

# GUIDE FOR EMPLOYERS

## IN RESPECT OF EMPLOYEES' TAX

GUIDE FOR EMPLOYERS IN RESPECT OF EMPLOYEES' TAX (2014 TAX YEAR)PAYE-GEN-01-G04

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**1 QUICK REFERENCE CARD**

The deduction tables and instructions in this guide came into effect on the 01 March 2013.

**Note:** this is only a quick reference to this guide.

In his Budget Speech on 27 February 2013, the Minister of Finance proposed new tax rates, tax rebates, tax thresholds and other tax amendments for individuals. These changes came into effect on 1 March 2013. Details of these proposals are listed below and Employers must update their payroll systems accordingly.

**Tax Tables for Individuals and Trusts**
**2013/2014 Tax Year (1 March 2013 to 28 February 2014)**

<b>TAXABLE INCOME (R)</b>	<b>RATES OF TAX (R)</b>
0 – 165 600	18% of each R1
165 601 – 258 750	29 808 + 25% of the amount above 165 600
258 751 – 358 110	53 096 + 30% of the amount above 258 750
358 111 – 500 940	82 904 + 35% of the amount above 358 110
500 941 – 638 600	132 894 + 38% of the amount above 500 940
638 601 and above	185 205 + 40% of the amount above 638 600

<b>Tax rebates applicable to individuals</b>	<b>2014</b>
Primary rebate	R 12 080
Secondary rebate (for persons 65 years and older)	R 6 750
Tertiary rebate (for persons 75 years and older)	R 2 250

<b>Tax thresholds applicable to individuals</b>	<b>2014</b>
Persons under 65 years	R 67 111
Persons 65 years and older	R104 611
Persons 75 years and older	R117 111

<b>Medical scheme fees tax credit for taxpayers under 65 years of age</b>	<b>2014</b>
For the taxpayer	R 242
For the first dependent	R 242
For each additional dependent	R 162

<b>Fringe benefit interest rate</b>
6% (i.e. repo rate)

The following allowances and fringe benefits have remained unchanged for the 2014 tax year:

<b>Travelling allowances</b>
80% of the travel allowance is subject to the deduction of Employees' Tax, meaning 80% of the travel allowance must be included in the employee's remuneration when calculating employees' tax. Provided that where the employer is satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20% of the allowance will be subject to employees' tax.

<b>Rates applicable to employees other than individuals</b>
Companies are taxed at a rate of 28% and trusts are taxed at a rate of 40%. The rates remained unchanged for the 2014 tax year.

<b>Fringe benefit: employer - owned provided motor vehicles</b>
With effect from 1 March 2011, the percentage rate for all employer - owned provided vehicles is 3.5 % per month of the vehicle's determined value. However, vehicles with maintenance plans included within the purchase price at the time of purchase will trigger only a 3.25 % monthly fringe benefit.
With effect from 1 March 2013, where the vehicle is acquired by the employer under an "operating lease" concluded at arm's length and that are not connected persons in relation to each other, the value of a fringe benefit is the actual cost to the employer incurred under this lease plus the cost of fuel in respect of that

**Fringe benefit: employer - owned provided motor vehicles**  
vehicle.

**Pension fund contributions**

Current contributions.	An annual deduction limited to the greater of — <ul style="list-style-type: none"> <li>• R1 750; or</li> <li>• 7,5% of the remuneration received during the year from retirement funding employment.</li> </ul>
Arrear contributions.	An annual deduction limited to R1 800.

**Retirement annuity fund contributions**

Current contributions.	An annual deduction limited to the greatest of — <ul style="list-style-type: none"> <li>• R1 750; or</li> <li>• R3 500 less allowable current pension fund contributions; or</li> <li>• 15% of the remuneration received during the year from non-retirement funding employment.</li> </ul>
Arrear contributions.	An annual deduction limited to R1 800 .

**Period for keeping records**

Records need not be retained by the person after a period of five years from the date of the submission of the return and after a period of five years from the end of the relevant tax period.

If the records are relevant to an audit or investigation or a person lodges an objection or appeal against the assessment or decision made, the person must retain the records relevant to the audit, objection or appeal until the audit is concluded or the assessment or the decision becomes final.

**FURTHER INFORMATION**

For more information visit the SARS website [www.sars.gov.za](http://www.sars.gov.za) call the SARS Contact Centre on 0800 00 SARS (7277), or visit your nearest SARS branch.

**2 PURPOSE**

- The purpose of this document is to assist employers in understanding their obligations relating to Employees' Tax, Skills Development Levy (SDL) and Unemployment Insurance Fund (UIF) contributions.

**3 SCOPE**

- This basic guide is issued in terms of Paragraph 9(2) of the Fourth Schedule to the Income Tax Act No. 58 of 1962 (The Income Tax Act).
- This guide prescribes –
  - the Employees' Tax deduction tables as contemplated in Paragraph 9(1) of the Fourth Schedule to the Income Tax Act
  - the manner in which the tables must be applied by the employer.

**4 REFERENCES**

**4.1 LEGISLATION**

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<p><b>Income Tax Act No. 58 of 1962:</b> Sections 1, 5(1), 5(1A), 5(2), 5(9), 5(10), 6, 7A, 7B, 8(1), 8A-C, 9(2)(e), 9(2)(g), 10(1)(g), 10(1)(gA)-(gC), 10(1)(gB)(iii), 10(1)(mB), 10(1)(nA)-(nE), 10(1)(o), 10(1)(p), 10(1)(q), 10(1)(r), 11(a), 11(k), 11(n), 18(1), 18(2), 18A, 91, 102, 111 and 112; <b>Second Schedule</b> all paragraphs; <b>Fourth Schedule</b> paragraphs 1 to 16 and 28 to 30; <b>Seventh Schedule</b> all paragraphs; <b>Interpretation Notes</b> 3, 4, 5, 7, 8, 14, 16, 17, 26, 27, 34, 35, 55 and 62 and <b>Practice Notes</b> 17 and 25 and <b>General Note</b> 35.</p> <p><b>Skills Development Levies Act No. 9 of 1999:</b> Sections 1 to 6, 7A and 11 to 13</p> <p><b>Unemployment Insurance Contributions Act No.4 of 2002:</b> Sections 1, 3, 4, 5, 6, 7, 8, 9A, 10, and 13</p> <p><b>Tax Administration Act No. 28 of 2011: Section 1</b></p>
Other Legislation:	<p>Aged Persons Act No. 81 of 1967                      Blind Persons Act No. 26 of 1968                      Disability Grants Act No. 27 of 1968  <b>Children's Act No. 33 of 1960:</b> Section 89  <b>Companies Act No. 61 of 1973:</b> Chapter VI  <b>Marine Traffic Act No. 2 of 1981:</b> Section 1  <b>Public Finance Management Act No. 1 of 1999:</b> Section 80(1)(b)  <b>Skills Development Act No. 97 of 1998:</b> Section 18(2) and (3)  <b>Social Assistance Act No. 13 of 2004:</b> Sections 4, 5, 6, 9, and 10  <b>Medical Schemes Act No. 131 of 1998:</b> Section 67(1)(g)  <b>Pension Funds Act No. 24 of 1956:</b> Section 15B and 15C  <b>Long-term Insurance Act, 1998</b> (Act No. 52 of. 1998)</p>

## 4.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
GEN-GEN-07-FAQ01	Medical Tax Credits - External FAQ.	All
PAYE-AE-06-G01	Guide for completion and submission of Employees' Tax certificates	All
PAYE-AE-06-G02	Guide for completion and submission of reconciliation declarations	All
PAYE-AE-06-G03	Guide for validation rules for fields applicable to reconciliation documents	All
PAYE-AE-06-G04	Guide for codes applicable to Employees' Tax certificates	All
PAYE-AE-06-G05	Guide for creation of CSV files for Employees' Tax certificate information	All
PAYE-AE-06-G06	Guide for PAYE e@syFile™ Employer for employee Income Tax registration or verification	All
PAYE-AE-06-POL01	Completion and submission of reconciliation documents	All
PAYE-AE-06-POL01-FAQ01	Completion and submission of CSV e@syFile™ Employer and ZipCentralFile reconciliation documents – External FAQ	All
PAYE-AE-06-POL01-FAQ02	Completion and submission of annual and interim reconciliation declarations – External FAQ	All
PAYE-GEN-01-G01	Guide for employer in respect of tax deduction tables	All
PAYE-GEN-01-G01-A01	Weekly tax deduction tables	All
PAYE-GEN-01-G01-A02	Fortnightly tax deduction tables	All
PAYE-GEN-01-G01-A03	Monthly tax deduction tables	All
PAYE-GEN-01-G01-A04	Annual tax deduction tables	All
PAYE-GEN-01-G02	Guide for employers in respect of fringe benefits	All
PAYE-GEN-01-G03	Guide for employers in respect of allowances	All
PAYE-GEN-01-G03-A01	Rate per kilometre schedule	All
PAYE-GEN-01-G03-A02	Subsistence allowance in respect of foreign travel	All
SDL-GEN-01-G01	Guide for employers in respect of the SDL	All
SDL-GEN-01-G01-FAQ01	SDL frequently asked questions	All
UIF-GEN-01-G01	Guide for employers in respect of the UIF	All
UIF-GEN-01-G01-FAQ01	UIF frequently asked questions	All

## 5 DEFINITIONS AND ACRONYMS

<b>4<sup>th</sup> Schedule</b>	<ul style="list-style-type: none"> <li>The Fourth Schedule to the Income Tax Act No 58 of 1962.</li> </ul>
<b>7<sup>th</sup> Schedule</b>	<ul style="list-style-type: none"> <li>The Seventh Schedule to the Income Tax Act No 58 of 1962.</li> </ul>
<b>Alternate period</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Annual equivalent</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Annual payment</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Backdated salary</b>	<ul style="list-style-type: none"> <li>Salary, wage or similar remuneration (excluding a bonus) payable by the employer to an employee.</li> </ul>
<b>Balance of remuneration</b>	<ul style="list-style-type: none"> <li>Any amount of remuneration after deducting the allowable deductions for Employees' Tax purposes.</li> </ul>
<b>Broad-based employee</b>	<ul style="list-style-type: none"> <li>A plan in terms of which —</li> </ul>

<p><b>share plan</b></p>	<ul style="list-style-type: none"> <li>▫ equity shares in that employer, or in a company that is an associated institution in relation to the employer, are acquired by employees from that employer, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973;</li> <li>▫ employees who participate in any other equity scheme of the employer or of a company that is an associated institution in relation to the employer, are not entitled to participate and where at least 80% of all other employees who are employed by the employer on a permanent basis on the date of grant are entitled to participate;</li> <li>▫ the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and</li> <li>▫ no restriction have been imposed in respect of the disposal of the equity shares, other than:             <ul style="list-style-type: none"> <li>○ a restriction imposed by legislation;</li> <li>○ a right of any person to acquire those equity shares from the employee or former employee who acquired the equity share:                 <ul style="list-style-type: none"> <li>▪ in the case where the employee or former employee is or was guilty of misconduct or poor performance, at the lower of market value on the date of the grant or acquisition by that employer; or</li> <li>▪ in any other case, at market value on the date of acquisition by that person.; or</li> </ul> </li> <li>○ 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.</li> </ul> </li> </ul>
<p><b>CCMA</b></p>	<ul style="list-style-type: none"> <li>• The Commission for Conciliation, Mediation and Arbitration.</li> </ul>
<p><b>Commissioner</b></p>	<ul style="list-style-type: none"> <li>• The Commissioner for the South African Revenue Service.</li> </ul>
<p><b>Employee</b></p>	<ul style="list-style-type: none"> <li>• An employee for Employees' Tax purposes is defines as —             <ul style="list-style-type: none"> <li>▫ A natural person who receives remuneration or to whom remuneration accrues;</li> <li>▫ 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;</li> <li>▫ A labour broker;</li> <li>▫ A person or class or category of persons whom the Minister of Finance by notice in the Government Gazette declares to be an employee;</li> <li>▫ A personal service provider;</li> <li>▫ A director of a private company.</li> </ul> </li> <li>• An employee for UIF purposes is defined 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</li> <li>• An employee for SDL purposes is defined as an employee for Employees' Tax purposes</li> <li>• 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.</li> </ul>

