

**Guide to the
Urban Development Zone Tax Incentive**



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GUIDE TO THE URBAN DEVELOPMENT ZONE TAX INCENTIVE

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

Foreword

This brochure is a general guide with regard to the urban development zone tax incentive. It 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.

The brochure *inter alia* provides:

- General guidance regarding the application and interpretation of the provisions of the Income Tax Act, No. 58 of 1962 (the Act) that pertain to the urban development zone tax incentive.
- An overview of the income tax consequences of the disposal of a building in respect of which the tax incentive was allowed or the ceasing of a taxpayer to use such a building solely for the purposes of that person's trade.
- Particulars of municipalities that have demarcated areas for purposes of the urban development zone tax incentive, as well as the process of demarcation that was followed.

This document is based on the legislation as at 25 July 2006. All the definitions in this brochure have been extracted from the Act, unless the context indicates otherwise. The words "taxpayer" and "person" are used interchangeably as they have the same meaning for purposes of this brochure.

Should you require additional information regarding the urban development zone tax incentive, you may:

- Contact any South African Revenue Service (SARS) office
- Visit SARS online at <http://www.sars.gov.za>
- Contact your own tax advisors
- Contact the SARS Call Centre on 0860 12 12 18

Comments and/or suggestions regarding this brochure may be sent to the following e-mail address: policycomments@sars.gov.za.

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GLOSSARY

Unless the context indicates otherwise, the meaning of words, concepts and acronyms used in this brochure, is the following:

Act	:	Income Tax Act, No. 58 of 1962
SARS	:	South African Revenue Service
UDZ	:	Urban development zone
UDZ building	:	A building that is located within an urban development zone
Minister	:	Minister of Finance
Commissioner	:	Commissioner for the South African Revenue Service

1. INTRODUCTION

In line with many countries, South Africa has a number of urban areas that are impoverished and are suffering from extensive urban decay. In order to address these concerns and maintain existing infrastructure that was developed at great cost, governments internationally have increasingly utilised tax measures to support efforts aimed at regenerating these urban areas. Such narrowly targeted capital allowances seek to attract development to areas where interest would otherwise be lacking.

In 2003, the Minister of Finance, therefore, introduced a tax incentive for investment in 16 designated inner cities. The core objectives of the incentive are to address dereliction and dilapidation in South Africa's largest cities and to promote urban renewal and development by promoting investment by the private sector in the construction and improvement of commercial and residential buildings that are used for purposes of trade. The incentive intends to encourage investment in areas with high population carrying capacity, central business districts or inner city environments and areas with developed urban transport infrastructure for trains, buses and/or taxis.

Without this incentive, costs incurred with regard to the construction or improvement of a commercial building may only be taken into account in the determination of a person's taxable income in certain limited circumstances, for example, where the person is using the building for purposes of manufacturing or hotel-keeping. Furthermore, without this incentive, no costs incurred with regard to the construction or improvement of a residential building may be taken into account in the determination of a person's taxable income, unless the building was erected by the person under a "housing project" as defined in section 13*ter* of the Act.

2. BROAD OVERVIEW OF THE TAX INCENTIVE

This incentive has been introduced in the form of an accelerated depreciation allowance and has been effected by the insertion of section 13*quat* into the Act. When claimed, the tax incentive, therefore, reduces the taxable income of a taxpayer. The incentive is not limited to the taxable income of the taxpayer and can, therefore, create an assessed loss.

The allowance (which will be referred to throughout the guide as the UDZ allowance) is applicable in respect of the -

- erection, extension or improvement of or addition to an entire building;
- erection, extension, improvement of or addition to a part of a building representing a floor area of at least 1 000 m²;
or
- purchase of such a building or part of a building directly from a developer on or after 8 November 2005, provided that certain requirements are met.

A taxpayer will only qualify for the UDZ allowance in respect of a building or part of the building constructed, improved or purchased directly from a developer within an urban development zone (UDZ), if the building or that part of the building is used solely for purposes of that person's trade and was brought into use for these purposes on or before 31 March 2009.

If all the requirements are complied with, a deduction in respect of the UDZ allowance will be allowed in the determination of the taxable income of a person that constructed or improved a building or bought a building from a developer.

The UDZ allowance will be allowed as follows:

- In respect of the erection or extension of or addition to a building or part of a building or the purchase of such a building or part of a building from a developer, over a period of 17 years (therefore, 20% of the cost in the first year of assessment and 5% of the cost in each of the successive 16 years of assessment).
- In respect of the improvement of an existing building or part of a building or the purchase of such an existing building or part of a building from a developer, over a period of 5 years (therefore, 20% of the cost in the first year of assessment and 20% of the cost in each of the 4 successive years of assessment).

3. WHAT REQUIREMENTS MUST A PERSON COMPLY WITH TO QUALIFY FOR THE UDZ ALLOWANCE?

Any person (natural person, company, close corporation, trust, etc.) will be eligible for the UDZ allowance if the following requirements are complied with in respect of a building or part of a building:

3.1 Building requirement

To be able to qualify for the UDZ allowance, a person must have –

- erected an entire new commercial or residential building;
- extended, added to or improved an entire existing commercial or residential building or part of such a building representing a floor area of at least 1 000 m²; or
- purchased a commercial or residential building or part of a commercial or residential building directly from a developer that complies with all three of the following requirements:
 - a) The developer erected, extended, added to or improved the entire building or a part thereof representing a floor area of at least 1 000 m².
 - b) The developer did not claim any UDZ allowance in respect of the building or that part of the building.
 - c) In the case of the improvement of a building or part of a building, the developer has incurred expenditure in respect of these improvements which is equal to at least 20 per cent of the purchase price paid by the person in respect of the building or part of the building.

For the purposes of the UDZ allowance, a “developer” is defined in section 13*quat* of the Act as a person that -

- “(a) erects, extends, adds to or improves a building or part of a building with the sole purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and
- (b) does not use the building or part which is to be disposed of as contemplated in paragraph (a) for purposes of his or her trade in any other manner;”

A person that purchased a building from a person other than a developer will, therefore, not be able to qualify for a UDZ allowance in respect of such a building.

3.2 Urban development zone requirement

To be able to qualify for the UDZ allowance it is, furthermore, required that the building or part of the building that was constructed, improved or purchased from a developer must be located within a UDZ.

For the purposes of the UDZ allowance, an “urban development zone” is defined in section 13*quat* as –

“an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the Gazette in terms of subsection (8);”

Sixteen designated municipalities had the opportunity to demarcate areas within their boundaries. By 14 July 2006, 15 of these municipalities have demarcated areas within their boundaries. Several criteria were taken into account in the demarcation of areas to ensure that the impact of the tax incentive is maximised in the parts of the cities/towns that are most in need of development.

