PAYE and Fringe benefit
Definitions - Employer Par 1 – Fourth Schedule

Employer (Par 1 of Fourth Schedule)

*Any person* who *pays or is liable to pay* to *any person* any amount by way of *remuneration*.

- Including an executor or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund.
- Including any person who is responsible for the payment of remuneration to any person under the provisions of any law or out of public funds or out of funds voted by Parliament or a provincial council.
- NB ‘Person’ is defined in s1
Definitions - Employee Par 1 – Fourth Schedule

Employee (Par 1 of Fourth Schedule)

- **Any person**, other than a company, who receives or to whom remuneration accrues (*taken to include directors of public companies*).
- A person who receives remuneration by reason of services rendered by that person to or on behalf of a ‘labour broker’.
- A labour broker (LB).
- A personal service provider.
- Director of a private company.
- A person or a class or category of persons whom the Minister of Finance declares to be an employee for the purposes of the definition by notice in the Government Gazette (referred to as a ‘declared employee’).
Definitions

- **Employer**
  - Person paying or liable to pay

- **Employee**
  - Person receiving

- Remuneration
Definitions – Remuneration Par 1 – Fourth Schedule

• Amount of **Income**
• paid or payable
• to any person
• by way of any:
  • salary or wages
  • leave pay or allowances
  • bonus or gratuity
  • overtime pay
  • commissions or fees
  • emoluments or pensions
• whether in cash or otherwise, and
• whether or not for services rendered
Remuneration specifically includes:

GI (a) – Annuities from an employer, including s10A annuities;

GI (c) - Any amount including voluntary awards received for services rendered or to be rendered;

GI (cA) – Restraint of trade payment (labour broker (no exemption certificate) or personal service provider
GI (cB) – Restraint of trade payment to a natural person

GI (d) – Lump sums received from employers (gross amount);
Remuneration specifically includes:

(e) – Retirement fund lump Sums

GI (eA) – Amounts from Public Sector Pension Funds

GI (f) – Amounts received in commutation of amount under employment contract

(i) – Fringe Benefits (Cash Equivalent as determined per the 7th Schedule)
Remuneration specifically includes:

- s8 – Allowances
- Section 8B Gain
- Section 8C Gain
- S7(11) Amounts received in terms of a maintenance order
Remuneration Continued

Remuneration specifically excludes:

• Payments to “independent contractors” (see slides on independent contractors)

• Disability pensions.

• Reimbursements
  • Paid by employer to employee in course of his employment of expenditure actually incurred.

• Annuity in terms of a divorce order.
  • other annuities, purchased or earned are included – paragraph (a) above
PART-TIME EMPLOYMENT Silke
13.7

- less than 22 hours per week; or
- without reference to any period

Subject to PAYE at 25%

Full-time students or scholars employed on a casual basis:
- 25% PAYE on part-time earnings
- does not apply to students/scholars in standard employment
  - (for example vacation work of more than 22 hours per week).

If employee is not in standard employment, works at least 5 hours per day at less than R270 per day, no employees’ tax is deducted.
Independent Contractor

Independent contractor?

Person who receives an amount in respect of services rendered in the course of a trade carried on by him independently from the person to whom the services are rendered.

For example the auditor or plumber
Definitions

- **Employer**
  - Person paying or liable to pay

- **Independent Contractor**
  - Not remuneration.
  - Therefore no employees’ tax.

- **Remuneration**
  - Person receiving
Independent Contractor

When is a trade being carried on independently?

A person will be deemed NOT to be carrying on a trade independently if:

• Services are required to be rendered mainly at the premises of the person to whom the services are rendered; and

• Person is subject to control or supervision of any other person as to the manner in which the services are performed or as to his hours of work.

• However if:

• Person employed 3 or more full time employees (excluding connected persons) engaged in that person’s business, throughout the year of assessment, then that person IS an independent contractor.

Interpretation Note 17 (further guidance)
Independent Contractor

• The following are **not** Independent Contractors:

  - A non-resident;
  - A person who has been declared to be an employee by the Minister of Finance by notice in the Gazette;
  - An employee who is a labour broker or who works for a labour broker; or
  - Personal Service Provider.
Labour Broker

The definition of an Employee includes:

- A Labour Broker

A Labour Broker is defined in Par 1:

- **NATURAL PERSON** who conducts or carries on business
- Providing clients with persons to perform work, for reward or
- Procuring (obtaining) workers for clients, for reward.

The labour broker then pays those persons by way of remuneration.
Labour Broker

Short-term employment:
• Good for client
• Not always good for employee

Client

Labour Broker

Employees of Labour Broker
Client Pays Labour Broker

Labour broker

Pays employees

Employee

Natural person!!!
Labour brokers

• From **1/03/2009** labour brokers NO longer include **companies, close corporations or trusts** (only natural persons).

• These entities are now dealt with in the definition of a ‘**personal service provider**’ (dealt with later).

• A labour broker **can** operate as a sole trader or partnership.

• **IF not** in the possession of a valid **IRP 30 certificate:**
  - The labour broker is treated as an employee and employees’ tax must be withheld on any amount paid to them.
  - The labour broker’s deductions are limited by s 23(k).
If no IRP30 exemption certificate:

Pays amount subject to employees’ tax using table for natural persons

Renders service

Labour broker

Pays amount subject to employees’ tax

Employee

Employees’ tax will essentially be withheld twice. The labour broker’s deductions are also limited by s 23(k)
Labour Brokers – IRP 30 (Par 2(5))

Requirements for IRP30 exemption certificate:

• Must be an Independent trader

• Registered as a provisional taxpayer

• Must be a registered employer

• Tax affairs up to date (submitted all required returns)

• Does not derive >80% of GI from one client (the 80% test does not apply if LB employs 3 or more full time employees who are not connected persons)

• May not provide the services of another labour broker to a client

• Must not be contractually obliged to provide a specified employee to the client.
Personal Service Provider

Employer

Employer
Personal Service Provider – Definition Par 1

• Any company or trust (note NOT an individual), and -

• The services are rendered personally by a person who is connected to the company or trust, and -

• The company or trust does not have 3 or more full-time employees (do not take employees that are shareholders or members of the company or trust and any of their connected persons into account), and-

AND
Personal Service Provider – Definition Par 1 Continued

• The person rendering the service to the client would have been regarded as an employee of the client if the service was rendered directly to that client; or

• Where the duties of the service must be performed mainly at the premises of the client, the person or company or trust is subject to the control or supervision of the client relating to the manner in which the services are performed; or

• Where more than 80% of the income of the company or trust during the year of assessment, from services rendered, consists or is likely to consist of amounts relating to one client.

If any of these criteria are met the company or trust will be a ‘personal service provider’ as defined.
Personal Service Provider

- Any remuneration paid to a Personal Service Provider as defined is subject to the withholding of employees’ tax at a rate of **28%**, unless a directive for a lower tax rate is provided to the employer (if the PSP is a trust, the rate is 41%(2017) and 45%(2018)).
Fringe benefits and allowances
Allowances

- Travel allowances (s8(1)(b))
- Subsistence allowances (s8(1)(c))
- Public officer allowances (s8(1)(d))
THE GENERAL RULE (S 8(1))

- Section 8 provides that the **net amount** (that is the amount of the allowance less allowable expenditure for business purposes) of the following allowances must be included in **taxable income**:
  - Travel Allowance
  - Subsistence Allowance
  - Allowances to Public Officers

- In the case of **any other allowance**, the **gross** amount will be included in taxable income.
The general rule (s 8(1))

Exception to the rule (s 8(1)(a)): **reimbursements or advances** are not included in taxable income in the case where:

- The expense is to be or was incurred at the **instruction** of the **principal** for the **furtherance of his trade**,
- The amount is **reimbursed** or an advance is given for the expense; and
- The individual has to provide **proof** to the principal that the expense was so incurred.

