

**GUIDE FOR EMPLOYERS
IN RESPECT OF EMPLOYEES' TAX
(2011 TAX YEAR)**

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1 PURPOSE

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

2 SCOPE

- This basic guide is issued in terms of Paragraph 9(2) of the Fourth Schedule to 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; and
 - the manner in which the tables must be applied by the employer.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Income Tax Act No. 58 of 1962: Sections 1, 5(3), 5(9), 5(10), 6, 7A, 8(1)(a) to (f), 8A, 8B, 8C, 10(1)(cN), 10(1)(gB), 10(1)(nA), 10(1)(nB), 10(1)(nG), 10(1)(nH), 10(1)(o), 10(1)(q), 10(1)(x), 18(1), 18(2), 69(1), 74(1), 75A, 89bis(2), 89sex, 89ter; Fourth Schedule Paragraphs 1 to 16, 29 and 30; Seventh Schedule all Paragraphs ; Interpretation Notes 3, 4, 8, 7, 14, 16, 17, 26, 27, 34 and 35 and Practice Notes 17 and 25 and General Note 35. Skills Development Levies Act No. 9 of 1999: Sections 1 to 6 and 11 to 13 Unemployment Insurance Contributions Act No.4 of 2002: Sections 1, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14
Other Legislation:	Children's Act No. 33 of 1960: Section 89 Companies Act No. 61 of 1973: Chapter VI Marine Traffic Act No. 2 of 1981: Section 1 Public Finance Management Act No. 1 of 1999: Section 80(1)(b) Skills Development Act No. 97 of 1998: Section 18(2) and (3) Social Assistance Act No. 13 of 2004: Sections 4, 5, 6, 9, and 10 Medical Schemes Act No. 131 of 1998: Section 67(1)(g) Pension Funds Act No. 24 of 1956: Section 15B and 15C
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
AS-SDL-01	Quick reference guide on SDL	All
AS-UIF-01	Quick reference guide on UIF	All
FIN-CH-02	SARS payment rules	All
AS-PAYE-05-G1	Guide in respect of Employees' Tax Deduction Tables	All
AS-PAYE-05-G1-A1	Weekly tax deduction tables	All
AS-PAYE-05-G1-A2	Fortnightly tax deduction tables	All
AS-PAYE-05-G1-A3	Monthly tax deduction tables	All
AS-PAYE-05-G1-A4	Annual tax deduction tables	All
AS-PAYE-05-G2	Guide for Employers in respect of Fringe Benefits	All
AS-PAYE-05-G3	Guide for Employers in respect of Allowances	All
AS-PAYE-05-G3-A1	Rate per kilometre schedule	All
AS-PAYE-05-G3-A2	Subsistence Allowance in respect of Foreign Travel	All
AS-PAYE-05-A1	Allowances	Withdrawn
AS-PAYE-05-A2	Fringe benefits	Withdrawn
AS-PAYE-05-A3	Rate per kilometre schedule	Withdrawn

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
AS-PAYE-05-A8	Subsistence deemed amount per country	Withdrawn
AS-PAYE-05-F1	Personal Service provider	All
AS-PAYE-05-F2	Seasonal Workers	All
AS-PAYE-13	External policy: Completion and submission of reconciliation documents	All
AS-PAYE-13-G1	Guide: Completion and submission of employees' tax certificates	All
AS-PAYE-13-G2	Guide: Completion and submission of reconciliation declarations	All
AS-PAYE-13-G3	Guide: Validation rules for fields applicable to reconciliation documents	All
AS-PAYE-13-G4	Guide: Codes applicable to employees' tax certificates	All
AS-PAYE-13-G5	Guide: Creation of CSV files – employees' tax certificate information	All

4 DEFINITIONS AND ACRONYMS

4th Schedule	<ul style="list-style-type: none"> Fourth Schedule to the Income Tax Act.
7th Schedule	<ul style="list-style-type: none"> Seventh Schedule to the Income Tax Act.
Alternate period	<ul style="list-style-type: none"> A period, whether of 12 months or not, commencing on the day following the last day of the preceding alternate period in relation to the employer and ending on a date falling not more than 14 days before or after the last day of February, or such greater number of days as the Commissioner, having regard to the circumstances of the case, may allow.
Annual equivalent	<ul style="list-style-type: none"> An amount equal to the sum of net remuneration multiplied by the ratio which a full year bears to the period in respect of which such net remuneration is payable.
Annual payment	<ul style="list-style-type: none"> 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.
Backdated salary	<ul style="list-style-type: none"> Salary, wage or similar remuneration (excluding a bonus) payable by the employer to an employee.
Balance of remuneration	<ul style="list-style-type: none"> Any amount of remuneration after deducting the allowable deductions for employees' tax purposes.
Broad-based employee share plan	<ul style="list-style-type: none"> A plan in terms of which — <ul style="list-style-type: none"> 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; 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; the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and no restriction have been imposed in respect of the disposal of the equity shares, other than: <ul style="list-style-type: none"> a restriction imposed by legislation; a right of any person to acquire those equity shares from the employee or former employee who acquired the equity share: <ul style="list-style-type: none"> 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 in any other case, at market value on the date of

	<ul style="list-style-type: none"> ○ acquisition by that person.; or ○ a restriction in terms of which the person who acquired the equity shares may not dispose of the equity shares for a period which may not extend beyond five years from the date of grant.
CC	<ul style="list-style-type: none"> • Close corporation.
CCMA	<ul style="list-style-type: none"> • Commission for Conciliation, Mediation and Arbitration.
Commissioner	<ul style="list-style-type: none"> • Commissioner for the South African Revenue Service.
Employees' tax	<ul style="list-style-type: none"> • An amount of tax that an employer must deduct from all regular or periodic payments (remuneration), paid or which becomes payable to an employee.
Employee	<ul style="list-style-type: none"> • An employee for employees' tax purposes is defines as — <ul style="list-style-type: none"> ▫ A natural person who receives remuneration or to whom remuneration accrues; ▫ A person (including a company) who receives remuneration or to whom remuneration accrues by reason of services rendered by such person to or on behalf of a labour broker; ▫ A labour broker; ▫ A person or class or category of persons whom the Minister of Finance by notice in the Government Gazette declares to be an employee; ▫ A personal service provider; ▫ A director of a private company. • 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
Employer	<ul style="list-style-type: none"> • 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 principle but includes any person acting in a fiduciary capacity or in his / her capacity as 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.
Equity instrument	<ul style="list-style-type: none"> • Means a share or a member's interest in a company, including— <ul style="list-style-type: none"> ▫ an option to acquire such a share, part of a share or member's interest; ▫ any financial instrument that is convertible to a share or member's interest; and ▫ any contractual right or obligation the value of which is determined directly or indirectly with reference to a share or member's interest.
Gain	<ul style="list-style-type: none"> • A gain for purposes of a broad based employee share plan and qualifying equity instruments means the amount by which any amount received by or accrued to the employee from the disposal exceeds the consideration given by the employee for the qualifying equity share, right or interest.
Holder of a public office	<ul style="list-style-type: none"> • The President, Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature; • Any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders or a member of the Council of Traditional Leaders; and

	<ul style="list-style-type: none"> A person occupying the office of president, chairman or chief executive officer of any non-profit organisation, shown to the satisfaction of the Commissioner to be organised on a national or regional basis to represent persons with a common interest and the funds of which are derived wholly or mainly from subscriptions from members or donations from the general public.
Labour broker	<ul style="list-style-type: none"> 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.
Lump sum benefit	<ul style="list-style-type: none"> Means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.
Marketable security	<ul style="list-style-type: none"> Any security, stock, debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise
Market value	<ul style="list-style-type: none"> In relation to an equity instrument — <ul style="list-style-type: none"> of a private company or a company that would be regarded as a private company if it were incorporated under the Companies Act, 1973, means an amount determined as its value in terms of a method of valuation: <ul style="list-style-type: none"> prescribed in the rules relating to the acquisition and disposal of that equity instrument; which is regarded as a proxy for the market value of that equity instrument for the purposes of those rules; and used consistently to determine both the consideration for the acquisition of that equity instrument and the price of the equity instrument repurchased from the employee after it has vested in that employee; or of any other company, means the price which could be obtained upon the 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. In relation to an equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm's length in an open market and without having regard to any restrictions imposed in respect of that equity share.
Month	<ul style="list-style-type: none"> In relation to an employer for taxable benefit purposes means any twelve portions into which any calendar year is divided.
Net remuneration	<ul style="list-style-type: none"> The balance of remuneration, excluding the following — <ul style="list-style-type: none"> Lump sum benefit payments in terms of the Second Schedule to the Act paid by funds; Gratuities paid by the employer on termination of service due to old age, ill-health or general reduction in personnel (retrenchment); Remuneration received by an employee who incurred deductible expenses in the production of income (the quantum of expenses can only be determine on assessment); Remuneration which is under the provisions of Section 7(2) deemed to be income that accrued to the spouse of the employee; Remuneration not derived: <ul style="list-style-type: none"> from standard employment; or by way of an annuity provided or payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or benefit fund; Remuneration paid or payable to a director of a company or member of a close corporation;

