



BASIC TAX

Estate Agents

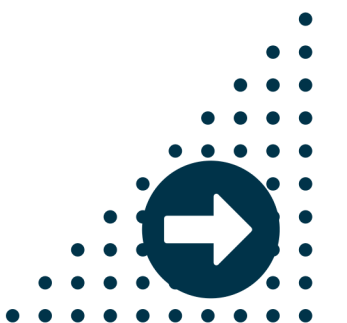
Basic Tax considerations for
Independent Estate Agents



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Independent Estate Agent vs. Employee Estate Agent



We have to draw a clear distinction between an **Independent Estate Agent** vs. an **Employee Estate Agent**. The reason for that is because **the income of these 2 types of working arrangements are taxed differently.**

Independent

An independent estate agent in essence operates as a stand-alone, independent business.

Employee

An agent that works for commission in an employment relationship with a company.





Rules to Determine Independence

In the real estate industry **the relationship between the individual estate agent and the Real Estate Company or Broker can be vague** and it is not that simple to pin it down.

The safest route to take is to be guided by the **Revenue Service's Guidelines**, because they are the guys pivotal in determining the responsibility of an estate agent, as to how to account for:

- ✓ **Money Received**
- ✓ **Expenses Incurred**
- ✓ **Tax Liability**
- ✓ **Manner of Tax Payments**



Interpretation Note 17 (Issue 5) from The South African Revenue Service, Date: 5 March 2019



In order **to establish an independent working arrangement** (agreement) as opposed to an employer/employee relationship **for tax purposes** the person's **independence is determined by** the exclusionary subparagraph of **the definition of the term "remuneration"**.

if your earnings are defined as **remuneration**, you are **NOT** regarded as **an independent contractor** of the company paying you

you are classified as being in an employment relationship with the employer having the responsibility to deduct PAYE from your earnings and pay it over to the Revenue Service.



Independent Contractors' Taxes Test



To conclusively **deem a person not to be an independent** contractor for employees' tax purposes **2 tests have to be passed.**

A person shall **not be deemed to carry on a trade independently** if the services or duties are:

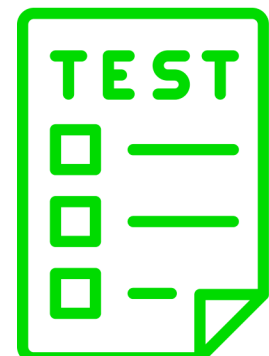
TEST 1

Required to be performed mainly at the premises of the client,

and

the worker is subject to the control of any other person as to:

- the manner in which the worker's duties are or will be performed,
- or as to the hours of work.



TEST 2



The worker is **subject to the supervision** of any other person as to the manner in which:

- the worker's duties are or will be performed, or
- as to the hours of work.

Where either **Test 1** or **Test 2** apply positively, the worker is deemed **NOT** to be an **independent Estate Agent**. The result of that is that:

The amount received by the estate agent is, therefore, **not excluded from remuneration** (and tax must be deducted accordingly as Employees tax also known as PAYE from the income received).

In contrast **NO TAX** will be withheld by the company from the earnings of an **independent estate agent**.

In short an estate agent's independence is determined by:

- **WHERE** duties are performed. (place of conducting business). And / Or
- Control exercised over the agent in terms of **HOW** duties are performed (manner of work). And / Or
- Control over **WHEN** duties are performed.



Clauses in Contracts Reinforcing Independence



The terms of a typical **agreement** that clearly **establish an independent relationship** and **not an employment contract**.

NO SUPERVISION OVER TIME AND MANNER OF HOW DUTIES ARE PERFORMED

"The Estate Agent shall be free to devote to his or her real estate service business such portion of his or her time, energy, effort and skill, as the Estate Agent sees fit and to establish his or her own endeavours."

"The Estate Agent shall not be required to keep definite office hours, attend sales meetings or adhere to sales quotas."

"The Estate Agent shall not have mandatory duties except those specifically set out in this Agreement."

