

GUIDE FOR EMPLOYERS IN RESPECT OF EMPLOYEES' TAX

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1 SCOPE

- This basic guide is issued in terms of Paragraph 9(1) of the Fourth Schedule to the Income Tax Act. It prescribes the deduction tables applicable to employees and the manner in which the tables must be applied by the employer.

2 REFERENCES

2.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<p>Income Tax Act No. 58 of 1962: Sections 1, 5(3), 5(9), 5(10), 6, 7A, 8(1)(a) to (f), 8A, 8B, 8C, 10(1)(cN), 10(1)(nA), 10(1)(nB), 10(1)(nG), 10(1)(nH), 10(1)(o), 10(1)(q), 10(1)(x), 18(1), 18(2), 69(1), 74(1), 75A, 89bis(2), 89sex, 89ter; Fourth Schedule Paragraphs 1 to 16, 29 and 30; Seventh Schedule all Paragraphs and Interpretation Notes 3, 4, 8, 7, 14, 16, 17, 26 and 27</p> <p>Skills Development Levies Act No. 9 of 1999: Sections 1 to 6 and 11 to 13</p> <p>Unemployment Insurance Contributions Act No.4 of 2002: Sections 1, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14</p>
Other Legislation:	<p>Children's Act No. 33 of 1960: Section 89</p> <p>Companies Act No. 61 of 1973: Chapter VI</p> <p>Marine Traffic Act No. 2 of 1981: Section 1</p> <p>Skills Development Act No. 97 of 1998: Section 18(2) and (3)</p> <p>Social Assistance Act No. 13 of 2004: Sections 4, 5, 6, 9, and 10</p> <p>Medical Schemes Act No. 131 of 1998: Section 67(1)(g)</p>
International Instruments:	None

2.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
QMS-01	Quality Management System Manual	ISO 9001:2000
AS-SDL-01	Quick reference guide on SDL	All
AS-UIF-01	Quick reference guide on UIF	All
FIN-CH-02	SARS payment rules	All
AS-PAYE-05-A1	Allowances	All
AS-PAYE-05-A2	Fringe benefits	All
AS-PAYE-05-A3	Rate per kilometre schedule	All
AS-PAYE-05-A4	Weekly tax deduction tables	All
AS-PAYE-05-A5	Fortnightly tax deduction tables	All
AS-PAYE-05-A6	Monthly tax deduction tables	All
AS-PAYE-05-A7	Annual tax deduction tables	All
AS-PAYE-05-A8	Example completing an EMP 201 return	Withdrawn
AS-PAYE-05-A9	List of codes applicable to employees' tax certificates	Withdrawn
AS-PAYE-05-A10	Validation rules for employees' tax certificates	Withdrawn
AS-PAYE-05-A11	Specifications for electronic employees' tax certificates	Withdrawn
AS-PAYE-05-A12	Calculation examples relating to remuneration	Withdrawn
AS-PAYE-05-A13	Calculating examples relating to allowances	Withdrawn
AS-PAYE-05-A14	Calculating examples relating to fringe benefits	Withdrawn
AS-PAYE-05-A15	Rates of tax	Withdrawn
AS-PAYE-05-F1	Personal Service Company	All
AS-PAYE-05-F2	Seasonal Workers	All

3 DEFINITIONS AND ACRONYMS

4th Schedule	Fourth Schedule to the Income Tax Act.
7th Schedule	Seventh Schedule to the Income Tax Act.
Alternate period	A period, whether of 12 months or not, commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days before or after the last day of February, or such greater number of days as the Commissioner, having regard to the circumstances of the case, may allow.
Annual equivalent	An amount equal to the sum of net remuneration multiplied by the ratio which a full year bears to the period in respect of which such net remuneration is payable.
Annual payment	An amount of net remuneration that is, in accordance with the employee's conditions of service or the employer's practice, paid in a lump sum to the employee or it is an amount that is calculated without reference to a period.
Associated institution	In relation to an employer for taxable benefit purposes, means — <ul style="list-style-type: none"> • where the employer is a company, any other company which is managed or controlled directly or indirectly by substantially the same persons; or • where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or any partnership of which the employer is a member; or • any fund established mainly for providing benefits for employees or former employees, but excluding — <ul style="list-style-type: none"> ▫ funds established by trade unions and industrial councils; and ▫ funds established for post-graduate research which are not financed by the employer.
Backdated salary	Salary, wage or similar remuneration (excluding a bonus) payable by the employer to an employee.
Balance of remuneration	Any amount of remuneration after deducting the allowable deductions for employees' tax purposes.
Broad-based employee share plan	A plan in terms of which — <ul style="list-style-type: none"> • equity shares are acquired from an employer by an employee, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973; • employees who participate in any other equity scheme of the employer are not entitled to participate and where at least 90% of all other employees who are employed by the employer on a permanent basis on the date of grant are entitled to participate; • the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and • no restriction have been imposed in respect of the disposal of the equity shares, other than — <ul style="list-style-type: none"> ▫ a restriction imposed by legislation; ▫ a right of any person to acquire those equity shares from the person who acquired the equity shares at market value; or ▫ a restriction in terms of which the person who acquired the equity shares may not dispose of the equity shares for a period which may not extend beyond five years from the date of grant.
Cash equivalent	For taxable benefit purposes, a cash equivalent shall be the value of the taxable benefit less any consideration (if applicable) given by the employee.
CC	Close corporation
CCMA	Commission for Conciliation, Mediation and Arbitration.
Commissioner	Commissioner for the South African Revenue Service.
Consideration	For taxable benefit purposes means any consideration given by an employee but does not include any consideration in the form of services rendered by the employee.
Employees' tax	An amount of tax that an employer must deduct from all regular or periodic payments (remuneration), paid or which becomes payable to an employee.
Employee	<ul style="list-style-type: none"> • An employee for employees' tax purposes is defines as — <ul style="list-style-type: none"> ▫ A natural person who receives remuneration or to whom remuneration

	<p>accrues;</p> <ul style="list-style-type: none"> ▫ A person (including a company) who receives remuneration or to whom remuneration accrues by reason of services rendered by such person to or on behalf of a labour broker; ▫ A labour broker; ▫ A person or class or category of persons whom the Minister of Finance by notice in the Government Gazette declares to be an employee; ▫ A personal service company; ▫ A personal service trust; ▫ A director of a private company. <ul style="list-style-type: none"> • An Employee for UIF purposes is defines as any natural person who receives any remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person but excluding an independent contractor. • An employee for taxable benefit purposes is defined as any person who receives remuneration or to whom remuneration accrues and includes any director of a company but excludes persons who retired before 1 March 1992 except for purposes of the provisions which deal with the payment of an employee's debt or the release of an employee from an obligation to pay a debt.
Employer	Any person who pays or is liable to pay a person an amount by way of remuneration including a person responsible for the payment of an amount by way of remuneration to a person under the provisions of a law or out of public funds or out of funds voted by parliament or Provincial Council.
Equity instrument	An equity share in a company or a member's interest in a close corporation, including an option to acquire such a share or member's interest and any other financial instrument which is convertible to a share or member's interest.
Gain	A gain for purposes of a broad based employee share plan and qualifying equity instruments means the amount by which any amount received by or accrued to the employee from the disposal exceeds the consideration given by the employee for the qualifying equity share, right or interest.
Holder of a public office	<ul style="list-style-type: none"> • The President, Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature; • Any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders or a member of the Council of Traditional Leaders; and • A person occupying the office of president, chairman or chief executive officer of any non-profit organisation, shown to the satisfaction of the Commissioner to be organised on a national or regional basis to represent persons with a common interest and the funds of which are derived wholly or mainly from subscriptions from members or donations from the general public.
Labour broker	Any person who, for reward, provides a client with other persons (or procures the persons) to render a service or to perform work for the client.
Long service	For taxable benefit purposes means an initial unbroken period of service of not less than 15 years or any subsequent unbroken period of service of not less than 10 years.
Marketable security	Any security, stock, debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise
Market value	<ul style="list-style-type: none"> • In relation to an equity instrument — <ul style="list-style-type: none"> ▫ of a private company or a company that would be regarded as a private company if it were incorporated under the Companies Act, 1973, means an amount determined as its value in terms of a method of valuation — ▫ prescribed in the rules relating to the acquisition and disposal of that equity instrument; ▫ which is regarded as a proxy for the market value of that equity instrument for the purposes of those rules; and ▫ used consistently to determine both the consideration for the acquisition of that equity instrument and the price of the equity instrument repurchased from the employee after it has vested in that employee; or ▫ of any other company, means the price which could be obtained upon the

	<p>sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the cases of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed.</p> <ul style="list-style-type: none"> In relation to equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm's length in an open market and without having regard to any restrictions imposed in respect of that equity share.
Month	In relation to an employer for taxable benefit purposes means any twelve portions into which any calendar year is divided.
Net remuneration	<p>The balance of remuneration, excluding the following:</p> <ul style="list-style-type: none"> Lump sum payments in terms of the Second Schedule to the Act paid by funds; Gratuities paid by the employer on termination of service due to old age, ill-health or general reduction in personnel (retrenchment); Remuneration received by an employee who incurred deductible expenses in the production of income (the quantum of expenses can only be determine on assessment); Remuneration which is under the provisions of Section 7(2) deemed to be income that accrued to the spouse of the employee; Remuneration not derived — <ul style="list-style-type: none"> from standard employment; or by way of an annuity provided or payable by a pension fund, provident fund or benefit fund; Remuneration paid or payable to a director of a company or member of a close corporation; Travel allowance which is subject to employees' tax (60% portion); An allowance granted to the holder of any public office, which is subject to employees' tax (50% portion); Remuneration derived by an employee in respect of which such employee is entitled to set off an assessed loss under Section 20(1); and Any retirement fund lump sum benefit.
Official rate of interest	The rate of interest fixed by the Minister from time to time by notice in the <i>Gazette</i> , where the loan is denominated in the currency of the Republic and a market related rate of interest, where the loan is denominated in a foreign currency.
PAYE	Pay-As-You-Earn.
Personal service company	<p>Any company (other than a company which is a labour broker) where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is a connected person in relation to such company, and –</p> <ul style="list-style-type: none"> such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; where those duties must be performed mainly at the premises of the client, such person or such company is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or where more than 80% of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company, or any associated institution in relation to such client, except where such company throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of such company of rendering any such service, other than any employee who is a shareholder or member of the company or is a connected person in relation to such person.
Personal service trust	<p>Any trust (other than a trust which is a labour broker) where any service rendered on behalf of such trust to a client of such trust is rendered personally by any person who is a connected person in relation to such trust, and –</p> <ul style="list-style-type: none"> such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such trust;

	<ul style="list-style-type: none"> where those duties must be performed mainly at the premises of the client, such person or such trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or where more than 80% of the income of such trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such trust, or any associated institution in relation to such client, except where such trust throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is a connected person in relation to such person or such trust.
Qualifying equity share	An equity share acquired in a tax year in terms of a broad-based employee share plan, where the market value of all equity shares, which were acquired by that employee in terms of that plan in that year and the two immediately preceding tax years does not in aggregate exceed R9 000.
RAF	Retirement annuity fund.
Recognised educational or research institution	A college or university as defined in Section 18A, or a school or any other educational or research institution wheresoever situated which is of a permanent nature, open to the public generally and offering a range of practical and academic courses.
Relative	A relative as defined in Section 1 means in relation to any person — <ul style="list-style-type: none"> in the first degree: children (own, adopted and / or step) and parents; in the second degree: grandchildren, grandparents, brothers and sisters; in the third degree: great grandchildren, great grandparents, uncles, aunts, nephews and nieces; his / her spouse and any of the spouse's relatives related to the spouse in the same manner above; or the spouse of any relative referred to above.
Representative employer	Any public officer, liquidator, judicial manager, manager, secretary, officer, guardian, curator, administrator or other person having authority to pay remuneration on behalf of an employer.
Restricted equity instrument	An equity instrument — <ul style="list-style-type: none"> which is subject to any restriction (other than a restriction imposed by legislation) that prevents the employee from freely disposing of that equity instrument at market value; which is subject to any restriction that could result in the employee forfeiting ownership of that equity instrument otherwise than at market value; if any person has retained the right to impose a restriction contemplated in the first two instances above, on the disposal of that equity instrument; which is an option contemplated in the definition of equity instrument and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument; which is a financial instrument contemplated in the definition of equity instrument and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument; if the employer has at the time of acquisition by the employee of the equity instrument undertaken to: <ul style="list-style-type: none"> cancel the transaction under which that taxpayer acquired the equity instrument; or repurchase that equity instrument from the employee at a price exceeding its market value on the date of repurchase; or which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent.
Retirement funding employment	Any remuneration (excluding certain amounts) of the employee that is taken into account in the determination of the contributions, made by an employee or by the employer on behalf of such employee, to a pension fund or provident fund.
SARS	South African Revenue Service.
SDL	Skills Development Levy.

SETA	Sector Education and Training Authority.
SITE	Standard Income Tax on Employees.
Standard employment	Any employment where an employee (including scholars and students), is required to render services to a single employer for a period of at least 22 hours in every full week provided that no regard shall be had to — <ul style="list-style-type: none"> • Periods of temporary absence of the employee due to leave or exceptional circumstances; or • Any temporary reduction in working hours imposed by the employer, for instance due to a reduction in the demand of the company's product, the employer imposes a temporary working week of less than 22 hours.
Taxable benefit	A benefit contemplated in the 7 th Schedule, but excluding — <ul style="list-style-type: none"> • any benefit, the amount or value of which is specifically exempt in terms of Section 10; • any benefit provided by a benefit fund in respect of medical, dental and similar services; • any lump sum benefit payable by a benefit, pension or provident fund, as defined in the Act; and • any benefit received by or accrued to a person stationed outside the Republic and employed by any national or provincial sphere of government or any national or provincial public entity, which is substantially funded by Parliament, if they are attributable to that official's services rendered outside the Republic.
Tax period	<ul style="list-style-type: none"> • In relation to any employer, as a period of 12 months ending on the last day of February of the relevant tax year or at the option of the employer, an alternate period, in respect of which remuneration is paid or has become due. • in relation to an employee, a tax year (1 March to 28 / 29 February of the next year) or any unbroken period during the tax year — <ul style="list-style-type: none"> ▫ during which the employee was employed by one employer in the Republic in standard employment; or ▫ during which any annuity was paid or became payable to him / her by one employer; or ▫ such period as the Commissioner considers appropriate in the circumstances, where the Commissioner has in relation to the employment of any employee, issued a ruling to the employer.
UI Commissioner	Unemployment Insurance Commissioner.
UIC Act	Unemployment Insurance Contributions Act.
UIF	Unemployment Insurance Fund.
Unrestricted equity instrument	An equity instrument which is not a restricted equity instrument.

