Protecting your reputation: Deductibility of legal expenses

Authors: Nicole Paulsen and Danielle Botha (DLA Cliff Dekker Hofmeyer)

The question of deductibility of legal expenses incurred to protect one’s reputation or the goodwill of a business seems to be a recent hot topic of conversation, especially when following the news. Interestingly, two international cases relating to the deductibility of legal expenses, both related to reducing reputational risk and challenging alleged unfounded allegations against the taxpayer, have recently been handed down in Australia and England, respectively.

In the Australian matter of Taxpayer and the Commissioner of Taxation 2013 AATA 783, the taxpayer applied for a private ruling from the Commissioner of Taxation regarding the deductibility of legal expenses incurred in challenging a banning order made against the latter by the Australian Securities and Investments Commission. The banning resulted in the taxpayer not being permitted to provide financial services for a period of five years. The court reiterated that legal expenses, like any other expenditure, are deductible to the extent that they are incurred ‘in gaining or producing’ assessable income. Legal expenses are not, however, deductible to the extent that they are capital or private in nature. The court found that the incurral of the legal expenses in question was aimed at enabling the taxpayer to re-enter the financial services industry and as such related to his income-earning structure. It follows that the expenditure was capital in nature and not deductible.

In the English case of Duckmanton v Revenue and Customs Commissioners [2013] UKUT 305 (TCC), the taxpayer lodged an appeal to the Upper Tribunal, against the decision of the First-Tier Tribunal (FTT), regarding the deductibility of legal expenses incurred in defending criminal proceedings instituted against the taxpayer.

By way of general background, the taxpayer was the owner of an unincorporated transport business. As a result of a fatal accident involving one of the taxpayer's vehicles, the taxpayer incurred substantial legal costs in defending the criminal proceedings instituted against him. In computing his profits for the relevant year of assessment, the taxpayer claimed a deduction for sums paid in preparation of his defence against the criminal proceedings. The taxpayer based his argument on the fact that the expenditure had been principally incurred not to protect his liberty, but to protect his operator's license and business reputation, both of which were an integral part of his trading operation.

The FTT rejected the taxpayer's argument and found that the main reason for incurring the expenditure was to support the taxpayer's defence in the criminal proceedings and to prevent a civil claim for damages against the taxpayer.

The taxpayer subsequently appealed to the Upper Tribunal who confirmed the decision of the FTT by reiterating that the preservation of the taxpayer's business and more specifically his reputation was not his only object when the taxpayer incurred expenditure on legal fees. The reasons behind the incurred expenditure were that they minimised the risk of imprisonment and prevented a substantial civil claim for damages. Accordingly, the expenditure was not wholly and exclusively incurred for purposes of the taxpayer's trade and the taxpayer was therefore not entitled to deduct the legal expenditure so incurred.

Based on the latter judgement it is clear that, in England at least, it is a specific requirement that legal expenditure must be 'wholly and exclusively' incurred for the purpose of producing income, in order for it to be deductible.

Before 1993, the Income Tax Act, No 58 of 1962 (Act), contained a similar requirement in that expenditure had to be 'wholly and exclusively' laid out for purposes of trade to be deductible. This requirement was of great concern in circumstances where expenditure was incurred with a dual motive.

This provision has, fortunately, been amended. The Act contains a general deduction formula which provides that, in determining the taxable income derived by a person from the carrying on of any trade, there shall be allowed as a deduction expenditure and losses actually incurred in the production of income, provided that] such expenditure and losses are not of a capital nature. However, the deduction formula is further qualified by s 23(g) of the Act, which prohibits the deduction of any moneys claimed as a deduction from income derived from trade, to the extent that they are not laid out or expended for the purposes of trade. This provision enables the disallowance of expenditure which has been incurred in carrying on a trade, but has not been expended exclusively for the purposes of that trade.

In light of the above it is important to note that in the South African context, courts will apportion legal expenditure where the expenditure has been incurred for a dual purpose, ie where the expenditure has been incurred to preserve the taxpayer's business and to prevent a civil claim for damages, and it is therefore not a requirement that the expenditure be incurred 'wholly and exclusively' for the purposes of trade in order for it to be deductible. This principle relating to the deductibility of expenditure incurred for a dual purpose was applied in the case of CIR v Nemojim (Pty) Limited 45 SATC.

However, as illustrated by the Australian case cited above, expenditure that is capital in nature, and that relates to the income-earning structure of a taxpayer, will be disallowed.

