November 2020 TAX UPDATE

Monthly Tax Update series

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The Tax Faculty

What we are covering today…

- Update on the 2020 Amendment Bills
- Latest tax judgments
- Latest SARS Rulings, etc
- Tax aspects relating to working from home

2020 Amendment Bills

- Final Bills introduced to the National Assembly on 28 October 2020
  - Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26—2020]
  - Taxation Laws Amendment Bill [B27—2020]
  - Tax Administration Laws Amendment Bill [B28—2020]

- Acts promulgated 05 November 2020
  - Disaster Management Tax Relief Act (Act No. 13 of 2020)
  - Disaster Management Tax Relief Administration Act (Act No. 14 of 2020)

Main amendments
Covered in Annual Tax Update

- Foreign employment income exemption: 183-day requirement
- Exemption for employer-provided bursaries
- Withdrawing from retirement funds upon emigration
- Preference share structures and s 7C
- Reimbursing employees for business travel
- Doubtful debt allowance
- Corporate reorganisation rules
- Loop structures
- Trust capital gains
- VAT amendments
- Tax administration amendments

Tax judgments

Date	Parties	Summary
30 October 2020	Van der Merwe v CSARS (A322/2019)	Tax Administration Act (TAA) ss 117(3), 129 and 133(1); whether – • rulings or orders made by the Tax Court in respect of the application for condonation and the striking out are appealable; • the granting of condonation to SARS was, on the facts, justified; • the failure to have the striking out application properly ventilated vitiated the proceedings. Matter concerns two interlocutory applications made in the tax court which were taken on appeal by the taxpayer to the high court; additional assessment; SARS condoning late objection; SARS failing to respond to objection - taxpayer appealing to the tax court for default judgment; SARS failing to file statement of grounds of assessment; SARS withdrawing condonation of late objection; high court finding by a majority that tax court had erred; appeal upheld with costs.
14 October 2020	CSARS v Zikhulise Cleaning and Maintenance and Transport Service (14886/16) [2020]; Mpisane v Zikhulise Cleaning and Maintenance and Transport CC and another (18101/16) [2017]	Tax administration; liquidation; whether a final winding up order should be granted, taking into account the provisions of s 177(3) of the TAA and s 346 of the Companies Act; judgment confirmed the process in respect of s 177(3) of the TAA, confirming what is required by SARS when bringing an application to place a company into liquidation, where the assessment is under objection and/or appeal; provided SARS includes a prayer for leave of the court to bring the application in its notice of motion it has complied with the provisions of s 177(3); judgment dealt extensively with the requirements for granting a final liquidation order in terms of s 346 of the Companies Act, 1973; rule nisi issued on 22 August 2019 confirmed and respondent placed under final winding-up; respondent ordered to pay the costs of the application, including the costs of three counsel.

Tax judgments – recently published

Date	Parties	Summary
23 September 2015	Ackermans Limited v CSARS (16408/2013)	Sections 237 and 33 of the Constitution of the Republic of South Africa, 1996; s 17(1) of the Superior Courts Act 10 of 2013; Application by Ackermans to appeal against order and judgment dated 20 February 2015 (16408/2013); SARS applying to cross appeal against the costs order in that judgment; applicant had contended in the earlier judgment that SARS had unduly delayed in issuing additional assessments which was contrary to the Constitution; Court finding that reasonableness of delay should be judged under s 79 of the Income Tax Act; Court had found that the matter should be placed before the tax court which was the appropriate forum; Applicant contending that the constitutional provisions and s 79 should be separated; Court finding that there were no reasonable prospects of success and dismissing application with costs; cross appeal consequently falling away.

