbalist
- Physiotherapist
- Chiropractor
- Orthopaedist
- Home nursing by a registered nurse or when supplied by a nursing agency
- Midwife
- Prescription medicine

If these expenses were incurred outside South Africa's borders and you still have proof of it, you can also declare it 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 (the total contributions paid to the medical scheme - 4 x medical scheme fees tax credit) + (the qualifying medical expenses paid - 7.5% of taxable income)
Under 65, with disability	33.3% of (the total contributions paid to the medical scheme - 3 x medical scheme fees tax credit) + (the qualifying medical expenses paid)
65 or over, with or without disability	33.3% of (the total contributions paid to the medical scheme – 3 x medical scheme fees tax credit) + (the 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 2019 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 2019 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, 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

▶ **THAMSANQA MSIZA,** Tax Consultant at Tax Consulting South Africa

The 2019 tax season opens in July 2019. We revisit the fundamentals of the travel claim on your tax return and expand on related concepts.

What is new?

The beginning of the 2019 tax year (1 March 2018) saw an administrative change to the tax rules and treatment of the reimbursive travel allowance. We consider what effect this will have on a taxpayer's 2019 tax return submission. We also revisit the concepts related to claiming travel costs as an independent contractor or as an employee. With SARS adopting a robust stance on verifications and audits, it is now more important than ever to maintain a travel logbook and to adopt good tax filing and compliance strategies. Otherwise this may cause unnecessary delays in obtaining a tax refund due.

2019 tax return: The impact of withholding PAYE on reimbursive travel allowances

A reimbursive travel allowance is an allowance paid to an employee for actual business kilometres travelled. Prior to 28 February 2018, there was no PAYE withholding requirement, nor was this included in the employee's taxable income for tax disclosure purposes, where:

- an employee travelled less than 12 000 business kilometres per annum;
- the employee received no other business travel compensation; and
- the reimbursive rate was less than the prescribed SARS rate (i.e., R3.55 for the 2018 tax year)

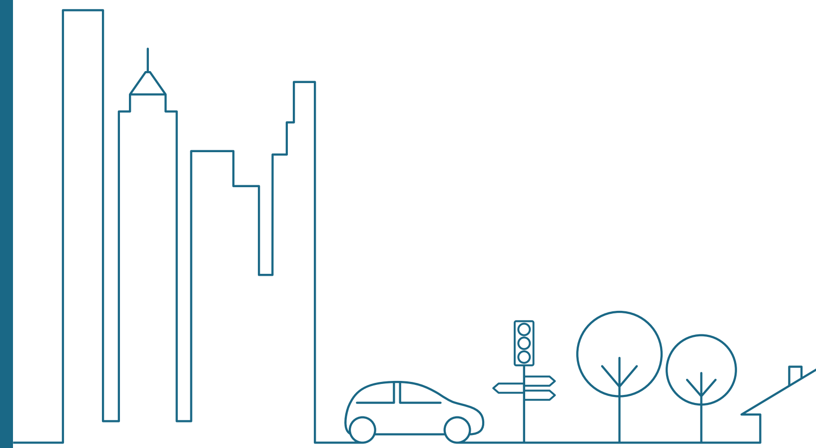
From 1 March 2018, the change in tax rules and treatment requires employers to consider the following:

1. *Where an employee is reimbursed using a rate higher than the prescribed rate, the differential between the SARS prescribed rate and the reimbursive rate will be subject to PAYE, irrespective of the business kilometres travelled.*
   - Employers need to carefully look at their reimbursement rates, as a rate above the threshold becomes subject to PAYE.
   - The PAYE deduction may result in lower employee take-home pay than with simple reimbursement at the SARS accepted rate, especially as the 12 000 km business cap no longer applies.
   - Some employers have run the numbers: by reimbursing at a lower tax-free rate and restructuring the pay package, they save the company money (as the reimbursive rate is lower) and give the employee more take-home pay (as tax free is better than taxed).
2. *There is now also a new tax-free treatment altogether.*
   - Where the employee is reimbursed at a rate lower than the prescribed rate and receives no other business travel compensation, irrespective of the kilometres travelled, the reimbursement will not attract PAYE, and will also not be taxable on the employee's personal tax return.
   - This means that employers must take great care, and do the computation, before providing employees with a travel allowance.
   - A travel allowance may actually cause the employee to pay tax on the reimbursement.
   - In certain circumstances, we have found that a travel allowance may no longer be a tax planning opportunity but may in fact increase the employee's tax burden.
3. *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 your opinion is only valid once you have 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.

An employee who has only ever received a reimbursive travel allowance, that was not taxable and not subjected to PAYE under the old rules, would have not needed to lodge a travel allowance claim and would have similarly become accustomed to not keeping a logbook. Under the new rules, however, the same employee will have to start keeping a logbook – and perhaps realise an administrative burden – where the received reimbursive allowance triggers the requirement to withhold PAYE.

"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."



Travel allowance deduction: The employee perspective

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 the SARS interpretation Note 14.

Moreover, motorcycle enthusiasts are not excluded from this definition, as further expanded in Interpretation Note 14.

The motor-powered vehicle or motorcycle

Must I own the vehicle or motorcycle?

In practice, an employee who receives a travel allowance generally owns their private vehicle used for travel. However, 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 motorcycle. Will this disqualify the employee from claiming against the travel allowance? No, section 8 does not limit nor disallow the claim against the travel allowance in this instance. It is not imperative that the car in question should be owned by the employee. Obviously, this can lead to an enquiry by the SARS auditor and 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

However, what if an employee makes use of a company-provided vehicle – can the employee claim against the travel allowance? No, where an employee receives a travel allowance and has made use of a company-provided car, no tax claim against the travel allowance (in terms of travel for business purposes) will be allowed (see section 8(1)(a)(i)(aa)).

Adding to the concern of unreducible taxes on the travel allowance are the taxes arising from the use of the company-provided motor vehicle as this is considered a taxable fringe benefit, according to paragraph 7(2)(b)) of the Seventh Schedule to the Income Tax Act. However, 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 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.

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 private travel. To reiterate: private travel is taxable and business travel is not taxable.

Claiming business travel

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

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 … <u>or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient</u> … 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". (My emphasis)

It is interesting to note that the word logbook is not specifically mentioned in the Income Tax Act. Rather, reference has been made on where a taxpayer proves business distance travelled to the satisfaction of the Commissioner, a travel allowance claim may be allowed.

Nonetheless – and in practice – a taxpayer can discharge the onus of proof that travelling with a private vehicle was travel expended 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 2018/2019 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 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 2019/2020 has adopted the same chorus and requires record of business travel only – continuing to provide taxpayers with an 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.

The importance of the logbook: Responding to SARS' more stringent audits

Additional information required by SARS

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. Ultimately, the burden of keeping records and maintaining a logbook is the taxpayer's burden, and necessary to claim against a travel allowance.

A more comprehensive logbook, perhaps containing further information – such as departure and arrival addresses – might prove beneficial in discharging the taxpayer's onus of proof. This information is not explicitly required on the SARS eLogbook for 2018/2019 and is left to the taxpayer's discretion. However, it can make reviewing of a travel claim slightly easier for a SARS auditor.

We have noted that a positive response is received from SARS where a SARS auditor is furnished with such comprehensive information.

Is the first trip always excluded from business travel?

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)).

For example: Where a consultant travels from an employer's branch office (not the consultant's usual place of employment) to a friend's house, the travel is considered private. Where a consultant stops to see a client en route to his or her place of employment, the travel between home and the client's premises would be private. However, the trip from the client to the place of employment would then be business travel.

Which method is best?

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. For 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 2019 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 that want to claim using this method must bear maintenance costs and fuel costs themselves.

Considering the information provided in the previous example, the fixed costs, fuel costs and maintenance costs components can be referenced as follows (as per the SARS eLogbook for 2018/2019):

Fuel costs per kilometre	*R1.248*
Maintenance costs per kilometre	*R0.519*
Fixed costs component	*R2.896 (R92 683 ÷ 32 000 km)*
	(figures - cost scale table: R280 000 vehicle)
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.

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.

When all is said and calculated what are the key take-aways?

- Maintaining a logbook remains imperative, as clearly noted in the SARS eLogbook for 2018/2019 – now more than before, in light of SARS' renewed stance on audits. SARS reserves the right to audit and query the content and information recorded by the taxpayer. In addition, the logbook must be retained for at least five years.
- Although fundamental differences exist in the treatment of the travel costs for an employee and for an independent contractor, both are required to maintain an up-to-date logbook and retain other supporting source documents.
- A deduction against a travel allowance is disallowed where an employee uses a company-provided car and receives a travel allowance. However, a taxpayer may claim a deduction from the fringe benefit arising from the provision and use of a company car for business travel.
- The reimbursive travel allowance changes, requiring withholding of PAYE, have not altered an employee's ability or manner to claim against a travel allowance. However, an added administrative burden (i.e. keeping a logbook) might be felt by an employee who finds his or her reimbursive travel allowance is taxed under the new rules.

WHAT YOU NEED TO KNOW ABOUT COMPANY CARS

15 minutes CPD

▶ **LIZBÉ MURRAY,** Director at Contador Accountants

How much of a perk is use of a company car? 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 you may be offered as part of your employment package is the use of a company car. Although most people see this as a great bonus, many employees don't 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 employees get from the employer as a reward for their services rendered. The employee is taxed on this benefit as if they received the benefit in cash. It is the employer's responsibility to determine the value of the fringe benefit, include it on the employee's payslip, and deduct PAYE from 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 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. 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 also 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 is determined, the next step is to calculate the benefit on which the employee is taxed. That is calculated as 3.5% of the determined value per month OR 3.25% of the determined value per month, if the purchase price includes a maintenance plan.

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

EXAMPLE:

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

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

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

The taxable portion of the employee benefit

The next step is to calculate the portion on which PAYE should be deducted. Remember that the employee is taxed on the personal use of the vehicle, 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, the 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 of 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).

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 (below), 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 kids you prefer a family vehicle instead.

An employee does not always have the option to choose between a company car or a travel allowance – 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.