	<ul style="list-style-type: none"> ▫ Travel allowance which is subject to employees' tax (80% portion); ▫ An allowance granted to the holder of any public office, which is subject to employees' tax (50% portion); ▫ Remuneration derived by an employee in respect of which such employee is entitled to set off an assessed loss under Section 20(1); and ▫ Any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.
PAYE	<ul style="list-style-type: none"> • Pay-As-You-Earn.
Personal service provider	<ul style="list-style-type: none"> • Any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and – <ul style="list-style-type: none"> ▫ such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; ▫ where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or ▫ where more than 80% of the income of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution in relation to such client, • except where such company or trust throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a shareholder or member of the company or trust or is a connected person in relation to such person.
Prescribed rate	<ul style="list-style-type: none"> • 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.
Qualifying equity share	<ul style="list-style-type: none"> • 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.
RAF	<ul style="list-style-type: none"> • Retirement annuity fund.
Remuneration for employees' tax purposes	<ul style="list-style-type: none"> • 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, and the holder of a public office. including — <ul style="list-style-type: none"> ▫ restraint of trade payments; ▫ an amount, including a voluntary award, received or accrued in commutation of amounts due in terms of a contract of employment or service; ▫ an amount received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment or of an appointment; ▫ An allowance or advance paid to an employee in respect of accommodation, meals or other incidental costs while the employee

	<p>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;</p> <ul style="list-style-type: none"> ▫ 50% of an allowance paid to a holder of a public office; ▫ 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); ▫ fringe benefits received in terms of the 7th Schedule; ▫ a gratuity received by or accrued to a person from his / her employer because such person obtained a university degree or diploma or has been successful in an examination; ▫ any gain determined in terms of Section 8B, which must be included in that person's income under that section (broad-based equity share plan); and ▫ any gain determined in terms of Section 8C which is required to be included in the income of that person <p>but not including —</p> <ul style="list-style-type: none"> ▫ Amounts paid to common law independent contractors, but excluding amounts paid to common law independent contractors who do not employ three or more qualifying employees and are required to render services mainly at the premises of the client and are subject to the control or supervision of any person as to the manner in which their duties are performed or as to the hours of work. ▫ This exclusion does not apply to — <ul style="list-style-type: none"> ○ any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker; ○ any labour broker; ○ any personal service provider; or ○ a person who is not ordinarily resident in South Africa. ▫ Any pension or additional pension under the Social Assistance Act. ▫ Any disability grant or additional or supplementary allowance under the Social Assistance Act. ▫ Any grant or contribution under the provisions of section 89 of the Children's Act. ▫ Amounts paid to an employee, wholly in reimbursement of expenditures actually incurred by such employee in the course of employment. ▫ Any annuity in terms of an order of divorce or decree of judicial separation or agreement of separation.
<p>Remuneration for SDL contribution proposes</p>	<ul style="list-style-type: none"> • Remuneration for SDL purposes is defined as remuneration for employees' tax purposes, but does not include any amount paid or payable to an employee — <ul style="list-style-type: none"> ▫ an amount paid or payable to any labour broker or any person declared by the Minister of Finance by notice in the Government Gazette as an employee to whom a certificate of exemption has been issued by SARS; ▫ an amount paid or payable to any person by way of pension,

	<ul style="list-style-type: none"> □ equity instrument at market value; □ 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; □ if any person has retained the right to impose a restriction contemplated in the first two instances above, on the disposal of that equity instrument; □ which is an option contemplated in the definition of equity instrument and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument; □ which is a financial instrument contemplated in the definition of equity instrument and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument; □ if the employer has at the time of acquisition by the employee of the equity instrument undertaken to: <ul style="list-style-type: none"> ○ cancel the transaction under which that taxpayer acquired the equity instrument; or ○ repurchase that equity instrument from the employee at a price exceeding its market value on the date of repurchase; or □ which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent.
Retirement-funding employment	<ul style="list-style-type: none"> • 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.
SARS	<ul style="list-style-type: none"> • South African Revenue Service.
SDL	<ul style="list-style-type: none"> • Skills Development Levy.
SETA	<ul style="list-style-type: none"> • Sector Education and Training Authority.
SITE	<ul style="list-style-type: none"> • Standard Income Tax on Employees.
Standard employment	<ul style="list-style-type: none"> • Any employment where an employee (including scholars and students), is required to render services to a single employer for a period of at least 22 hours in every full week provided that no regard shall be had to — <ul style="list-style-type: none"> □ Periods of temporary absence of the employee due to leave or exceptional circumstances; or □ Any temporary reduction in working hours imposed by the employer, for instance due to a reduction in the demand of the company's product, the employer imposes a temporary working week of less than 22 hours.
Taxable benefit	<ul style="list-style-type: none"> • A benefit contemplated in the 7th Schedule, but excluding — <ul style="list-style-type: none"> □ any benefit, the amount or value of which is specifically exempt from normal tax in terms of Section 10; □ any benefit provided by a benefit fund in respect of medical, dental and similar services; □ any lump sum benefit payable by a benefit, pension, pension preservation fund, provident fund or provident preservation fund, as defined in the Act; and □ any benefit received by or accrued to a person stationed outside the Republic and employed by any national or provincial sphere of government or any national or provincial public entity, which is substantially funded by Parliament, if they are attributable to that official's services rendered outside the Republic.
Tax period	<ul style="list-style-type: none"> • In relation to any employer, as a period of 12 months ending on the last day of February of the relevant tax year or at the option of the employer, an alternate period, in respect of which remuneration is paid or has become

	<p>due.</p> <ul style="list-style-type: none"> • In relation to an employee, a tax year (1 March to 28 / 29 February of the next year) or any unbroken period during the tax year — <ul style="list-style-type: none"> ▫ during which the employee was employed by one employer in the Republic in standard employment; or ▫ during which any annuity was paid or became payable to him / her by one employer; or ▫ such period as the Commissioner considers appropriate in the circumstances, where the Commissioner has in relation to the employment of any employee, issued a ruling to the employer.
UI Commissioner	<ul style="list-style-type: none"> • Unemployment Insurance Commissioner.
UIC Act	<ul style="list-style-type: none"> • Unemployment Insurance Contributions Act.
UIF	<ul style="list-style-type: none"> • Unemployment Insurance Fund.
Unrestricted equity instrument	<ul style="list-style-type: none"> • An equity instrument which is not a restricted equity instrument.

5 BACKGROUND

What is employees' tax

Where an employer pays remuneration to an employee, the employer has an obligation to deduct employees' tax from the remuneration and pay the tax deducted to SARS on a monthly basis. In most instances, the employer is obliged to issue each employee with an employees' tax certificate [IRP5/IT3(a)] which reflects, amongst other detail, the employees' tax deducted. This employees' tax has to be split between SITE and PAYE. These subjects are fully dealt with later in this guide. In addition thereto, the employer is obliged to submit an annual reconciliation (EMP501) to the SARS office.

In terms of Paragraph 3 of the 4th Schedule employees' tax receives preference over any other deduction, regardless of what any other Act or agreement requires.

Any reference to the start date and end date of a tax period as 1 March and 28 / 29 February in 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.

What is SDL

This is a compulsory levy scheme for the purposes of funding education and training as envisaged in the Skills Development Act, 1998. This levy came into operation on 1 April 2000 and is payable by employers on a monthly basis.

What are UIF contributions

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 since 1 April 2002 and are paid over to the UIF which is managed by the UI Commissioner.

Meaning of SITE, PAYE and Employees' tax

Employees' tax is deducted during the tax period. SITE is the portion of employees' tax that is applicable only on the annualised net remuneration up to R60 000.

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

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

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

6 REGISTRATION

6.1 REGISTRATION AS AN EMPLOYER

Reference to the Act Paragraph 15(1) of the 4th 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 14 days after he / she becomes an employer unless none of the employees is 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 EMP 101 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, humanitarian, health care, religion, belief or philosophy public benefit activities or solely provides funds to such a public benefit organisation and to whom a letter of exemption has been issued by the SARS Tax Exemption Unit.
- Any municipality in respect of which a certificate of exemption is issued by the Minister of Labour.

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 purposes

The following employers who are **not exempt** from contributing to the fund, **must register with the UI Commissioner** —

- an employer who is not required to register for employees' tax purposes at SARS;
- an employer who has not registered voluntarily as an employer for employees' tax purposes at SARS; and
- an employer who is not liable for the payment of SDL.

An employer / employee is **NOT REQUIRED to contribute** in the following circumstances —

- an employee and his / her employer, where such employee is employed by the employer for less than 24 hours a month;
- an employee and his / her employer, where the employee receives remuneration under contract of employment contemplated in Section 18(2) of the Skills Development Act;
- employees and employers in the national and provincial spheres of Government who are officers or employees as defined in Section 1(1) of the Public Service Act 1994; and
- an employee and his / her employer where that employee has entered the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership (as the case may be) or by any other agreement or undertaking to repatriate that person, or if that person is so required to leave the Republic.

6.2 BRANCHES REGISTERED SEPARATELY

Reference to the Act	Tax period definition in Paragraph 11B(1) of the 4 th Schedule
Meaning	Where an employer has for registration purposes applied for separate registration of branches of his / her undertaking, each such branch shall be deemed to be a separate employer.
Application form	Application to register a branch separately from the main branch must be made on an EMP102 form.
Transferring between branches	Where an employee is transferred between branches, the branch where the employee has worked until 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).

6.3 CHANGES OF REGISTERED PARTICULARS

Reference to the Act	Paragraph 15(3) of the 4 th Schedule.
Meaning	An employer must inform SARS in writing within 14 days of any change in

registered particulars:

- Change of name;
- Address; or
- When he / she ceased to operate as an employer.

7 RECORD KEEPING

7.1 EMPLOYER RECORDS

Reference to the Act Paragraph 14(1), 14(4) and 30(1)(i) of the 4th Schedule
Section 13 of the SDL Act
Section 14 of the UIC Act

Meaning 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.

These records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.