SARS documents and notices

- SARS to discontinue the use of cheques
- Extended deadline to file Country-by-Country Report returns
- Reflecting deferred PAYE amounts
- Tax Practitioner Connect #19: POAs
- Updated *Guide for Employers in respect of the Unemployment Insurance Fund*:
  - New registration requirements from the UI Commissioner
- SARS Comprehensive Guide to Capital Gains Tax (Issue 9) issued 5 November 2020
- Updated Venture Capital Companies (VCC) list with three new companies (30 October 2020)

SARS to discontinue the use of cheques

- 12 November 2020: SARS has decided not to accept cheques as a form of payment at Customs ports of entry from 14 December 2020 and at banks from 1 January 2021
- Taxpayers and Customs clients who need to pay SARS can use one of the following options:
  - eFiling
  - Electronic Funds Transfer (EFT)
  - At a bank branch (cash and EFT). All payments can be made at any ABSA, Capitec, FNB, Nedbank or Standard Bank branch.
  - Travellers entering and leaving the country will still be able to pay cash at the port of entry.
- Taxpayers are reminded that all payments must contain the correct beneficiary ID and payment reference number (PRN). Detailed payment information is available on the SARS website www.sars.gov.za.

Extended deadline to file Country-by-Country Report returns

- 12 November 2020: Public notice published in terms of s 25(7) of the Tax Administration Act, 2011, extending the deadline to file Country-by-Country (CBC) Report returns by persons as specified in the notice.
    - Notice: deadline to file the CBC Reports under Notice No. 1117 published in *Gazette* No. 41186 (20 October 2017), for Reporting Fiscal Years commencing before 1 March 2020 as follows:
        - Person required to file by 31 December 2020 or 31 January 2021: deadline extended to 28 February 2021.
        - Person required to file by 28 February 2021: deadline extended to 31 March 2021.
- See https://www.sars.gov.za/TaxTypes/CIT/Pages/Country-by-Country.aspx

Reflecting deferred PAYE amounts
FAQs for Employers on COVID-19 relief - New FAQ no. 34

- Q: How to reflect the COVID-19 Tax Relief deferred payments on the EMP501?
- A:
  - For the months where the deferred payment is applicable (April to August 2020), capture the full 100% PAYE liability, regardless of relief.
  - The payment must include the full payment made plus the relief granted. ETI utilised must not be included.
  - For the months where the COVID-19 instalments are payable (September 2020 to February 2021 (s/be October 2020 – March 2021)), declare the full 100% PAYE liability. Instalments must not be included. The payment must include only the payment towards the monthly liability (return value) and not include the instalment value.
  - Note: Please make sure that the EMP501 reflects the full 100% liability.

Tax Practitioner Connect #19 (Nov 2020)

Unlawful for tax practitioners to approve online POAs for clients

- Some misunderstanding regarding the approvals of tax type transfers by means of PoAs on eFiling, granted to tax practitioners by taxpayers.
- SARS has implemented a new functionality on eFiling, which allows taxpayers or their registered representatives to authorise the transfer or any movement of Personal Income Tax eFiling profiles via the online PoA. It forms part of a number of digital enhancements that are meant to make it easy to comply.
- This new, streamlined digital process of transferring a taxpayer's tax affairs per tax type from one practitioner to another, requires the taxpayer to accept and digitally approve an online PoA. This includes approval and provision of a PoA to a new practitioner, thus a taxpayer is obliged to complete the online PoA to enable a tax practitioner to have access to the client's eFiling profile.
- Tax practitioners may not approve a PoA on behalf of a client, pretending to be the taxpayer or their representatives is a misrepresentation of the facts, hence unlawful.
- The requirement that a taxpayer must approve a PoA is embedded in the legal principle that a person can only act (including submit a tax return on eFiling) on behalf of another if the latter person has authorised the former to do so. Such authorisation is given in the form of a PoA and misuse of that would be seen as unlawful.

Tax Practitioner Connect #19 (Nov 2020)
Unlawful for tax practitioners to approve online POAs for clients

Non-compliance

- Some practitioners update a taxpayer's records and approve transfers fraudulently by changing the taxpayer's cell number to their own, in order to receive an OTP. This is equivalent to imitating a taxpayer's signature, thereby exceeding the PoA given to the tax practitioner, and constitutes an unlawful practice.
- We have started to track IP addresses to identify possible unlawful tax type transfers by means of PoAs approved by tax practitioners, in order to put an end to this practice. In cases where changes or transfers are requested and the approval comes from the same computer (IP address), there is a high probability that it originates from the same person, i.e. the tax practitioner, and SARS will follow the matter up.
- SARS has already written a number of Cease and Desist letters to tax practitioners in this regard. Should SARS find that practitioners continue to request transfers and approve their own PoAs, SARS will register cases of fraud and of the statutory offences under section 234 of the Tax Administration Act, as well as lodge a complaint with the relevant controlling body (RCB). This may also result in the suspension of a tax practitioner from eFiling.
- Refer to the Guide for Tax Practitioners on eFiling, or see the FAQ on the Tax Practitioner's Page under *How do I initiate a tax type transfer on eFiling*?