Each municipality that had demarcated an area within its boundaries had to prove to the Minister that the following requirements had been complied with:

- The demarcated area is located within the boundaries of one of the 16 designated municipalities.
- The area has been demarcated through formal resolution by the municipality.
- The demarcated area is prioritised in the municipality’s integrated development plan as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity.
- The contribution from that area is undergoing a sustained real or nominal decline, whereas it previously contributed a significant portion of the aggregate revenue collections of the municipality as measured in the form of property rates or assessed property values.
- Significant fiscal measures had been implemented by the municipality to support the regeneration of that area, including the appropriation of significant funds for developing the area in the annual budget of the municipality, special tariffs for categories of residential, commercial or industrial users or partnership agreements with the business community for the promotion of urban development within that area.

The particulars of the areas that have been demarcated by the following 15 municipalities were published by the Minister in the following Gazettes:

Municipality	Date of Gazette	Gazette No.	Notice No.
Buffalo City Municipality	10 December 2004	27077	1432
Cape Town Municipality	14 October 2004	26866	1156
Ekurhuleni Municipality	6 June 2005	27656	535
Emalahleni Municipality	12 May 2006	28795	416
Emfuleni Municipality	10 December 2004	27077	1432
eThekweni Metro Municipality	10 December 2004	27077	1432
Johannesburg Metro Municipality	14 October 2004	26866	1156
Mangaung Municipality	10 December 2004	27077	1432
Matjhabeng Municipality	14 July 2006	29010	669
Mbombela Municipality	10 December 2004	27077	1432
Msunduzi Municipality	6 June 2005	27656	535
Nelson Mandela Metro Municipality	6 June 2005	27656	535
Polokwane Municipality	6 June 2005	27656	535
Sol Plaatje Municipality	10 December 2004	27077	1432
Tshwane Metro Municipality	10 December 2004	27077	1432

Note: These Gazettes/Notices are available on the SARS website www.sars.gov.za under Legislation/Regulations and Government Notices.

3.3 Trade requirement

To be able to qualify for the UDZ allowance it is required that a person that constructed or improved a building or part of a building within a UDZ or purchased such a building or part of a building directly from a developer, uses it solely for the purposes of that person's trade.

A person will only qualify for the UDZ allowance once a building or part of a building that was constructed, improved or purchased from a developer is brought into use solely for the purposes of that person's trade.

The courts have interpreted the concept "trade" to be neither exhaustive nor restrictive – it will, therefore, include any activity where a person risks something with the object of making a profit. For example, the letting of commercial or residential property at market prices, the carrying on of a manufacturing concern with the object of making a profit, etc. constitutes trade.

3.4 Owner requirement

To be able to qualify for a UDZ allowance it is required that the building or part of the building that was constructed or improved must be owned by the person claiming the allowance.

A lessee that constructed or improved a building or part of a building on leased property will, therefore, not be able to qualify for a UDZ allowance in respect of that building.

3.5 Dates requirement

To be able to qualify for a UDZ allowance in respect of a building or part of a building that was constructed or improved, a person must comply with the following two date requirements:

(a) Commencement date requirement

The erection, extension or improvement of or addition to the building must have commenced –

- on or after the date on which the Minister has published the particulars of the relevant demarcated area within which the building is located in the *Gazette*; and
- in terms of a contract formally and finally signed by all parties thereto on or after that date.

To be able to qualify for a UDZ allowance in respect of a building or a part of a building that was purchased from a developer it is, furthermore, required that the purchase agreement must have been concluded on or after 8 November 2005.

(b) Trade date requirement

To qualify for a UDZ allowance, the building or that part of a building must have been brought into use solely for purposes of trade on or before 31 March 2009.

To summarise, no person will, therefore, be able to qualify for the UDZ allowance in respect of –

- the construction or improvement of a building or part of a building that has commenced before the date on which the particulars of the relevant demarcated area was published in the *Gazette*;
- the construction or improvement of a building or part of a building that has commenced in terms of a contract that has been formally and finally signed by all parties thereto before the date on which the particulars of the relevant demarcated area was published in the *Gazette*;
- the purchase of a building or part of a building from a developer, where the purchase agreement has been concluded before 8 November 2005; or
- the construction, improvement or purchase of a building or part of a building from a developer that was not brought into use solely for the purposes of trade on or before 31 March 2009.

3.6 Documentation requirement

To be able to qualify for the UDZ allowance, it is necessary that the person claiming the allowance has obtained certain documentation from the relevant municipality. If the building or part of the building was purchased from a developer it is, furthermore, necessary that certain other documentation must be obtained from such developer.

(i) The municipality

- A certificate of confirmation issued by the municipality to that person which confirms that the building or part of a building that was constructed, improved or purchased from a developer is located within a UDZ within the boundaries of that municipality (a location certificate).
- A certificate of occupancy in respect of the building or part of the building that was constructed improved or purchased.

For purposes of the UDZ allowance, a certificate of occupancy is defined in section 13*quat* as –

“a certificate contemplated in section 14(1) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);”

(ii) **The developer**

A certificate (UDZ 3) that is available on SARS’s website www.sars.gov.za that confirms that -

- the erection, extension, addition to or improvement of the building was commenced by the developer on or after the date of publication of the particulars pertaining to the demarcation of the relevant area in which the building is located, in terms of a contract formally and finally signed by all parties thereto on after that date;
- the construction or improvement by the developer covers the entire building or at least a floor area of 1 000 m²;
- the developer has not claimed any UDZ allowance in respect of the building or that part of the building; and
- in the case of the improvement of a building or part of a building, the developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of the building or that part of the building.

The above documentation must, together with the relevant SARS form (see par. 10 for more information in this regard) be submitted with the person’s relevant return of income when a UDZ allowance is claimed.

4. WHEN WILL A PERSON NOT BE ELIGIBLE FOR THE UDZ TAX ALLOWANCE?

A person will not be eligible for the UDZ allowance in respect of a building or part of a building if –

- any of the requirements set out in paragraphs 3.1 to 3.6 above are not complied with;
- the person ceased to use the building or part thereof solely for purposes of that person’s trade during a previous year of assessment (see paragraph 13 for more information in this regard);
- the building or part of a building has been disposed of by the person during any previous year of assessment; or
- the notice in which the particulars of an area demarcated by a municipality were published has been withdrawn by the Minister (see paragraph 14 for more information in this regard).

The following examples illustrate different scenarios in which a person will not qualify for the UDZ allowance:

Example 1:

Facts:

On 30 September 2005 Investor X commenced the erection of a new residential building in a UDZ after the date of the publication of the particulars of the demarcated area, in terms of a contract formally and finally signed by all parties thereto after the date of the publication of the particulars of the demarcated area. After completion of the erection of the building Investor X commenced to use it for private residential purposes on 1 February 2006.