4 BACKGROUND

- What is employees' tax
- What is SDL
 - This is a compulsory levy scheme for the purposes of funding education and training as envisaged in the Skills Development Act, 1998. This levy came into operation on 1 April 2000 and is payable on a monthly basis.
- What are UIF contributions
 - This is a compulsory contribution to fund unemployment benefits. The contributions deducted and payable by employers have been collected by SARS since 1 April 2002 and are paid over to the UIF that is managed by the UI Commissioner.

- **Meaning of SITE, PAYE and Employees' tax**
 - Employees' tax is deducted during the tax period. SITE is **the portion** of employees' tax that is applicable only on the annualised net remuneration up to R60 000. In terms of Paragraph 11B(2)(a) and (b) of the 4th Schedule, the determination of SITE is done at the end of the tax period and may represent only a portion of the employees' tax deducted during the year. The balance of employees' tax after **excluding** the SITE portion **and including** employees' tax on remuneration other than net remuneration represents PAYE.

- **Liability of representative employer** — The representative employer is not relieved from any liability, responsibility or duty of the employer and is therefore subject to the same duties, responsibilities and liabilities as the employer.

5 GOVERNING LEGISLATION

- The Paragraphs of the Fourth and Seventh Schedule and Sections referred to in this publication are governed by the Income Tax Act. References to the Skills Development Levies Act and Unemployment Insurance Contributions Act are specifically indicated.

6 REGISTRATION

6.1 REGISTRATION AS AN EMPLOYER

- *Paragraph 15(1) of the 4th Schedule* prescribes that an employer must apply for registration with SARS within 14 days after he / she becomes an employer unless none of the employees is liable for normal tax. Application to register as an employer must be made on an EMP 101 form.
- **Registration for SDL purposes** — *Section 5 of the SDL Act* prescribes that where an employer is liable to pay the levy, the employer must register as an employer with SARS and must indicate the jurisdiction of the SETA within which the employer must be classified. Although some employers are exempt from the payment of the levy, these employers are not absolved from registration.
 - The following employers are **exempt from paying the SDL** in terms of Section 4 of the SDL Act —
 - Any public service employer in the national or provincial sphere of Government. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
 - Any national or provincial public entity if 80% or more of its expenditure is paid directly or indirectly from funds voted by Parliament. (These employers must budget for an amount equal to the levies payable for training and education of their employees).
 - Any public benefit organisation, exempt from the payment of income tax in terms of Section 10(1)(cN), which solely carries on certain welfare, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a public benefit organisation and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit.
 - Any municipality in respect of which a certificate of exemption is issued by the Minister of Labour.
 - **An** employer is not required to register as an employer for SDL purposes if there are during any month reasonable grounds for believing that the total leviable amount paid or payable by that employer to all its employees during the following 12 month period will not exceed R500 000 even though such employer is liable to register with SARS for employees' tax purposes.
- **Registration for UIF contribution purposes** — *Section 10 of the UIC Act* prescribes that where an employer is liable to pay the UIF contribution, the employer must register with SARS **or** the UIF office (whichever is applicable to such employer) for the payment of the contributions.
 - The following employers who are **not exempt** from contributing to the fund, **must register with the UI Commissioner** —

- an employer who is not required to register for employees' tax purposes at SARS;
- an employer who has not registered voluntarily as an employer for employees' tax purposes at SARS; and
- an employer who is not liable for the payment of SDL.
- Section 4 of the UIC Act prescribes that an employer / employee is **NOT REQUIRED to contribute** in the following circumstances —
- an employee and his / her employer, where such employee is employed by the employer for less than 24 hours a month;
- an employee and his / her employer, where the employee receives remuneration under contract of employment contemplated in Section 18(2) of the Skills Development Act;
- employees and employers in the national and provincial spheres of Government who are officers or employees as defined in Section 1(1) of the Public Service Act 1994; and
- an employee and his / her employer where that employee has entered the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership (as the case may be) or by any other agreement or undertaking to repatriate that person, or if that person is so required to leave the Republic;

6.2 BRANCHES REGISTERED SEPARATELY

- *The tax period definition in Paragraph 11B(1) of the 4th Schedule* prescribes that where an employer has for registration purposes applied for separate registration of branches of his / her undertaking, each such branch shall be deemed to be a separate employer.
- Application to register a branch separately from the main branch must be made on an EMP 102 form.
- Where an employee is transferred between branches, the branch where the employee has worked until date of transfer must issue an IRP 5 for the period 1 March (or date of commencement of employment if such date was after 1 March) up to the day preceding the transfer. The branch to which the employee was transferred must issue a further IRP 5 to cover the period from date of transfer up to the end of February (or other date, e.g. where the employee's service was terminated).

6.3 CHANGE OF REGISTERED DETAILS

- *Paragraph 15(3) of the 4th Schedule* prescribes that an employer must inform SARS in writing within 14 days of any change in registered particulars (e.g. change of name, address or when he / she **ceased to** operate as an employer).

7 RECORD KEEPING

- *Paragraph 14(1) of the 4th Schedule, Section 13 of the SDL Act and Section 14 of the UIC Act* prescribes that every employer must keep a record of all remuneration paid, employees' tax deducted in respect of each employee and SDL and UIF contributions. This register must contain personal particulars as well as financial details of each employee.
- *Paragraph 14(4) of the 4th Schedule* prescribes that these records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.
- *Paragraph 30(1)(i) of the 4th Schedule* prescribes that records must be kept for a period of five years from the date of the last entry and must be available for inspection purposes by SARS officials. Employers who supply the tax certificate information on an electronic medium or electronically, must also keep such records for the prescribed period.

7.1 RECORDS AND INFORMATION TO BE PROVIDED BY THE EMPLOYEE

- The employee must supply the following particulars to his / her employer to ensure that the employer's records are correct —

- Surname and full names;
 - Address;
 - Identity number or passport number and date of birth;
 - Income Tax reference number (if any); and
 - Written declaration where required.
- Written declaration by employee
 - Where an employee is
 - not required to render services to the employer for at least 22 hours in every completed week, and
 - he / she furnishes the employer with a written declaration stating that he / she does not or will not render services to another employer during the period he / she holds such employment at the relevant employer,
 - such an employee is deemed to be in standard employment.

8 DETERMINING THE EMPLOYEES' TAX, SDL AND UIF LIABILITY

8.1 ELEMENTS REQUIRED BEFORE EMPLOYEES' TAX MAY BE DEDUCTED

- The Fourth Schedule requires the presence of three elements before employees' tax may be deducted, namely, an **employer** paying **remuneration** to an **employee**.
- The employer must **determine** the employment relationship to be able to classify the worker efficiently in order to determine the rate which must be applied to deduct employees' tax from the remuneration of the specific employee.

8.2 ANNUAL EQUIVALENT CALCULATION

- The annual equivalent must be determined when an employee's tax period is shorter than a full tax year in order to determine the amount of employees' tax deductible.
- Although the annual tax is determined on the annual equivalent, the total tax will be calculated as a pro-rata portion in order to determine the employees' tax deductible on the remuneration which was actually received or accrued. This is done by dividing it by the ratio which a full year bears to the periods in respect of which the remuneration was received or accrued.
- The following formula must be used to determine the annual equivalent:
 - Total remuneration received / accrued
 - Total pay periods in tax year
 - Total pay periods worked
- Example: Employee is employed for a full pay period
 - A monthly paid employee (under 65) worked for 7 full months at one employer and received R32 500 for the period worked. The annual equivalent must be determined in order to do a final employees' tax calculation.

- Calculating annual equivalent: $R32\ 500 \div 7 \times 12 = R55\ 714$
- Tax on annual equivalent R55 714 according to the annual table is R1 748.79
- Tax on R32 500 for 7 months worked: $R1\ 748.79 \div 12 \times 7 = 1\ 020.12$

- Example: Employee is employed for a portion of a pay period
 - **Weekly paid employee:** A weekly remunerated employee (under 65) starts working on the 5th day of a week. He receives R425 for the 3 days worked during the first week. The employee's week consists of 7 days.

<ul style="list-style-type: none"> • Determine the decimal portion of the pay period: $3 \div 7 = 0.4285$ • Calculating annual equivalent: $R425 \div 0.4285 \times 52 = R51\ 575$ • Tax on annual equivalent R51 575 according to the annual table is R1 001.79 • Tax on R425 for 3 days worked: $R1\ 001.79 \div 52 \times 0.4285$ • 8.26
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- **Fortnightly paid employee:** A fortnightly remunerated employee (under 65) starts working on the 7th day of a fortnight period. He receives R1 066 for the 8 days worked during the first fortnight period. The employee's week consists of 14 days.

<ul style="list-style-type: none"> • Determine the decimal portion of the pay period: $8 \div 14 = 0.5714$ • Calculating annual equivalent: $R1\ 066 \div 0.5714 \times 26 = R48\ 505$ • Tax on annual equivalent R48 505 according to the annual table is R450.09 • Tax on R1 066 for 8 days worked: $R450.09 \div 26 \times 0.5714$ • 9.89

- **Monthly paid employee:** A monthly remunerated employee (under 65) starts working on the 16th day of a month which consists of 30 days. He receives R1 925 for the 15 days worked during the first month.

<ul style="list-style-type: none"> • Determine the decimal portion of the pay period: $15 \div 30 = 0.5$ • Calculating annual equivalent: $R1\ 925 \div 0.5 \times 12 = R46\ 200$ • Tax on annual equivalent R46 200 according to the annual table is R35.19 • Tax on R1 925 for 15 days worked: $R35.19 \div 12 \times 0.5$ • 1.47
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8.3 REMUNERATION FOR EMPLOYEES' TAX PURPOSES

- Paragraph 1 of the 4th Schedule defines remuneration as any amount of income which is paid or is payable to any person whether in cash or otherwise and whether or not in respect of services rendered.
- **Examples of remuneration** — Remuneration will include salary, fee, bonus, wage, gratuity, pension, leave encashment, emolument, voluntary award, commission, annuity, stipend, remuneration for overtime, superannuation allowance, retirement allowance, lump sum payment, director's remuneration, etc.
- The following are **specifically included** as remuneration:
 - restraint of trade payments;
 - an amount, including a voluntary award, received or accrued in commutation of amounts due in terms of a contract of employment or service;
 - an amount received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment or of an appointment;
 - An allowance or advance paid to an employee in respect of accommodation, meals or other incidental costs while the employee is by reason of the duties of his / her office obliged to spend at least one night away from his / her usual place of residence in the Republic is deemed to become payable to the employee in the following month in respect of services rendered. This deeming provision applies where such an allowance or advance was paid to an employee during any month in respect of a night away from his / her usual place of residence and that employee has not by the last day of the following month either spent the night away from his / her usual place of residence or refunded that allowance or advance to the employer;

- 50% of an allowance paid to a holder of a public office;
 - 60% of an allowance or advance in respect of the expense of travelling for business purposes (excluding an allowance paid for actual distance travelled for business purposes, at a rate not exceeding the rate per kilometre fixed by the Minister of Finance in the Government Gazette);
 - fringe benefits received in terms of the 7th Schedule;
 - a gratuity received by or accrued to a person from his / her employer because such person obtained a university degree or diploma or has been successful in an examination;
 - any gain determined in terms of Section 8B, which must be included in that person's income under that section (broad-based equity share plan); and
 - any gain determined in terms of Section 8C which is required to be included in the income of that person.
- The following are **specifically excluded** from remuneration and consequently no employees' tax is deductible:
 - Amounts paid to common law independent contractors, but excluding amounts paid to common law independent contractors who do not employ three or more qualifying employees and are required to render services mainly at the premises of the client and are subject to the control or supervision of any person as to the manner in which their duties are performed or as to the hours of work.
 - This exclusion does not apply to —
 - any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
 - any labour broker;
 - any personal service company;
 - any personal service trust; or
 - a person who is not ordinarily resident in South Africa.
 - Any pension or additional pension under the Social Assistance Act.
 - Any disability grant or additional or supplementary allowance under the Social Assistance Act.
 - Any grant or contribution under the provisions of Section 89 of the Children's Act.
 - Amounts paid to an employee, wholly in reimbursement of expenditures actually incurred by such employee in the course of employment.
 - Any **annuity** in terms of an order of divorce or decree of judicial separation or agreement of separation.
 - Employees' tax must be calculated on the **balance of remuneration** (remuneration for employees' tax purposes less any allowable deductions).

8.4 REMUNERATION FOR UIF CONTRIBUTION PURPOSES

- *Section 1 of the UIC Act* defines remuneration as remuneration for employees' tax purposes, but **excludes** any amount paid or payable to an employee:
 - by way of pension, superannuation allowance or retiring allowance;
 - that constitutes an amount contemplated in Paragraphs (a), (cA), (d), (e) or (eA) of the definition of gross income in Section 1 of the Income Tax Act —
 - by way of annuity [par (a)];
 - as compensation for any restraint of trade [par (cA)];
 - any amount, including a voluntary award received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment [par (d)];
 - a retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit [par (e)]; or
 - lump sum benefits from a pension fund (where the rules provide that on retirement a portion of the benefit has to be taken in the form of an annuity, etc.) [par (eA)]; and
 - by way of commission.
- The UIF contribution must be calculated on the remuneration for UIF purposes.

8.5 REMUNERATION FOR SDL PURPOSES

- *Section 3(5) of the SDL Act* defines remuneration as remuneration for employees' tax purposes, but **excludes** the following amounts from remuneration for purposes of determining the leviable amount:
 - an amount paid or payable to any labour broker or any person declared by the Minister of Finance by notice in the Government Gazette as an employee to whom a certificate of exemption has been issued by SARS;
 - an amount paid or payable to any person by way of pension, superannuation allowance or retiring allowance;
 - an amount contemplated in Paragraphs (a), (d), (e) or (eA) of the definition of gross income in Section 1 of the Income Tax Act —
 - by way of annuity [par (a)];
 - any amount, including a voluntary award received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment [par (d)];
 - a retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit [par (e)]; or
 - lump sum benefits from a pension fund (where the rules provide that on retirement a portion of the benefit has to be taken in the form of an annuity, etc.) [par (eA)]; and
 - an amount payable to a learner in terms of a contract of employment contemplated in Section 18(3) of the Skills Development Act.