Tax Practitioner Connect #19 (Nov 2020)

Unlawful for tax practitioners to approve online POAs for clients

- SAIT Member Alert 12 November 2020:
  - Although SAIT acknowledges and respects SARS' concern, the matter is not always clear-cut as a number of tax practitioners have complete written mandates from their clients, and the current process does not seem to cater for these mandates. Whilst SAIT is investigating the matter further, we advise members in the meantime to be aware and carefully follow SARS' guidance in this regard. SARS has indicated that strong sanctions may be implemented against transgressing tax practitioners, e.g. leading to the suspension of a tax practitioner from eFiling.

Deducting home office expenses: Key considerations

1	Section 11(a)	General deduction formula
2	Section 23(b)	Private expenses disallowed BUT limited concession for home office
3	Section 23(m)	Denial of deductions for employees
4	CGT consequences	

General deduction formula

s 11(a)

- For the purpose of determining the taxable income derived by any person from carrying on any **trade**, there shall be allowed as deductions from the income of such person so derived-

  (a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature

Prohibited deduction – private expenses
s 23(a) & (b)

- No deduction of -

  (a) costs incurred in the maintenance of any taxpayer, his family or establishment;

  (b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwelling-house or domestic premises except in respect of such part as may be occupied for the purposes of trade:

  Provided that –

  - (a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is **specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes**; and
  - (b) no deduction shall in any event be granted where the taxpayer's trade constitutes any **employment** or office unless -

    (i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; or

    (ii) his duties are mainly performed in such part.

What is allowed under s 23(b)

- Expenses related to part of a private residence IF that part is **specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes**
- Independent contractors
  - No further restriction
- Commission-earners
  - Duties must be mainly (>50% of the time) performed away from an office provided to by his employer
- Other employees
  - Duties must be mainly (>50% of the time) performed in the home office

"specifically equipped"

IN 28 – Home office expenses (Issue 2 - 2011)

- The part of the home in respect of which a claim is submitted must be occupied for purposes of a "trade", as defined in s 1.
- The part that is so occupied must be specifically equipped for purposes of the trade.
  - "specific" = "relating uniquely to a specified or particular thing"
  - "equip" = "to furnish with"; "supply with the items needed for a particular purpose"
- In order for a part of a private home to be considered "specifically equipped" for the purposes of trade, that part must be fitted with the instruments, tools and equipment required to conduct *that* trade.

“regularly and exclusively used for … the trade”

IN 28 – Home office expenses (Issue 2 - 2011)

- “regularly” = “done or happening frequently”
- “exclusively” = “excluding or not admitting other things; excluding all but what is specified”.
- It is not possible to define what would be acceptable to SARS as regular usage for the purposes of trade, as each case will have to be judged on its own merits. However, a home office that is maintained and is only used occasionally, e.g. once on a weekend due to the taxpayer maintaining separate business premises, is not used frequently enough to constitute “regular” use.
- As regards the requirement of exclusivity, this provision contemplates that the part used for trade may not be used for any other purpose other than the taxpayer’s trade. A deduction is not permitted where it is evident that the taxpayer conducts any activities of a private nature in the part used for trade, such as permitting children to use the room as a play room.