<b>Employees' Tax</b>	<ul style="list-style-type: none"> <li>• An amount of tax that an employer must deduct from all regular or periodic payments (remuneration), paid or which becomes payable to an employee</li> </ul>
<b>Employer</b>	<ul style="list-style-type: none"> <li>• 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. This definition excludes any person not acting as a principal but includes any person acting in a fiduciary capacity or in his/her capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund.</li> </ul>
<b>Equity instrument</b>	<ul style="list-style-type: none"> <li>• Means a share or a member's interest in a company, including— <ul style="list-style-type: none"> <li>▫ an option to acquire such a share, part of a share or member's interest;</li> <li>▫ any financial instrument that is convertible to a share or member's interest; and</li> <li>▫ any contractual right or obligation the value of which is determined directly or indirectly with reference to a share or member's interest.</li> </ul> </li> </ul>
<b>Gain</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>Holder of a public office</b>	<ul style="list-style-type: none"> <li>• 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 Councilor, a member of a provincial legislature;</li> <li>• 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</li> <li>• 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.</li> </ul>
<b>Labour broker</b>	<ul style="list-style-type: none"> <li>• Any natural person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons (or procures other persons) to render a service or to perform work for the client, for which services or work of such other persons are remunerated by such person.</li> </ul>
<b>Lump sum benefit Section 1</b>	<ul style="list-style-type: none"> <li>• Means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.</li> </ul>
<b>Market value</b>	<ul style="list-style-type: none"> <li>• In relation to an <b>equity instrument</b> — <ul style="list-style-type: none"> <li>▫ of a private company or a company that would be regarded as a private company if it were incorporated under the Companies Act of 1973, means an amount determined as its value in terms of a method of valuation: <ul style="list-style-type: none"> <li>○ prescribed in the rules relating to the acquisition and disposal of that equity instrument;</li> <li>○ which is regarded as a proxy for the market value of that equity instrument for the purposes of those rules; and</li> <li>○ used consistently to determine both the consideration for the acquisition of that equity instrument and the price of</li> </ul> </li> </ul> </li> </ul>

	<p>the equity instrument repurchased from the employee after it has vested in that employee; or</p> <ul style="list-style-type: none"> <li>▫ of any other company, means the price which could be obtained upon the 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.</li> <li>• In relation to <b>equity share</b> 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.</li> </ul>
<b>Marketable security</b>	<ul style="list-style-type: none"> <li>• Any security, stock, debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise</li> </ul>
<b>Month</b>	<ul style="list-style-type: none"> <li>• In relation to an employer for taxable benefit purposes means any twelve portions into which any calendar year is divided.</li> </ul>
<b>Net remuneration</b>	<ul style="list-style-type: none"> <li>• The balance of remuneration, excluding the following – <ul style="list-style-type: none"> <li>▫ Special remuneration paid/payable to any mine worker as contemplated in section 5(9);</li> <li>▫ (b) Remuneration received by an employee who incurred deductible expenses in the production of income (the quantum of expenses can only be determine on assessment);</li> <li>▫ Remuneration which is under the provisions of Section 7(2) deemed to be income that accrued to the spouse of the employee;</li> <li>▫ (f) Remuneration not derived: <ul style="list-style-type: none"> <li>○ from standard employment; or</li> <li>○ by way of an annuity provided or payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or benefit fund;</li> </ul> </li> <li>▫ (g) Remuneration paid or payable to a director of a company or member of a close corporation;</li> <li>▫ (h) Travel allowance which is subject to Employees' Tax (80% portion);</li> <li>▫ (h) An allowance granted to the holder of any public office, which is subject to Employees' Tax (50% portion);</li> <li>▫ (i) Remuneration derived by an employee in respect of which such employee is entitled to set off an assessed loss under Section 20(1); and</li> <li>▫ (j) Any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.</li> </ul> </li> </ul>
<b>PAYE</b>	<ul style="list-style-type: none"> <li>• Pay-As-You-Earn (Employees' Tax)</li> </ul>
<b>Prescribed rate</b>	<ul style="list-style-type: none"> <li>• In relation to any interest payable, means such rate as the Minister may from time to time fix by notice in the Gazette in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (no. 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate will apply from the first day of the second month following the date on which that new rate came into operation.</li> </ul>
<b>Qualifying equity share</b>	<ul style="list-style-type: none"> <li>• 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 R50 000.</li> </ul>
<b>Relevant material</b>	<ul style="list-style-type: none"> <li>• As defined per section 1 of the Tax Administration Act means any information, document or thing that is foreseeable relevant for tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed</li> </ul>

<b>Remuneration for Employees' Tax purposes</b>	<ul style="list-style-type: none"> <li>• Remuneration for Employees' Tax purposes is defined as any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including —             <ul style="list-style-type: none"> <li>▫ restraint of trade payments;</li> <li>▫ an amount, including a voluntary award, received or accrued in commutation of amounts due in terms of a contract of employment or service;</li> <li>▫ 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;</li> <li>▫ 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;</li> <li>▫ 50% of an allowance paid to a holder of a public office;</li> <li>▫ 80% 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);</li> <li>▫ fringe benefits received in terms of the Seventh Schedule to the IT Act;</li> <li>▫ 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;</li> <li>▫ 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</li> <li>▫ any gain determined in terms of Section 8C which is required to be included in the income of that person</li> </ul> </li>   <li>• but not including —             <ul style="list-style-type: none"> <li>▫ 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.</li> <li>▫ This exclusion does not apply to —                 <ul style="list-style-type: none"> <li>○ 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;</li> <li>○ any labour broker;</li> <li>○ any personal service provider; or</li> <li>○ a person who is not ordinarily resident in South Africa.</li> </ul> </li> <li>▫ Any pension or additional pension under the Social Assistance Act.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>▫ Any disability grant or additional or supplementary allowance under the Social Assistance Act.</li> <li>▫ Any grant or contribution under the provisions of Section 89 of the Children's Act.</li> <li>▫ Amounts paid to an employee, wholly in reimbursement of expenditures actually incurred by such employee in the course of employment.</li> <li>▫ Any annuity in terms of an order of divorce or decree of judicial separation or agreement of separation.</li> </ul>
<p><b>Remuneration for SDL proposes</b></p>	<ul style="list-style-type: none"> <li>• Remuneration for SDL purposes is defined as remuneration for Employees' Tax purposes (this means <b>after</b> taking the allowable deductions into account which the employer may have deducted for purposes of calculating employees tax, including remuneration of employees who earn less than the tax threshold), but does not include any of the following amounts — <ul style="list-style-type: none"> <li>▫ 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;</li> <li>▫ an amount paid or payable to any person by way of pension, superannuation allowance or retiring allowance;</li> <li>▫ an amount contemplated in paragraphs (a), (d), (e) or (eA) of the definition of gross income in Section 1 of the Income Tax Act — <ul style="list-style-type: none"> <li>○ by way of annuity [par (a)];</li> <li>○ 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)];</li> <li>○ a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit [par (e)]; or</li> <li>○ 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</li> </ul> </li> <li>▫ an amount payable to a learner in terms of a contract of employment contemplated in Section 18(3) of the Skills Development Act</li> </ul> </li> </ul>
<p><b>Remuneration for UIF contribution proposes</b></p>	<ul style="list-style-type: none"> <li>• Remuneration for UIF purposes is defined as remuneration for Employees' Tax purposes (<b>before</b> taking any allowable deductions into account which the employer may have deducted for purposes of calculating employees tax), but does not include any amount paid or payable to an employee — <ul style="list-style-type: none"> <li>▫ by way of pension, superannuation allowance or retiring allowance;</li> <li>▫ 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 — <ul style="list-style-type: none"> <li>○ by way of annuity [par (a)];</li> <li>○ as compensation for any restraint of trade [par (cA)];</li> <li>○ 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)];</li> <li>○ a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit [par (e)]; or</li> <li>○ 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</li> </ul> </li> <li>▫ by way of commission</li> </ul> </li> </ul>

<p><b>Representative employer</b></p>	<ul style="list-style-type: none"> <li>• Representative employer contemplated in the 4<sup>th</sup> Schedule means -           <ul style="list-style-type: none"> <li>▫ in the case of any company, the judicial officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager;</li> <li>▫ in the case of any municipality or any body corporate or unincorporated, any manager, secretary, officer or other person responsible for paying remuneration on behalf of such municipality or body;</li> <li>▫ in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or</li> <li>▫ in the case of any employer who is not resident in the Republic, any agent of such employer having authority to pay remuneration who resides in the Republic, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him/her.</li> </ul> </li> </ul>
<p><b>Restricted equity instrument</b></p>	<ul style="list-style-type: none"> <li>• An equity instrument —           <ul style="list-style-type: none"> <li>▫ 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;</li> <li>▫ which is subject to any restriction that could result in the employee forfeiting ownership or the right to acquire ownership of that equity instrument otherwise than at market value or being penalised financially in any other manner for not complying with the terms of the agreement for the acquisition of that equity instrument;</li> <li>▫ 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;</li> <li>▫ 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;</li> <li>▫ 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;</li> <li>▫ if the employer has at the time of acquisition by the employee of the equity instrument undertaken to:               <ul style="list-style-type: none"> <li>○ cancel the transaction under which that taxpayer acquired the equity instrument; or</li> <li>○ repurchase that equity instrument from the employee at a price exceeding its market value on the date of repurchase; or</li> </ul> </li> <li>▫ which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent?</li> </ul> </li> </ul>
<p><b>Retirement-funding employment</b></p>	<ul style="list-style-type: none"> <li>• The part of remuneration as is taken into account in the determination of the contributions made by the employee or on his/her behalf to a pension fund or provident fund (where the employee is a member of or contributed to) established for the benefit of employees of his/her employer from whom such remuneration is derived.</li> </ul>
<p><b>SARS</b></p>	<ul style="list-style-type: none"> <li>• The South African Revenue Service.</li> </ul>
<p><b>SDL</b></p>	<ul style="list-style-type: none"> <li>• Skills Development Levy</li> </ul>
<p><b>SETA</b></p>	<ul style="list-style-type: none"> <li>• Sector Education and Training Authority.</li> </ul>
<p><b>Standard employment</b></p>	<ul style="list-style-type: none"> <li>• 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 —</li> </ul>