Determination of the UDZ allowance:

Investor X complied with all the requirements, except for the trade requirement. He did not use the building solely for the purposes of his trade and will, therefore, not qualify for a UDZ allowance in respect of the erection of the building.

Example 2:

Facts:

On 6 June 2006 Lessee X commenced to refurbish a building in a UDZ after the date of the publication of the particulars of the demarcated area, in terms of a contract formally and finally signed by all the parties thereto after the date of the publication of the particulars of the demarcated area. After the completion of the refurbishment of the building, Lessee X commenced to use it for purposes of his trade from 1 February 2007.

Determination of the UDZ allowance:

Lessee X complied with all the requirements, except for the owner requirement. As he is not the owner of the building, he will not qualify for the UDZ allowance in respect of the refurbishment of the building.

Example 3:

Facts:

On 01 June 2005 Investment Company X commenced refurbishing its building in a UDZ of which the particulars of the demarcation of the area was only published on 6 June 2005, in terms of a contract formally and finally signed by all parties thereto on 30 May 2005. After the completion of the refurbishment of the building, Investment Company X commenced to use the building for purposes of his trade on 30 September 2005.

Determination of the UDZ allowance:

Investment Company X complied with all the requirements, except for the commencement requirement. As Investment Company X commenced refurbishing the building before the particulars of the demarcation of the area was published in terms of a contract formally and finally signed by all parties thereto on 30 May 2005, it will not qualify for a UDZ allowance in respect of the refurbishment of the building.

Example 4:

Facts:

On 30 April 2005 Investment Company X commenced refurbishing its building in a UDZ after the date of the publication of the particulars of the demarcated area. After completion of the refurbishment Investment Company X commenced using it for trade on 30 September 2005. Investment Company X then sold it on 31 January 2006 for significantly more than its cost. Investment Company X has a 28 February year-end.

Determination of the UDZ allowance:

Investment Company X complied with all the requirements and provided that the documentation requirements as set out in paragraph 3.6 are complied with, will qualify for a UDZ allowance in respect of the refurbishment of the building in the 2006 year of assessment. It will, however, cease to qualify for the UDZ allowance from the 2007 year of assessment, as the building was sold during the 2006 year of assessment. All deductions that were previously allowed in respect of UDZ allowances will, furthermore, be subject to the recoupment provisions as contained in section 8(4)(a) of the Act. Investment Company X will also be subject to taxation on the capital gain made on the disposal of the UDZ building.

5. WILL THE PURCHASER OF A SECTIONAL TITLE UNIT BE ABLE TO QUALIFY FOR THE UDZ ALLOWANCE?

The purchaser of a sectional title unit will be able to qualify for the UDZ allowance if the following requirements are complied with:

- The unit is used by the person solely for purposes of that person's trade
- The unit is located within an urban development zone
- The unit is purchased directly from a developer that complies with the three requirements as set out in paragraph 3.1
- The necessary documentation as set out in paragraph 10 is submitted with the purchaser's relevant annual return of income
- The purchaser has not, subsequent to qualifying for the UDZ allowance in respect of costs pertaining to a unit sold or ceased to use the unit solely for the purposes of trade during a previous year of assessment

Example 5:

Facts:

Developer X demolished an old block of flats and erected a new block of flats consisting of 50 units within an UDZ zone after the publication of the particulars of the demarcation of the area. After completion of the erection of the new building Developer X sold 40 units and concluded lease contracts with tenants for a one year period. Some of the purchasers of the units use them for private residential purposes and the rest of the purchasers use them solely for purposes of their trade.

Determination of the UDZ allowance

The purchasers of the units that are used for purposes of their trade will qualify for UDZ allowances in respect of these units. The purchasers of the units that are used for private residential purposes will, however, not qualify for UDZ allowances in respect of these units. Developer X will qualify for UDZ allowances in respect of the units that are let to tenants. When these units are sold by Developer X, the purchasers of these units will not qualify for UDZ allowances.

6. WHICH COSTS ARE COVERED BY THE UDZ ALLOWANCE?

For the purposes of the UDZ allowance "cost" is defined in section 13*quat* as –

"the costs (other than borrowing or finance costs) actually incurred in erecting, extending, adding to or improving a building or part thereof and includes any costs incurred –

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and
- (c) in respect of structures or work directly adjoining the building so erected, extended, added to or improved, for purposes of providing –
 - (i) water, power or parking with respect to that building or part;
 - (ii) drainage or security for that building or part;
 - (iii) means of waste disposal for that building or part; or
 - (iv) access to that building or part, including the frontage thereof;"

The costs pertaining to the following will, for example, be regarded as costs for the purposes of the UDZ allowance:

- Construction work
- Architect and approval fees
- Demolishing of an existing building or part of an old building
- Structures to provide water, power, sewerage, drainage, waste disposal, access to the building, parking or security
- Sidewalks
- Landscaping as part of the development

The costs pertaining to the following will, for example, not be regarded as costs for purposes of the UDZ allowance:

- Purchase price of the land
- Transfer duties
- Borrowing or financing charges
- Transfer and related costs

Where a person purchased a building or part of a building from a developer –

- 55 per cent of the purchase price of the building or part thereof, in the case of a new building erected, extended or added to by the developer; and
- 30 per cent of the purchase price of the building or part of the building, in the case of a building improved by the developer,

will be deemed to be costs incurred by the person in respect of the erection, extension, addition to or improvement of the building or part of the building.

For purposes of the UDZ allowance the “purchase price” in relation to any building or part of a building purchased by the taxpayer is defined in section 13*quat* as –

“the lesser of –

- a) the actual cost to the taxpayer to purchase that building or part; or
- b) the cost which a person would have incurred had that person purchased that building or part under a cash transaction concluded at arm’s length on the date on which that taxpayer purchased that building or part;”

These “deemed costs” will be regarded as costs for purposes of the UDZ allowance and no further adjustments will have to be made in this regard. The purchaser of a building or part of a building will, therefore, be able to qualify for a UDZ allowance in respect of the “deemed costs” pertaining to such a building or part of a building.

This can be illustrated by way of the following example:

Example 6:

Facts:

Investor X purchased a new sectional title unit in a security complex from a developer on 2 January 2006 and immediately thereafter brought it into use for purposes of his trade. The purchase price amounted to R1, 2m and consisted of the costs pertaining to the land and the building.

Determination of the UDZ allowance:

55 per cent of the purchase price will be deemed to be costs incurred by the investor for purposes of the determination of the UDZ allowance and no adjustment has to be made to, for example, exclude costs pertaining to the land. Provided that all the other requirements are complied with, the investor will, therefore, be able to claim the UDZ allowance in respect of costs incurred of $55\% \times R1,2m = R660\,000$.