Types of taxpayers
s 23(b)

- Independent contractors
  - No further restriction
- Commission-earners
  - Duties must be mainly (>50% of the time) performed away from an office provided to by his employer
- Other employees
  - Duties must be mainly (>50% of the time) performed in the home office

Prohibited deduction – employees
s 23(m)

- Subject to paragraph (k) (labour brokers and personal service providers)
- N/A to agents or representatives whose remuneration is normally derived mainly in the form of commissions based on sales or the turnover attributable to him/her
- any expenditure, loss or allowance, contemplated in s 11, which relates to any employment of, or office held by, any person in respect of which s/he derives any remuneration, as defined in paragraph 1 of the Fourth Schedule, **other than-**

  (i) any contributions to a pension fund, provident fund or retirement annuity fund that may be deducted under s 11F

  (ii) any allowance or expense which may be deducted under s 11 (c) (legal expenses), (e) (wear and tear allowance), (i) (bad debts) or (j) (doubtful debt allowance)

  (iiA) any deduction allowable under s 11(nA) or (nB) (amounts refunded)

  (iii) (deleted)

  (iv) any deduction allowable under s 11(a) or (d) (repairs) in respect of any rent of, cost of repairs of or expenses in connection with any dwelling house or domestic premises, to the extent that the deduction is not prohibited under s 23(b).

What is allowed for employees after s 23 (b) & (m)?

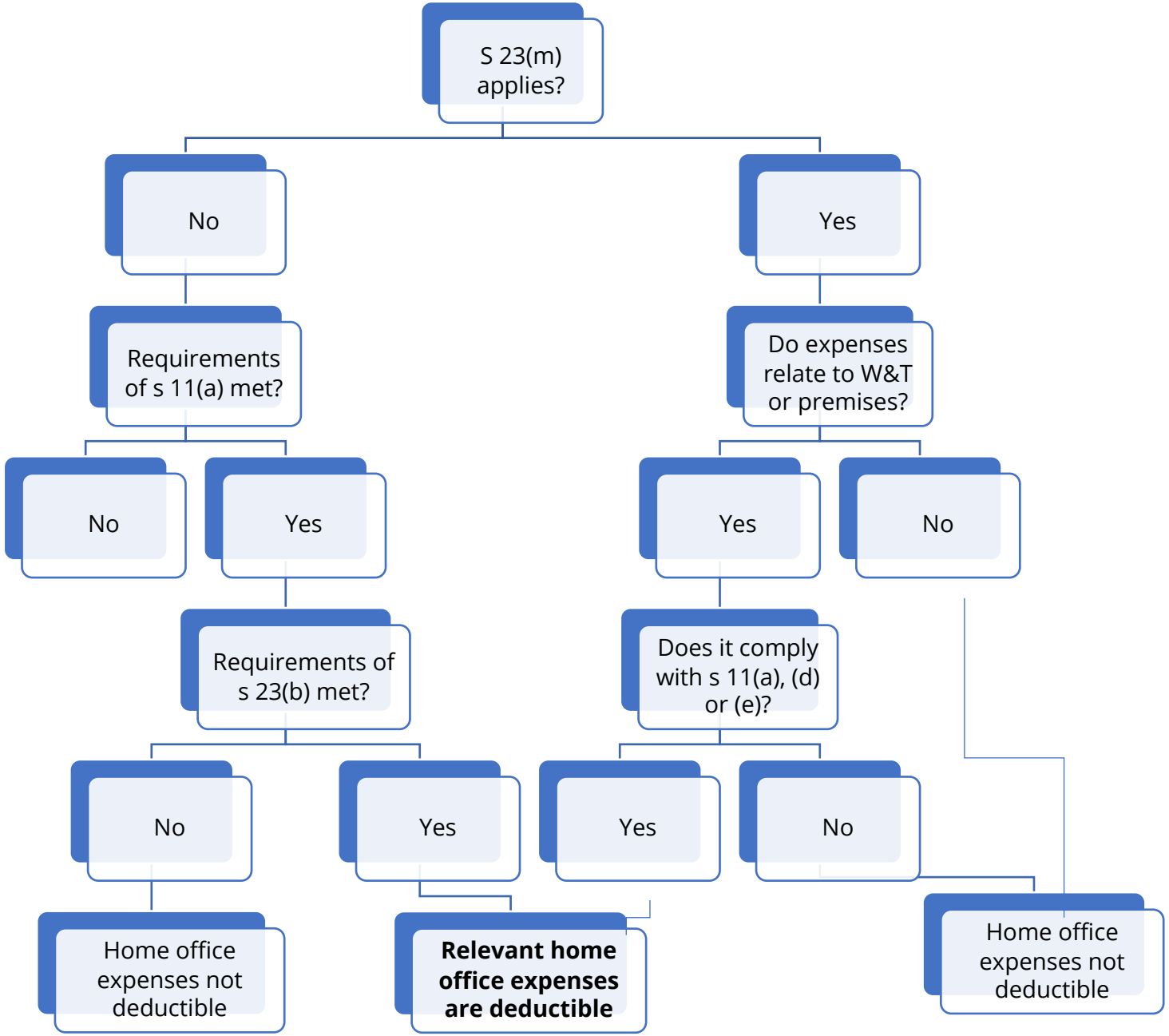
- S 23(b)
  - Expenses related to part of a private residence IF that part is **specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes**
  - Duties must be mainly (>50% of the time) performed in the home office.
- S 23(m)
  - Deductions allowed under s 11(a) or (d) (repairs) in respect of any rent of, cost of repairs of or expenses in connection with any dwelling house or domestic premises, to the extent that the deduction is not prohibited under s 23(b).

