Livestock

Meaning and nature of livestock
Meaning of "livestock"
Various paragraphs of the First Schedule apply to livestock. The word "livestock" is not defined in the First Schedule or the main body of the Act. The word is described in the New Shorter Oxford English Dictionary as –17
"animals kept or dealt in for use or profit".

The above meaning was confirmed in relation to the First Schedule in R Koster & Son (Pty) Ltd and another v CIR 1985 (2) SA 831 (A), 47 SATC 23 at 32 in which Nicholas JA stated the following:
"Paragraph 2 of the First Schedule refers to all livestock. This is a general term which comprises any animals kept or dealt in for use or profit."Livestock thus includes animals held for breeding purposes (often referred to as fixed capital assets) and those held for resale (often referred to as floating capital assets).
The livestock must be used in the farming operations to fall within the ambit of the First Schedule.

Nature
The general rule in paragraph 2 is that all farmers, including companies carrying on farming operations, are required to include in their tax returns the value of their livestock held and not disposed of at the beginning and at the end of each year of assessment. The value of livestock held and not disposed of at the end of the year of assessment ("closing stock") is included in income and the value of livestock held and not disposed of at the beginning of the year of assessment ("opening stock") is allowed as a deduction from income.

Once an animal is classified as livestock any consideration received or accrued on its disposal must be included in the farmer's gross income regardless of whether the animal was acquired as fixed capital or floating capital. This was confirmed in R Koster & Son (Pty) Ltd & another v CIR in which the court cited with approval the following passage from Farmer v COT 1944 SR 80, 13 SATC 158 at 159 in which this principle was upheld in relation to equivalent provisions of the Southern Rhodesia Income Tax Act:

"The main provision of this section is that every farmer is bound to include in the return rendered by him for income tax purposes, i.e., for the determination of his taxable income, the values of all livestock and produce held by him and not disposed of at the beginning and end of each year of assessment. The section has a wide embrace, both as to the farmer affected and the class of livestock. It makes no distinction between ranching stock and dairy, sheep, pig or other livestock, and it treats livestock in the same category as produce; in other words, it abolishes the importance or necessity of inquiring into the purpose with which the farmer has acquired his livestock or what his scheme or method of profit making is, and treats all the farmer's livestock and produce as his floating capital. In respect of these two commodities the farmer is treated, willy nilly, as an ordinary trader for income tax purposes. Dependent upon the difference in the value of his livestock at the commencement and the close of each year, there is either an accrual or a loss of his floating capital; if the former this forms part of his income, if the latter the loss is deducted from his income. His sales during each year of his livestock of whatever category, whether of part or the whole of his herd, form part of his income and his losses, whether mortality or other losses, are deducted from his income. This basis of computation for income tax purposes has been imposed compulsorily upon the farmer by legislation, and the Commissioner of Taxes and the Courts are no longer concerned to inquire whether in a particular farming business the farming livestock can be treated as fixed capital, because it must now be treated as part of the stock in trade of his farming business."

The trade of farming is specifically excluded from the opening and closing stock provisions in section 22. The opening and closing stock provisions in paragraph 3 only deal with livestock and not consumable stores. Accordingly, a farmer’s consumable stores, which include items such as fuel, spare parts, fertilizer and packing materials, do not need to be brought into account in opening stock or closing stock.

Application to game farming

A game farmer is generally involved in 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 the animals for meat. The game which is part of the farming operations clearly falls within the definition of livestock discussed above and is accordingly considered to be livestock for purposes of the First Schedule.

Animals which are not part of the farming operations, that is, animals which the farmer is not raising with the intention of exploiting commercially, will not fall within the scope of the First Schedule. For example, a game farmer may have hyenas, foxes or rodents on the farm which are not part of the farming operation and therefore do not fall within the provisions of the First Schedule.

Under paragraph 2 a game farmer must include in the return of income the value of all livestock “held and not disposed of” at the beginning and end of each year of assessment. In the context of the First Schedule SARS interprets “held” as referring to ownership.

