

UDZ Tax Incentive: Amendment dealing with Sectional Title Properties

This Extract from the Relevant Legislation has been prepared for your convenience by the Economic Development Unit, City of Johannesburg (March 2006) (see Pages 53 – 55)

Please note that if the full information is required on this Act, this may be obtained from www.sars.gov.za, or cut and paste this link:

[http://www.sars.gov.za/legislation/acts/2005/Revenue%20Laws%20Amendment%20Act%20Act%20No%2031%20of%202005\)%20\(Promulgation%20date%201%20February%202006\)%20\(GG%2028450\).pdf](http://www.sars.gov.za/legislation/acts/2005/Revenue%20Laws%20Amendment%20Act%20Act%20No%2031%20of%202005)%20(Promulgation%20date%201%20February%202006)%20(GG%2028450).pdf)



**Government Gazette
Staatskoerant**

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 488 Cape Town, 1 February 2006 No. 28450
Kaapstad, 1 Februarie 2006

THE PRESIDENCY	DIE PRESIDENSIE
No. 102 1 February 2006	No. 102 1 Februarie 2006
It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—	Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—
No. 31 of 2005: Revenue Laws Amendment Act, 2005.	No. 31 van 2006: Wysigingswet op Inkomstewette, 2006.

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Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004 and section 19 of Act 32 of 2004

23 Section 13quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words in the definition of “cost” preceding paragraph (a) of the following words:
“**‘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—”;
- (b) by the substitution in subsection (1) for paragraph (c) of the definition of “costs” of the following paragraph:
“(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;
(iv) access to that building or part, including the frontage thereof;”;
- (c) by the insertion in subsection (1) after the definition of “cost” of the following definitions:
“**‘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;”;
‘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;
- (d) by the substitution for subsection (2) of the following subsection:
“(2) There **[shall]** 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 **[within an urban development zone]** 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) **[which]** 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; [and]
(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 1000 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

[(b)](e) **[in respect of which]** a certificate of occupancy has been granted in respect of the building or part so erected, extended, added to or improved.”;

(e) by the insertion after subsection (3) of the following subsection:

“(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.”;

(f) by the substitution in subsection (4) for paragraphs (a), (b) and (c) of the following paragraphs:

“(a) a certificate **[from]** issued by the municipality to the taxpayer confirming that the building is located within an urban development zone within that municipality;

(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; **[and]**

(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 [extension, addition or]** improvement of a building as contemplated in subsection (3)(b); and”;

(g) by the addition to subsection (4) of the following paragraph:

“(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.”;

(h) by the substitution in subsection (5) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

“(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: **[or]**”;

- (i) by the addition in subsection (5) of the word “or” at the end of paragraph (b);
- (j) by the addition to subsection (5) of the following paragraph:
“(c) which is brought into use by the taxpayer after 31 March 2009.”;
- (k) by the addition in subsection (6) of the word “and” at the end of paragraph (d) and the deletion of the word “and” at the end of paragraph (e);
- (l) by the substitution in subsection (9) for paragraph (c) of the following paragraph:
“(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;”;
- (m) by the insertion after subsection (10) of the following subsections:
“(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.(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.”.



REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 2005



NATIONAL
TREASURY

[W.P. —05]

EXPLANATORY MEMORANDUM ON THE
REVENUE LAWS AMENDMENT BILL, 2005

INTRODUCTION

The Revenue Laws Amendment Bill, 2005, introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1991, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Tax on Retirement Funds Act, 1996, the Road Accident Fund Act, 1996, the Uncertificated Securities Tax Act, 1996, the Revenue Laws Amendment Act, 2003, and the Second Revenue Laws Amendment Act, 2004.

CLAUSE 23

Income Tax: Amendment of section 13quat of the Income Tax Act, 1962

Section 13quat was inserted in the Income Tax Act, 1962, in 2003 as a tax incentive to encourage investment in identified urban development zones to address the problem of urban decay in these zones and maintain existing infrastructure that was developed at great cost.

Section 13quat provides for an accelerated depreciation allowance for the construction of new buildings and refurbishment of existing buildings in identified inner cities within selected municipalities. The allowance is available to taxpayers who own the building, has constructed or refurbished it and uses it solely for the purposes of trade, including the letting of the property. Therefore, if a developer builds in an urban development zone with the intention to on-sell the building, no allowance under this section will be available, since the developer will not use the building. The purchaser of the property will also not be eligible for the allowance as the purchaser has not undertaken the construction or improvements.

It is proposed that the tax incentive be extended to first purchasers that buy from bona fide developers. Extending the incentive in this way will allow developers to incur the actual costs of constructing or refurbishing a building in an urban development zone and on-sell the building together with the right to claim the incentive. The first purchaser, although not having incurred the actual costs of

construction or refurbishment, will qualify for the tax incentive and be able to claim an allowance on a percentage of the purchase price which is deemed to be attributable to the developer's construction or refurbishment costs.

The current provisions of section 13quat also require that the whole building must be used by the taxpayer for purposes of trade. As developers often sell buildings constructed by them on a sectional title basis, it is proposed that the scope of the section be extended to also cover parts of buildings that are constructed or refurbished.

In order to ensure that refurbishments of part of a building are substantial, a requirement for a minimum refurbished floor space of 1000m² has been introduced. This minimum floor space requirement does not apply where an entire building is constructed or refurbished.