Expenses that may be deducted by employees

IN 13 – s 23(m) (Issue 3 - 2011)

- Contributions to a retirement funds (s 11F)
- Qualifying legal expenses (s 11(c))
- Wear-and-tear allowances on items used for purposes of trade, such as computers or books (s 11(e))
- Bad debts, e.g. income not paid to the employee as a result of the insolvency of the employer (s 11(i))
- Doubtful debts (s 11(j))
- Amounts included in taxable income, and then refunded by that taxpayer (s 11(nA) & (nB))
- Home office expenses that relate to rental, repairs and expenses incurred in relation to a private dwelling as permitted by s 23(b)

Decision-tree – deduction of home office expenses (IN 28)



E.g. (IN 13)

- Mr. Z received a pensionable salary of R100 000 and contributed R6 000 to a pension fund.
- Mr. Z stays in a 100 square metre rented house and he uses a 15 square metre room exclusively as his home office.
- He pays a monthly rental of R2 000 and the total amount of rates and taxes for the year is R3 600.

- Result:
  - The restrictions of s 23(m) will apply.
  - However, the following expenses will be deductible as permitted by s 23(m) & 23(b):
    - Pension fund contributions of R6 000.
    - Rental cost of R3 600 (15% of R2 000 x 12).
    - Rates and taxes of R540 (15% of R3 600).

E.g. (IN 13)

- An employee received a pensionable salary of R130 000.
- The employee contributed R9 750 to an approved pension fund and incurred –
  - entertainment expenses of R1 000;
  - cell phone airtime expenditure of R1 500; and
  - text book costs of R750 that are required for and relate directly to her profession.

- Result:
  - S 23(m) prohibits the deduction of entertainment and cell phone expenses.
  - S 23(m) permits a s 11(e) wear-and-tear allowance for text book expenditure (full deduction as amount is less than R7 000 – IN 47).
  - Pension fund contribution deductible under s 11F.

Types of home office expenses that may qualify for deduction

IN 28 – Home office expenses (Issue 2 - 2011)

- Expenses in connection with the premises
  - Rent of the premises (s 11(a))
  - Interest on bond
  - Rates and taxes
  - Cleaning
  - Cost of repairs to the premises (s 11(d))
- Wear-and-tear allowance (s 11(e)) on assets used for trade.

Example: commission earner
IN 28 – Home office expenses (Issue 2 - 2011)

- X is an employee in receipt of commission income of R50 000, a salary of R20 000 and a travel allowance of R3 000 a year.
- X is obliged in terms of his employment contract to work from home since his employer does not provide him with an office at work. He maintains a home office which he has specifically set up for the purposes of his employment duties. The home office is used regularly and exclusively for the purposes of work. His duties are performed mainly in the home office.
- The total area (square metres [m2]) of the home study is 20m2 in relation to the total area of his house which is 200m2, thus the area of the home office in relation to the total area of the house = 10% (20/200).
- X purchased a computer for R12 000, an office desk for R2 000 and an office chair for R800 for the home office.
- X's interest on household bond = R25 000 for the year.
- Rates and taxes for the year = R2 500.
- X contributes R5 000 a year to a pension fund.
- X incurred commission-related business expenses of R9 000 (cellphone and stationery costs).