For example: Bob is told by his employer to buy some paper for the printers at the office. Bob pays R800 for the paper with his own money. When Bob got back to the office, he gave the paper and the receipt to his boss who immediately gave him R800 cash as repayment for the amount paid.
Travel allowances

- In order to calculate the net amount, there needs to be distinguished between **two types** of travel allowances:
  - Fixed Travel Allowance
  - Reimbursive travel allowance
## Travel allowances

<table>
<thead>
<tr>
<th><strong>Fixed Travel Allowance:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- For example, Employer A pays Mr H a fixed monthly amount of R3 000 as an allowance for travel expenses incurred by him.</td>
</tr>
<tr>
<td><strong>Reimbursement based on actual business kilometers</strong> ('Reimbursive Travel Allowance'):</td>
</tr>
<tr>
<td>- For example, Mr N travels 25km from his office in Sunninghill to a client in Sandton every day.</td>
</tr>
<tr>
<td>- At the end of the month, he submits a claim form to his employer for the actual number of kilometers travelled, being 500km for the month (20 working days times 25km per day).</td>
</tr>
<tr>
<td>- The employer paid him an amount of R2,50 per kilometer (R1 250 in total) based on the employer’s policy for travel expense claims.</td>
</tr>
</tbody>
</table>
How do I calculate the business costs to get to the net amount of the travel allowance?
PRIMARY INFORMATION TO BE FURNISHED BY A TAXPAYER AS REQUIRED BY SARS

Opening kilometers at the beginning of the year of assessment

Closing kilometers at the end of the year of assessment

DAILY BUSINESS TRAVEL RECORDS

<table>
<thead>
<tr>
<th>Date</th>
<th>Kilometre Recording</th>
<th>Total Business Kms</th>
<th>Business Travel Details</th>
<th>Actual Fuel Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Opening Kilometres</td>
<td>Closing Kilometres</td>
<td>From</td>
<td>To</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reason</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GRAND TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Which one will the taxpayer choose?
Deemed Cost Per Kilometer

Deemed cost per kilometer = Fixed Cost Component + Fuel Cost Component + Maintenance Cost Component
Deemed Cost Per Kilometer

In order to calculate the fixed cost per kilometer, the “value” of the vehicle must be determined.

The “value” for this purpose is:

• Where the vehicle was acquired under a bona fide agreement of sale or exchange, the original cost, including VAT but excluding any finance charges.

• Where the vehicle is held under a lease contemplated in par (b) of the definition of ‘instalment credit agreement’ in s1 of the VAT Act or was held by him under a lease where ownership transferred to him at the termination of the lease, the cash value per s1 of the VAT Act.

• In any other case, the market value of the vehicle at acquisition date or date when the right of use was first obtained, plus VAT on the market value.
Deemed Cost Per Kilometer

Once the “value” has been determined:

- **Fixed cost** from table *divided* by the **total** kilometers travelled for **both private and business** use *(apportioned per day (x/365) if travel allowance received for less than a year)*

Plus

- **Fuel Cost Component** per table *(only IF the recipient bore the full cost of fuel)*

Plus

- **Maintenance Cost Component** per table *(only IF the recipient bore the full cost of maintenance)*
## Travel Allowance 2017 YOA

<table>
<thead>
<tr>
<th>Value of the vehicle (including VAT)</th>
<th>Fixed cost</th>
<th>Fuel cost</th>
<th>Maintenance cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>R</td>
<td>R per annum</td>
<td>c per km</td>
<td>c per km</td>
</tr>
<tr>
<td>0 – 80 000</td>
<td>26 675</td>
<td>82.4</td>
<td>30.8</td>
</tr>
<tr>
<td>80 001 – 160 000</td>
<td>47 644</td>
<td>92.0</td>
<td>38.6</td>
</tr>
<tr>
<td>160 001 – 240 000</td>
<td>68 684</td>
<td>100.0</td>
<td>42.5</td>
</tr>
<tr>
<td>240 001 – 320 000</td>
<td>87 223</td>
<td>107.5</td>
<td>46.4</td>
</tr>
<tr>
<td>320 001 – 400 000</td>
<td>105 822</td>
<td>115.0</td>
<td>54.5</td>
</tr>
<tr>
<td>400 001 – 480 000</td>
<td>125 303</td>
<td>132.0</td>
<td>64.0</td>
</tr>
<tr>
<td>480 001 – 560 000</td>
<td>144 784</td>
<td>136.5</td>
<td>79.5</td>
</tr>
<tr>
<td>Exceeding 560 000</td>
<td>144 784</td>
<td>136.5</td>
<td>79.5</td>
</tr>
</tbody>
</table>
## Travel Allowance 2018 YOA

<table>
<thead>
<tr>
<th>Value of the vehicle (including VAT)</th>
<th>Fixed cost</th>
<th>Fuel cost</th>
<th>Maintenance cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>R</td>
<td>R per annum</td>
<td>c per km</td>
<td>c per km</td>
</tr>
<tr>
<td>0 – 85 000</td>
<td>28 492</td>
<td>91.2</td>
<td>32.9</td>
</tr>
<tr>
<td>85 001 – 170 000</td>
<td>50 924</td>
<td>101.8</td>
<td>41.2</td>
</tr>
<tr>
<td>170 001 – 255 000</td>
<td>73 427</td>
<td>110.6</td>
<td>45.4</td>
</tr>
<tr>
<td>255 001 – 340 000</td>
<td>93 267</td>
<td>118.9</td>
<td>49.6</td>
</tr>
<tr>
<td>340 001 – 425 000</td>
<td>113 179</td>
<td>127.2</td>
<td>58.2</td>
</tr>
<tr>
<td>425 001 – 510 000</td>
<td>134 035</td>
<td>146.0</td>
<td>68.4</td>
</tr>
<tr>
<td>510 001 – 595 000</td>
<td>154 879</td>
<td>150.9</td>
<td>84.9</td>
</tr>
<tr>
<td>Exceeding 595 000</td>
<td>154 879</td>
<td>150.9</td>
<td>84.9</td>
</tr>
</tbody>
</table>
Actual Cost Per Kilometer

**Travel costs** (including fuel, maintenance, insurance, finance costs, license costs and other similar costs)

**Lease payments** (only if vehicle is leased) [the total payments for the year may not exceed the appropriate category's “fixed costs” in the Appendix C table]

**Wear and Tear** (only if owned) [Over a period of seven years from date of acquisition. The total cost is limited to R560 000 (2018: R595 000) and the finance charges are limited to an amount as if the total debt had not exceeded R560 000(2018: R595 000)]

Actual cost per kilometer

Total kilometers travelled (business and private)
Actual Cost Per Kilometer

The actual cost per kilometer is calculated by dividing the following by total kilometers travelled:

- **Travel costs** (including fuel, maintenance, insurance, finance costs, license costs and other similar costs)

Plus

- **Lease payments** (only if vehicle is leased) [the total payments for the year may not exceed the appropriate category’s “fixed costs” in the Appendix C table]

Or

- **Wear and Tear** (if owned) [Over a period of seven years from date of acquisition. The total cost is limited to R560 000 (2018:R595 000) and the finance charges are limited to an amount as if the total debt had not exceeded R560 000 (2018 : R595 000)]
Net Amount
Reimbursive Travel Allowance

- Actual cost per kilometer
- Deemed cost per kilometer
- Simplified rate per kilometer

OR

- Actual Business Kilometers
- Actual Business Kilometers
- Actual Business Kilometers
Reimbursive Travel Allowance

If the travel allowance is a **reimbursive allowance**:

- Follow the **same principles** as for a fixed travel allowance, only now there is **a third option IF**:
  - The total business kilometers travelled do not exceed **8 000 km (2018 : 12 000km)** during the year of assessment; and
  - No other travel allowance or reimbursement is paid by the principal to the employee.