7. WHICH AMOUNTS WILL BE ALLOWED AS DEDUCTIONS?

The following amounts will be allowed to be deducted as UDZ allowances:

(a) The erection or extension of or addition to a building

In respect of the erection of a new building or part of a building or the extension of or addition to an existing building, the following amounts will be allowed to be deducted as UDZ allowances:

- An amount equal to 20 per cent of the cost pertaining to the erection or extension of or addition to the building in the year of assessment during which the building is brought into use by the taxpayer solely for the purposes of that person's trade; and
- An amount equal to five per cent of the cost in each of the 16 succeeding years of assessment, provided that the person does not cease to use the building or that part of the building solely for purposes of that person's trade.

This can be illustrated by the following examples:

Example 7:

Facts:

Investor X constructed a new commercial building in order to conduct a retail business after having purchased vacant land for R5m. The cost of the new construction amounted to R100m.

Determination of the UDZ allowance:

Provided that all other requirements are complied with, Investor X will be able to claim 20 per cent of the construction costs in the first year of assessment (i.e. R20m) when the building is brought into use for purposes of trade. Thereafter, Investor X can claim 5 per cent of the costs for each of the next 16 years of assessment (i.e. R5m per annum for the next 16 years). Investor X will not qualify for a UDZ allowance in respect of the purchase price of the land.

Example 8:

Facts:

Investor X purchased a new commercial building directly from a developer in order to conduct a retail business. The cost of the commercial building amounted to R100m.

Determination of the UDZ allowance:

Provided that all other requirements are complied with, Investor X will be able to claim a total amount of R55m (55% x purchase costs) over 17 years. He will be able to claim 20 per cent of the “deemed” construction costs in the first year of assessment (i.e. 20% x R55m = R11m) when the building is brought into use for purposes of trade. Thereafter, Investor X can claim 5 per cent of the “deemed” costs for each of the next 16 years of assessment (i.e. 5% x R55m = R2,75m per annum for the next 16 years).

(b) The improvement of an existing building or part of a building

In respect of the improvement of an existing building the following amounts will be allowed to be deducted as UDZ allowances:

- An amount equal to 20 per cent of the cost pertaining to the improvement of the building in the year of assessment during which the building is brought into use by the taxpayer solely for the purposes of trade; and
- An amount equal to 20 per cent of the cost in each of the four succeeding years of assessment, provided that the person does not cease to use the building or that part of the building solely for the purposes of trade.

This can be illustrated by way of the following examples:

Example 9:

Facts

Investor X acquired a run-down shop for R8m and refurbished the shop in order to conduct a viable retail business. The cost of the refurbishment amounted to R100m.

Determination of the UDZ allowance

Provided that all other requirements are complied with, Investor X will be able to claim the refurbishment costs in equal instalments over 5 years (i.e. R20m per year for 5 years) commencing in the year of assessment when the building is brought into use for purposes of trade. Investor X will not qualify for a UDZ allowance in respect of the R8m cost pertaining to the purchasing of the existing building.

Example 10:

Facts

Investor X purchased a refurbished retail shop directly from a developer in order to conduct a viable retail business. The cost of the refurbishment amounted to R100m.

Determination of the UDZ allowance

Provided that all other requirements are complied with, Investor X will be able to claim a total deduction of R30m (30% x R100m). A deduction in respect of the “deemed” costs relating to the improvements can be claimed in equal instalments over 5 years (i.e. 20% x R30m for 5 years) commencing in the year of assessment when the building is brought into use for purposes of that person’s trade.

Improvements to a building or part of the building will include any extension or addition to the building which is incidental to that improvement, where the existing structural or exterior framework of the building is preserved.

This can be illustrated by way of the following example:

Example 11:

Facts:

The owner of a 3-storey commercial building decided to install an escalator in the building. The cost pertaining to the installation of the escalator amounted to R20 000. To be able to install the escalator, a part of the building's roof had to be extended by half a metre. The cost pertaining to the extension amounted to R6 000.

Determination of the UDZ allowance:

The owner will be able to claim the cost pertaining to the installation of the escalator in equal instalments over 5 years (i.e R 4 000 per year for 5 years) commencing in the year of assessment when the escalator is brought into use for purposes of trade. The owner will also qualify for a UDZ allowance over 5 years in respect of the costs pertaining to the extension of the building, as the extension is incidental to that improvement.

8. WHAT ARE THE OBLIGATIONS OF A DEVELOPER FOR PURPOSES OF THE URBAN DEVELOPMENT ZONE TAX INCENTIVE?

To enable a person that purchased a building or part of a building located in a UDZ directly from a developer to qualify for a UDZ allowance, the developer has to provide that person with a certificate (UDZ 3 that is available on the SARS website www.sars.gov.za) in which it is confirmed that -

- the erection, extension or improvement of or addition to the building or part of the building was commenced by the developer on or after the date of publication in the *Gazette* of the particulars of the demarcated area in which the building is located, in terms of a contract formally and finally signed by all parties thereto on or after that date;
- the erection, extension or improvement of or addition to the building by the developer covers either the entire building or a part of the building representing a floor area of at least 1 000 m²;
- the developer has not claimed any UDZ allowance in respect of the building or that part of the building;
- a certificate of occupancy has been issued by the relevant municipality in respect of the building or that part of the building; and
- where the developer has improved the building or part of the building, that developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the person in respect of the building or that part of the building.

The onus is on the person that claims a deduction of the UDZ allowance to ensure that the information on the certificate is correct.

If the Commissioner has reason to believe that the information provided in the certificate by the developer is not correct, the Commissioner must disallow the UDZ allowance claimed by the person in respect of the building or part of the building purchased from the developer, unless sufficient information is provided to the Commissioner to prove that the information contained in that certificate is correct.

In addition to the above-mentioned obligation of a developer to provide a purchaser of a building or part of a building within an urban development zone with a UDZ 3 form, any developer who erects, extends, adds to or improves a building within a UDZ of which the estimated cost thereof is likely to exceed R5million, furthermore, must comply with the reporting requirements as discussed in paragraph 14.3 below.

9. WILL A PERSON QUALIFY FOR ANY OTHER ALLOWANCES IN RESPECT OF A UDZ BUILDING?

The UDZ tax incentive has been introduced in the form of an accelerated depreciation allowance and does, therefore, not constitute an additional tax allowance. A taxpayer that claimed a deduction of the UDZ allowance in respect of a building/part of a building may not claim any other depreciation allowances in respect of that building or part of the building.

