
SOUTH AFRICAN REVENUE SERVICE

DRAFT

**DRAFT GUIDE ON THE
TAXATION OF
PROFESSIONAL SPORTS
CLUBS AND PLAYERS**

Another helpful guide brought to you by the
South African Revenue Service



www.sars.gov.za

Draft guide on the taxation of professional sports clubs and players

Foreword

This guide is a general guide regarding the taxation of professional sports clubs and professional sports players in South Africa. It also refers briefly to the position of visiting players in the ordinary course.

This guide is not meant to delve into the precise technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. It is not a binding general ruling issued in accordance with section 76P of the Income Tax Act, No. 58 of 1962.

This guide is based on the applicable tax legislation as at 31 July 2010 and includes the amendments effected by the Taxation Laws Amendment Act 17 of 2009 and the Taxation Laws Second Amendment Act 18 of 2009.

The main focus of this guide is the taxation of **professional** sports players and clubs and **not amateur** players. Additionally, the guide focuses on South African resident players and clubs, and not on foreign athletes.

For purposes of this guide –

- “**the Act**” means the Income Tax Act, No. 58 of 1962;
- “**CGT**” means capital gains tax;
- “**the Commissioner**” means the Commissioner for SARS;
- “**SARS**” means the South African Revenue Service;
- references to “**section**” and “**Schedule**” are to sections of and Schedules to the Income Tax Act;
- the “**VAT Act**” means the Value-Added Tax Act, No. 89 of 1991;
- “**VAT**” means value-added tax;
- the words “**taxpayer**” and “**person**”, are used interchangeably
- “**South Africa**” and “**the Republic**” are used interchangeably;
- a “**sports player**”, “**athlete**”, “**sportsperson**” or “**player**” (used interchangeably) is any person who participates in a sport as a professional.

Should you require additional information, you may –

- contact your local SARS branch;
- visit SARS website at **www.sars.gov.za**;
- contact your own tax advisors;
- if calling locally, contact the SARS National Call Centre on 0800 00 7277; or
- if calling from abroad, contact the SARS National Call Centre on +27 11 602 2093.

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1. Introduction

The sports industry is one of the largest growing industries internationally. The main aim of this guide is to explain the income tax and VAT consequences for professional sports clubs and professional sports players in South Africa.

2. General principles

A growing number of players now earn their livelihood from sport through a diverse range of income sources, sometimes from a number of different countries. Consequently, depending on the nature of the income received by them, different tax rules will be applied. The tax treatment will also depend on whether players are employed by clubs or are considered independent contractors.

Clubs also earn income from sport, for example from gate takings, the sale of rights and other sources. They employ players and other staff and must therefore comply with the general obligations in relation to employers contained in the Act. They are in many instances liable to register as VAT vendors. They therefore incur a range of tax obligations that will be considered throughout this guide.

Certain key concepts are clarified below to contribute to a proper understanding of the discussion of the obligations and entitlements of both players and clubs.

- **Income tax** – The liability of a taxpayer for the “normal tax” (also known as income tax) is established by section 5(1) and is imposed in relation to taxable income upon all persons, whether individuals, companies, close corporations, voluntary associations governed by constitutions, and upon other taxable entities, for example, trusts, estates of deceased persons and insolvent estates.
- **Gross income** – When calculating a taxpayer's taxable income, the gross income must first be determined. The definition of “gross income” includes all receipts by and accruals to any resident, irrespective of where they were earned, and in the case of a non-resident, receipts and accruals to the extent that they are from a source within or deemed to be within the Republic. Receipts and accruals of a capital nature are excluded from a taxpayer's gross income. Some receipts or accruals of a capital nature are however specifically included in gross income by the inclusions listed in paragraphs (a) to (n) of the definition of “gross income”.

For gross income to arise there must be an amount received or accrued. The reference to “the total amount” in the gross income definition does not imply that the benefit should always be an amount of money. The value of exchanged or bartered assets may also be included in gross income, even the value of the use of an asset in an appropriate case, provided that what is received has an ascertainable monetary value or can be converted into money.

- **General deduction formula** – The general deduction formula, contained in section 11(a), read with sections 23(f) and 23(g), contains the general principles with which an expense must comply in order to be deductible from gross income, so as to arrive at taxable income. Other provisions allow for special deductions, often contrary to the general principles. Thus certain capital allowances such as wear and tear on assets are permissible under specific provisions. However, if no special deduction applies in respect of a particular expense, the expense in question must comply with the general

deduction formula. The general deduction formula provides that for expenditure and losses to be deductible, they must be –

- actually incurred during the year of assessment;
 - in the production of income;
 - not of a capital nature; and
 - laid out or expended for the purposes of trade.
- **Prohibited deductions** – Section 23 expressly prohibits the deduction of certain types of expenditure. Some prohibited deductions include domestic and private expenditure, the deduction of any loss or expenditure to the extent that it is recoverable under any contract of insurance, security, guarantee or indemnity, and tax, penalties and all interest on tax. Additionally, expenses incurred for the purposes of earning any amount which is not income or amounts not expended for purposes of trade, are not deductible.
 - **“Trade”** is defined in the Act as including –
 - (a) every profession, trade, business, employment, calling, occupation or venture;
 - (b) the letting of property; and
 - (c) the use of or the grant of permission to use any patent, design, trade mark, copyright or any other property which is of a similar nature.

The definition is very wide and involves an active step. The question whether or not any specific activity can be regarded as the “carrying on of a trade”, is a question of law that depends on the facts and circumstances of the specific case.

- **Allowances and taxable benefits** – The term "allowance" is usually used in the context of an employment relationship and it means the grant of something additional to ordinary wages. Allowances are generally paid to employees to meet expenditure incurred on behalf of their employers. The portion of the allowance not expended for business purposes must be included in an employee's taxable income. The most common types of allowances are travelling, subsistence and cellular phone allowances. Taxable benefits (also referred to as fringe benefits) are payments made to employees, usually in a form other than money. An example of a fringe benefit is the use of a company car.
- **“Remuneration”** is defined in paragraph 1 of the Fourth Schedule. It includes, amongst others, any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or pension paid by an employer to an employee, whether or not for services rendered.
- **CGT** is an abbreviation for the term capital gains tax. CGT is not a separate tax, but is part of normal income tax and is payable on the taxable portion of a capital gain. CGT is a tax levied on capital gains arising from the disposal of assets. A capital gain arises when the proceeds from the disposal of an asset exceed the base cost of that asset. South African resident companies and individuals are subject to CGT on the disposal of their assets on a world-wide basis.
- The term **“natural person”** is a legal term, referring to a living breathing person as opposed to a juristic person such as a company or close corporation. The term **“juristic person”** refers to a corporation that is recognised by law as having rights, duties, and the capacity to carry out juristic acts (like entering into contracts) as if it were a natural person.

- **“Employees’ tax”** is defined in paragraph 1 of the Fourth Schedule as the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee.
- **“Provisional tax”** is paid by taxpayers earning taxable income other than remuneration, for example, income from a business or profession.
- **VAT** is an abbreviation for the term value-added tax, which is an indirect tax levied on the taxable supply of goods or services as well as on the importation of goods into South Africa. Persons who make taxable supplies in excess of R1 million in any 12-month consecutive period are liable for compulsory VAT registration, but a person may also choose to register voluntarily provided that the minimum threshold of R50 000¹ has been exceeded in the past 12-month period. There are also some exceptions where this minimum threshold is not applicable, for instance, it does not apply to welfare organisations.

The essential characteristics of a VAT-type tax are as follows:

- The tax applies generally to transactions related to supplies of goods and services.
- It is proportional to the price charged for the goods and services.
- It is charged at each stage of the production and distribution process.
- The taxable person (vendor) may deduct the tax paid during the preceding stages (that is, the burden of the tax is on the final consumer).

Currently, the standard rate of 14% applies on most supplies and importations, but there is a limited range of goods and services which are either exempt, or which are subject to tax at the zero rate. For example, exports are taxed at 0% and the importation of services is only subject to VAT where the importer is not a vendor, or where the services are imported for private, exempt, or other non-taxable purposes. Taxable supplies include supplies for which VAT is charged at either the standard rate or zero rate.

The mechanics of the VAT system are based on a subtractive or credit input method which allows the vendor to deduct the tax incurred on enterprise inputs (input tax) from the tax collected on the supplies made by the enterprise (output tax). The vendor files a return after each tax period (usually every month or every two months), and the net VAT, being the difference between the output tax and input tax is either paid to SARS, or refunded to the vendor (as the case may be).

- An **“employee”** is any person who receives remuneration or to whom remuneration accrues. A person is deemed to be an employee if he or she is subject to the control or supervision of the employer as to the manner in which and hours for which that person is working, and the services are rendered mainly at the employer’s premises.
- An **“independent contractor”** provides services under terms specified in a contract. Unlike an employee, an independent contractor does not work regularly under the control and supervision of an employer, but works as and when required and retains control over schedules, number of hours worked, jobs accepted and the manner of performance of those jobs. The employer of an independent contractor normally does not have to pay over employees' tax to SARS. A person is deemed to be an independent contractor if that person employs three or more full-time employees (other than connected persons).

¹ The minimum threshold is R60 000 in the case of persons that supply *“commercial accommodation”*. The entry level threshold for voluntary VAT registration increased from R20 000 to R50 000 with effect from 1 March 2010.

[For more information on independent contractors, see *Interpretation Note No. 17 (Issue 3) – 9 January 2008 Employees’ tax: Independent contractors* on the SARS website www.sars.gov.za.]

3. Taxation of sports clubs and sportspersons

All persons, whether South African citizens or foreigners working in South Africa and who earn income in South Africa are generally liable to pay tax on that income. A taxpayer's taxable income is determined as follows:

- The first step is to determine the taxpayer's gross income.
- The next step is to determine if any of this income is exempt from tax and if it is, the amount is deducted from gross income in order to arrive at income.
- From income is deducted the aggregate of all amounts allowed as general or specific deductions.
- Lastly, taxable capital gains are determined at the taxpayer's inclusion rate (into taxable income), thereby arriving at the taxpayer's taxable income. A natural person is entitled to deduct a rebate from the tax payable.