Result (s 23(m) N/A)

- X may claim a deduction for the following:
  - Travel expenses
  - Cellphone expenses and stationery expenses of R9 000.
  - Wear-and-tear allowance under s 11(e) for the computer (3 years), office desk (100%) and office chair (100%).
  - Interest on bond of R2 500 (R25 000 x 10%).
  - Rates and taxes of R250 (R2 500 x 10%).
  - Pension fund contributions of R5 000, subject to the limits imposed by s 11F.

Example: normal remuneration
IN 28 – Home office expenses (Issue 2 - 2011)

- Y, an employee, earns a salary of R50 000, commission of R20 000 and a travel allowance of R3 000 a year.
- Y is obliged in terms of her employment contract to work from home since her employer does not provide her with an office at work. She maintains a home office which she has specifically set up for the purposes of her employment duties. The home office is used regularly and exclusively for the purposes of work. Her duties are performed mainly in the home office.
- The total area (square metres [m2]) of the home study is 20m2 in relation to the total area of his house which is 200m2, thus the area of the home office in relation to the total area of the house = 10% (20/200).
- Y purchased a computer for R12 000 an office desk for R2 000 and an office chair for R800 for the home office.
- Y incurred computer repair costs of R2 000,
- Y's interest on her household bond = R25 000 for the year.
- Rates and taxes for the year = R2 500.
- Renovation (repair) costs for the whole house = R5 000.
- Y contributes R5 000 a year to a pension fund.
- She also incurred commission-related business expenses of R9 000 consisting of cellphone expenses and stationery costs.

Result (s 23(m) applies)

- Y may claim the following deductions:
  - Travel expenses against travel allowance
  - Wear-and-tear allowance under s 11(e) for the computer (3 years), office desk (100%) and office chair (100%).
  - Interest on bond = R2 500 (R25 000 x 10%).
  - Rates and taxes = R250 (R2 500 x 10%).
  - Repair costs = R500 (R5 000 x 10%).
  - Pension fund contributions of R5 000, subject to s 11F.
- Expenses disallowed under s 23(m):
  - Cellphone expenses and stationery costs of R9 000.
  - Repair costs of computer of R2 000 (not related to a dwelling house or domestic premises).

What if other allowances were granted?
IN 14 (Issue 4 - 2019)

- Section 8(1)(a)(i): all allowances and advances must be included in the recipient's taxable income to the extent that they were not expended as specified in s 8(1).
  - Section 8(1) only permits a deduction for expenditure incurred in relation to travelling on business, expenditure incurred for accommodation, meals and incidental costs while an office holder or employee is obliged to spend at least one night away from his or her usual place of residence as a result of business or official purposes and expenditure incurred by reason of the duties attendant upon public office.

Employer-owned (or leased) equipment and related services

- Employer provides the employee with equipment or related services and incurs the associated cost: 2 potentially taxable benefits arise
  - the private or domestic use of an employer-owned or provided asset [para 2(b)]; and
  - access to and use of a telecommunication network (e.g. line rental, call charges, data downloads) for private or domestic purposes at the employer's cost [which constitutes the provision of free or cheap services under para 2(e)].

Equipment provided by the employer
Seventh Schedule para 6

- (1) Where an employee has been granted the right to use any asset (excluding residential accommodation or a motor vehicle), the cash equivalent of the value of the taxable benefit = the value of the private or domestic use of the asset (usually rental/15% of cost less any consideration given by the employee).
- (4) No value shall be placed under this paragraph on the private or domestic use of an asset by an employee, if –
  - (bA) the asset consists of telephone or computer equipment which the employee uses **mainly** (>50%) for the purposes of the employer's business.