COMMON DEDUCTIONS

TRAVEL ALLOWANCE VS REIMBURSEMENT

30 minutes CP

▸ **CLAIRE ABRAHAM,** Senior Manager at PWC

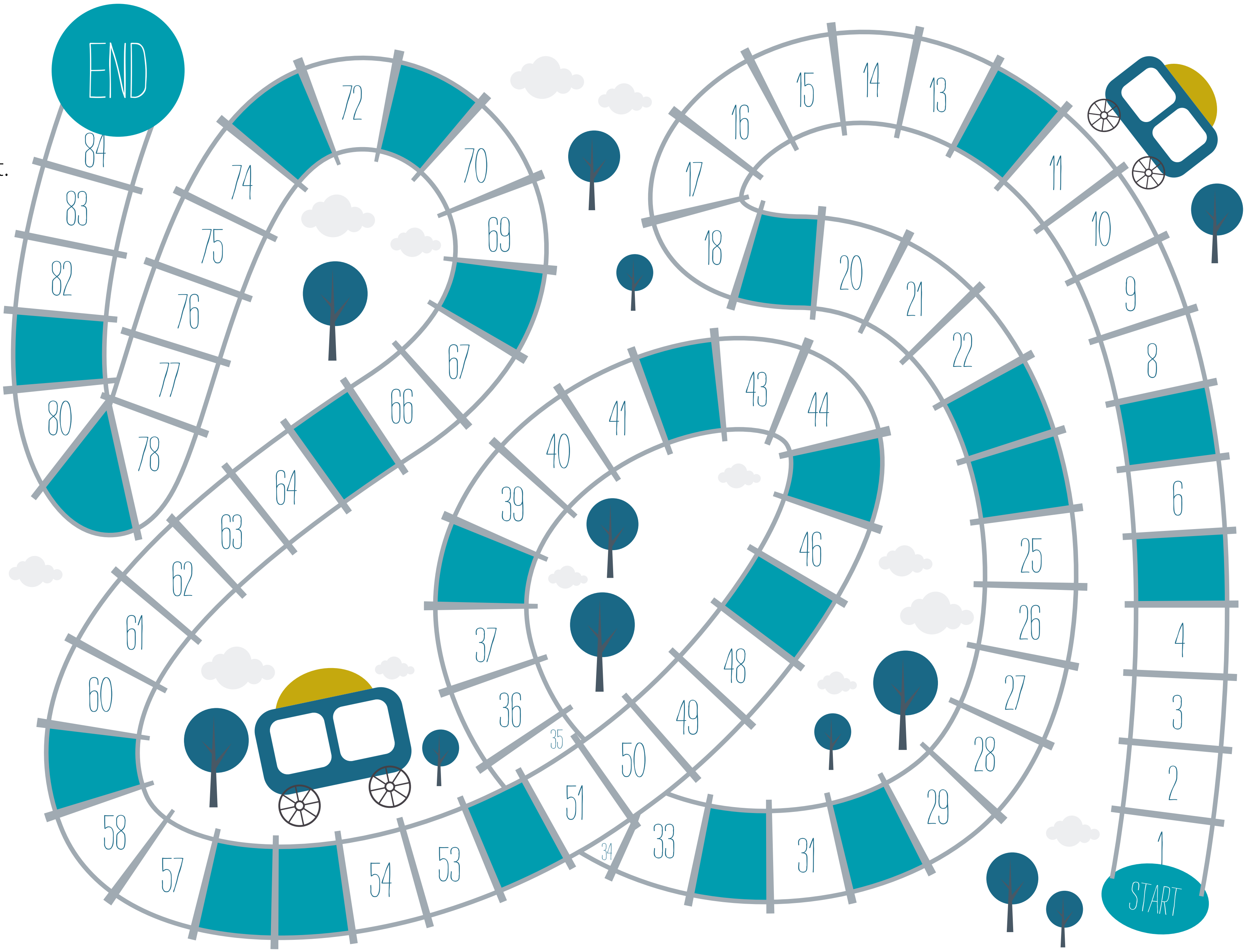
How much does a travel allowance cost an employer? Is it cheaper to reimburse employees for actual business travel after it has been undertaken? What are the administration costs involved in managing the tax and other risks? Read on to find out.

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 to employers of a travel allowance and a travel reimbursement. 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.

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 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.

"Employers need to consider the industry they are in and which categories of staff they have. A sales company will need a robust travel allowance and reimbursement policy."



What is a travel allowance really for?

According to Interpretation Note 14, issued by the Legal and Policy Division of the South African Revenue Service, 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. 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 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 employee expenditure, which is taxable. This is why employers were 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 deemed 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 have, 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 appear, 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, the 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 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 R3.61 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 R3.61 with effect from 1 March 2018. However, depending on the circumstances, although easier to administer and less risky from a tax point of view, this may negatively affect the employee if the actual expenditure incurred is more than this limit.

How does the tax treatment impact my costs?

Some employers are of the view that the tax treatment of the travel allowance vs 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 does in order to calculate the applicable allowance.
This estimate can be costly and 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 performed, SARS can seek to recover under-deducted PAYE as well as raise penalties and interest on the portion 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, in theory an employee could overstate his logbook and claim a higher deduction than the business travel he 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 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.

This can be done by artificially inflating their logbooks. 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 you remunerate your staff?

When granting a travel allowance, the employer needs to consider whether staff 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 employee costs, such as pension and medical aid. If the employee wants to structure R120 000 as a travel allowance into his existing CTC, his 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 their employer's expenses? This is notwithstanding the potential monthly cash flow advantage of only 80% of the travel allowance being subject to PAYE.

The answer to that question is "yes", if they are not being reimbursed. The employee is presumed to be using 20% of his allowance for business, so he is not subject to tax on that 20%. Nevertheless, if the employer is not refunding him, that 20% still comes out of his CTC. Although he can deduct his business expenditure and is therefore paying less income tax, he is still effectively using his own funds to cover the employer's expense. Therefore, the employee may insist that he also be refunded for his business expenditure from the employer, or that the travel allowance be granted so as to increase his CTC, where extensive travel is required. 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 your 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 should be compensated for on a reimbursement basis.

Conclusion

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

DEDUCTING YOUR HOME OFFICE EXPENDITURE

15 minutes CPD

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

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

"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."

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. SARS allows such employees to deduct their home office expenses within the "Other Deductions" section of the ITR12 form. However, all this is only allowed under certain specific conditions.

It is important to understand that 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.

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 also take other commission-related business expenses, such as telephone, stationery and repairs to the printer, into account.

The second group (i.e., salaried employees with variable payments or commission making up less than 50% of their total remuneration) can only claim 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 2019 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 must also ensure that the supporting documents can easily be reconciled with the home office claim on their ITR12. If the backup is unclear or insufficient, SARS will disallow the deduction altogether.

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

While people are eager to claim the home office tax deduction 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 property one day.

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

However, if the taxpayer 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 2007 for R1.2 million. In February 2015, she carried out renovations for R300 000 to add on an office from where she worked until she sold her home in February 2019. The office space made up approximately 10% of her total house space (i.e., it was 10 m², while her entire home was 100 m²) 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 2019 when she sold it for R3.5 million. Her taxable income for 2019 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.

I'VE HAD TO REFUND MY EMPLOYER...

▶ **FAEEZA SONI,** Senior Lecturer in Tax at Wits

Our article examines the tax situation of employees who receive benefits from their employers and then have to pay back the money. Can they claim back the tax already paid?

An employee may have received a benefit from an employer with conditions attached. Failure to meet the condition/s resulted in the employee having to refund their employer.

Examples of refunds made to an employer include the following:

- A refund of a scholarship or bursary, where the qualification is incomplete
- A refund relating to maternity leave, where the employee does not return to work
- A refund of a retention bonus, where the employee resigns before the agreed term

The tax treatment of the benefit when it was received

Study assistance

The tax treatment of the receipt of study assistance depends on the agreed terms with the employer.

If the employer contributes towards the employee's qualification, the contribution made by the employer is included in the employee's taxable income as a fringe benefit. If an employer contributes towards the studies of an employee's relative then this will also be included in the employee's taxable income as a fringe benefit. However, these inclusions may qualify for the section 10(1)(q) exemption and have no impact on taxable income overall. If the amount qualifies for an exemption then the employee would not pay tax on the amount when the benefit is granted.

A study loan granted by the employer to employee, with 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.

Study assistance: Section 10(1)(q) exemption

If the employer contributes towards the employee's qualification then the benefit can qualify for the exemption only if the employee agrees to refund the employer for the scholarship or bursary in the event that the employee fails to complete his or her studies.

The exemption may also apply to a bursary or scholarship given to a relative of an employee. The following conditions apply:

1. the employee's remuneration proxy (remuneration in the last year of assessment) must not exceed R600 000 and;
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 and 2019 years of assessment. In previous years, the amounts differ.

Maternity leave and retention bonuses

An employee who takes maternity leave receives the benefit of receiving remuneration whilst the employee is away. A receipt of a retention bonus is remuneration when the bonus is paid.

Provided that no exemptions apply (for example section 10(1)(q)), the employee would have paid Pay-As-You-Earn (PAYE) 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.

The tax treatment of the 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 requirements are met.

The refund can be deducted from the employee's taxable income only in that year of assessment where 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. It is therefore necessary to consider if the amount qualified for an exemption when received, in order 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.

With respect to 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. This means 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 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 assessment for the year (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. This deduction differs from the one in section 11(nA) in that it refers 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 amounts must be indicated next to the code 4042, 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 (responsibility) is on the employee to prove that this is the case. The documentation will be required if SARS conducts a compliance verification. An employee needs to prove only that the amount was taxed previously (this can be seen on the IRP5 relating to the benefit granted) and that a refund was made.

In 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 would detail that the amount was paid to the employee and previously taxed. It would also detail that the refund was made.

SARS will also consider other documentation. This includes bank statements and payslips to prove that the amount was included in taxable income previously, but has now been refunded.

DEDUCTIBLE DONATIONS:

THE GIFT THAT KEEPS ON GIVING

▸ **DANIEL BAINES,** Tax Consultant at Mazars

Donations to approved public benefit organisations may be deducted from income for tax purposes. We look at requirements and the amounts by which this feel-good way can reduce tax liability.

If individuals make donations to certain public benefit organisations this can result in less tax to be paid when they submit their annual tax returns.

The potential reduction in tax liability is dependent on the donation being made to a SARS-approved section 18A public benefit organisation. An example of an approved public benefit organisation is the Animal Welfare Society of South Africa. Before making donations, it is important to check that the organisation is not only approved as a public benefit organisation but also has section 18A status. A list of all approved public benefit organisations can be accessed from the SARS website: www.sars.gov.za/ClientSegments/Businesses/TEO/Pages/Approved-Section18A-PBO's.aspx

When an individual donates to such an entity, the entity should issue the individual with a section 18A certificate. This is important as it provides the details that will be included in the individual's tax return and SARS may request the taxpayer to submit the certificate in order for the deduction to be approved. The taxpayer must ensure that the certificate has the requisite information as required by SARS, such as the charity's PBO number.

"When donating to an approved public benefit organisation, it is important to request the section 18A certificate."