2014 – The South African "Tax Year" Ahead In Perspective

- Aurthor: Hugo Van Zyl (Cross Border Tax and Exchange Control Specialist)

The first and very important note to make, in dealing with South African tax issues: tax year 2014 ends on the last day of **FEBRUARY 2014**. The South African tax year for most individuals, are 1 March until the last day of February in the next calendar year. Corporates can change their tax year-end to align with the last day of their financial year-end, yet Trusts partners in a JV or partnership, are obliged to file assuming a tax year-end on the last day of February, despite their financial year-end being the last day of another month.

Yes, sadly this date, **Friday 28th 2014**, is not even listed on the SARS webpage on important dates, yet is an extremely important tax deadline.

SARS has two webpages namely: www.sars.gov.za and www.sarsefiling.co.za.

The President's State of the Nation Address will be delivered in Parliament on 13 February 2014, and 13 days later the Finance Minister Pravin Gordhan will present the budget speech to Parliament (26 February 2014, around 2 pm)

On 28 February 2014, the following tax compliance issue should have been dealt with:

1. Provisional tax return (IRP6) is due for filing and payment;

2. VAT return i.r.o. VAT period ending 31 January 2014, needs to be eFiled and paid.

3. Users of company cars and recipient of travel allowances, need to close of their logbooks and start a new logbook as of 1 March 2014.

4. Do a dry run IRP5 reconciliation, probably long before the last day as the employee's tax certificates need to be issued soon and apply tax adjustments to be done before month end and be deducted from staff's February payroll. The IRP5 is a certificate of employee income and is equivalent to the IRS Form W-2 and the P60 in UK and Ireland.

Other important tax dates in the 2014 calendar year:

5. On every 7th of the month, or the last business day on or before the 7th, pay over the pay roll taxes (PAYE) to SARS on form EMP201;

6. On the 25th of every month file VAT201 returns – for eFile clients there is a later date, being the last business dat of the month to file. Do note push through payments initiated on the last business will normally attract a falt 10% penalty as the process takes 24-48 hours to complete

7. 31 January 2014 – deadline iro 2013 tax returns (provisional) taxpayers are due to SARS

8. 31 May 2014 – Employer's Tax Season Ends – IRP5 recon must now be filed and staff be issued their tax certificates

9. 1 July 2014 – Start of tax filing season 2014 (individuals) i.r.o. February 2014 tax year-end IT12 returns. FBAR and FATCA are expected to be big issues in this 2014 tax filing season

as SARS is about to enter into a FATCA compliance agreement with the IRS.

10. 31 August 2014 – file and pay the first provisional tax return for tax year-end February 2015

11. 1 September until 31 October 2014 – filing of interim 2015 IRP5 recon filing (this is iro of 2015 tax year)

12. 27 September 2014 – End of Personal Income Tax – Manual Forms Submission i.e. taxpayers not using eFiling

13. 21 November 2014 – Deadline for eFiling tax filer iro February 2014 tax year-end, end of tax filing season

In terms of the Tax Administration Act, the following tax yes are administered and collected by SARS:

A. Income Tax – one annual form IT12 (for individuals on PIT system) and IT14 for companies (on CIT) are to be file, and two provisional tax returns (IRP6) are filed, one end August and one en February.

B: PAYE or Pay As Your Earn – it is part of the Income Tax Act (Schedule 4) yet administered as a separate tax unit, using form numbers commencing with EMP (as in EMPloyee) or IRP (Inland Revenue Person)

C: DWT or dividend withholding tax, currently 15% on all dividends to non-residents, SA resident individuals and much lower where there is treaty rules applicable.

D: VAT of value-added tax using form reference VAT.

E: Provisional Tax – part of the income tax system, iro tax to be collected where no PAYE or other withholding taxes were paid. The system operates on gross income basis where total tax due is reduced by PAYE credits, qualifying foreign tax credits and finally withholding tax credits.

Failing to file any of the above returns on the schedule dates, listed above, can result in SARS denying a tax good standing certificate. In South Africa tax practitioners can't renew their annual registration with the submission of a tax good standing certificate. Corporates and Small Businesses alike, is not able to trade without the tax good standing certificate as most government and large corporate tender conditions includes a tax good standing certificates.

Said good standing certificates have recently lead to court battles in SA tax courts as SARS now has the ability to withdraw a tax good standing or tax clearance certificate.

Taking note of the above forms, the listed dates and taking care to file other related forms, such as UIF (to SARS) and workmen's compensation fund to its Commissioner, is now part of the daily challenge doing business in SA.