10. HOW DOES A PERSON CLAIM THE UDZ ALLOWANCE?

A person claiming the UDZ allowance in respect of a year of assessment has to submit the following documentation with the relevant return of income:

- a) A UDZ 1 or UDZ 2 (whichever is applicable) with regard to each building or part of a building in respect of which a UDZ allowance is claimed, where the following information *inter alia* has to be provided:
 - The total cost in respect of the construction or improvement of a building or part of a building or where a building or part of a building was purchased from a developer the “deemed cost” for purposes of the UDZ allowance.
 - The extent to which these costs relate to any portion of the building in respect of which a certificate of occupancy has been granted by the relevant municipality.
 - An indication whether these costs were incurred in respect of the erection or extension of, addition to or improvement of a building;
- b) A certificate of occupancy obtained from the relevant municipality;
- c) A location certificate obtained from the relevant municipality; and
- d) Where a building or part of a building is purchased from a developer, a certificate (UDZ 3 as per paragraph 8 above) obtained from the developer that constructed or improved the building or part of the building that confirms that -
 - the erection or extension of, addition to or improvement of the building or part of the building was commenced by the developer on or after the date of publication of the particulars pertaining to the demarcation of the relevant area in which the building is located, in terms of a contract formally and finally signed by all parties thereto on after that date;
 - the construction or improvement by the developer covered the entire building or at least a floor area of 1 000 m²;
 - the developer has not claimed any UDZ allowance in respect of the building or part thereof;
 - a certificate of occupancy has been issued by the relevant municipality in respect of the building or that part of the building; and
 - in the case of the improvement of a building or part of a building, the developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of the building or part of the building.

11. CAN A DEMARCATED AREA CEASE TO BE A UDZ?

Any municipality that has demarcated an area within its boundaries has to provide an annual report to the Minister and Commissioner with regard to buildings constructed or improved within the UDZ's. These municipalities also have to provide location certificates to taxpayers that constructed or improved buildings within the demarcated areas.

Should a municipality fail to submit an annual report or the Commissioner inform the Minister that the municipality has issued a location certificate in respect of a building that is situated outside a UDX, the notice in which the particulars of an area demarcated by or municipality was published in the Gazette, may be withdrawn by the Minister.

However, corrective steps may be taken by a municipality (i.e. to submit the annual report or withdraw the incorrect location certificate) within a period as prescribed by the Minister, in which case the notice will not be withdrawn by the Minister.

12. WHAT HAPPENS WHEN A PERSON SELLS A UDZ BUILDING?

Where a person that claimed a deduction for a UDZ allowance sells the building in respect of which the UDZ allowance was claimed, such person will from the year of assessment following the year of assessment during which the person sold the building or part of the building, no longer qualify for a UDZ allowance in respect of such building or part of the building.

All deductions that were previously allowed in respect of UDZ allowances, will, furthermore, be subject to the recoupment provisions contained in section 8(4)(a) of the Act. Such person will, furthermore, be subject to taxation on any capital gain made on the disposal of the UDZ building.

This can be illustrated by way of the following example:

Example 12

Facts:

Investment company X constructed a new commercial building in order to conduct a retail business. The cost of this new construction amounted to R200m. The company claimed 30 per cent of these costs over three years of assessment (20% (R40m) in the first year and 5% (R10m) in each of the following two years). Investment Company X then sold the building for R308m.

Determination of income tax consequences:

Purchase price of building		R200m
Less: UDZ allowances granted		R 60m
		R140m
Selling price (proceeds)		R308m
Recoupment of UDZ allowances	R 60m	
Capital gain	R108m	R168m

The R60m recouped and the taxable capital gain of R54m (R108m x 50%) will be included in the taxable income of Investment company X.

13. WHAT HAPPENS WHEN A PERSON CEASES TO USE A BUILDING SOLELY FOR PURPOSES OF TRADE?

Where a person that claimed a deduction for a UDZ allowance ceases to use the UDZ building or part of a building in respect of which the UDZ allowance was claimed solely for purposes of trade, such person will from the year of assessment following the year of assessment during which the person ceased to use the building or part of the building solely for purposes of trade, no longer qualify for any UDZ allowances in respect of the costs incurred in respect of such building or part of such building.

This can be illustrated by the following example:

Example 13:

On 30 April 2005 Investment Company X commenced refurbishing its building in a UDZ after the date of the publication of the particulars of the demarcated area. After completion of the refurbishment Investment Company X commenced to use it for purposes of its trade on 30/09/2005. Company X then ceased to use it solely for purposes of its trade on 31 January 2006. Investment Company X has a 28 February financial year-end.

Determination of the UDZ allowance:

Investment Company X complied with all the requirements and provided that the documentation requirements as set out in paragraph 3.6 above are complied with, will qualify for a UDZ allowance in respect of the refurbishment of the building in the 2006 year of assessment. It will, however, cease to qualify for the UDZ allowance from the 2007 year of assessment, as the company ceased to use the building solely for purposes of trade during the 2006 year of assessment.

14. WHICH REPORTING REQUIREMENTS EXIST IN RESPECT OF THE URBAN DEVELOPMENT ZONE TAX INCENTIVE?

In terms of the Act there are various specific aspects in respect of which the Commissioner, municipalities and developers have to report on.

14.1 Municipalities

Any municipality that has demarcated an area within its boundaries has to provide an annual report to the Minister and Commissioner with regard to the UDZ tax incentive.

To enable a municipality to provide this information annually, it will be required from any person that applies for a location certificate at a municipality to provide certain information to that municipality.

The following information has to be provided by the municipalities to the Minister and Commissioner on an annual basis:

- Total number of applications for location certificates
- Particulars of each taxpayer to which a location certificate has been issued
- The location of each building for which that certificate has been issued
- The estimated costs incurred by the taxpayer in respect of each building or part of a building or in the case of a taxpayer who purchased the building or part from a developer, the estimated amount of the UDZ allowance to be claimed in respect of that building or part of the building

- The estimated number of jobs created as a result of the UDZ tax incentive
- The additional property rates collected as a result of the UDZ tax incentive
- The average turnover time for all planning and building approvals

If a municipality fails to–

- provide an annual report to the Minister or Commissioner, or the Commissioner reports to the Minister that the municipality has issued a location certificate in respect of a building that is situated outside a UDZ; and
- take corrective steps within a period specified by the Minister,

the Minister may withdraw the notice in which the particulars of an area demarcated by a municipality was published in the Gazette.

The effect of such a withdrawal will be that the area that was demarcated by the municipality will no longer constitute a UDZ and a taxpayer will, therefore, not be able to qualify for a UDZ allowance in respect of any building that was constructed or improved within that area in respect of a contract formally and finally signed by all parties thereto on or after the date of the withdrawal of the notice in the Gazette.

14.2 The Commissioner

The Commissioner has to submit an annual report to the Minister containing information relating to –

- the number of taxpayers that have during the relevant year claimed a UDZ allowance;
- the total amount of UDZ allowances allowed to taxpayers during that year; and
- the total amount of costs to those taxpayers which are or will be allowed as UDZ allowances.

The Commissioner is, furthermore, obliged to inform the Minister when a municipality has issued a location certificate in respect of a building that is situated outside an urban development zone.