Sports clubs and sportspersons have many receipts and expenses to deal with on a daily basis. These receipts and expenses generally fall into their taxable income during a year of assessment and it is therefore important for them to know how to deal with each item. Thus, consideration will be given below to specific issues relevant to sports clubs and sportspersons respectively.

Although the focus between clubs and players has as far as possible been separated, there are instances in which, for the sake of completeness, both players and clubs are mentioned to clarify a particular point.

4. Taxation of receipts and accruals of sports clubs

Clubs generate income through a variety of sources. Many clubs have an associate system in terms of which the affiliated supporters pay an associate fee. These fees, as well as attendance receipts, sponsoring contracts, team merchandising, TV rights, and player transfer fees, are usually the primary sources of sports clubs' financing. Some receipts, accruals and expenses relevant to sports clubs are discussed below.

4.1 Transfer fees

4.1.1 Introduction

In professional sport, it is an annual occurrence that players are transferred from one club to another. These transfers could be local (within South Africa) or across international borders.

For example, under rules established by *Fédération Internationale de Football Association* (FIFA), a player who is contracted to a club can have his contract “sold” to another club through a process known as the transfer system. This system requires the club that is “buying” a player to pay compensation to the club surrendering its player. Simply put, a transfer fee is an amount paid by one club to another club that is contractually entitled to a player's performance, to acquire the services of that player. Usually the player is also given a percentage of the transfer fee, but this is negotiated between the player and the club giving up the services of the player. It follows that what is being sold is not the player, but the services of that player, or more precisely, the right is abandoned by the club to require the

player's services, paving the way for the "acquiring" club to enter into a new contract with that player.

4.1.2 Income tax implications

Typically, however, especially if the player is an employee, the right to demand performance from a player is not trading stock and it is not brought into account as opening and closing stock as provided for by section 22. Under ordinary circumstances, these types of transactions would not fall into a category where any of the clubs could be said to be actively "trading" in players' contracts. The frequency of the transfers are typically limited and the intention of the managers of the clubs would not be to trade players at a profit, but to acquire the services of players with the potential to enhance their club's performance thereby making financial gains, to bring lasting benefits to the club. For the acquiring club, the money expended in acquiring the right to contract with the player will therefore typically be an expense of a capital nature, since what it is really doing is paying to enter into a contract to expand its income-producing capacity. Then the expense is of a capital nature and no deduction of the associated expense will be allowed to the club.

An "asset" is defined in paragraph 1 of the Eighth Schedule, to mean property of any kind, including assets that are movable or immovable, tangible or intangible, but excluding trading stock held for the purpose of realising a financial or economic return. In terms of this definition, and particularly because it includes property of an intangible or incorporeal nature, the right to demand performance from a player would qualify as an asset.

In the case of something being classified as a capital asset for tax purposes, gains or losses on its sale or disposal are regarded as capital gains or capital losses. In simple terms, a capital gain results when the club disposes of an asset at a higher price than what it paid for it and a capital loss results when it disposes of an asset at a lower price than what it paid for it. The amount paid for the asset is referred to as the base cost of the asset. Usually so-called holding costs may be added to the base cost, but in practice such costs would amount to the player's remuneration only, which may not be brought into account, because the expense is deductible from the club's income in accordance with the general deduction formula mentioned above. CGT is a tax on the profit that results from the disposal of the asset, unless excluded by specific provisions. Therefore, as contractual rights are regarded as assets, CGT will be payable on the gain (if any) made by the transferring club on the disposal of the right to claim performance from the player. A club releasing a player from his or her contractual obligations for a fee and not paying a fee to the transferring club for the entitlement to contract that player, gives the result of the entire fee being considered a capital gain, the base cost for the acquisition of the right to demand performance from the player having been nil.

Example 1 – Transfer fees and CGT

Facts:

Club Striker "buys" Player Y from Club Goalie for R300 000. During the annual transfer window-period, Club Striker enters into negotiations with Club Defender regarding the "sale" of Player Y, resulting in Player Y joining Club Defender for R500 000.

Result:

CGT will be payable on the gain of R200 000 by Club Striker.

However, on the basis of the foregoing reasoning, in the event that it is found as a fact that any club actively trades in the acquisition and disposal of such rights in terms of contracts concluded with players for speculative purposes, the proceeds received by that club upon the disposal of its rights will be of a revenue nature and not a capital gain.

4.1.3 VAT implications

The surrender of the right by the selling club in favour of the purchasing club is the supply of a service carried on in the course of an enterprise. The amount paid in exchange for the club to release the player from the contract constitutes consideration paid for a taxable supply at the standard rate if the club is a vendor. These services, when supplied to a foreign club which is not a resident of the Republic and not a vendor, will be subject to VAT at the zero rate.

As the player in a team sport such as soccer will usually be an employee, any amount paid to the player by either the club which acquires the services of the player or the club which releases the player from the contract will constitute remuneration and will not include any VAT. However, the position is different if the player is an independent contractor, or if the sporting activity is conducted through a separate legal entity interposed between the player and the club. In such cases, the interposed entity or the independently contracted player may be required to register for VAT, and to charge VAT on any sporting services rendered to the club (including any fee paid in connection with a transfer to another club). Further, if a player conducts an enterprise in this manner any amount paid to release the player from a contract with a club, will constitute consideration for a taxable supply made at the standard rate by the club. The standard rate will apply in this case, regardless of whether the player or the interposed entity concludes a further contract to provide the player's services to a local club or an overseas club. In this case the club releasing the interposed entity from the contract must be issued with a tax invoice and if it is a vendor, it may deduct input tax thereon.

The same principles will apply to the extent that contracts in other sporting disciplines are entered into or terminated in a similar manner.

4.2 Signing-on fees

4.2.1 Introduction

Signing-on fees are paid when a player becomes a contract player for a club. These fees are, in most cases, an "enticement" and are used by clubs to encourage a player to join one club instead of another. Although the fee is agreed on before entering into the contract, it is only paid after the contract of employment is concluded. In terms of standard employment contracts used by most clubs, the player, should he or she decide to cancel his or her contract before the expiry date, is under no obligation to repay the fee to the club.

Furthermore, the signing-on fee is not a restraint of trade payment. A mere prohibition against competition is not a restraint of trade. In any event, an obligation to keep secret and confidential an employer's trade-sensitive information whilst in employ is not a restraint of trade since it is already implied by the contract of employment

4.2.2 Income tax implications

The fees paid by the club to the player will generally be deductible, but spread over the period of the contract.

4.2.3 VAT implications

See 5.2.3.

4.3 Sponsorships

4.3.1 Introduction

Many clubs raise additional funds through activities like fundraising, sponsorships or grants. According to the Sponsorship Code of the Advertising Standards Authority of South Africa (ASA) the term “sponsorship” is defined as –

“a form of marketing communication whereby a sponsor contractually provides financial and/or other support to an organisation, individual, team, activity, event and/or broadcast in return for rights to use the sponsor's name and logo in connection with a sponsored event, activity, team, individual, organisation or broadcast.”

[The Sponsorship Code is available at www.asasa.org.za.]

Sponsorship can take on many forms, from an altruistic act of donating funds or the use of goods for a charitable cause, to a formal business arrangement (corporate sponsorship) whereby goods, services or funding is made available under a sponsorship contract to a person in return for specific advertising, branding and promotional services.

In the commercial world it is seldom that funds are donated, or the use of assets such as motor vehicles are made available to sporting organisations, without expecting something of value in return which is in pursuance of the sponsoring organisation's business objectives.

Typical arrangements include –

- the making available of funds, vehicles and technical expertise in motor sports;
- contracts for advertising, branding and logos displayed on the kit of national and provincial team sports such as rugby, cricket and soccer; and
- cash prizes, trophies and other prizes which are sponsored for competitions and events.

4.3.2 Income tax implications for the sponsor

For expenses or losses to be deducted from a taxpayer's income, they must comply with the requirements set out in section 11(a) read with section 23(g), namely, they must be –

- actually incurred,
- during the year of assessment,
- in the production of income, and
- not of a capital nature.

Further, the expenditure must be laid out or expended for the purposes of trade.

The activities of a sponsor involve expending certain amounts of money or services to a sports club during an agreed-upon period in exchange for advertisement or promotional benefits. To be deductible, this expenditure has to be of a revenue and not of a capital nature. Expenditure incurred to acquire or create an income-producing asset would normally be of a capital nature. Expenditure incurred in actually working the income producing asset would be of a revenue nature. The funds are disbursed by the sponsor with the intention of increasing its income by means of positive endorsements from the club. The money is therefore spent in working the sponsor's income-producing asset in the production of

income. Hence, the value of the benefits provided by the sponsor to the sports club constitutes a deduction from gross income in the hands of the sponsor.

4.3.3 Income tax implications for the recipient of the sponsorship

In terms of a sponsorship agreement, a club receives various goods and services such as airline tickets, kits and the use of vehicles in exchange for providing marketing and promotional benefits. The value of those benefits is income in the hands of the club.

As with sponsors, what must also be determined is whether the benefits extended by the club to the sponsors form part of the cost of the club's income-producing structure or part of the cost of the club's income-producing operations. Generally, a club generates its income by way of the activities of the players who represent it, of their coach and other support staff and by deploying its physical facilities. Marketing and securing additional funding and promotional benefits form part of the day-to-day operations of the club. Related expenditure is therefore of a revenue nature.

A club that receives sponsorships in kind receives income, even though not in the form of money. The goods and services have a monetary value. Gross income is a receipt or accrual, not of a capital nature, "in cash or otherwise". The value of sponsorships must be included in the club's gross income and is in principle taxable.