Caveat: Very small business are exempt from provisional tax, VAT but not PAYE.

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Income protection policies: tax deduction for premiums to be abolished from 1 March 2015

Employees earning remuneration are generally prohibited from claiming tax deductions for any expenditure other than those items listed in section 23(m) of the Income Tax Act (58 of 1962). This is in contrast to persons carrying on a trade independently of an employer.

One of the few deductions still available to employees is for premiums paid on income protection insurance policies. Currently, such premiums are deductible if (a) the policy covers the person against loss of income as a result of illness, injury, disability or unemployment, and (b) the amounts payable in terms of the policy constitute or will constitute income. The general principle has been that the premiums will be deductible if the proceeds are taxable – for example, if the policy pays a salary replacement annuity to the policyholder in the event that he/she is no longer able to earn a living. The deduction available for these premiums is, however, an exception to the general rule that personal expenditure is non-deductible, on the basis that these premiums incurred may, in fact, produce taxable income (and therefore passes the section 11(a) general deduction test).

The deduction is also an exception to the general prohibition on tax relief for personal insurance – for example, life insurance, again on the basis that life insurance proceeds are typically a non-taxable capital lump sum. This exception carries through into the way the premiums are treated for fringe benefits tax purposes: where such premiums are paid by employers on these policies to cover employees, the premiums are not a taxable fringe benefit, as opposed to employer-paid group life insurance, which is taxable (but again, the proceeds of employer-fund group life policies, where the premiums are taxed as fringe benefits, are specifically exempt from tax).

Tax authorities and policymakers dislike and avoid exceptions almost as much as they dislike allowing tax relief for personal expenditure. As a result, the Taxation Laws Amendment Bill published on 24 October 2013 has deleted this deduction from section 23(m)(iii) and, for good measure, confirms a prohibition on the deduction of any insurance premiums where the policy “covers that person against death, disablement, severe illness or unemployment” (section 23(r)). The exception to the fringe benefit rules at para. 12C(2) of the Seventh Schedule has also been deleted, meaning that employer-paid premiums to such policies will be taxable in employees’ hands, as is the case for group life premiums.

Of some consolation is the insertion of a new exemption at section 10(1)(gI), for any amount received or accrued to a policyholder in respect of a policy of insurance relating to their death, disablement, severe illness or unemployment. This exemption will cover proceeds of such policies, whether in the form of income (annuities) or capital (lump sums). The same exemption extends to employer-funded policies, in terms of section 10(1)(gG). Furthermore, the exemption is not limited to policies taken out after the effective date of the amendment (1 March 2015), but will apply to all proceeds from any policy. That is to say, there is no clawback provision which seeks to disallow the exemption for the portion of proceeds relating to premiums paid for which a tax deduction was allowed under the old rules (or for which no fringe benefits tax was paid, in the case of employer-funded premiums). Consequently, individuals who have existing policies (or existing employer-funded cover), and who suffer a setback resulting in a claim and proceeds after 1 March 2015, will not pay tax on those proceeds, notwithstanding that they will have benefited from a tax deduction or tax-free benefit on the premiums in prior years.

While the proposed regime is quite clean, simple and consistent, it has the potential to discourage individuals from taking out this type of cover, and similarly discourage employers from offering it as a benefit (indeed, if it is offered as a benefit, the take-up by employees will no doubt be reduced). Policymakers have pointed out that the proceeds are now tax-exempt, which should reduce the amount to be insured to achieve the same coverage. This should, in turn, reduce premiums and encourage insurance. There is, however, the potential that people will value a tax deduction today more than the potential of tax-free proceeds in the future, and so are likely to cancel or avoid such insurance. This, in turn, creates the potential of more uninsured people, in a society with 25 percent unemployment and where the state does not provide a substantial safety net in terms of welfare or health services.

In addition, insurance companies have already complained to National Treasury (to no avail, it seems) that individuals currently receiving benefits will be less likely to return to work if they receive tax-free payments, and that the insurance books are currently based on a certain return-to-work rate which will need to be revised (and which may impact premiums). No doubt, the insurers will also suffer if policies are cancelled once the deduction is abolished.

A few examples are displayed below to assist in clarifying these changes:

Retail policy:

– An individual purchases a policy costing R2000 per month, which provides a partial salary-replacement annuity should he be injured and unable to work.

– The individual earns over R638 600 per annum and pays tax at the top rate of 40%. He therefore receives tax relief of R2000*40%*12 = R9600 pa for the premiums.