The following two examples show the reduction in tax liability that an individual may receive upon making a donation to an approved organisation (based on the tax tables for the 2020 tax year):

Examples of reduction in tax liability

	EXAMPLE 1	EXAMPLE 2
NO DONATION MADE		
Taxable income	R500 000	R1 000 000
Tax liability	R127 875 (excluding rebates)	R327 040 (excluding rebates)
DONATION MADE		
Taxable income	R500 000	R1 000 000
Less donation	R40 000 (donation cannot be more than 10% of taxable income)	R40 000 (donation cannot be more than 10% of taxable income)
New taxable income	R460 000	R960 000
Tax liability	R113 475 (excluding rebates)	R310 640 (excluding rebates)
REDUCTION IN TAX LIABILITY	**36%**	**41%**

In example 1, the individual has reduced his or her tax liability by R14 400 or 36% of the amount donated.

The greater your taxable income, the greater benefit you have when donating to a charity. This is illustrated in example 2.

The taxpayer with a taxable income of R1 000 000 has reduced his or her tax liability by R16 400 by donating R40 000. The taxpayer therefore reduces his or her tax liability by 41% of the amount donated. This is because the taxpayer's marginal tax rate is 41%. Compare this with the first example where the taxpayer reduced their tax liability by 36% of the amount donated. This is because the taxpayer's marginal rate of taxation in that example is 36%.

If applicable, the amounts of R14 400 and R16 400 will be paid out as a refund by SARS upon submission of the individual's tax return, provided the individual can produce a valid section 18A certificate. Please note the payment of a refund will depend on each person's overall tax situation, but the taxpayer will always receive a reduction in tax liability.

Donating to a charity of your choice has great benefits, both in terms of the reduction in tax liability as well as the contribution made to society. When donating to an approved public benefit organisation, it is important to request the section 18A certificate. SARS will deny the deduction of the donation if the certificate cannot be produced upon assessment.

DEDUCTING MISCELLANEOUS BUSINESS EXPENSES

15 minutes CPD

NICCI COURTNEY-CLARKE, Tax Senior at TaxTim

What counts as a business expense and when can you deduct it from your income? Our article provides a hands-on explanation.

The type of business expenses that an individual can claim as a deduction depends on the type of taxpayer they are, or in other words, the nature of their income. There are broadly three types of individual taxpayers:

1. Self-employed entrepreneurs
2. Commission earners
3. Salary earners

Broadly speaking, 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 your 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 for your business related to the product, services and sales
- Telephone and fax or communication: Fixed line and cellular phone costs

Commission earners

These types of taxpayers work for someone and are thus employed. However, their income is made up primarily of commission. This means that on their IRP5, their commission income (source code 3606) must be 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 around the area of 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, which 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), which 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 deduction is subject to a letter from their company stating that they have express permission to use the device for work purposes, and that they are not being compensated by an allowance to maintain such a device. Taxpayers will have to estimate the ratio of business to personal use for their 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 R7000, also using the SARS prescribed rates. Note, that low-value items below R7000 are usually expensed in the year they are purchased.

> "Salaried employees are very limited by tax law in terms of what business expenses they can deduct."

Supporting documents

After taxpayers submit 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

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.

EXPENSE	SELF-EMPLOYED ENTREPRENEURS Sole Proprietor / freelancer / independent contractor	COMMISSION EARNERS Commission income makes up more than 50% of your 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, insurance invoices	• Logbook with details of business mileage • Vehicle purchase invoice (if applicable) • Fuel, maintenance, licence, 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, purpose of meeting • Restaurant invoices/receipts	• Schedule of entertainment expenses, showing details for each claim, e.g. names of people, purpose of meeting • Restaurant invoices/receipts	Cannot claim
Telephone	• Sample of actual monthly invoices • Calculation showing how the total expense was apportioned between business and personal use	• Sample of actual monthly invoices • Calculation showing how the total expense was apportioned between business and personal use	Cannot claim

** Salaried employee can only claim travel expenditure if a travel allowance (source code 3701 or 3702), or use of company car (3802 or 3816) fringe benefit, is received.*

RETIREMENT: KEEPING UP WITH CONTRIBUTIONS AND RECORDS

15 minutes CP

▶ **ISABEAU BRINCKER,** Tax Advisor for Sanlam

Saving for retirement can hold tax benefits. 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 to harmonise and simplify the retirement savings regime. At the time, the annuitisation of benefits for provident and preservation funds was postponed by two years. Progress on this matter has been slower than anticipated and consultations are yet to be finalised.

The Income Tax Act was nevertheless amended with effect from 1 March 2016, with the possibility of a revision of these provisions if agreement was not reached by the end of the two-year period. The 2019 budget speech did not mention any such amendments. Rather, further amendments were proposed so as 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 28 February 2019, the amended legislation is relevant and it is important to properly record all retirement fund contributions, whether they qualify for a deduction in the 2019 year of assessment or not.

As from 1 March 2016, the income tax deduction in relation to contributions to a pension fund, provident fund and retirement annuity fund was standardised as one uniform deduction applying across all funds. Section 11F of the Act contains the provisions for this deduction and in calculating 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:

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”).

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 28 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 28 February should they want to make any retirement annuity fund contributions so as 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. 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.

Excess contributions

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 and/or by way of deduction from lump sum payments on retirement or withdrawal from the fund and/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 and/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, such as the cost effectiveness of the retirement saving product, the balanced risk profile which such product is required to have due to applicable regulations and limited access to the funds.

Accurate filing

Taxpayers must take due care to correctly disclose retirement fund contributions in their income tax return (ITR12). This is important not only for purposes of correctly calculating the deduction under section 11F, but also to ensure that carried forward contributions are registered on the SARS systems for automatic carry forward.

Contributions administered through the payroll system of a member’s employer will be included on the taxpayer’s employee income tax certificate (IRP5). A copy of the IRP5 is submitted directly to SARS by the employer and it is used to pre-populate the taxpayer’s ITR12 in as far as employment income and deductions are concerned. Own and deemed contributions to a pension fund and/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 and/or documentation should be required from the taxpayer in relation to employment retirement fund contributions.

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 which 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, and automatically brings forward (from the preceding year of assessment) and/or carries forward (to the succeeding year of assessment) any carried-forward contributions (i.e., contributions which did not qualify for deduction in prior years and/or the current year).

"Taxpayers must take due care to correctly disclose retirement fund contributions in their income tax return."

Carried-forward contributions are automatically calculated by SARS’ assessment system and reflected as “amount brought forward from previous year” and/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 which 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.

30 minutes CPD

HOW TO REPORT YOUR INVESTMENT INCOME

MELISSA DUFFY, Tax Director at KPMG and
NOMAWOTHI BAFANA, Junior Tax Consultant at KPMG

Reporting investment income in the ITR12 can be tricky. Our article shows you how to do this by providing a breakdown for each type of investment income, with source codes. We even outline some handy investments that are tax efficient.

Income from investments must be reported in your annual income tax return. Your tax residence status will dictate the extent of your disclosure of investment income. If you are tax resident in South Africa, you have to report your worldwide income and worldwide capital gains. If you are non-tax resident, you only have 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
- Section 12J dividend income
- Interest earned on positive credit card balances
- Interest from medical aid savings account
- Interest income from bank accounts
- Dividend income from shares held
- Interest income from the South African Revenue Service
- Real estate investment trust income

Collective investment schemes (CIS)

The Collective Investment Schemes Control Act is the Act which governs the creation and administration of collective investment schemes in South Africa.

A CIS 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 CIS an investor may achieve a spread of investments in assets such as shares, bonds, deposits, money market instruments, real estate. One of the main characteristics of a CIS 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 (REITs)

A REIT (pronounced "reet") is a company that owns, and often operates, income-producing property. Tax Talk Issue 76 contained a detailed article on REITs. 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 (DWT). Instead, the dividend income is subject to normal tax. However, in relation to non-resident natural persons, the dividend will be exempt from normal tax but subject to a 20 per cent DWT unless the percentage is reduced in terms of a double tax agreement in place.

Venture Capital Companies (VCCs)

VCCs are special investment vehicles created in terms of section 12J of the Income Tax Act to generate financial support for start-ups, to create employment and to support the economy. These investments are considered "high risk". A taxpayer's funds are locked in for a minimum period of five years. However, what makes these investments immensely attractive from a tax perspective is that a taxpayer will get 45 per cent 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 be extended. The revenue stream from section 12J investments is usually dividend income which is subject to dividends withholding tax.

"If you are tax resident in South Africa, you have to report your worldwide income and worldwide capital gains."

What documentation do I need to complete the tax return?

You 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

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. There have been discussions around SARS prepopulating investment income using third party data. However, this will be implemented in a future tax year.

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. DWT would have already been applied to the amount received by the taxpayer	Gross income definition in S1 and S10(1)(k)	No source code
Foreign dividends	Partial exemption by formula	Gross income definition in S1 and S10B	4216 for gross income 4112 for foreign tax credits on this income
Foreign interest income	No exemption applies	Gross income definition in S1	4218 for gross income 4113 for foreign tax credits on this income
REIT income	No exemption applies	S25BB	4238
Tax free savings accounts	Income is exempt	S12T	4219 for contributions made 4239 for net return on investment – profit 4240 for net return on investment - loss 4241 for interest earned 4242 for dividends tax free investments 4243 for capital gain 4244 for capital loss 4246 for TFI – Transfer in 4247 for TFI – Transfer out 4248 for TFI- Withdrawal
VCC income	Tax break on initial investment Income is exempt from dividends tax	S12J	4051 for amount invested 4245 for amount recouped on sale of VCC shares

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.

What are the benefits of different investment vehicles when it comes to a person's tax position?

To the extent that one has surplus cash to invest, it may be worthwhile investing in the following investment vehicles to generate returns with a beneficial tax impact. Please consult your financial advisor for more investment options.

- The first R23 800 (R34 500 if over 65) of interest income in relation to a natural person is exempt. That means one could invest up to R350 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.

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 of the 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.

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

▶ **MARTIN DE KOCK,** Director of Ascor Independent Wealth

Our article looks at the tax breaks but also the 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 it is clear that 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 VCC 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 have a 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, VCCs 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	*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	*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.
- 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, exit fees.

"As with any investment, the tax implications should never be the primary focus influencing your investment decisions."

- 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 Services 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, to mention a few.

RENTING OUT PROPERTY:

ARE THE REWARDS WORTH THE RISKS?

15 minutes CPD

▸ **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 which is 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 it 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. Not only the rental income will be 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.

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 claimed.

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

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/or interest for the incorrect disclosure of information to SARS. If this is the case, the landlord should ensure that this position is corrected on an urgent basis 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 personal nature
- Claimed in the correct year of assessment and that there is proof that such expenses were incurred by the landlord

Where expenses are claimed that do not comply with the above requirements, the landlord faces the risk of the expenses being disallowed as a deduction from taxable income, resulting in higher taxable income than anticipated. Examples of expenses which may be claimed include rates and taxes, bond interest and insurance costs.

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, for example.

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 a substantial period of 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 the landlord is not merely using the rented property as a mechanism to incur losses and reduce the tax payable, without substantiation. 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, where it is initially of the view that they do in fact apply.

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.