- **Then**: the taxpayer may elect to use 329 cents (2018 : 355 cents) per kilometer as the cost per kilometer.
Reimbursive Travel Allowance

Important to note:

- Where **more than one vehicle** was used during the year of assessment the distance travelled for both in total may not exceed 8 000 km (2018 : 12 000km) for business purposes.

- If both fixed and reimbursive travel allowances are received, both amounts will be **combined** on assessment and treated as a **fixed travel allowance**. The simplified method can **not** be used in this case.
Travel Allowance

Important to note:

S8(1)(a)(i)(aa) If an employee receives a travel allowance and enjoys the right of use of an employer provided vehicle (par 7 of the Seventh Schedule):

- The **full** allowance is included in income (in other words, not the net amount)
- **No deductions** are allowed against the allowance.
- The fringe benefit is taxed in terms of par 7 of the Seventh Schedule (see slides relating to right of use of a motor vehicle).
Anti-avoidance s8(1)(b)(iv)

- If a vehicle has been acquired or hired by the taxpayer, his spouse or child and is then let to the employer who gives the right of use to the employee, the rentals paid are treated as a travel allowance. The employee will be able to offset this allowance with expenditure incurred using one of the methods indicated above.

- (NO fringe benefit results, NO tax on “rental income”, NO deduction for rent paid on vehicle (if leased), amount received treated as normal travel allowance)
Travel Allowance

- Important to note s8(1)(b)(i)
  - Private travel includes travelling between his or her place of residence and
  - His or her place of employment or business or
  - Any other travelling done for his or her private or domestic purposes
Employees’ Tax

- 80% of a fixed travel allowance is included in remuneration
- Only 20% of a fixed travel allowance is included in remuneration if the employer is satisfied that at least 80% of the use of the motor vehicle for the year of assessment will be for business purposes.
Employees’ Tax

- A reimbursive travel allowance is not subject to employees’ tax.

- However the unexpended portion may be subject to normal tax when the employee’s income tax assessment is finalised.

- To facilitate and simplify the calculation and administration of employees’ tax, it was proposed in the 2017 Budget Speech, that only the portion of travel expenses reimbursed by an employer that exceeds the rate or distance fixed by the Minister of Finance by notice in the Gazette in terms of the current law should be regarded as remuneration for the purposes of determining employees’ tax.
Subsistence allowances s 8(1)(c)

A subsistence allowance is typically granted to an employee who is required to travel for business purposes (example: out-of-town audit). The allowance can cover costs relating to accommodation, meals or other incidental costs.

Where that employee is required to be away from his normal place of residence in SA for at least one night for business purposes, a deduction may be claimed against such an allowance.

As in the case of a travel allowance, only the net amount of the allowance is included in taxable income.

The deductions allowed are limited to the amount of the allowance.
Subsistence allowances s 8(1)(c)

Deductions against subsistence allowance

CHOOSE EITHER OR

Expenditure actually incurred for accommodation, meals or other incidental costs. (Requires valid supporting documentation)

Where proof of expenditure cannot be provided, an amount based on the rates approved by the Commissioner.
Subsistence allowances s 8(1)(c)

The 2017 YOA applicable rates are:

For travel **within South Africa**

<table>
<thead>
<tr>
<th>Rate per day</th>
<th>Covering</th>
</tr>
</thead>
<tbody>
<tr>
<td>R115</td>
<td>Incidental costs only</td>
</tr>
<tr>
<td>R372</td>
<td>Meals and incidental costs</td>
</tr>
</tbody>
</table>

For travel **outside South Africa**:

If the allowance is granted to cover the cost of **meals and incidental costs**, then the amount allowable as a deduction is determined in terms of a table providing the different rates based on the country of the accommodation.
Subsistence allowances s 8(1)(c)

The 2018 YOA applicable rates are:
For travel within South Africa

<table>
<thead>
<tr>
<th>Rate per day</th>
<th>Covering</th>
</tr>
</thead>
<tbody>
<tr>
<td>R122</td>
<td>Incidental costs only</td>
</tr>
<tr>
<td>R397</td>
<td>Meals and incidental costs</td>
</tr>
</tbody>
</table>

For travel outside South Africa:
If the allowance is granted to cover the cost of **meals and incidental costs**, then the amount allowable as a deduction is determined in terms of a table providing the different rates based on the country of the accommodation.
Subsistence allowances s 8(1)(c)

- Note that there is no “deemed rate” for accommodation. If the employee cannot prove the expense, no deduction can be claimed against the subsistence allowance.

- The deemed rates apply for each day or part of a day that the employee is required to be away from his usual place of residence in South Africa (subject to the “one night” rule).

- Remember that the employee will choose the most beneficial of the actual cost vs the deemed rates.

- Where the employee is not required to spend at least one night away from his usual place of residence in SA, the gross amount of the allowance will be included in gross income.
Subsistence allowances s 8(1)(c)

- Note that the costs in the table for travel outside South Africa are indicated **per day** and denominated in **foreign currency**.

- These amounts must therefore be **translated to Rand** using the principles in s 25D.

- If the **employee has not**, by the **last day** of the **month following the payment** of a subsistence allowance, either spent a night away from his usual residence or paid the allowance back to the employer, the amount will be deemed to be an amount received for **services rendered** and **included in gross income** under par (c) of the definition. (Proviso to subpar (ii) of par (bA) of the definition of ‘remuneration’ in the Fourth Schedule).
Employees’ Tax

- Subsistence allowances are excluded from the definition of remuneration therefore no employees’ tax is deducted from a subsistence allowance.

- If the employee has not by the last day of the month following the payment of the subsistence allowance, either spent a night away from his usual place of residence or paid back the subsistence allowance to his employer, it will be regarded as remuneration and subject to employees’ tax.

- In this instance it is not a subsistence allowance and will be regarded as services rendered (par c).
Allowances to holders of a public office

- s 8(1)(e) defines a holder of public office. The list includes officials in the local, provincial and national spheres of government as well as the CEO or chairman of a non-profit organization. Refer to the section for more details.

- s 8(1)(d) provides a list of expenditure which, if incurred for the purpose of his office, can be offset against an allowance paid to the holder of that public office for such expenditure.

- The list includes items such as stationery, postage, secretarial services, travelling and telephone calls.

- If the person is required to pay for these expenses out of their salaries, a portion of their salaries is deemed to be a subsistence allowance R120 000. (s8(1)(f)). The R120 000 is apportioned if the public office is held for less than a year.

- Only the net amount of the allowance will be included in the taxpayer’s income.
Employees’ Tax

- 50% of a public officer’s allowance is included in remuneration.
- However disclosure of the entire 100% allowance on the IRP5
Seventh Schedule
Fringe Benefits
Fringe Benefits (7\textsuperscript{th} Schedule)

- Par (i) of the definition of Gross Income includes the "\textit{cash equivalent}" of the value of any benefit granted as determined under the provisions of the Seventh Schedule.
Introduction

The Seventh Schedule deals with the following Fringe Benefits:

• Acquisition of an asset at less then market value
• Right of use of an asset
• Right of use of a motor vehicle
• Meals and refreshments
• Residential Accommodation
• Free or cheap services
• Benefits in respect of interest on debt
• Subsidies in respect debt
• Contributions to benefit funds
• Medical Costs
• Benefits in respect of insurance policies
• Contributions made by employers to retirement funds
• Payment of employee debt
Introduction

- The Seventh Schedule is only applicable where an employer/employee relationship exists.

- “Employer” and “employee” are defined in the Fourth Schedule (which deals with Employees’ Tax).