"Nothing contained in this Agreement shall be regarded as creating any relationship (employer/employee, joint venture, partnership, shareholder) between the Parties, other than the independent contractor relationship as set forth herein. "

The Estate Agent may be:

- a natural person,
- a company or
- close corporation.

(Each entity is taxed differently)



Taxation Agreements with Independent Estate Agents



Typically, an **employee** incurs **no "business expenses"** and is **reimbursed or granted allowances** for expenses on behalf of the employer, while an **independent contractor incurs business expenses**.

Similarly, an **employee will not have to register with the Department of Labour** (as a labour broker or employer) or with **SARS** for Value-added tax (VAT) (as an enterprise) or for **PAYE** (as an employer), where an **independent Estate Agent may have to** depending on their circumstances.

Expenses:

- Marketing
- Entertaining
- Bookkeeping
- Wages
- Travel
- etc.

THE INDEPENDENT ESTATE AGENT CLAUSE ON TAX RESPONSIBILITY ALSO READS:

"The Estate Agent understands that he/she or it is entering into this Agreement as an independent contracting estate agent and not as an employee."

"The Estate Agent understands that it is the Estate Agent's sole responsibility for paying all income taxes, withholding taxes, and other taxes and amounts required by law for the Estate Agent's compensation and all other payments to the Estate Agent, if any."

"Neither the Estate Agent nor any of his/her/its staff is an employee or agent of the Company for any purpose whatsoever."



THE INDEPENDENT ESTATE AGENT CLAUSE ON TAX RESPONSIBILITY ALSO READS:



The Company will not withhold and pay any income or other taxes on the Estate Agent's compensation."

"The Company will have no responsibility to provide any insurance, retirement or other employee benefits to the Estate Agent."

"The Estate Agent will not be treated as an employee with respect to services rendered by the Estate Agent pursuant to this Agreement for tax purposes."

In practice this means that **NO TAXES** will be withheld from the estate agent. It also places a responsibility on the estate agent to provide for his/her own taxes as a business and to provide or make provision for a tax bill as a provisional taxpayer **normally three times during a tax year.**



ESTATE AGENT EXPENSES TO CONDUCT INDEPENDENT BUSINESS

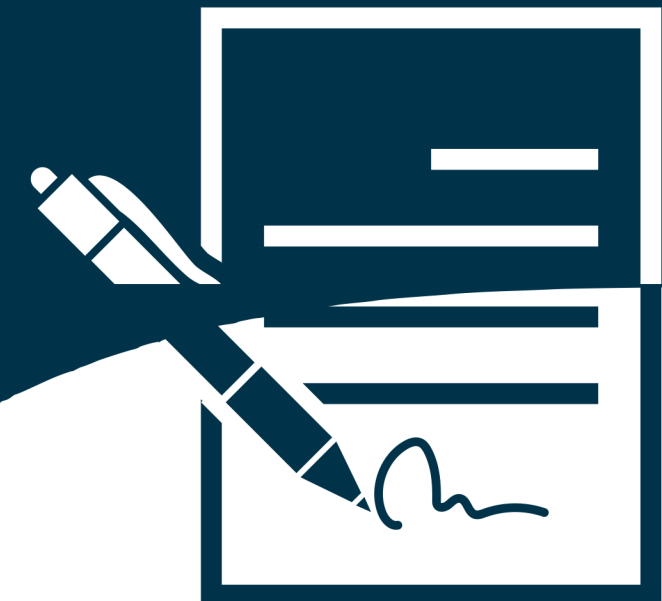


Further **clauses in** the independent estate agent **agreement with the company** deals with the Estate Agent's **responsibility for all the expenses** related to running an independent business.

"In no way limiting the generality of the foregoing, the Estate Agent shall be responsible for the following expenses:"

Fees due to the Estate Agency
Affairs Board,
Legal Practice Council,
cell phone expenses,
business cards,
signs,
sign-posts,
advertising,
personal branding,
continuing education,
licensing,
printing,

copying,
faxing,
digital camera,
computer(s), printer/scanner/fax,
high-speed Internet,
automobile expenses,
auto insurance,
rentals and municipality taxes of any
kind, and any and all government,
regulatory or agency licensure,
compliance, or
other fees and expenses.