8.6 ALLOWABLE DEDUCTION TO DETERMINE THE BALANCE OF REMUNERATION

8.6.1 PENSION FUND CONTRIBUTIONS

- *Paragraph 2(4)(a) of the 4th Schedule* prescribes that the employer must deduct current and arrear contributions, within the limits contemplated in Section 11(k), by the employee to an approved pension fund which the employer is **entitled or required** to deduct from the employee's remuneration.
- Section 11(k) limit the allowable deduction to the following:
 - **Current contributions** — An annual deduction limited to the greatest of:
 - R1 750; or
 - 7, 5% of the remuneration received during the year from retirement funding employment.
 - **Arrear contributions** — an annual deduction limited to R1800.

8.6.2 RAF CONTRIBUTIONS

- *Paragraph 2(4)(a) of the 4th Schedule* prescribes that the employer must deduct current and arrear contributions, within the limits contemplated in Section 11(n), by the employee to an approved RAF which the employer is **entitled or required** to deduct from the employee's remuneration.
- *Paragraph 2(4)(b) of the 4th Schedule* prescribes that the employer may at his / her option deduct current and arrear RAF contributions, within the limits contemplated in Section 11(n), which the **employee has paid directly to the Fund**, provided that proof of payment has been furnished to the employer.
- Section 11(n) limit the allowable deduction to the following:
 - **Current contributions** — An annual deduction limited to the greatest of:
 - R1 750;
 - R3 500 less allowable current pension fund contributions; or
 - 15% of the remuneration received during the year from non-retirement funding employment.
 - **Arrear contributions** — an annual deduction limited to R1800.

8.6.3 INCOME PROTECTION POLICY PREMIUMS

- *Paragraph 2(4)(c) of the 4th Schedule* prescribes that the employer may at his / her option deduct any premium paid by the employee in respect of which proof of payment has been furnished to the employer in terms of an insurance policy —
 - to the extent that it covers that employee against the loss of income as a result of illness, injury, disability or unemployment; and
 - in respect of which all amounts payable in terms of that policy constitute or will constitute income as defined.

8.6.4 MEDICAL SCHEME CONTRIBUTIONS

- **Employee 65 years or older** — *Paragraph 2(4)(d) of the 4th Schedule* prescribes that the employer **must** deduct any contribution made by the employee to a registered medical scheme as contemplated in Section 18(1)(a) in respect of which proof of payment has been furnished to the employer.
- **Employee under 65 years** — *Paragraph 2(4)(e) of the 4th Schedule* prescribes that the employer **must** deduct any contribution made by the employee to a registered medical scheme as contemplated in Section 18(1)(a) as does not exceed the amount contemplated in Section 18(2)(c)(i) in respect of which proof of payment has been furnished to the employer.
 - The allowable amount is determined as follows:
 - **Capped amount:**
 - **R570** for each month in the tax year in respect of which those contributions were made solely with respect to the benefits of the employee;
 - **R1 140** for each month in the tax year in respect of which those contributions were made with respect to the benefits of the employee and one dependant; or
 - where those contributions were made with respect to the employee and more than one dependant, **R1 140** in respect of the employee and one dependant plus **R345** for every additional dependant for each month in the tax year in respect of which those contributions were made.
 - **Reduced amount** — The capped amount must be REDUCED by any amount contributed by the employer which has not been included as a taxable benefit in the remuneration of the employee (see medical contributions paid by the employer under the fringe benefit section).
- *Section 18(5)* deems contributions paid by the employer which have been included in the remuneration of the employee as a fringe benefit to have been paid by the employee.
- Where an employer employs a new employee who was in employment with another employer in the same month, it is the responsibility of the second employer to ensure that only one contribution is made to a medical scheme in respect of that specific month.
- In order to determine the capped amount which may be used for a specific month, the employer **may** obtain the information relating to the beneficiaries covered by the medical scheme from the relevant medical scheme.

8.7 EMPLOYEES' TAX DEDUCTION

- *Paragraph 2(1), 2(4) and 2(5)(c) of the 4th Schedule* prescribe that employees' tax must be deducted from any amount that is paid by way of remuneration. The deduction is calculated on the balance of remuneration after the deduction of all allowable deductions.
- An employer and employee may under no circumstances conclude an agreement whereby the employer undertakes not to deduct or withhold employees' tax or UIF contributions. Such an agreement is void in terms of Paragraph 7 of the 4th Schedule.

- Employees' tax **MUST** be deducted from remuneration paid to an employee even though such person is registered as a provisional taxpayer with SARS. This provision also applies to directors of private companies and members of close corporations.
- **Voluntary employees' tax deduction** —*Paragraph 2(2) of the 4th Schedule* prescribes that an employer may deduct a greater amount of employees' tax on receipt of a written request from an employee. For various reasons, employees may find that they have to pay in fairly large amounts upon receipt of their assessments. To reduce the amount payable on assessment or avoid having to pay in an additional amount, such employees may request (in writing) their employers to deduct from their remuneration a greater amount of employees' tax than is required.
 - The employer must remit the amount deducted to SARS with his / her monthly EMP 201 return; **and**
 - The voluntary employees' tax deducted **must be reflected as PAYE on the IRP 5 certificate as it does not represent SITE:**
- Estimated assessment
 - *Paragraph 12 of the 4th Schedule, Section 13 of the SDL Act and Section 14 of the UIC Act* prescribes that the Commissioner may estimate the amount of employees' tax, SDL or UIF contributions due by the employer —
 - where the employer fails to deduct or withhold the correct amount of employees' tax or UIF contributions (excluding SDL as the employer is not allowed to deduct it from the employee); or
 - where the employer fails to pay over the employees' tax, SDL or UIF contribution due.
 - *Paragraph 13(3) of the 4th Schedule* prescribe that any estimate of the amount of employees' tax, SDL or UIF contributions payable by the employer is subject to objection and appeal.

9 PAYMENT OF EMPLOYEES' TAX, SDL AND UIF

- *Paragraph 2(1) of the 4th Schedule, Section 6 of the SDL Act and Section 8 of the UIC Act* prescribes that the employees' tax and UIF contributions as well as SDL must be paid over to SARS within 7 days after the end of the month during which the amount was deducted **or due.**
- *Section 89sex* prescribes that where the seventh day falls on a Saturday, Sunday or public holiday, the payment must be made not later than the last business day prior to such day. These cut-off dates apply to SDL and UIF contributions as well.
- *Paragraph 14(2) of the 4th Schedule, Section 6(2) of the SDL Act and Section 8(2) of the UIC Act* prescribes that the employer must submit **such declaration as** the Commissioner may prescribe when making any payment. The prescribed EMP 201 return is automatically supplied to the employer for payment purposes each month. **Only** in instances where the return is not received in time for payment purposes, a note must accompany the payment with the following information —
 - Name, postal address and contact telephone number of employer;
 - Reference number, starting with 7, L or U;
 - Month to which the payment relates (e.g. November **2007**); and
 - Amount of the payment enclosed.
- An EMP 201 not received in time by an employer will not be accepted as an excuse for the late payment of employees' tax, SDL and UIF contributions.
- Payments of employees' tax, SDL and UIF contributions **MUST** be reflected correctly and separately on the EMP 201 form in order to avoid the incorrect allocation of these payments and the unnecessary issue of final demands.
- *Paragraph 5(1) of the 4th Schedule and Section 7(4) of the UIC Act* prescribes that an employer who fails to deduct or withhold the full amount of employees' tax and UIF contributions is personally liable for the shortfall.

- Bank payments
 - Electronic payments can be made directly into SARS banking accounts at First National Bank, Absa Bank, Nedbank or Standard Bank or via the Internet banking facilities. In all instances it is imperative that the correct payment reference information is provided to ensure that tax payments can be identified and correctly allocated upon receipt by SARS.
 - Two items are essential in order to ensure that payments are processed correctly, namely:
 - SARS beneficiary account ID; and
 - A 19-digit bank payment reference number. This enables the allocation of such payment to a specific tax type and period.
 - Please refer to SARS' website www.sars.gov.za for further information and details relating to bank payment limits and bank payment reference number structuring.
- Allocation of payments
 - Section 89ter(1A) prescribes that where any payment is made by an employer in respect of employees' tax, **SDL and UIF**, such payment will be allocated in the following order:
 - in respect of penalty;
 - in respect of interest, to the extent to which the payment exceeds the amount of penalty; and
 - in respect of employees' tax or additional penalty, to the extent to which the payment exceeds the amount of penalty and interest.
 - Where there is a shortfall after the allocation of penalties and interest and the outstanding tax has not been covered in full, interest will continue to accrue on the outstanding tax. These rules are also applicable to SDL and UIF contribution payments.
- Penalties and interest
 - Section 89bis(2), Section 11 of the SDL Act and Section 12 of the UIC Act prescribes that interest shall be payable at the prescribed rate if any amount of employees' tax, SDL or UIF contributions is not paid in full within the prescribed period for payment of such amount.
 - Paragraph 6(1) of the 4th Schedule, Section 12(1) of the SDL Act and Section 13(1) of the UIC Act prescribes that a penalty equal to 10% in addition to the interest, will be imposed on late payments or outstanding amounts.
 - Paragraph 6(2A) of the 4th Schedule, Section 12(3) of the SDL Act and Section 13(2) of the UIC Act prescribes that where the employer fails to pay the relevant amount with intent to evade his / her obligation, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of employees' tax, SDL or UIF contributions which the employer so failed to pay.

10 SITE

- SITE is the abbreviation for Standard Income Tax on Employees. SITE is not an additional tax but is merely an alternative method of determining liability for normal tax and was introduced to ensure that the tax deducted by an employer should equate to a **SITE only** employee's actual normal tax liability.
- SITE represents nothing more than payments towards an employee's normal tax liability and in cases of employees subject only to SITE, the tax actually deducted from their remuneration by their employers, equates to their normal tax liability.
- Paragraph 11B(2) of the 4th Schedule prescribes that the SITE liability of an employee must be determined by the employer at the end of the employee's tax period or at the end of the tax year.
- Paragraph 11B(5)(a) of the 4th Schedule prescribes that the employer is obliged to refund the excess deducted to the employee where the employees' tax required to be deducted at the end of a tax period consists solely of SITE and the total amount of tax actually deducted exceeds such SITE required to be deducted. However, where the employees' tax required to be deducted does not consist solely of SITE, the excess deducted must be shown as PAYE on the IRP 5 and the employer is not permitted to refund the PAYE to the employee.

- **Recalculation of SITE by SARS** —Paragraph 11B(4) of the 4th Schedule prescribes that SITE may be recalculated by SARS in the following circumstances:
 - where the employee is entitled to the deduction of pension and / or retirement annuity fund contributions and such contributions were not taken into account by the employer in the determination of SITE; or
 - where an employee is under the age of 65 years and medical expenses as an aggregate exceeds 7,5% of taxable income; or
 - where the employee paid medical scheme contributions which were not taken into account by the employer in the determination of SITE;
 - where the employee's net remuneration for the year of assessment is less than the annual equivalent; or
 - where the employee is entitled to the deduction of any premium in terms of an insurance policy and such premiums were not taken into account by the employer in the determination of SITE (see Income Protection Policy Premium in paragraph 8.5.3).

- Paragraph 11B(2A) of the 4th Schedule prescribes that where the employer finds at the end of an employee's tax period that the SITE liability does not differ by more than R5.00 (or such other amount as the Commissioner may determine by notice in the Gazette) from the total amount of employees' tax deducted during the year, the employer may, at his / her option, deem the total amount deducted to be the correct amount of SITE determined.

- Paragraph 11B(7)(c) of the 4th Schedule prescribes that if the employer makes use of his / her own methods to determine the employees' tax liability, for example a software program, and the difference does not deviate by more than 2% of the SITE liability, the amount may be deemed to be correct. This provision only applies —
 - where it relates to employees whose employees' tax represents SITE only;
 - where the employees' tax has been correctly deducted in accordance with the tax deduction tables, tax deduction program SARSTAX 2000 or the statutory rates of tax; and
 - if a shortfall or excess occurs as a result of the use of methods other than the tax deduction tables or tax deduction program SARSTAX 2000 and the difference is not more or less than 2%, then the difference need not to be recovered or refunded, as the case may be.

- Example: SITE determination at the end of a full tax year
 - Where the employee's annual equivalent of net remuneration does not exceed R60 000 and the employee was employed for the full tax year, the total amount of employees' tax applicable to the net remuneration will represent SITE. This amount can also be determined by using the annual tax table.
 - Where the employee's annual equivalent of net remuneration exceeds R60 000 and the employee was employed for the full tax year, the employees' tax that represents SITE and PAYE must be determined by using the annual tax table.

- Example: SITE determination where the tax period is shorter than a full tax year
 - **Monthly paid employee:** An employee (under 65) is employed for the period 1 March to 31 October and the employer has deducted employees' tax correctly according to the monthly table. The remuneration and employees' tax details are as follows:

• Month	• Salary	• Overtime	• Total remuneration	• Employee s' tax
• March	• 5 000	•	• 5 000	• 209.64
• April	• 5 000	• 1 300	• 6 300	• 449.09
• May	• 5 000	•	• 5 000	• 209.64
• June	• 5 000	• 1 400	• 6 400	• 461.37
• July	• 5 000	•	• 5 000	• 209.64
• August	• 7 300	•	• 7 300	• 622.65
• September	• 7 300	• 450	• 7 750	• 705.72

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• October	• 7 300	•	• 7 300	• 622.65
• TOTAL	• 46 900	• 3 150	• 50 050	• 3 490.40

• Tax on annual equivalent (50 050 ÷ 8 x 12) R75 075 according to the annual tables	• SITE	• PAYE	• TOTAL
• Determine the tax on R50 050	• 2 520.00	• 2 707.29	• 5 227.29
• Final employees' tax for tax period worked	• ÷ 12 x 8	• ÷ 12 x 8	• ÷ 12 x 8
	• 1 680.00	• 1 804.86	• 3 484.86

- As the annual equivalent of the net remuneration exceeds R60 000, the employer may not refund the excess of R5.54 (R3 490.40 less R3 484.86) to the employee.
- This excess amount is added to PAYE and reflected as such on the employees' tax certificate.
- **Weekly paid employee:** An employee (under 65) is employed for 9 weeks and the employer deducted employees' tax correctly according to the weekly table. The remuneration and employees' tax details are as follows:

• Week	• Wage week per	• Employees' tax
• 15 to 23 (9 weeks)	• 950	• 11.67
• TOTAL	• 8 550	• 105.03

• Tax on annual equivalent (8 550 ÷ 9 x 52) R49 400 according to the annual tables	• SITE	• PAYE	• TOTAL
• Determine the tax on R8 550	• 611.19	• Nil	• 611.19
• Final employees' tax for tax period worked	• ÷ 52 x 9	• ÷ 52 x 9	• ÷ 52 x 9
	• 105.78	• Nil	• 105.78

- If the employer finds at the end of the tax period that the SITE liability differs by not more or less than R5 from the total amount of employees' tax which was deducted during the tax period, the employer may, at his / her option, deem the total amount deducted (R105.03) as the correct amount of SITE.