	<ul style="list-style-type: none"> <li>▫ Periods of temporary absence of the employee due to leave or exceptional circumstances; or</li> <li>▫ 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.</li> </ul>
<b>Tax period</b>	<ul style="list-style-type: none"> <li>• Means, in relation to employees' tax, skills development levies as determined in section 3 of the SDL Act and contributions as determined in section 6 of UIC Act, the period in respect of which the amount of tax payable must be determined under the relevant tax Act.</li> <li>• 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.</li> <li>• In relation to an employee, a tax year (1 March to 28/29 February of the next year) <b>or any unbroken period</b> during the tax year — <ul style="list-style-type: none"> <li>▫ during which the employee was employed by one employer in the Republic in standard employment; or</li> <li>▫ during which any annuity was paid or became payable to him/her by one employer; or</li> <li>▫ 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</li> </ul> </li> </ul>
<b>Taxable benefit</b>	<ul style="list-style-type: none"> <li>• A voluntary or otherwise benefit contemplated in the 7<sup>th</sup> Schedule, but excluding — <ul style="list-style-type: none"> <li>▫ any benefit, the amount or value of which is specifically exempt from normal tax in terms of Section 10;</li> <li>▫ any benefit provided by a benefit fund in respect of medical, dental and similar services, hospital services, nursing services and medicines;</li> <li>▫ any lump sum benefit payable by a benefit, pension, pension preservation fund, provident fund or provident preservation fund, as defined in the Act;</li> <li>▫ any benefit or privilege received by or accrued to a person contemplated in section 9(2)(g) or (h) stationed outside the Republic which is attributable to the person's services rendered outside the Republic; or</li> <li>▫ any severance benefit.</li> </ul> </li> </ul>
<b>UI Commissioner</b>	<ul style="list-style-type: none"> <li>• The Unemployment Insurance Commissioner.</li> </ul>
<b>UIC Act</b>	<ul style="list-style-type: none"> <li>• The Unemployment Insurance Contributions Act.</li> </ul>
<b>UIF</b>	<ul style="list-style-type: none"> <li>• Unemployment Insurance Fund</li> </ul>
<b>Unrestricted equity instrument</b>	<ul style="list-style-type: none"> <li>• An equity instrument which is not a restricted equity instrument. The share is freely disposable upon acquisition.</li> </ul>
<b>Variable remuneration</b>	<ul style="list-style-type: none"> <li>• As defined per section 7B of the Income Tax Act means overtime pay, bonus or commission contemplated in the definition of "remuneration" in paragraph 1 of the 4<sup>th</sup> Schedule</li> </ul>
<b>Year of Assessment</b>	<ul style="list-style-type: none"> <li>• The year of assessment for taxpayers covers a period of 12 months. For individuals and trusts, the commencement date of the year of assessment starts on 1 March and ends on the 28/29 February each year. For Companies and Close Corporations the year of assessment is the applicable financial year</li> </ul>

**6 BACKGROUND**

<b>What is Employees' Tax</b>	<p>Where an employer pays or becomes liable to pay remuneration to an employee, the employer has an obligation to deduct or withhold Employees' Tax from the remuneration and pay the tax deducted or withheld to the South African Revenue Service (SARS) on a monthly basis. In most instances, the employer is obliged to issue each employee with an Employee Tax certificate [IRP5/IT3(a)] which reflects, amongst other details, the Employees' Tax deducted. Effective 1 March 2012 (2013 year of assessment) Standard Income Tax on Employees (SITE) will no longer be applicable as the tax threshold now exceeds the R60, 000, i.e. SITE limit.</p> <p>These subjects are fully dealt with later in this guide. In addition thereto, the employer is obliged to submit an Employer Reconciliation Declaration (EMP501) to SARS.</p> <p>In terms of Paragraph 3 of the 4th Schedule, Employees' Tax receives preference over any other deduction from the employee's remuneration which the employer has a right or is obliged to deduct otherwise than in terms of any law.</p> <p>Any reference to the start date and end date of a tax period is 1 March and 28/29 February. This guide will include the start date and end date of an alternate period. An alternate period is normally determined at the option of the employer which may be exercised in relation to all employees or any class of employee. Where an employer adopts the so-called alternate period, any remuneration paid to an employee during such alternate period is regarded as having been paid to him/her during the corresponding tax year.</p>
<b>What is SDL</b>	<p>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 by employers on a monthly basis.</p>
<b>What are UIF contributions</b>	<p>This is a compulsory contribution to fund unemployment benefits. Since 1 April 2002, the contributions deducted and payable by employers on a monthly basis have been collected by SARS and are paid over to the UIF which is managed by the UI Commissioner.</p>
<b>SITE</b>	<p>Special provisions were introduced during 2010 to phase-out the SITE system over a three year period and will be effective from the 2012 year of assessment, that is for the period starting 1 March 2011. This process does not affect the determination of SITE at the end of the tax period which must be done and must be reflected on IRP5 tax certificates as in the past.</p> <p>Where the taxable income of the taxpayer consists solely of remuneration of which the full amount is subject to the SITE, the amount of tax payable by that taxpayer must be reduced by -</p> <ul style="list-style-type: none"> <li>• 2/3 of the remuneration amount applicable from 1 March 2011 to 29 February 2012 tax year</li> <li>• 1/3 of the remuneration amount applicable from 1 March 2012 to 28 February 2013 tax year</li> <li>• As from the 1 March 2013, tax relief will no longer be applied to reduce the amount of tax payable.</li> </ul>
<b>Liability of representative employer</b>	<p>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.</p>
<b>References to the Act</b>	<p>The paragraphs of the Fourth and Seventh Schedule and Sections referred to in</p>

this publication are governed by the Income Tax Act. References to the Skills Development Levies Act (SDL Act) and Unemployment Insurance Contributions Act (UIC Act) are specifically indicated.

**7 REGISTRATION**

**7.1 REGISTRATION AS AN EMPLOYER**

**Reference to the Act** Chapter 3 of the Tax Administration Act  
Paragraph 15(1) of the 4<sup>th</sup> Schedule  
Section 4 and 5 of the SDL Act  
Section 4 and 10 of the UIC Act

**Meaning** An employer must apply for registration for Employees' Tax purposes with SARS within 21 business days after he/she becomes an employer unless none of the employees are liable for normal tax.

Where an employer is liable to pay the SDL 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.

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.

**Application form** Application to register as an employer must be made on an EMP101e form.

**Employers exempt from paying the SDL levy** The following employers are **exempt from paying the SDL** —

- 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 and humanitarian (paragraph 1 of Part 1 of the Ninth Schedule), health care (limited to paragraph 2(a), (b), (c) and (d) of Part 1 of the Ninth Schedule), religion, belief or philosophy public benefit activities (paragraph 5 of Part 1 of the Ninth Schedule) or solely provides funds to such a public benefit organisation (paragraph 10 of Part 1 of the Ninth Schedule) 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.

**Note:** Although the above-mentioned employers are exempt from the payment of the levy, these employers are not absolved from registration. An employer is only 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 with the UI Commissioner for UIF** The following employers who are **not exempt** from contributing to the fund, **must register with the UI Commissioner** —

**purposes**

- 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
- an employer who is not liable for the payment of SDL.

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.

## 7.2 BRANCHES REGISTERED SEPARATELY

<b>Reference to the Act</b>	Tax period definition in Paragraph 11B(1) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	Where an employer has for registration purposes applied for separate registration of branches of his/her undertaking, each branch shall be deemed to be a separate employer.
<b>Application form</b>	Application to register a branch separately from the main branch must be made on an EMP102e form.
<b>Transferring between branches</b>	Where an employee is transferred between branches, the branch where the employee has worked until the date of transfer must issue an IRP5/IT3(a) 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 IRP5/IT3(a) 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).

## 7.3 CHANGES OF REGISTERED PARTICULARS

<b>Reference to the Act</b>	Chapter 3 of the Tax Administration Act
<b>Meaning</b>	An employer must inform SARS in writing within 21 business days of any change in registered particulars: <ul style="list-style-type: none"> <li>• Postal address</li> <li>• Physical address</li> <li>• Representative taxpayer</li> </ul>

- Banking particulars used for transactions with SARS
  - Electronic address used for communication with SARS or
- Such other details as the Commissioner may require by public notice.

## 7.4 DEREGISTRATION OF AN EMPLOYER

<b>Reference to the Act</b>	Paragraph 15(3) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	Every person who is registered as an employer shall within 14 days after ceasing to be an employer, notify the Commissioner in writing of the fact of the employer have ceased to be an employer.

# 8 RECORD KEEPING

## 8.1 EMPLOYER RECORDS

<b>Reference to the Act</b>	Chapter 4 of the Tax Administration Act Paragraph 14(1)) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	<p>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.</p> <p>These records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.</p> <p>The following record of all employees' needs to be maintained by the employer, as may be prescribed by the Commissioner.</p> <ul style="list-style-type: none"> <li>• Amount of remuneration paid</li> <li>• Employees' Tax deducted/withheld on all remuneration</li> <li>• Income Tax reference number of that employee and</li> <li>• Such further information as the Commissioner may prescribe.</li> </ul>
<b>Prescribed period for keeping records</b>	<p>The records must be kept for a period of five (5) years from the date of the submission of the return and from the end of the relevant tax period. The employer must retain such records and make them available for scrutiny by the Commissioner.</p> <p>Employers who supply the tax certificate information on an electronic medium or electronically, must also keep such records for the prescribed period.</p>

## 8.2 RECORDS AND INFORMATION TO BE PROVIDED BY THE EMPLOYEE

<b>Reference to the Act</b>	Paragraph 14(1)) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	<p>The employee must supply the following particulars to his/her employer to ensure that the employer's records are correct —</p> <ul style="list-style-type: none"> <li>• Surname and full names</li> </ul>

- Address
- Identity number or passport number and date of birth
- Income Tax reference number (if any)
- Written declaration where required (refer below).
- An employee is deemed to be in standard employment
- Where such employee renders services to the employer for 22 hours or less in every completed week
- The employee 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 hold such employment at the relevant employer.

Written declaration by employee

**9 DETERMINING THE EMPLOYEES' TAX, SDL AND UIF LIABILITY**

**9.1 ELEMENTS REQUIRED BEFORE EMPLOYEES' TAX MAY BE DEDUCTED**

**Reference to the Act** Employer, employee and remuneration definitions in Paragraph 1 of the 4<sup>th</sup> schedule

**Meaning** 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.

**9.2 ANNUAL EQUIVALENT CALCULATION**

**Reference to the Act** Annual equivalent definition in Paragraph 11B of the 4<sup>th</sup> Schedule

**Meaning** 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.

**Prescribed formula** The following formula must be used to determine the annual equivalent:

$$\text{Total remuneration received/accrued} \times \frac{\text{Total pay periods in tax year}}{\text{Total pay periods worked}}$$

Although the annual tax is determined on the annual equivalent, the employee will not be liable for the tax on the annual equivalent, but only for the pro-rata portion which represents 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.

**Determination of annual equivalent** An annual equivalent need only be determined when an Employee's Tax period is shorter than a full tax year.

**Example: Employee's Tax period is shorter** **A monthly paid employee:** (under 65) worked for 7 full months at one employer and received R70 000 for the period worked. The annual equivalent must be

than a full tax year

determined in order to do a final Employees' Tax calculation.

Calculating annual equivalent: $R70\ 000 \div 7 \times 12 = R120\ 000$		
Tax on annual equivalent of R120 000 according to the annual table is .....	R9 532	
Tax on R70 000 for 7 months worked: $R9\ 532 \div 12 \times 7$ .....		R5 560

**Examples: Employee is employed for a portion of a pay period**

**Weekly paid employee:** A weekly remunerated employee (under 65) starts working on the 5<sup>th</sup> day of a week. He receives R931 for the 3 days worked during the first week. The employee's week consists of 7 days.

Determine the decimal portion of the pay period: $3 \div 7 = 0.4285$		
Calculating annual equivalent: $R931 \div 0.4285 \times 52 = R112\ 980$		
Tax on annual equivalent of R112 980 according to the annual table is .....	R8 263	
Tax on R931 for 3 days worked: $R8\ 263 \div 52 \times 0.4285$ .....		R68

**Fortnightly paid employee:** A fortnightly remunerated employee (under 65) starts working on the 7<sup>th</sup> day of a fortnight period. He receives R2 593 for the 8 days worked during the first fortnight period. The employee's week consists of 14 days.