Equipment provided by the employer
IN 77 – Taxable benefit: employer-provided equipment (4 March 2014)

- No value (Nil taxable benefit) if more than 50% of the total use of the asset is for business purposes.
- The assessment of whether or not the asset is used mainly for business purposes must be determined on a case-by-case basis taking all the facts and circumstances into account.
- SARS will consider, amongst others, the nature of the employee's work and official duties (that is, job responsibilities), qualifying criteria for entitlement to the use of the asset or service and the conditions of use or terms of the grant.
- The employer and the employee bear the onus of proving that based on the facts and circumstances the particular asset is required due to the nature of the employee's job and the associated responsibilities and that it is used mainly for business purposes.

Example
IN 77

- Dr C is employed by Good Medical Health (Pty) Ltd (GMH). Part of Dr C's job responsibilities is to run the emergency phone assistance programme which is available to patients 24 hours a day, 7 days a week.
- GMH purchases and gives Dr C a prepaid cell phone to use for purposes of the emergency line. GMH also purchases sufficient airtime in case Dr C needs to make a call. However, the purpose of the phone is to keep the line open in order to receive emergency calls and to be able to provide life-saving assistance telephonically. There is limited use of the phone to make calls and it is rarely used to make personal calls.

- Result:
  - The facts and circumstances of the case indicate that Dr C uses the cell phone and prepaid recharge vouchers mainly for the purpose of GMH's business
  - As a result the private or domestic use of the cell phone has no value under para 6(4)(bA).

Example
IN 77

- ABC Ltd purchased a laptop for the sole use by one of its employees, A.
- A is the company accountant and uses the laptop to perform his duties on a daily basis.
- The agreement between ABC and A is that the laptop must be used mainly for purposes of the employer's business. A is permitted to use the laptop for occasional private use and is not required to account for business and private usage.

- Result:
  - A uses a computer to perform his job and is required to use the computer mainly for the purposes of the employer's business. As a result SARS will accept that the laptop is used mainly for purposes of ABC's business and no value will be placed on the private or domestic use of the computer. This is so despite the fact that A is not required to monitor and maintain records of the actual business and private usage.

Example
IN 77

- ABC Limited purchased a laptop which it allows S, the company's receptionist, to use. On receipt of the laptop S signed an IT form confirming receipt of the laptop. The fine print on the form stated that all company assets must be used mainly for work purposes.
- As S already has a desktop computer at work, the laptop is left at home. S is generally not required to perform any work outside of normal office hours and uses the laptop at home for private purposes. As an exception to the norm S occasionally assists with capturing data into a company database over the weekend – S does this from home using the company laptop.

- Result:
  - S's job responsibilities do not require the use of a laptop mainly for work purposes. The fact that the IT form stated that the asset must be used mainly for work purposes is not relevant because it is not a condition that is enforced in S's case. ABC Limited and S will need to determine the value of the private use taking into account the period of use.

Employer-provided services

- Employer provides the employee with access to and use of a telecommunication network (e.g. line rental, call charges, data downloads) for private or domestic purposes at the employer's cost
  - Constitutes the provision of free or cheap services under para 2(e)
  - Nil value on the private use of a telecommunication service if –
    - the service is used mainly for business purposes; or
    - the service is rendered to employees as a benefit to be enjoyed by them at their place of work, for example, private calls made from the office using the employer's fixed line service.

Employer-provided services
IN 77

- An assessment of whether or not the service is used mainly for business purposes must be determined on a case-by-case basis taking all the facts and circumstances into account.
- Employers are responsible for ensuring that the services are used mainly for business purposes, failing which they will be required to include a taxable fringe benefit in the employee's gross income and, for purposes of calculating employees' tax, remuneration.

Example
IN 77

- An employee is granted the use of a cell phone as a benefit of employment. The employee uses the phone mainly to make and receive personal telephone calls. The employee does not pay for personal calls.

- Result:
  - A taxable benefit arises under para 2(e) because the service, which has been provided by arrangement with the employer, has been used for private purposes and the employee has not paid any consideration for that private use.
  - The amount of the benefit = the cost to the employer of having that service rendered but limited to the extent it was used for private purposes. Accordingly, the monthly subscription and any call charges borne by the employer will need to be allocated between business use and private use. The amount of the taxable benefit will be equal to the portion attributable to the private use.