11 OFFENCES

- Paragraph 30(1) of the 4th Schedule prescribes that any person will be guilty of an offence and liable on conviction to a fine or imprisonment where he / she —
 - fails to deduct employees' tax from remuneration or to pay the tax to the Commissioner within the prescribed period;
 - uses or applies employees' tax deducted or withheld, for purposes other than the payment of such amount to the Commissioner;
 - permits a false IRP 5 certificate to be issued or knowingly is in possession of or uses a false IRP 5 certificate;
 - alters an IRP 5 certificate issued by any other person, purports to be the employee named on any IRP 5 certificate or obtains a credit for his / her own advantage or benefit in respect of employees' tax deducted or withheld from another person's remuneration;

- not being an employer and without authority from an employer issues or causes to be issued, any document purporting to be an IRP 5 certificate;
 - without just cause fails to comply with an income tax directive issued by the Commissioner;
 - furnishes false information or misleads his / her employer regarding the amount of employees' tax to be deducted in his / her case;
 - fails to deliver IRP 5 certificates to employees or former employees within the prescribed periods;
 - fails to comply with any condition prescribed by the Commissioner in regard to the manner in which IRP 5 certificates may be used, the surrender of unused stocks of certificates, accounting for used, unused and spoiled IRP 5 certificates when required by the Commissioner to do so or to surrender unused IRP 5 certificates when ceasing to be an employer;
 - fails to comply with the conditions for using a mechanised system for printing IRP 5 certificates to be issued to employees or former employees;
 - fails to maintain a record of remuneration paid and tax deducted therefrom or to retain such record for a period of five years from the date of the last entry therein;
 - fails to apply for registration as an employer;
 - fails to notify the Commissioner of a change of address;
 - fails to notify the Commissioner that he / she has ceased to be an employer;
 - fails to comply with a written request for information; or
 - defaults in rendering a return.
- Penal clause
 - An employer guilty of an offence may be fined or sentenced to imprisonment for a period not exceeding twelve months.
 - Section 75A prescribes that the Commissioner may, notwithstanding the Secrecy provisions¹, from time to time publish the particulars relating to any offence committed by any person, where such person has been convicted of any offence in terms of the Income Tax Act. Such publication may specify the —
 - name and address of the offender;
 - particulars of the offence;
 - tax year or tax period during which the offence occurred;
 - amount or estimated amount of the tax or additional tax involved; and
 - particulars of the fine or sentence imposed.

12 TAX DIRECTIVES (GRATUITIES, LUMP SUMS AND EXCEPTIONAL CIRCUMSTANCES)

12.1 PURPOSE OF A TAX DIRECTIVE

- *Paragraph 9(1) of the 4th Schedule* prescribes that a tax directive (IRP 3) is issued by SARS to instruct the employer / fund how to deduct employees' tax from certain payments where the prescribed tax tables do not cater for certain remuneration or other payments.
- Tax calculations according to the tax directive should be regarded as a mere estimate as some employees may find that they still have to pay in substantial amounts or that a credit may be due to them once the final liability has been determined on assessment.
- The following rules relate to a tax directive —
 - A tax directive is only valid for the tax year or period stated thereon.
 - Employers may not act upon photocopies of directives.
 - Employers may under no circumstances deviate from the instructions of the directive.
 - Tax directives issued to electronic clients via the SARS Interface are valid directives.
 - Employers must apply the percentage of employees' tax as indicated on the directive prior to taking into account allowable deductions for employees' tax purposes (e.g. pension, retirement annuity fund contributions, etc).

- Tax directives must be applied for in all the circumstances explained in the following paragraphs.
- Reasons and application forms for tax directives
 - Application forms have been developed for purposes of applying for a specific tax directive and all these application forms are available on SARS website www.sars.gov.za. Form A & D, Form B and Form C **are samples of forms to be used by funds and** fund administrators must add their own logo and address when submitting the applications forms to SARS offices.
 - When applying for a tax directive, the employer / fund administrator must ensure that the correct application form is used according to the reason for the exit from the fund / employer's service and nature of the amount payable to the employee / member of the fund.
 - **The forms that are available are –**
 - IRP 3(a) – Gratuities paid by employer (e.g. death / retirement / retirement due to ill health, superannuation & other / retrenchment / share options without obligation / in service payment within 5 years of retirement / other).
 - IRP 3(b) – Employees' tax to be deducted at a fixed percentage (e.g. commission agents / personal service company / personal service trust).
 - IRP 3(c) – Employees' tax to be deducted at a fixed amount (e.g. Paragraph 11 of the 4th Schedule (hardship) / assessed loss carried forward).
 - IRP 3(d) – Determine deemed remuneration to be used to deduct employees' tax (e.g. Paragraph 11 of the 4th Schedule (hardship) / Paragraph 11C(1)(ii)(bb) of the 4th Schedule).
 - Form A & D – Lump sums paid by pension and / or provident fund. (e.g. death / ill health / retirement / provident fund – deemed retirement).
 - Form B – Lump sums paid by pension and / or provident fund on resignation / withdrawal / winding up / transfer / *Section 1, Paragraph (eA) of the definition of gross income* transfer or payment / surplus apportionment / unclaimed benefit).
 - Form C – Lump sums paid by a RAF to a member (e.g. death before retirement / death after retirement / ill health / retirement / transfer from one RAF to another / unclaimed benefit).
- To avoid a delay in the issuing of a directive, certain minimum information is required on the relevant application form. Please refer to AS-IT-15 on the SARS website: www.sars.gov.za for more information.

12.2 GRATUITIES ON TERMINATION, IMPENDING TERMINATION OF SERVICES OR RETRENCHMENT

- A gratuity is an amount, voluntary or otherwise, paid to an employee by an employer in respect of the termination of service. The most common examples are —
 - Normal termination of service as a result of resignation or discharge;
 - Retirement or death; and
 - Termination of service as a result of retrenchment.
- An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.
- Normal termination of service
 - The gratuity paid by an employer to an employee is treated as an annual payment (for example, service bonus) and the applicable formula is used for the calculation of employees' tax.
 - A SITE calculation must be done at the end of the tax period to determine the SITE and the gratuities must be reflected on the IRP 5 certificate under code 3907.
- Dismissal, retrenchment **or retirement**
 - **A tax directive must be obtained from the SARS office or where the employee is on register for income tax purposes.**

- Where, on dismissal or retrenchment, an employee is entitled to an amount which refers to the period that the employer is obliged to give the employee notice of such termination of service (e.g. the employer pays the employee an amount equal to the salary the employee would have earned if such employee had worked for the full notice period), the amount (notice pay) will not qualify for the exemption in terms of *Sections 7A(4A) or 10(1)(x)* and **notice pay must not be entered** on the IRP 3(a) application form as part of the lump sum amount.
 - **The applicable exemption shall be determined by SARS with the processing of the tax directive application.**
 - The gratuity due to retrenchment, retirement, etc. must be reflected on the IRP 5 certificate under code 3901 and the tax attributed to the lump sum must be reflected as PAYE.
 - **Exemption** — Any amount in cash or in kind, received by or accrued to an employee or the holder of any office by way of bonus, gratuity or compensation (including payment for accumulated leave and redundancy payment) because of the termination of his / her services or because of the impending termination of his / her services within five years, is exempt from tax to the extent of a cumulative amount of R30 000 **provided that** —
 - the person to whom it is paid has attained the age of 55; or
 - the termination or impending termination of such person's services is due to superannuation, ill-health or other infirmity; or
 - the termination of the person's services is as a result of the employer having ceased trading or where he / she has affected a general reduction in personnel or a reduction in personnel of a particular class.
 - The exemption does not apply where the employer is a company and the employee concerned was at any time a director of the company or at any time held more than 5% of the company's issued share capital.
- Lump sum payments in five years preceding retirement
 - Only lump sum payments in the five years preceding the retirement (termination of the employee's services) or retrenchment (reducing staff numbers) or payments which falls together with the retirement (termination), will be taken into account for purposes of the exemption.
 - A further requirement is that the first of such payments (in the case of leave payments) must be in respect of all leave to the employee's credit at that stage.

12.3 HARDSHIP DUE TO ILLNESS OR OTHER CIRCUMSTANCES

- *Paragraph 11 of the 4th Schedule* prescribes that the Commissioner may, having regard to the circumstances of the case, issue a directive authorising the employer to refrain from deducting any employees' tax or to deduct a specified amount to alleviate hardship due to illness or other circumstances or to correct an error in the calculation of employees' tax.
- An IRP 3(c) application form, which is obtainable from SARS, must be submitted in respect of the above.

12.4 GAINS MADE IN RESPECT OF RIGHTS TO ACQUIRE MARKETABLE SECURITIES

- *Paragraph 11A of the 4th Schedule* prescribes that the employer must apply for an IRP 3 tax directive in order to ascertain the amount of employees' tax to be deducted or withheld from any gain made by the exercise, cession or release of any right to acquire any marketable security as contemplated in *Section 8A* **which applies if the right was obtained before 26 October 2004.**
- **Taxable portion** — A tax liability will arise on the day on which the **right** is exercised or otherwise dealt with and will be calculated as the difference between the amount paid for the **marketable security** and the market value at that date.
- An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.

- **IRP 5** — The income must be reflected under code 3707 on the certificate.

12.5 BROAD-BASED EMPLOYEE SHARE PLAN

- *Paragraph 11A of the 4th Schedule* prescribes that employees' tax must be deducted from any amount received by or accrued to the employee during the year from any gain made from the disposal of any qualifying equity share or any right or interest in a qualifying equity share as contemplated in *Section 8B*, which —
 - was acquired in terms of a broad-based employee share plan; and
 - is disposed of by the employee within five years from the date of grant of that qualifying equity share, otherwise than —
 - in exchange for another qualifying equity share;
 - on the death of the employee; or
 - on the insolvency of the employee.
- Exchange for other qualifying equity share
 - If an employee disposes of a qualifying equity share in exchange solely for any other equity share, that other equity instrument in exchange is deemed to be —
 - a qualifying equity share which was acquired by the employee on the date of grant of the qualifying equity share disposed of in exchange; and
 - acquired for a consideration equal to any consideration given for the qualifying equity share disposed of in exchange.
 - If an employee acquires any equity share by virtue of any qualifying equity share held by the employee, that other equity share so acquired is deemed to be a qualifying equity share which was acquired on the date of grant of the qualifying equity share so held by the employee.
- Employers must calculate the employees' tax deductible from any amount received by or accrued to the employee during the year from any gain made from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, in the same manner as tax on an annual payment (bonus). **Where the employee is not employed by the employer, the tax must be determined at a fixed rate of 25%.**
- **IRP 5** — The income must be reflected under code 3717 on the certificate.

12.6 VESTING OF EQUITY INSTRUMENTS

- *Paragraph 11A of the 4th Schedule* prescribes that the employer must apply for an IRP 3 tax directive in order to ascertain the amount of employees' tax to be deducted or withheld from any gain in respect of the vesting of any equity instrument as defined in *Section 8C*.
- These provisions are only applicable to any equity instrument acquired on or after 26 October 2004.
- **Taxable portion:** The gain to be included in the remuneration of an employee is —
 - in the case of a disposal, the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or
 - in any other case, the sum of —
 - the amount by which the market value of the equity instrument determined at the time that it vests in that employee exceeds the sum of any consideration in respect of that equity instrument; and
 - the excess amount (if any) which exceeds the consideration in respect of the restricted equity instrument where the consideration includes an amount other than restricted equity instruments.
- When the equity instrument vests in the employee and when an unrestricted equity instrument is acquired, the gain will be subject to the deduction of employees' tax.

- **Vesting of equity instrument:** An equity instrument acquired is deemed to vest —
 - in the case of an unrestricted equity instrument, when the employee acquires it; and
 - in the case of a restricted equity instrument, at the earliest of —
 - when all relevant restrictions cease;
 - immediately before the employee disposes of it (except for disposals discussed hereunder);
 - immediately after it terminates (if it is an option);
 - immediately before the employee dies if all the restrictions relating to that equity instrument are or may be lifted on or after death; and
 - the **time a disposal (contemplated in 2(a)(1) or (b)(i) occurs.**
- A disposal does not trigger a vesting if —
 - a restricted equity instrument is replaced by another restricted equity instrument;
 - a restricted equity instrument is disposed of to a person otherwise than by or under a disposal made in terms of a transaction at arm's length; or
 - a restricted equity instrument is disposed of to a connected person.
- An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.
- **IRP 5** — The gain must be reflected under code 3718 on the certificate.

12.7 ARBITRATION AWARDS

- Awards (e.g. CCMA and labour court awards) are remuneration as defined if it can be established that the award is actually in respect of services rendered.
- CCMA and labour court awards can be classified into three broad categories:
 - **Unfair dismissals** — Amounts awarded in respect of unfair dismissals are remuneration as defined in the Fourth Schedule and are therefore subject to the deduction of employees' tax. Such amounts are received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment to any office or employment.
 - **Termination of employment contract prior to its expiry date** — Amounts awarded in respect of termination of an employment contract prior to its expiry date are remuneration as defined in the Fourth Schedule and are therefore subject to the deduction of employees' tax. Such amounts are received or accrued in commutation of amounts due under a contract of employment or service or in respect of cancellation or variation of any office or employment.
 - **Unfair labour practices** — Amounts paid or accrued as a result of unfair labour practice, may be included in remuneration as defined. SARS will examine the facts of the case and the nature of amounts awarded when the application for a tax directive is received from the employer.
- A written application, accompanied by all relevant information, for a ruling must be directed to the nearest SARS Branch Office where it is established that a portion of the award is not taxable.
- **Employees' tax** — Employers must calculate the employees' tax deductible from the taxable award in the same manner as tax on an annual payment (bonus).
- **IRP 5** — The relevant taxable and non-taxable portions of an arbitration award must be reflected on the certificate under code —
 - 3608 (taxable amount); and
 - 3609 (non-taxable amount).

12.8 LUMP SUM PAYMENTS FROM A PENSION, PROVIDENT OR RETIREMENT ANNUITY FUND

- In terms of the *Second Schedule*, SARS determines the amount of employees' tax attributable to a lump sum payment from a pension, provident or retirement annuity fund on application for a tax directive.
- Application forms A & D, B or C are furnished by the administrators of the relevant funds in accordance with the instructions contained in the Government Gazette No. 22577 (notice no. 1893) dated 24 August 2001. Examples of updated application forms are available on the SARS website www.sars.gov.za.

