

Legislation

Selected Provisions of Urban Development Zone Legislation

Income Tax Act, 1962 (Act 58 of 1962) as amended by the:
Revenues Law Amendment Act (45 of 2003) – Section 33(7) and
Revenue Laws Amendment Act (28 of 2005),

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 erection or extending, adding to or improving a building or part thereof and includes any cost 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. 28 of 2005. Para (c) substituted by s.23 (b) of Act No. 28 of 2005]

“developer” means a person who-

- (a) erects, extends, adds to or improves a building or part 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 s. 23 (c) of Act No. 28 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 costs to the taxpayer to purchase that building or part; or
- (b) the costs 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 s. 23 (c) of Act No. 28 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 section (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 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 of that building by the taxpayer or developer covers either the entire building or a floor area of at least 1000m² of that building;
 - (d) in 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. 28 of 2005]

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

- (a) in the case of the erection or 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 percent 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 percent 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 percent 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 percent of that cost in each of the four succeeding years of assessment.

(3A) For the purposes of subsection (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 sub section (3) (a); and
- (b) 30 per cent of the purchase price of that building or part, in the case of building improved by that developer as contemplated in sub section (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. 28 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) or (b), 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. 28 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. 28 of 2005.]
 - (c) particulars as to whether the costs referred to in paragraph (b) were incurred in respect of the erection or extension of or additions 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. 28 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 sub section (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. 28 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. 28 of 2005]
- (b) which has been disposed of by the taxpayer during any previous year of assessment; or
[Para (b) substituted by s. 23 (i) of Act No. 28 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. 28 of 2005, Para (c) added by s. 23 (j) of Act No. 28 of 2005]

(10A) Every developer who erects, extends, adds to or improves any building within an urban development zone must, if the estimated costs 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 the 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. 28 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. 28 of 2005]