On the assumption that the sponsored club earns income, the question arises whether the club is then entitled to any deductions from its income which relate to its acquisition of the sponsorship. Say, for example, the club undertook in consideration for the sponsorship to issue the sponsor an agreed number of match tickets for each match of the club's first team for the duration of the sponsorship. Under section 11(a) expenses may be deducted only if they were, amongst others, actually incurred. Say the club had to pay market value for the tickets supplied for away matches. The cost would be deductible. Moreover, only the discounted values of tickets obtained at a discount would be deductible. Tickets for home matches are unlikely to cost the club much. In that event only the actual costs, like printing costs, and not the selling price of the ticket, would be deductible.

4.3.4 VAT implications for the sponsor and the recipient

A payment made by a sponsor in terms of a sponsorship agreement to provide funding to an organisation constitutes consideration for an advertising, branding or promotional service provided by the recipient. The sports organisation receiving the sponsorship funding will be making a taxable supply to the sponsor. If the recipient is a vendor, a tax invoice should be issued to the sponsor and output tax must be declared on the receipt. The sponsor, in turn, may deduct input tax if the advertising, branding or promotional service has been acquired from the recipient for the purposes of making taxable supplies.

Sponsorship can also take the form of a barter transaction. For example, if the right to use a motor vehicle is provided for a specified period of time by a motor dealer, in return for the advertising or promotional service offered by the sports organisation, and as the consideration received by each party to the agreement is not in money, the open market value of each supply must be determined. The open market value is the consideration in money (including VAT) that the supply of those goods or services would generally fetch if supplied in similar circumstances on the relevant date in the Republic if the supply were freely offered and made between persons who are not "connected persons", as defined.

In such a barter transaction, the motor dealer must declare output tax on the open market value of the advertising or promotional benefit received, as this constitutes the consideration

for the supply of the right of use of the motor vehicle. Similarly, if the sporting organisation receiving the sponsorship vehicle is registered for VAT, output tax must be declared on the open market value of the right of use of the motor vehicle, being the consideration for the taxable supply of the advertising or promotional service supplied to the motor dealer. Generally, the view on the determination of the open market value for each of the supplies in this kind of a barter transaction is that as long as the parties are trading at arm's-length and are not connected persons, the supplies concerned may be regarded as being of equal value. It is further considered that the open market value to be used by each party should be an amount which is equal to the average rental (including VAT) which would be charged by a motor vehicle rental enterprise operating under normal business conditions in the Republic for the specific type of motor vehicle. Normally, if both parties are vendors, each party is liable to account for output tax on the consideration received for the supply made, and to issue a tax invoice to the other. Each party will also be entitled to deduct input tax on the consideration "paid" for the goods and services, provided that:

- the goods or services are acquired for taxable purposes;
- a tax invoice is held; and
- the expense is not specifically denied.

For example, the motor dealer will not be entitled to deduct input tax on the advertising or promotional service provided, if the supplier is not a registered VAT vendor. Similarly, input tax may not be deducted if the supply to the motor dealer constitutes "entertainment". From the club's point of view, no input tax may be deducted on the acquisition of a "motor car" as this type of expense is specifically denied.

Example 2 – VAT implications of a barter transaction

Facts:

Motor Manufacturer X (Manufacturer X) enters into an agreement with Professional Soccer Team Y (Team Y). Both parties are registered VAT vendors. In terms of the agreement, Team Y is supplied with the right to use 12 passenger motor cars owned by Manufacturer X for 12 months. In return, Team Y must participate in all of Manufacturer X's advertising campaigns, and the vehicles must carry the branding and logos of Motor Manufacturer X. The specific type of motor cars supplied to Team Y may each be rented on a monthly basis from a reputable local car rental enterprise for R5 700 per month (including VAT).

Question: What are the VAT implications of this barter transaction for the parties concerned?

Result:

As the parties are trading at arm's-length and are not connected persons, the supply of the right of use of the vehicles and the advertising, branding and promotional services exchanged may be regarded as being of equal value (open market value = R5 700 x 12 = R68 400).

Manufacturer X

Manufacturer X has granted the right of use of the motor cars to Team Y in return for the performance of specific advertising, branding and promotional services. Manufacturer X is therefore liable to account for output tax on the consideration received for the supply of the right to use the motor cars. The consideration received is equal to the open market value of the advertising, branding and promotional service. Manufacturer X will therefore declare output tax of R8 400 per month ($R5\,700 \times 12 \times 14/114$) for the duration of the contract. Manufacturer X will be entitled to deduct input tax on the amount “paid” for the services acquired from Team Y, provided that it is in possession of a valid tax invoice issued by Team Y.

Team Y

Similarly, Team Y supplies an advertising, branding and promotional service to Manufacturer X in return for the right of use of the motor cars. Team Y must account for output tax on the consideration received for the supply of services to Manufacturer X. The consideration received is equal to the open market value of the right of use of the motor cars. Team Y will, therefore, declare output tax of R8 400 per month ($R5\,700 \times 12 \times 14/114$) for the duration of the contract. However, Team Y will not be entitled to deduct input tax on the amount “paid” for the acquisition of the right of use of the motor car, as input tax will be denied under section 17(2)(c) of the VAT Act, since it is not in the business of supplying motor cars. If the right to use the vehicles is supplied by Team Y to any of the players in the team (being employees), this constitutes a taxable fringe benefit for employees’ tax and VAT purposes. Team Y will be required to account for output tax on the value of the benefit, calculated at 0.3% of the “determined value” of the motor vehicle (for each month or part thereof) for each employee.

Refer to **5.9.3** for more details in regard to a vehicle which is provided as a fringe benefit.

The income tax implications relating to individual players receiving sponsorships are discussed at **5.4**.

4.4 Prize money

4.4.1 Introduction

Prize money refers to the money that a club or player would receive for participating in and/or winning a particular sports competition. During these tournaments, only specific clubs or players are invited or permitted to participate. Successful clubs or players will then receive a sum of money which would constitute prize money. This prize money is sponsored by the taxpayer sponsoring the challenge. Successful clubs or players will receive different amounts depending on their position in the contest after the final match has been played.

4.4.2 Income tax implications

Money that first accrues to a club before distribution will form part of the club’s gross income and will be fully taxable. Thereafter, provided that all requirements are met, the club will be able to claim a deduction under section 11(a) on the portions distributed to the players which will be taxable in their hands as remuneration. The general principle applicable to this type of receipt or accrual is applied by asking whether or not the recipient, in this instance the club, received or will receive the prize money on its own behalf, or solely on behalf of the player or players concerned. Once the income accrues to or is received by the club for its own benefit, it is income in the clubs hands.

The income tax consequences relating to sportspersons and the VAT implications relating to sportspersons as well as clubs who win prize money are discussed below at **5.5**.

4.5 Gate takings

4.5.1 Introduction

Gate takings and the sale of programmes are important sources of income for the owners of sporting venues, who often are, but need not necessarily be the hosting clubs.

Generally a gate control sheet is completed after all games as a record of income and expenses of each game. This sheet typically indicates the number of tickets sold, the price of the tickets, as well as the expenses incurred which relate directly to the event, such as security, gate control, entertainment and, if applicable, ground rental expenses.

4.5.2 Income tax implications

The gross gate takings will be included in the club's gross income under the "gross income" definition contained in section 1. All expenses incurred in the production of the income like, for example, the ground rental fees, will be allowed as a deduction under section 11(a).

4.5.3 VAT implications

The sale of tickets for entry into any sporting or other entertainment event will usually be subject to VAT at the standard rate, but if the event takes place in a stadium or other venue outside of the Republic, the ticket price will be subject to VAT at the zero rate. Ticket prices will also include VAT at 14% where the ticket is sold outside of the Republic and the match played within the Republic.

The general time of supply rule is applicable to admissions so that the supply is deemed to take place when an invoice is issued or any payment is received, whichever is the earlier. As invoices are not usually issued in respect of admissions, payment of the admission or part thereof will usually determine in which tax period the supply takes place. The general value of supply rules apply to admissions, so that VAT is levied at the standard rate on the price of the admission before the addition of VAT. Alternatively, the amount of VAT charged may be calculated by applying the tax fraction (14/114) to the VAT-inclusive price of admission.

In the event that a person has to buy a programme to get into a sporting event, the payment for the programme is the consideration for the admission. Moreover, where tickets, tokens, vouchers or programmes are issued on payment of the admission charge which entitles the bearer to admittance to the premises, function or event, the payment thereof will determine the tax period in which the supply of admission is made. The time of supply of admissions to a series of events, for example, where a season ticket is issued, will take place on payment or part payment for the season ticket.

There are a variety of contractual arrangements which may apply in regard to admissions to sporting events and other supplies made at the event. The VAT treatment of these supplies will depend on who stages the event, who owns the venue, what supplies are made between the parties (or other outside contractors), and whether the parties to the agreement are VAT vendors or not. For example, sports stadiums are usually owned by provincial sporting bodies, sports clubs, municipalities or property holding entities connected to sporting bodies. The contract between the sporting organisation and the owner of the stadium will determine for whose benefit the admission or entrance fee is charged, and should provide details of any other supplies which may be necessary to stage the event.

In circumstances where a club stages an event, the stadium owner's fee may be a certain percentage of the entrance fees charged and/or other sales, or it may be a predetermined rental/fee. In such a case, the club will charge and account for the VAT collected from the patrons of the event and for the other supplies which it may make at the venue. Further, if the stadium owner is a vendor, that person must account for output tax on the rental, fee or percentage of gate takings received for making the stadium available to the club and the club must request the stadium owner for a tax invoice in this regard so that it may deduct the VAT paid as input tax. Alternatively, the stadium owner may stage the event and pay the clubs a performance fee. In such a situation, the stadium owner will charge and account for the VAT on any entrance fees collected from patrons and the VAT paid on performance fees may be deducted as input tax subject to the normal requirements for deducting input tax. The clubs will declare output tax on the performance fees in that case.

4.6 Issuing of debentures to the public

4.6.1 Introduction

A debenture is a loan contract that is entered into between a company and a person (the holder) in which a sum of money is put up for a specified period. The debenture holder is entitled to a fixed amount of annual interest and the principal amount whenever the debenture matures. Essentially, a debenture is a long-term debt instrument used by governments and large companies to obtain funds.