Determine the decimal portion of the pay period: $8 \div 14 = 0.5714$		
Calculating annual equivalent: $R2\ 593 \div 0.5714 \times 26 = R117\ 987$		
Tax on annual equivalent R117 987 according to the annual table is .....	R9 154	
Tax on R2 593 for 8 days worked: $R9\ 154 \div 26 \times 0.5714$ .....		R201

**Monthly paid employee:** A monthly remunerated employee (under 65) starts working on the 16<sup>th</sup> day of a month which consists of 30 days. He receives R5 000 for the 15 days worked during the first month.

Determine the decimal portion of the pay period: $15 \div 30 = 0.5$		
Calculating annual equivalent: $R5\ 000 \div 0.5 \times 12 = R120\ 000$		
Tax on annual equivalent R120 000 according to the annual table is .....	R9 532	
Tax on R5 000 for 15 days worked: $R9\ 532 \div 12 \times 0.5$ .....		R397

## 9.3 DEDUCTION TO DETERMINE THE BALANCE OF REMUNERATION

### 9.3.1 PENSION FUND CONTRIBUTIONS

<b>Reference to the Act</b>	Paragraph 2(4)(a) of the 4 <sup>th</sup> Schedule Section 11(k)
<b>Meaning</b>	The employer must deduct any contributions by the employee concerned to any pension fund which the employer is entitled or required to deduct from the employee's remuneration.  The allowable deduction must be limited to the deduction to which the employee is entitled under Section 11(k) having regard to the remuneration and the period (e.g. current or arrear contributions) in respect of which it is payable.
<b>Limitation</b>	<b>Current contributions</b> — An annual deduction limited to the greatest of — <ul style="list-style-type: none"> <li>• R1 750</li> <li>• 7,5% of the remuneration received during the year from retirement funding employment.</li> </ul>

**Arrear contributions** — An annual deduction limited to R1 800.

**IRP5/IT3(a) details**

The full amount of the pension fund contributions made by the employee must be reflected under the following codes:

- code 4001 (current contributions)
- code 4002 (arrear contributions).

**9.3.2 Retirement Annuity Fund (RAF) CONTRIBUTIONS**

**Reference to the Act**

Paragraph 2(4)(b) and (bA) of the 4<sup>th</sup> Schedule Section 11(n)

**Meaning**

The employer may at his/her option deduct any RAF contributions by the employee in respect of which proof of payment has been furnished to the employer

The employer must deduct any RAF contributions made by the employer to any RAF for the benefit of the employee.

The allowable deduction must be limited to the deduction to which the employee is entitled under Section 11(n) having regard to the remuneration and the period (e.g. current or arrear contributions) in respect of which it is payable.

**Limitation**

**Current contributions** — An annual deduction limited to the greatest of —

- R1 750
- R3 500 less allowable current pension fund contributions
- 15% of the remuneration received during the year from non-retirement funding employment.

**Arrear contributions** — An annual deduction limited to R1 800.

**IRP5/IT3(a) details**

The full amount of the RAF contributions made by the employee must be reflected under the following codes —

- code 4006 (current RAF contributions)
- code 4007 (arrear RAF contributions).

**RAF contributions by employer**

A contribution made by an employer on behalf of an employee is a taxable fringe benefit in the hands of an employee. These contributions are deemed to be paid by the employee and the same value included as a taxable benefit should be added to the value of the contributions made by the employee (code 4006).

**9.3.3 INCOME PROTECTION POLICY PREMIUMS**

**Reference to the Act**

Paragraph 2(4)(c) of the 4<sup>th</sup> Schedule Section 11(a)

**Meaning**

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

- in respect of which all amounts payable in terms of that policy constitute or will constitute income as defined.

**IRP5/IT3(a) details** The amount of the allowable income protection policy premiums made by the employee must be reported under code 4018.

### 9.3.4 DONATIONS

**Reference to the Act** Paragraph 2(4)(f) of the 4<sup>th</sup> Schedule  
Section 18A(2)(a)

**Meaning** The employer must deduct so much of any donation deducted from the remuneration of the employee and paid over by the employer to the relevant approved organisation on behalf of the employee.

**Limitation** The deduction may not exceed 5% of the remuneration after deducting there from —

- allowable pension fund contributions
- allowable RAF contributions
- allowable income protection policy premiums
- allowable medical scheme contributions.

**Note:** This deduction may only be allowed if the employer will be issued a receipt which reflects the details as prescribed in section 18A(2)(a).

**IRP5/IT3(a) details** The full amount of the donations deducted from the remuneration of the employee must be reflected under code 4030 and not only the allowable portion.

### 9.3.5 MEDICAL SCHEME CONTRIBUTIONS OVER 65 YEARS OF AGE

**Reference to the Act** Paragraph 2(4)(d) and (e) of the 4<sup>th</sup> Schedule  
Section 18(1)(a), 18(2)(c)(i) and 18(5)

**Meaning** The employer must deduct any contribution made by the employee to a registered medical scheme as contemplated in Section 18(1)(a) where the employer effects payment of these contributions to the medical scheme.

The employer may at his/her option deduct any contribution made by the employee to a registered medical scheme as contemplated in Section 18(1)(a) where the employer does not affect payment of these contributions to the medical scheme but the employee furnishes the employer with proof of payment.

**Note:** The allowable deduction must be limited for employees who are 65 years of age or older.

**Limitation** **Employee 65 years and older:** The allowable deduction will be all contributions made by the employee.

**IRP5/IT3(a) details** The information relating to medical scheme contributions must be reported under the following codes —

- code 4005 - Medical scheme contributions made by the employee
- code 4474 – Employer's medical scheme contributions made for the benefit of the employee

- code 4493 - Employer's medical scheme contributions made for the benefit of the retired employee or dependants to whom the "no value" provisions apply.

### **9.3.6 MEDICAL SCHEME FEES TAX CREDIT FOR TAXPAYERS BELOW 65 YEARS OF AGE**

<b>Reference to the Act</b>	Paragraphs 2(4)(d) and 9(6) of the 4 <sup>th</sup> Schedule Section 6A
<b>Meaning</b>	<p>Effective 1 March 2012, the current medical scheme contribution deduction for taxpayers aged below 65 is replaced by a medical scheme contribution tax credit. This does not apply to persons 65 years of age or older: Visit our website <a href="http://www.sars.gov.za">www.sars.gov.za</a> for a full explanation on the Medical Scheme Fees Tax Credit for taxpayers not yet 65 years of age. The tax credit applies in respect of fees paid by the taxpayer to a registered medical scheme. The amount of the medical scheme contribution tax credit is –</p> <ul style="list-style-type: none"> <li>• R242 in respect of benefits to the taxpayer</li> <li>• R242 in respect of benefits the taxpayer's first dependent</li> <li>• R162 in respect of benefits to each additional dependent.</li> </ul>
<b>Medical scheme contributions by employer</b>	A contribution made by an employer on behalf of an employee is a taxable fringe benefit in the hands of an employee. These contributions are deemed to be paid by the employee and the same value included as a taxable benefit (code 3810) should be added to the value of the contributions made by the employee (code 4005).
<b>Limitation</b>	Aggregate of the full medical scheme contributions in excess of four (4) times the credit plus all out of pocket expenses, only to the extent that it exceeds 7.5% of the taxable income (excluding retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit).
<b>IRP5/IT3(a) details</b>	<p>The information relating to medical scheme contributions must be reported under the following codes —</p> <ul style="list-style-type: none"> <li>• code 4005 - Medical scheme contributions made by the employee</li> <li>• code 4474 – Employer's medical scheme contributions made for the benefit of the employee; or</li> <li>• code 4493 - Employer's medical scheme contributions made for the benefit of the retired employee or dependants to whom the "no value" provisions apply.</li> </ul>

## **9.4 EMPLOYEES' TAX DEDUCTION**

<b>Reference to the Act</b>	Paragraph 2(1), 2(2), 2(4), 2(5)(c), 3 and 7 of the 4 <sup>th</sup> Schedule Section 7B of the Income Tax Act
<b>Meaning</b>	Employees' Tax must be deducted from any amount that is paid by way of remuneration.
<b>Amount on which Employees' Tax is deductible</b>	The Employees' Tax deduction is calculated on the balance of remuneration after the deduction of all allowable deductions (i.e. pension fund contributions, RAF contributions, income protection policy premiums, donations and medical scheme contributions (for a taxpayer who is 65 years of age or older).
<b>Voluntary additional</b>	An employer may deduct a greater amount of Employees' Tax on receipt of a

<b>Employees' Tax deduction</b>	<p>written request from an employee.</p> <p>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.</p>
<b>Agreement between employer and employee</b>	<p>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 4<sup>th</sup> Schedule.</p>
<b>Provisional taxpayer employee</b>	<p>Employees' Tax must be deducted or withheld from the variable 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.</p>
<b>Remittance of Employees' Tax</b>	<p>The employer must remit the amount deducted or withheld to SARS with his/her Monthly Employer Declaration (EMP201).</p>
<b>IRP5/IT3(a) details</b>	<p>The amount of Employees' Tax must be reported under the following codes —</p> <ul style="list-style-type: none"> <li>• code 4102 – The PAYE component of the Employees' Tax deducted/withheld including any voluntary additional Employees' Tax deducted</li> <li>• code 4103 – The total of code 4101.</li> </ul>

## 9.5 SDL LIABLE AMOUNT

<b>Reference to the Act</b>	<p>Section 3(1) and (4) of the SDL Act</p>
<b>Meaning</b>	<p>The employer must pay SDL at a rate of 1% (from 1 April 2001) of the leviable amount.</p>
<b>Amount on which SDL is determined</b>	<p>The leviable amount is the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the 4<sup>th</sup> Schedule provisions for purposes of determining the employer's liability for Employees' Tax.</p> <p>The SDL is therefore determined on the balance of remuneration after the deduction of all allowable deductions (i.e. pension fund contributions, RAF contributions, income protection policy premiums, donations and medical scheme contributions).</p> <p><b>Note:</b> All remuneration not included in the definition of remuneration for SDL purposes should be excluded from the balance of remuneration result.</p>
<b>Remittance of SDL</b>	<p>The employer must remit the SDL liable amount to SARS with his/her monthly EMP201.</p>
<b>IRP5/IT3(a) details</b>	<p>The SDL amount must be reported under the code 4142 on each relevant employee's certificate.</p>

## 9.6 UIF LIABLE AMOUNT

<b>Reference to the Act</b>	<p>Section 5 and 6 of the UIC Act</p>
<b>Meaning</b>	<p>The employer and employee must on a monthly basis contribute to the UIF.</p>

The employer must contribute 1% of the remuneration paid or payable to the relevant employee during any month.

The employee must contribute 1% of the remuneration paid or payable to him/her by his/her employer during any month.

**Amount on which UIF contributions is determined**

The amount on which the UIF contribution is based is the total amount of remuneration as defined for UIF purposes.

This remuneration amount is not based on the balance of remuneration and is basically the defined remuneration before the deduction of any allowable deductions.

**Note:** All remuneration not included in the definition of remuneration for UIF purposes should be excluded from the remuneration for purposes of determining the UIF liable amount.

**Remittance of UIF**

The employer must remit the UIF liable amount to SARS with his/her monthly EMP201.

**IRP5/IT3(a) details**

The total UIF contribution amount (i.e. employer's 1% and employee's 1%) must be reported under the code 4141 on each relevant IRP5/IT3(a).

## 9.7 ESTIMATED ASSESSMENT

**Reference to the Act**

Chapter 8 of the Tax Administration Act  
Section 9A of the UIC Act

**Meaning**

The Commissioner may estimate the amount of Employees' Tax, SDL or UIF due by the employer where —

- the employer has failed to furnish an EMP201 as required or
- the employer submits a return or information that is incorrect or inadequate.

SARS must make the estimate based on information readily available.

If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly, which assessment is not subject to objection and appeal.