The following record of all employees' needs to be maintained by the employer, as may be prescribed by the Commissioner.

- Amount of remuneration paid;
- Employees' tax deducted / withheld on all remuneration;
- Income Tax reference number (if any).

Prescribed period for keeping records The records must be kept for a period of five years from the date of the last entry and must be available for inspection purposes by SARS officials.

Employers who supply the tax certificate information on an electronic medium or electronically, must also keep such records for the prescribed period.

7.2 RECORDS AND INFORMATION TO BE PROVIDED BY THE EMPLOYEE

Reference to the Act Section 4(c)

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

- Surname and full names;
- Address;
- Identity number or passport number and date of birth;
- Income Tax reference number (if any); and
- Written declaration where required.

Written declaration by employee Where an employee is —

- not required to render services to the employer for at least 22 hours in every completed week, and
- he / she furnishes the employer with a written declaration stating that he / she does not or will not render services to another employer during the period he / she holds such employment at the relevant employer,

such an employee is deemed to be in standard employment.

8 DETERMINING THE EMPLOYEES' TAX, SDL AND UIF LIABILITY

8.1 ELEMENTS REQUIRED BEFORE EMPLOYEES' TAX MAY BE DEDUCTED

Reference to the Act Employer, employee and remuneration definitions in paragraph 1 of the 4th 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.

8.2 ANNUAL EQUIVALENT CALCULATION

Reference to the Act Annual equivalent definition in Paragraph 11B of the 4th 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:

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

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 than a full tax year 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 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 **R11 343**
 Tax on R70 000 for 7 months worked: **R11 343** $\div 12 \times 7$ **R6 617**

Examples: Employee is employed for a portion of a pay period **Weekly paid employee:** A weekly remunerated employee (under 65) starts working on the 5th day of a week. He receives 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: $3 \div 7 = 4285$

Calculating annual equivalent: $R931 \div 0.4285 \times 52 = R112\,980$
 Tax on annual equivalent of R112 980 according to the annual table is **R10 074**
 Tax on R931 for 3 days worked: **R10 074** $\div 52 \times 0.4285$ **R83**

Fortnightly paid employee: A fortnightly remunerated employee (under 65) starts working on the 7th 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 **R10 965**
 Tax on R2 593 for 8 days worked: **R10 965** $\div 26 \times 0.5714$ **R251**

Monthly paid employee: A monthly remunerated employee (under 65) starts working on the 16th day of a month which consists of 30 days. He receives 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 **R11 343**
 Tax on R5 000 for 15 days worked: **R11 343** $\div 12 \times 0.5$ **R473**

8.3 DEDUCTION TO DETERMINE THE BALANCE OF REMUNERATION

8.3.1 PENSION FUND CONTRIBUTIONS

Reference to the Act	Paragraph 2(4)(a) of the 4 th Schedule Section 11(k)
Meaning	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.
Limitation	Current contributions — An annual deduction limited to the greatest of — <ul style="list-style-type: none"> • R1 750; or • 7,5% of the remuneration received during the year from retirement funding employment. 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: <ul style="list-style-type: none"> • code 4001 (current contributions); and • code 4002 (arrear contributions).

8.3.2 RAF CONTRIBUTIONS

Reference to the Act	Paragraph 2(4)(b) and (bA) of the 4 th Schedule Section 11(n)
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Meaning	<p>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</p> <p>The employer must deduct any RAF contributions made by the employer to any RAF for the benefit of the employee.</p> <p>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.</p>
Limitation	<p>Current contributions — An annual deduction limited to the greatest of —</p> <ul style="list-style-type: none"> • R1 750; • R3 500 less allowable current pension fund contributions; or • 15% of the remuneration received during the year from non-retirement funding employment. <p>Arrear contributions — An annual deduction limited to R1 800.</p>
IRP5/IT3(a) details	<p>The full amount of the RAF contributions made by the employee must be reflected under the following codes —</p> <ul style="list-style-type: none"> • code 4006 (current RAF contributions); and • code 4007 (arrear RAF contributions).
RAF contributions by employer	<p>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).</p>

8.3.3 INCOME PROTECTION POLICY PREMIUMS

Reference to the Act	Paragraph 2(4)(c) of the 4 th Schedule Section 11(a)
Meaning	<p>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 —</p> <ul style="list-style-type: none"> • to the extent that it covers that employee against the loss of income as a result of illness, injury, disability or unemployment; and • in respect of which all amounts payable in terms of that policy constitute or will constitute income as defined.
IRP5/IT3(a) details	The amount of the allowable income protection policy premiums made by the employee must be reported under code 4018.

8.3.4 DONATIONS

Reference to the Act	Paragraph 2(4)(f) of the 4 th 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 therefrom —

- allowable pension fund contributions;
- allowable RAF contributions;
- allowable income protection policy premiums; and
- 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**.

8.3.5 MEDICAL SCHEME CONTRIBUTIONS**Reference to the Act**

Paragraph 2(4)(d) and (e) of the 4th 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 effect payment of these contributions to the medical scheme but the employee furnished the employer with proof of payment.

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

Limitation

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

Employee under 65 years: The allowable deduction may not exceed the "capped amount" applicable to the specific employee.

Capped amount

The **capped amount must be** determined as follows —

- **R670** for each month in the tax year in respect of which those contributions were made solely with respect to the benefits of the employee;
- **R1 340** for each month in the tax year in respect of which those contributions were made with respect to the benefits of the employee and one dependant; or
- where those contributions were made with respect to the employee and more than one dependant, **R1 340** in respect of the employee and one dependant plus **R410** for every additional dependant for each month in the tax year in respect of which those contributions were made.

Note: In order to determine the capped amount which may be used for a specific month, the employer may obtain the information relating to the beneficiaries

covered by the medical scheme from the relevant medical scheme.

Newly appointed employee

Where an employer employs a new employee who was in employment with another employer in the same month, it is the responsibility of the second employer to ensure that only one contribution is made to a medical scheme in respect of that specific month.

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; and
- code 4474 – Employer’s medical scheme contributions made for the benefit of the employee; or
- code 4493 - Employer’s medical scheme contributions made for the benefit of the retired employee or dependants **to whom the “no value” provisions apply.**

Medical scheme contributions by employer

A contribution made by an employer on behalf of an employee who is under 65 years of age 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).

8.4 EMPLOYEES' TAX DEDUCTION

Reference to the Act

Paragraph 2(1), 2(2), 2(4), 2(5)(c), 3 and 7 of the 4th Schedule

Meaning

Employees' tax must be deducted from any amount that is paid by way of remuneration.

Amount on which employees' tax is deductible

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**).

Voluntary additional employees' tax deduction

An employer may deduct a greater amount of employees' tax on receipt of a written request from an employee.

For various reasons, employees may find that they have to pay in fairly large amounts upon receipt of their assessments. To reduce the amount payable on assessment or avoid having to pay in an additional amount, such employees may request (in writing) their employers to deduct from their remuneration a greater amount of employees' tax than is required.

Agreement between employer and employee

An employer and employee may under no circumstances conclude an agreement whereby the employer undertakes not to deduct or withhold employees' tax or UIF contributions. Such an agreement is void in terms of Paragraph 7 of the 4th Schedule.

Provisional taxpayer employee

Employees' tax **MUST** be deducted from remuneration paid to an employee even though such person is registered as a provisional taxpayer with SARS. This provision also applies to directors of private companies and members of close corporations.

Remittance of employees' tax

The employer must remit the amount deducted to SARS with his / her monthly EMP 201 return.

IRP5/IT3(a) details

The amount of employees' tax must be reported under the following codes —

- code 4101 – The SITE component of the employees' tax deducted / withheld;
- code 4102 – The PAYE component of the employees' tax deducted / withheld including any voluntary additional employees' tax deducted; and
- code 4103 – The total of code 4101 and 4102.

8.5 SDL LIABLE AMOUNT

Reference to the Act

Section 3(1) and (4) of the SDL Act

Meaning

The employer must pay SDL at a rate of 1% (from 1 April 2001) of the leviable amount.

Amount on which SDL is determined

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 4th Schedule provisions for purposes of determining the employer's liability for employees' tax.

The SDL is therefore determine 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).

Note: All remuneration not included in the definition of remuneration for SDL purposes should be excluded from the balance of remuneration result.

Remittance of SDL

The employer must remit the SDL liable amount to SARS with his / her monthly EMP 201 return.

IRP5/IT3(a) details

The SDL amount must be reported under the code 4142 on each relevant employee's certificate.

8.6 UIF LIABLE AMOUNT

Reference to the Act

Section 5 and 6 of the UIC Act

Meaning

The employer and employee must on a monthly basis contribute to the UIF.

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 EMP 201 return.
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 employee's certificate.