– This tax benefit will be nil from 1 March 2015.

Employer-provided policy:

– An employer takes out a policy which covers all its employees, so that if they are injured after hours and unable to work, they will receive a limited annuity.

– The policy costs R1 000 000 pa and covers 100 employees. The fringe benefit is therefore approx R833 per month. However this is a nil value fringe benefit so the employees pay no tax on it.

– From 1 March 2015, the employees will pay tax on this benefit. For a highest-rate taxpayer, the additional tax will be R333 per month.

It should be noted that the premiums may change once the tax rules change given that the proceeds of the policies will become tax-free.

Tax Administration Act – Understatement penalty regime

The draft Taxation Administration Laws Amendment Bill, 2013 (TALAB) was released by the South African Revenue Services (SARS) on 5 July 2013 for public comment.

The TALAB proposes, amongst other things, that several amendments be made to the Tax Administration Act, No 28 of 2011 (the TAA) in respect of understatement penalties.

In terms of section 222(1) of the TAA a taxpayer must pay an understatement penalty if that taxpayer has made or caused an 'understatement'. SARS has no discretion in imposing such a penalty.

The understatement penalty is a percentage based penalty determined with reference to the taxpayer's behaviour. In this regard a table in section 223 of the TAA assigns a specific percentage to the relevant behaviour. In standard cases, the percentage ranges from a minimum of 25% to a maximum of 200%. Similarly, SARS has no discretion to reduce the applicable percentage where it has been determined that a taxpayer falls within a particular behavioural category.

The TALAB promises some relief to taxpayers subject to this rather harsh penalty regime.

Under the present provisions, a taxpayer must technically pay an understatement penalty where an honest mistake has resulted in an understatement, provided that the taxpayer's behaviour falls into an applicable category in the penalty table. For example, if a taxpayer has made an honest mistake and this resulted in 'substantial understatement', the taxpayer would have to pay a 25% penalty. SARS has no discretion to not impose the penalty or to impose a penalty at a lower percentage.

The TALAB proposes that an exception be introduced in respect of taxpayers who make or cause an understatement due to a '*bona fide* inadvertent error'.

A draft explanatory memorandum on the objects of the TALAB (memorandum) was released together with the TALAB. The memorandum explains that to determine whether an understatement was caused by a '*bona fide* inadvertent error', SARS will have regard to 'the circumstances in which the error was made', but also other factors including:

- The taxpayer's knowledge, education, experience, and skill.
- The size or quantum, nature and frequency of the error.
- Whether similar errors were made previously.
    - In case of arithmetical errors, whether the taxpayer has procedures in place to detect such errors.

In respect of errors relating to the interpretation of tax laws, SARS will have regard to:

- the complexity of the provisions;
- whether the taxpayer tried to understand the provisions, including consulting the relevant explanatory memoranda or making reasonable enquiries; and
- whether the taxpayer relied on information (incorrect or misleading) which came from a reputable source and a reasonable person in the same circumstances would find the information complex.

The TALAB proposes further relief in the form of a reduction of some of the penalty percentages in the penalty table in section 223 of the TAA. In respect of standard cases, the new penalties are to be reduced as follows:

	Current penalty percentage	**Proposed penalty percentage**
Substantial understatement	25%	10%
Reasonable care not taken in completing return	50%	25%
No reasonable grounds for tax position taken	75%	50%
Gross negligence	100%	100%
Intentional tax evasion	200%	200%

The reasons provided in the memorandum for the reduction is to align the percentages with that of ‘comparative tax jurisdictions where largely similar penalty regimes apply’.

In terms of section 223(3), an understatement penalty imposed by SARS must be remitted where the taxpayer has fully disclosed particulars of the arrangement to SARS by no later than the due date of the relevant return, and the taxpayer was in possession of a tax opinion, which must meet certain requirements. One such requirement is that the tax opinion must have been issued by no later than the date that the relevant return was due.

The TALAB proposes that the said requirement must be deemed to have been met if the return was due by 1 October 2012. This implies that the taxpayer may rely on an otherwise qualifying opinion even if it was obtained after 1 October 2012, in respect of a matter where the taxpayer’s return was due by that date.

The TALAB also now makes it clear that a taxpayer may indeed object against the imposition of an understatement penalty in terms of section 224 of the TAA, and not only to the refusal by SARS to remit a penalty under section 223(3) of the TAA.