12.9 DIRECTORS OF PRIVATE COMPANIES / MEMBERS OF CLOSE CORPORATIONS

- *Paragraph 11C(1)(c)(ii)(bb) of the 4th Schedule* prescribes that the employer must **only** apply for a tax directive to determine the minimum amount of remuneration where the minimum amount (deemed amount) **cannot** be determined for the purpose of the prescribed formula.
- *Paragraph 11 of the 4th Schedule* prescribes that the director may apply for a relief where there is a verifiable result of hardship (refer to Hardship due to illness or other circumstances in paragraph 12.3).
- **Where the minimum amount cannot be determine for purposes of the prescribed formula** — Where the employer has not determined the remuneration for the year preceding the last tax year, the employer must apply for a tax directive to determine the amount of remuneration which is deemed to have been received by the employee (director).
 - The following **minimum information** MUST be supplied in the space provided for on the application form as well as the personal particulars of the director:
 - Last known remuneration received or accrued [including allowances but excluding lump sums (as contained in Paragraph (d), (e) and (f) of the definition of gross income in Section 1) and gains made by directors in respect of rights to acquire marketable securities];
 - Tax year in which such remuneration was received; and
 - Number of completed months for which the last known remuneration was received.
- **Relief where there is a verifiable result of hardship** — Where the expected remuneration of a director for the current year is less than the remuneration received for the previous year, the director may apply for a tax directive for relief.
 - The following **minimum information** MUST be supplied in the space provided for on the application form as well as the personal particulars of the director:
 - Last known remuneration received or accrued [including allowances but excluding lump sums (as contained in Paragraph (d), (e) and (f) of the definition of gross income in Section 1) and gains made by directors in respect of rights to acquire marketable securities];
 - Tax year in which such remuneration was received;
 - Number of completed months for which the last known remuneration was received;
 - The estimated / actual remuneration for the current tax year; and
 - Documentation to support the application, such as interim financial statements and / or minutes of meetings held by directors which indicate that remuneration to be paid to directors will be less than the remuneration for the previous tax year.
- An IRP 3(d) application form, which is obtainable from SARS, must be submitted in respect of the above.
- The taxation of director's remuneration is covered separately in this guide (refer to paragraph 14.4).

13 TAX DEDUCTION TABLES

13.1 RATES OF TAX PRESCRIBED BY THE COMMISSIONER

- *Paragraph 9(1) of the 4th Schedule* states that the deduction tables are prescribed by the Commissioner, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister of Finance in the budget statement.
- *Paragraph 9(2) of the 4th Schedule* prescribes that these tables come into force on such a date as may be notified by the Commissioner in the Government Gazette and remain in force until withdrawn by the Commissioner.
- In the absence of a tax directive to the contrary as prescribed in *Paragraph 10 of the 4th Schedule*, employers must make use of the deduction tables prescribed by the Commissioner or use the statutory rates as an alternative.
- Implementation of new rates of tax
 - The new tax rates must be implemented by employers as soon as possible but not later than 1 July of a tax year and employees' tax must be calculated according to these rates.
 - Any **over deduction** of employees' tax arising as a result of the implementation of new rates not in the employer's possession on 1 March of each new tax year, may be refunded to the employee as soon as new rates (tables) are implemented.
 - Any **under deduction** of employees' tax arising as a result of the implementation of new rates not in the employer's possession on 1 March of the new tax year, may be adjusted over the remainder of the new tax year (from the date of implementation until 28 February).
- **Employee leaves employment before introduction of new tables** – If an employee leaves your employment after 1 March of the new tax year but before the implementation of the new rates, the employees' tax deductions made in accordance with the previous rates are regarded as final.
- Rebates for individuals which are prescribed in *Section 6* are deducted from the normal tax determined according to the statutory rates of tax. No rebates are allowed to trusts or personal service trusts.

13.2 STATUTORY RATES OF TAX

- Rates applicable to individuals

Taxable Income		Rates of Tax			
R	R	R			R
0	— 122 000		18%	of every R1	
122 001	— 195 000	21 960	+	25%	of the amount over 122 000
195 001	— 270 000	40 210	+	30%	of the amount over 195 000
270 001	— 380 000	62 710	+	35%	of the amount over 270 000
380 001	— 490 000	101 210	+	38%	of the amount over 380 000
490 001	and over	143 010	+	40%	of the amount over 490 000
Rebates:					
Primary rebate					R8 280
Additional rebate for persons 65 years or older					R5 040
Tax thresholds:					
Persons under 65 years					R46 000
Persons 65 years or older					R74 000

- The rebates for individuals are deducted from the normal tax determined according to the statutory rates of tax.
- The primary rebate is deductible for all individuals although the additional rebate may only be applied for individuals who are 65 years or older.

- Rates applicable to personal service trusts
 - Employees' tax must be deducted at a flat rate of 40% on the remuneration of personal service trusts (excluding a special trust).
 - No rebates are allowed to personal service trusts.
- Rates applicable to personal service companies
 - Employees' tax must be deducted at a flat rate of 33% on the remuneration of personal service companies.
 - No rebates are allowed to personal service companies.

13.3 DIFFERENT VERSIONS OF TAX DEDUCTION PROGRAMS

- Small differences may occur between the manual tables, SARSTax 2000 and other computer programs based on the statutory rates of tax. All these methods are acceptable in terms of the Income Tax Act as long as the results are within the rules provided for in the Act.
- Tax deduction tables
 - The manual tables and guidelines for employers include weekly, fortnightly, monthly and annual deduction tables. The tables are issued free of charge and should extra copies be required, these can be obtained from SARS. The tax rebates have already been taken into account in the compiling of the manual tables, therefore no further calculations are necessary.
 - The tables are attached to this guide (see [AS-PAYE-05-A4 to A7](#)).
- SARSTax 2000
 - The employees' tax deduction software program is available on compact disc under the name SARSTax 2000. The minimum software and hardware required to use the program is —
 - WINDOWS 95 / 98 / 2000 / XP or WINDOWS NT with SP5 or later;
 - Microsoft Internet Explorer (version 4 or later);
 - 486 / 100 MHZ or higher processor;
 - CD Rom drive;
 - 16MB RAM (recommended 24MB); and
 - SVGA (800 x 600) or higher screen resolutions.
 - **SARSTax 2000** is supplied free of charge and may be reproduced freely. The latest version, in operation since 1 March 2006, is version 3. New tax rates, which need to be imported, are distributed annually.

14 CLASSIFICATION OF EMPLOYEES (WORKERS)

14.1 LABOUR BROKER

- The provision or procurement of workers as opposed to the provision of service is of importance. Typically, a labour broker arrangement will involve three parties, namely:
 - **Client:** The person who specifies the workers required. A written or oral service contract would arise between the client and the labour broker where the service conditions of the workers may or may not be stipulated. Payments for the workers' services are made to the labour broker.
 - **Labour broker:** The labour broker is a person who, for reward, provides and remunerates workers for a client and is either in or not in possession of an exemption certificate (IRP 30). The labour broker either makes available his / her own employees to perform work for a client or procures workers for a client. The labour broker pays the workers.
 - **Workers:** These workers can be any person, including —
 - Members and / or employees of a close corporation;
 - Directors and / or employees of a company;
 - Trustees and / or employees of a trading trust;

- Proprietors and / or employees of a business; and
- Partners and / or employees of a partnership.
- Exemption certificate (IRP 30)
 - Paragraph 2(5) of the 4th Schedule makes provision for an exemption certificate to be issued by SARS to a labour broker, which will absolve employers from having to deduct employees' tax from any payments made to such labour brokers.
 - SARS shall not issue an exemption certificate if —
 - more than 80% of the gross income of the labour broker during the tax year consists of amounts received from any one client, unless the labour broker employs three or more full-time employees throughout the tax year —
 - who are on a full-time basis engaged in the business of that labour broker of providing persons to or procuring persons for clients of that labour broker; and
 - who are not connected persons in relation to that labour broker; or
 - the labour broker provides to any of its clients the services of any other labour broker; or
 - the labour broker is contractually obliged to provide a specified employee of the labour broker to render any service to such client.
 - An exemption certificate is only valid from the date of issue until the end of the tax year.
 - The labour broker must apply annually on an IRP 30(a) form for a new exemption certificate at a SARS office at least 2 months before the expiring of his / her current exemption certificate. If the issue of an exemption certificate is delayed for longer than a calendar month, the date of validity will be altered from the date of issue to the date the application was received. In such cases any employees' tax deducted is refundable by the relevant employer.
 - An exemption certificate will only be valid if:
 - it is not outdated;
 - it bears a labour broker reference number beginning with a 7;
 - it has been computer printed;
 - the labour broker is in possession of the original; and
 - it has not been altered in any way.
 - If a labour broker is in possession of a valid exemption certificate and undergoes a change of name, the original certificate must be returned to the relevant SARS office together with an application for a new certificate, which indicates the changed particulars.
 - If an exemption certificate has been lost or misplaced, application for a replacement certificate must be made to SARS Head Office and the replacement certificate will only be issued during the period of validity of the original certificate.
- Employees' tax applicable to Labour brokers
 - If a labour broker is not in possession of a valid exemption certificate (IRP 30), all payments made to the labour broker will be subject to employees' tax.
 - An employer who does not deduct employees' tax from a payment to a labour broker must be in possession of a certified copy of an exemption certificate (IRP 30) that must be retained for inspection purposes.
 - The deduction is classified in the following categories:
 - Individuals — employees' tax must be deducted according to the employees' tax deduction tables.
 - Company or close corporation — where the labour broker is a company or close corporation, tax must be deducted according to the rate applicable to employment companies (33%).
 - Tax directive — tax must be deducted according to the instructions on the tax directive.
- IRP 5 details
 - The employees' tax deducted for individuals, companies and close corporations whether calculated according to the deduction tables or a tax directive, must be reflected as PAYE **and not** as SITE on the certificate.
 - The remuneration must be reflected under code 3617 on the IRP 5 certificate.
 - The reason code for non-deduction of employees' tax must be reflected as 07 on the certificate.

14.2 PERSONAL SERVICE COMPANY OR PERSONAL SERVICE TRUST

- Rules to determine if an employee is a personal service company / trust
 - A personal service company or trust is any company or trust where services are rendered personally by any connected person in relation to such company or trust and —
 - the person rendering the service would be regarded as an officer or employee of the client, had such service been performed directly to the client;
 - **those duties must be performed mainly at the premises of the client and** the person rendering the service is subject to the control and supervision of the client as to the manner in which the duties are performed in rendering such service; or
 - more than 80% of the income of the company / trust is derived during the tax year from one client.
 - The employee will be deemed to be a personal service company or personal service trust if any of the above scenarios apply.
 - A person shall not be required to deduct or withhold employees' tax solely by virtue of the fact that 80% of the income of the company is derived during the tax year from one client, where the personal service company / trust has provided that person with an affidavit or solemn declaration stating that the relevant paragraphs mentioned above do not apply and that person relied on that affidavit or declaration in good faith. **This affidavit must be provided annually in respect of each year of assessment.**
- **Exclusion:** A company or trust who employs throughout the tax year three or more full-time employees (other than shareholders, members or connected persons) who are on a full-time basis engaged in the business of the company or trust of rendering any service.
- **Employees' tax** — The rate at which employees' tax is deductible for personal service companies is **33%** and for personal service trusts **it is 40%**.
- **IRP 5 details** — The employees' tax deducted must be reflected as PAYE on the certificate.

14.3 INDEPENDENT CONTRACTOR

- Income earned by an independent contractor is specifically excluded from the *definition of remuneration in Paragraph 1(ii) of the 4th Schedule*.
- In distinguishing between an employee and an independent contractor / trader one must commence with an analysis of the employment contract. The object of the contract (or the parties' rights and obligations under the contract) must be established.
- The object of the contract is not a mere indicator, but determines the legal nature of the contract. The object to be established is the pre-eminent object, for example —
 - If the object is the surrender of productive capacity (whether capacity to provide a service or to produce things), then the contract is for employment of an employee. The essence of an employee's contract (contract of service) is the placing of one person's services (labour) at the disposal of another, enabling the acquisition of that service itself and not simply the fruits of that productive capacity.
 - If the object is the acquisition of the result of deployed productive capacity (of a produced thing or of a provided service), then the contract is for the employment of an independent contractor. The essence of an independent contractor's contract (contract for services or work) is that the independent contractor only commits himself / herself to deliver the product or end result of that capacity.
- **Exceptions:** The *4th Schedule* prescribes that the independent contractor's income will be deemed to be remuneration and will therefore be subject to employees' tax, if —

- the services are required to be performed mainly at the premises of the person by whom the remuneration is paid / payable or of the person to whom such services were or are to be rendered; and
 - the person who render or will render the service is subject to the control and supervision as to the manner in which his / her duties are performed or to be performed or as to his / her hours of work.
- The person will be deemed to be an independent contractor if he / she throughout the year of assessment employs three or more employees who are on a full-time basis engage in the business of persons rendering any such service other than any employee who is a connected person in relation to such person and not any of the two requirements under the exceptions above are met.
- The employer, being a party to the employment contract, is in the best position to determine whether or not the employee is an independent contractor. SARS has therefore provided certain guidelines in order to assist the employer with this responsibility. These guidelines are available in Interpretation Note 17 and can be obtained on the website www.sars.gov.za under Interpretation Notes / Income Tax.

14.4 DIRECTORS OF PRIVATE COMPANIES / MEMBERS OF CLOSE CORPORATIONS

- The *definition of employee in Paragraph 1 of the 4th Schedule* includes a director of a private company. Any remuneration paid or payable to a director of a private company or a member of a close corporation is therefore subject to the deduction of employees' tax from 1 March 2002.
- *The definition of a company in Section 1 of the Act includes a close corporation and therefore, the same rules for the deduction of employees' tax from the remuneration of directors of private companies apply to members of close corporations. This definition includes a person who, in respect of a close corporation, holds any office or performs any functions similar to the functions of a director of a company other than a close corporation.*
- **Deemed minimum remuneration** — A director is deemed to have received a minimum amount of remuneration every month.
 - The minimum amount of remuneration is determined by the formula prescribed in *paragraph 11C of the 4th Schedule*, namely —

$$Y = \frac{T}{N} \text{ in which:}$$

- **Y represents** the monthly amount to be determined;
- **T represents** the balance of remuneration paid or payable to the director by that company in respect of the last tax year of that director, less any amounts included **in that remuneration** —
 - relating to the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment;
 - which are lump sum payments received from a retirement fund;
 - in commutation of amounts due under any contract of employment or service;
 - which are gains made by the exercise, cession or release of any right to require any marketable security as contemplated in Section 8A;
 - which are gains made from the disposal of any qualifying equity share as contemplated in Section 8B; and
 - Which are gains made from the vesting of any equity instrument as contemplated in Section 8C; and
- **N represents** the number of completed months in the tax year in respect of which T was derived.
 - If the remuneration for the year preceding the last tax year has also not been determined as yet, then the company must request the Commissioner to determine the remuneration for the purposes of the formula.