8.7 DETERMINATION OF SITE AND PAYE

Reference to the Act	Paragraph 11B of the Fourth Schedule
Meaning	<p>SITE is the abbreviation for Standard Income Tax on Employees. SITE is not an additional tax but is merely an alternative method of determining liability for normal tax and was introduced to ensure that the tax deducted by an employer should equate to a SITE only employee's actual normal tax liability.</p> <p>SITE represents nothing more than payments towards an employee's normal tax liability and in cases of employee's subject only to SITE, the tax actually deducted from their remuneration by their employers, equates to their normal tax liability.</p>
Refund of SITE	<p>The employer is obliged to refund the excess deducted to the employee where the employees' tax required to be deducted at the end of a tax period consists solely of SITE and the total amount of tax actually deducted exceeds such SITE required to be deducted. However, where the employees' tax required to be deducted does not consist solely of SITE, the excess deducted must be shown as PAYE on the IRP5/IT3(a) and the employer is not permitted to refund the PAYE to the employee.</p>
Recalculation of SITE by SARS	<p>The amount of net remuneration derived by the employee and SITE may be recalculated by SARS in the following circumstances —</p> <ul style="list-style-type: none">• where the employee is entitled to the deduction in respect of any contribution to a pension fund or retirement annuity fund or a deduction in respect of any premiums paid in terms of a qualifying income protection policy and such contributions / premiums have not been taken into account by his / her employer in the determination of SITE;• where an employee is under the age of 65 years and he / she is entitled to medical expenses which in aggregate exceed 7,5% of taxable income;• where the employee is entitled to a deduction in respect of medical scheme contributions which have not been taken into account by his / her employer in the determination of SITE; and / or• where the employee's net remuneration for the year of assessment is less than the annual equivalent.
SITE deemed to be correct	<p>Where the employer finds at the end of an employee's tax period that the SITE liability does not differ by more than R5.00 (or such other amount as the Commissioner may determine by notice in the Gazette) from the total amount of employees' tax deducted during the year, the employer may, at his / her option, deem the total amount deducted to be the correct amount of SITE determined.</p> <p>Where the employer makes use of his / her own methods to determine the employees' tax liability, for example a software program, and the difference does not deviate by more than 2% of the SITE liability, the amount may be deemed to be correct. This provision only applies —</p>

- where it relates to employees whose employees' tax represents SITE only;
- where the employees' tax has been correctly deducted in accordance with the tax deduction tables, tax deduction program SARSTAX 2000 or the statutory rates of tax; and
- if a shortfall or excess occurs as a result of the use of methods other than the tax deduction tables or tax deduction program SARSTAX 2000 and the difference is not more or less than 2%, then the difference need not to be recovered or refunded, as the case may be.

Determination of SITE

The SITE liability of an employee must be determined by the employer at the end of the employee's tax period or at the end of the tax year.

Example: Employee's tax period is a full tax year

Where the employee's annual equivalent of net remuneration does not exceed R60 000 and the employee was employed for the full tax year, the total amount of employees' tax applicable to the net remuneration will represent SITE. This amount can also be determined by using the annual tax table.

Where the employee's annual equivalent of net remuneration exceeds R60 000 and the employee was employed for the full tax year, the employees' tax that represents SITE and PAYE must be determined by using the annual tax table.

Example: Employee's tax period is shorter than a full tax year

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

Month	Salary	Overtime	Total remuneration	Employees' tax
March	R8 800		R8 800	R728
April	R8 800	R1 500	R10 300	R 998
May	R8 800		R8 800	R728
June	R8 800	R1 600	R10 400	R1 016
July	R8 800		R8 800	R728
August	R10 500		R10 500	R1 036
September	R10 500	R1 400	R11 900	R1 304
October	R10 500		R10 500	R1 036
TOTAL	R75 500	R4 500	R80 000	R7 574

	SITE	PAYE	TOTAL
Tax on annual equivalent of R120 000 (80 000 ÷ 8 x 12) according to the annual table	540	10 803	11 343
Determine the tax on R80 000	$\frac{\div 12 \times 8}{360}$	$\frac{\div 12 \times 8}{7 202}$	$\frac{\div 12 \times 8}{7 562}$
Final employees' tax for tax period worked	<u>360</u>	<u>7 202</u>	<u>7 562</u>

Note: As the annual equivalent of the net remuneration exceeds R60 000, the employer may not refund the excess of R12 (R7 574 less R7 562) to the employee. This excess amount is added to PAYE and reflected as such on the employees' tax certificate.

- **Weekly paid employee:** An employee (under 65) is employed for 9 weeks and the employer deducted employees' tax correctly according to the weekly table. The remuneration and employees' tax details are as follows.

Week	Wage per week	Employees' tax
15 to 23 (9 weeks)	R1 100	R1

TOTAL	R9 900	R9
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	SITE	PAYE	TOTAL
Tax on annual equivalent of R57 200 (9 900 ÷ 9 x 52) according to the annual table	35	Nil	35
Determine the tax on R9 900	<u>÷52x9</u>	<u>÷52x9</u>	<u>÷52x9</u>
Final employees' tax for tax period worked	<u>6</u>	<u>Nil</u>	<u>6</u>

Note: If the employer finds at the end of the tax period that the SITE liability differs by not more or less than R5 from the total amount of employees' tax which was deducted during the tax period, the employer may, at his / her option, deem the total amount deducted (R9) as the correct amount of SITE.

8.8 ESTIMATED ASSESSMENT

Reference to the Act Paragraph 12 of the 4th Schedule
Section 7A of the SDL 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 EMP 201 monthly return;
- **the employer has furnished a reconciliation declaration but the Commissioner is not satisfied with the declaration;**
- where the employer has failed to deduct or withhold the correct amount of employees' tax or UIF contributions (excluding SDL as the employer is not allowed to deduct it from the employee); or
- where the employer has failed to pay over the employees' tax, SDL or UIF contribution due.

The estimate will be a reasonable estimate of the amount of employees' tax, SDL or UIF which is required to be deducted or withheld by the employer.

The employer shall be liable to the Commissioner for the payment of the amount of employees' tax, SDL or UIF so estimated as if such amount was deducted / withheld as required by the provisions of the 4th Schedule.

Any estimate of the amount of employees' tax, SDL or UIF contributions payable by the employer is subject to objection and appeal.

9 PAYMENTS

9.1 PAYMENT OF EMPLOYEES' TAX, SDL AND UIF

Reference to the Act Paragraph 2(1), 5(1) and 14(2) of the 4th Schedule
Section 6 of the SDL Act
Section 7(4) and 8 of the UIC Act
Section 89sex and 89ter(1A)

Meaning The employees' tax and UIF contributions as well as SDL must be paid over to SARS within 7 days after the end of the month during which the amount was deducted or due.

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.

Monthly declaration

The employer must submit such declaration as the Commissioner may prescribe when making any payment. The prescribed EMP 201 return is automatically supplied to the employer for payment purposes each month.

Payments of employees' tax, SDL and UIF contributions MUST be reflected correctly and separately on the EMP 201 form in order to avoid the incorrect allocation of these payments and the unnecessary issue of final demands.

An EMP 201 not received in time by an employer will not be accepted as an excuse for the late payment of employees' tax, SDL and UIF contributions.

Requesting an EMP201 return

Where an employer has not received an EMP201 return, such return should be requested from SARS by means of a:

- **Telephonic request (SARS contact centre);**
- **Written request (e.g. post, email or fax); or**
- **Personal visit (SARS branch office).**

Employer personally liable

An employer who fails to deduct or withhold the full amount of employees' tax and / or UIF contributions is personally liable for the shortfall.

Payments

Please refer to SARS' website www.sars.gov.za for information and details relating to payment to SARS.

The payment reference number will be pre-printed on the EMP201 return which is issued by SARS to the employer on a monthly basis.

Allocation of payments

Where any payment is made by an employer in respect of employees' tax, SDL and UIF, such payment will be allocated in the following order —

- in respect of penalty;
- in respect of interest, to the extent to which the payment exceeds the amount of penalty; and
- in respect of employees' tax or additional penalty, to the extent to which the payment exceeds the amount of penalty and interest.

Where there is a shortfall after the allocation of penalties and interest and the outstanding tax has not been covered in full, interest will continue to accrue on the outstanding tax. These rules are also applicable to SDL and UIF contribution payments.

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.

9.2 INTEREST AND PENALTY

Reference to the Act

Paragraph 6(1) and 6(2A) of the 4th Schedule
Section 89bis(2)
Section 11, 12(1) and 12(3) of the SDL Act
Section 12, 13(1) and 13(2) of the UIC Act

Meaning	Interest as well as a penalty may be imposed on late payments or outstanding amounts.
Interest	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.
Penalty	A penalty equal to 10% in addition to the interest will be imposed on late payments or outstanding amounts.
Additional penalty	Where the employer fails to pay the relevant amount with intent to evade his / her obligation, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of employees' tax, SDL or UIF contributions which the employer so failed to pay.

10 OFFENCES

Reference to the Act	Paragraph 30(1) of the 4 th Schedule Section 75, 75A and 104
Meaning	<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"> • fails to deduct employees' tax from remuneration or to pay the tax to the Commissioner within the prescribed period; • uses or applies employees' tax deducted or withheld, for purposes other than the payment of such amount to the Commissioner; • permits a false IRP5/IT3(a) certificate to be issued or knowingly is in possession of or uses a false IRP5/IT3(a) certificate; • alters an IRP5/IT3(a) certificate issued by any other person, purports to be the employee named on any IRP5/IT3(a) certificate or obtains a credit for his / her own advantage or benefit in respect of employees' tax deducted or withheld from another person's remuneration; • not being an employer and without authority from an employer issues or causes to be issued, any document purporting to be an IRP5/IT3(a) certificate; • without just cause fails to comply with an income tax directive issued by the Commissioner; • furnishes false information or misleads his / her employer regarding the amount of employees' tax to be deducted in his / her case; • fails to deliver IRP5/IT3(a) certificates to employees or former employees within the prescribed periods; • fails to comply with any condition prescribed by the Commissioner in regard to the manner in which IRP5/IT3(a) certificates may be used, the surrender of unused stocks of certificates, accounting for used, unused and spoiled IRP5/IT3(a) certificates when required by the Commissioner to do so or to surrender unused IRP5/IT3(a) certificates when ceasing to be an employer; • fails to comply with the conditions for using a mechanised system for printing IRP5/IT3(a) certificates to be issued to employees or former

employees;

- fails to maintain a record of remuneration paid and tax deducted there from or to retain such record for a period of five years from the date of the last entry therein;
- fails to apply for registration as an employer;
- fails to notify the Commissioner of a change of address;
- fails to notify the Commissioner that he / she has ceased to be an employer;
- fails to comply with a written request for information; or
- defaults in rendering a return.