The expression would therefore mean livestock owned by the taxpayer which has not been disposed of.

The question of ownership is particularly relevant to wild game because under the common law wild game are regarded as res nullius, that is, things owned by nobody but which can be owned. Ownership is established by taking control of the animal with the intention of being the owner. Typically in the game farming context this is achieved by erecting fences around the farm. The common law position has been modified by the Game Theft Act No. 105 of 1991. This Act ensures that a farmer remains the owner of game that escapes from the farm. “Game” is defined in the Game Theft Act as follows:“game” means all game kept or held for commercial or hunting purposes, and includes the meat, skin, carcass or any portion of the carcass of that game.

Opening and closing stock

As noted above the value of closing stock is included in income and the value of opening stock is allowed as a deduction from income. The value of the livestock to be included in opening stock and closing stock is determined according to paragraphs 4 (opening stock) and 5 (closing stock).

Paragraph 5(1) stipulates that the value to be placed on the livestock for purposes of the First Schedule shall be the standard value applicable to that livestock. The standard value of any class of livestock of a farmer is generally either –

• the standard value of that class of livestock fixed by regulation under the Act, or

• another standard value adopted by the farmer (or company or the executor of the estate) when a particular class of livestock is adopted for the first time and such value is within 20% of the standard values fixed in the regulations or which, in certain circumstances, has been approved by the Commissioner.

Paragraph 4(1) provides that the value of the opening stock will be –

• the value of the closing stock at the end of the preceding year;

• the market value of livestock acquired during the current year of assessment otherwise than by purchase, natural increase or in the ordinary course of the farming operations carried on, for example, by donation or inheritance;26 and

• the market value of livestock which was previously held, but not as part of the farming operations, becomes part of the farming operations.

Note: Any opening stock still on hand at the end of the year of assessment must be included in the closing stock at its standard value and not market value.

The regulations do not fix a standard value for game livestock. For the purpose of standard values the Commissioner accepts that game livestock may be allocated a standard value of nil.

The cost of acquiring game

The cost price of game livestock acquired by a person carrying on farming operations may be claimed as a deduction under section 11(a).

Limitation under paragraph 8 of the First Schedule

Paragraph 8 provides that the deduction of expenditure incurred during the year of assessment for the acquisition of livestock, which may be allowed under section 11(a) for the cost price thereof, is ring-fenced. The deduction available is limited to the sum of the income received and accrued from farming operations plus the value of the livestock held and not disposed of by the farmer at the end of the year of assessment less the value of livestock held and not disposed of by the farmer at the beginning of the year of assessment. Any amount not allowed as a deduction will be carried forward to the succeeding year of assessment and will be deemed to be expenditure incurred in that year (and hence subject to potential limitation in the succeeding year depending on the facts).

This potential limitation only applies to the deduction which may be allowed under section 11(a). Although opening stock forms part of the limitation calculation under paragraph 8, the opening stock deduction29 is not itself subject to the paragraph 8 limitation.

The potential limitation is assessed on the totality of all the farmer’s livestock regardless of its nature. For example, if a taxpayer conducted sheep farming and game farming, a single limitation calculation taking into account both the sheep and game livestock would be performed.

A taxpayer that can demonstrate that the cost of acquisition of a particular animal, which is no longer held and not disposed of at the end of the year of assessment, is included in the amount to be carried forward under paragraph 8 (for example, the animal purchased has been hunted and killed) may exclude the cost of that particular animal from the carried-forward amount and immediately claim it as a deduction. It is considered unlikely that this will apply frequently, if at all, in the context of game farming because it is often impracticable to accurately count and track particular livestock.

In addition, a farmer will be entitled to an immediate deduction if the opening stock value of livestock plus the amount to be carried forward under paragraph 8 exceeds the market value of all livestock held and not disposed of at the end of the year of assessment. The amount of the deduction is equal to the amount of the excess and the onus rests on the taxpayer to substantiate the amount claimed. The amount to be carried forward under paragraph 8 must also be reduced by the excess.

NB: Examples to be posted soon.