4.6.2 Income tax implications

A large number of sporting organisations have also used the issuing of debentures in order to obtain necessary funds. In exchange, apart from the annual interest paid, debenture holders can sometimes receive match tickets from the club. Interest is a payment made for the use of money, and qualifies as a deduction when the money is borrowed for the purposes of trade and the interest incurred in the production of income. It is sufficient for the interest to be allowed as a deduction if the funds were raised and interest was incurred for the purpose of generating income. Clubs acquiring funds through the issuing of debentures must use the money in the production of income. In this case, all money expended by the club in the form of interest will be a deductible expense because it was incurred in the production of income.

The interest received will be fully taxable in the hands of the holders, since they are receiving income in addition to the principle amount that they will receive on the maturity of the loan. In circumstances where the holder is also entitled to tickets, the value of the tickets must be included as taxable income.

4.6.3 VAT implications

Debentures and loans constitute financial services which are exempt from VAT. This means that when a loan is made to a sports club, or a debenture is issued by a sports club to raise finance, there will be no VAT charged on the transaction. Similarly, where interest is paid on the loans or debentures, there is no output tax and input tax for either party. However, in a case where the amount of interest which the investor would be entitled to, is forfeited or set-off against the consideration which is payable for a taxable supply, this constitutes payment for the taxable supply. In such a case, the person making the taxable supply must declare output tax on the amount set-off or forfeited as consideration for the supply.

4.7 Insurance premiums paid by clubs

4.7.1 Introduction

In the sport world, accidents to sports players could end in disaster that could result in financial devastation especially if sport is their livelihood and only source of income. Insurance that covers their earning capacity or personal liability is therefore an important component for them to consider. For a club, the destruction of sporting premises owned by it could have drastic consequences for both the club and the players, thus insurance is also vital for clubs.

4.7.2 Income tax implications

Insurance premiums paid to cover, for example training kits, equipment or the facilities, will be seen as being incurred in the production of income and will be deductible expenditure.

Any amount received from the insurance company in respect of an insurance claim will be taxable as a recoupment under section 8(4) of the Act.

4.7.3 VAT implications

A club can incur VAT-inclusive expenditure in the form of short-term insurance premiums to cover training kit, equipment or club facilities etc and in these cases the VAT may be deducted as input tax as the expenditure will be incurred in the course or furtherance of the enterprise. The same will apply if the club pays an insurance premium to cover the risks associated with injury to players (employees). However, the ability to deduct input tax on insurance premiums incurred for enterprise purposes by the club is limited to short-term insurance, as long-term insurance premiums do not include any VAT.

When an indemnity payment is made in terms of a short-term insurance policy, the club receiving the payment (the insured) will be deemed to make a supply to the insurer. As such a payment is deemed to be received in the course or furtherance of the enterprise, the club will be required to declare output tax at the standard rate on the receipt. No deemed supply arises and no output tax is declared if any indemnity payment is received under a long-term insurance contract.

5. Taxation of receipts and accruals of sports players

There are many types of receipts and accruals relevant to sports players. Those most pertinent are discussed below.

5.1 Player salaries and other remuneration

5.1.1 Introduction

The majority of sportspersons participating in team sports enter into contracts with their clubs, franchises or unions. Sports players who are retained on a contract will normally be employees of the club and therefore subject to the tax provisions of employment income.

Non-contract sports players, for example golf or tennis players, are not employees of a club, but are self-employed. These non-contracted players, or independent contractors, have full control of their involvement in sport and get to decide which events or games they will enter and also on the frequency of entering.

[For more information on independent contractors, see *Interpretation Note No. 17 (Issue 3) – 9 January 2008 Employees' tax: Independent contractors* on the SARS website www.sars.gov.za.]

5.1.2 Income tax implications

Salaries, wages and similar items paid to contracted players are “gross income” for that player, are subject to income tax, and must be declared by the player in his or her annual tax return. As the amounts also constitute “remuneration”, clubs paying such amounts to players have an obligation to deduct employees' tax and pay what was deducted over to SARS within the prescribed period.

Independently contracted players, like contracted players, also receive payments arising out of their participation in matches or competitions which are taxable as income. These receipts must also be declared in the annual tax return.

The permissible deductions from the gross income of an independent sportsperson differ from those permitted to a player who is an employee and who earns his or her income primarily from salary. See **5.11** for more information.

5.1.3 VAT implications

The payment of salaries and wages to employees constitutes the payment of “remuneration”, and does not include any VAT. No input tax may therefore be deducted by a club on any remuneration paid.

Payments to non-contracted players who are independent contractors may include VAT if the person concerned is registered as a VAT vendor. Match fees or other payments received for rendering services as a player to a club will be in the course of a player's enterprise and will therefore attract VAT at the standard rate if that particular player is registered for VAT. In such a case, the player must levy VAT and the club must be provided by the player with a tax invoice for the services rendered so that it may deduct the VAT charged by the player as input tax.

5.2 Player signing-on fees

5.2.1 Introduction

Signing-on fees are received by a player when signing up an agreement with a club.

5.2.2 Income tax implications

The signing-on fee constitutes remuneration in the hands of the player. Remuneration, according to the Fourth Schedule, includes, amongst other things, amounts payable for services to be rendered, including voluntary awards. The signing-on fee is a payment made for future services to be rendered and thus remuneration. The club making the payment is responsible for withholding employees' tax in respect of the player signing-on fees and paying it over to SARS.

At the end of the year of assessment, the club that paid the signing on fee to the player must give the player an employees' tax (IRP 5) certificate indicating the amount paid to the player as well as the employees' tax deducted. The signing-on fee must be reflected under code 3605 on the IRP 5 certificate.

5.2.3 VAT implications

Since the salaries (remuneration) paid to employees does not include any VAT, the payment of signing-on fees will usually not be regarded as payments made in respect of taxable supplies received. Consequently, the club will not be able to deduct input tax on signing-on fees paid to players. However, any fees or commission paid to the player's agent for securing the services of the player will include VAT if the agent is a vendor.

5.3 Image rights payments

5.3.1 Introduction

South African sports players are, like their overseas counterparts, enjoying the rewards gained from commercial opportunities such as image licensing agreements, celebrity endorsements and appearance fees. Image licensing agreements involve the commercial exploitation of a player's image such as the use of his or her name, photograph, reputation, voice, signature, initials or nickname. Image rights are the legal rights associated with using the image of a sportsperson in marketing or promotional activities. Image rights payments refer to the funds that a player receives from an enterprise that uses his or her image for advertising purposes.

5.3.2 Income tax implications

The above payments form part of the player's gross income and will therefore be included in his or her taxable income. The same treatment will also apply to endorsement fees and appearance fees as all three form part of a sports player's remuneration, are of a revenue nature and are accordingly taxable.

5.3.3 VAT implications

The amount paid to a sportsperson to appear at an event or to participate in a competition, in his or her private capacity, will not attract VAT in the hands of that person unless he or she is a VAT vendor, or liable to be registered as a vendor outside of any employment contract with the club.

Any consideration paid to a club for image rights or appearance fees in regard to the club as an entity or in respect of individual employees for which the club holds image or appearance rights, will attract VAT at the standard rate in the hands of the club.

The person paying a VAT-inclusive price for the image or advertising rights will in appropriate cases be entitled to deduct input tax on the VAT-inclusive amount paid for the rights, but subject to the usual requirements for deducting input tax (for example, a tax invoice must be held).

5.4 Sponsorships of sports players

5.4.1 Introduction

Sponsorships are offered to players in various forms, for example, equipment, clothing, watches, transport and travel.

5.4.2 Income tax implications

Amounts received for services rendered or to be rendered, whether of a voluntary nature or not, are specifically included in gross income, whether or not the receipt is of a capital nature. Sponsorships are therefore included in a player's gross income.

Generally an employer-employee relationship will not exist between the provider of the sponsorship and the player. Hence, in situations where no such relationship exists, and the player is not deemed to be an employee for employees' tax purposes, the sponsor will not be required to withhold employees' tax. The player is required to disclose the amount of the sponsorship (in cash or otherwise) in his or her annual tax return. However, if the sponsor has sponsored the club or employer of the sports person and the club in turn provides its players with a portion of the receipts, the amounts will constitute remuneration. The club is required to deduct or withhold employees' tax from the amounts paid to the players. This is irrespective of whether the receipt by the player is in cash or not.

5.4.3 VAT implications

The same principles as set out in 4.3.4 will apply in cases where an individual sports person is the recipient of the sponsorship. The VAT treatment will therefore depend on whether the individual is a vendor or not. In cases where the individual is not a vendor, there will be no output tax by the recipient, and the sponsor will not be entitled to deduct any input tax on the payment.

5.5 Prize money

5.5.1 Introduction

In the event of a team winning a tournament and the players not being paid the prize money directly by the tournament sponsor; two scenarios can occur regarding the winning team and the subsequent entitlement to the prize money. The first is that the sponsor awards the prize money to the winning club and the club then distributes the money amongst the players. In this situation it is either the prerogative of the club or determined by prior agreement between club and player as to how much each player gets. The club can retain a portion to be used on club-related needs. The second scenario is that the money is paid to the club provided that the money is expressly for the benefit of the individual players and that it will be divided amongst all the players that participated in the tournament. Here, the club acts merely as a conduit through which the prize money is paid.

5.5.2 Income tax implications

Scenario one

The prize money received by the players is for services rendered and is therefore included in the player's gross income. The definition of "remuneration" in paragraph 1 of the Fourth Schedule is very wide and includes amounts received such as any bonuses, commission, fees and gratuities, whether or not for services rendered. The additional amount of money paid by a club (which it receives from the sponsors of a challenge as prize money) to its players would fall within the definition of "remuneration" and would be subject to employees' tax as an employer-employee relationship exists between the club and players.