A further clarification made by the TALAB is that the term ‘understatement’ is now defined as any prejudice to SARS or the fiscus, irrespective of the tax period in which the prejudice manifests. For example, a taxpayer cannot argue that an understatement did not cause prejudice to SARS in the relevant tax year because the taxpayer was in an assessed loss position that year. If the assessed loss would have been reduced had the understatement not been made, and SARS would only have been prejudiced in a future year, it would still be an ‘understatement’.

The TALAB proposes that the above amendments apply retrospectively, with effect from the commencement date of the TAA (being 1 October 2012).

Specifically, in this regard, taxpayers on whom SARS has imposed understatement penalties at the current higher rates should insist that SARS reduce the rates in accordance with the TALAB.

Taxpayers are also afforded a further opportunity to obtain qualifying tax opinions to request remittance of understatement penalties in respect of substantial understatements.

***(Editorial comment**: Although the final version of the legislation might differ from the draft bill referred to in this article, the current version provides that the amendment will only come into operation when the Bill is promulgated. Taxpayers would therefore not be able to claim refunds of penalties imposed before that date.)*

Render unto Caesar – Harsh Tax Penalties Reviewed

JOHANNESBURG – Taxpayers who accidentally reduce their tax liability due to a reasonable mistake without any intent to defraud the Taxman, won't be subjected to harsh understatement penalties in future.

The Tax Administration Laws Amendment Bill was introduced in the National Assembly last week and revises regulations to such an extent that the South African Revenue Service (Sars) won't impose penalties in cases where the understatement by the taxpayer "results from a *bona fide* inadvertent error".

This follows criticism from tax practitioners and taxpayers on the harsh penalties previously imposed even where taxpayers had no intention of deceiving Sars.

The new penalty regime was introduced through the Tax Administration Act that became effective on October 1 last year but immediately drew widespread criticism due to the punitive nature thereof.

Finance Minister Pravin Gordhan, already indicated in the 2013 Budget Review that the penalties will be refined to allow for bona fide mistakes.

Piet Nel, project director for tax at the South African Institute of Chartered Accountants (Saica), explains that the bill does not define what a "*bona fide* inadvertent error" is, but Sars will provide guidance on the meaning going forward.

In explanatory documentation issued alongside the bill, the revenue authority notes that proposals to define the term, have the potential to accidentally "exclude deserving cases and include undeserving cases".

The intent of the amendment is to provide relief to those taxpayers that completed their tax returns with reasonable care, didn't intentionally aim to mislead Sars and could prove extenuating circumstances.

The proposed amendment will apply with effect from October 1, 2012, but will also pertain to understatements made in a return before that date. However, the expectation is not that Sars will reimburse taxpayers for penalties that have already been levied.

Nel says the changes to the penalty regime also allows for an understatement penalty percentage to be levied to each tax misstatement individually. In the past, the highest percentage applied to all understatements, even if some should have attracted a lower penalty percentage.

The amendments also introduce much lower penalties for a number of categories (see table). The lower percentages are in line with similar tax jurisdiction around the world.

Source: Tax Administration Laws Amendment Bill, p23 (Numbers in square brackets are the higher penalty percentages that previously applied.)

Moreover, prior to the amendments Sars had to remit a penalty imposed for a substantial understatement if the taxpayer relied on a tax opinion. In future, this will only apply if an independent tax practitioner provided the opinion.

Opinion by in-house tax practitioners will not qualify since they have a vested interest in the outcome of the matter.

Nel says the amendments also clarify that a taxpayer may object and appeal against the levying of any understatement penalty and not only against the decision not to remit a substantial understatement penalty.

Nel expects the bill to be signed into law late in November or December.

Income protection policies: deduction for premiums to be abolished

By Dan Foster, associate director: International Executive Services, KPMG

Employees earning remuneration are generally prohibited from claiming tax deductions for any expenditure other than those items listed in section 23(*m*) of the Income Tax Act (58 of 1962). This is in contrast to persons carrying on a trade independently of an employer.

One of the few deductions still available to employees is for premiums paid on income protection insurance policies. Currently, such premiums are deductible if (a) the policy covers the person against loss of income as a result of illness, injury, disability or unemployment, and (b) the amounts payable in terms of the policy constitute or will constitute income. The general principle has been that the premiums will be deductible if the proceeds are taxable – for example, if the policy pays a salary replacement annuity to the policyholder in the event that he/she is no longer able to earn a living. The deduction available for these premiums is, however, an exception to the general rule that personal expenditure is non-deductible, on the basis that these premiums incurred may, in fact, produce taxable income (and therefore passes the section 11(a) general deduction test).