14.3 Developers

In addition to the certificate discussed in paragraph 8, any developer who erects, extends, adds to or improves a building within an urban development zone of which the estimated cost thereof is likely to exceed R5 million has to –

- inform the Commissioner within 30 days after the commencement of that erection, addition or improvement, of the estimated costs thereof in respect of the building or part(s) of the building which the developer intends to sell and the estimated selling price of the building or those parts; and
- inform the Commissioner within 30 days after the sale of the building or any parts of the building have been concluded, of the actual costs incurred in respect of that building or part(s) of that building and the actual selling price of that building or part(s) thereof.

A UDZ 4 that is available on the SARS website www.sars.gov.za has to be completed for these purposes and submitted to:

Legal and Policy Division:

Legislative Policy,
Private Bag X923,
Pretoria,
0001

or sent via e-mail to udz4@sars.gov.za

15. CAN A PERSON OBJECT TO THE DISALLOWANCE OF THE UDZ ALLOWANCE?

Where a person that claimed a deduction in respect of a UDZ allowance is not satisfied with an assessment issued, for example where an adjustment has been made by the Commissioner to the UDZ allowance claimed in the person's return of income, the person may object to such an assessment.

The objection must be in the prescribed form (ADR 1), state the grounds on which the objection is lodged and reach the Commissioner within a period of 30 business days after the date of the assessment.

Where a person failed to attach the necessary documentation, as discussed in paragraph 10 above to the relevant return of income, such documentation must be attached to the objection.

Further information regarding the objection and appeal procedure is available on the SARS website www.sars.gov.za and is set out in the *Guide on Tax Dispute Resolution*.

16. WHAT ARE THE CONTACT DETAILS OF THE DIFFERENT MUNICIPALITIES?

The contact details of the municipalities that demarcated areas within their boundaries are as follows:

Municipality	Contact person	Tel. no.	Fax. No.	E-mail address
Buffalo City Municipality	Mr. Louis Roodt	(043) 705 2501	(043) 743 5266	louisr@buffalocity.gov.za
Cape Town Municipality	Mr. Peter Henshall-Howard	(021) 425 6459	(021) 425 6495	Peter.Henshall-Howard@capetown.gov.za
Ekurhuleni Municipality	Mr. Sammy Mafu Mr. Hennie Botha	(011) 741 6187 (011) 741 6600	(011) 741 6688 (011) 741 6688	sammym@ekurhuleni.com bothahp@ekurhuleni.com
Emalahleni Municipality	Mr. Eric Parker	(013) 690 6720	(013) 690 6295	parkereg@emahleni.co.za
Emfuleni Municipality	Mr. Christo De Jager	(016) 950 5545/6	(016) 931 1747	adeleb@emfuleni.gov.za
eThekweni Metro Municipality	Ms. Fikile Ndlovu	(031) 3362586	(031) 336 2614	ndlovufikile@durban.gov.za
Johannesburg Metro Mun	Ms. Lebo Ramoreboli	(011) 358 3437	(011) 358 3444	lebor@joburg.org.za
Mangaung Municipality	Mr. MW Machogo	(051) 405 8711	(051) 405 8882	machogo@civic.mangaung.co.za
Matjhabeng Municipality	Mr. Koos Duvenage	(057) 916 4123	(057) 916 4136	koosd@matjhabeng.co.za
Mbombela Municipality	Me. Hazel Zitha Me. Liezl van Niekerk	(013) 759 2063 (013) 759 2225	(013) 759 2194 (013) 759 2194	hazelz@mbombela.gov.za liezlv@mbombela.gov.za
Msunduzi Municipality	Mr. Radha Gounden	(033) 395 1143	(033) 3951576	Radha.Gounden@msunduzi.gov.za
Nelson Mandela Metro Mun	Ms. D Mc Carthy	(041) 506 2352	(041) 506 2403	dmccarthy@mandelametro.gov.za
Polokwane Municipality	Mr. M Maremane	(015) 290 2292	(015) 290 2255 (015) 290 2266	Matlala.M@Polokwane.org.za
Sol Plaatje Municipality	Mr G de Bruin	(053) 830 6343	(053) 831 6301	gdebruin@solplaatje.org.za
Tshwane Metro Municipality	Ms. Riana Du Plessis	(012) 358 7838	(012) 358 7921	rianadpl@tshwane.gov.za

17. CONCLUSION

It is trusted that this brochure will contribute to greater certainty regarding the application and interpretation of the provisions of the Act pertaining to the UDZ tax incentive. Further information regarding the topics discussed in this brochure and about SARS is available on the SARS website www.sars.gov.za or can be obtained from SARS offices.



**Deduction claimed in terms of section 13quat:
Purchase of a building/part of a building within
an Urban Development Zone**

Notes:

1. This form must be completed in respect of the purchase of a building/part of a building erected, extended, added to or improved by a developer in respect of which a deduction is claimed in terms of section 13quat of the Income Tax Act, 1962.
2. No deduction will be considered **unless** the following documentation, together with this form are provided with the tax return for the year of assessment in respect of which the deduction is claimed:
 - The location certificate obtained from the relevant municipality
 - A certificate of occupancy obtained from the developer
 - A completed UDZ3

Particulars of taxpayer

Name

Income tax reference no. Year of assessment

Particulars of building/part of building

Number of location certificate issued by municipality

Relevant municipality in which boundaries building is located

Total cost (purchase price) of:

(a) Building purchased directly from developer that erected, extended or added to the building R

(b) Building purchased directly from developer that improved the building R

Has a certificate of occupancy been issued by the municipality to the developer in respect of this building/part of the building? YES NO

Deemed costs for purposes of the deduction in respect of the erection or extension of or addition to the building/part of building (55% of the cost in (a) above) R

Deemed costs for purposes of the deduction in respect of the improvement of the building/part of building (30% of the cost in (b) above) R

Date when agreement to purchase the building/part of building was concluded

Particulars relating to deduction claimed

	Erection or extension of or addition to building/part of building	Improvement of building/part of building
Deduction(s) claimed during current year of assessment	R <input type="text"/>	R <input type="text"/>
Deduction(s) claimed during previous year(s) of assessment	R <input type="text"/>	R <input type="text"/>
Deduction(s) that can be claimed in future year(s) of assessment	R <input type="text"/>	R <input type="text"/>
Total "deemed costs" (Total of above 3 amounts)	R <input type="text"/>	R <input type="text"/>

Date when building was brought into use solely for purposes of trade

Period building was used solely for purposes of trade: From to

If the building was not used solely for purposes of trade during the entire year of assessment, please provide the reason(s) therefor

Main business or trade for which property was used during year of assessment

Declaration

I, , hereby certify that the particulars stated are true and correct to the best of my knowledge and belief.