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

11 TAX DIRECTIVES (GRATUITIES, LUMP SUM BENEFITS AND EXCEPTIONAL CIRCUMSTANCES)

11.1 PURPOSE OF A TAX DIRECTIVE

Reference to the Act	Paragraph 9(1) of the 4 th Schedule Paragraph 19 of the 7 th Schedule
Meaning	A tax directive (IRP 3) is issued by SARS to instruct the employer / fund how to deduct employees' tax from certain payments where the prescribed tax tables do not cater for certain remuneration or other payments.
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 — <ul style="list-style-type: none"> • 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 . Form A & D, Form B and Form C are samples of forms to be used by funds and fund administrators must add their own logo and address when submitting the applications forms to SARS offices.

When applying for a tax directive, the employer / fund administrator must ensure that the correct application form is used according to the reason for the exit from the fund / employer's service and nature of the amount payable to the employee / member of the fund.

- The forms that are available are —
 - IRP 3(a) – Gratuities paid by employer (e.g. death / retirement / retirement due to ill health, superannuation & other / retrenchment / share options without obligation / in service payment within 5 years of retirement / other).
 - IRP 3(b) – Employees' tax to be deducted at a fixed percentage (e.g. commission agents / personal service provider).
 - IRP 3© – Employees' tax to be deducted at a fixed amount (e.g. Paragraph 11 of the 4th Schedule (hardship) / assessed loss carried forward).
 - IRP 3(d) – Determine deemed remuneration to be used to deduct employees' tax (e.g. Paragraph 11 of the 4th Schedule (hardship) / Paragraph 11C(1)(ii)(bb) of the 4th Schedule).
 - Form A & D – Lump 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).

To avoid a delay in the issuing of a directive, certain minimum information is required on the relevant application form. Please refer to AS-IT-15 on the SARS website: www.sars.gov.za for more information.

11.2 GRATUITIES ON TERMINATION, IMPENDING TERMINATION OF SERVICES OR RETRENCHMENT

Reference to the Act	Gross income definition in Section 1 Section 7A(4A) Section 10(1)(gB)(iii) and 10(1)(x)
Meaning	A gratuity is an amount, voluntary or otherwise, paid to an employee by an employer in respect of the termination of service. The most common examples are — <ul style="list-style-type: none"> • Normal termination of service as a result of resignation or discharge; • Retirement or death; and • Termination of service as a result of retrenchment.
Exemption	Any amount in cash or in kind, received by or accrued to an employee or the holder of any office by way of bonus, gratuity or compensation (including payment for accumulated leave and redundancy payment) because of the termination of his / her services or because of the impending termination of his / her services within five years, is exempt from tax to the extent of a cumulative amount of R30 000 provided that —

- the person to whom it is paid has attained the age of 55; or
- the termination or impending termination of such person's services is due to superannuation, ill-health or other infirmity; or
- the termination of the person's services is as a result of the employer having ceased trading or where he / she has affected a general reduction in personnel or a reduction in personnel of a particular class.

The exemption does not apply where the employer is a company and the employee concerned was at any time a director of the company or at any time held more than 5% of the company's issued share capital.

Note: Where, on dismissal or retrenchment, an employee is entitled to an amount which refers to the period that the employer is obliged to give the employee notice of such termination of service (e.g. the employer pays the employee an amount equal to the salary the employee would have earned if such employee had worked for the full notice period), the amount (notice pay) will not qualify for the exemption in terms of Sections 7A(4A) or 10(1)(x) and notice pay must not be entered on the IRP 3(a) application form as part of the gratuity amount.

Gratuity payments in five years preceding retirement

Only gratuity payments in the five years preceding the retirement (termination of the employee's services) or retrenchment (reducing staff numbers) or payments which falls together with the retirement (termination), will be taken into account for purposes of the exemption.

A further requirement is that the first of such payments (in the case of leave payments) must be in respect of all leave to the employee's credit at that stage.

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

Where the employer paid compensation in respect of the death of an employee where that death arises out of and in course of the employment of that employee, a tax directive must be obtained from the SARS office where the employee is on register for income tax purposes.

- The compensation will qualify for an exemption in terms of section 10(1)(gB)(iii), to the extent that the compensation —
 - was paid in addition to any compensation paid in terms of the Workmen's Compensation Act, 1941 or the Compensation for Occupational Injuries and Diseases Act, 1993; and
 - does not exceed an amount of R300 000 less the sum of the amounts already allowed as an exemption in terms of section 10(1)(x).

The applicable exemption shall be determined by SARS with the processing of the tax directive application.

Application forms

An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.

Employees' tax

Normal termination of service: The gratuity paid by an employer to an employee is treated as an annual payment (for example, service bonus) and the applicable formula is used for the calculation of employees' tax.

Dismissal, retrenchment or retirement: A tax directive must be obtained from the SARS office or where the employee is on register for income tax purposes. 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 SITE calculation must be done at the end of the tax period to determine the SITE and the gratuities must be reflected on the IRP5/IT3(a) certificate under code 3907.

Dismissal, retrenchment or retirement: The gratuity due to retrenchment, retirement, etc. must be reflected on the IRP5/IT3(a) certificate under code 3901 and the tax attributed to the gratuity must be reflected as PAYE.

Compensation in respect of death arises out of and in the course of employment: The compensation must be reflected in full under code 3901 on the IRP5/IT3(a) certificate and the tax attributable to this compensation must be reflected as PAYE.

11.3 HARDSHIP DUE TO ILLNESS OR OTHER CIRCUMSTANCES

Reference to the Act	Paragraph 11 of the 4 th Schedule
Meaning	<p>The Commissioner may, having regard to the circumstances of the case, issue a directive authorising the employer to —</p> <ul style="list-style-type: none"> • 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; or • deduct an amount of employees' tax determined in accordance with a specified rate or scale.
Reason for directive	<p>This type of directive is issued —</p> <ul style="list-style-type: none"> • 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; or • where remuneration is paid to a personal service provider.
Application form	An IRP 3(c) application form, which is obtainable from SARS, must be submitted by the relevant employee in respect of the above.

11.4 GAINS MADE IN RESPECT OF RIGHTS TO ACQUIRE MARKETABLE SECURITIES

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

Application form An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.

IRP5/IT3(a) details Income must be reflected under code 3707 on the certificate.

11.5 BROAD-BASED EMPLOYEE SHARE PLAN

Reference to the Act Paragraph 11A of the 4th 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; and
- is disposed of by the employee within five years from the date of grant of that qualifying equity share, otherwise than —
 - in exchange for another qualifying equity share;
 - on the death of the employee; or
 - on the insolvency of the employee.

Exchange for other qualifying equity share If an employee disposes of a qualifying equity share in exchange solely for any other equity share, that other equity instrument in exchange is deemed to be —

- a qualifying equity share which was acquired by the employee on the date of grant of the qualifying equity share disposed of in exchange; and
- acquired for a consideration equal to any consideration given for the qualifying equity share disposed of in exchange.

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.

11.6 VESTING OF EQUITY INSTRUMENTS

Reference to the Act Paragraph 11A of the 4th Schedule
Section 8C

Meaning The employer must apply for an IRP 3 tax directive in order to ascertain the amount of employees' tax to be deducted or withheld from any gain in respect of the vesting of any equity instrument as defined in Section 8C.

These provisions are only applicable to any equity instrument acquired on or after

26 October 2004.

Taxable portion

The gain to be included in the remuneration of an employee is —

- in the case of a disposal, the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or
- in any other case, the sum of —
 - the amount by which the market value of the equity instrument determined at the time that it vests in that employee exceeds the sum of any consideration in respect of that equity instrument; and
 - the excess amount (if any) which exceeds the consideration in respect of the restricted equity instrument where the consideration includes an amount other than restricted equity instruments.

When the equity instrument vests in the employee and when an unrestricted equity instrument is acquired, the gain will be subject to the deduction of employees' tax.

Vesting of equity instrument

An equity instrument acquired is deemed to vest —

- in the case of an unrestricted equity instrument, when the employee acquires it; and
- in the case of a restricted equity instrument, at the earliest of —
 - when all relevant restrictions cease;
 - immediately before the employee disposes of it (except for disposals discussed hereunder);
 - immediately after it terminates (if it is an option);
 - immediately before the employee dies if all the restrictions relating to that equity instrument are or may be lifted on or after death; and
 - the time a disposal (contemplated in 2(a)(1) or (b)(i) occurs.

Disposal

A disposal does not trigger a vesting if —

- a restricted equity instrument is replaced by another restricted equity instrument;
- a restricted equity instrument is disposed of to a person otherwise than by or under a disposal made in terms of a transaction at arm's length; or
- a restricted equity instrument is disposed of to a connected person.

Application form

An IRP 3(a) application form, which is obtainable from SARS, must be submitted in respect of the above.

IRP5/IT3(a) details

The gain must be reflected under code 3718 on the certificate.

11.7 ARBITRATION AWARDS

Reference to the Act

Paragraph (c), (d) and (f) of the definition of gross income in section 1
Paragraph 9(3) of the Fourth Schedule

Meaning

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 Office where it is established that a portion of the award is not taxable.

Employees' tax Employers must calculate the employees' tax deductible from the taxable award in the same manner as tax on an annual payment (bonus).

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).

11.8 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 4th 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.