Scenario two

Money that accrues directly to the players would still be subject to tax in the players' hands. The money will not be taxable in the hands of the club since it merely received the money, not for its own benefit, but as a conduit on behalf of the players. Participating in tournaments is part of a player's contract, thus any income received as a direct result of his or her labour would be taxable. Therefore, the prize money that players receive forms part of their income irrespective of whether it is received from their club (employer) or not.

As in *Scenario two*, if the prize money accrues to the player directly from the sponsor, there will generally be no obligation on the part of the sponsor to withhold employees' tax, as there

is normally no employer-employee relationship between the player and the sponsor. The prize money must then be included in the gross income of the player when the annual tax return is submitted, and will be subject to income tax on assessment. Prize money that is paid by the player's employer requires the employer to disclose the amount of the prize, as well as the employees' tax deducted, on the player's IRP 5 certificate, under code 3605.

5.5.3 VAT implications

Scenario one

In *Scenario one* discussed in **5.5.2** above, the club receives the prize money as principal. This means that if the money can be viewed as consideration for services rendered to the sponsor of the competition, the prize money is deemed to be VAT-inclusive and the club must declare output tax at the standard rate on the receipt. The application of the view as adopted in *Interpretation Note No. 41* means that the prize winning would be regarded as consideration received for participating in the competition, and as such, will become subject to VAT at the standard rate in the hands of the winning club. Any part of the prize monies subsequently paid by the club to any individual team player would fall within the definition of "remuneration" and the club would not be entitled to deduct any input tax thereon. The person holding the competition may not deduct input tax on any cash prizes awarded as the amount is not paid to the recipient (club) in consequence of a bet. However, the VAT-inclusive costs of certain other goods or services acquired which are awarded as prizes may be deducted as input tax.

Scenario two

In *Scenario two* discussed in **5.5.2** above, where the money accrues directly to the players, the club will not be liable for any output tax since the amount(s) would merely be received by the club on behalf of the players. Since most sportspersons are employees and participating in such competitions form an integral part of their employment contracts, the payments received will generally not include any VAT.

5.6 Indemnification of sportspersons

5.6.1 Introduction

Every year thousands of serious injuries occur to sportspeople by, amongst other things, foul or negligent play, unexpected violence or even by playing in unsafe facilities. In the event of an injury to a player, a sum of money in the form of compensation is sometimes paid to the injured player, either by the club to which the player belongs or by the offending party that caused the injury. Compensation is paid by the club when it is under a legal obligation to make the payment and the offending player must pay compensation when he is ordered by a court to do so.

An injured player's sporting career can be temporarily or permanently disrupted, depending on the seriousness of the injury. The non-participation in any sport-related activities may result in the player not receiving any remuneration from the club for a period of time. The player may however receive compensation for loss of income.

5.6.2 Income tax implications

In determining whether an amount paid as compensation is taxable, the question that needs to be considered is whether the money was paid to compensate the player for loss of earnings that he or she otherwise might have received had the injury not occurred. In this case, the money will be regarded as income and will be included in the taxable income of

the player. The reason for this is that the compensation received would “fill the hole” left by the absence of monthly income, thus being revenue for the player.

In the case of the paying party, it must be shown by the taxpayer that the expense was incurred in the production of income and that the risk of the payment occurring was so closely connected with the taxpayer’s business operations that it was inseparable from it or necessarily incidental to the carrying on of that business.

It is important to note that each case will be considered independently and on the facts of that particular case when deciding the deductibility of an amount of compensation.

5.6.3 VAT implications

Compensation payments whether of a capital or revenue nature, would not normally be regarded as payment for a taxable supply made by the sportsperson and would therefore not include any VAT. The same applies in cases for compensation which are determined as “damages” in a court of law. As discussed in **5.6.2**, there may be some exceptions as each case is considered independently and on the facts of that particular case. As a general principle, VAT will not be applicable unless the compensation can properly be regarded as consideration for a taxable supply made by the recipient of the payment to the person making the payment.

5.7 Bonuses and benefit matches

5.7.1 Introduction

Professional sportspeople are sometimes granted benefits arising out of a benefit match or a series of events throughout a benefit period. The money raised during this initiative held by the club is then paid over to the player concerned.

5.7.2 Income tax implications

In the above case, the player is not using his or her skills for the purpose of commercial exploitation. The activities by the club are a means of recognising the personal attributes of the player and showing gratitude to the player for his or her contribution on the sporting field and to the game itself. The payments that the player receives will be once-off and *ex gratia* from the club. It is thus not something that is anticipated nor does the player have an expectation of receiving the benefit payments. However, all amounts (including voluntary awards) received for employment, services rendered or the termination of employment, are specifically included in gross income, whether or not the receipt is of a capital nature. Receipts and accruals arising out of those events are accordingly taxable as they are expressly included in the player’s gross income on the basis that they are directly related to services rendered by the player.

In other situations a player will be paid a bonus on achieving a certain result, such as a bonus paid to members of a team on winning a particular competition or for achieving a personal best, or an award such as a “man-of-the-match” award. This additional amount paid to the player is an incentive payment or bonus that arises from normal employment and part of the player’s taxable income.

All of these benefits (benefit match proceeds, bonuses and man-of-the-match awards) received by a player constitute remuneration, as they are received for or by virtue of services rendered, employment or the termination of employment. The full award (whether in cash or not) is taxable and employees’ tax must be deducted by the club.

Awards received directly from sponsors must also be included in the gross income of the player. However, no employees' tax withholding obligation arises if there is no employer-employee relationship between the sponsor and the player.

5.7.3 VAT implications

For VAT purposes, the payment of bonuses and benefits to contracted and non-contracted players is the same as discussed under **5.1.3**. The implication for a club that stages a benefit match is that VAT must be charged in the normal manner as is the case for gate takings, entrance fees or for other goods or services supplied at, or in connection with the staging of the event. For example, if a benefit dinner is held before or after the benefit match, VAT must also be charged on the entrance fee to the dinner.

5.8 Allowances, advances and reimbursements

5.8.1 Introduction

a) Income tax implications

The differences between allowances, advances and reimbursements are important and can be distinguished as follows:

Allowances and advances are amounts of money granted by an employer to an employee in circumstances where the employer is certain that the employee will incur business-related expenditure on behalf of the employer. The difference between the two is that in case of an allowance, the employee is not obliged to prove or account for the business expenditure to the employer whereas in the case of an advance, the employee is obliged to provide the necessary evidence. A reimbursement of business expenditure occurs when an employee incurs business-related expenses on behalf of an employer out of his or her own pocket (that is, without having had the benefit of an allowance or an advance) and is subsequently reimbursed for this expenditure by the employer after having proved and accounted for the expenditure to the employer.

All allowances and advances are included in a taxpayer's taxable income unless the money relates to amounts expended during travelling for business purposes; or for accommodation, meals and incidental costs while the employee is obliged to spend a night away from his usual place of residence as a result of that business. The amounts deemed to have been expended on meals and/or incidental costs are determined annually by the Commissioner by way of notice in the *Government Gazette*. Reimbursements and advances are excluded from taxation where the employer instructs the employee to expend money on its behalf for business purposes and requires proof of the expenditure from the employee.

Sometimes employees are in receipt of allowances that are much greater than the true anticipated business expense. This excess position is regarded as normal remuneration for services rendered, and is covered by the definition of "gross income". The excessive portion will be subject to normal employees' tax rules. Also applicable to allowances and advances are the exemption provisions under section 10. For example, uniform allowances and relocation cost allowances are exempt from income tax, provided they meet the conditions specified in the particular exemption sections.

[For more information on allowances, reimbursements and advances, see *Interpretation Note No. 14 (Issue 2) – 8 January 2008 Allowances, advances and reimbursements* available on the SARS website www.sars.gov.za.]

b) VAT implications

Most allowances and advances constitute “remuneration”, which means that the club paying these amounts to employees (players) will not be allowed to deduct input tax on expenses paid for by the employee with the allowance or advance, as these are not regarded as the expenses of the club/employer. The club may, however, deduct input tax if the advance or reimbursement is for expenses which are incurred by the employee on behalf of the employer. For example, if the player is provided with an advance to pay for travel, accommodation, meals and incidental costs whilst spending at least a night away from home as a result of work duties, those expenses are for the account of the employer and not the employee. Input tax may be deducted by the employer in situations where the employee pays for expenses incurred on behalf of the employer, either from funds advanced to the employee for that purpose, or where the employee pays for the expense, and is later reimbursed. The employee, in such cases, should ensure that the tax invoices are issued to the employer, so that the employer may deduct the VAT incurred as input tax where this is allowed.

5.8.2 Travelling allowance

This allowance is granted to cover costs incurred on travelling for business. Although fully taxable on assessment, only 60%² of the allowance is subject to the deduction of PAYE. This does not mean that only 60%² is taxable. The full allowance remains taxable and any unspent portion will be included in the player's taxable income. The taxable portion of this allowance may be reduced by claiming expenses in using a private vehicle for business purposes. The full allowance must be reflected under code 3701 on the player's IRP 5 certificate.

5.8.3 Reimbursements for business travelling using private transport

In the event that the player does not receive a travel allowance and is reimbursed for the actual distance travelled for business purposes, at a rate per kilometre that does not exceed the rate per kilometre as calculated according to Annexure A or R2.92 per kilometre, and the total business kilometres travelled during the year of assessment do not exceed 8 000 km, the reimbursement is not subject to employees' tax and is not taxable on assessment. The total reimbursement is, however, reflected under code 3703 on the player's IRP 5 certificate.

A reimbursement that is received in addition to a travel allowance, or *vice versa*, must be added together on assessment and both must be treated as a travel allowance. The total reimbursement will be reflected under code 3702 on the player's IRP 5 certificate.

The distance travelled for business purposes can be proved by a logbook in which the business kilometres, destinations and dates on which the travelling occurred, must be reflected.

5.8.4 Accommodation expenditure and special daily allowance where the player has to spend at least one night away from his or her usual place of residence

An allowance can also be granted to a player to meet official expenditure incurred for accommodation, meals and incidental costs. Here, the portion of the allowance that is actually expended in this regard will not be included in the player's taxable income on assessment. Proof of the actual expenditure must be available on request.