Signed at on this day of 20



Developer Certificate

Notes:

- 1. This certificate is a declaration of compliance with the requirements of section 13quat(4)(d)(iii) of the Income Tax Act, 1962 and must be completed by the developer.
- 2. Where a building/part of a building was purchased from a developer, no deduction will be considered unless the following documentation, together with this form, are provided with the tax return for the year of assessment in respect of which the deduction is claimed:
 - The location certificate obtained from the relevant municipality
 - A certificate of occupancy obtained from the developer
 - A completed UDZ2

Particulars of taxpayer

Name

Income tax reference no.

Particulars of building/part of building

Description of building/part of building as per title deed

Physical address

Postal code

Purchase price R

Date when agreement to purchase was concluded C C Y Y - M M - D D

If not entire building, which part of building was sold to the taxpayer?

Date of commencement of erection, extension, addition or improvement of building/part of building C C Y Y - M M - D D

Did the erection, extension, addition or improvement cover the:
 A Entire building B If not the entire building, a floor area of at least 1 000m² C Neither (A) nor (B)

Date when occupancy certificate was issued in respect of the building/part of building C C Y Y - M M - D D

If the building/part of the building was improved, was the expenditure incurred by you (the developer) in respect of that improvement equal to at least 20% of the purchase price paid by the above-mentioned taxpayer in respect of the building/part of the building? YES NO

Particulars of developer

Name

Income tax reference no.

Postal address

Postal code

Work telephone number C O D E - N U M B E R Cellphone number N U M B E R

If the cost of the erection, extension, addition or improvement exceeded R5 million, was a UDZ4 completed and submitted to SARS in respect of the above-mentioned building? YES NO

Have you claimed any allowance under section 13quat in respect of this building/part of the building? YES NO

Declaration by developer

I, , the developer (in the case of a company the public officer of the company), hereby confirm that the above-mentioned particulars are true and correct to the best of my knowledge and belief.

Signed at on this day of 20



Developer information

Notes:

- 1. This form must be completed by a developer to comply with the reporting obligations as per section 13quat (10A) of the Income Tax Act, 1962.
- 2. This form must be completed with regard to each building in respect of which the cost is likely to exceed R5 million.
- 3. Part A of this form must be completed and the form submitted to SARS within 30 days after the commencement of the erection or extension of or addition to or improvement of the building or the parts which the developer intends to sell.
- 4. Part B of this form must be completed and the form submitted to SARS within 30 days after the sale of the building or all anticipated sales of any parts of the building.
- 5. Forms must be submitted to: Legislative Policy, Private Bag X923, Pretoria, 0001 or sent via e-mail to udz4@sars.gov.za

Particulars of developer

Name																		
Income tax reference no.																		
Postal address																		
Work telephone number	C	O	D	E	-	N	U	M	B	E	R	Cellphone number	N	U	M	B	E	R
											Postal code							

Particulars of building/part of building

Description of building													
Physical address													
											Postal code		
Total number of units in the case of a building/part of a building subdivided into units													

Part A

Estimated costs of erection or extension of or addition to building or part(s) intended for sale	R									
Estimated costs of improvement in respect of the building or part(s) intended for sale	R									
Estimated selling price of building or part(s) intended for sale	R									
Date of commencement of erection, extension, addition or improvement										

Part B

Actual costs incurred in respect of the building or part(s) of the building that was sold	R									
Actual selling price of building or parts of building that was sold	R									
Date when occupancy certificate was issued by the municipality										
Date of sale of building/last part(s) of building intended for sale										
In the case of units sold, total number of units sold										

Extract of section 13quat of the Income Tax Act, No. 58 of 1962

13quat. Deductions in respect of erection or improvement of buildings in urban development zones.—(1) For the purposes of this section—

“**certificate of occupancy**” means a certificate contemplated in section 14 (1) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

“**cost**” means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building or part thereof and includes any costs incurred—

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and
- (c) in respect of structures or works directly adjoining the building or part so erected, extended, added to or improved, for purposes of providing—
 - (i) water, power or parking with respect to that building or part;
 - (ii) drainage or security for that building or part;
 - (iii) means of waste disposal for that building or part; or
 - (iv) access to that building or part, including the frontage thereof;

[Definition of “cost” amended by s. 23 (a) of Act No. 31 of 2005. Para (c) substituted by s. 23 (b) of Act No. 31 of 2005.]

“**developer**” means a person who—

- (a) erects, extends, adds to or improves a building or part of a building with the sole purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and
- (b) does not use the building or part which is to be disposed of as contemplated in paragraph (a) for purposes of his or her trade in any other manner;

[Definition of “developer” inserted by s. 23 (c) of Act No. 31 of 2005.]

“**purchase price**” in relation to any building or part of a building purchased by the taxpayer means the lesser of—

- (a) the actual cost to the taxpayer to purchase that building or part; or
- (b) the cost which a person would have incurred had that person purchased that building or part under a cash transaction concluded at arm’s length on the date on which that taxpayer purchased that building or part;

[Definition of “purchase price” inserted by s. 23 (c) of Act No. 31 of 2005.]

“**urban development zone**” means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the Gazette in terms of subsection (8);

(2) There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is to be used solely for purposes of that taxpayer’s trade, if—

- (a) that building is situated within an urban development zone;
- (b) the erection, extension, addition or improvement was commenced by the taxpayer or the developer, as the case may be, on or after the date of publication of the notice contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date;
- (c) the erection, extension, addition to or improvement by the taxpayer or developer covers either the entire building or a floor area of at least 1 000 m² of that building;
- (d) in the case where the taxpayer purchased that building or part from a developer—
 - (i) the agreement to purchase was concluded on or after 8 November 2005;
 - (ii) that developer has not claimed any allowance under this section in respect of that building or part; and
 - (iii) if the developer improved the building or part as contemplated in subsection (3) (b), that developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of that building or part; and
- (e) a certificate of occupancy has been granted in respect of the building or part so erected, extended, added to or improved.

[Sub-s. (2) substituted by s. 23 (d) of Act No. 31 of 2005.]

(3) The amount of the allowance contemplated in subsection (2)—

- (a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to—
 - (i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer’s trade; and
 - (ii) five per cent of that cost in each of the 16 succeeding years of assessment; or
- (b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—
 - (i) 20 per cent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year

of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and

(ii) 20 per cent of that cost in each of the four succeeding years of assessment.