The deduction is also an exception to the general prohibition on tax relief for personal insurance – for example, life insurance, again on the basis that life insurance proceeds are typically a non-taxable capital lump sum. This exception carries through into the way the premiums are treated for fringe benefits tax purposes: where such premiums are paid by employers on these policies to cover employees, the premiums are not a taxable fringe benefit, as opposed to employer-paid group life insurance, which is taxable (but again, the proceeds of employer-fund group life policies, where the premiums are taxed as fringe benefits, are specifically exempt from tax).

Tax authorities and policymakers dislike and avoid exceptions almost as much as they dislike allowing tax relief for personal expenditure. As a result, the *Taxation Laws Amendment Bill* published on 24 October 2013 has deleted this deduction from section 23(*m*)(iii) and, for good measure, confirms a prohibition on the deduction of any insurance premiums where the policy "covers that person against death, disablement, severe illness or unemployment" (section 23(*r*)). The exception to the fringe benefit rules at para. 12C(2) of the Seventh Schedule has also been deleted, meaning that employer-paid premiums to such policies will be taxable in employees' hands, as is the case for group life premiums.

Of some consolation is the insertion of a new exemption at section 10(1)(*g*I), for any amount received or accrued to a policyholder in respect of a policy of insurance relating to their death, disablement, severe illness or unemployment. This exemption will cover proceeds of such policies, whether in the form of income (annuities) or capital (lump sums). The same exemption extends to employer-funded policies, in terms of section 10(1)(*g*G). Furthermore, the exemption is not limited to policies taken out after the effective date of the amendment (1 March 2015), but will apply to all proceeds from any policy. That is to say, there is no clawback provision which seeks to disallow the exemption for the portion of proceeds relating to premiums paid for which a tax deduction was allowed under the old rules (or for which no fringe benefits tax was paid, in the case of employer-funded premiums). Consequently, individuals who have existing policies (or existing employer-funded cover), and who suffer a setback resulting in a claim and proceeds after 1 March 2015, will not pay tax on those proceeds, notwithstanding that they will have benefited from a tax deduction or tax-free benefit on the premiums in prior years.

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In addition, insurance companies have already complained to National Treasury (to no avail, it seems) that individuals currently receiving benefits will be less likely to return to work if they receive tax-free payments, and that the insurance books are currently based on a certain return-to-work rate which will need to be revised (and which may impact premiums). No doubt, the insurers will also suffer if policies are cancelled once the deduction is abolished.

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– From 1 March 2015, the employees will pay tax on this benefit. For a highest-rate taxpayer, the additional tax will be R333 per month.

It should be noted that the premiums may change once the tax rules change given that the proceeds of the policies will become tax-free.

South African Personal Income Tax

What is it?

Income tax is the normal tax which is paid on your taxable income.

Examples of amounts an individual may receive, and from which the taxable income is determined, include –

- Remuneration (income from employment), such as, salaries, wages, bonuses, overtime pay, taxable (fringe) benefits, allowances and certain lump sum benefits
- Profits or losses from a business or trade
- Income or profits arising from an individual being a beneficiary of a trust
- Director's fees
- Investment income, such as interest and foreign dividends
- Rental income or losses
- Income from royalties
- Annuities
- Pension income
- Certain capital gains

Who is it for?

You are liable to pay income tax if you earn more than R63 556 in the 2013 year of assessment, and are younger than 65 years of age. If you are 65 years of age or older, the tax threshold (i.e. the amount above which income tax becomes payable) increases to R99 056. For taxpayers aged 75 years and older, this threshold is R110 889.

Where taxpayers receive remuneration which is less than R250 000, they may elect not to submit an income tax return, provided the following criteria are met:

- Their remuneration is from a single employer;
- Their remuneration is for a full year of assessment (1 March – 28/29 February);
- No allowance was paid, from which employees' tax was not fully deducted;
- No further deductions need to be claimed or income declared.

The rates of tax chargeable on taxable income are determined annually by Parliament, and are generally referred to as "marginal rates of tax" or "statutory rates". The rate of tax levied on an individual is set on a sliding scale which results in the tax increasing as taxable income increases. Every year, the Minister of Finance announces the rates to be levied by publishing the applicable tax tables during the annual budget speech.

What steps must I take to ensure compliance?

