Farming operations

The First Schedule applies to any person who derives taxable income from carrying on pastoral, agricultural or other farming operations. Such a person can include an individual (whether farming alone or in partnership), a deceased estate, an insolvent estate, a company, a close corporation or a trust.

The expression “farming operations” is not defined in the Act and should be interpreted according to its ordinary meaning as applied to the subject matter with regard to which it is used.

The question of whether a person is carrying on farming operations is one of fact (ITC 1319 (1980) 42 SATC 263 (EC) at 264, cited with approval in CIR v D & N Promotions (Pty) Ltd 1995 (2) SA 296 (A), 57 SATC 178 at 183) and must be decided considering all the facts of a particular case.

Farming and agriculture are defined in the Merriam-Webster’s dictionary as –
“the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products”.

However, every activity in the nature of farming will not constitute “farming operations”. This was confirmed by Heher AJA in the Supreme Court of Appeal in C: SARS v Smith when he stated the following:
“In ordinary parlance the phrase ‘carrying on farming operations’ is capable of several meanings. In the context of s 26(1) it could mean simply ‘a particular form or kind of activity’ or it could bear a more commercial nuance, ‘a business activity or enterprise’.

“The Act is directed to the taxation of profit-making activities. There is no apparent reason why the legislature should have intended a taxpayer who farms as a hobby or who
dabbles in farming for his own satisfaction to receive the benefits conferred by the First Schedule.”

An example of the above principle can be found in ITC 1324 (1980) 42 SATC 288 in which it was held that a grower who merely intended to sell crops surplus to his needs was not carrying on farming operations.

Thus, in order to fall within the First Schedule a farming operation needs to be a trade of the taxpayer and there must be an overall profit-making intention.

It is now settled law that the test for determining whether a taxpayer is carrying on farming operations is a subjective one, that is, one based on the taxpayer’s intention. This was held to be the case in the Smith case above in which Heher JA stated that –“a taxpayer who relies on s 26(1) is (over and above proof that he is engaged in an activity in the nature of farming) only required to show that he possesses at the relevant time a genuine intention to carry on farming operations profitably. All considerations which bear on that question including the prospect of making a profit will contribute to the answer, none of itself being decisive”.

The court went on to cite ITC 1185 in which Miller J stated the following:

“It is no difficult matter to say that an important factor is: what was the taxpayer’s intention when he bought the property? It is often very difficult, however, to discover what his true intention was. It is necessary to bear in mind in that regard that the ipse dixit8 as to his intent and purpose should not lightly be regarded as decisive. It is the function of the court to determine on an objective review of all the relevant facts and circumstances, what the motive, purpose and intention of the taxpayer were . . . This is not to say that the court will give little or no weight to what the taxpayer says his intention was, as is sometimes contended in argument
on behalf of the Secretary in cases of this nature. The taxpayer’s evidence under oath and that of his witnesses, must necessarily be given full consideration and the credibility of the witnesses must be assessed as in any other case which comes before the court. But direct evidence of intent and purpose must be weighed and tested against the probabilities and the inferences normally to be drawn from the established facts.”

In evaluating the genuineness of the taxpayer’s intention the nature and extent of the enterprise will be relevant. The following examples of factors to be considered were provided by Erasmus J in ITC 1698:

“[T]he size and location of the property on which the operation is being conducted, the portion of that property being used for that purpose, capital expenditure, turnover, labour, the regularity and purposefulness of the activity, the time and effort spent thereon by the taxpayer in relation to his other gainful activities, if any, and the existence of a real prospect of profit (or lack thereof). The list is not exhaustive and the permutations of such activities are infinite. None of these considerations is necessarily in itself decisive.”

It is not a requirement that a person has to own the land on which the farming operations are carried on but the person must have a right to the land and the yield from it. This principle was illustrated in ITC 1548 (1991) 55 SATC 26 in which the court found that the shearing and harvesting activities undertaken by a farmer on behalf of others on their land was not farming and neither were the transport services the farmer provided – the farmer was performing a service for other farmers and did not have a right to those farmers’ land or the yield from it.

The factors referred to above are not exhaustive and whether or not farming operations are being conducted will depend on all the facts and circumstances of each case.
The same test, used to determine whether a person is carrying on farming operations, applies to game farming. Having regard to the above general principles, the activity of breeding and running game on a farm for the purpose of marketing the live animals, hunting the animals for a fee or slaughtering them for the meat, falls within the ambit of game farming (ITC 1698 (2000) 63 SATC 161 (SEC); ITC 1414 (1986) 48 SATC 174). A person who owns land and occasionally allows hunters to, for example, cull the game on the land, is unlikely to be regarded on such activities alone to carry on game-farming operations. The person would have to convince the Commissioner that game is being raised with a genuine profit intention before the activities would be regarded as carrying on farming operations. An occasional culling is, in isolation, unlikely to indicate and support a contention that there was a genuine intention to carry on farming activities profitably.

Raising livestock generally involves purchasing, breeding and selling or using the particular animals. The facts and circumstances of a particular case are critical because, for example, in some cases the regular purchasing of breeding stock will be required and in other cases regular purchasing will not be required. In addition, the degree of day-to-day hands on involvement of a game farmer in raising livestock is likely to vary depending on the particular species of game, however in all instances there would be a level of active involvement appropriate to the particular species and farming operation.