² 80% with effect from 1 March 2010

Certain maximum amounts (deemed amounts) will, for ease of administration, be accepted as having been spent for meals and/or incidentals without the need to produce proof of the expenditure. Any amount (based on the expenditure to be incurred) that is less than or equal to the applicable deemed amount will not be subject to income tax. These deemed amounts are determined by the Minister of Finance for the relevant year of assessment by way of notice in the *Gazette*. Examples of the deemed amounts applicable to the 2010 year of assessment (for the period 1 March 2009 – 28 February 2010) are discussed in more detail in **5.8.5** and **5.8.6**.

A player who receives allowances in excess of the deemed amounts must claim actual expenditure (proof must be available) in his or her income tax return to avoid paying income tax on the allowances. Alternatively, the player can claim the deemed amounts and pay income tax on the amounts in excess of the deemed amounts.

The direct payment of accommodation costs by the club is not a taxable benefit and is not reflected on the employee's IRP 5 certificate. However, an allowance paid to a player to cover accommodation costs, will be taxed unless the player is able to submit proof of the actual accommodation expenditure.

All claims will be limited to the amount of the allowance received.

5.8.5 Deemed amounts for official journeys inside South Africa for the 2010 year of assessment

In circumstances where a player must undertake an official journey locally, the club can either pay his or her reasonable actual accommodation expenditure plus a special daily allowance for incidental expenses; **or** a fixed, all-inclusive allowance.

A maximum of R80 per day will be deemed to have been expended on incidental costs for players who are away from their usual place of residence on official duty within South Africa and meals and accommodation are provided by the club free of charge. For this purpose, incidental costs mean beverages, private telephone calls, gratuities and room service. Any allowance less than or equal to R80 per day for these expenses will therefore not be subject to tax but will be reflected on the player's IRP 5 certificate. The allowance will be regarded as a non-taxable subsistence allowance and the full amount should be reflected under code 3705 on the player's IRP 5 certificate.

A maximum of R260 per day will be deemed to have been expended on meals and incidental costs during official travel inside South Africa in case where the club only provides accommodation free of charge. Any allowance less than or equal to R260 per day for these expenses will therefore not be subject to tax, but must be reflected on the player's IRP 5 certificate. Should the club pay more than R260 per day for meals and other incidental costs, the allowance will be taxable. Accordingly the allowance will be regarded as a taxable subsistence allowance and the full amount should be reflected under code 3704 on the player's IRP 5 certificate.

5.8.6 Deemed amount for official journeys outside South Africa for the 2010 year of assessment

A club will normally cover a player's actual accommodation costs plus a special daily allowance for meals and incidental expenses when the player has to undertake an official journey outside South Africa. The Commissioner determines a maximum amount per country, which is announced annually in the *Gazette*, and which is deemed to be expended

in each country. Any daily allowance less than or equal to the specified amounts will therefore not be subject to tax, but must be reflected on the player's IRP 5 certificate.

The amounts per country may be obtained from the SARS website under Tax Types/Pay as you Earn (PAYE)/Allowances/Subsistence allowance.

5.9 Taxable fringe benefits³

5.9.1 Introduction

a) Income tax implications

The Seventh Schedule imposes certain duties upon employers who award their employees fringe benefits in the course of their employment or as a result of services rendered. The cash equivalent of the value of these taxable benefits determined under the Schedule is included in paragraph (l) of the definition of "gross income". Therefore, the value is also included in the taxpayer's remuneration and as a result, is subject to the deduction of employees' tax.

Conditions that must be met before any amount can be subjected to tax by way of the above-mentioned paragraph include –

- a benefit must have been granted to the taxpayer or to his or her family;
- the benefit must have been granted in respect of employment;
- the benefit must have been granted during the year of assessment; and
- the benefit must be a taxable benefit as defined in the Seventh Schedule.

Once these requirements have been met, the "cash equivalent" of the taxable benefit as determined under the provisions of the Seventh Schedule, will be included in gross income.

A benefit is also granted to an employee when an **associated institution** in relation to a club grants a taxable benefit to a player. An associated institution in relation to a club is any company managed or controlled directly or indirectly by the same person, as well as any fund established for the benefit of employees or former employees of an employer or any company associated with that employer.

Examples of taxable benefits received from employers include –

- the acquisition of an asset from the employer, either free of charge or at a reduced cost;
- the use of free or cheap services provided by the employer;
- the private use of an employer-owned asset;
- low-interest or interest-free loans;
- free or cheap meals or refreshments provided by the employer;
- medical scheme contributions paid by the employer;
- medical and dental services provided to the player at the employer's expense; and
- the settlement of a player's debt by the employer.

³ In this guide only those benefits that are considered common to sportspersons are discussed in more detail.

Note: For most of these benefits, certain exclusions may apply. For example, no value is placed –

- on meals and refreshments provided at the club's business premises;
- if loans granted are casual loans and do not exceed R3 000;
- on loans granted for study purposes;
- if the private use of the club's asset is incidental to business use;
- if the asset consists of telephone or computer equipment which the employee uses mainly for business purposes;
- on any communication service (for example cellular phone) provided to the player, if the service is used mainly for the club's business purposes; and
- on any transport service rendered by the club to players in general for the conveyance of the players from their homes to their work and *vice versa*

b) VAT implications

In addition to withholding PAYE on certain fringe benefits, employers must also declare output tax at the standard rate on the consideration (or open market value – as the case may be) for any fringe benefit provided to an employee.

The VAT-treatment of fringe benefits generally follows the timing and valuation rules as set out in the Seventh Schedule. Another general principle which applies is that if the benefit has no value, or if it is not regarded as a fringe benefit for income tax purposes, the same will apply for VAT purposes. A fringe benefit will only be subject to VAT if two conditions are present, namely:

- the supply must be a fringe benefit as contemplated in the Seventh Schedule; and
- the type of supply must constitute a taxable supply for VAT purposes.

For example, although low-interest loans and residential accommodation may constitute taxable fringe benefits for income tax purposes, they are not taxable fringe benefits for VAT purposes as the underlying supplies are exempt from VAT.

There are special rules governing the valuation of a benefit involving the supply of the right of use of a motor vehicle for VAT purposes. Refer to 5.9.3(c) for more details in this regard.

5.9.2 Residential accommodation

Clubs often provide free or cheap residential accommodation to players or pay for the accommodation of players. A taxable benefit arises where the player is provided with accommodation either free of charge or for rental consideration that is less than the rental value of the accommodation.

The value of the fringe benefit must be determined in accordance with a formula given in paragraph 9(3)(a) of the Seventh Schedule or the amount equal to the cost to the employer (in other words, rentals paid and other expenses defrayed in order to provide such accommodation). A cash allowance that has been granted to a player in order to defray accommodation costs will be subjected to employees' tax.

The cash equivalent of the benefit must be calculated during the year at the same intervals at which the player is remunerated and employees' tax must be deducted.

No value is placed on any accommodation provided away from the player's usual place of residence in South Africa if the player is absent from that residence for the purpose of performing his or her duties.

The cash equivalent of the benefit must be reflected under code 3805 on the player's IRP 5 certificate.

5.9.3 Right of use of a motor vehicle

a) Introduction

Clubs receive vehicle sponsorships from various car dealers or manufacturers. The vehicles are provided by the car dealers to the clubs who may in turn provide the right of use of the vehicles to players.

b) Income tax implications

A taxable benefit arises when the club or an associated institution in relation to the club provides the player with the right to use the vehicle for the player's private or domestic use. The method used to determine the taxable benefit is based on the determined value of the motor vehicle. The determined value is the cost of the vehicle, excluding any finance charges and VAT. The determined value of the motor vehicle is reduced where the player is provided the right of use of the vehicle 12 months or more after the club first acquired the vehicle or the right of use of the vehicle. The open market value of the vehicle must be used if the motor vehicle was donated or acquired in some other manner.

The monthly value of the benefit is currently 2.5% of the determined value of the car. However, if more than one vehicle is made available to the player, the monthly taxable benefit is 2.5% of the vehicle having the highest determined value and 4% for each additional vehicle. Note that this rule is currently under review. It has been proposed in the draft amendment bill that this rate be increased to 4% for each vehicle.

The value of the private use may be reduced if the player does not receive a travelling allowance for the motor vehicle provided by the club and –

- the player bears the cost of all fuel used for the purposes of the private use of the vehicle: *the monthly taxable benefit may be reduced by 0.22% (that is 2.5% or 4% less 0.22%);* or
- the player bears the full cost of maintenance, including the cost of repairs, servicing, lubrication and tyres of the vehicle: *the monthly taxable benefit may be reduced by 0.18% (that is 2.5% or 4% less 0.18%).*

The value of the private use of the vehicle may not be reduced if the vehicle is temporarily not in use by the player for private purposes.

The cash equivalent of the benefit accrues monthly and employees' tax must be deducted. The cash equivalent of the benefit must be reflected under code 3802 on the player's IRP 5 certificate.

[For more information regarding the circumstances under which the Commissioner may reduce the private use on assessment as well as the circumstances under which the value of the private use is deemed to be nil, please refer to *Draft Interpretation Note – Right of use of motor vehicle* available on the SARS website www.sars.gov.za.]

c) VAT implications

An employer is deemed to have made a taxable supply to an employee in the course or furtherance of the enterprise if a vehicle is provided to the employee for private or domestic purposes either free of charge, or for a consideration which is less than the value of such use, and therefore output tax must be paid by the employer. The consideration for the supply is calculated in the manner prescribed by the Minister of Finance in *Regulation GN 2835 – Directions for purposes of sections 10(8) and (13) – dated 22 November 1991*.