Tax Responsibilities of an Independent Estate Agent



RESPONSIBILITY



Q: So, you are now classified as an Independent Estate Agent for tax purposes, how do you manage your taxes now?

A: Start to understand that **YOU** are a **PROVISIONAL TAXPAYER!**

A PROVISIONAL TAXPAYER:

Revenue Service defines a provisional taxpayer as **any person who receives income** (or to whom income accrues) **other than remuneration**. Most **salary earners** are therefore **not-provisional taxpayers, if they have no other sources of income**.

To quote the act:

"A provisional taxpayer is defined in paragraph 1 of the Fourth Schedule of the Income Tax Act, No.58 of 1962, as any

- natural person who derives income, other than remuneration...
- company; or
- person who is told by the Commissioner that he or she is a provisional taxpayer."



There are instances where a person can receive income other than remuneration and be excluded from being a provisional taxpayer.



EXCLUSION TEST 1

Any natural person who **does not earn any income from carrying on any business** – provided that person's taxable income will not be more than the tax threshold.

2023 tax year thresholds are:

- for taxpayers below age of 65 – **R91 250**
- age 65 to below 75 – **R141 250**
- age 75 and over – **R157 900**

EXCLUSION TEST 2

The **taxable income** of that person (earned from interest, foreign dividends, rental from letting of fixed property and remuneration from unregistered employer) **will not be more than R30 000.**





The implications of being a provisional taxpayer is that the “**buck stops with YOU**”

- You will have to enforce **self discipline** to put money away to provide for the glooming tax guillotine above your head.
- Nobody is going to deduct tax from your income and
- no one is going to create a tax certificate for you.
- You need to create an income statement as laid out in the example to follow and
- You will probably need a professional accountant to assist you with your tax return.

- Most important of all, if you do not keep proper records of your expenses with the necessary knowledge of what is deductible from your income to derive at a net profit which is one of the markers needed in your tax computation. You will lose out and pay more tax than is lawfully required.



The final tax amount due



The final tax amount due by you is determined with **real figures** unlike provisional taxes which is based on an estimate. It will be helpful to think of your provisional tax payments as credits which will be deducted from your final tax amount to arrive at a tax liability or refund.

How to calculate the income tax on an Estate Agency Business (In general)

Commission income

Less - Allowable Tax deductions / Expenses related to estate agent's business

Equals = Business Profit

Add + Other Taxable income

Less - Exemptions e.g. Interest rebates

Less - Special Deductions e.g. Donations to PBO, Retirement Annuity.

Equals = Taxable income

Calculate: Income Tax

Less - Section 6 "age" rebates

Less - Section 6A Medical Tax Credits (medical aid tax credit rebates)

Less - Section 6B Additional Medical Tax Credits (additional tax expenses)

Equals = Tax payable





A practical example of an
Estate Agent's tax calculation:

2

Scenarios



A practical example of an Estate Agent's tax calculation: 2 Scenarios

1

The Estate Agent trades as a Sole Proprietor (individual)

Both entities have exactly the same income and expenditure

2

The Estate Agent trades as a company. (Be careful of a company)

In the company the agent gets a salary of R226,000. The company has to deal with dividend tax, which is not required for a sole proprietorship.