- (3A) For purposes of subsections (2) and (3), where the taxpayer purchased a building or part of a building from a developer—
- (a) 55 per cent of the purchase price of that building or part, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3) (a); and
 - (b) 30 per cent of the purchase price of that building or part, in the case of a building improved by that developer as contemplated in subsection (3) (b), is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part.
[Sub-s. (3A) inserted by s. 23 (e) of Act No. 31 of 2005.]
- (4) No deduction shall be allowed under this section, unless the taxpayer has together with the tax return for the year of assessment in which the deduction is claimed under subsection (3) (a) (i) or (b) (i), provided to the Commissioner—
- (a) a certificate issued by the municipality to the taxpayer confirming that the building is located within an urban development zone within that municipality;
[Para. (a) substituted by s. 23 (f) of Act No. 31 of 2005.]
 - (b) the total amount of the costs to the taxpayer (other than a taxpayer contemplated in paragraph (d)) of the erection, extension, addition or improvement and the extent that those costs relate to any portion of the building in respect of which a certificate of occupancy has been granted;
[Para. (b) substituted by s. 23 (f) of Act No. 31 of 2005.]
 - (c) particulars as to whether the costs referred to paragraph (b) were incurred in respect of the erection or extension of or addition to a building as contemplated in subsection (3) (a) or the improvement of a building as contemplated in subsection (3) (b); and
[Para. (c) substituted by s. 23 (f) of Act No. 31 of 2005.]
 - (d) in the case of a taxpayer who purchased the building or part of a building from a developer—
 - (i) the purchase price of that building or part;
 - (ii) the amount of the purchase price deemed to be a cost incurred by the taxpayer in terms of subsection (3A); and
 - (iii) a certificate from the developer in the form prescribed by the Commissioner confirming that the requirements in subsection (2) (b), (c) and (d) have been met.
[Para. (d) added by s. 23 (g) of Act No. 31 of 2005.]
- (5) No deduction shall be allowed under this section in respect of any building or part of a building—
- (a) where that taxpayer ceased to use that building, or part solely for purposes of that taxpayer's trade during any previous year of assessment;
[Para. (a) substituted by s. 23 (h) of Act No. 31 of 2005.]
 - (b) which has been disposed of by the taxpayer during any previous year of assessment; or
[Para. (b) amended by s. 23 (i) of Act No. 31 of 2005.]
 - (c) which is brought into use by the taxpayer after 31 March 2009.
[Sub-s. (5) amended by s. 23 (h) of Act No. 31 of 2005. Para. (c) added by s. 23 (j) of Act No. 31 of 2005.]
- (6) For the purposes of this section, one area may be demarcated by a municipality where—
- (a) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;
 - (b) that area is demarcated through formal resolution by the relevant municipal council;
[Para. (b) substituted by s. 12 of Act No. 16 of 2004.]
 - (c) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;
[Para. (c) substituted by s. 19 (1) (a) of Act No. 32 of 2004 deemed to have come into operation on 22 December, 2003.]
 - (d) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—
 - (i) property rates; or
 - (ii) assessed property values,and where the contribution from that area is undergoing a sustained real or nominal decline; and
[Para. (d) substituted by s. 19 (1) (b) of Act No. 32 of 2004 and amended by s. 23 (k) of Act No. 31 of 2005.]
- (e) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—
- (i) the appropriation of significant funds for developing the area in the annual budget of the municipality;
 - (ii) special tariffs for categories of residential, commercial or industrial users; or
 - (iii) partnership arrangements with the business community for the promotion of urban development within that area.
[Para. (e) amended by s. 23 (k) of Act No. 31 of 2005.]

(f)

[Para. (f) deleted by s. 19 (1) (c) of Act No. 32 of 2004 deemed to have come into operation on 22 December, 2003.]

- (7) (a) Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed—
- (i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or
 - (ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population.
- (b) Where that municipality has a population of 2 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6) provided that—
- (i) the two areas do not in total exceed the one area contemplated in paragraph (a) (ii); and
 - (ii) each area otherwise satisfies the requirements of subsection (6).
- (c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2001 and the total population of that municipality must be rounded to the nearest multiple of 100 000.
- (d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph (a) where—
- (i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph (a);
 - (ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area;
 - (iii) the municipality has not demarcated two areas as contemplated in subparagraph (b); and
 - (iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.
- (8) The Minister must publish by notice in the Gazette particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).
- (9) Every municipality must provide a report annually to the Commissioner and the Minister for each urban development zone located within that municipality within such time as is prescribed by the Minister, listing—
- (a) each taxpayer to which a certificate contemplated in subsection (4) (a) has been issued;
 - (b) the location of each building for which that certificate was issued;
 - (c) the estimated costs incurred by the taxpayer in respect of each building or in the case of a taxpayer who purchased the building or part from a developer, the estimated amount of the allowance to be claimed in respect of that building or part under this section;
- [Para. (c) substituted by s. 19 (1) (e) of Act No. 32 of 2004 and by s. 23 (l) of Act No. 31 of 2005.]
- (d) the estimated total jobs created as a result of this section;
- [Para. (d) substituted by s. 19 (1) (e) of Act No. 32 of 2004 deemed to have come into operation on 22 December, 2003.]
- (e) the additional property rates collected as a result of this section; and
 - (f) the total applications for a certificate contemplated in subsection (4) (a);
 - (g) the average turnover time for all planning and building approvals.
- [Sub-s. (9) amended by s. 19 (1) (d) of Act No. 32 of 2004 deemed to have come into operation on 22 December, 2003.
Para. (g) added by s. 19 (1) (f) of Act No. 32 of 2004 deemed to have come into operation on 22 December, 2003.]
- (10) Where—
- (a) a municipality does not provide an annual report as contemplated in subsection (9) or a quarterly report as contemplated in subsection (6) (f) or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4) (a) in respect of a building that is located outside an urban development zone; and
 - (b) corrective steps are not taken by that municipality within a period specified by the Minister, the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.
- (10A) Every developer who erects, extends, adds to or improves any building within an urban development zone must, if the estimated cost of that erection, extension, addition or improvement is likely to exceed R5 million—
- (a) inform the Commissioner within 30 days after commencement of the erection, extension, addition or improvement of the estimated costs thereof in respect of the building or the parts which the developer intends to sell and the estimated selling price of that building or those parts; and
 - (b) inform the Commissioner within 30 days after sale of the building or all anticipated sales of any parts of the building have been concluded of the actual costs incurred in respect of that building or parts and the actual selling price of that building or parts thereof.
- [Sub-s. (10A) inserted by s. 23 (m) of Act No. 31 of 2005.]
- (10B) If the Commissioner has reason to believe that the information provided in the certificate by a developer as contemplated in subsection (4) (d) (iii) is not correct, the Commissioner must disallow any deduction claimed under this section, unless sufficient information is provided to the Commissioner to prove that the information contained in that certificate is correct.
- [Sub-s. (10B) inserted by s. 23 (m) of Act No. 31 of 2005.]

- (11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—
- (a) the number of taxpayers which have during the relevant year claimed an allowance in terms of this section;
 - (b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and
 - (c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.
- [S. 13^{quat} inserted by s. 33 of Act No. 45 of 2003.]



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