- Where the remuneration of the director for the last tax year has not yet been determined for purposes of T in the formula, T shall then be determined based on the balance of remuneration paid / payable by the company to the director in respect of the preceding tax year increased by an amount equal to 20% of that remuneration and N shall be the number of completed months which the director was employed by that company during that preceding tax year.
- Fixed remuneration more than 75% of T in the formula
 - With effect from 1 March 2004 the requirement to determine employees' tax on the deemed remuneration will not be applicable to directors earning more than 75% of their remuneration in the form of fixed monthly payments.
 - Where more than 75% of T (only T in respect of the last tax year) consists of fixed monthly remuneration, the company must use actual remuneration to calculate the monthly PAYE (i.e. *paragraph 11C* is **NOT** applicable). Where the remuneration in respect of the last tax year has not been finalised **or where it has been finalised and not more than 75%** of T consists of fixed monthly remuneration, the company must apply *deemed minimum remuneration rules as set out under the relevant heading above*.
- **Where T in the formula cannot be determined:** Where the deemed remuneration cannot be determined in the prescribed manner as a result of the fact that the remuneration of the director has not been determined for the relevant years of assessment, SARS must be approached to make the determination.
- *Paragraph 9(5) of the 4th Schedule* prescribes that the monthly employees' tax must be determined on the higher of the actual or the deemed remuneration of the directors of a company.
 - Where the actual remuneration is used, employees' tax is payable by the director and must be calculated on the actual remuneration.
 - Where the deemed remuneration is the highest, employees' tax on the deemed remuneration exceeding the employees' tax on the actual remuneration must be paid by the company and the difference must be paid by the director by way of a deduction from the director's actual remuneration.
- **Right of recovery:** The employer has the right to recover the PAYE on the deemed remuneration paid by the company from the director. This recovery may, in addition to any other right of recovery, be recovered from any amount which is or may become payable by the company to the director. The director **IS NOT ENTITLED TO** receive an employees' tax certificate in respect of the amount of **EMPLOYEES' TAX PAID BY THE COMPANY** on the deemed **REMUNERATION IF THE COMPANY HAS NOT RECOVERED** the employees' tax from the director.
- **Director status changes to employee:** Where the person ceases to be a director but remains an employee of the company, the formula must no longer be used and PAYE must be deducted from remuneration that is actually paid or is payable to the employee. Only one IRP 5 needs to be issued for the year.
- **Director appointed during tax year:** Where a person is appointed as a director of a private company during the tax year and the director was not previously an employee of that company, PAYE will be payable on the actual remuneration which is paid or is payable to the director during that tax year. The formula will not be applied to deem any remuneration to have accrued to the director in the year of appointment. However, where the newly appointed director was previously an employee of the company, the formula will be applicable.
- *Paragraph 11 of the 4th Schedule* prescribes that **relief** can be obtained from SARS where there is a verifiable reason for hardship. In these situations, SARS has the discretion to issue a directive to reduce the amount of PAYE payable.

- The amount of tax that a private company pays in respect of the deemed remuneration of each director is not considered to be a loan granted to that director for the purposes of the Seventh Schedule, i.e. it does not give rise to an interest-free loan fringe benefit. It is an amount for which the company is liable in terms of *Paragraph 11C(2) of the 4th Schedule*.
- **Remuneration for SDL and UIF contributions purposes:** As the **actual** remuneration of a private company director **falls** within the definition of remuneration, the **actual** remuneration must be **used for** the calculation of SDL and UIF contributions.
- Remuneration only determined in the next tax year
 - Circumstances may arise where the remuneration of a director or portion thereof accrues in a tax year but the quantum of the remuneration is only determined in a later year. For example, the service contract of a director may provide that the director is entitled to a bonus of 10% of the company's profits for the year ending on 28 February 2008. The financial accounts of the company are only finalised on 30 June 2008 when the quantum of the director's bonus can be determined.
 - As long as the accrual of the bonus is not dependant on any other condition that may happen after the end of the 2008 tax year, the bonus will accrue in the 2008 tax year. The bonus which is eventually quantified in the 2009 tax year will not, however, be included in the calculation of the actual remuneration for the determination of PAYE in either the 2008 or 2009 tax year. Instead it will be included in the calculation of the deemed remuneration for the 2009 tax year (which must be re-calculated at the time of determination).
- **Employees' tax** — SITE is not deductible from the remuneration of directors because their remuneration is specifically excluded from the definition of net remuneration. Employers must therefore **reflect PAYE only on the IRP 5 certificate**.
- IRP 5 detail
 - The remuneration shown on the IRP 5 must be the amount of actual remuneration which is paid / payable to the director for the tax year.
 - The amount of PAYE shown on the IRP 5 will be the sum of the PAYE that was deducted from the actual remuneration of the director and the PAYE paid by the company in respect of the deemed remuneration of that director.
 - The salaries paid to directors must be reflected under code 3615 on the IRP 5 and all other components of the remuneration (bonus, allowance, benefits, etc.) must be reflected against the existing codes.
- Example: Actual remuneration
 - **The director received a fixed monthly salary of R10 000 per month and when calculating T in the formula, it amounts to R150 000.**
 - **The fixed monthly remuneration of R120 000 (R10 000 x 12) exceeds 75% of T, therefore employees' tax must be deducted on the fixed monthly remuneration of R10 000 and Paragraph 11C of the 4th Schedule (deemed remuneration) must not be applied.**
- Example: Deemed minimum remuneration
 - **The total remuneration of the director received for the last year of assessment was R150 000 and the director was only employed for 10 months during the last year of assessment.**
 - **Calculating the deemed minimum remuneration by applying the prescribed formula:**
 - 150 000 (T)
 - 10 (N)
 - = R15 000 (Y)
 - **The deemed minimum remuneration is thus R15 000.**

- Example: Remuneration determined in the next tax year
 - The service contract of a director may provide that the director is entitled to a bonus of 10% of the company's profits for the year ending on 28 February 2008. The financial accounts of the company are only finalised on 30 June 2008 when the quantum of the director's bonus can be determined.
 - As long as the accrual of the bonus is not dependant on any other condition that may happen after the end of the 2008 tax year, the bonus will accrue in the 2008 tax year.
 - The bonus which is eventually quantified in the 2009 tax year will not, however, be included in the calculation of the actual remuneration for determination of PAYE in either of the 2008 or 2009 tax year. It will instead be included in the calculation of the deemed remuneration of the 2009 tax year (which must be re-calculated at the time of the determination).

14.5 STUDENTS AND SCHOLARS

- Full-time students and scholars do not fall in a specific category and are taxed in the same manner as any other employee. The employer must determine, according to the rules for standard employment and non standard employment (25% deduction), which applicable method of deducting employees' tax must be used.

14.6 SEASONAL WORKERS

- A seasonal worker is a person who is only employed during a peak period for a specific period, for example:
 - Persons employed on a fruit farm during the picking season to pick and pack fruit;
 - Persons employed on a sheep farm to assist with either the lambing or shearing; or
 - Factories that require additional help during the canning season.
- A tax period commences at the date the employee was employed and ends on the date his / her employment was terminated.
- If the season extends over the following tax year, the employer must issue two IRP 5 certificates in respect of the two tax periods. For example, the employee will have two periods where a season extends from 15 November to 20 May, namely, 15 November to 28 February (1st tax year) and 1 March to 20 May (2nd tax year). Two IRP 5 certificates must be issued for the two periods as the employee has two tax periods in one service period.

14.7 EMPLOYEES 65 YEARS OR OLDER

- *Paragraph 11B(6) of the 4th Schedule* prescribes that employees' tax deductions for persons 65 years or older must be made according to the tables for PERSONS 65 YEARS OR OLDER from the **beginning** of the tax period (e.g. 1 March) during which the employee turns 65 and not as from the month the qualifying age of 65 is attained.
- Employees 65 years or older must furnish the employer with a written declaration or a copy of his / her identification document as confirmation thereof. Where no such proof is submitted, the employer is obliged to determine the SITE and PAYE liability according to the tables applicable to PERSONS UNDER 65 YEARS.
- *Paragraph 2(4) of the 4th Schedule* prescribes that contributions to a medical scheme may be deducted prior to the calculation of employees' tax in respect of employees who are 65 years or older.

14.8 TEMPORARY EMPLOYEES WHO ARE FREQUENTLY EMPLOYED

- Where an employer employs employees regularly or frequently for such periods as may be required by the employer, the Commissioner may in terms of the *sub-paragraph (c) of the definition of standard employment in Paragraph 11B of the 4th Schedule*, after consultation with the employer, issue a ruling to the employer **as to the method to be used for the calculation of employees' tax for such a group of employees.**
- A written application (by the employer), accompanied by all relevant information, must be directed to the nearest SARS **Branch Office** (refer also to Standard employment in paragraph 15.1). The following information is pertinent to the written application —
 - a full explanation of the specific category of employees in respect of which the application is made,
 - a full description of the basis on which such employees are employed, and
 - a full explanation as to why such employees are regularly or frequently employed.

14.9 COMMISSION AGENTS

- Employee works for commission only:
 - If the employee is in possession of a tax directive, the employer **MUST** deduct employees' tax according to the instructions on the tax directive and the employees' tax deducted must be reflected as PAYE on the IRP 5 certificate.
 - If the employee is not in possession of a tax directive, the employer **MUST** deduct employees' tax according to the applicable tax deduction tables and a SITE calculation must be done at the end of the tax year or tax period.
- Employee works for salary and commission:
 - If the employee is in possession of a tax directive, the employer **MUST** deduct employees' tax according to the instructions on the tax directive and the employees' tax deducted must be reflected as PAYE on the IRP 5 certificate.
 - If the employee is not in possession of a tax directive, the employer **MUST** combine the salary and commission and deduct employees' tax according to the applicable tax deduction tables and a SITE calculation must be done at the end of the tax year or tax period.
- Under no circumstances may 25% or any other percentage for that matter, be deducted from remuneration, unless the tax directive so directs.
- **An employee earning commission may only apply for a tax directive where his / her remuneration consists mainly in the form of commission based on the employee's sales or turnover attributable to him / her.**
- **IRP 5** — Commission income must be reflected under code 3606 on the IRP 5 certificate and the salary income under code 3601.
- Example: Employees' tax on quarterly commission
 - **An employee (under 65) received a monthly salary and according to results he also received commission every three months. The remuneration and employees' tax details are as follows:**

• Month	• Salary	• Commission	• Employees' tax
• April	• 4 505	•	• 120.63
• May	• 4 505	•	• 120.63
• June	• 4 505	• 1 500	• To be calculated

•	Divide the quarterly commission by the number of months in which it was earned:	R1 500	÷	3	•	500.00	•
•	Add: salary for June				•	4 505.00	•
•					•	5 005.00	•
•	Tax on R5 005 (salary and commission) according to the monthly tables ...				•	211.62	•
•	Less: tax on R4 505 (monthly salary)				•	120.63	• 120.63
•	Tax on commission for one month				•	90.99	•
•	Multiply tax on commission for one month with the number of months in which it was earned:	R90.99	x	3	•		• 272.97
•	Employees' tax deductible for June				•		• 393.60

15 CLASSIFICATION OF PAYMENTS

15.1 DEEMED standard AND NON-STANDARD EMPLOYMENT

- Where an employee does not fall within the definition of standard employment, an employee will be deemed to be in standard employment if —
 - the employee (including scholars and students) is required to work for less than 22 hours a week and the employee furnishes a written declaration that he / she will not render services to any other employer, for the period that such employment is held; or
 - the employee works for at least 5 hours a day and receives less than R176 per day.
- Where the employer conducts his / her business in such a manner that employees render services on a regular or frequent basis for such periods as may be required by the employer the Commissioner may, after consultation with the employer or with any body or association on which the employer is represented, direct that the employment of such employees shall be standard employment. The Commissioner may further instruct the employer as to the manner in which employees' tax must be deducted. (Refer also to Temporary employees who are frequently employed in paragraph 14.8).
- **Examples of non-standard employment**
 - Workers not in standard employment employed on a daily basis who are physically paid daily.
 - Casual commissions paid, such as spotter's fees.
 - Casual payments to casual workers for irregular services rendered or occasional services.
 - Fees paid to part-time lecturers.
 - Honoraria paid to office bearers of organisations, clubs, etc.
- **Employees' tax**
 - Standard employment income — The weekly, fortnightly and monthly tables are used and the annual table is used at the end of the tax period or tax year to determine SITE.
 - Non-standard employment income — Employees' tax at the rate of 25% must be calculated on the **balance of remuneration**.
 - Where the employer is in possession of a tax directive in respect of a part-time employee, tax must be deducted according to the instructions on the directive. (Refer also to Commission Agents in paragraph 14.9).

- Determining the applicable method of deducting employees' tax (unless a tax directive is applicable):

Scenario	Deduction method
Employee is not in standard employment and works at least 5 hours per day and earns less than R176 for that day	No tax to be deducted
Employee is required to work at least 22 hours a week and is in standard employment	Deduction tables
Employee is not in standard employment and works less than 5 hours per day and earns less than R176 for that day	25% deduction
Employee is not in standard employment and works at least 5 hours per day and earns more than R176 for that day	25% deduction

- IRP 5** — As the remuneration received for non-standard employment is excluded from the definition of **net remuneration**; the employees' tax deducted must be reflected as PAYE on the IRP 5.

15.2 BACKDATED (ANTEDATED) SALARIES AND PENSIONS

- The employer must ascertain the amount of employees' tax that must be deducted from backdated salaries / pensions relating to current or previous tax year.
- Where the backdated salary / pension relate to periods in the current tax year, the employees' tax must be calculated by adding the backdated salary / pension to the remuneration received.
- It is SARS' practice that employers must also calculate the employees' tax deductible from backdated salary / pension, which relates to periods in previous tax years in the same manner as tax on a bonus, using the current year's tax deduction tables.
- The employer must provide the employee with a schedule which indicates the portion of the backdated salary / pension in respect of each previous tax year.
- IRP 5** — Backdated salary (excluding any bonus) must be reflected on the certificate as follows:
 - The portion of the salary which relates to periods in the current tax year must be reflected under code 3601; and
 - The portion of the salary which relates to periods in the **previous tax years** must be reflected under code 3907.
- Example:** An employee (under 65) received a salary of R3 752 per month for the period July to December. An increase of R300 per month (backdated from 1 July) is paid in December.