Step one: You must register for income tax

If you earn a taxable income which is above the tax threshold (see above), you must register as a taxpayer with SARS.
To register for income tax, you must complete an IT77 registration form which can be obtained from the SARS website, namely www.sars.gov.za. The form can also be requested from any SARS branch or the SARS Contact Centre. Once it has been completed, it can be taken to any SARS branch for processing or the form can be posted to SARS. To find your nearest branch visit our branch locator.

Top tip: You must register for income tax at SARS within 60 days of becoming liable for tax.

Step two: You must submit a return

If you are registered for income tax, you will be required to submit an annual income tax return to SARS. See the 2012/2013 Tax Tables. The 2013 year of assessment (commonly referred to as a "tax year") runs from 1 March 2012 to 28 February 2013. Every year, SARS announces its Tax Season, a period during which you are required to submit your annual income tax return. The tax season for the 2013 tax year opens on 1 July 2013. The income tax return which should be completed by individuals is known as the ITR12 form. For more information, see our ITR12 Comprehensive Guide, source codes and live stock values.

When should it be submitted?

- The deadline for all taxpayers who wish to submit their tax return manually, by mail or by drop-off at any dedicated SARS drop box, is 27 September 2013.
- The deadline for all taxpayers who submit their returns electronically at a SARS branch is 22 November 2013, so if you do it online you get more time!
- Non-provisional taxpayers who file via eFiling have until 22 November 2013 to submit their returns.
- Provisional taxpayers who file via eFiling have until 31 January 2014 to submit their returns.

If you don't submit your income tax return on time, you may be liable for penalties.

How should it be submitted?

Online: The easiest and quickest way to file a tax return is online, by making use of SARS eFiling. You must, however, first register for eFiling on the SARS eFiling website. We have a page where we explain to you in detail how to register for eFiling. Once registered, you can complete the online form to create your return. Note that you will start by completing the first page of the form which contains several questions regarding the nature of your tax affairs (referred to as a return "wizard"). Completion of this part will automatically tailor the tax return to your specific tax requirements.

Once you have registered for eFiling, you can also file your return by making use of your cellular phone in linking with our mobisite. Alternately, you can download our eFiling App, after which you will be able to file your individual Income Tax Returns quickly and easily via your iPhone 4 or 4s, iPad, Android phone and Android tablet.

In a branch: The tax return can also be requested by visiting any SARS branch office. To find your nearest branch visit our branch locator. (Please note that there may be delays and queues during filing season, which is why SARS promotes the use of eFiling as a medium for return submission.)

Top Tip: When completing your return, you will require the following documentation in order to verify the existing, pre-populated information that appears in the return, as well as to complete any remaining portions:

- IRP5: This is the employees' tax certificate your employer issues to you.
- Certificates you received for local interest income earned.
- Any other documentation relating to income received or accrued, such as remuneration that has not been reported to SARS by your employer, or business or investment income, etc.
- Details of medical expenses paid and medical scheme contributions made.
- The relevant certificates reflecting your retirement annuity fund contributions made.
- A logbook and other documents in support of business travel expenses (if the travel allowance is part of your remuneration or if you have the right of use of a company car taxable benefit).
- Any other documentation relating to the allowable deductions you wish to claim.

SARS TAX SEASON 2013

What is it?

Tax Season 2013 is open! It’s that time of the year again when you have to complete and submit your Income Tax Return (ITR12). We will help you through Tax Season 2013 with all you need to know so you can file easily and on time.

Who is it for?

- Individuals (Provisional and non-provisional taxpayers)
- Trusts

If you earn under R250 000 for a full year from one employer (that’s your total salary income before tax) and have no other sources of additional income (for example like interest or rental income) and no deductions that you want to claim for (for example like medical expenses, travel or retirement annuities), then you don’t need to submit a return.

What steps must I take?

- Use the information supplied in your ITR5/IT3(a)(which you will get form your employer) as well as other Tax Certificates from your medical aid, Retirement Fund Annuities, investment income etc.
- Use only accurate information and the correct figures which appear on your various supporting documents when you complete your return.
- Don’t claim deductions and expenses which do not exist or are not applicable to the year of assessment for which the return is being submitted.
- And finally, don’t leave anything out! Declare all

additional income you earned like the rent you got from your holiday house or the tips and salary you got from your waitressing job!

Top Tip: Remember, you need to keep all your supporting documents for five years in case SARS wants to check them.

When should it be submitted?

It's very important that you submit your return by the set deadline to avoid any penalties and interest which may be charged for late submission. Please take note of the following deadline dates:

- Paper/manual via post or dropping it off in a SARS drop box by **27 September 2013**.
- Electronically at a SARS branch by **22 November 2013.**
- Non-provisional taxpayers who use eFiling by **22 November 2013.**
- Provisional taxpayers who use eFiling by **31 January 2014.**

How should it be submitted?