DO I NEED TO COMPLETE A PROVISIONAL TAX RETURN?

30 minutes CPD

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

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

Who is 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, independent contractors)
- Property rental
- Investments (i.e., dividends and interest)
- An unregistered employer (i.e., an employer who does not deduct PAYE from their salary)

If you are self-employed and earn taxable income above the annual tax threshold (2020: R79 000) 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.

The deadline for the first provisional tax return for 2020 is 30 August 2019. This means that both the return (IRP6) as well as your tax payment (if applicable) must be submitted to SARS by this date.

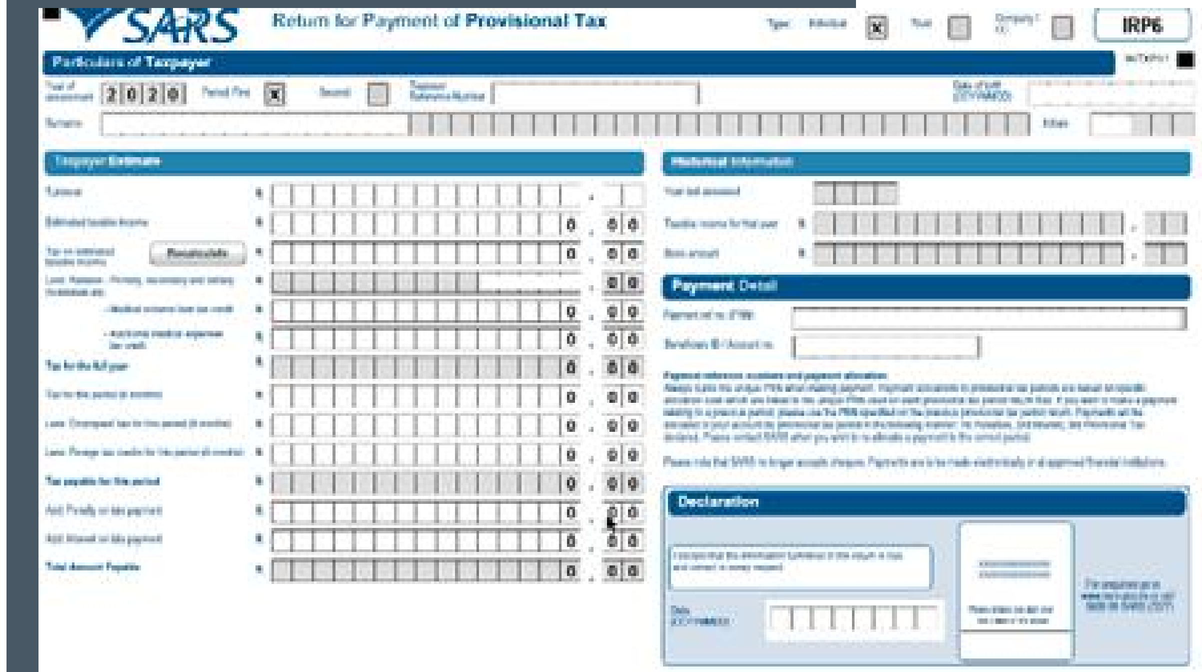
Documents you need in order to prepare the IRP6

Below is a list of documents that may be needed in order to prepare your first provisional tax return. Make sure you have 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

Screenshots are for illustrative purposes only. This year, SARS has launched a simpler format on eFiling which allows for easier navigation (refer to Part 1 of this edition).

How to complete your first provisional tax return


SARS Return for Payment of Provisional Tax IRP6

Particulars of Taxpayer

Taxpayer Estimate

Historical Information

Payment Detail

Declaration

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 2020 is for the six months ending 31 August 2019.

Turnover
This is your estimated gross income for the whole year (1 March 2019 – February 2020) which includes: total business income, royalties, dividends, interest and all other income, including employment income (salary). Retirement fund lump sums, retirement fund withdrawal benefits and severance benefits must be excluded because these are taxed according to their own special tax tables.

Estimated taxable income
This is your gross income (no. 3 above) minus your 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. (2020: R310 per month for the first two members and R209 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 (no. 5) less rebates and tax credits.

Tax for this period (six months)
This will automatically calculate and will equal half the annual tax due (no. 9).

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 pay your first payment after the deadline (i.e., after 30 August 2019) 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 10.25% on payments after the deadline. If applicable, you need to calculate this amount and enter it here.

Total amount payable
This amount will automatically calculate.

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 must be 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 their prescribed rate (currently 10.25% per annum) as well. Be sure to check the deadline on their 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.

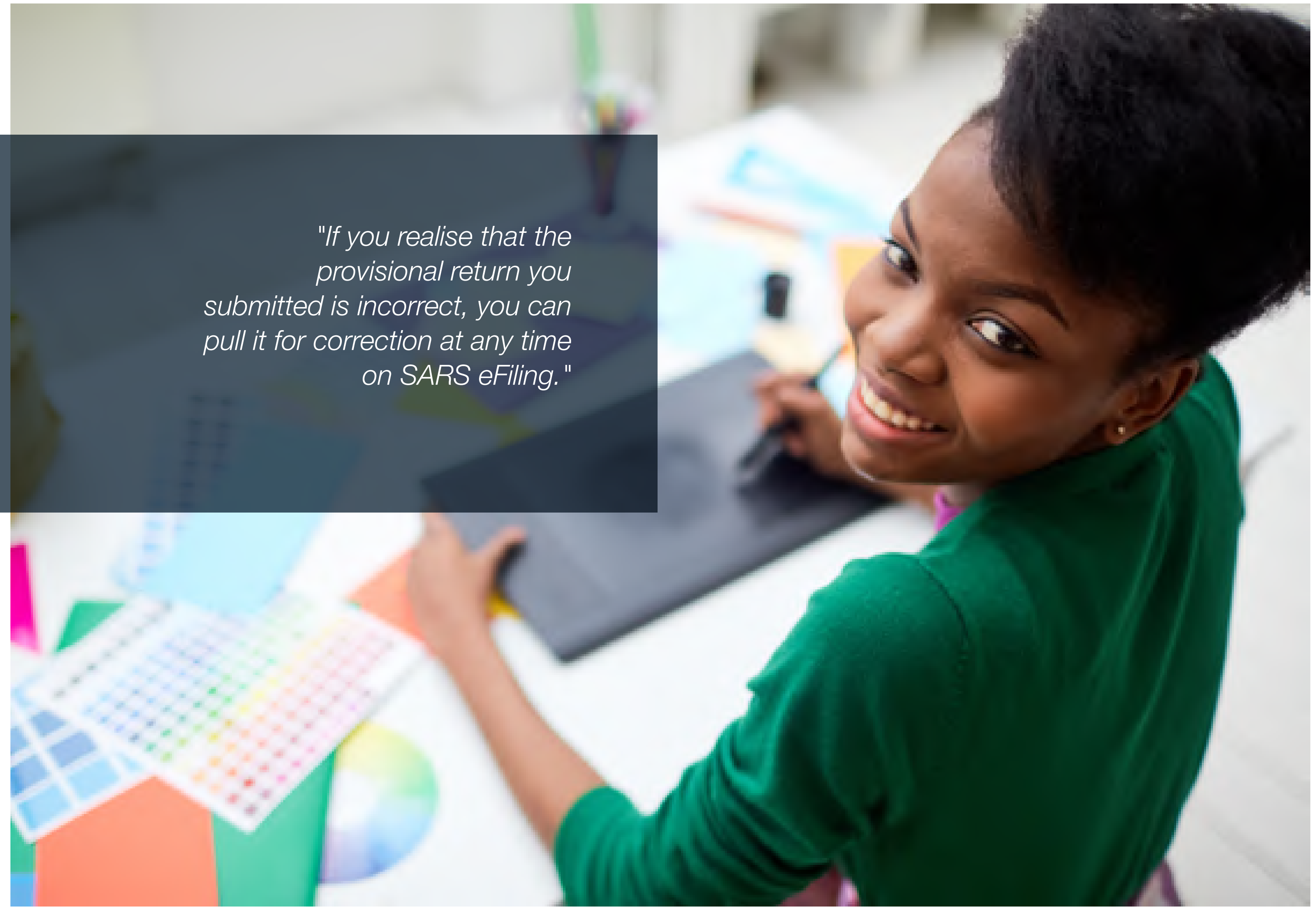
Don't overlook investment income and capital gains
If you own investments, you should request a provisional statement from the financial institution in August to ensure you include your interest and capital gains in your estimate of taxable income. Too often taxpayers are surprised by unexpected capital 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.

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 R1m 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".

"If you realise that the provisional return you submitted is incorrect, you can pull it for correction at any time on SARS eFiling."



The penalty amount will be calculated at 20% of the difference between the normal tax payable on your estimate and the lesser of:

- Tax on 90% of your actual taxable income
- Tax on your basic amount

If your taxable income is more than R1 million, you need to ensure that your estimate of taxable income on your second provisional return is no less than 80% of your actual taxable income. SARS does not consider the basic amount when a taxpayer's taxable income is more than R1 million.

The penalty will be calculated at 20% of the difference between the normal tax payable for your estimate and tax calculated on 80% 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 for correction at any time on SARS eFiling. To do this, you need to navigate to this return by selecting the menu item "Returns" and then "Returns History" and then click on the button "Request for Correction". You can then make the changes to your IRP6 and resubmit.

WHEN SHOULD PROVISIONAL TAXPAYERS REGISTER AND REPORT?

15 minutes CPD

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

Do you qualify as a provisional taxpayer? Read on to find out the answer and what to do about it.

> *"Generally, a provisional taxpayer must make two provisional tax payments: one six months into the year of assessment and one at the end of the year of assessment."*

A tax year or year of assessment is generally a twelve-month period during which taxes are chargeable on a taxpayer. The 'year of assessment' in respect of individual and trust taxpayers largely follows the twelve-month period from 1 March of a year to the last day of February of the subsequent year while a company's year of assessment is based on its financial year.

All individual and trust taxpayers are currently in the 2020 year of assessment. Most taxpayers are familiar with the filing obligation and requirements in respect of annual income tax returns, while many lose sight of filing obligations during the course of the year. Provisional tax filing is a prime example of this.

Provisional tax is not a new nor an additional tax imposed on a taxpayer. Rather, it is an advanced payment towards your income tax liability. These advanced payments serve as tax credits to offset your final calculated income tax liability on assessment.

SARS touts the provisional tax payment as beneficial to taxpayers as a means of managing individual tax obligations and cash flow, in order to avoid large payments on assessment. It is certainly also true that it serves as a substantial and needed cash injection for SARS midway through the year.

Do you qualify as a provisional taxpayer?

Let us start with the simpler scenario, namely if SARS notifies you that you qualify as a provisional taxpayer. Then you simply are one. Also any company (including a close corporation) is required to register as provisional taxpayer.

