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

Dear SARS

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

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on Issue 3 of the Draft Interpretation Note (IN) issued on 15 November 2021 providing clarity on the deductibility of home office expenses incurred by persons in employment or persons holding an office. This Draft IN was released in May 2021 and has been updated by SARS to provide further clarity in response to comments received.
2. It is noted by SARS in the Draft IN that the position in relation to the deductibility of interest incurred in connection with a home office (ie. the interest is not deductible) represents a significant change to Issues 1 and 2 of this IN and to the Draft IN issued in May 2021. Accordingly, it is proposed that this updated draft IN will be issued on 1 March 2022 and be effective for years of assessment commencing on or after 1 March 2022. SARS notes that even though it is proposed that the Note will be effective for years of assessment commencing on or after 1 March 2022, the additional clarity given on interpretations which have not changed will provide useful guidance for earlier years of assessment.

GENERAL COMMENTS

3. We once again commend the authors on a document that is, in relation to the examples, well written, clear and relevant to modern day times and realities. However, it is still disappointing to see that the strict requirements of section 23(b) still stand with no amendments/relaxations.
4. Section 23(b) was created in circumstances when a “home study” was for a few and something that was not that common as it was commonly used for ancillary work (self-study) or after hour work.
5. Today our reality is a lot different. Our work, clients and homes are digitally connected and many people can now perform their full and primary work from their “home office”.



6. It is highly unlikely that many employers will require all employees to return to the offices or on a full-week basis, meaning that the home office will become a permanent location of work for many employees regardless of the lockdown restrictions.
7. This applies across job levels and sectors in the economy which means that it also applies to those who do not have the luxury of large suburban homes and a stand-alone “home study”. These new “work from home” taxpayers mostly only have shared family space.
8. This “home office” migration is not only COVID driven but is a result of changes brought about by the digital economy and how people work. However, as the digital and “gig economy” expanded more, especially younger taxpayers have moved away from the traditional employment model and now have multiple “gigs” that vary from Uber services to part time employment and multiple short term contractor work. Even their payment model has migrated away from cash and money. This has resulted in exponentially more “individual small business taxpayers” conducting business that not only share personal and business moveable assets such as cars and cell phones but also their place of home and work.
9. This needs to be considered when contemplating the current context of the interpretation and amendments to section 23(b) and/or 23(m) in order to enable an equitable tax regime relating to the current working environment.
10. At a policy level, we are disappointed that given the current circumstances there has been no degree of relaxation especially in relation to the requirement that the home office be “exclusively” used for the purposes of trade.
11. We do acknowledge, as SARS points out in the Draft IN, that legislative amendments will be needed to align with these changed circumstances and we do hope that the National Treasury will consider [SAICA's Annexure C proposals](#) made in this regard to National Treasury in December 2021 (and summarised, where applicable, in the comments below).
12. However, SARS appears to have applied a narrower interpretation of the legislation than it has applied for many years even if the factual context should have led to the opposite, that is a broader interpretation to take into account the “new normal”.
13. We note that the home office allowance review as mentioned in the 2021 Budget Speech, currently being conducted by National Treasury is regarded a multi-year project.
14. The concern, however, is that the outcome of this multi-year project will be too late for many taxpayers as they have already had to submit their tax returns for the 2020 and 2021 years of assessment. A certain degree of relaxation in the legislation especially in relation to the requirement in section 23(b) that the home office be “exclusively” used for the purposes of trade would have been appreciated for these years of assessment.

COMMENTS ON THE SPECIFIC PARAGRAPHS AND EXAMPLES IN THE DRAFT IN

Paragraph 4.5.3 – Regular and exclusive trade use

15. This paragraph provides an explanation of the terms “exclusive use” and “regular”.
16. It is, however, uncertain how strictly this interpretation should be applied as exclusive means 100% and could be interpreted quite pedantically.
17. As this is a current problem it may require some contextualised interpretation until the legislature can attend to the matter.

18. Submission: Further clarity on this should be provided in the draft IN, but it is our understanding that the legislation was not written with the idea of such an extreme limited application.
19. *Suggested legislative amendment needed:* We have requested National Treasury to clarify through legislative amendment that the provision should not have such an extremely narrow application and should be expanded to accommodate the “new normal”.