Increased salary received at the end of December R3 752 + R300)	4 052.00	
Add: backdated increased for the months July to November R300 x 5)	1 500.00	
Total remuneration for December	5 552.00	
Tax on R4 052 according to the monthly tables	39.36	39.36
Less: tax on R3 752 (salary before increase)	0.00	
Tax on increase	39.36	
Tax on R1 500 (backdated increase of salary): R39.36 x 5		196.80
Employees' tax deductible for December		236.16

15.3 RESTRAINT OF TRADE PAYMENTS

- Payments in respect of a restraint of trade (i.e. sterilisation of a person's income earning capacity) are included in the *definition of remuneration in Paragraph 1 of the 4th Schedule* and are therefore subject to the deduction of employees' tax.
- *Paragraph (cA) of the definition of gross income in Section 1* prescribes that where a payment in respect of a restraint of trade was received or accrued, it will be taxable in full if it was received by or accrued to a natural person, a labour broker not in possession of an exemption certificate, a personal service company or a personal service trust.
- **Employees' tax** — Employees' tax from restraint of trade payments must be calculated in the same manner as tax on a bonus.
- **IRP 5** — Restraint of trade payments must be reflected under code 3613 on the certificate

15.4 LEAVE PAY

- Leave pay is remuneration as defined in *Paragraph 1 of the 4th Schedule* and is fully subject to the deduction of employees' tax.
- Leave days accrue as an employee works. Some employees are allowed to encash the value of accrued leave without actually taking leave – this encashment constitutes taxable remuneration. It is only when the leave is encashed that it is included in the remuneration of the employee. No value is placed on the accrued leave until the leave is encashed. Unpaid leave taken or forfeited leave do not constitute remuneration, as there is no value attached thereto.
- **Accrued leave** can be paid to an employee, and thus become taxable remuneration, when:
 - an employee dies and accrued leave is paid to the employee's **estate**;
 - **employment is terminated for any reason, such as** retirement, resignation or dismissal;
 - an employee becomes insolvent;
 - **it is encashed for any reason, such as when too much leave has accrued; or**
 - **it is encashed** due to internal arrangements (for example, employee is appointed in a more senior post or promoted).
- **Unpaid leave:** The fact that an employee has taken **unpaid leave** of any type (including maternity leave), has no effect on the employee's tax period. The tax period continues until the end of the tax year, unless the employee resigns or dies before the end of the tax year. When the tax period does end and the final tax calculation is performed to calculate SITE, it will be found that the employee has probably paid too much employees' tax due to he /she being absent without pay during the tax period.
- **Employees' tax** must be calculated differently on leave that is taken where an advance is paid and accrued leave that is encashed.
 - **Where leave is taken and an advance is paid for the leave period, the advance must be treated as advanced salary.**
 - **Accrued leave that is encashed** must be tax in the same manner as a bonus.
- **IRP 5** — **Accrued leave which has been encashed** must be reflected on the certificate under —
 - code 3901 if it accrued as a result of death, superannuation or dismissal; and
 - code 3605 if it accrued as a result of encashment or resignation.

15.5 SPECIAL REMUNERATION PAID TO PROTO TEAMS

- Amounts paid to proto team members as special remuneration are defined as remuneration in *Paragraph 1 of the 4th Schedule* and are subject to the deduction of employees' tax.

- *Section 5(9)* defines special remuneration as any amount received by or accrued to any mineworker over and above his / her normal remuneration and any regular allowance in respect of special services rendered by him / her (otherwise than in the course of his / her normal duties) in combating any fire, flood, subsidence or other disaster in a mine or in rescuing persons trapped in a mine or in performing any hazardous task during any emergency in a mine.
- The special remuneration paid to proto teams is subject to the rating formula contained in *Section 5(10)* **which can only be applied on assessment.**
- **Employees' tax** — Employers must calculate the employees' tax deductible from this special remuneration in the same manner as tax on a bonus is calculated.
- **IRP 5** — Special remuneration paid to proto team members must be reflected under code 3906 on the certificate.

15.6 ADVANCE SALARY

- Advance salary can be seen as an amount of future remuneration paid by the employer prior to actual date on which such remuneration becomes payable. Such advance payment will be subject to the deduction of employees' tax when it is paid by the employer to the employee.
- **IRP 5** — The advance salary must be reflected under code 3601 on the certificate.
- **Example:** A monthly paid employee (under 65) received R11 994 in October in respect of remuneration that is due to accrue to him in October, November and December.

• Tax on R3 998 (salary per month) according to the monthly tables	• 29.64
.....	
• Tax on R11 994 (advance salary): R29.64 x 3	• 88.92
.....	

15.7 OVERTIME PAYMENTS

- Employees' tax on overtime payments is not calculated differently from tax on salaries. Any overtime payment must be added to the salary (remuneration) for the specific period and the employees' tax must be determined by using the applicable tax deduction tables.
- **IRP 5** — The overtime payment must be reflected under code 3607 on the certificate.
- **Example:** A monthly paid employee (under 65) received R4 240 salary and R900 overtime in June.

• Tax on R5 140 (salary and overtime) according to the monthly tables	• 235.38
.....	

15.8 ANNUAL PAYMENTS

- *Paragraph 11B(3)(b) of the 4th Schedule* prescribes a special formula to be used to calculate employees' tax on annual payments.
- The following are examples of annual payments **or payments made without reference to a period:**
 - Annual bonus;
 - Incentive bonus;
 - Leave pay on resignation;
 - Encashment of leave;
 - Merit awards;
 - Backdated payments in respect of salary / wages (accrued in previous tax years);
 - An amount paid to a mineworker for picking up a diamond;

- An amount paid to an employee for a proposal to simplify procedures; and
 - A bonus or an incentive amount paid to an employee to retain his / her services for a specific period. Where this amount is repayable by the employee on termination of his / her service prior to the end of the contract period, the employees' tax paid on this amount may under no circumstances be refunded to the employee.
- **IRP 5** — The total of all annual payments received during the tax year must be reflected under code 3605 on the certificate.
 - Example: Month in which the annual payment is paid
 - **A monthly paid employee (under 65) received a salary of R4 250 and a bonus of R3 500 in October.**

• Tax on R4 250 (salary) according to the monthly table	• 75.27
.....	
• Annual equivalent of the salary R4 250 x 12)	• 51 000
• Add: bonus (annual payment)	• 3 500
.....	
• 54 500	•
• Tax on R54 500 according to the annual table	• 1532.79
.....	
• Less: Tax on R51 000 (annual equivalent) according to the annual table ...	• 902.79
• Tax on bonus (annual payment)	• 630.00
.....	
• Employees' tax deductible for October	• 705.27
.....	

- Example: Employees' tax on annual payment spread over the tax year
 - **The same figures as in the previous example are used. The employee is for the full year in the employment of the employer. The tax on the bonus must be calculated at the beginning of the employee's tax period and then spread over the remainder of the pay periods of the employee for the specific tax year.**

• Tax on R3 500 (bonus) spread over the tax year (R630.00 ÷ 12)	• 52.50
.....	

- Example: Production bonus paid in a following pay period
 - **A monthly paid employee (under 65) earns a production bonus in July but this bonus is only paid in the following pay period (August). The remuneration and employees' tax details are as follows:**

• Month	• Salary	• Production bonus	• Employees' tax
• July	• 4 705	•	• 157.35
• August	• 5 310	• 800	• To be calculated

• Tax on R6 110 (salary and production bonus) for August according to the monthly table	• 409.53
.....	
• Less: tax deducted in July according to the monthly table	• 157.35
.....	
• Tax on production bonus (paid in August)	• 252.18
.....	
	• 252.18

•	Add: tax on salary (R5 310) for August according to the monthly table	•	265.08
•	Employees' tax deductible for August	•	517.26

- If the production bonus was paid during the same pay period in which it was earned, it must be added to the salary and employees' tax must be determined according to the appropriate weekly, fortnightly or monthly table. This bonus relates to a specific period (period during which it was earned).

• Example: Monthly production bonus paid to a weekly remunerated employee

- A weekly paid employee (under 65) earns a monthly production bonus in May but this bonus is only paid in the following month (3rd week of June). The remuneration and employees' tax details are as follows:

• Month	• Week	• Wage	• Production bonus	• Employees' tax
• May	• 4	• 1 060	•	• 31.47
• June	• 1	• 1 060	•	• 31.47
•	• 2	• 1 060	•	• 31.47
•	• 3	• 1 060	• 300	• To be calculated
•	• 4	• 1 060	•	• 31.47

•	Tax on R1 060 (wage) for week 3 in June according to the weekly table	•	31.47
•	Divide the production bonus by the number of weeks in which it was earned (previous month had 4 weeks): R300 ÷ 4	•	75
•	Add: wage for 3 rd week in June	•	1 060
•		•	1 135
•	Tax on R1 135 according to the weekly table	•	45.33
•	Less: Tax on R1 060 (weekly wage) according to the weekly table	•	31.47
•	Tax on production bonus for one week	•	13.86
•	Multiply the tax on the bonus for one week with number of weeks in which it was earned:	•	55.44
•		•	
•	Employees' tax deductible for 3 rd week in June	•	86.91

15.9 ALLOWANCES AND FRINGE BENEFITS

• Allowances

- Section 8(1) provides that certain amounts must be included in the employee's taxable income. These amounts are normally referred to as allowances.
- The following type of allowances may be paid by an employer to an employee:
 - Travel allowance;
 - Subsistence allowance;
 - Allowance to a holder of a public office; and / or
 - Other allowances received by virtue of the employee's office or duties (e.g. tool allowance, etc.)

- Special provisions exist for travel, subsistence and public office allowances. Please refer to annexure 1 (AS-PAYE-05-A1) to this guide for a detail explanation in respect of these allowances.
- Fringe benefits
 - In terms of the 7th Schedule, a taxable benefit is deemed to have been granted by the employer if, as a benefit or advantage of, or by virtue of such employment or as a reward for services rendered or to be rendered, the employee is granted on of the benefits described in Paragraph 2 of the 7th Schedule, namely:
 - Acquisition of an asset at less than the actual value (money excluded);
 - Right of use of a motor vehicle;
 - Right of use of an asset (excluding a motor vehicle and accommodation);
 - Meals, refreshments or vouchers that entitle an employee to any meal or refreshment;
 - Free or cheap accommodation;
 - Free or cheap services;
 - Low or interest free loans;
 - Subsidy in respect of interest;
 - Subsidy in respect of interest on a home loan;
 - Payment of an employee's debt or the release of the employee from the obligation to pay a debt;
 - Medical fund contributions paid on behalf of an employee; and / or
 - Medical costs (other than contributions) paid for the benefit of an employee.
 - Special provisions exist for determining the amount which must be included in the taxable remuneration of an employee due to any of these benefits being granted to the employee. Please refer to annexure 2 (AS-PAYE-05-A2) to this guide for a detail explanation in respect of fringe benefits.

16 EXEMPTIONS

16.1 UNIFORMS (SPECIAL UNIFORMS)

- Where it is a condition of employment that an employee is required whilst on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of such uniform given to the employee or any allowance made by the employer to the employee in lieu of such uniform as is reasonable, is exempt from tax in terms of *Section 10(1)(nA)*.
- **IRP 5** — The value or allowance amount must be reflected under code 3709 on the certificate.

16.2 TRANSFER COSTS

- Any benefit received by an employee by reason of the fact that his / her employer has borne certain expenditure incurred in consequence of the employee's relocation from one place of employment to another or on the appointment of the employee or on termination of the employee's employment, may be exempt from tax in terms on *Section 10(1)(nB)*.
- A transfer that does not necessitate a change of residence does not fall within the ambit of the exemption.
- **Expenditure exempt from tax:** Where the employer has borne the expenses (costs) set out below (whether the employer pays the creditors directly or reimburses the employee for cost paid), they will be exempt from tax —
 - the transportation of the employee, members of his / her household and personal goods from his / her previous place of residence to his / her new place of residence;
 - any costs as the Commissioner may allow which have been incurred by the employee in respect of the sale of his / her previous residence and in settling in permanent residential accommodation at his / her new place of residence; and

- the cost of renting temporary residential accommodation for the employee and members of his / her household during a period which ends 183 days after his / her transfer took place or after his / her date of appointment.
- **Reimbursement of actual expenses:** The following items are exempt from tax if the employer reimburses the employee for the actual expenditure incurred —
 - Bond registration and legal fees **paid in respect of a new residence that has been purchased;**
 - Transfer duty **paid in respect of the new residence;**
 - Cancellation **fees paid of the cancellation** of bond **on the previous residence;** and
 - Agent's commission on sale of previous residence.
- **Settling-in** costs reimbursed to the employee by the employer are also exempt from tax. To simplify administration, an amount not exceeding one month's basic salary may be paid to the employee free of tax to cover settling-in costs. This costs are for items such as —
 - New school uniforms;
 - Replacement of curtains;
 - Motor vehicle registration fees; and
 - Telephone, water and electricity connection.
- **Expenditure fully taxable:** Should payments be made by the employer in respect of the following two items, **they** will constitute taxable benefits in the hands of the employee concerned and be subject to the deduction of employees' tax:
 - Payments to reimburse the employee for loss on the sale of a previous residence during transfer.
 - Architect's fees for the design or alteration of a new residence.
- IRP 5 detail
 - If the expenditure is exempt from tax (**e.g. reimbursement of actual expenses and settling-in costs**) the amount must be reflected under code 3714 on the IRP 5 certificate.
 - In cases where the expenditure is taxable the amount must be reflected under code 3713 on the IRP 5 certificate.
- Example
 - **The employer transfers his employee from Pretoria to Cape Town. The employee's basic salary is R5 600 per month.**
 - **The employer has already paid for the transfer of the employee's personal goods and made arrangements for the employee and members of his household to stay in a hotel on the employer's account for the 6 months during which the employee's new house is being built.**
 - **The employee claims the following expenses from which he was fully reimbursed by the employer.**

Description	Amount
New school uniforms purchased	1 750.00
Curtains made for new residence	8 360.00
Motor vehicle registration fees	216.00
Telephone, water and electricity connections	1 015.00
Loss on the sale of the previous residence	12 000.00

•	•	Architect's fees for the design of the new residence	•	7 60 0.00
•	•	Bond registration and legal fees for the new residence	•	6 80 0.00
•	•	Transfer duty on new residence	•	25 0 00.0 0
•	•	Agent's fee on sale of previous residence	•	16 3 97.0 0
•	•	TOTAL	•	79 1 28.0 0

- The employer must deduct employees' tax from items 5 and 6 as they are not exempt from tax and the value of these two items must be reflected under code 3713 on the IRP 5 certificate.
- All other items (except for items 5 and 6) are exempt from the deduction of employees' tax and their total value must be reflected under code 3714 on the IRP 5 certificate.
- The employer could have paid the employee R5 600 (one month's basic salary) without withholding employees' tax to cover the actual expenses in respect of items 1 to 4.