With respect to an individual and trust, the type of income earned as well as the amount of such income would qualify you as a provisional taxpayer.

- If you derive income by way of any amount which is not remuneration or a qualifying allowance or advance (received from your employer) such as trade or business income, rental income and return on investment income both from a local and foreign source.
- If your employer is not registered with SARS. Since PAYE is not deducted from your remuneration you are obliged to settle your taxes in the form of provisional tax payments. This is typical to expatriate employees rendering their services in South Africa on behalf of a foreign employer.

If you do not qualify as a provisional taxpayer under the above provisions and you derive a capital gain on the disposal of an asset during the year of assessment, then the receipt of the capital gain does not render you 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 also excluded from the definition of provisional taxpayer:

- Approved public benefit organisations (PBOs) and recreational clubs
- Qualifying body-corporate, share block company or association 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 entity
- A deceased estate

Furthermore, an individual is also excluded from the provisional taxpayer definition if you do not derive income from a trade and during the year of assessment your:

- taxable income does not exceed the tax threshold (for the 2020 tax year the thresholds are: R79 000 for individuals under the age of 65 years, R122 300 for persons 65 years of age to below 75 years of age and R136 750 for individuals 75 years of age and older); or
- the 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 fall into one of the qualifying categories

The taxpayer carries the obligation to determine whether they qualify, as the law states a provisional taxpayer is liable for the payment of provisional tax. In terms of tax legislation one must apply for registration as a provisional taxpayer within 21 days of becoming so obliged.

However, with the advent of eFiling, there is no longer a need to complete printed forms to be rendered 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 return on investment income being close to the threshold limit, it is recommended that you contact a tax practitioner to assist you in order to mitigate the risk of any penalties or interest on non-compliance.

Where and how to register

If you are an eFiling user and have an existing eFiling profile for normal tax purposes, registering for provisional tax is as easy as clicking a button or two. Simply follow the SARS guide, *How to file your provisional tax return.*

If a taxpayer does not use or have access to eFiling, the prescribed forms should be available at a SARS branch.

When and how you need to report and pay

Generally, a provisional taxpayer must make two provisional tax payments: one six months into the year of assessment and one at the end of the year of assessment. A further payment can also be made after the end of the year of assessment if necessary.

The first provisional tax period for individuals and trusts in respect of the 2020 year of assessment is August 2019.

The second provisional tax period 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 2020 year of assessment this period is February 2020.

A voluntary provisional tax payment can be made seven months following the February of the year of assessment, i.e. 30 September. This payment is made to reduce or avoid the interest charge, should the first and second provisional tax payments not cover the full tax liability on assessment.

Where SARS increases the estimated taxable income amount submitted by the 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, within an agreed period.

Provisional tax payments can be settled at banks, via eFiling and via electronic funds transfer (EFT). If you opt to make payment electronically by EFT you should be aware of your bank's cut-off times to ensure the clearance period is before the actual due date of the payment. If you opt to make payment at your bank you will need your 19-digit payment reference number and the SARS beneficiary ID or account reference number which are reflected on the provisional tax return.

Conclusion

With various penalties and interest at play for non-compliance with respect to an individual's provisional tax obligation, it is certainly advised to give this tax its due respect!

PROVISIONAL TAX

PENALTY AND INTEREST RISKS

15 minutes CPD

▶ **DARREN BRITZ,** Senior Attorney at Tax Consulting SA &
KELSEY JAYES, Attorney at Tax Consulting SA

Provisional taxpayers must comply with all requirements for filing returns and making payments in order to avoid risk of penalties and interest. Our article provides guidance on the risks attendant on being a provisional taxpayer, and how to mitigate them.

Taxpayers who are required to pay provisional tax must comply with additional tax filing obligations together with their usual obligation to file an annual income tax return. As provisional taxpayers, these persons must quickly become familiar with their provisional tax obligations, failing which they are at risk of paying interest and/or 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 (IRP 6) 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 not 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 date of commencement of its financial year.

The failure by a provisional taxpayer to make payment on time will result in the imposition of what is known as a "penalty for late payment of provisional tax", which is imposed in terms of paragraph 27 of the Fourth Schedule to the Income Tax Act, read with Chapter 15 of the Tax Administration Act. This penalty is calculated at 10% of the provisional tax amount not paid.

By way of a simple example, if a provisional tax amount of R500 000 was not paid or is paid late, the penalty that is levied will be 10% of R500 000, being R50 000.

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

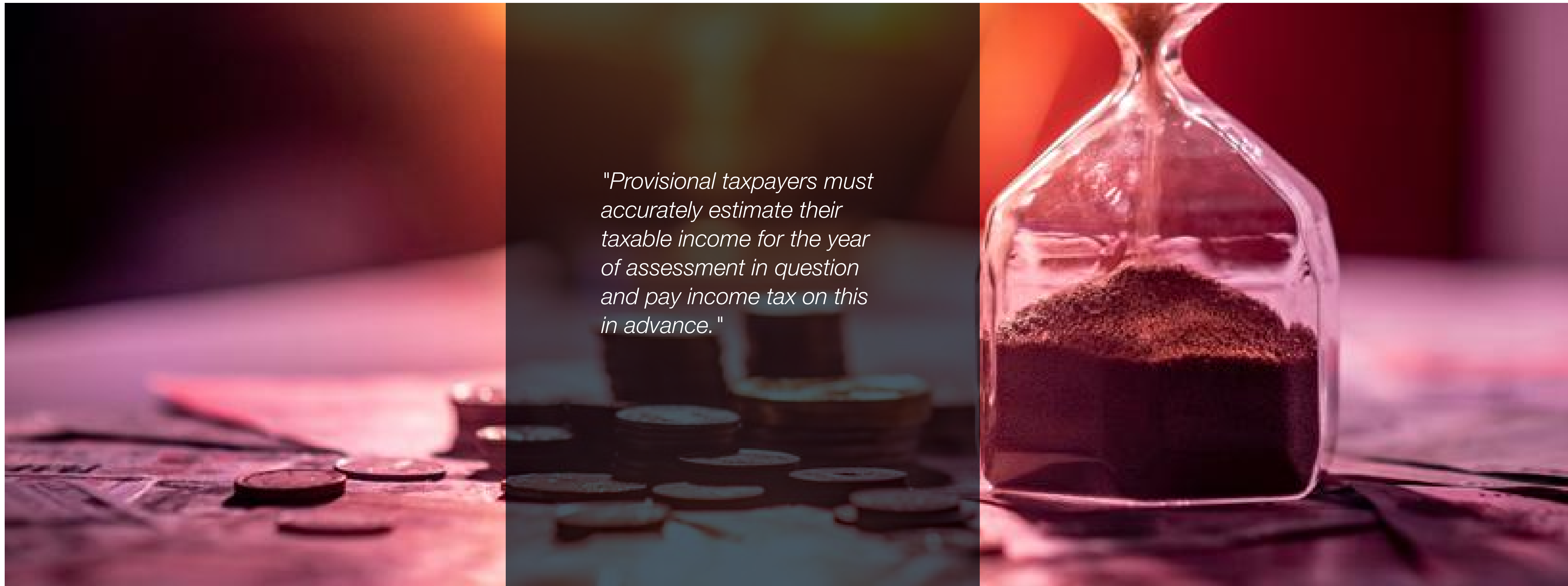
Interest is levied, in terms of section 89bis(2) of the Income Tax Act, on provisional tax due by the taxpayer as a result of late or non-payment and will continue to accrue until the taxpayer has paid the provisional tax in full. Interest on overdue provisional tax is calculated at the "prescribed rate", 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, it has been fixed at the rate of 10,25% per annum since 1 January 2019. 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. A 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 provisional tax in full.



"Provisional taxpayers must accurately estimate their taxable income for the year of assessment in question and pay income tax on this in advance."

Penalty for the 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. 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 (commonly 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 basic amount;
- and the total amount of tax paid by the taxpayer by the end of the year of assessment.

By way of an example, let us say that the taxpayer's basic amount is R300 000 and, in the 2018 year of assessment, the taxpayer estimates (in the second period) a taxable income of R200 000 for the year of assessment but his actual taxable income was R400 000. The taxpayer in this example estimated an amount that is less than 90% of his actual taxable income and is also less than the basic amount, thereby triggering an underestimation penalty. The penalty payable by the taxpayer in this example will be 20% of the difference between R300 000, being the basic amount (as this is less than 90% of the taxpayer's actual taxable income), and the total amount of tax which has been paid by the taxpayer by the end of the 2018 year of assessment.

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 the 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 89*quat(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 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 where they submit 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 various sections of the Income Tax Act, including certain paragraphs of the Fourth Schedule thereto, as well as certain sections of the Tax Administration Act. Each category of penalties 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.

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 which is not to replace expert advice. Provisional taxpayers are ultimately responsible for their own tax affairs and must comply to avoid risk of penalties and interest.

HOW TO DEAL 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, provides the constitutional and legislative context in which SARS may request information, and sets out a range of responses that are available to recipients of requests for information.

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

The provisions of the Tax Administration Act that regulate requests for information are mainly contained in section 46 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 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 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 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.

The definition of "relevant material" is contained in section 1 of the Tax Administration Act as "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 Explanatory Memorandum to the Tax Administration Act 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 Act does provide some limits on the demands that can be placed on recipients of requests for information where the recipient is someone other than the taxpayer in question. In these circumstances, relevant material is "limited to material maintained or kept or that should reasonably be maintained or kept by the person in respect of the taxpayer", which in most cases would be limited to a period of five years.

Furthermore, and even more cumbersome in the case of connected persons located outside of South Africa, the Act affords the recipient of the request for information with a period of 90 days in which to respond. This has particular application with respect to transfer pricing audits, where SARS may request extensive details of potentially affected transactions. This could include the following:

- Copies of contracts and agreements
- Governance and regulatory documents (such as board minutes)
- Detailed allocations of revenue, costs, expenses and profits between connected persons
- 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.

Possible responses available to the recipient of the request for information

There are five possible responses available to a taxpayer who disputes the obligation to comply with a request for information.

1. Invoking legal privilege

Recipients of requests for information are permitted to withhold information which is subject to legal privilege. However, advice should be sought in this regard as the factors 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

> *"It is highly advisable that taxpayers approach tax administration experts after receiving a request for information from SARS."*

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 provides explicit support for recipients of requests in that it recognises 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) 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

In *CSARS v Brown 561/2016*, the Eastern Cape Division of the High Court held that the principles of administrative justice only become relevant once SARS has been placed in possession of the requested information. A preliminary investigation by SARS (such as would occur in terms of section 46 of the Tax Administration Act) does not constitute administrative action. Therefore, the recipient of a request for information is not able to use the Promotion of Administrative Justice Act to review a decision made in terms of section 46 Tax Administration Act.

Nevertheless, 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.