- Essentially an employee is anyone who receives remuneration as defined in the Fourth Schedule from an employer. An employer is anyone who is liable to pay such remuneration.
Introduction

- A **retired employee** who receives fringe benefits from his previous employer will be **liable for tax** on those benefits as they constitute remuneration as defined.

- Any benefit granted to any **other person** (for example their spouse or child) as a result of the employee’s services rendered to the employer will be taxed in the hands of the employee who rendered the services (par 16).

- Taxable benefits exclude amounts that are exempt in terms of section 10 (par 1 definition of taxable benefit).

- A partner in a partnership is deemed to be an employee of the partnership for purposes of the Seventh Schedule (par 2A).
Introduction

- Any fringe benefit that is granted by an “associated institution”, which typically includes a company managed or controlled by substantially the same persons (see definition in par 1), is deemed to be granted by the employer themselves (par 4).

- “associated institution” in relation to any single employer means –
  
  (a) Where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or

  (b) Where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or

  (c) Any fund established solely or mainly for providing benefits for employees or former employees of the employer...
Introduction

The employer is obliged to do the following (paragraphs 17 & 18):

• Determining the cash equivalent of the value of a taxable benefit in terms of the Seventh Schedule.

• To issue a certificate within 30 days of the end of the year of assessment or from the date on which the benefit has been granted, indicating the nature of the benefit as well as the value that has been attached to the benefit.

• Provide both the employee and the Commissioner with a copy of this certificate.

• If the employer fails to do this, a fine of 10% of the cash equivalent of the benefits will be levied.

• However, if the fringe benefit was included in the Employees’ Tax calculation of the employee, no such certificate is required to be issued.

• Declare on their return that all taxable benefits granted to employees have been declared on their employees’ tax certificates.
Assets acquired below market value – par 2(a) and 5

Any asset (property of any nature) acquired by the employee from the employer for no consideration or for a consideration less than market value (par 2(a)).

Excluding:

- Money
- Meals and lodging benefits dealt with in par 2(c) & (d)
- Marketable Securities s8A
- Qualifying Equity Shares s8B
- Equity Instruments s8C
## Assets acquired below market value – par 2(a) and 5

<table>
<thead>
<tr>
<th>Rule</th>
<th>Value of benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Rule</td>
<td>Market value on the date the asset is acquired by the employee</td>
</tr>
<tr>
<td>If the asset is movable and was acquired by the employer specifically to provide it to the employee</td>
<td>Cost of the asset to the employer</td>
</tr>
<tr>
<td>If the asset is the employer's trading stock</td>
<td>Lower of cost and market value</td>
</tr>
<tr>
<td>If the asset is a marketable security</td>
<td>Market Value</td>
</tr>
<tr>
<td>If the employer had right of use before acquiring ownership of the asset</td>
<td>Market Value</td>
</tr>
</tbody>
</table>
Assets acquired below market value – par 2(a) and 5

- If the asset is awarded for long service or bravery:

- The value must be reduced by the lesser of R5 000 or the cost to the employer.

- “Long service”: initial unbroken service period of 15 years and subsequent unbroken 10 year service periods.

- In general, the “cost” and “market value” of assets will exclude VAT if the employer is a vendor (unless a provision in the VAT act prohibits the claiming of VAT).
Assets acquired below market value – par 2(a) and 5

- Fuel or lubricants for use in a motor vehicle of which the employee has right of use.

No value

Immovable property, unless:
- Remuneration proxy (see later slides) of employee exceeds R250 000;
- Market value on date of acquisition exceeds R450 000; or
- Employee and employer are connected persons.
The cash equivalent = (value determined in terms of par 2(a) and 5 of the Seventh Schedule – any consideration paid by the employee) is subject to employees’ tax
Right of use of assets – par 2(b) and 6

A fringe benefit arises if an employee is granted the right of use of an asset for a consideration that is less than the value thereof.

Excluding:

• Right of use of a motor vehicle   par 7
• Right of use of residential accommodation   par 9
## Right of use of assets – par 2(b) and 6

<table>
<thead>
<tr>
<th>Rule</th>
<th>Value of benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Where the asset is leased by the employer</td>
<td>The amount of the <strong>rental payable</strong> for the period that the employee has the right of use of the asset</td>
</tr>
<tr>
<td>(b) Where the asset is owned by the employer</td>
<td><strong>15% per annum</strong> on the <strong>lower</strong> of the <strong>cost</strong> to the employer or the <strong>market value</strong>.</td>
</tr>
<tr>
<td>Proviso to (b): Provided that where the employee has the <strong>sole right of use</strong> of the asset over a <strong>major portion</strong> of the asset’s <strong>useful life</strong></td>
<td>The value shall be the <strong>cost</strong> of the asset to the employer.</td>
</tr>
</tbody>
</table>

- The employee may deduct costs incurred on the maintenance or repairs of the asset against the value of the fringe benefit (par 6(1)).
Right of use of assets – par 2(b) and 6

(a) Private use of asset is merely incidental to the use thereof for business purposes; or
(b) Asset is provided as an amenity to be enjoyed for recreational purposes at the employer’s place of work or at a place of recreation provided by the employer for use of his employees in general; or
(c) Equipment or machine that can be used by employees in general for short periods and value of private use is negligible; or
(d) Telephone or computer used mainly (>50%) for business; or
(e) Books, literature, recordings or works of art.
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(b) and 6 of the Seventh Schedule – any consideration paid by the employee or any amount spent by the employee on the repairs or maintenance of such asset) is subject to employees’ tax (calculated monthly)
Right of use of a motor vehicle – par 2(b) and 7

A fringe benefit arises if an employee is granted the right of use of a motor vehicle (par 2(b)).

Where an employer transfers his rights and obligations under a lease to an employee, the employer shall be deemed to have granted the right of use of the motor vehicle to the employee for the remainder of the lease period.

- Any rentals that become payable by the employee will be deemed to be considered payable by him for the said right of use.
- Determined value must be determined in accordance with subpar 1(b) (see next slide).
Right of use of a motor vehicle – par 2(b) and 7

How is the cash equivalent calculated?

- The cash equivalent is determined in accordance with the provisions of paragraph 7.
- The cash equivalent of the taxable benefit is:
  - the **value of private use** as determined under para 7 **less**
  - any **consideration** given by the employee to the employer for the use of the motor vehicle during that period **other than** consideration in respect of the cost of the license, insurance, maintenance or fuel in respect of such vehicle.
## Right of use of a motor vehicle

<table>
<thead>
<tr>
<th>Vehicle obtained by employer:</th>
<th>Determined Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease under par (b) of Installment Credit Agreement in s 1 of the VAT Act</td>
<td><strong>Cash Value</strong> (as per section 1 of the VAT Act)</td>
</tr>
<tr>
<td>Any other case (excluding operating lease in terms of s23A)</td>
<td><strong>Retail Market Value</strong> (excluding any interest or finance charges) but usually including VAT (See Regulation R.362 dated 23 April 2015 contains provisions relating to “Retail market value issued in this regard)</td>
</tr>
</tbody>
</table>

The determined value is reduced by **15% per year** (reducing balance method) for every **completed 12 month** period between the date of acquisition by the employer and the date of granting the right of use to the employee.