Example
IN 77

- An employee is granted internet access at home by the employer in order to be able to conduct the employer's business outside of office hours. The employee accesses the internet at home on a personal computer in order to conduct research for purposes of the employer's business. The employee occasionally uses the internet for private purposes. The monthly internet subscription is paid by the employer.
- Result:
  - No value is placed on the taxable benefit because, based on the facts and circumstances of the case, the internet access provided by the employer is a telecommunication service used mainly for purposes of the employer's business.

Employee-owned (or leased) equipment and related services

- Employee enters into a contract with a service provider for which the employee (and not the employer) has acquired the right to, e.g. a cell phone or laptop and access to a telecommunication network. The contract with the service provider could take the form of a standard 24-month (or similar) contract between the employee and the service provider or a “prepaid” (or similar) contract.
- The employer may require the employee to use his or her private contract or equipment during the course of the employee’s employment for work purposes.
- Typically the employer would grant the employee an allowance or a reimbursement in order to defray the expenditure incurred for business purposes.

Reimbursements
IN 77

- Excluded from taxable income:
  - Reimbursements of expenditure, which were incurred on the instruction of the employer and where the employee is required to provide the employer with proof (e.g. itemised billing statements) that the amounts were expended as instructed.
    - See IN 14 “Allowances, Advances and Reimbursements”.
- An employee must retain records of business expenditure claimed for a period of 5 years from the date when the employee’s tax return is submitted to SARS.
- Reimbursements at an amount greater than the cost incurred for business purposes will be included in remuneration and are subject to tax to the extent the amount reimbursed exceeds that cost.

Allowances
IN 77

- An employee may receive an allowance from an employer when the employer is satisfied that the employee will incur business-related expenditure on behalf of the employer. The employee is not obliged to prove or account for the actual business expenditure to the employer.
- The full amount of the allowance must be included in the employee's taxable income under s 8(1)(a)(i).
- Generally, no deduction may be claimed against this allowance in determining the amount to be included in taxable income.
- An allowance is included in taxable income and is also included in remuneration for purposes of calculating monthly employees' tax deductions.
- Employers that pay employees a "predetermined reimbursement" based on expected business usage are not paying a "reimbursement" within the true meaning of the word. Payments based on expected or anticipated business usage and not linked to actual expenditure are treated as allowances and not as reimbursements.

CGT aspects
Eighth Schedule

- Primary residence exclusion (PRE) (CG/CL up to R2 million)
  - The residence must be used mainly (>50%) for domestic purposes.
  - N/A to the portion of the residence used for non-residential purpose (including used for trade)
    - PRE applies only in respect of the portion of the capital gain or capital loss on disposal of the primary residence that is attributable to any period on or after the valuation date during which that person, beneficiary or spouse used that residence for domestic purposes as well as to the part of that residence used by that person, spouse or beneficiary mainly for purposes other than the carrying on of a trade (para 49).

Example
SARS Comprehensive Guide to CGT – Issue 9 (2020)

- Antoinné acquired her primary residence in 1996. From 1 October 2001 until she sold it on 31 January 2020, she used 10% of the house as a home study and consulting room for her legal practice. Base cost = R500 000.
- Proceeds on disposal of the residence = R2 million.

- Result:
  - R2m proceeds threshold for the exclusion of a capital gain on disposal of a primary residence (para 45(1)(b)) N/A because Antoinné used a portion of the house for the purposes of trade during the period on or after the valuation date.
  - She must determine a capital gain or loss.
  - CG = R1,5 million [R2m less R500 000]
    - R150 000 (10% of R1,5m) of the capital gain does not qualify for the PRE (may deduct the R40 000 annual exclusion).
    - R1 350 000 (R1,5 million − R150 000) is disregarded because it is less than the PRE of R2 million.

Any Questions

- Please use the Question Portal on iLearn to post any questions.

The Tax Faculty

THANK YOU!