This Regulation basically provides that the consideration in money for the deemed supply (fringe benefit) upon which VAT is payable is calculated as being –

- 0.3% of the “determined value” of the motor vehicle (for each month or part thereof) if an input tax credit on the motor vehicle was specifically denied under section 17(2) of the VAT Act; or
- 0.6% of the “determined value” of the motor vehicle (for each month or part thereof) if an input tax credit has, or may be deducted on the motor vehicle.

For more information in this regard, refer to **4.3.4** and **Example 2**.

5.9.4 Personal use of business cellular phones and computers

A player is deemed to have received a taxable fringe benefit if he or she is granted the right to use any asset owned by the club for private or domestic purposes. However, no value is placed on the private or domestic use if the asset consists of a telephone or computer which the employee uses **mainly** for the purposes of the employer's business. The term “mainly” has been interpreted by our courts to mean usage in excess of 50%.

5.9.5 Free or cheap communication services

A player is deemed to have received a taxable benefit if –

- any service that has been rendered to the player at the club's expense (whether by the employer or by some other person) and
- that service has been used by the player for his or her private and domestic purposes, and
- no consideration has been given by the player or the consideration is less than the cost to the employer of providing that service.

No value is placed on a communication service (for example, access to a cellular telephone network) which the player uses mainly for the purposes of the club's business. The term “mainly” has been interpreted to mean usage in excess of 50%. For example, the portion of the bill that relates to private use will not result in a taxable fringe benefit in the hands of the player where a player uses a club cellular telephone and the monthly network subscription is paid for by the club, but the network access is used mainly for business purposes.

5.9.6 Payment of the income protection policy premium by the club

A player is deemed to have received a taxable fringe benefit if the club pays any premium to an income protection policy where the player is a beneficiary. The player must be taxed on the monthly premiums paid by the club.

The benefit must be disclosed under code 3806 on the player's IRP 5 certificate.

5.9.7 Relocation/transfer costs of an employee

Any benefit received by a player by reason of the fact that the club has borne certain relocation expenditure in consequence of –

- the player's relocation from one place of employment to another; or
- on the appointment of the player; or
- termination of the player's employment,

is exempt from tax.

A transfer that does not result in a change of residence does not fall within the ambit of the exemption.

The value of any residential accommodation provided by the club to the player as result of his or her transfer or relocation will be exempt from income tax, provided that the player is not granted residential accommodation for more than 183 days. As soon as the benefit has been provided for more than 183 days, a taxable benefit arises.

The Commissioner may allow certain settling-in costs, which include expenditure incurred on new school uniforms, the replacement of curtains, motor vehicle registration fees, telephone, and water and electricity connection, to be paid by an employer without any benefit accruing to the employee. To simplify administration, a club may pay an amount equal to one month's basic salary to cover settling-in costs. Additionally, the expenditure that is exempt from tax must be reflected under code 3714 on the player's IRP 5 certificate. In cases where the costs incurred by the club are taxable in the hands of the player, the amount must be reflected under code 3713 on the IRP 5 certificate.

5.9.8 Uniforms

The duties of sports players, especially in team-orientated sports, are of such a nature that they are normally required to wear a uniform whilst competing. In professional sport, the clubs would normally provide the uniform or clothing to the players. Uniforms would include items such as kit worn during matches, formal jackets, training gear, etc.

The value of a uniform or a reasonable uniform allowance is exempt from tax only if –

- the uniform is a special uniform;
- the player is as a condition of employment required to wear the uniform while on duty;
and
- the uniform is clearly distinguishable from ordinary clothing.

Unless **all** of the above conditions are satisfied, the value of the uniforms provided to players is taxable. Employees' tax must be deducted from the player's remuneration or from the allowance if an allowance is paid. The value of the uniform or the allowance amount must be reflected under code 3709 on the player's IRP 5 certificate.

5.10 Deductions pertaining to medical, pension fund and retirement annuity contributions.

5.10.1 Introduction

a) Income tax implications

In respect of medical scheme contributions and non-recoverable expenses the following information must be completed in the player's income tax return:

- The number of members and dependants per month for whom the player has subscribed to a medical scheme.
- The player's contributions to a registered medical scheme.
- The club's contribution to a registered medical scheme.
- Total of non-recoverable medical expenses which can be proved to have been paid for the player, his or her spouse, qualifying children and any dependant admitted as a dependant in terms of the rules of the medical scheme or fund at the time the expenses were paid.

The qualifying deduction will be calculated by SARS.

b) VAT

Normally medical, pension and other benefit schemes are not registered for VAT in so far as they charge subscriptions for providing medical benefits to their members. As the subscriptions or contributions to these benefit funds do not include any VAT, no input tax may be deducted by the club if it pays a subscription for the benefit of a player.

Any medical expenses or fees for hospitalisation paid by the club or provided to any players who are injured on duty (whether provided at the club's medical facility or at a private facility) is regarded as a fringe benefit provided to the player, but a nil value applies. The same applies for meals provided at the workplace for the players. The club will therefore not declare any output tax on the fringe benefit in these cases.

The club will be entitled to deduct any VAT charged or included in the cost of providing medical services to its players as input tax, since this expense is regarded as being in the ordinary course or furtherance of the enterprise (sporting activity). This does not apply to the VAT incurred on any food and beverages acquired to provide players with meals at their place of work as this is specifically denied.

5.10.2 Medical Fund Contributions

a) Persons below the age of 65 years

Allowable deduction for persons below the age of 65 years:

- (a) Contributions to a registered medical scheme for the player, his or her spouse and dependants –
- (i) R625 per month for the player; or
 - (ii) R1 250 per month for the player and one dependant; or
 - (iii) R1 250 per month for the player and one dependant, plus R380 per month for every additional dependant.

The amounts in (i), (ii) or (iii) above, as the case may be, must be reduced by any contributions paid by the club which has not been included as a taxable benefit in the

player's remuneration. Please note that these amounts normally change annually. The amounts set out above are in respect of the 2010 year of assessment.

(b) So much of the total of –

- (i) any contributions made by the player to a registered medical scheme for himself/herself, his/her spouse and dependant which has not been allowed as a deduction in (a) above;
- (ii) actual qualifying medical expenses (including qualifying disability-related expenses) paid by the player and not recoverable from the medical scheme for himself/herself, his/her spouse, qualifying children and any dependant admitted as the player's dependant in terms of the rules of the medical scheme or fund at the time such expenses were paid; and
- (iii) contributions by the club to the medical scheme taxed as a fringe benefit,

as exceeds 7.5% of the player's taxable income before allowing any deduction under (b) above (that is, 7.5% of taxable income after allowing (a) above).

Any amount paid by the club in excess of the amounts in (a) above will be included in the player's income as a taxable benefit.

b) Persons 65 years or older

A player or former player's contributions to a registered medical scheme are taken into account in determining the monthly PAYE liability. No limitation is placed on the allowable deduction and on assessment the player will be entitled to deduct all other allowable medical expenses and disability-related expenses.

c) Persons with disabilities

Only if a player, his or her spouse or their child has a disability as defined in section 18(3) (see below), will the player be allowed to deduct all his or her contributions to a registered medical scheme, qualifying medical expenses and disability-related expenses necessarily incurred and paid.

A disability, in this context, means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, which has lasted for more than a year, and which was diagnosed by a registered medical practitioner. With effect from the 2009-2010 year of assessment, the qualifying expenses are prescribed by the Commissioner.

5.10.3 Pension fund contributions

a) Current contributions

A player's contribution to a pension fund is permitted as a deduction in determining his or her taxable income. This is normally done on a monthly basis when determining the player's PAYE liability. The deduction is limited to the greater of R1 750 or 7.5% of the pensionable salary (that is the portion of a player's income on which the player's pension fund contribution is based.)

The contribution to the pension fund must also be claimed as a deduction in the annual income tax return. The information relating to the player's contribution is reflected under code 4001 on the player's IRP 5 certificate and the club's contribution must be reflected under code 4472. Any pension fund contributions not allowed as a deduction (that is,

contributions in excess of 7.5% of the player's pensionable salary) in the year of assessment in which those contributions were made will be received tax-free when the player subsequently exits from the fund.

b) Arrear pension

Contributions in respect of arrear pension are permitted as a deduction in determining the player's taxable income. The arrear contributions paid are limited to a maximum of R1 800 for a year of assessment.

5.10.4 Retirement annuity fund (RAF) contributions

RAF contributions are also permitted as a deduction in determining the player's taxable income. In cases where it is requested and permitted by the clubs, this is done on a monthly basis when determining the player's PAYE liability. The deduction is limited to the greater of –

- 15% of non-pensionable income; or
- R3 500 less pension fund contributions; or
- R1 750.

Non-pensionable income refers to a player's taxable income that is not taken into account when determining contributions to a pension fund or provident fund.

The RAF contributions must also be claimed as a deduction in the annual income tax return, and declared under code 4006 of the player's IRP 5 certificate. This information is reflected on a certificate from the RAF that reflects the total contributions made by the player to the fund during the year of assessment. Such a certificate can be obtained from the administrator of the retirement annuity fund.

5.11 Other deductions for players

5.11.1 Introduction

Employees who do not earn mainly commission, in other words those who earn mainly salary, allowances and benefits, may only make limited deductions from their income. Section 23(m) provides that only the expenses listed below are permitted as deductions.

5.11.2 Repayable employee benefits

Clubs may sometimes make payments to players that are subject to certain conditions. The payments are fully taxable (and subject to PAYE). Players may thereafter be required to repay the amounts initially received as a result of their failure to remain with the club as required.

In the circumstances where a player is required to repay an amount to the club, and an amount was previously included in his or her taxable income, the amount repaid may be claimed as a deduction in the tax year in which it is repaid. A deduction is only claimable on submission of the annual income tax return.

For example, if a player is paid a retainer of R10 000 in year one, on condition that he or she remains in the employ of the club for two years, and due to him or her leaving the club before the two years have been completed he or she must repay the R10 000, a deduction of R10 000 may be claimed on assessment against the player's taxable income in year two, but only if the player has actually repaid the amount due.