The provisions of Paragraphs 9(3) of the 4th Schedule prescribe that no amount of tax must be withheld where the member has taxable income (excluding any lump sum payment) in the previous year of assessment which is less than the threshold for that specific year.

When SARS receives a directive application and no information regarding the member's previous year's taxable income is available, the tax will be calculated by SARS according to the annual income indicated by the fund on the application form.

Application forms The relevant application forms A and D, B or C are furnished by the administrators of the relevant funds in accordance with the instructions contained

in the Government Gazette No. 22577 (notice no. 1893) dated 24 August 2001.

Examples of updated application forms are available on the SARS website www.sars.gov.za.

Lump sum payments in respect of withdrawal

In respect of withdrawal (e.g. resignation, transfer, surplus apportionments, Divorce, maintenance or housing loan payments) —

- Lump sum payments prior to **1 March 2009** —
 - from a Pension, Pension preservation or Retirement annuity fund must be reflected under code 3902 on the IRP5/IT3(a) certificate.
 - from a Provident or Provident preservation fund must be reflected under code 3904 on the IRP5/IT3(a) certificate.
 - 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) certificate.
 - 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) certificate.
- Lump sum payments after **1 March 2009**:
 - from a Pension, Pension preservation, Provident, Provident preservation or Retirement annuity fund must be reflected under code 3920 on the IRP5/IT3(a) certificate.
 - due to Surplus apportionments paid in terms of section 15C of the Pension Funds Act of 1956 must be reflected under code 3921 on the IRP5/IT3(a) certificate.
 - due to a court order in respect of a divorce or housing loan, must be reflected under code 3920 on the IRP5/IT3(a) certificate.
 - 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) certificate.

Surplus apportionments after 1 January 2006 and paid in terms of section 15B of the Pension Funds Act of 1956 must be reflected under code 3908 on the IRP5/IT3(a) certificate.

Lump sum payments in respect of death of retirement

Lump sum payments prior to 1 October 2007 —

- from a Pension or Retirement annuity fund must be reflected under code 3903 on the IRP5/IT3(a) certificate.
- from a Provident fund must be reflected under code 3905 on the IRP5/IT3(a) certificate.

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

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

Unclaimed benefits prior to 1 March 2009 and in terms of the provisions of General Note 35 (GN35 can be found on SARS' website www.sars.gov.za) must be reflected under code 3909 on the IRP5/IT3(a) certificate.

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) certificate. 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.

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 or 3909.
- Under code 4115 if the lump sum payment is reflected under code 3915, 3920 or 3921.

11.9 DIRECTORS OF PRIVATE COMPANIES / MEMBERS OF CLOSE CORPORATIONS

Reference to the Act	Paragraph 11 and 11C(1)(c)(ii)(bb) of the 4 th Schedule
Meaning	<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	<p>Where the minimum amount cannot be determine for purposes of the prescribed formula — Where the employer has not determined the remuneration for the year preceding the last tax year, the employer must apply for a tax directive to determine the amount of remuneration which is deemed to have been received by the employee (director) —</p> <ul style="list-style-type: none"> • 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 — <ul style="list-style-type: none"> ▫ 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; and ▫ Number of completed months for which the last known remuneration was received. <p>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 —</p> <ul style="list-style-type: none"> • 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; and
- Documentation to support the application, such as interim financial statements and / or minutes of meetings held by directors which indicate that remuneration to be paid to directors will be less than the remuneration for the previous tax year.

Application form An IRP 3(d) application form, which is obtainable from SARS, must be submitted in respect of the above.

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

12 CLASSIFICATION OF EMPLOYEES (WORKERS)

12.1 LABOUR BROKER

Reference to the Act Labour broker and employee definition in Paragraph 1 of the 4th schedule Paragraph 2(5) of the 4th Schedule.

Meaning 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).

Client The person who specifies the workers required. A written or oral service contract would arise between the client and the labour broker where the service conditions of the workers may or may not be stipulated. Payments for the workers' services are made to the labour broker.

Labour broker The labour broker is a natural person who, for reward, provides and remunerates workers for a client and is either in or not in possession of an exemption certificate (IRP 30). The labour broker either makes available his / her own employees to perform work for a client or procures workers for a client. The labour broker pays the workers.

Workers These workers can be any person, including —

- Members and / or employees of a close corporation;
- Directors and / or employees of a company;
- Trustees and / or employees of a trading trust;
- Proprietors and / or employees of a business; and
- Partners and / or employees of a partnership.

Exemption certificate (IRP 30) The 4th Schedule makes provision for an exemption certificate to be issued by SARS to a labour broker, which will absolve employers from having to deduct employees' tax from any payments made to such labour brokers.

SARS shall not issue an exemption certificate if —

- more than 80% of the gross income of the labour broker during the tax year consists of amounts received from any one client, unless the labour broker employs three or more full-time employees throughout the tax year —
 - who are on a full-time basis engaged in the business of that labour broker of providing persons to or procuring persons for clients of that labour broker; and
 - who are not connected persons in relation to that labour broker; or
- the labour broker provides to any of its clients the services of any other labour broker; or
- the labour broker is contractually obliged to provide a specified employee of the labour broker to render any service to such client.

An exemption certificate is only valid from the date of issue until the end of the tax year.

The labour broker must apply annually on an IRP 30(a) form for a new exemption certificate at a SARS office at least 2 months before the expiring of his / her current exemption certificate. If the issue of an exemption certificate is delayed for longer than a calendar month, the date of validity will be altered from the date of issue to the date the application was received. In such cases any employees' tax deducted is refundable by the relevant employer.

- An exemption certificate will only be valid if —
 - it is not outdated;
 - it bears a labour broker reference number beginning with a 7;
 - it has been computer printed;
 - the labour broker is in possession of the original; and
 - it has not been altered in any way.

If a labour broker is in possession of a valid exemption certificate and undergoes a change of name, the original certificate must be returned to the relevant SARS office together with an application for a new certificate, which indicates the changed particulars.

If an exemption certificate has been lost or misplaced, application for a replacement certificate must be made to SARS Head Office and the replacement certificate will only be issued during the period of validity of the original certificate.

Employees' tax

If a labour broker is not in possession of a valid exemption certificate (IRP 30), all payments made to the labour broker will be subject to employees' tax.

An employer who does not deduct employees' tax from a payment to a labour broker must be in possession of a certified copy of an exemption certificate (IRP 30) that must be retained for inspection purposes.

- The deduction is classified in the following categories —
 - 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	<p>The employees' tax deducted for a labour broker whether calculated according to the deduction tables or a tax directive, must be reflected as PAYE and not as SITE on the certificate.</p> <p>The remuneration must be reflected under code 3617 on the IRP5/IT3(a) certificate.</p> <p>The reason code for non-deduction of employees' tax (where applicable) must be reflected as 07 on the certificate.</p>
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12.2 PERSONAL SERVICE PROVIDER

Reference to the Act	Employee and personal service provider definitions in Paragraph 1 of the 4 th Schedule
Meaning	<p>A personal service provider is any company or trust where services are rendered personally by any connected person in relation to such company or trust and —</p> <ul style="list-style-type: none"> • the person rendering the service would be regarded as an officer or employee of the client, had such service been performed directly to the client; • those duties must be performed mainly at the premises of the client and the person rendering the service is subject to the control and supervision of the client as to the manner in which the duties are performed in rendering such service; or • more than 80% of the income of the company / trust is derived during the tax year from one client. <p>The employee will be deemed to be a personal service provider if any of the above scenarios apply.</p> <p>Note: A person shall not be required to deduct or withhold employees' tax solely by virtue of the fact that 80% of the income of the company or trust is derived during the tax year from one client, where the personal service company or trust has provided that person with an affidavit or solemn declaration stating that the relevant paragraphs mentioned above do not apply and that person relied on that affidavit or declaration in good faith. This affidavit must be provided annually in respect of each year of assessment.</p>
Exclusion	A company or trust who employs throughout the tax year three or more full-time employees (other than shareholders, members or connected persons) who are on a full-time basis engaged in the business of the company or trust of rendering any service.
Employees' tax	The rate at which employees' tax is deductible for a personal service provider is 33%.
IRP5/IT3(a) detail	The employees' tax deducted must be reflected as PAYE on the certificate.

12.3 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 th Schedule
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Meaning	<p>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.</p> <p>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.</p> <p>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.</p>
Deemed independent contractor	<p>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.</p>
Exceptions	<p>The 4th Schedule prescribes that the independent contractor's income will be deemed to be remuneration and will therefore be subject to employees' tax, if —</p> <ul style="list-style-type: none"> • the services are required to be performed mainly at the premises of the person by whom the remuneration is paid / payable or of the person to whom such services were or are to be rendered; and • the person who render or will render the service is subject to the control and supervision 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	<p>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.</p> <p>These guidelines are available in Interpretation Note 17 and can be obtained on the website www.sars.gov.za under Interpretation Notes / Income Tax.</p>

12.4 DIRECTORS OF PRIVATE COMPANIES / MEMBERS OF CLOSE CORPORATIONS

Reference to the Act	<p>Employee definition in Paragraph 1 of the 4th Schedule Paragraph 9(5), 11C and 2(1) of the 4th Schedule Company definition in section 1</p>
Meaning	<p>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.</p> <p>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</p>

private companies apply to members of close corporations. This definition includes a person who, in respect of a close corporation, holds any office or performs any functions similar to the functions of a director of a company other than a close corporation.

Deemed minimum remuneration

A director is deemed to have received a minimum amount of remuneration every month.