Where the vehicle is obtained by the employer from an **associated institution** and the employee had enjoyed the right of use before the acquisition by the employer, the determined value shall be the determined value at the date the **employee first obtained the right of use**.
# Right of use of a motor vehicle

<table>
<thead>
<tr>
<th>Value of private use</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Rule</strong></td>
<td>3.5% of ‘determined value’</td>
</tr>
<tr>
<td>Where the motor vehicle is the subject of a maintenance plan at the time of acquisition by the employer (or when right of use was obtained by employer)</td>
<td>3.25% of ‘determined value’</td>
</tr>
<tr>
<td>Operating lease as defined in 23A(1) at arm’s length between non-connected persons</td>
<td>Actual cost to employer plus fuel costs (here “determined value” is irrelevant)</td>
</tr>
</tbody>
</table>

- The value determined above is a **monthly value** and must be **multiplied by the number of months** that the employee had the right of use of the motor vehicle.
- Where the right of use extends over a period that **does not cover a full month**, the **number of days** in that month must be used to apportion the value for **that month i.e. 15/31**
Right of use of a motor vehicle

‘Maintenance Plan’ (par 7(11)):

Contractual obligation undertaken by a provider in the ordinary course of trade with the general public to underwrite the costs of all the maintenance of that vehicle, other than top-up fluids, tyres or abuse of the vehicle;

- For a period of not less than 3 years;
- And a distance travelled of not less than 60 000 km.
Right of use of a motor vehicle

Temporary non-use: (para 7(5))

**No reduction** in the value is made if the vehicle in question was during any period for **any reason temporarily not used** by the employee for private purposes.
What if the employee is granted the right of use of more than one motor vehicle by their employer?
Right of use of a motor vehicle

Normally where **more than one vehicle** is being used, the calculation of the cash equivalent is simply done for each vehicle separately;

Unless par 7(6) applies:

When an employee is given the use of **more than one** motor vehicle at the same time, **all used primarily for business purposes (>50% per log book)**, then the taxable value is calculated with reference to the vehicle with the highest ‘determined value’. So instead of doing a calculation for each vehicle separately, you simply calculate the value of the benefit for the vehicle with the highest determined value.

Note, this provision does not apply if either par 7(7) or par 7(8) are applied (see next slide).

Right of Use and Travel Allowance: No Travel Allowance Deduction
Par 7(7) and 7(8) reductions
Right of use of a motor vehicle

Reduction of assessment for actual kilometers travelled (para 7(7)):

Where a logbook is kept of actual business kilometers travelled:

The value of private use, must be reduced in the proportion of business kilometers to total kilometers travelled.
Right of use of a motor vehicle

Reduction on assessment for actual expenditure (7(8))

Where a logbook is kept of actual **private kilometers** travelled and the employee bears the **full cost** of any of the following:

- License, insurance, maintenance; or
- Fuel (for its private use);

then reduce the value of private use as follows:

<table>
<thead>
<tr>
<th>Full cost paid by employee</th>
<th>Reduce value of private use by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of license, insurance, maintenance</td>
<td>Cost x private km / total km</td>
</tr>
<tr>
<td>Cost of fuel for private use</td>
<td>Private km x Appendix C tariff per kilometer in respect of fuel (Travel Allowance Table)</td>
</tr>
</tbody>
</table>

- 7(8) is not applicable to a vehicle obtained under an operating lease as defined in s 23A(1).
Right of use of a motor vehicle
Operating lease s 23A(1)

- “Operating Lease”:
- A lease of movable property by a lessor in the ordinary course of business (not being a banking, financial services or insurance business) if:
  - Such property may be hired by members of the general public for a period of less than one month.
  - The cost of repairs and maintenance resulting from normal wear and tear of such property is borne y the lessor.
  - The risk of destruction of the asset is not assumed by the lessee (other than destruction due to negligence of the lessee).
Right of use of a motor vehicle
Operating lease s 23A(1)

- If the vehicle of which the right of use has been given to an employee has been obtained by the employer under an “Operating Lease”:

  • If the lease is entered into between non-connected persons at arm’s length, the value of private use for purposes of par 7(4) is the cost to the employer plus the cost of fuel.
  • The par 7(8) reduction of the value of private use does not apply (the par 7(7) reductions can still be applied).
Right of use of a motor vehicle – par 2(b) and 7

The nature of the employee’s duties are such that he is regularly required to use the vehicle outside of his normal hours for work and it is used only for travel between his residence and place of work or private use that is infrequent or merely incidental to business use.

Vehicle is used by employees in general; Private use thereof is infrequent or merely incidental to its business use and the vehicle is not kept at or near the residence of the employee concerned outside business hours.
Employees’ Tax

- 80% of taxable amount calculated in terms of par 7 of the Seventh Schedule is included in remuneration for employees’ tax purposes if the employer is satisfied that less than 80% of the use of the motor vehicle for a year of assessment will be for business purposes.

- 20% of taxable amount calculated in terms of par 7 of the Seventh Schedule is included in remuneration for employees’ tax purposes if the employer is satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes.
Meals and refreshments – par 2(c) and 8

A fringe benefit arises if an employee has been provided with any meal or refreshment for a consideration that is less than the value thereof (par 2(c)).

Excluding:

- Meals provided together with residential accommodation (par 9).
Meals and refreshments – par 2(c) and 8

Value of the benefit:

The value of the benefit is equal to the cost to the employer of such meal or refreshment.
Any meal or refreshment:
(a) Supplied by the employer to his employees in a canteen, cafeteria or dining room operated by or on behalf of the employer and patronised wholly or mainly by his employees or on the business premises of the employer.
(b) Supplied during business hours or extended hours or on a special occasion.
(c) Enjoyed in the course of providing a meal to any person whom the employee is required to entertain on behalf of the employer.
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(c) and 8 of the Seventh Schedule – any consideration paid by the employee) is subject to employees’ tax
A fringe benefit arises if an employee has been provided with residential accommodation, whether furnished or unfurnished, and with or without board, meals, fuel, power or water. (par 2(d))
Residential Accommodation

<table>
<thead>
<tr>
<th>If:</th>
<th>Rental Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full ownership does not vest in the employer, and the accommodation was obtained by the employer at arm’s length from a non-connected person</td>
<td>Lower of:</td>
</tr>
<tr>
<td></td>
<td>- Formula</td>
</tr>
<tr>
<td></td>
<td>- Expenditure incurred by employer</td>
</tr>
<tr>
<td>Any other case</td>
<td>Formula</td>
</tr>
</tbody>
</table>
Residential Accommodation

Formula:

\[(A - B) \times \frac{C}{100} \times \frac{D}{12}\]

Where:

- A is the ‘remuneration proxy’ (defined in s1):

‘Remuneration proxy’ = remuneration as defined in Fourth Schedule for preceding year of assessment excluding the value of the right of use of residential accommodation.

If employed for only part of the preceding year, then the remuneration in those months must be annualised (using days 365).

If not at all employed during the prior year, then the first month’s remuneration in the current year must be annualised (using days 365).
Residential accommodation

- B is an amount of R75 000 (2018: R75 750), UNLESS
  - The employer is a **private company** and the employee or his spouse is a **controlling shareholder** of the employer company; or
  - the employee, spouse or minor child has any **right of option** to become the **owner of the property**.

- Then B is zero.

- C is:
  - **19** if there are at least 4 rooms, furniture **and** power supplied by employer.
  - **18** if there are least 4 rooms and **either** furniture **or** power supplied by employer (but not both).
  - **17** in any other case.

- D is:
  - The number of **months** that the employee had right of use of the accommodation in the current year of assessment.
Residential accommodation

Important points:

- Where two or more residential units situated at different places, are provided to the employee to be used from time to time in the performance of his duties, the cash equivalent is determined using the unit that yields the greatest rental value (par 9(6)).

- Where the employee has an interest (as defined in par 9(10)) in the accommodation provided to him, which has been let to the employer, the rent will be deemed to not have been received by or accrued to the employee (par 9(9)).
Holiday accommodation

Holiday accommodation:

• If the holiday accommodation is hired (other than from an associated institution), the rental value is determined at the amount actually incurred for rent and any services/meals that have been charged to the employer.