Ultimately, all of SARS' conduct must comply with the principle of legality. For example, in terms of section 42 of the Tax Administration Act, taxpayers must be provided with a notice of commencement of audit and are legally entitled to be kept informed of the stage of completion of the audit. Procedural flaws and noncompliance with the Tax Administration Act on the part of SARS may result in a court invalidating the resulting additional assessment, as occurred in recent case of *IT 13726*. These principles would apply *mutatis mutandis* to requests for information.

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 requests for information. However, despite the extensive powers afforded to SARS, its discretion is not entirely unfettered in that requests for information must concern material that is foreseeably relevant for the purposes of SARS administering a tax Act. Requests which 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 which is held by a connected person and which 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

Perhaps the Rolling Stones were not so far off with the words of their song, "You can't always get what you want":

"You can't always get what you want
But if you try sometimes you might find
You get what you need."

It is therefore highly advisable that taxpayers approach tax administration experts after receiving a request for information from SARS in order to review the request for information in light of the criteria and restrictions as mentioned above.

Taxpayers should also not lose sight of the fact that a request for information or review is potentially the first step in an audit. The replies furnished to SARS must therefore be carefully considered and questions meticulously replied to.

"Taxpayers should not lose sight of the fact that a request for information is potentially the first step in an audit, and replies furnished to SARS must be carefully considered."

15 minutes CPD

ALL ABOUT SARS ASSESSMENTS

▸ **SUZANNE SMIT,** Senior Manager: Tax Advisory at Geneva Management Group

Find out all about assessments and how to approach them 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, and specifically sections 91 to 100, provide 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 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 and personal income tax returns are due by 31 October each year.

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 for purposes of this article is on the following:

Selection for verification

Chapter 5 of the Act comprises the information gathering provisions and section 40 of the Act provides for 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 the comparison of information declared in the tax return against financial statements, accounting records and other supporting documents. Ultimately SARS wants to 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, you 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.

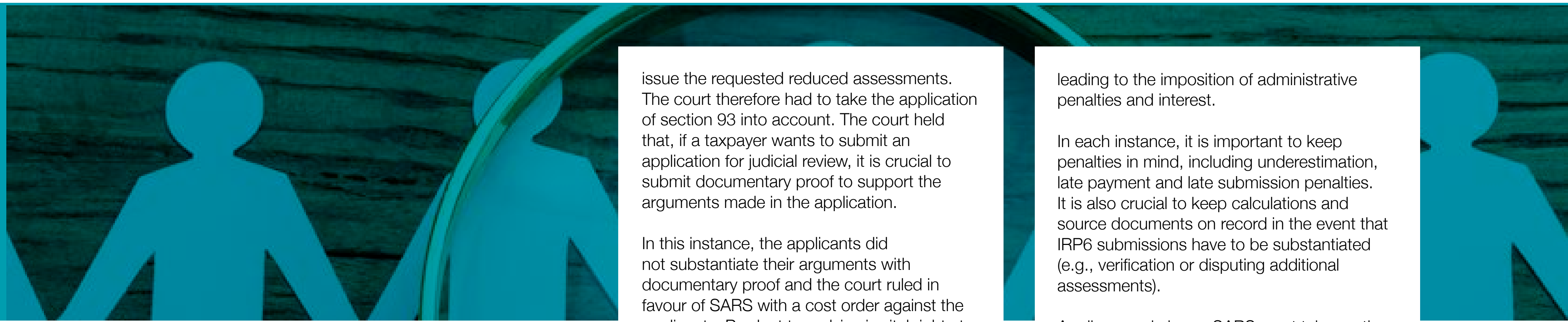
Additional assessments

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, which 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. ▸

POST-RETURN

"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."



- 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 by then 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 satified 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, 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 income tax and it 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, then 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 by it, then the taxpayer may follow the dispute process as set out in Chapter 9 of the Act, i.e. firstly object 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 but if SARS issues an additional assessment, Chapter 9 still applies. This will, for instance, apply to administrative penalties imposed (as per para 19 of the Fourth Schedule).

Conclusion

Based on SARS' far-reaching powers to make an estimate, issue additional assessments and to 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 the taxpayer's actual taxable income.

POST-RETURN

THE SARS REFUND PROCESS

30 minutes CPD

NICO THERON, Founder and **WIKUS SWART,**
Tax Consultant at Unicus Tax Specialists SA

Sometimes taxpayers receive assessments stating that they are entitled to a refund, only to be informed that their tax affairs are subject to an audit or verification. Read on to learn about the SARS refund process.

Being assessed to a refund only to be selected for an audit or verification can be compared to giving a child an ice cream only to tell her she can't 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 she can have an ice cream, only to put it out of her 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 the taxpayer through the employees' tax or provisional tax systems. In our experience, when taxpayers overpay tax it is for one of the following reasons:

- Fear of penalties for underestimating provisional tax
- Employers or taxpayers take an overly prudent approach when calculating employees' tax or provisional tax
- Employees claim medical tax credits or deductions (e.g., for retirement annuity fund contributions) that employers did not take into account when calculating their PAYE
- Employees claim deductions for business travel
- Taxpayers set off assessed losses from trading activities against employment income
- On the final return there is an exemption or deduction that was not taken into account under the provisional tax or employees' tax system

SARS can select the taxpayer for audit on any consideration relevant to the proper administration of a tax Act, including on a random or risk assessment basis. Suffice it to say that a taxpayer in a refund position will arguably always be a consideration relevant to the proper administration of a tax Act or at least present a risk. Best be prepared to deal with it!

How to approach a tax audit or verification

Most audits or verifications start with a request for relevant material. In the "simple cases" where SARS asks for specific documents, dealing with the audit or verification is a simple exercise. In this instance, you can simply give SARS the information they are asking for (assuming it actually exists and is available). In our experience, it also helps to prepare an easy-to-follow index and to properly cross reference the documents provided in response to SARS' request – almost like preparing an audit file.

While providing something like an audit file may be considered by some as "marking your own homework", doing so has various benefits, including benefits associated with bigger picture dispute resolution strategies.

Problems arise 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? What are you supposed to give them?

Stated simply, they are asking the taxpayer to give them the documents or material necessary to discharge the taxpayer's onus of proof in respect of declarations made in the tax return. What relevant material the taxpayer would have to give SARS will depend on the particular return and particular facts. The following example serves to illustrate a typical response to a vague request.

Example
Assume a taxpayer claimed an assessed loss from residential rental activities on the tax return (not ring fenced), has one IRP5 and gets assessed to a refund. Shortly after the assessment is issued, the taxpayer receives a "verification of income tax return" notice. In the notice, SARS requests the following:

"A tax refund arises as a result of the overpayment of tax by the taxpayer through the employees' tax or provisional tax systems."

- 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 your declaration

In this example, the taxpayer must obviously provide a copy of the IRP5. While SARS indeed has a copy of the IRP5, suffice it to say that employers often make corrections to the certificates, resulting in mismatches. SARS did not ask for anything in particular relating to the loss from rental activities. Does that mean the taxpayer does not have to give SARS anything in that regard? Some might argue the taxpayer would indeed not have to provide anything or that the information request is unlawful. In our experience, however, unless the taxpayer is prepared to litigate or enter into a dispute with SARS, the path of least resistance would be to give SARS something.

The typical approach in this example would be to provide SARS with at least an income statement that actually ties in with the figures in the return. A typical "incorrect" response would be to bury SARS in paperwork: invoices, bank statements and schedules with no or confusing headings that relate to invoices included somewhere in a pile of papers uploaded to eFiling, in between other irrelevant documents. More often than not, this approach results in additional assessments (whether rightly or wrongly so) that extinguish the refund and also in the imposition of understatement penalties.

Providing SARS with an income statement may, and normally does, result in more specific requests from SARS. For example, SARS may request detail of repairs and maintenance, reflecting the amount incurred, date incurred and the nature of the repairs and maintenance. The typical "incorrect" response is a pile of invoices that do not tie into the repairs and maintenance expense on the income statement. A better response is a schedule that actually ties in with the income statement, breaking down the repairs and maintenance expenses with cross referenced invoices in support of each item on the schedule. Laborious indeed but, in our experience, arguably the quickest way to expedite the audit or verification and to secure the refund or at least to prevent or limit issues in a subsequent dispute.

What about interest on delayed refunds?

Natural persons who are provisional taxpayers are entitled to interest on overpayment of provisional tax, provided the taxable income for the year exceeds R50 000 or the excess provisional tax paid is at least R10 000. This applies even if the refund is being withheld as a result of an audit or verification. Interest should be calculated from the last day of September (in the majority of cases) following the tax year in question up to the date that SARS pays the refund. Interest must be calculated at 6.25% (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 a collection 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.

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. In this case you would be wise to seek help.

TAX APPs

We rounded up some of the tax apps available to simplify life for taxpayers and tax professionals.

TAXPLANNER 2020

www.taxbox.co.za

Do you prepare and submit provisional and final tax returns for your clients? Then you require a comprehensive tool at a very reasonable cost to assist you in calculating provisional taxes with accuracy, including all aspects of individual tax laws, saving you considerable time and money!

- TaxPlanner is the solution, which is designed to easily, FULLY calculate and prepare provisional, and final tax returns!
- Analyse, plan, administer and prepare your clients' tax the quick, accurate and easy way, with tax knowledge built into the application.
- SARS interfacing now available in this new version of TaxPlanner.

For more information please visit our website.

COST: R950 to R7 500
(dependent on database capacity)

HOW TO DOWNLOAD: TaxPlanner 2020 –
Evo Version: taxbox.co.za/downloads/TAXPLANNER_SETUP.exe

TAX EXPENSE TRACKER

www.taxtim.com

Staying organised is the only way to maximise your tax refund when Tax Season comes around. You need to provide proof of all your expenses to claim everything you can as a deduction on your tax return.

Use TaxTim's handy Tax Expense Tracker to find out what you can deduct, keep track of your allowable expenses and view consolidated reports month-by-month or at year end. Store a photo of your receipt with every expense.

Just another way TaxTim makes tax easy!

COST: Free.

HOW TO DOWNLOAD:
Google Play Store.

hAPP-e-tax

www.hApp-e-tax.co.za

hApp-e-tax is a professional South African income tax legislation App. Its many features include: South African Income Tax Act, Tax Administration Act, Interpretation Notes, Double Taxation Agreements (DTAs), comprehensive definitions lists, over 120 tax topics, personalised notes and personalised information folders.

It has an intuitive search function and fast navigation. The App does not require internet connection and provides free, real-time updates. Designed by a highly qualified South African tax expert for professional tax consultants, accountants, lawyers, CEOs, CFOs, financial experts, bookkeepers, students. Within a few months since its launch the app has sold hundreds of copies and has received rave reviews!

COST: 489 excl. VAT (SAIT members get 20% off this price), with a 90 day free trial – you only pay after 90 days. Corporate subscriptions: +27 87 551 0771.