The employer shall be liable to the Commissioner for the payment of the amount of Employees' Tax, SDL or UIF contributions estimated as if such an amount was deducted/withheld as required by the provisions of the relevant Tax Acts

Any estimate of the amount of Employees' Tax, SDL or UIF contributions payable by the employer is subject to objection and appeal unless both the taxpayer and the Commissioner in terms of section 95(3) of the Tax Administration Act agree in writing to the said estimate assessment(s).

## 10 PAYMENTS

### 10.1 PAYMENT OF EMPLOYEES' TAX, SDL AND UIF

**Reference to the Act**

Chapter 10 of the Tax Administration Act  
Paragraph 2(1), 5(1) and 14(2) of the 4<sup>th</sup> Schedule  
Section 6 of the SDL Act  
Section 7(4) and 8 of the UIC Act

<b>Meaning</b>	<p>The Employees' Tax and UIF contributions as well as SDL must be paid over to SARS within seven days after the end of the month during which the amount was deducted or due or such longer period as the Commissioner determines.</p> <p>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.</p>
<b>Monthly declaration</b>	<p>The employer must submit such declaration as the Commissioner may prescribe when making any payment. The prescribed EMP201 must be requested by the employer for payment purposes each month.</p> <p>Payments of Employees' Tax, SDL and UIF contributions <b>MUST</b> be reflected correctly and separately on the EMP201 in order to avoid the incorrect allocation of these payments and the unnecessary issue of final demands.</p> <p>An EMP201 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.</p>
<b>Requesting an EMP201</b>	<p>Where an employer has not received an EMP201, such declaration should be requested from SARS by means of a:</p> <ul style="list-style-type: none"><li>• Telephonic request (SARS Contact Centre)</li><li>• Written request (e.g. post)</li><li>• Personal visit (SARS branch).</li></ul>
<b>Employer personally liable</b>	<p>An employer who fails to deduct or withhold the full amount of Employees' Tax and/or UIF contributions is personally liable for the shortfall.</p>
<b>Payments</b>	<p>Please refer to GEN-PAYM-01-G01 - SARS Payment Rules - Reference Guide available on the SARS website: <a href="http://www.sars.gov.za">www&gt;sars.gov.za</a>.</p>
<b>Allocation of payments</b>	<p>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 —</p> <ul style="list-style-type: none"><li>• in respect of penalty</li><li>• in respect of interest, to the extent to which the payment exceeds the amount of penalty</li><li>• in respect of Employees' Tax or additional penalty, to the extent to which the payment exceeds the amount of penalty and interest.</li></ul> <p>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.</p> <p>SARS may allocate any payment against the oldest tax and/or the oldest interest where no designation on an account has been received excluding amount not yet due.</p>

## 10.2 INTEREST AND PENALTY

<b>Reference to the Act</b>	<p>Chapter 15 of the Tax Administration Act Paragraph 6(1) of the 4th Schedule Section 89<i>bis</i>(2) Section 11, 12(1) and 12(3) of the SDL Act Section 13(1) of the UIC Act</p>
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<b>Meaning</b>	Interest as well as a penalty may be imposed on late payments or outstanding amounts.
<b>Interest</b>	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.
<b>Penalty</b>	A penalty equal to 10% in addition to the interest will be imposed on late payments or outstanding amounts.
<b>Additional penalty</b>	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.

## 11 OFFENCES

<b>Reference to the Act</b>	Chapter 15, 16 and 17 of the Tax Administration Act Paragraph 30(1) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	<p>Any person will be guilty of an offence and liable on conviction to a fine or imprisonment where he/she —</p> <ul style="list-style-type: none"> <li>• fails to deduct Employees' Tax from remuneration or to pay the tax to the Commissioner within the prescribed period</li> <li>• uses or applies Employees' Tax deducted or withheld, for purposes other than the payment of such amount to the Commissioner</li> <li>• permits a false IRP5/IT3(a) to be issued or knowingly is in possession of or uses a false IRP5/IT3(a)</li> <li>• alters an IRP5/IT3(a) issued by any other person, purports to be the employee named on any IRP5/IT3(a) or obtains a credit for his/her own advantage or benefit in respect of Employees' Tax deducted or withheld from another person's remuneration</li> <li>• not being an employer and without authority from an employer issues or causes to be issued, any document purporting to be an IRP5/IT3(a)</li> <li>• without just cause fails to comply with an Income Tax directive issued by the Commissioner</li> <li>• furnishes false information or misleads his/her employer regarding the amount of Employees' Tax to be deducted in his/her case</li> <li>• fails to deliver IRP5/IT3(a) to employees or former employees within the prescribed periods</li> <li>• fails to comply with any condition prescribed by the Commissioner in regard to the manner in which IRP5/IT3(a) may be used, the surrender of unused stocks of certificates, accounting for used, unused and spoiled IRP5/IT3(a) when required by the Commissioner to do so or to surrender unused IRP5/IT3(a) when ceasing to be an employer</li> <li>• fails to comply with the conditions for using a mechanised system for printing IRP5/IT3(a) to be issued to employees or former employees</li> </ul>

- fails to maintain a record of remuneration paid and tax deducted there from or to retain such record for a period of 5 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
- defaults in rendering a return.

**Penal clause**

An employer shall be guilty of an offence may be fined or sentenced to imprisonment for a period not exceeding 12 months.

**12 TAX DIRECTIVES (LUMP SUM BENEFITS AND EXCEPTIONAL CIRCUMSTANCES)**

**12.1 PURPOSE OF A TAX DIRECTIVE**

**Reference to the Act**

Paragraph 9(1) of the 4<sup>th</sup> Schedule  
Paragraph 19 of the 7<sup>th</sup> Schedule

**Meaning**

A tax directive (IRP3) 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.

**Important**

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.

**Rules related to tax directives**

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.).

**Application forms**

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](http://www.sars.gov.za). Form A & D, Form B, Form C and Form E 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 branches.

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 —
  - IRP3(a) – Lump sum paid by employer (e.g. death/retirement/retirement due to ill health, superannuation & other/retrenchment/share options without obligation/in service payment within five years of retirement/other).
  - IRP3(b) – Employees' Tax to be deducted at a fixed percentage (e.g. commission agents/personal service provider).
  - IRP3(c) – Employees' Tax to be deducted at a fixed amount (e.g. Paragraph 11 of the 4<sup>th</sup> Schedule (hardship)/assessed loss carried forward).
  - IRP3(d) – Determine deemed remuneration to be used to deduct Employees' Tax (e.g. Paragraph 11 of the 4<sup>th</sup> Schedule (hardship)/Paragraph 11C (1)(ii)(bb) of the 4<sup>th</sup> Schedule).
  - Form A & D – Lump sum benefits paid by pension and/or provident fund. (e.g. death/ill health/retirement/provident fund – deemed retirement).
  - Form B – Lump sum benefits 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 sum benefits 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).
  - Form E – Lump sum benefits payable after retirement (e.g. Death Member/Former Member after Retirement, Par. (c) Living Annuity Commutation, Death - Next Generation Annuitant, Next Generation Annuitant Commutation, Gn16: Existing Annuity).

To avoid a delay in the issuing of a directive, certain minimum information is required on the relevant application form. For more information refer to IT-AE-12-SOP01 - Guide for Tax Directives - External on the SARS website: [www.sars.gov.za](http://www.sars.gov.za).

**Compensation in respect of death arises out of and in the course of employment**

Refer to 12.9 LUMP SUM COMPENSATION FOR OCCUPATIONAL DEATH

**Application forms**

An IRP3 (a) application form, which is available from SARS, must be submitted in respect of the above.

**Employees' Tax**

**Normal termination of service:** The lump sum 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 gratuitous payment (leave pay that the employee is not entitled to but which is paid out voluntarily by the employer) upon termination of employment that is calculated with reference to leave days, does not constitute leave pay and could be included in the severance benefit amount.

Leave pay is a payment in respect of services rendered and does not form part of a severance benefit.

**Retrenchment, retirement or death:** A tax directive must be obtained from the SARS branch or where the employee is on register for Income Tax purposes. The applicable exemption shall be determined by SARS with the processing of the tax directive application.

**IRP5/IT3(a) details**

**Normal termination of service:** A PAYE calculation must be done at the end of the tax period to determine the PAYE.

**Retrenchment, retirement or death:** The lump sum amount paid due to retrenchment, retirement, etc. must be reflected on the IRP5/IT3(a) under code 3901.

## 12.2 HARDSHIP DUE TO ILLNESS OR OTHER CIRCUMSTANCES

**Reference to the Act**

Paragraph 11 of the 4<sup>th</sup> Schedule

**Meaning**

The Commissioner may, having regard to the circumstances of the case, issue a directive authorising the employer to —

- refrain from deducting any Employees' Tax from the remuneration of an employee
- deduct a specified amount of Employees' Tax from the remuneration of an employee
- deduct an amount of Employees' Tax determined in accordance with a specified rate or scale.

**Reason for directive**

This type of directive is issued —

- in order to alleviate hardship to that employee due to circumstances outside the control of the employee
- to correct any error in regard to the calculation of Employees' Tax
- in case of remuneration constituting commission
- where remuneration is paid to a personal service provider.

**Application form**

An IRP3(c) application form, which is available from SARS, must be submitted by the relevant employee in respect of the above.

## 12.3 GAINS MADE IN RESPECT OF RIGHTS TO ACQUIRE MARKETABLE SECURITIES

**Reference to the Act**

Paragraph 11A of the 4<sup>th</sup> Schedule  
Section 8A

**Meaning**

The employer must apply for an IRP3 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.

**Application form**

An IRP3(a) application form, which is available from SARS, must be submitted in respect of the above.

## IRP5/IT3(a) details

Income must be reflected under code 3707 on the certificate.

## 12.4 BROAD-BASED EMPLOYEE SHARE PLAN

## Reference to the Act

Paragraph 11A of the 4<sup>th</sup> Schedule  
Section 8B

## Meaning

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
- is disposed of by the employee within 5 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
  - 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
- acquired for a consideration equal to any consideration given for the qualifying equity share disposed of in exchange.

## Acquisition of equity shares

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.

## Employee' Tax

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%.

## IRP5/IT3(a) details

The income must be reflected under code 3717 on the certificate.

## 12.5 VESTING OF EQUITY INSTRUMENTS

## Reference to the Act

Paragraph 11A of the 4<sup>th</sup> Schedule  
Section 8C

## Meaning

The employer must apply for an IRP3 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.

<b>Taxable portion</b>	<p>The gain to be included in the remuneration of an employee is —</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• in any other case, the sum of — <ul style="list-style-type: none"> <li>▫ 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</li> <li>▫ 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.</li> </ul> </li> </ul> <p>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.</p>
<b>Vesting of equity instrument</b>	<p>An equity instrument acquired is deemed to vest —</p> <ul style="list-style-type: none"> <li>• in the case of an unrestricted equity instrument, when the employee acquires it</li> <li>• in the case of a restricted equity instrument, at the earliest of — <ul style="list-style-type: none"> <li>▫ when all relevant restrictions cease</li> <li>▫ immediately before the employee disposes of it (except for disposals discussed hereunder)</li> <li>▫ immediately after it terminates (if it is an option)</li> <li>▫ immediately before the employee dies if all the restrictions relating to that equity instrument are or may be lifted on or after death</li> <li>▫ the time a disposal (contemplated in 2(a)(1) or (b)(i) occurs.</li> </ul> </li> </ul>
<b>Disposal</b>	<p>A disposal does not trigger a vesting if —</p> <ul style="list-style-type: none"> <li>• a restricted equity instrument is replaced by another restricted equity instrument</li> <li>• 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</li> <li>• a restricted equity instrument is disposed of to a connected person.</li> </ul>
<b>Application form</b>	An IRP3(a) application form, which is available from SARS, must be submitted in respect of the above.
<b>IRP5/IT3(a) details</b>	The gain must be reflected under code 3718 on the certificate.
<b>12.6 ARBITRATION AWARDS</b>	
<b>Reference to the Act</b>	Paragraph (c), (d) and (f) of the definition of gross income in section 1 Paragraph 9(3) of the Fourth Schedule
<b>Meaning</b>	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.