• In any other case, the "fair market price" per day that the employer would receive if the accommodation was let to any person who is not an employee.

The rental value is reduced by any consideration given to get to the cash equivalent.
Residential Accommodation

Where usual place of residence is in South Africa:
- Any accommodation, inside or outside South Africa supplied by the employer while the employee is away from his usual place of residence for work purposes.

Where usual place of residence is outside South Africa:
- Any accommodation inside South Africa provided for a period not exceeding 2 years from the date of arrival of the employee in SA to perform his work duties (this provision does not apply if the employee was physically present in SA for more than 90 days in the year preceding the date of arrival in SA or to the extent that the cash equivalent exceeds R25 000 per month; or
- If the employee is physically present in SA for a period of less than 90 days during the year in which the accommodation is provided (so even beyond 2 years).
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(d) and 9 of the Seventh Schedule – any consideration paid by the employee) is subject to employees’ tax
Services provided by the employer- par 2(e) and 10

- A fringe benefit arises where an employer provides services to an employee and it is utilised for **private purposes** at no cost or a cost which is less than the value thereof (par 2(e)).

**Examples:**
Employer pays for an air ticket for employee to travel for private purposes.
Employer pays for employee’s phone line at home.

**Excluding:**
- Medical Services (subpar (j));
- Payments to insurers for the benefit of employees (subpar(k));
- Holiday accommodation (par 9(4)(a)).
Services provided by the employer

<table>
<thead>
<tr>
<th>If:</th>
<th>Value of benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>The employer is engaged in the business of transporting passengers for reward by <strong>sea or air</strong> and allows the employee or his relatives to travel <strong>outside South Africa</strong> for <strong>private purposes</strong></td>
<td>The lowest fare payable</td>
</tr>
<tr>
<td>Any other case.</td>
<td>Cost to the employer</td>
</tr>
</tbody>
</table>

- From the value, deduct consideration paid by the employee to get the cash equivalent.
Services provided by the employer

- A travel facility granted by an employer in the business of conveying passengers by **land, air or sea** to an employee, his spouse or minor child to travel to:
  - Any destination **in** the republic; or
  - **Overland** to any destination outside the republic, or
  - Any destination **outside the Republic** on a normal flight and **no advance reservation** of the seat could be made.

- The employer provides transport services to employees in general to convey them to and from their place of work.

- Any communication service provided to an employee, if the service is used **mainly** for the purposes of the employer’s business.

- Services rendered at place of work for the better performance of their duties, as a benefit to be enjoyed by them or for recreational purposes.

- Travel facilities given to spouse or minor child to visit employee more than 250km away from home where he is required to stay for more than 183 days in the year.
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(e) and 10 of the Seventh Schedule – any consideration paid by the employee) is subject to employees’ tax
Loans – par 2(f), 11 and 10A

Loans that are provided to employees at a rate that is lower than the official rate of interest gives rise to a fringe benefit in terms of paragraph 2(f).

Excluding:

• Debts to enable employees to buy qualifying shares in terms of s 8B or to pay stamp duties or securities transfer tax thereon.
• Debts in respect of which a par 2(gA) subsidy is payable.
Loans – par 2(f), 11 and 10A

Cash equivalent: xxx
Interest at the official rate of interest xxxxx
Less: Interest payable by employee (xxx)

Official Rate of Interest:
• ZAR Loan: SA repo rate + 100 basis points (1%)
• Foreign Currency: Equivalent of SA repo rate + 100 basis points (1%)
Loans – par 2(f), 11 and 10A

**Official rate of interest:**

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1 April 2016</td>
<td>8%</td>
</tr>
<tr>
<td>From 1 February 2016</td>
<td>7.75%</td>
</tr>
<tr>
<td>From 1 December 2015</td>
<td>7.25%</td>
</tr>
<tr>
<td>From 1 August 2015</td>
<td>7%</td>
</tr>
<tr>
<td>From 1 August 2014</td>
<td>6.75%</td>
</tr>
<tr>
<td>Earlier</td>
<td>6.5%</td>
</tr>
</tbody>
</table>
Loans – par 2(f), 11 and 10A

Cash equivalent:

The cash equivalent is deemed to accrue to the employee:

• On each date that the interest becomes payable (in the case where interest is payable at regular intervals); or

• On the last day of each period in respect of which remuneration is payable to the employee (if no interest or irregular payment intervals) [so typically every month]
Par 11(5) – Where the amount of the cash equivalent included in the taxpayer’s income, had it been incurred by the taxpayer as interest, would have been incurred in the production of their income, that amount will be deemed to be interest actually incurred for the purposes of s11(a).

Example

Company A extended a loan of R50 000 at an interest rate of 4% to employee B on 1 September 2016 to enable him to buy a small rent-producing property. He generated taxable income of R2 500 from the property before taking any interest into account.

Cash equivalent of fringe benefit \((R50 000 \times (8\% - 4\%) \times 6/12) = R1000\)

The R1000 will be included in his income as a fringe benefit, but will also be allowed as a deduction under s 11(a) as a result of par 11(5). The 4% interest paid by employee B will also qualify for a deduction under s 11(a).
LOANS – PAR 2(F), 11 AND 10A

- Taxable Income:

- Preliminary taxable income         R2 500

- Fringe benefit Par 2(f)            R1 000

- Par 11(5) deemed interest deduction (R1 000)

- Actual interest incurred           (R1 000)
  (R50 000 x 4% x 6/12)

- Taxable Income                    R1 500
Par 10A
Deemed loan
Par 10A – Deemed Loan

Deemed Loans par 10A:

Where:

• An employee has been granted the use of residential accommodation owned by the employer;
• The employee, their spouse or minor child are entitled or obliged to acquire the accommodation at a future date at a stated price;
• Rent is payable on the accommodation calculated wholly or partly as a percentage of the stated price.

Then:

The value of the fringe benefit is determined as follows:

Interest at the official rate on the stated price \[ \text{xxxxx} \]
Less: Rent paid by employee \[ (\text{xxxx}) \]
Taxable Benefit \[ \text{xxxxx} \]
Important to note:

- The benefit is thus treated as a low interest rate loan and not as the right to use residential accommodation. The formula in par 9 is thus not used.

- If the **actual amount paid** for the purchase of the property at the end of the agreement is **less than** the market value **at the date of the agreement**, an additional fringe benefit under par 2(a) (acquisition of asset at less than market value) arises.
Loans – par 2(f), 11 and 10A

No Value

Casual loans (short-term at irregular intervals) or loan of which the value does not exceed R3 000 at any time

Loans to enable employees to further their studies
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(f), 10A and 11 of the Seventh Schedule) is subject to employees’ tax.
- The cash equivalent is the interest on the outstanding balance at the applicable official interest rate less the actual interest paid during the year.
- The employee is taxed on this cash equivalent on a pro rata basis at the end of each month that a remuneration is paid if no interest payable or if it is paid at irregular intervals. If interest is payable at regular intervals, the employee is taxed on the dates that the interest becomes payable.
Subsidies – par 2(g),(gA) and 12

A fringe benefit arises where an employer pays a subsidy in respect of interest or capital payable by an employee on a debt to a third party.

- This only applies where the sum of the subsidy and interest paid by the employee exceeds the amount of the interest calculated at the official rate of interest. (If not, it is a low interest rate loan under par 2(f)).

- The cash equivalent is simply the amount of the subsidy.

- No Value: None

Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(g), (gA) and 12 of the Seventh Schedule) is subject to employees’ tax.
Release of debt – par 2(h) and 13

A fringe benefit arises where a debt owed by the employee to the employer is discharged, or where the employer pays a debt on behalf of the employee to a third party.