- **Get help SA Tax Guide Team**

Need help?

- **Get help SA Tax Guide Team**

New details required from Tax Practitioners

When filing a tax return for your clients you'll notice that our first question asks if the return is being made by a Tax

Practitioner. You will need to tell us that you're filing the return on their behalf and provide us with your contact details and your Tax Practitioner number so we can make sure that we can send the outcome to you as well as your client. So it's as simple as that, make sure you have your email address and telephone available.
Top tip: when filing your own personal return you do not declare that you are a Tax Practitioner filing on someone's behalf.

EXPLANATORY MEMORANDUM ON DRAFT EMPLOYMENT TAX INCENTIVE BILL, 2013

The Draft Employment Tax Incentive Bill gives effect to the announcement by the President in his 2010 State of the Nation Address, and the 2010 Budget, that government will table proposals to subsidise the cost of hiring younger workers. The draft bill also gives effect to the 2013 Budget.

Many South Africans are excluded from economic activity, and as a result suffer disproportionately from unemployment, discouragement and economic marginalisation. High youth unemployment means young people are not gaining the skills or experience needed to drive the economy forward. This lack of skills can easily become a lifelong experience, thereby having long-term adverse effects on the economy.

Download the full memo in PDF, clause by clause explanation, click below

LAPD-LPrep-Draft-2013-85 – Draft EM on the Employment Tax Incentive Bill

Related articles across the web

ANC: Tax incentive bill necessary

MTBPS – Mini budget short of tax talk – Sacci

Job Incentive Bill To Include 'Tough Penalties'

Sars Launches Scam Alert

Author: Fin24.com

The tax season opened officially on July 1 and many law-abiding taxpayers are getting ready to do their bit. Unfortunately, so too are the shady individuals and gangs who operate phishing scams.

Particularly concerning is the fact that the current crop of fraudsters are sending out email messages about fake refunds which look very realistic and may well fool many an unsuspecting taxpayer.

PwC tax consultant Lida Smit said on Monday the company has recorded an uptick in fake emails claiming to be from Sars, an example of which is shown below:

Dear Taxpayer,

SARS REPORT
We have filed your return, we were unable to reach you on your cellphone that is why we are contacting you through E-mail, you have 24 hours to confirm your filing.

Said Smit: "Some of them (fake notifications) are obvious scams which can easily be identified, but the last one we received was sent from an e-filing@sars.co.za address.

“Now, we that work on and with e-filing every day know that this is not legit, but I can understand that someone who is not so familiar with it may get caught.”

She pointed out that PwC has many German clients, who are particularly vulnerable to this kind of fraud.Meanwhile, Fin24 has been inundated by responses from users who have been targeted by these fraudsters.

A worrying factor is that in their emails they are now starting to mention refund amounts that make sense to potential victims.

“What I find scary, is that the amount they mentioned in the fake email is just about as much as my Sars refund was last year. Maybe it becomes even more sinister if it might even be possible that they have access to the Sars database,” wrote a Fin24 user.

A lucky Fin24 user was saved from financial loss by quick thinking on the part of First National Bank, which froze and blocked his wife’s account so that fraudsters were unable to get their hands on any funds.

Sars spokesperson Adrian Lackay emphasised that taxpayers must ignore these fake notifications. Sars has created a section on its website to alert South Africans of any scams or phishing attacks.

“Members of the public are randomly emailed with false ‘spoofed’ emails made to look as if these emails were sent from Sars, but (which) are in fact fraudulent emails aimed at enticing unsuspecting taxpayers to part with personal information such as bank account details.

“Examples include emails that appear to be from returns@sars.co.za, or refunds@sars.co.zaindicating that tax payers are eligible to receive TAX refunds.

“These emails contain links to false forms and false websites made to look like the ‘real thing’, but with the aim of fooling people into entering personal information such as bank account details which the criminals then extract and use fraudulently.

“Please note these are scams,” Sars warned, adding that the taxman will not request your banking details through the phone, email or websites.

So what to do if you receive an email but aren’t sure if it’s the real thing?

“First obtain verification from the Sars call centre or a branch, for instance. Never give out any details in response to these fake communications,” said Lackay.

A Fin24 user did just that – and discovered to her dismay that instead of Sars owing her money, it was the other way around and she had to pay the taxman an outstanding amount.