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Submission File

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South African Revenue Service
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BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE FINAL INTERPRETATION NOTE 28 (ISSUE 3) – DEDUCTIONS OF HOME OFFICE EXPENSES INCURRED BY PERSONS IN EMPLOYMENT OR PERSONS HOLDING AN OFFICE

1. We note that SARS on 4 March 2022 issued the final version (Issue 3) of the Draft Interpretation Note (IN) on the deductibility of home office expenses incurred by persons in employment or persons holding an office.
2. This final IN includes SARS' position in relation to the deductibility of interest incurred in connection with a home office. This position is explained on page 17 as follows:

"Section 23(m)(iv) excludes from the prohibition against deduction any deduction which is allowed under section 11(a) or section 11(d) in respect of expenses in connection with a premise to the extent that the deduction is not prohibited under section 23(b).

It depends on the facts, however, interest incurred on most loans used to acquire a premise will meet the requirements for deduction under section 24J and will therefore be deductible under section 24J and not section 11(a). If the interest expense meets the requirements in section 24J, it means the portion of interest incurred in connection with the part of the premises used for purposes of trade (the home office) will be prohibited by section 23(m) and is not deductible."

3. Therefore, in terms of the IN, for years of assessment commencing on or after 1 March 2022, if the interest expense meets the requirements in section 24J, the portion of interest incurred in connection with the part of the premises used for purposes of trade (the home office) will be prohibited by section 23(m) and is not deductible.

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| 4. <u>Submission</u> : SARS should provide an example of what interest will not fall under section 24J. |
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ADDITIONAL COMMENTS IN RESPECT OF THE INTEREST DEDUCTION

5. On reflection, when reading section 23(m) it is, however, apparent that section 23(m) only applies to expenditure, losses or allowances contemplated in section 11 and which relate to any employment in respect of which the taxpayer derives any remuneration.
6. This begs the question whether section 24J is a section 'contemplated' under section 11; should it not be, then interest generally falling under section 24J will remain deductible and not prohibited by section 23(m).
7. The overall scheme of the Income Tax Act is that "taxable income" is determined by deducting from "income" all amounts allowed under Part I of Chapter II. Generally, section 11(x) brings into the tax calculation all deductions in the Act that are not specifically included in section 11, though it does not necessarily include all as allowed in Part I of Chapter II.
8. Section 11(x) states that 'any amounts which in terms of any other provision in this Part (*encompassing section 5 to 37G*), are allowed to be deducted from the income of the taxpayer'.
9. However, in respect of section 24J, it is our understanding that this section is a stand-alone deduction provision under Part I of Chapter II and is not reliant on section 11 as the 'deduction' section.
10. As a point of departure to this understanding, the [2009 Explanatory Memorandum on the Taxation laws Amendment Bill](#) stated the following in relation to the changes to section 11A:
 11. *"Section 11A allows taxpayers to claim their pre-start up expenses even though a trade has not yet commenced. All deductions under section 11A are ring-fenced so as to useable only against present and future income from the same trade. The deductions allow cover all items listed in section 11 (other than section 11(x) which refers to deductions outside section 11(x)). When enacted in 2003, these deductions included all interest deductions relating to section 24J instruments because section 24J was previously only a timing provision (the deduction being granted by virtue of section 11(a) or (bA)). Late in 2004, amendments were made so that section 24J shifted from a mere timing provision to a stand-alone deduction and income provision. A corresponding amendment to section 11A, however, was inadvertently omitted, thereby excluding section 24J from section 11A start-up relief. The cross-references to section 24J will accordingly be included section so as to restore the intent of the initial legislation."*
12. Thus interest was no longer deductible in terms of section 11(a), but in terms of section 24J and it fundamentally also changed the nature of section 24J. The question that still remains, is whether section 24J would still be contemplated as being included in section 11(x).
13. In our view the answer is no.

14. In this regard, we refer to section 8(4)(a) which stipulates the following:

(4)

- (a) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), 11(n), 11(p) and (q), section 11F, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5), as applied by section 13(8), or section 13b/s(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment:

15. This section specifically includes in a taxpayer's income a recoupment of amounts allowed as a deduction under, *inter alia*, section 11 to 20 and separately incorporates the various other sections separately listed.

16. One of these separately listed sections is section 24J.

17. The legislator had to specifically list the deductions allowed that must be recouped to ensure the proper operation of the provision, but as section 24J is separately listed from the deductions allowed under section 11 to 20, it is evident that the legislator did not contemplate or intend section 24J as being included under section 11.

18. It would have been superfluous to list section 24J separately if it was in any event included under section 11(x)¹ and therefore section 11. The context also clearly indicates and aligns to the scheme of the Act to allow for deductions and match recoupments accordingly.

19. Submission: We are of the view that section 11(x) does not include section 24J. This position is reaffirmed by the section 8(4)(a) recoupment provision that specifically mentions both section 11 and section 24J as deductions that must be recouped.

20. The IN should be amended to clearly explain that section 24J is not a deduction as contemplated in section 11 (section 11(x)) and is thus not prohibited in terms of section 23(m).

21. It should be clearly noted that any interest incurred in connection with the home office should be allowed as a deduction by an individual working from home and earning remuneration, to the extent that this expense is not prohibited as a deduction in terms of section 23(b).

¹ In *Eksteen v Road Accident Fund* [2021] ZASCA 48 (21 April 2021) this principle was approved again, "When interpreting a statutory provision, one must proceed from the fundamental premise that meaning must be given to every word (provided the context lends itself to such meaning). The rationale for this principle is that a statute is not taken to use words without meaning. No clause, sentence or word must be construed to be superfluous, void or insignificant."



Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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