Excluding:
- Contributions made by an employer to a benefit fund (par 2(i));
- Medical costs paid by the employer (par 2(j)).
Release of debt – par 2(h) and 13

- **Cash Equivalent:** The amount of debt discharged or paid.

**Note:**
- A debt is deemed to be discharged if owed by the employee to the employer and the debt is extinguished by way if prescription (after 3 years) and the employer could have recovered the debt or could have caused the running of the prescription to be interrupted, unless the employer did not have any intention to confer a benefit on the employee.
Release of debt – par 2(h) and 13

- For membership to **professional** bodies as a requirement of employment.
- Insurance premiums paid by the employer indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer.
- Former member of a non-statutory force or service to the Government Employees’ Pension Fund.
- An obligation to a first employer arising from the non-compliance of the conditions of a bursary or study loan which has been paid by the second employer and the employee has undertaken to work for the second employer for a period at least equal to the unexpired period of the first employer.

**Employees’ Tax**

- The cash equivalent = (value determined in terms of par 2(h) and 13 of the Seventh Schedule) is subject to employees’ tax.
Medical contributions – par 2(i) and 12A

- A fringe benefit arises in terms of paragraph 2(i) where an employer pays contributions to a medical benefit fund on behalf of an employee or his dependants.

- The cash equivalent is:
  The amount of the contributions paid on behalf of the employee.

- If the contributions cannot be specifically attributed to each employee, then it must be attributed to all employees that are provided with the medical benefit using the following ratio:
  \[
  \text{Total contribution} \div \text{No. of employees}
  \]
Medical contributions – par 2(i) and 12A

- A person who has retired from the employment of the employer by reason of old age, ill health or other infirmity;
- The dependents of a deceased employee who was in the employment of such employer at the date of death;
- The dependents of a former employee after his death, if the employee had retired from the employment of that employer by reason of old age, ill health or other infirmity.

**Employees’ Tax**
- The cash equivalent = (value determined in terms of par 2(i) and 12A of the Seventh Schedule) is subject to employees’ tax.
- Nb The employer must take the s6A credit into account when calculating the employees’ tax
Medical, dental and similar services provided by the employer par 2(j) and 12B

- A taxable benefit arises when an employer pays any medical, dental or similar services as well as hospital services, nursing services or for medicines for the employee, his spouse, child, relatives or dependents.

- Cash equivalent = cost to employer less consideration paid by employee

- Use the proportional amount based on the ratio:

\[
\text{Full expenses incurred by employer} \div \text{No. of employees}
\]

-if the costs cannot be directly attributed to the specific employee
Medical, dental and similar services provided by the employer par 2(j) and 12B

- Treatments listed by the Minister of Health as prescribed minimum benefits (See legislation for detail);
- Services rendered in general to employees at their place of work for the better performance of their duties;
- Services rendered or medicine supplied in order to comply with any law of the republic.
- Benefits derived by:
  - A person who has retired from the employment of the employer by reason of old age, ill health or other infirmity;
  - The dependents of a deceased employee who was in the employment of such employer at the date of death;
  - The dependents of a former employee after his death, if the employee had retired from the employment of that employer;
  - A person entitled to the over-65 rebate.

**Employees Tax**

The cash equivalent = (value determined in terms of par 2(j) and 12B of the Seventh Schedule) is subject to employees’ tax.
Benefits iro Insurance Policies para 2(k) and 12C

- A fringe benefit arises where an employer has during any period made any payment to any insurer under an insurance policy for the **benefit of the employee** or his spouse, child, dependent or nominee.

**Excluding:**
- Policies relating to an event arising solely in the course of employment.

- Use the proportional amount based on the ratio:
  - Full expenses incurred by employer
    - No. of employees

  - **If the costs cannot be directly attributed to the specific employee**
Benefits iro Insurance Policies para 2(k) and 12C

- Cash Equivalent = cost to the employer

- Refer to slides above for the interaction between par 2(k) and the section 10(1)(gG) exemption. Note that the exemption only applies to the proceeds received once the insurance benefit pays out and not to the fringe benefit amount included.

*Employees Tax

The cash equivalent = (value determined in terms of par 2(k) and 12C of the Seventh Schedule) is subject to employees’ tax
Contributions to funds para 2(l) and 12D

- A fringe benefit arises where an employer makes any contributions for the benefit of an employee to any pension fund, provident fund or retirement annuity fund.
Contributions to funds para 2(l) and 12D

- Cash equivalent

  - Where the benefits payable to members in respect of a fund member category of a fund consists solely of defined contribution components:
    - The value of the fringe benefit is the amount contributed by the employer.

  - Where the benefits payable to members in respect of a fund member category of a fund consists of components other than only defined contribution components, the cash equivalent is calculated as:
    - \[ X = (A \times B) - C \]

  Where:
  - \( X \): the mount to be determined
  - \( A \): Fund member category factor
  - \( B \): Retirement funding income of employee
  - \( C \): Sum of amounts contributed by the employee to the fund (excluding any additional voluntary contribution made by the employee and buyback)
Contributions to funds para 2(l) and 12D

- Contributions by an employer to a fund for the benefit of an employee who has retired from that fund.
- Contributions by an employer to a fund in respect of the dependants or nominees of a deceased member of that fund.

No Value
Employees’ Tax

- The cash equivalent = (value determined in terms of par 2(l) and 12D of the Seventh Schedule) is subject to employees’ tax.
- Remember: In terms of s 11(k)(iii) if an amount has been contributed to a fund by an employer on behalf of an employee then to the extent that the amount has been included in the employee’s income as a fringe benefit, that amount is deemed to have been contributed by the employee themselves. The employee will therefore be entitled to a s11(k) deduction.
Other Relevant Matters

- s12H Learnership Allowances
- Employment Tax Incentive
- VAT treatment relating Non Executive Directors
Incentive Allowances Learnership Agreements - s12H

Note:
Old rules up until 30 September 2016. Old rules did not distinguish between deductions for different NQF Levels.

New rules from 1 October 2016 – agreements entered into on or after this date.
Learnership allowances – s12H- Before 1 October 2016

- s 11(a) deduction for expenditure actually incurred (e.g. Salaries)
- In addition – Employee with no disability
- R30 000 annual allowance for full year of learnership (apportioned for time – less than 12 months or over two years of assessment)
- On completion:
  - If the period of the learnership is less than 24 months, a completion allowance of R30 000.
  - If the period of the learnership is for more than 24 months or greater, a completion allowance of R30 000 for every consecutive period of 12 months.
Learnership allowances – s12H- Before 1 October 2016

- In addition – Employee with disability
- R50 000 annual allowance for full year of learnership (apportioned for time – less than 12 months or over two years of assessment)
- On completion:
  - If the period of the learnership is less than 24 months, a completion allowance of R50 000.
  - If the period of the learnership is for than 24 months or greater, a completion allowance of R50 000 for every consecutive period of 12 months.
s12H Learnership Allowance

Deduction in addition to any expenditure actually incurred (s11(a)) when a learner:

- **Learner enters into** a registered learnership agreement (as defined) with an employer in the course of his trade
- **Successful completion** of a registered learnership

**Aim:** to encourage skills development and job creation

**What agreements qualify?**

Section 12H(1) – “Registered learnership agreement”

(a) Registered in accordance with the Skills Development Act, 1998; **AND**

(b) Entered between learner and employer **before 1 April 2022** (SUNSET date 31/03/2022).