**Classification**

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.

**Application form**

A written application, accompanied by all relevant information, for a ruling must be directed to the nearest SARS branch 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).

**IRP5/IT3(a) detail**

The relevant taxable and non-taxable portions of an arbitration award must be reflected on the certificate under the following codes —

- code 3608 (taxable amount) and
- code 3602 (non-taxable amount).

**12.7 LUMP SUM BENEFIT PAYMENTS FROM A PENSION, PENSION PRESERVATION, PROVIDENT, PROVIDENT PRESERVATION OR RETIREMENT ANNUITY FUND**

**Reference to the Act**

Second Schedule to the Income Tax Act

**Meaning**

The provisions of Paragraphs 2(1) and 9(3) of the 4<sup>th</sup> Schedule prescribe that trustees or fund administrators must apply for a tax directive at SARS before a lump sum benefit from a pension, pension preservation, provident, provident preservation or retirement annuity fund may be paid.

**Application forms**

The relevant application forms A and D, B, C or E 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](http://www.sars.gov.za).

**Lump sum payments in**

In respect of withdrawal (e.g. resignation, transfer, future surpluses, divorce,

**respect of withdrawal**

housing loan payments, emigration withdrawal, or discontinued contributions) —

- Lump sum payments with a date of accrual prior to **1 March 2009** —
  - from a Pension, Pension preservation or RAF must be reflected under code 3902 on the IRP5/IT3(a)
  - from a Provident or Provident preservation fund must be reflected under code 3904 on the IRP5/IT3(a)
  - due to surplus apportionments after 1 January 2006 and NOT paid in terms of section 15B of the Pension Funds Act of 1956 must be reflected under code 3902 or 3904 (according to the fund type) on the IRP5/IT3(a)
  - due to a court order in respect of a divorce, maintenance or housing loan must be reflected under code 3902 or 3904 (according to the fund type) on the IRP5/IT3(a).
- Lump sum payments with a date of accrual after **1 March 2009**:
  - Withdrawals from a Pension, Pension preservation, Provident, Provident preservation or RAF must be reflected under code 3920 on the IRP5/IT3(a) except paragraph (eA) of the definition of gross income in section 1.
  - Future surplus paid in terms of section 15E & 15D of the Pension Funds Act of 1956 must be reflected under code 3921 on the IRP5/IT3(a).
  - due to a court order in respect of a divorce orders, must be reflected under code 3920 on the IRP5/IT3(a)
  - due to a withdrawal after retirement from a living annuity in terms of paragraph (c) of the definition of living annuity, where the value of the assets become less than the amount prescribed by the Minister in the Gazette, must be reflected under code 3921 on the IRP5/IT3(a). With effect from 1 March 2011, the retirement lump sum rates of tax is applicable to the commutation of a living annuity and the source code 3915 with the tax code 4115 must be used on the IRP5/IT3(a).

**Lump sum payments in respect of death of retirement**

Lump sum payments prior to 1 October 2007 —

- from a Pension or RAF must be reflected under code 3903 on the IRP5/IT3(a).
- from a Provident Fund must be reflected under code 3905 on the IRP5/IT3(a).

Lump sum payments after 1 October 2007 from a Pension, Pension preservation, Provident, Provident preservation or RAF must be reflected under code 3915 on the IRP5/IT3(a).

**Lump sums other than 'Death and retirement'**

Lump sum payments by unapproved funds must be reflected under code 3907 on the IRP5/IT3(a).

Unclaimed benefits prior to 1 March 2009 and in terms of the provisions of General Note 35 (GN35 is available on the SARS website [www.sars.gov.za](http://www.sars.gov.za)) must be reflected under code 3909 on the IRP5/IT3(a).

Retirement lump sum benefits paid according to paragraph (eA) of the definition of gross income in section 1 must be reflected under code 3614 on the IRP5/IT3(a). These type of benefits include —

- A member of a public sector fund who transfer from a Pension Fund to a Provident Fund while the member remains effectively in the employment of the same employer.
- Any amount which has become payable to the member of a public sector fund or is being utilised to redeem a debt while the member remains effectively in the employment of the same employer.

**Lump sum payments in respect of involuntary termination of employment** Lump sum payments accruing after 28 February 2009 from a Pension or Provident Fund in respect of termination of services per sub par. 2(1)(a)(ii)(AA) or (BB) of the Second Schedule of the Income Tax Act (e.g. retrenchment) must be reflected under code 3915 on the IRP5/IT3(a).

Lump Sum payments accruing before 1 March 2009 must be dealt with as prescribed for “lump sum payments in respect of withdrawal”.

**IRP5/IT3(a) details** The TAX portion according to the relevant tax directive must be reflected as follows —

- Under code 4102 if the lump sum payment is reflected under code 3902, 3903, 3904, 3905, 3907, 3908, 3909 or 3614.
- Under code 4115 if the lump sum payment is reflected under code 3915, 3920 or 3921.

## 12.8 LUMP SUMS BY EMPLOYERS – SEVERANCE BENEFITS

**Reference to the Act** **Severance benefit definition in section 1**  
Gross income definition in Section 1  
Paragraph 9(3) of the 4<sup>th</sup> Schedule  
Section 10(1)(gB) of the Income Tax Act

**Meaning** Severance benefit means any amount (other than a lump sum benefit or an amount contemplated in paragraph (d) (ii) or (iii) of the definition of “gross income”) received by or accrued to a person by way of a lump sum from or by arrangement with the person’s employer or an associated institution in relation to that employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person’s office or employment or of the person’s appointment (or right or claim to be appointed) to any office or employment, if—

- such person has attained the age of 55 years.
- such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of holding the person’s office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body
- such termination or loss is due to—
  - the person’s employer having ceased to carry on or intending to cease carrying on the trade in respect of which the person was employed or appointed
  - the person having become redundant in consequence of a general reduction in personnel or a reduction in personnel of a particular class by the person’s employer, unless, where the person’s employer is a company, the person at any time held more than five per cent of the issued share capital or members’ interest in the

company.

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to be an amount which accrued to such person immediately prior to his or her death.

**Exemption**

Section 10(1)(gB) of the Income Tax Act exempt any amount paid by the employer to any person in respect of the death of an employee to the extent that that compensation does not include:

- The amount of pension paid in respect of the death or disablement caused by any occupational injury or disease sustained or contracted by an employee before 1 March 1994
- Does not exceed an amount of R300,000 **or**
- The amount was paid in terms of Section 17 of the Road Accident Fund Act of 1966.

**Leave payment**

Please note that leave pay is a payment in respect of services rendered and does not form part of a severance benefit. The normal bonus calculation should be used to calculate the tax.

**Application form**

An IRP3(a) application form, which is available on the SARS website must be submitted in respect of the above. Paragraph 9(3) of the 4<sup>th</sup> Schedule prescribes that the employer must submit a directive application before paying out a lump sum to the employee.

**IRP5/IT3(a) details**

The full amount must be reflected under code 3901 and the tax under code 4115 on the IRP5/IT3(a).

## 12.9 LUMP SUM COMPENSATION FOR OCCUPATIONAL DEATH

**Reference to the Act**

Section 10(1)(gB)(iii)

**Meaning**

Lump sum payments accruing after 1 March 2011 from a compensation fund in respect of:

- lump sum compensation paid by the employer as a direct result of an occupational death of an employee. These payments must be in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 and within the requirements of Section 10(1)(gB)(iii) of the Income Tax Act, as amended.

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to be an amount which accrued to such person immediately prior to his/her death.

**Application form**

An IRP3(a) application form, which is available on the SARS, must be submitted in respect of the above.

**IRP5/IT3(a) details**

The tax portion according to the relevant tax directive must be reflected as follows:

- under code 4115 if the lump sum payment is reflected under code 3922 on the IRP5/IT3(a) with effect from 2012 year of assessment.

**Exemption**

The death lump sum benefit will be exempt if:

- The death benefit is paid in terms of the Compensation for Occupational

## Injuries and Diseases Act

- The employer must pay this amount
- A maximum amount of R300 000 will be exempt.

**12.10 EMPLOYER-OWNED INSURANCE POLICIES**

<b>Reference to the Act</b>	Paragraphs 2(e), 2(k) and 12C of the 7 <sup>th</sup> Schedule Paragraphs 2(4) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	<p>Employers enter into insurance policies arrangements for the benefit of employees or directors, or for their dependants and nominees. These policies make payment upon the death, disability or severe illness of an employee of such employer. The employer incurs premiums in respect of a policy of insurance that relates to the death, disability or severe illness of employees for the direct or indirect benefit of those employees. Employers are entitled to a premium deduction in respect of such policy. However the payment of these insurance premiums shall give rise to a simultaneous fringe benefit inclusion for employees.</p> <p>Where the employer is the named beneficiary and has an arrangement with employee to pay over the proceeds to the employees, the tax treatment should be the same as for payments made directly by the insurer to the employee.</p>
<b>Employees' Tax</b>	<p>The fringe benefit will arise on a monthly basis in respect of employer-owned insurance policies for the direct and indirect benefit of employees.</p> <p>The lump sum proceeds in respect of the employer-owned insurance policy where the policy proceeds are received by the policyholder (the employer); the policyholder will be taxed, subject to a particular exemption. The exemption will apply where the policyholder did not choose to be eligible for the deduction of a premium from 1 March 2012 onwards.</p> <p>If the policyholder (employer) receives the insurance proceeds in respect of an employer-owned insurance risk policy on or after 1 March 2012, the proceeds will be exempt unless the employer elected in the policy agreement to be eligible to the premiums as deductions.</p> <p>The value of the fringe benefit on a monthly basis will be deemed to be equal to employer's premium contributions. The fringe benefit must be taken into account for Employees' Tax purposes.</p>
<b>IRP5/IT3(a) details</b>	<p>The taxable fringe benefit must be reflected under the income code 3801 on the IRP5/IT3(a).</p> <p>The lump sum proceeds in respect of the employer-owned insurance policies must be reflected under the income source code 3809 on the IRP5/IT3(a).</p>

**12.11 DIRECTORS OF PRIVATE COMPANIES/MEMBERS OF CLOSE CORPORATIONS**

<b>Reference to the Act</b>	Paragraph 11 and 11C(1)(c)(ii)(bb) of the 4 <sup>th</sup> Schedule
<b>Meaning</b>	<p>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.</p> <p>A director may apply for a relief where there is a verifiable result of hardship.</p>

**Tax directive application** Where the minimum amount cannot be determined 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 and lump sum benefits (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.

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 and lump sum benefits (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
  - 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.

**Application form** An IRP3(d) application form, which is available from SARS, must be submitted in respect of the above.

**Important** The taxation of director's remuneration is covered separately in this guide.

<b>13 CLASSIFICATION OF EMPLOYEES (WORKERS)</b>
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### 13.1 LABOUR BROKER

<b>Reference to the Act</b>	Labour broker and employee definition in Paragraph 1 of the 4 <sup>th</sup> schedule Paragraph 2(5) of the 4 <sup>th</sup> Schedule.
<b>Meaning</b>	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 the client, the labour broker and the worker(s).
<b>Client</b>	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 natural person who, for reward, provides and remunerates workers for a client and is either in or not in possession of an exemption certificate (IRP30). 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
- Partners and/or employees of a partnership.