Example Estate Agent Tax Calculation		Page 1
Income Statement	Sole Proprietor	Company
Commission income	500,000	500,000
Less: Expenses		
Accounting fee	5,000	5,000
Advertising	10,000	10,000
Bank charges	5,000	5,000
Courier & postage	2,000	2,000
Depreciation – IT	4,000	4,000
Entertainment	5,000	5,000
Internet & phone	6,000	6,000
IT expenses	3,000	3,000
Municipal charges	5,000	5,000
Office	20,000	20,000
Salary Estate Agent	0	226,000
Subscriptions	9,000	9,000
Training	5,000	5,000
Travel and accomodation	10,000	10,000
Total expense	89,000	315,000
Net Profit from business	411,00	185,000

Example Estate Agent Tax Calculation	Page	2
Tax calculation	Sole Proprietor	Company
Net Profit from business	411,00	185,000
Companies Tax	0	51,800
Dividend Tax	0	47,360
Salary for employee tax	0	226,000
Add Other Income		
Interest	50,000	50,000
Less Interest Exemption	(23,800)	(23,800)
Less Tax Deductions		
Retirement Annuity Fund	(24,000)	(24,000)
Taxable income	413,200	228,200
Tax thereon for the 2023 year-end	95,540	42,860
• Less: Rebate – Primary	(14,958)	(14,958)
• Less: 6A medical aid contribution	(3,744)	(3,744)
• Less: 6B medical expenses not covered	(5,000)	(5,000)
Plus: Company Tax & Dividend Tax		99,160
Tax liability	71,838	118,318
Deduct		
• PAYE	0	(19,158)
• First Provisional Tax	(25,234)	(25,234)
• Second Provisional tax	(45,000)	(45,00)
ESTIMATED TAX DUE	1,604	28,926



Conclusion:

- Total tax payable trading as sole proprietor = 71,838
- Total tax payable trading as company = 118,318

It is clear that trading as a Company will not always ensure the lowest tax liability. Comprehensive planning is required with a company, coupled with keeping company records and other obligations, will result in escalation of costs.

The company's tax can be minimised when it is classified as a Small Business Corporation as defined by the Tax Act.

There are conditions that must be complied with in order to qualify as a Small Business Corporation.

*Delving any deeper into this subject is beyond the scope of this presentation.
Seek professional tax assistance if you consider trading as a company.*



Trade as a company or not?





When to trade as a company or not?

1. Employer

You have employees and have to register your business as an employer at the Department of labour, SARS and Unemployment Insurance Fund.

2. Turnover

Your turnover is in excess of R1m and you have to register for VAT.

3. Partners

Partners are joining you in the business. For continuity purposes issuing shares may be better than partnership agreements.

3. Small Business Corporation (SBC) for Tax purposes

You have three or more unrelated people, full time employed within the business. (Small Businesses Corporation requirement)



I am an Independent Estate Agent, what now?



1. **Know your status:** Are you an employee or independent contractor as defined by Revenue Services.
2. **Save money for tax!** Put 25% of your gross income away for taxes.
3. **Submit Provisional Tax Returns:** Thereby avoiding penalties and interest.
4. **Keep accurate records of ALL your expenses:** Taxpayers lose millions of Rands in excessive taxes by not keeping record of all their expenses. There are technology products available like Dext that simplify the keeping of records and storing it to prove the claim later as an expense.



I am an Independent Estate Agent, what now? (continues)



5. Remember the basic rule: Expenses incurred in the production of income are deductible from income for tax purposes.
6. Stay up-to-date with your accounting records. Using an online accounting system that is kept up-to-date so that you have minimum admin work and can be accessed from anywhere will be a great asset in your business.
7. Know your financial position at all times.



I am an Independent Estate Agent, what now? (continues)



8. Claim your work space as a deduction from your income and keep a logbook of your travel kilometres.
9. Get professional help early, before it is too late. In the long run, having to deal with old records and tight deadlines instituted by SARS costs more than being up-to-date with your books and tax submissions.



- easy
- quick
- precise



Sage

netcash[®]

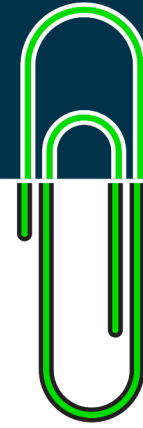
Debit orders Receipts & payments feed

Dext — Supplier invoices
and cash slips

Sage — payroll

You can do it!





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