16.3 SHARE SCHEMES

- An amount (including any taxable benefits) received by or accrued to an employee under a share incentive scheme operated for the benefit of employees which was derived —
 - upon the cancellation of a transaction under which the employee purchased the shares under the scheme; or
 - upon repurchase by the employee at a price not exceeding the selling price to him / her of the shares under the scheme,
 is exempt from tax in terms of *Section 10(1)(nH)*, if the employee does not receive compensation or a consideration in excess of the purchase price he / she actually paid for the shares.
- This Section in effect exempts from tax the benefit that is commonly called the stop loss benefit that can accrue in terms of share incentive schemes.
- **Employees' tax** — Employees' tax must not be deducted from the exempted amount.
- **IRP 5** — The exempted amount must be reflected under code 3714 on the IRP 5 certificate.

16.4 BURSARIES AND SCHOLARSHIPS

- Any bursary or *bona fide* bursary or scholarship granted to enable or assist any person to study at a recognised educational or research institution may be exempt in terms of *Section 10(1)(q)*.
- **Taxable benefit:** If the scholarship or bursary has been granted by an employer (or associated institution) to an employee or to a relative of such employee, **the exemption shall not apply** if the following conditions are present —
 - in the case of a scholarship or bursary granted to the employee to enable or assist any such employee, unless the employee agrees to reimburse the employer for any scholarship or bursary granted to him / her if he / she fails to complete his / her studies for reasons other than death, ill-health or injury;
 - in the case of a scholarship or bursary granted to enable or assist any such relative of an employee to study, if the remuneration derived by the employee during the tax year exceeded R100 000; and
 - to so much of a bursary as in the case of such relative exceeded R10 000 during the tax year.

- Exempt from tax
 - Expenditure in connection with internal or on-the-job training or courses presented by other institutions on behalf of the employer, does not represent a taxable benefit in the hands of the employees, provided that the training is job-related and ultimately for the employer's benefit. The following are examples of this type of training:
 - Computer and word processing courses;
 - Management and administration courses;
 - Bookkeeping courses;
 - Sales courses;
 - Courses in operating office and technical equipment; and
 - Language courses for employees.
- To the extent that a *bona fide* bursary does not qualify for the exemption, it is taxable in the employee's hands.
- The following is an indication of bursaries and study loans that will be taxed as a fringe benefit:
 - Low-interest or interest-free loans granted by the employer to further the employee's studies are not regarded as bursaries, but as low or interest-free loans upon which no value is placed.
 - Where the employee is not required to repay the loan, he / she will have received a taxable benefit in terms of Paragraph 2(h) of the Seventh Schedule (payment of employee's debt or release employee from obligation to pay debt) and employees' tax must be deducted. This taxable benefit is seen as an annual payment for SITE purposes.
 - Where an employer rewards an employee for obtaining a qualification, successful completion of a study course or reimburses the employee for study expenses, such reward or reimbursement of study expenses will represent, in the case of the reward, taxable remuneration and in the case of the reimbursement of study expenses, a taxable benefit in terms of Paragraph 2(h) of the Seventh Schedule (payment of employees debt or release employee from obligation to pay debt).
 - Only the taxable portion of bursaries paid to an employee or a family member of an employee is subject to the deduction of employees' tax.
 - Any bursary, which is granted subject to the condition of repayment, due to non-fulfilment of conditions stipulated in a written agreement, will be treated as a *bona fide* bursary until such time as the non-compliance provisions of the agreement are invoked. In the tax year in which such provisions are invoked, the amount of the bursary will be regarded as a loan and any benefit which an employee may have received by way of an interest-free or low-interest loan will constitute a taxable benefit in terms of *Paragraph 2(f) of the Seventh Schedule*.
- The taxable benefit of a bursary is regarded as an annual payment for SITE purposes.
- In addition to re-stating the statutory provisions, **Practice Note 17** was issued. This practice note contains the interpretation of words and phrases (e.g. closed and open scholarship and bursaries, tax implications and other forms of study assistance).
- **IRP 5** — It is only the taxable portion of bursaries that must be reflected under code 3809 on the employee's IRP 5 certificate.
- Example
 - An employer granted a bursary of R14 000 to each of the employee's two children. The employee earns an annual salary of R72 000, a bonus of R6 000 and a housing subsidy of R8 000. The employer does not operate a bursary scheme that is open to the general public.
 - Although the employee's remuneration does not exceed R100 000 per annum, the bursaries are paid in consequence of services rendered by him.
 - The bursaries of R14 000 each exceed the exemption limit of R10 000 per relative, but only the taxable portion of R8 000 (R28 000 less R20 000) is subject to the deduction of employees' tax in the hands of the employee.

- If the employee's remuneration, however, exceeds R100 000 per annum, the bursaries (R28 000) will be taxable in full.

16.5 EMPLOYMENT INCOME EXEMPTIONS

- **Section 10(1)(o) exempts from tax any** remuneration derived by a person in respect of **services rendered** outside the Republic for an employer if such person was outside the Republic for periods exceeding 183 full days in aggregate during any 12 month period and for a continuous period exceeding 60 full days during that period and those services were rendered during that period or periods.
- For the purposes of counting these days, a person will still be regarded as being outside South Africa where the person is in transit through South Africa between two places outside South Africa and he / she does not formally enter South Africa through a port of entry or at any other place in the case of a person authorised by the Minister of Home Affairs.
- This exemption does not apply in respect of any remuneration derived by the holder of any public office (dealt with under Allowance to a Holder of a Public Office in paragraph 17.3). Further, it is not applicable to employees who are employed in the national or provincial sphere of government, any local authority or any public entity if 80% or more of the expenses of the entity are defrayed from funds voted by Parliament.
- **Officer or crew member of a ship:** Remuneration derived by an officer or crew member of a ship engaged —
 - in the international transportation for reward of passengers or goods; or
 - in the prospecting for, or the mining of, any minerals from the seabed outside the continental shelf of the Republic, where such officer or crew member is employed on board such ship solely for purposes of the passage of such ship as defined in the Marine Traffic Act,
 - is exempt from tax if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the tax year.
 - **Where remuneration is received by or occurs to an officer or crew member of ship as mentioned above during any year of assessment in respect of services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered.**
- The question of whether an employee will qualify for the exemption or not is a question of fact that can only be answered once the requisite number of days has been met. Directives are therefore not issued for such taxpayers. Where the employer is satisfied that the employee will meet the necessary criteria for the exemption to be granted, the employer is at liberty not to deduct employees' tax provided that a copy of each page of the employee's passport and a copy of the relevant contract for the services to be rendered in a foreign country are kept. Should it transpire that the employee does not qualify for the exemption, the employer will be held personally liable for any losses that SARS may suffer due to the non-deduction of the full amount of employees' tax.
- Please refer to the applicable Interpretation Notes (numbers 16 and 34) on the website www.sars.gov.za under Interpretation Notes / Income Tax for more information.
- **IRP 5** — Separate certificates must be issued to an employee if such employee's remuneration consists of local and foreign employment remuneration for specified periods during a tax year.

17 EMPLOYEES' TAX CERTIFICATES [IRP 5, IRP5(A) AND IT 3(A)]

17.1 OBLIGATION OF EMPLOYER TO ISSUE EMPLOYEES' TAX CERTIFICATES

- **Paragraph 13(1) of the 4th Schedule prescribes that** an employer must furnish employees to whom remuneration is paid or has become payable and from which employees' tax in respect of a tax period was deducted, with an IRP 5 certificate within the prescribed period.

- If for a valid reason no employees' tax was deducted from the remuneration paid to an employee, an IT 3(a) return must be issued to the employee instead of an IRP 5 certificate.
- *Paragraph 13(2) of the 4th Schedule prescribes that* the employees' tax certificate must be delivered to the employee within —
 - sixty (60) days after the end of the tax year or alternative period;
 - fourteen (14) days after an employee has left the employer's service;
 - seven (7) days after the employer has ceased to be an employer; or
 - a further period as the Commissioner under special circumstances may approve.
- A separate certificate may under no circumstances be issued to the employee in respect of the same remuneration and no blank certificates may be issued.
- **Foreign employment income:** Separate certificates must be issued to the employee if the employee's remuneration consists of local remuneration and foreign remuneration for certain periods during a specific tax year. The nature of person must be indicated as M on the certificate that reflects the foreign employment income.
- **Codes used on certificates:** All income and deductions must be classified according to the different codes allocated for income and deductions. A certificate will be rejected if it does not contain the mandatory information as required and the codes are not in the specified sequence.
- **Declaration by employer:** The employer must declare on the annual IRP 501 reconciliation or IT 3 General return that all taxable benefits enjoyed by employees, are reflected on the IRP 5 or IT 3(a) certificates issued.

17.2 DUPLICATE CERTIFICATES

- *Paragraph 13(8) of the 4th Schedule prescribes that* the employer must, at the request of his / her employee or former employee, issue a duplicate certificate and such duplicate certificate must disclose the full details of the original certificate.

17.3 CANCELLED CERTIFICATES

- *Paragraph 13(10) of the 4th Schedule prescribes that* any cancelled or spoiled certificate may not be destroyed by the employer concerned but must be retained until the Commissioner requires it to be surrendered to him / her.
- Where an employer cancels a certificate, SARS must immediately be notified in writing of all such certificate numbers.
- A certificate must be cancelled if the written or printed information thereon is incorrect. It is not necessary to submit the original certificate to SARS when the original certificate is cancelled unless SARS has requested such certificates.

17.4 UNUSED MANUAL CERTIFICATES

- *Paragraph 13(11) of the 4th Schedule prescribes that* SARS must immediately be notified in writing when any unused manual certificates are lost or destroyed.
- **Unused stock when employer ceases business:** *Paragraph 13(13) of the 4th Schedule prescribes that* the employer must return all unused certificates as well as the blank EMP 201 returns to SARS within 14 days of his / her ceasing to be an employer.

17.5 WHEN MUST AN IT 3(A) RETURN BE ISSUED

- Every employer is required to furnish his / her employee with certificates relating to amounts paid or accrued to such employee in the prescribed formats.
- IT 3(a) returns are issued —
 - Where foreign employment income is not subject to the deduction of employees' tax.
 - Where an employee's annual equivalent of the remuneration amounts to at least R2 000 and does not exceed the tax threshold. (If an employee was not employed by the same employer for the full tax year, the remuneration received for the tax period must be calculated pro-rata in order to determine whether an IT 3(a) must be issued).
 - In respect of lump sum payments (not reflected on an IRP 5) from which no tax has been deducted.
 - In respect of any amount paid to a person for services rendered or to be rendered from which no employees' tax has been deducted.
 - In respect of directors remuneration which is only determined in the following tax year.
- IT 3(a) returns are NOT issued —
 - In respect of any remuneration which is reflected on an IRP 5 (e.g. fringe benefits).
 - In respect of fees paid for services rendered by persons in the ordinary course of their professional practice (e.g. medical practitioners, attorneys, advocates, accountants, auditors, etc.).
 - Where the annual equivalent of the remuneration does not exceed R2 000 for the tax year.
- Where no employees' tax has been deducted from the remuneration paid to any person and no IT 3(a) return was issued in respect thereof, the employer must furnish SARS, in terms of Section 69(1) with a list of names in alphabetical order (together with his / her IRP 501 reconciliation or IT 3 general return). The following information of the relevant employees must be reflected —
 - Surname and initials or trading name;
 - Identity number, passport number or company / cc / trust number;
 - Amount of remuneration;
 - Address; and
 - Period employed or accrual date.
- An employer must be registered with SARS to receive manual IT 3(a) returns.

18 RECONCILIATIONS (IRP 501)

18.1 OBLIGATION OF EMPLOYER TO SUBMIT A RECONCILIATION

- *Paragraph 14(3) of the 4th Schedule prescribes that* the employer is obliged to furnish a reconciliation statement showing details of the total amount of employees' tax deducted or withheld as well as the details of IRP 5 certificates issued during the tax year.
- The purpose of the reconciliation is to —
 - reconcile the amount of employees' tax which was declared and paid over to SARS on the monthly EMP 201 returns, with the tax reflected on the IRP 5 certificates issued for that tax year; and
 - justify all issued, cancelled, lost and destroyed IRP 5 certificates.
- The IRP 501 reconciliation statement must be submitted to your local SARS office within —
 - 60 days after the end of the tax year or alternate period; or
 - 14 days after you have ceased to be an employer.

18.2 PENALTY ON NON COMPLIANCE

- Paragraph 14(5) of the 4th Schedule prescribes that if an employer fails to render a reconciliation within the prescribed period, such employer shall be required to pay a penalty equal to 10% of the total amount of employees' tax deducted or withheld from the remuneration of employees during the relevant tax year.
- The Commissioner may remit the penalty or a portion thereof if he / she is satisfied that the circumstances warrant it.

19 QUALITY RECORDS

- Completed forms as listed below —

Number	Title
EMP 201	Return for remittance.
Form A & D	Application form for a tax directive in respect of lump sums paid by a pension and / or provident fund on death / ill health / retirement / deemed retirement / unclaimed benefit.
Form B	Application form for a tax directive in respect of lump sums paid by a pension and / or provident fund on resignation / withdrawal / winding up / transfer / surplus apportionment / unclaimed benefit.
Form C	Application form for a tax directive in respect of lump sums paid by a RAF to a member on death before retirement / death after retirement / ill health / retirement / transfer from one RAF to another / unclaimed benefit.
IRP 3	Tax directive.
IRP 3(a)	Application form for a tax directive in respect of Gratuities paid by the employer.
IRP 3(b)	Application form for a tax directive in respect of employees' tax to be deducted at a fixed percentage .
IRP 3(c)	Application form for a tax directive in respect of employees' tax to be deducted at a fixed amount .
IRP 3(d)	Application form for a tax directive in respect of deemed remuneration to be used to deduct employees' tax.
IRP 5	Employees' tax certificate.
IRP 30	Labour broker exemption certificate.
IRP 130	Application for registration as a creator.
IRP 501	Reconciliation of tax deductions and certificates.
IT 3	General return of information.
IT 3(a)	Employees' tax certificate where no tax has been deducted.

20 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	GM Policy and Standards
Policy Owner:	GM Policy and Standards
Author:	R Ford
Detail of change from previous revision:	Incorporate legislation changes during the 2008 tax year
Template number and revision	POL-TM-07 - Rev 3