**Exemption certificate (IRP 30)**

The 4<sup>th</sup> 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
  - 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 IRP30(a) form for a new exemption certificate at a SARS branch at least two 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 branch 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**

If a labour broker is not in possession of a valid exemption certificate (IRP30), 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 (IRP30) that must be retained for inspection purposes.

- The deduction is classified in the following categories —
  - Labour broker with exemption certificate — no Employees' Tax must be deducted
  - Labour broker without an exemption certificate – Employees' Tax must be deducted according to the applicable deduction tables
  - Labour broker with a tax directive – Employees' Tax must be deducted according to the instructions on the tax directive.

**IRP5/IT3(a) details**

The Employees' Tax deducted for a labour broker whether calculated according to the deduction tables or a tax directive must be reflected as PAYE.

The remuneration must be reflected under code 3617 on the IRP5/IT3(a).

The reason code for non-deduction of Employees' Tax (where applicable) must be reflected as 07 on the IRP5/IT3(a).

**13.2 INDEPENDENT CONTRACTOR**

**Reference to the Act**

Income earned by an independent contractor is specifically excluded from the definition of remuneration in Paragraph 1 of the 4<sup>th</sup> Schedule.

**Meaning**

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.

**Deemed independent contractor**

The person will be deemed to be an independent contractor if he/she throughout the year of assessment employs three or more employees (other than any employee who is a connected person in relation to such person) who are on a full-time basis engage in the business of persons rendering any such service and providing that neither of the above two proviso's under exceptions are applicable.

**Exceptions**

The 4<sup>th</sup> 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
- the person who renders or will render the service is subject to the control and supervision of any other person as to the manner in which his/her duties are performed or to be performed or as to his/her hours of work.

**Important**

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 SARS website [www.sars.gov.za](http://www.sars.gov.za).

### 13.3 DIRECTORS OF PRIVATE COMPANIES/MEMBERS OF CLOSE CORPORATIONS

**Reference to the Act**

Employee definition in Paragraph 1 of the 4<sup>th</sup> Schedule  
Paragraph 9(5), 11C and 2(1) of the 4<sup>th</sup> Schedule  
Company definition in section 1

**Meaning**

The definition of employee 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 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 4<sup>th</sup> 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 benefit 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
  - which are gains made from the vesting of any equity instrument as contemplated in Section 8C.
- **N represents** the number of completed months in the tax year in respect of which T was derived.
  - if the remuneration for the year proceeding 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.

**Note:** 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.

**Example:** The total remuneration of the director received for the last year of assessment was R150 000 and the director were only employed for 10 months during the last year of assessment. Calculate the deemed minimum remuneration by applying the prescribed formula:

$$R150\ 000 (Y) = \frac{150\ 000 (T)}{10 (N)}$$

The deemed minimum remuneration is thus R15 000.

#### 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.

**Example:** 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 4<sup>th</sup> Schedule (deemed remuneration) must not be applied.

#### 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.

#### Employees' Tax

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 IRP5/IT3(a) 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 IRP5/IT3(a) 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.

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. It is an amount for which the company is liable in terms of Paragraph 11C(2) of the 4<sup>th</sup> 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 2009. 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 2009 tax year, the bonus will accrue in the 2009 tax year. The bonus which is eventually quantified in the 2010 tax year will not, however, be included in the calculation of the actual remuneration for the determination of PAYE in either the 2009 or 2010 tax year. Instead it will be included in the calculation of the deemed remuneration for the 2010 tax year (which must be re-calculated at the time of determination).

**Important**

SARS has provided certain guidelines in order to assist employers. These guidelines are available in Interpretation Note 5 and can be obtained on the SARS website: [www.sars.gov.za](http://www.sars.gov.za).

**Employees' Tax**

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.

**IRP5/IT3(a) details**

The remuneration shown must be the amount of actual remuneration which is paid/payable to the director for the tax year.

The amount of PAYE 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 and all other components of the remuneration (bonus, allowance, benefits, etc.) must be reflected against the existing codes.

**13.4 STUDENTS AND SCHOLARS****Reference to the Act**

Employee definition in Paragraph 1 of the 4<sup>th</sup> Schedule

**Meaning**

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 nonstandard employment (25% deduction), which applicable method of deducting Employees' Tax must be used.

**13.5 SEASONAL WORKERS****Reference to the Act**

Employee definition in Paragraph 1 of the 4<sup>th</sup> Schedule

**Meaning**

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
- 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 IRP5/IT3(a) 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 (1<sup>st</sup> tax year) and 1 March to 20 May (2<sup>nd</sup> tax year). Two IRP5/IT3(a)s must be issued for the two periods as the employee has two tax periods in one service period.

**13.6 EMPLOYEES BETWEEN 65 AND 74 YEARS****Reference to the Act**

Paragraph 11B(6) of the 4<sup>th</sup> Schedule

Paragraph 2(4) of the 4<sup>th</sup> Schedule

**Meaning**

Employees' Tax deductions for persons between the ages of 65 and 74 years must be made according to the tables for persons between the ages of 65 and 74 years 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 between the ages of 65 and 74 years is attained.

Employees between the ages of 65 and 74 years 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 PAYE liability according to the tables applicable to persons between the ages of 65 and 74 years.

**13.7 EMPLOYEES 75 YEARS OR OLDER**

**Reference to the Act**

Paragraph 11B(6) of the 4<sup>th</sup> Schedule  
Paragraph 2(4) of the 4<sup>th</sup> Schedule

**Meaning**

Employees' Tax deductions for persons 75 years or older must be made according to the tables for PERSONS 75 YEARS OR OLDER from the beginning of the tax period (e.g. 1 March) during which the employee turns 75 and not as from the month the qualifying age of 75 is attained.

Employees 75 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 PAYE liability according to the tables applicable to PERSONS UNDER 75 YEARS.

**13.8 TEMPORARY EMPLOYEES WHO ARE FREQUENTLY EMPLOYED**

**Reference to the Act**

Standard employment definition in Paragraph 11B of the 4<sup>th</sup> Schedule

**Meaning**

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 subparagraph (c) of the definition of standard employment in Paragraph 11B of the 4<sup>th</sup> 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.

**Application**

A written application (by the employer), accompanied by all relevant information, must be directed to the nearest SARS branch. 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
- a full explanation as to why such employees are regularly or frequently employed.

**13.9 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 IRP5/IT3(a).

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 PAYE 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 IRP5/IT3(a) .

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 PAYE 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.

**Application form**

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.

**IRP5/IT3(a) detail**

Commission income must be reflected under code 3606 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	R7 185		R286
May	R7 185		R286
June	R7 185	R1 500	To be calculated

Divide the quarterly commission by the months in which it was earned (R1 500 ÷ 3) .....	500	
Add: salary for June .....	7 185	
	7 685	
Tax on R7 685 (salary and commission) according to the monthly tables .....	377	
Less: Tax on R7 185 (monthly salary) .....	286	286
Tax on commission for one month .....	91	
Multiply tax on commission for one month with the months in which it was earned (R91 x 3)		273
Employees' Tax deductible for June is		13

**14 CLASSIFICATION OF PAYMENTS**

**14.1 DEEMED STANDARD AND NON-STANDARD EMPLOYMENT**

**Reference to the Act**

Standard employment definition in Paragraph 11B of the 4<sup>th</sup> Schedule

**Meaning**

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
- the employee works for at least five hours a day and receives less than

R257 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 anybody 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).

**Examples of non-standard employment**

Workers not in standard employment employed on a daily basis who are physically paid daily, for example:

- 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 PAYE.

**Non-standard employment income** — Employees' Tax at the rate of 25% must be calculated on the balance of remuneration.

**Tax directive** — 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.

**Example**

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 <b>at least</b> five hours per day and earns less than R257 for that day	No tax to be deducted
Employee is <b>required to work at least</b> 22 hours a week and is in standard employment	Deduction tables
Employee is not in standard employment and <b>works less than</b> five hours per day and earns less than R257 for that day	25% deduction
Employee is not in standard employment and <b>works at least</b> five hours per day and earns more than R257 for that day	25% deduction

**IRP5/IT3(a) detail**

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.

## 14.2 BACKDATED (ANTEDATED) SALARIES AND PENSIONS

**Reference to the Act**

Paragraph 9(3) of the Fourth Schedule, Section 7A.

**Meaning**

The employer must ascertain the amount of Employees' Tax that must be deducted from backdated salaries/pensions relating to current or previous tax

year.

**Accrued in current tax year** Where the backdated salary/pension relates to periods in the current tax year, the Employees' Tax must be calculated by adding the backdated salary/pension to the remuneration received.

**Accrued in the previous year** 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.

**IRP5/IT3(a) details** 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
- 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 R8 000 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 (R8 000 + R300)	8 300	
Add: backdated increased salary for the months July to November (R300 x 5)	1 500	
Total remuneration for December .....	9 800	
Tax on R8 300 (December salary) according to the monthly tables	488	488
Less: Tax on R8 000 (salary before increase) .....	434	
Tax on increased salary (R300) .....	54	
Tax on total backdated increased salary of R1 500 (R54 x 5)		270
Employees' Tax deductible for December is		218

### 14.3 RESTRAINT OF TRADE PAYMENTS

**Reference to the Act** Remuneration definition in Paragraph 1 of the 4<sup>th</sup> Schedule  
Paragraph (cA) of the definition of gross income in Section 1

**Meaning** 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.

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 or a personal service provider.

**Employees' Tax** Employees' Tax from restraint of trade payments must be calculated in the same manner as tax on a bonus.

**IRP5/IT3(a) detail** Restraint of trade payments must be reflected under code 3613 on the certificate

### 14.4 LEAVE PAY

**Reference to the Act** Remuneration definition in Paragraph 1 of the 4<sup>th</sup> Schedule

**Meaning** Leave pay is remuneration as defined 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).

Leave pay is a payment in respect of services rendered and does not form part of a severance benefit.

**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 PAYE, 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.

**IRP5/IT3(a) detail**

Accrued leave which has been encashed must be reflected under —

- code 3605 if it accrued as a result of encashment or resignation.
- If the employer uses code 3901, all tax paid will be refunded to the employee.

**14.5 SPECIAL REMUNERATION PAID TO PROTO TEAMS**

**Reference to the Act**

Remuneration definition in Paragraph 1 of the 4<sup>th</sup> Schedule Section 5(9) and 5(10) of the Income Tax Act

**Meaning**

Amounts paid to proto team members as special remuneration are subject to the deduction of Employees’ Tax.

Special remuneration is defined 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.

**Employees' Tax** Employers must calculate the Employees' Tax deductible from this special remuneration in the same manner as tax on a bonus is calculated.

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.

**IRP5/IT3(a) details** Special remuneration paid to proto team members must be reflected under code 3906 on the IRP5/IT3(a).

## 14.6 ADVANCE SALARY

**Reference to the Act** Remuneration definition in Paragraph 1 of the 4<sup>th</sup> Schedule

**Meaning** 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.

**Employees' Tax** An advance payment will be subject to the deduction of Employees' Tax when it is paid by the employer to the employee.

**IRP5/IT3(a) details** The advance salary must be reflected under code 3601 on the certificate.

**Example** A monthly paid employee (below 65) received R18 000 in October in respect of remuneration that is due to accrue to him in October, November and December.