The minimum amount of remuneration is determined by the formula prescribed in paragraph 11C of the 4th Schedule, namely —

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

- **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 contemplate in Section 8B; and
 - Which are gains made from the vesting of any equity instrument as contemplated in Section 8C; and
- **N represents** the number of completed months in the tax year in respect of which T was derived.
 - If the remuneration for the year preceding the last tax year has also not been determined as yet, then the company must request the Commissioner to determine the remuneration for the purposes of the formula.

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 was 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 4th 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 EMPLOYEES' TAX CERTIFICATE IN RESPECT OF THE AMOUNT OF EMPLOYEES' TAX PAID BY THE COMPANY ON THE DEEMED REMUNERATION IF THE COMPANY HAS NOT RECOVERED THE EMPLOYEES' TAX FROM THE DIRECTOR.

Director status changes to employee

Where the person ceases to be a director but remains an employee of the company, the formula must no longer be used and PAYE must be deducted from remuneration that is actually paid or is payable to the employee. Only one IRP5/IT3(a) need 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 4th Schedule.

Remuneration for SDL and UIF contributions purposes

As the actual remuneration of a private company director falls within the definition of remuneration, the actual remuneration must be used for the calculation of SDL and UIF contributions.

Remuneration only determined in the next tax year

Circumstances may arise where the remuneration of a director or portion thereof accrues in a tax year but the quantum of the remuneration is only determined in a later year.

For example, the service contract of a director may provide that the director is entitled to a bonus of 10% of the company's profits for the year ending on 28 February 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 website: 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.

SITE is not deductible from the remuneration of directors because their remuneration is specifically excluded from the definition of net remuneration. Employers must therefore reflect PAYE only on the IRP5/IT3(a) certificate.

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.

12.5 STUDENTS AND SCHOLARS

Reference to the Act

Employee definition in paragraph 1 of the 4th 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 non standard employment (25% deduction), which applicable method of deducting employees' tax must be used.

12.6 SEASONAL WORKERS

Reference to the Act Employee definition in paragraph 1 of the 4th 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; or
- Factories that require additional help during the canning season.

A tax period commences at the date the employee was employed and ends on the date his / her employment was terminated.

If the season extends over the following tax year, the employer must issue two IRP5/IT3(a) certificates in respect of the two tax periods.

For example, the employee will have two periods where a season extends from 15 November to 20 May, namely, 15 November to 28 February (1st tax year) and 1 March to 20 May (2nd tax year). Two IRP5/IT3(a) certificates must be issued for the two periods as the employee has two tax periods in one service period.

12.7 EMPLOYEES 65 YEARS OR OLDER

Reference to the Act Paragraph 11B(6) of the 4th Schedule
Paragraph 2(4) of the 4th Schedule

Meaning Employees' tax deductions for persons 65 years or older must be made according to the tables for PERSONS 65 YEARS OR OLDER from the beginning of the tax period (e.g. 1 March) during which the employee turns 65 and not as from the month the qualifying age of 65 is attained.

Employees 65 years or older must furnish the employer with a written declaration or a copy of his / her identification document as confirmation thereof. Where no such proof is submitted, the employer is obliged to determine the SITE and PAYE liability according to the tables applicable to PERSONS UNDER 65 YEARS.

12.8 TEMPORARY EMPLOYEES WHO ARE FREQUENTLY EMPLOYED

Reference to the Act Standard employment definition in Paragraph 11B of the 4th 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 4th Schedule, after consultation with the employer, issue a ruling to the employer as to the method to be used for the calculation of employees' tax for such a group of employees.

Application

A written application (by the employer), accompanied by all relevant information, must be directed to the nearest SARS Branch Office. The following information is pertinent to the written application —

- a full explanation of the specific category of employees in respect of which the application is made;
- a full description of the basis on which such employees are employed, and
- a full explanation as to why such employees are regularly or frequently employed.

12.9 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) certificate.

If the employee is not in possession of a tax directive, the employer MUST deduct employees' tax according to the applicable tax deduction tables and a SITE calculation must be done at the end of the tax year or tax period.

Employee works for salary and commission

If the employee is in possession of a tax directive, the employer MUST deduct employees' tax according to the instructions on the tax directive and the employees' tax deducted must be reflected as PAYE on the IRP5/IT3(a) certificate.

If the employee is not in possession of a tax directive, the employer MUST combine the salary and commission and deduct employees' tax according to the applicable tax deduction tables and a SITE calculation must be done at the end of the tax year or tax period.

Under no circumstances may 25% or any other percentage for that matter, be deducted from remuneration, unless the tax directive so directs.

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	R5 185		R78
May	R5 185		R78
June	R5 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	5 185	
	5 685	
Tax on R5 685 (salary and commission) according to the monthly tables	168	
Less: Tax on R5 185 (monthly salary)	<u>78</u>	78
Tax on commission for one month	90	

Multiply tax on commission for one month with the months in which it was earned (R90 x 3)	270
Employees' tax deductible for June is	348

13 CLASSIFICATION OF PAYMENTS

13.1 DEEMED STANDARD AND NON-STANDARD EMPLOYMENT

Reference to the Act Standard employment definition in paragraph 11B of the 4th 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; or
- the employee works for at least 5 hours a day and receives less than R218 per day.

Where the employer conducts his / her business in such a manner that employees render services on a regular or frequent basis for such periods as may be required by the employer the Commissioner may, after consultation with the employer or with any body or association on which the employer is represented, direct that the employment of such employees shall be standard employment. The Commissioner may further instruct the employer as to the manner in which employees' tax must be deducted. (Refer also to Temporary employees who are frequently employed).

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 SITE.

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 at least	No tax to be

5 hours per day and earns less than R218 for that day	deducted
Employee is required to work at least 22 hours a week and is in standard employment	Deduction tables
Employee is not in standard employment and works less than 5 hours per day and earns less than R218 for that day	25% deduction
Employee is not in standard employment and works at least 5 hours per day and earns more than R218 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.

13.2 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 relate 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; and
- The portion of the salary which relates to periods in the **previous tax years** must be reflected under code 3907.

Example

An employee (under 65) received a salary of R6 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 (R6 000 + R300)	6 300	
Add: backdated increased salary for the months July to November R300 x 5)	1 500	
Total remuneration for December	7 800	
Tax on R6 300 (December salary) according to the monthly tables	279	279
Less: Tax on R6 000 (salary before increase)	226	
Tax on increased salary (R300)	53	
Tax on total backdated increased salary of R1 500 (R53 x 5)		265
Employees' tax deductible for December is		544

13.3 RESTRAINT OF TRADE PAYMENTS

Reference to the Act

Remuneration definition in Paragraph 1 of the 4th 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

13.4 LEAVE PAY

Reference to the Act

Remuneration definition in Paragraph 1 of the 4th 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).

Unpaid leave

The fact that an employee has taken unpaid leave of any type (including maternity leave), has no effect on the employee's tax period.

The tax period continues until the end of the tax year, unless the employee resigns or dies before the end of the tax year.

When the tax period does end and the final tax calculation is performed to calculate SITE, it will be found that the employee has probably paid too much employees' tax due to he /she being absent without pay during the tax period.

Employees' tax

Must be calculated differently on leave that is taken where an advance is paid and accrued leave that is encashed —

- Where leave is taken and an advance is paid for the leave period, the

advance must be treated as advanced salary.

- Accrued leave that is encashed must be tax in the same manner as a bonus.

IRP5/IT3(a) detail

Accrued leave which has been encashed must be reflected under —

- code 3901 if it accrued as a result of death, superannuation or dismissal; and
- code 3605 if it accrued as a result of encashment or resignation.

13.5 SPECIAL REMUNERATION PAID TO PROTO TEAMS

Reference to the Act

Remuneration definition in paragraph 1 of the 4th Schedule Section 5(9) and 5(10)

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 certificate.

13.6 ADVANCE SALARY

Reference to the Act

Remuneration definition in paragraph 1 of the 4th 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 (under 65) received R18 000 in October in respect of remuneration that is due to accrue to him in October, November and December.

Tax on R6 000 (salary per month) according to the monthly tables	226
Employees' tax on the advance salary of R18 000 (R226 x 3) is	678

13.7 OVERTIME PAYMENTS

Reference to the Act

Remuneration definition in paragraph 1 of the 4th 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 certificate.
Example	A monthly paid employee (under 65) received R6 000 salary and R900 overtime in June.

Tax on R6 900 (salary and overtime) according to the monthly tables	386
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13.8 ANNUAL PAYMENTS / BONUS

Reference to the Act Paragraph 11B(2)(b) and 11B(3)(b) of the 4th 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
- an amount that is calculated without reference to a period.

Examples of annual payments The following are examples of annual payments or payments made without reference to a period —

- Annual bonus;
- Incentive bonus;
- Leave pay on resignation;
- Encashment of leave;
- Merit awards;
- Backdated payments in respect of salary / wages (accrued in previous tax years);
- An amount paid to a mineworker for picking up a diamond;
- An amount paid to an employee for a proposal to simplify procedures; and
- A bonus or an incentive amount paid to an employee to retain his / her services for a specific period. Where this amount is repayable by the employee on termination of his / her service prior to the end of the contract period, the employees' tax paid on this amount may under no circumstances be refunded to the employee.

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 certificate.