HOW TO DOWNLOAD:
Apple App Store or Google Play Store.

PKF TAX GUIDE

www.pkf.co.za

The PKF Tax Guide provides off line support that enables tax professionals to obtain a summary of tax information. It allows for the simplification of complex tax provisions and quick access to information regarding domestic and international taxes.

- Updated on an annual basis
- Contains the latest South African tax rules over a wide range of taxes such as Income Tax (including capital gains tax, donations tax, dividends tax and withholding taxes), VAT, transfer duty and estate duty.
- Also contains useful tools such as:
  - » SARS interest rates applicable both historically and as at the date of publication
  - » Withholding tax rates applicable in respect of dividends, interest and royalties as determined in accordance with the relevant double taxation agreements
  - » IRP5 code table

COST: Free.

HOW TO DOWNLOAD: Can be downloaded from the Apple App Store or Google Play.

JOURNEY ORGANIZER

www.journeyorganizer.co.za

You can pay less tax, and get a sizeable SARS refund if you're self-employed, a business owner or a corporate employee incurring travel expenses in the production of income, or if you receive a travel allowance – but only if you have a SARS-compliant travel logbook. Journey Organizer makes it simple to keep to a SARS-compliant logbook – on your smartphone!

Simply plug the dongle into your vehicle's 12V socket, download the app to your smartphone, and pair the two via Bluetooth. Journey Organizer will automatically log your travel and time data, and flagging a trip for business is as simple as pushing a button on the device. The dongle doubles as a high-current USB port to charge other devices.

COST: R999 - The JO hardware is a once off purchase to cover the hardware costs. Download the JO App and start using JO immediately without any payment for the first 1 month. Thereafter, users will be charged a fee of R29.00/m for each registered JO hardware unit. T&Cs apply.

HOW TO DOWNLOAD:
Google Play Store or Apple App Store.

LITTLE LOGBOOK GLOBAL

www.littlelogbook.net

Little LogBook is a mileage tracking application, specifically developed for SARS and business mileage claims, with no monthly or annual fees.

Turn your mileage into money with accurate electronic GPS trip data and greatly reduce administration, with automated categorising of business and private activities. View vehicle activity, routes travelled, speed along the route and generate a multitude of reports in .pdf, .csv, .xls and .kml.

COST: R1159.09

HOW TO DOWNLOAD: Simply go to our website www.littlelogbook.net or click on the download link www.littlelogbook.net/downloads.asp

TAX DIRECTORY

Whatever your tax needs, browse our Tax Directory to locate a practice near you.

KEY

- ITR12
- ITR14
- VAT201
- EMP201
- OPINION WORK
- SARS DISPUTES

KEY ITR12 ITR14 VAT201 EMP201 OPINION WORK SARS DISPUTES

FREE STATE

GC Cloete Accounting and Tax Services Inc
Dr Corrie Cloete, CEO

056 8114882 | corrie@catsinc.co.za | catsinc.co.za

CATS INC. practices as professional tax advisors & public accountants. Specialist services include uniquely developed forensic services that form the solid foundation for SARS dispute resolutions, SARS rescission applications, tax opinions & tax compliance/ compromises. We provide complete accounting services for a number of smaller clients & also implement internal accounting &costing systems for larger clients.

Ranking of standard tax offerings:

FinApex Financial Services
Zana Potgieter, Director

074 990 4484 | zana@finapex.co.za | finapex.co.za

FinApex strives to provide an accurate & timely record of all your taxation & other financial transactions. FinApex promises that our client will be aware of all the necessary compliance guidelines during these transactions. FinApex has the ability to bring a comprehensive knowledge of the financial sector that changes from time to time.

Ranking of standard tax offerings:

Business Evolution
Michelle Homann, Managing Director

082 445 4108 | michelle@bevolve.co.za | bevolve.co.za

We provide effective tax planning services. At Business Evolution we want to help you evolve your company. We strive to provide the professional service you require to build your business. We believe that there is always room for improvement.

Ranking of standard tax offerings:

Crest Trust Holdings Inc.
Ian Brink, Managing Director

012 643 1049 | info@ctrust.co.za | ctrust.co.za

We offer specialised tax advice on estate duty, VAT, CGT, transfer duty & related taxes as a supporting service to our core business of fiduciary services, including the drafting of wills; administration of deceased estates; setting up, legal audit & management of trusts; comprehensive estate planning & structuring; & the drafting of fiduciary-related contracts & agreements.

GAUTENG

Africorp Accounting
Lelanie Murphy, Director

083 234 5092 | lelanie@africorpaccounting.co.za | africorpaccounting.co.za

Africorp Accounting is a niche tax & accounting firm that has existed for over 14 years, with a multidisciplinary team of tax attorneys, tax practitioners, chartered accountants & professional accountants, offering a holistic, client-centric & fully compliant approach.

We offer technical expertise & advice for a range of accounting functions for companies &/or practitioners wishing to hand off certain financial & administrative matters. Our good standing with SARS & our long-time experience with their procedures relieve you of various time-consuming obligations, such as tax compliance, registrations & submissions.

Our unique approach of adding a robust tax layer to your existing accounting function sets us apart from other providers. This enables us to structure your accounts around tax optimisation, taking advantage of the allowances afforded in tax law. Tax is planned proactively & not a mere afterthought.

Specialised tax offerings: Corporate tax returns and compliance, expedited SARS administration, individual tax returns, VAT registration, VAT returns, SARS disputes, remission of VAT penalties, preparing AFS, CIPC and COIDA registrations, Section 18A applications, EMP201 returns and IRP5 reconciliations & independent reviews.

Ranking of standard tax offerings:

Deceased Estate Tax Administration
Rhea Muller-Wolff, Admitted Attorney and Notary Public

084 910 1072 | rhea@deceasedestatestax.co.za | deceasedestatestax.co.za

We are a specialist deceased estate division with experienced tax attorneys & chartered accountants. The finalisation of a deceased estate holds unique challenges, especially where the SARS tax affairs of the deceased were not up to date or properly planned; high net worth estates; or simply complex deceased estates including international beneficiaries & complex structures. The executor is often caught in dealing with tax complexities outside their core areas of expertise &/or frustrating delays in process, whilst the beneficiaries are unable to understand the delays in finalising the estate.

Our typical clients are professional estate executors, attorneys, accountants or bankers who have the scars to show & know that the SARS estate tax process requires a different skill set. We also assist where the executor is a family member or professional, who is unable to finalise an estate due to complexities with SARS &/or the taxes of the estate, deceased or beneficiaries.

Our services are unique in the market, being that we have operated for over 14 years, with over 70 professionals & no subcontracting of services. We are well versed on dealing with SARS, with a know-how of SARS systems, requirements & processes for expedited conclusions.

Specialised tax services: SARS administration at branch & LBC level, tax profile correction, SARS registrations, tax clearance certificates, SARS matters including tax filing, dispute resolution, objections & appeals & re-activation of expatriate tax reference numbers for tax directives, IRP6, admin penalties, notice of objections, & post-death tax returns.

GAUTENG

etiMAX
Gareth Hardy, Managing Director

083 675 8228 | gareth@etimax.co.za | etimax.co.za

We are Employment Tax Incentive (ETI) specialists. There is a high probability that you are under claiming on your ETI. We assist you in recovering ETI shortfalls and rectify your current claims. Contact us to find out how we can help you.

Ranking of standard tax offerings:

KCE Consulting Inc
Kim White, Director

011 793 3686 | kim@kceconsulting.co.za | kceconsulting.co.za

KCE is a firm of registered accountants & auditors with a personal & professional focus to your statutory needs.

Highly competent in the understandings surrounding South African tax law, we maintain an up-to-date working knowledge of the legislation & will look after your personal & company taxes with the utmost confidence & care.

Our exceptional team strives for excellence in all aspects of accounting, whatever your needs from monthly / daily accounting to audit, tax advice & submissions to payroll we have you covered. Integrating our services with the cloud we add value to the day-to-day needs of your business, allowing you to keep a finger on the pulse of your company while we attend to the accounting & tax admin giving you 100% compliance with SARS.

Ranking of standard tax offerings:

Unicus Tax Specialists SA
Nico Theron, Managing Partner

012 944 8888 | ntheron@unicustax.co.za | unicustax.co.za

Unicus Tax is a tax only service firm specialising predominantly in corporate income tax & VAT & more specifically in the context of tax dispute resolution, advance tax rulings, VDPs, opinions & non-binding private opinion applications.

Ranking of standard tax offerings:

Thinking Financial Planners
Jose Proenca, Master Tax Practitioner

082 888 2704 | jose@thinkingfinancialplanners.co.za | thinkingfinancialplanners.co.za

Holistic independent financial planning family office. We ask, we listen attentively, we brainstorm, we think strategically, we plan, we implement & we take diligent care of our client's financial strategy so they can focus on their own areas of expertise & importance.

Ranking of standard tax offerings:

Shamu Bookkeeping Services (Pty) Ltd
Mike Herholdt, Managing Director

011 011 9057 / 016 110 0150 | mike@shamubookkeeping.co.za | shamubookkeeping.co.za

We offer comprehensive tax & accounting services to both personal & corporate clientele. We specialise in preparation & submission of simple & complex personal tax submissions to SARS. Our tax professionals & practitioners are on hand to assist you with any SARS matters & to assist you with registering on SARS eFiling.

Ranking of standard tax offerings:

Tax Consulting South Africa
Christopher Renwick, Senior Tax Attorney

072 038 1765 | christopher@taxconsulting.co.za | taxconsulting.co.za

Tax Consulting South Africa has been in existence for over 14 years, with over 70 professionals including tax attorneys, tax practitioners & chartered accountants, who assist fellow professionals & high-value taxpayers on complex tax related matters that require a multidisciplinary approach.

As a dedicated tax practice, we are deeply experienced in working with SARS, with the know-how of SARS systems, requirements & processes for expedited conclusions. This allows us to absorb the administrative burden & frustration that is often faced when dealing directly with SARS, whilst ensuring client matters are resolved optimally.

All legal engagements are protected by legal professional privilege. This provides a safe & constructive environment to assess risk & provide advice on tax compliance & the corresponding tax implications

Specialised tax offerings: Individual and corporate tax returns, SARS engagements including audits, rulings, VAT refunds, disputes, VDPs & tax clearances; corporate tax compliance; international tax and cross-border transactions; accrual reviews; payroll audits; tax optimised remuneration package structuring; & tax technical advice.

Ranking of standard tax offerings:

Tax Refine
Lucky Makhubela, Tax Practitioner

076 581 7565 | luckymakhubela32@gmail.com

Tax Refine refines all taxpayer issues. We are the solution to your tax compliance requirements.