5.11.3 Other deductions permitted for employees

Other deductions permitted to employees include the following:

- Legal expenses under certain (in practice very limited) qualifying circumstances.
- Wear and tear in respect of certain assets purchases by the employee such as a computer required for purposes of employment.
- Home office expenses which relate to rental, repairs and expenses incurred in relation to a dwelling house or domestic premises under certain qualifying circumstances.
- Insurance policy premiums against the loss of income as a result of illness, injury, disability or unemployment, provided the amounts payable under the policy will constitute income.
- Bad and doubtful debts incurred in respect of employment. For example, salary income taxed in the previous year of assessment that was never paid. The outstanding salary may be claimed as a bad debt if proof is submitted that the employer will not be able to pay it.
- Donations to approved charities.

5.12 Skills development levy (SDL)

The SDL scheme is a statutory compulsory levy scheme for the purpose of funding education and training needs in the Republic as envisaged in the Skills Development Act of 1998. It became payable with effect from 1 April 2000. This levy is paid by employers to SARS and goes to Government bodies known as sectoral education training authorities (SETAs) responsible for organising education and training programmes within a specific sector.

The Commissioner is responsible for administering the SDL in so far as it relates to the collection and the payment of the levy by the employers. The leviable amount is the total amount of remuneration paid by an employer to its employees during any month and 1% of the leviable amount is payable to SARS by the employer.

Remuneration paid to employees below the income tax threshold (that is, in those cases where no employees' tax is deducted) must also be incorporated into the remuneration for determining the leviable amount. Small businesses with an annual payroll of less than R500 000 do not need to pay these levies. The SDL is paid with the employees' tax on a monthly basis.

At the time when the SDL was first introduced, the amount payable was regarded as being VAT-inclusive at the standard rate. However, with effect from 1 April 2005, SDL payments are no longer VAT-inclusive, and employers may no longer deduct input tax on such payments. SETAs will also, with effect from 1 April 2005, no longer declare output tax on SDL payments received, as they are regarded as public authorities and are no longer liable to register for VAT. Grants that are paid by SETAs to sports clubs that are employers for the purposes of training their employees are subject to VAT at the zero rate.

5.13 Unemployment Insurance Fund (UIF) contributions

UIF contributions are based on remuneration, as determined for employees' tax purposes, before the deduction of allowable contributions to pension, retirement annuity funds and where applicable, medical contributions. There are exceptions, such as commissions,

pensions and annuities, amounts paid to labour brokers and personal service providers, retirement fund lump sums, and others.

The rate of contribution is 1% by the employer and 1% by the employee on his or her remuneration, and the employer is obliged to withhold the employee's contribution and pay both amounts to SARS. The maximum contribution is R249.56, that is where any employee earns more than R12 478 per month, the contribution is payable only on the first R12 478 and the balance is not subject to the contribution.

Unemployment benefits paid under the Unemployment Insurance Act, No. 63 of 2001 are exempt from tax. The benefits are paid in the following circumstances:

- Ordinary unemployment benefits to unemployed contributors who are capable of and available for work.
- Illness allowance to contributors who are unemployed owing to illness.
- Maternity benefits to female contributors who are unemployed during the pregnancy.
- The spouse or minor child of someone who has died can claim death benefits if the deceased contributed to the fund.

UIF payments do not include any VAT and employers may not deduct input tax on such payments.

5.14 Donations received by clubs and players

5.14.1 Introduction

A *bona fide* donation is a gratuitous donation or gift disposed of by the donor out of liberality or generosity, whereby the donee is enriched and the donor impoverished. It is a voluntary gift which is freely given to the donee and there may be no *quid pro quo*, no reciprocal obligations and no personal benefit for the donor. If the donee gives any consideration at all it is not a donation. A donation which will qualify as a deduction must be made in money (cash) or of property made in kind to the organisation which has been approved in terms of section 18A and must actually be paid or transferred during the year of assessment.

5.14.2 Income tax implications

Donations received by a club or a player will not be taxable because it is regarded as a capital receipt.

[For more information on donations tax, see www.sars.gov.za. Additionally, *The Tax Exemption Guide for Public Benefit Organisations in South Africa (Issue 3) – dated 10 October 2007*, which contains information regarding donations and PBO's, can also be found on the SARS website.]

5.14.3 VAT implications

The term “donation” is defined in section 1 of the VAT Act, and basically has the same characteristics as described in **15.4.1** above. However, for VAT purposes, a donation is a gratuitous payment or donation of goods or services which made to an “association not for gain”. An association not for gain includes a sports club (amongst other entities), and does not necessarily have to be an organisation which has been approved in terms of section 18A of the Income Tax Act. To qualify as a “donation” it is a requirement that the payment made, or the goods or services supplied is completely gratuitous, otherwise it could be regarded as payment (consideration) for goods or services supplied by the recipient.

Generally, the donor will not be entitled to deduct any input tax on any goods, services, or cash donated to an association not for gain. Similarly, the recipient will not charge any output tax on the subsequent supply of any goods or services which it received as a donation.

[For further information regarding donations, refer to the *VAT 414 Guide for Associations not for Gain and Welfare Organisations*.]

6. Taxation of foreign income

As from 2001, South Africa moved from a source-based income tax system to a residence-based income tax system. Taxpayers who are residents of South Africa are (subject to certain exclusions) taxed on their worldwide income, irrespective of where the income is earned. Companies are considered to be resident in South Africa if they are incorporated, established, formed or effectively managed in South Africa. However, source continues to be relevant since persons who are not resident in South Africa are subject to tax in South Africa on all income which is deemed to be from a South African source.

Over the years, South Africa has entered into a number of agreements concerning the avoidance of double taxation (DTAs) with various countries, which are aimed at regulating the taxation of income which is earned in one country and subject to tax in both countries. The main objective of a DTA is to avoid double taxation. Section 6quat provides for the claiming of foreign taxes paid by a taxpayer as a credit against its South African tax liability. Additionally, it also provides for a deduction from taxable income of foreign taxes which do not qualify for a tax rebate. Noted that the section 6quat rebate or deduction is granted in substitution for the relief to which a resident would be entitled to under a double taxation agreement, and not in addition to such relief.

[For more information on the deduction of foreign taxes, see *Interpretation Note No. 18 (Issue 2) – 31 March 2009 Income tax: Section 6quat: Rebate or deduction for foreign taxes on income* on www.sars.gov.za.]

7. Taxation of foreign sportspersons

7.1 Introduction

As more and more international entertainers and sportspeople travel to South Africa to perform, SARS has introduced new legislation which seeks to tax the earnings of foreign artists and sportspersons.

The tax implications for foreign artists and sportspersons are briefly discussed below. For more information the Office of Non-Resident Entertainers and Sportspersons can be contacted at (011) 602 4503 or (011) 602 2967.

7.2 Income tax implications

According to the provisions of sections 47A to 47K, amounts paid to foreign sportspersons for specified activities in South Africa are subject to a withholding tax at a flat rate of 15%. Specified activities include any personal activity carried out in South Africa by a sportsperson either alone or with other people. The Act requires that any resident who is responsible to pay a foreign sportsperson, must withhold the tax from that payment and pay it over to SARS. Failure to comply with this requirement could result in the resident being held personally liable for the payment of the tax.

Under this section, withholding tax does not apply to players who are employees of a resident South African employer (such as non-resident players contracted to play for a South African club for a period of time), or to players physically present in South Africa for more than six months in a year. These people will be subjected to normal tax. There is also an obligation on any resident who is primarily responsible for founding, organising or facilitating a specified activity in South Africa to notify SARS of such activities.

7.3 VAT implications

As mentioned above, VAT is levied at the standard rate on the supply of goods and services in the Republic. A non-resident person (for example, a sports club or an independent contractor) who carries on an enterprise or activity in the Republic, must register and charge VAT for supplies made in the Republic where the value of taxable supplies in any 12-month consecutive period exceeds the compulsory VAT registration threshold (currently R1 million). However, this will only apply if the club or person carries on the enterprise activity continuously or regularly. Whether the activities of the person or club in the Republic are of a continuous or regular nature will depend on the facts and circumstances of the case.

8. Conclusion

This guide is meant to provide clarity to some of the issues and situations experienced by sports clubs and sportspersons in South Africa. As not every situation can be address exclusively, the guide tries to address those matters most commonly experienced. Note that each case has to be considered independently and on the facts of that particular case when deciding on the taxability of a specific aspect. Further information can be obtained from the SARS website www.sars.gov.za and from SARS offices nationwide.

Annexure A – Scale of rates per kilometre applicable for the 2009/10 tax year

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenance cost
R	R	c/km	c/km
0-40 000	14 672	58.6	21.7
40 001-80 000	29 106	58.6	21.7
80 001-120 000	39 928	62.5	24.2
120 001-160 000	50 749	68.6	28.0
160 001-200 000	63 424	68.8	41.1
200 001-240 000	76 041	81.5	46.4
240 001-280 000	86 211	81.5	46.4
280 001-320 000	96 260	85.7	49.4
320 001-360 000	106 367	94.6	56.2
360 001-400 000	116 012	110.3	75.2
exceeding 400 000	116 012	110.3	75.2

Note: As the above scale of rates per kilometre are based on the value of the vehicle, the taxpayer must determine the value of his or her vehicle in accordance with one of the following methods:

- (i) where the vehicle was acquired under a bona fide agreement of sale or exchange, the original cost thereof to the player, including any value-added tax paid but excluding any finance charges or interest payable in respect of the acquisition thereof; or
- (ii) where the vehicle is held under a financial lease (i.e. for a period of at least 12 months and the taxpayer accepts the full risk of destruction or loss and liability for insurance and maintenance of the vehicle) or was held by a taxpayer under a lease and he or she acquired ownership on termination of the lease, the cash value thereof as determined for value-added tax purposes, plus any value-added tax paid by the lessor; or
- (iii) in any other case, the market value of the motor vehicle at the time the taxpayer first obtained the vehicle or the right of use thereof, plus any value-added tax payable on that value.

The fixed cost must be reduced on a pro-rata basis if the vehicle is used for business purposes for less than a year.