Example **Month in which the annual payment is paid / accrued:** A monthly paid employee (under 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	226
Annual equivalent of salary (R6 000 x 12)	72 000
Add: bonus (annual payment)	4 800
Total remuneration for October	<u>76 800</u>
Tax on R76 800 (total remuneration) according to the annual tables	3 576
Less: Tax on R72 000 (annual equivalent) according to the annual tables	<u>2 703</u>
Tax on bonus (R4 800)	<u>873</u> <u>873</u>
Employees' tax deductible for December is	<u>1 099</u>

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 (R873 ÷ 12)	73
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Production bonus paid in a following pay period: A monthly paid employee (under 65) earns a production bonus in July but this bonus is only paid in the following pay period (August). The remuneration and employees' tax details are as follows.

Month	Salary	Production bonus	Employees' tax
July	R6 000		R226
August	R6 000	R2 500	To be calculated

Tax on R8 500 (salary and production bonus for August) according to the monthly tables	682
Less: tax deducted for July according to the monthly tables	<u>226</u>
Tax on production bonus of R2 500 (paid in August)	<u>456</u> 456
Add: tax on salary (R6 000) for August according to the monthly table	<u>226</u>
Employees' tax deductible for August	<u>682</u>

- 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 (under 65) earns a monthly production bonus in May but this bonus is only paid in the following month (3rd 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 215		R21
June	1	R1 215		R21
	2	R1 215		R21
	3	R1 215	R300	To be calculated
	4	R1 215		R21

Tax on R1 215 for 3 rd week's wage in June according to the weekly table	21
Divide the production bonus by the weeks in which it was earned (R300 ÷ 4)	75

Add: wage for 3 rd week in June	1 215
Total remuneration for 3 rd week in June	<u>1 290</u>
Tax on R1 290 according to the weekly tables	35
Less: tax on R1 215 (weekly wage) according to the weekly tables ...	<u>21</u>
Tax on production bonus for one week (R75)	<u>14</u>
Multiply the tax on the bonus for one week with weeks in which it was earned (R14 x 4)	56
Employees' tax deductible for 3 rd week in June is	<u>77</u>

14 ALLOWANCES AND FRINGE BENEFITS

14.1 ALLOWANCES

References to the Act	Remuneration definition in paragraph 1 of the 4 th Schedule Section 8(1)
Meaning	Certain amounts must be included in the employee's taxable income and these amounts are normally referred to as allowances.
Types of allowances	The following type of allowances may be paid by an employer to an employee — <ul style="list-style-type: none"> • Travel allowance; • Subsistence allowance; • Allowance to a holder of a public office; and / or • Other allowances received by virtue of the employee's office or duties (e.g. tool allowance, etc.).
Other references	Special provisions exist for travel, subsistence and public office allowances. Please refer to AS-PAYE-05-G3 attached to this guide for a detail explanation in respect of these allowances.

14.2 FRINGE BENEFITS

Reference to the Act	Remuneration definition in paragraph 1 of the 4 th Schedule All paragraphs of the 7 th Schedule
Fringe benefits	A taxable benefit is deemed to have been granted by the employer if, as a benefit or advantage of, or by virtue of such employment or as a reward for services rendered or to be rendered, the employee is granted on of the benefits described in Paragraph 2 of the 7 th Schedule, namely — <ul style="list-style-type: none"> • Acquisition of an asset at less than the actual value (money excluded); • Right of use of a motor vehicle; • Right of use of an asset (excluding a motor vehicle and accommodation); • Meals, refreshments or vouchers that entitle an employee to any meal or refreshment; • Free or cheap accommodation; • Free or cheap services;

- Low or interest free loans;
- Subsidy in respect of interest;
- Subsidy in respect of interest on a home loan;
- Payment of an employee's debt or the release of the employee from the obligation to pay a debt;
- Medical fund contributions paid on behalf of an employee; and / or
- Medical costs (other than contributions) paid for the benefit of an employee.

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. Please refer to AS-PAYE-05-G2 guide for a detail explanation in respect of fringe benefits.

15 EXEMPTIONS

15.1 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 certificate.

15.2 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; and

- the cost of renting temporary residential accommodation for the employee and members of his / her household during a period which ends 183 days after his / her transfer took place or after his / her date of appointment.

Reimbursement of actual expenses

The following items are exempt from tax if the employer reimburses the employee for the actual expenditure incurred —

- Bond registration and legal fees paid in respect of a new residence that has been purchased;
- Transfer duty paid in respect of the new residence;
- Cancellation fees paid of the cancellation of bond on the previous residence; and
- Agent's commission on sale of previous residence.

Settling-in costs

Reimbursed to the employee by the employer are also exempt from tax. To simplify administration, an amount not exceeding one month's basic salary may be paid to the employee free of tax to cover settling-in costs. This costs are for items such as —

- New school uniforms;
- Replacement of curtains;
- Motor vehicle registration fees; and
- Telephone, water and electricity connection.

Expenditure fully taxable

Should payments be made by the employer in respect of the following two items, they will constitute taxable benefits in the hands of the employee concerned and be subject to the deduction of employees' tax —

- Payments to reimburse the employee for loss on the sale of a previous residence during transfer.
- Architect's fees for the design or alteration of a new residence.

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

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

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
TOTAL		79 128.00

- 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.

15.3 SHARE SCHEMES

Reference to the Act Section 10(1)(nE) and 10(1)(nH)

Meaning An amount (including any taxable benefits) received by or accrued to an employee under a share incentive scheme operated for the benefit of employees which was derived —

- upon the cancellation of a transaction under which the employee purchased the shares under the scheme; or
- upon repurchase by the employee at a price not exceeding the selling price to him / her of the shares under the scheme,
- is exempt from tax in terms of Section 10(1)(nH), if the employee does not receive compensation or a consideration in excess of the purchase price he / she actually paid for the shares.

This Section in effect exempts from tax the benefit that is commonly called the stop loss benefit that can accrue in terms of share incentive schemes.

Employees' tax Employees' tax must not be deducted from the exempted amount.

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

15.4 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 tax year.

Exempt from tax

Expenditure in connection with internal or on-the-job training or courses presented by other institutions on behalf of the employer, does not represent a taxable benefit in the hands of the employees, provided that the training is job-related and ultimately for the employer's benefit. The following are examples of this type of training —

- Computer and word processing courses;
- Management and administration courses;
- Bookkeeping courses;
- Sales courses;
- Courses in operating office and technical equipment; and
- Language courses for employees.

To the extent that a bona fide bursary does not qualify for the exemption, it is taxable in the employee's hands.

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 SITE purposes.
- Where an employer rewards an employee for obtaining a qualification, successful completion of a study course or reimburses the employee for study expenses, such reward or reimbursement of study expenses will represent, in the case of the reward, taxable remuneration and in the case of the reimbursement of study expenses, a taxable benefit in terms of Paragraph 2(h) of the Seventh Schedule (payment of employees debt or release employee from obligation to pay debt).
- Only the taxable portion of bursaries paid to an employee or a family member of an employee is subject to the deduction of employees' tax.

- Any bursary, which is granted subject to the condition of repayment, due to non-fulfilment of conditions stipulated in a written agreement, will be treated as a bona fide bursary until such time as the non-compliance provisions of the agreement are invoked. In the tax year in which such provisions are invoked, the amount of the bursary will be regarded as a loan and any benefit which an employee may have received by way of an interest-free or low-interest loan will constitute a taxable benefit in terms of Paragraph 2(f) of the Seventh Schedule.

Employees' tax The taxable benefit of a bursary is regarded as an annual payment for SITE 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).

15.5 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 employees who are employed in the national or provincial sphere of government, any local authority or any public entity if 80% or more of the expenses of the entity are defrayed from funds voted by Parliament.

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; or
- in the prospecting for, or the mining of, any minerals from the seabed outside the continental shelf of the Republic, where such officer or crew member is employed on board such ship solely for purposes of the passage of such ship as defined in the Marine Traffic Act,
- is exempt from tax if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the tax year.
- Where remuneration is received by or occurs to an officer or crew member of ship as mentioned above during any year of assessment in respect of services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered.

The question of whether an employee will qualify for the exemption or not is a question of fact that can only be answered once the requisite number of days has been met. Directives are therefore not issued for such taxpayers. Where the employer is satisfied that the employee will meet the necessary criteria for the exemption to be granted, the employer is at liberty not to deduct employees' tax provided that a copy of each page of the employee's passport and a copy of the relevant contract for the services to be rendered in a foreign country are kept. Should it transpire that the employee does not qualify for the exemption, the employer will be held personally liable for any losses that SARS may suffer due to the non-deduction of the full amount of employees' tax.

Other references

Please refer to the applicable Interpretation Notes (numbers 16 and 34) on the website www.sars.gov.za under Interpretation Notes / Income Tax for more information.

16 QUALITY RECORDS

- Completed forms as listed below —

Number	Title
EMP 201	Return for remittance.
Form A & D	Application form for a tax directive in respect of lump 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.
IRP 3	Tax directive.
IRP 3(a)	Application form for a tax directive in respect of Gratuities paid by the employer.
IRP 3(b)	Application form for a tax directive in respect of employees' tax to be deducted at a fixed percentage .
IRP 3(c)	Application form for a tax directive in respect of employees' tax to be deducted at a fixed amount .
IRP 3(d)	Application form for a tax directive in respect of deemed remuneration to be

Number	Title
	used to deduct employees' tax.
IRP 5 / IT 3(a)	Employees' tax certificate.
IRP 30	Labour broker exemption certificate.
IRP 130	Application for registration as a creator.
EMP 501	Reconciliation of tax deductions and certificates.
EMP 601	Employer Cancel certificate declaration

17 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	GE Enterprise Business Enablement
Policy Owner:	GE Enterprise Business Enablement
Author:	Cathy Rossouw
Detail of change from previous revision:	Incorporate legislation changes relating to the 2011 tax year
Template number and revision:	POL-TM-07 - Rev 3