Ranking of standard tax offerings:

NK Accounting Services
Nikki Kennedy, Co-owner

012 665 3574 | nikki@nkaccounting.co.za | nkaccounting.co.za

We provide financial & management accounting, taxation & payroll services. Contact us for your personal income tax return – we will guide you to ensure all relevant income & deductions are covered. We pride ourselves in providing professional quality services.

Ranking of standard tax offerings:

KWAZULU-NATAL

Revelation Consulting Incorporated
Mr Leslie Chetty, Director

031 207 6675 | lbchetty@revcon.co.za | @ revcon.co.za

Revelation Consulting Inc. is a professional accounting & tax firm that has existed over the last 20 years. Our clients acknowledge both our sound business judgement & application of specialist skills, where quality of delivery includes not just our technical expertise, but also a cost-effective & pragmatic approach. Our service offerings include, but are not limited to tax services & payroll services.

Ranking of standard tax offerings:

Deceased Estate Tax Administration
Rhea Muller-Wolff, Admitted Attorney and Notary Public

084 910 1072 | rhea@deceasedestatestax.co.za | @ deceasedestatestax.co.za

We are a specialist deceased estate division with experienced tax attorneys & chartered accountants. The finalisation of a deceased estate holds unique challenges, especially where the SARS tax affairs of the deceased were not up to date or properly planned; high net worth estates; or simply complex deceased estates including international beneficiaries & complex structures. The executor is often caught in dealing with tax complexities outside their core areas of expertise &/or frustrating delays in process, whilst the beneficiaries are unable to understand the delays in finalising the estate.

Our typical clients are professional estate executors, attorneys, accountants or bankers who have the scars to show & know that the SARS estate tax process requires a different skill set. We also assist where the executor is a family member or professional, who is unable to finalise an estate due to complexities with SARS &/or the taxes of the estate, deceased or beneficiaries.

Our services are unique in the market, being that we have operated for over 14 years, with over 70 professionals & no subcontracting of services. We are well versed on dealing with SARS, with a know-how of SARS systems, requirements & processes for expedited conclusions.

Specialised tax services: SARS administration at branch & LBC level, tax profile correction, SARS registrations, tax clearance certificates, tax filing, SARS matters including tax filing, dispute resolution, objections & appeals & re-activation of expatriate tax reference numbers for tax directives, IRP6, admin penalties, notice of objections, & post-death tax returns.

WESTERN CAPE

Africorp Accounting
Lelanie Murphy, Director

083 234 5092 | lelanie@africorpaccounting.co.za | @ africorpaccounting.co.za

Africorp Accounting is a niche tax & accounting firm that has existed for over 14 years, with a multidisciplinary team of tax attorneys, tax practitioners, chartered accountants & professional accountants, offering a holistic, client-centric & fully compliant approach.

We offer technical expertise & advice for a range of accounting functions for companies &/or practitioners wishing to hand off certain financial & administrative matters. Our good standing with SARS & our long-time experience with their procedures relieve you of various time-consuming obligations, such as tax compliance, registrations & submissions.

Our unique approach of adding a robust tax layer to your existing accounting function sets us apart from other providers. This enables us to structure your accounts around tax optimisation, taking advantage of the allowances afforded in tax law. Tax is planned proactively & not a mere afterthought.

Specialised tax offerings: Corporate tax returns and compliance, expedited SARS administration, individual tax returns, VAT registration, VAT returns, SARS disputes, remission of VAT penalties, preparing AFS, CIPC and COIDA registrations, Section 18A applications, EMP201 returns and IRP5 reconciliations & independent reviews.

Ranking of standard tax offerings:

FIDATO (Pty) Ltd
Morné le Roux MTP SA

021 201 6700 | mdleroux@fidato.co.za | @ fidato.co.za

Maximise growth, minimise risk, save time & money.

FIDATO (Pty) Ltd was founded in Cape Town almost two decades ago with a focus on tax legal advice & business restructuring.

Today, we have a track record of delivering superior long-term returns to our clients across South Africa & abroad with a value-driven approach to maximise growth & reduce risk.

Pro-actively in tune with market trends & tax regulations, we anticipate new entrants & disruptive trends, & ensure your business can respond to regulation in both a pragmatic & optimistic manner.

Our industry expertise extends across corporate governance, tax risk, holistic payroll tax structures, asset optimisation, individual compliance & investor support across South Africa & abroad.

We focus on mitigating your tax exposure, improving operational efficiency & enhancing overall cash flow to help you lead in the markets where you compete.

Our promise to you – The savings our advice affords will far outweigh the cost.

Ranking of standard tax offerings:

KEY ITR12 · ITR14 · VAT201 · EMP201 · OPINION WORK · SARS DISPUTES

WESTERN CAPE

Fin Tax
Diane Pardoe, Director

021 782 5575 | dianedavpic@iafrica.com | @ taxconsulting.co.za

Along with our standard bookkeeping, payroll, financial reporting, company registrations & full spectrum tax services, we are now proud to introduce two new divisions to our existing repertoire.

Our special projects division is geared to assist in many technical tax issues:

- Section 200 compromise applications
- SARS debt deferment arrangements
- Guidance & assistance in long-standing non-compliance with SARS
- Special objections & appeals
- Financial emigrations
- Tax opinions
- Advice on tax residency matters
- Assistance with tax structuring & tax administration
- Corporate tax restructuring
- Audit assistance
- Business valuations

We now also offer a special service to UK taxpayers who require navigation & assistance with submission of HM revenue & customs self-assessment returns (this service is for personal tax submissions only).

Ranking of standard tax offerings:

Tax Consulting South Africa
Christopher Renwick, Senior Tax Attorney

072 038 1765 | christopher@taxconsulting.co.za | @ taxconsulting.co.za

Tax Consulting South Africa has been in existence for over 14 years, with over 70 professionals including tax attorneys, tax practitioners & chartered accountants, who assist fellow professionals & high-value taxpayers on complex tax related matters that require a multidisciplinary approach.

As a dedicated tax practice, we are deeply experienced in working with SARS, with the know-how of SARS systems, requirements & processes for expedited conclusions. This allows us to absorb the administrative burden & frustration that is often faced when dealing directly with SARS, whilst ensuring client matters are resolved optimally.

All legal engagements are protected by legal professional privilege. This provides a safe & constructive environment to assess risk & provide advice on tax compliance & the corresponding tax implications

Specialised tax offerings: Individual and corporate tax returns, SARS engagements including audits, rulings, VAT refunds, disputes, VDPs & tax clearances; corporate tax compliance; international tax and cross-border transactions; accrual reviews; payroll audits; tax optimised remuneration package structuring; & tax technical advice.

Ranking of standard tax offerings:

LPH Services (Pty) Ltd
Leia van der Horst, Tax Director

021 448 1360 | leia.vanderhorst@lph.co.za | @ lph.co.za

We are committed to providing our clients with original, creative & practical solutions. Whether it is for a company or an individual, we can combine sound local knowledge with wide international experience & connections. This approach not only deals with the present, but helps clients plan for the future.

Ranking of standard tax offerings:

NATIONAL

PKF SA
Paul Gering, Tax Partner

031 573 5000 | paul.gering@pkf.co.za | @ pkf.co.za

PKF is one of the largest mid-tier accounting firms in South Africa, providing multi-disciplinary auditing, accounting & business advisory services.

The member firms have 64 directors & consultants & over 740 staff to provide clients with focused, quality personalised service & support at director level.

In addition to our full range of advisory services, PKF has the ability and the capacity to service large, complex transactions. Our directors are accessible to our clients on each engagement, & are unwavering in our commitment to provide straightforward advice.

Our clients acknowledge both our sound business judgment and our innovative and disciplined application of specialist skills, where quality of delivery includes not just technical expertise but also focused attention and a pragmatic, cost-effective approach.

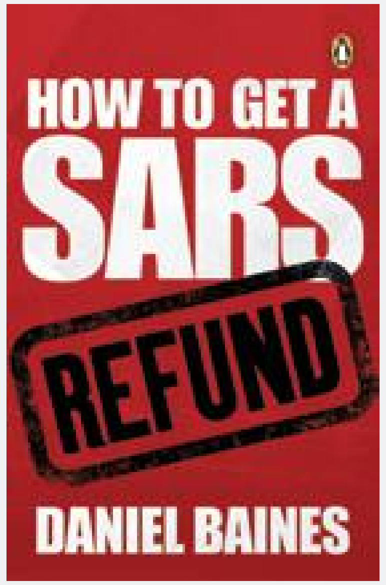
Our worldwide network enables the sharing of expertise and experience, and underpins the ability of local teams to offer our clients globally relevant advice, grounded in local knowledge.

Ranking of standard tax offerings:

INCREASE YOUR CHANCES OF GETTING

A REFUND FROM SARS

With informative, practical examples, these books set out how to get the most bang for your buck from the taxman.



How to Get a SARS Refund

If you derive your income from salaried employment and wish to utilise the tax laws in South Africa to minimise your tax liability and maximise your refund from SARS upon filing your annual tax return, this book is for you.

How to Get a SARS Refund will help you understand why you are taxed the amount that you are, and will assist you in reducing your tax liability. It will also help you to navigate your way through the annual income tax return for individuals (ITR12) as you complete your return via eFiling. Topics covered include the basics of understanding individual tax, deductions from taxable income and medical tax credits. The guide also deals with the following types of taxes a salaried taxpayer may become liable for: Dividends tax, tax on interest earned, capital gains tax and provisional tax.

Key points covered include:

- Will help readers understand why they are taxed the amount that they are
- Will assist the reader to reduce their tax liability
- Increases the reader's chances of getting a refund from SARS
- Allows readers to arrange their personal finances in a tax-efficient manner
- Accessible and easy to understand for the layperson
- Written by a tax expert

Price: R124.00

How to Get a SARS Refund for Small Businesses

This book is the follow-up to *How to Get a SARS Refund*, which explains individual taxes. *How to Get a SARS Refund for Small Businesses* explains small-business tax. It is written in easy-to-understand language. The practical examples in the book will allow those who have never studied the subject to understand the tax rules quickly and easily. It will provide aspiring entrepreneurs with extra confidence to take that first step on their business adventure. Current business owners will gain a better understanding of how their business operates.

The book covers different types of tax that a small-business owner may encounter, including income tax, VAT, pay-as-you-earn (PAYE) and dividends tax. The book details how different types of entities are taxed, such as a private company compared with a sole proprietor.

How to Get a SARS Refund for Small Businesses aims to bridge the current education gap that exists for entrepreneurs and small-business owners who were never taught about tax in school or at university.

Price: R120.00

THE AUTHOR

Daniel Baines is an admitted attorney with a Bachelor of Arts, LLB and MCom (in taxation) from Rhodes University. He currently works as a Tax Consultant for Mazars, is a regular contributor of tax articles to *The Herald* newspaper and has had five of his tax articles published in the *Sunday Times*.