Tax on R8 000 (salary per month) according to the monthly tables	434
Employees' Tax on the advance salary of R18 000 (R434 x 3) is	1302

## 14.7 OVERTIME PAYMENTS

**Reference to the Act** Remuneration definition in Paragraph 1 of the 4<sup>th</sup> Schedule

**Meaning** Overtime amounts paid to employees are subject to the deduction of Employees' Tax.

**Employees' Tax** 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.

**IRP5/IT3(a) details** The overtime payment must be reflected under code 3601 on the IRP5/IT3(a).

**Example** A monthly paid employee (below 65) received R6 000 salary and R900 overtime in June.

Tax on R6 900 (salary and overtime) according to the monthly tables	236
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## 14.8 ANNUAL PAYMENTS/BONUS

**Reference to the Act** Paragraph 11B(2)(b) and 11B(3)(b) of the 4<sup>th</sup> Schedule

**Meaning** An annual payment is —

- 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

**Examples of annual payments**

- an amount that is calculated without reference to a period.

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.

**Employees' Tax**

The Employees' Tax on an annual payment is basically determined by calculating the annual equivalent of the remuneration earned during the tax period by the employee and adding the annual payment to the result.

The difference between the tax on the total result (annual equivalent plus annual payment) and the tax on the annual equivalent will result in the Employees' Tax deductible from the annual payment.

**IRP5/IT3(a) detail**

The total of all annual payments received during the tax year must be reflected under code 3605 on the IRP5/IT3(a).

**Example**

**Month in which the annual payment is paid/accrued:** A monthly paid employee (below 65) received a salary of R6 000 and a bonus of R4 800 in October.

Tax on R6 000 (salary) according to the monthly table		74	
Annual equivalent of salary (R6 000 x 12) .....	72 000		
Add: bonus (annual payment) .....	4 800		
Total remuneration for October .....	76 800		
Tax on R76 800 (total remuneration) according to the annual tables .....		1747	
Less: Tax on R72 000 (annual equivalent) according to the annual tables .....	883		
Tax on bonus (R4 800) .....	864	864	
Employees' Tax deductible for December is			938

**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 R4 800 (bonus), as calculated above, spread over the tax year (R864 ÷ 12)	72
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**Production bonus paid in a following pay period:** A monthly paid employee (below 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	R6 000		74
August	R6 000	R2 500	To be calculated

Tax on R8 500 (salary and production bonus for August) according to the monthly tables .....	522	
Less: tax deducted for July according to the monthly tables .....	74	
Tax on production bonus of R2 500 (paid in August) .....	448	448
Add: tax on salary (R6 000) for August according to the monthly table		74
Employees' Tax deductible for August		522

- Note:** 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).

**Monthly production bonus paid to a weekly remunerated employee:** A weekly paid employee (below 65) earns a monthly production bonus in May but this bonus is only paid in the following month (3<sup>rd</sup> week of June). May had 4 weeks. The remuneration and Employees' Tax details are as follows.

Month	Week		Production bonus	Employees' Tax
May	4	R1 287		0
June	1	R1 287		0
	2	R1 287		0
	3	R1 287	R300	To be calculated
	4	R1 287		0

Tax on R1 287 for 3 <sup>rd</sup> week's wage in June according to the weekly table	0	
Divide the production bonus by the weeks in which it was earned (R300 ÷ 4) .....	75	
Add: wage for 3 <sup>rd</sup> week in June .....	1 287	
Total remuneration for 3 <sup>rd</sup> week in June .....	1 362	
Tax on R1 362 according to the weekly tables .....	13	
Less: tax on R1 287 (weekly wage) according to the weekly tables .....	0	
Tax on production bonus for one week (R75) .....	13	
Multiply the tax on the bonus for one week with weeks in which it was earned (R13 x 4) .....	52	
Employees' Tax deductible for 3 <sup>rd</sup> week in June is		52

**15 ALLOWANCES AND FRINGE BENEFITS****15.1 ALLOWANCES**

<b>References to the Act</b>	Remuneration definition in Paragraph 1 of the 4 <sup>th</sup> Schedule Section 8(1)
<b>Meaning</b>	Certain amounts must be included in the employee's taxable income and these amounts are normally referred to as allowances.
<b>Types of allowances</b>	The following type of allowances may be paid by an employer to an employee — <ul style="list-style-type: none"> <li>• Travel allowance</li> <li>• Subsistence allowance</li> <li>• Allowance to a holder of a public office and/or</li> <li>• Other allowances received by virtue of the employee's office or duties (e.g. tool allowance, etc.).</li> </ul>
<b>Other references</b>	Special provisions exist for travel, subsistence and public office allowances. Please refer to PAYE-GEN-01-G03 attached to this guide for a detail explanation in respect of these allowances.

**15.2 FRINGE BENEFITS**

<b>Reference to the Act</b>	Remuneration definition in Paragraph 1 of the 4 <sup>th</sup> Schedule All paragraphs of the 7 <sup>th</sup> Schedule
<b>Fringe benefits</b>	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 one of the benefits described in Paragraph 2 of the 7 <sup>th</sup> Schedule, namely — <ul style="list-style-type: none"> <li>• Acquisition of an asset at less than the actual value (money excluded)</li> <li>• Right of use of a motor vehicle</li> <li>• Right of use of an asset (excluding a motor vehicle and accommodation)</li> <li>• Meals, refreshments or vouchers that entitle an employee to any meal or refreshment</li> <li>• Free or cheap residential accommodation</li> <li>• Payment of a debt, or of any securities transfer tax</li> <li>• Free or cheap services</li> <li>• Low or interest free loans</li> <li>• Subsidy in respect of interest</li> <li>• Subsidy in respect of interest on a home loan</li> <li>• Payment of an employee's debt or the release of the employee from the obligation to pay a debt</li> </ul>

- Medical fund contributions paid on behalf of an employee
- Medical costs (other than contributions) paid for the benefit of an employee
- Contributions to a benefit fund and/or
- Payment to an insurer under an insurance policy.

**Other references**

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. For more information refer to PAYE-GEN-01-G02 guide for a detail explanation in respect of fringe benefits available on the SARS website [www.sars.gov.za](http://www.sars.gov.za).

## 16 EXEMPTIONS

### 16.1 UNIFORMS (SPECIAL UNIFORMS)

**Reference to the Act** Section 10(1)(nA)

**Meaning** 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.

**IRP5/IT3(a) details** The value or allowance amount must be reflected under code 3714 on the IRP5/IT3(a).

### 16.2 TRANSFER COSTS

**Reference to the Act** Section 10(1)(nB)

**Meaning** 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.

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
- 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** The following items are exempt from tax if the employer reimburses the employee

**expenses**

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
- 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.

**IRP5/IT3(a) details**

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.

In cases where the expenditure is taxable the amount must be reflected under code 3713.

**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 six months during which the employee's new house is being built.

The employee claims the following expenses for which he was fully reimbursed by the employer.

No	Description	Amount
1	New school uniforms purchased	1 750.00
2	Curtains made for new residence	8 360.00
3	Motor vehicle registration fees	216.00
4	Telephone, water and electricity connections	1 015.00
5	Loss on the sale of the previous residence	12 000.00
6	Architect's fees for the design of the new residence	7 600.00
7	Bond registration and legal fees for the new residence	6 800.00
8	Transfer duty on new residence	25 000.00
9	Agent's fee on sale of previous residence	16 397.00

<b>TOTAL</b>	79 138.00
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- 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.
- 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.
- 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

<b>Reference to the Act</b>	Section 10(1)(nE)
<b>Meaning</b>	<p>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 —</p> <ul style="list-style-type: none"> <li>• upon the cancellation of a transaction under which the employee purchased the shares under the scheme</li> <li>• upon repurchase by the employee at a price not exceeding the selling price to him/her of the shares under the scheme</li> </ul> <p>is exempt from tax if the employee does not receive or become entitled to receive any compensation or a consideration other than the repayment of any portion of the purchase price actually paid by him.</p> <p>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.</p>
<b>Employees' Tax</b>	Employees' Tax must not be deducted from the exempted amount.
<b>IRP5/IT3(a) details</b>	The exempted amount must be reflected under code 3714.

### 16.4 EXECUTIVE SHARE SCHEMES

<b>Reference to the Act</b>	Section 8C
<b>Meaning</b>	<p>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 —</p> <ul style="list-style-type: none"> <li>• Capital distributions that include further restricted equity instruments are treated as non-events, and the new restricted equity instrument is subject to Section 8C. This amendment became effective in respect of any capital distribution or dividends received or accrued on or after 1 January 2011.</li> <li>• An employer's involvement in swaps of equity instruments is no longer a pre-requisite for rollover treatment. As long as the new instrument is a restricted equity instrument in the employer or associated institution, the new instrument will be subject to section 8C and the swap a non-event. The amendment applies to acquisitions occurring on or after 1 January 2011.</li> <li>• An anti-avoidance provision was included to guard against situations where co-employees and directors collude to avoid the deferment of taxation that section 8C achieves. With effect from 1 January 2011, rollover</li> </ul>

treatment will apply to equity instruments acquired from employees or directors of the same employer.

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.

**IRP5/IT3(a) details** The exempted amount must be reflected under code 3714.

## 16.5 BURSARIES AND SCHOLARSHIPS

**Reference to the Act** Section 10(1)(q)

**Meaning** 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 year of assessment.

**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.

**Bursaries and study loans taxed as a fringe benefit** 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 PAYE 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.

**Employees' Tax** The taxable benefit of a bursary is regarded as an annual payment for PAYE purposes.

**IRP5/IT3(a) details** It is only the taxable portion of bursaries that must be reflected under code 3801.

**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.

**Other references** 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).

## 16.6 EMPLOYMENT INCOME EXEMPTIONS

**References to the Act** Section 10(1)(o)

**Meaning** 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. Further, it is not applicable to any person in respect of services rendered or work or labour performed in terms of section 9(2)(h), that is who are employed in the national, provincial or local sphere of government, any constitutional institution, a public entity or a municipality entity.

Where remuneration is received by or accrues to any employee during any year of assessment in respect of services in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered.

#### Exemptions

Exempts from tax any remuneration derived by an employee in respect of services rendered outside the Republic for an employer if such person was outside the Republic —

- for a period or 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

#### 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
- 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 year of assessment
- 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.

#### Other references

For more information refer to the applicable Interpretation Notes (numbers 16 and 34) on the SARS website [www.sars.gov.za](http://www.sars.gov.za)

## 16.7 EMPLOYER-PROVIDED LONG-TERM INSURANCE (Including Deferred Compensation Schemes)

**References to the Act** Paragraph 13(2)(bA) of the Seventh Schedule

**Meaning** No value shall be placed on the value of any taxable benefit derived by reason of the fact that an employer has paid insurance premiums indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer

**Other references** For more information refer to the applicable Interpretation Note on the SARS website [www.sars.gov.za](http://www.sars.gov.za)

## 17 QUALITY RECORDS

- Completed forms as listed below —

Number	Title
EMP201	Monthly Employer Declaration
Form A & D	Application form for a tax directive in respect of lump sum benefits 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 sum benefits 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 sum benefits 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
IRP3	Tax directive
IRP3(a)	Application form for a tax directive in respect of <b>Gratuities</b> paid by the employer
IRP3(b)	Application form for a tax directive in respect of Employees' Tax to be deducted at a <b>fixed percentage</b>
IRP3(c)	Application form for a tax directive in respect of Employees' Tax to be deducted at a <b>fixed amount</b>
IRP3(d)	Application form for a tax directive in respect of <b>deemed remuneration</b> to be used to deduct Employees' Tax
IRP5/IT3(a)	Employee Tax certificate
IRP30	Labour broker exemption certificate
EMP501	Employer Reconciliation Declaration
EMP601	Certificate Cancellation Declaration

## 18 DOCUMENT MANAGEMENT

Designation	Name/Division
Business Owner:	GE Enterprise Business Enablement
Policy Owner:	GE Enterprise Business Enablement
Author:	P Khoncha
Detail of change from previous revision:	Updated to include 2013 Budget Speech Changes
Template number and revision:	POL-TM-07 - Rev 3