- Agreements entered into on or after 1 October 2016.
## NQF Levels

<table>
<thead>
<tr>
<th>NQF LEVEL</th>
<th>DESIGNATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Grade 9</td>
</tr>
<tr>
<td>2</td>
<td>Grade 10 &amp; National (vocational) Certificate level 2</td>
</tr>
<tr>
<td>3</td>
<td>Grade 11 &amp; National (vocational) Certificate level 3</td>
</tr>
<tr>
<td>4</td>
<td>Grade 12 &amp; National (vocational) Certificate level 4</td>
</tr>
<tr>
<td>5</td>
<td>Higher Certificate &amp; Advanced National (vocational) Certificate</td>
</tr>
<tr>
<td>6</td>
<td>National Diploma &amp; Advanced Certificate</td>
</tr>
<tr>
<td>7</td>
<td>Bachelor’s degree, Advanced Diploma &amp; B-Tech</td>
</tr>
<tr>
<td>8</td>
<td>Honours degree, Postgraduate Diploma &amp; Professional Qualifications</td>
</tr>
<tr>
<td>9</td>
<td>Master’s Degree</td>
</tr>
<tr>
<td>10</td>
<td>Doctoral Degree</td>
</tr>
</tbody>
</table>
### Commencement /Annual Allowance

- Agreement pursuant to trade

<table>
<thead>
<tr>
<th>Level Range</th>
<th>Amount (R)</th>
<th>Section Ref.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-6</td>
<td>40,000</td>
<td>s12H(2)(a)</td>
</tr>
<tr>
<td>7-10</td>
<td>20,000</td>
<td>s12H(2A)(a)</td>
</tr>
</tbody>
</table>

- Available **every year** the learnership agreement is carried out.
- Allowance is **apportioned pro rata** for full months that the agreement existed - S12H(2)(b)/s12H(2A)(b)
- **NB not** calendar months!

### Completion Allowance

- Agreement period ≥ 24 months
- Agreement period < 24 months

<table>
<thead>
<tr>
<th>Level Range</th>
<th>Amount (R)</th>
<th>Section Ref.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-6</td>
<td>40,000</td>
<td>s12H(4);</td>
</tr>
<tr>
<td>7-10</td>
<td>20,000</td>
<td>s12H(4A)</td>
</tr>
</tbody>
</table>

- x no. of every full 12 month period completed.

- If period LESS THAN 24 months:
  - R40 000 – NQF 1-6 – s12H(3)
  - R20 000 – NQF 7-10 – s12H(3A)

- On successful completion of the agreement
- Agreement was pursuant to trade of employer
- Not apportioned.
- If learnership is shifted to a new employer (See next slide).
### s12H Learnership Allowance – Disability

| Commencement / Annual Allowance | R60 000 (NQF Levels 1-6) – s12H(2)(a) > Increased by s12H(5)  
R50 000 (NQF Levels 7-10) – s12H(2A)(a) > Increased by s12H(5A) | • Available every year the learnership agreement is carried out.  
• Allowance is apportioned pro rata for full months that the agreement existed - S12H(2)(b)/s12H(2A)(b)  
• NB not calendar months! |
|--------------------------------|-------------------------------------------------|------------------------------------------------------------------|
| **Completion Allowance**      | R60 000 (NQF Levels 1-6) s12H(4);  
R50 000 (NQF Levels 7-10) s12H(4A)  
x no. of every full 12 month period completed. | • On successful completion of the agreement  
• Agreement was pursuant to trade of employer  
• Not apportioned.  
• If learnership is shifted to a new employer (See next slide). |
| ➢ Agreement period ≥ 24 months | If period LESS THAN 24 months:  
➢ R60 000 – NQF 1-6 – s12H(3)  
➢ R50 000 – NQF 7-10 – s12H(3A) |                                                                  |
| ➢ Agreement period < 24 months | Also increased by s12H(5) and s12H(5A) |                                                                  |
s12H Learnership Allowance

- If the learnership is **shifted to a new employer**, the **first employer** will be eligible for a **pro rata portion** of the **commencement allowance** and the **second employer** will be able to deduct the **remainder of the commencement allowance** and the **full completion allowance**.

- If the learnership agreement is **terminated** and not completed, **no further annual or completion allowance** can be claimed by the employer.
s12H Learnership Allowance

Example

- Learner A (not disabled) enters into an 8-month registered learnership agreement with his employer Easy Employ (Pty) Ltd (31 December year end) on 1 November 2016.
- The NQF level of the learnership is level 5.
- The learnership agreement is successfully completed on 30 June 2017.

REQUIRED:

- Calculate the s12H allowances available to Easy Employ (Pty) Ltd for the 2016 and 2017 years of assessment.
S 12H Learnership Allowance

Solution:

2016 year of assessment
Section 12H(2)(a) annual allowance (6 667)
(40 000 x 2/12)

2017 year of assessment
Section 12H(2)(b) annual allowance (20 000)
(40 000 x 6/12)

Section 12H(3) completion allowance (40 000)
(< 24 months)
BACKGROUND - VAT TREATMENT RELATING NON EXECUTIVE DIRECTORS

Uncertainty relating to how non-executive directors are to be taxed

Are non-executive directors employees or independent contractors?
NON-EXECUTIVE DIRECTORS ARE INDEPENDENT CONTRACTORS

- No control nor supervision by companies served
- Independent per King IV
- No involvement in day-to-day management
- Advisory role on a board
HOW ARE NON-EXECUTIVE DIRECTORS TAXED?

Old treatment: Employees’ tax

The companies served would deduct and withhold PAYE for non-executive directors

New treatment: VAT vendors

Non-executive directors need to levy VAT of 14% on the value of their fees if the compulsory registration threshold of R1 million is met.

Voluntary registration is allowable
Companies that non-executive directors serve no longer withhold PAYE

Non-executive directors as VAT vendors now need to register as provisional taxpayers

Non-executive directors have the option to have the companies they serve continue withholding PAYE to fulfil Income Tax obligations
PAYE RELATED ISSUES

Unemployment Insurance Fund (UIF)  Skills Development Levy (SDL)

No need to withhold and pay UIF going forward  No need to withhold and pay SDL going forward

Companies may be able to claim back UIF and SDL payments made in the last 5 years and reimburse non-executive directors. Unlikely however as refunds may prove to be insignificant in value.

Non-executive directors’ fees no longer qualifies as remuneration
EMPLOYMENT TAX INCENTIVE

- To encourage the employment of workers, a special incentive is allowed as a credit against the employer’s monthly PAYE, from 1 January 2014.
- The incentive is not applicable to the government as an employer and also some of the public entities.
- In order for the employer to qualify for the incentive, the employer must be registered for PAYE, not have been disqualified by the Minister of Finance and also be tax compliant.
- The employee must have a valid South African identity document
EMPLOYMENT TAX INCENTIVE

- The employee must have a valid South African identity document or asylum seeker permit and be at least 18 years old but not older than 29 years.

- The employee must not be a domestic worker or related or connected to the employer and earn at least R2 000 remuneration per month (or minimum amount stipulated by the regulated industry) but a maximum of R6 000 remuneration per month. The employee must be newly appointed from 1 October 2013.

- An employer may not receive the employment tax incentive after 28 February 2019.
## EMPLOYMENT TAX INCENTIVE TABLE

<table>
<thead>
<tr>
<th>Monthly remuneration</th>
<th>Per month during the first 12 months of employment</th>
<th>Per month during the next 12 months of employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than R2 000</td>
<td>50% of monthly remuneration</td>
<td>25% of monthly remuneration</td>
</tr>
<tr>
<td>R2 000 or more but less than R4 000</td>
<td>R1 000</td>
<td>R500</td>
</tr>
<tr>
<td>R4 000 or more but less than R6 000</td>
<td>Formula: R1 000 – (0.5 x (monthly remuneration – R4 000))</td>
<td>Formula: R500 – (0.25 x (monthly remuneration – R4 000))</td>
</tr>
<tr>
<td>R6 000 or more</td>
<td>Nil</td>
<td>Nil</td>
</tr>
</tbody>
</table>