Example 1 – Regularity test

20. This example sets out to explain what circumstances would satisfy the regularity test and could qualify for a home office deduction in respect of expenditure incurred during that period.

21. Submission: An example/comment of what the minimum threshold of what would be regarded as “regular”/“frequently” is needed for taxpayers/practitioners to evaluate against each scenario. In this example Jan and Feb 2021 is clearly not regular.

Example 3 – Exclusivity test

22. In Example 3, it is stated that should family members be allowed to play or conduct hobby-related activities in the home office after work hours during the week and also on weekends, then the home office is not used exclusively as a home office and no deduction will be allowed.
23. In this example, the only non-business use is conducted after work hours and over the weekends which would generally not be regarded as being within the working week yet the home office still does not satisfy the “exclusivity test”.
24. Although the example provides some guidance on the interpretation of “exclusive use” and “regular”, it is still unclear how strictly the interpretation of these terms will be applied by SARS.
25. Surely the legislation was not written with the idea of such a limited application. Whilst we understand the need for this exclusivity, there should be some sort of discretion and guidance to have certain exceptions to this rule to not make this test so restrictive



especially considering the fact that so many people are currently working from home due to the pandemic that has been ongoing for over 20 months.

26. Working from home has become the new norm and our tax rules need to be adjusted accordingly so as to not prejudice those individuals.
27. Reference to “exclusivity” is also made in the statement contained at the bottom of page 14 which reads as follows:
28. *“For example, an employee that works from a home office for three days out of five every working week may claim the amount so calculated in respect of maintaining the home office, not only three fifths of the expenses”.*

29. Submission: Although we appreciate the fact that the Draft IN states that the law does not concern itself about trifles and so inconsequential private use, such as, for example, answering a private telephone call in the home office whilst working, or walking through the home office after work to an outside patio, will not render the use to be not exclusively for purposes, this exclusion appears a bit harsh especially considering the current pandemic and the closure of schools for a period of time.
30. *Suggested legislative amendment needed*: There should be a certain degree of relaxation in the legislation especially in relation to the requirement in section 23(b) that the home office be “exclusively” used for the purposes of trade.
31. Consideration needs to be given to amending the definition of “exclusively used” to “used mainly as a home office”. It is submitted that by increasing the requirement from “regularly and exclusively” to “mainly”, the deductions scope is limited to persons who use the space more than 50% for trade purposes but not exclusively as opposed to used less than 50% but in regular intervals of the time but exclusively when in such use.
32. For example, a taxpayer may have a dedicated study which is used 90-95% of the time exclusively for work, but on the odd occasion the taxpayer’s son sits next to the working taxpayer as the taxpayer has to check his maths or sometimes on a Sunday, he will sit in the study...its ad-hoc use but it does happen and should not preclude the taxpayer from claiming a home office allowance.
33. Taking this into account in relation to Example 9, it is suggested that rather than losing the deduction in its entirety due to the room having a dual-purpose but still used “mainly” for trade purposes, the taxpayer should rather limit the deduction to three fifths and be allowed some deduction where the home office is not exclusively used for trade purposes.
34. Until a legislative change has been made, it is suggested that SARS should deem a taxpayer who works mainly from home to be using the home office regularly and exclusively for purposes of trade, while he/she is actually working in the home office during office hours.
35. We are afraid that without this interpretation the majority of taxpayers will unfortunately not be getting any relief as it only the privileged few that are in the fortunate situation to have

huge homes that allow them the luxury of allocating a room exclusively as their own home office.

36. With regard to the cost burden to the fiscus of granting this relaxation, SARS must be aware that many businesses have terminated their corporate office leases or down scaled their office floor size hence there will be a corresponding reduction in the s11(a) deduction for rent expenses usually deducted by businesses.

Examples 6 & 7 – Mainly used

37. Examples 6 and 7 explain the term “mainly used”. The examples use the number of working days in a year of assessment to determine whether the home office is mainly occupied for trade purposes.

38. We understood this requirement was to be determined over the period one is required to work from home in respect of each expense item incurred during the tax year and for which income (salary) was earned and not determined merely in relation to the number of working days in the relevant year of assessment. The calculation used to claim any expense will be different depending on interpretation of the above.

39. To illustrate the concern, assume an employee worked for one employer for half of the tax year (50% of the working days in the year of assessment). The employee was required to work from the office during this period of employment. The employee then resigned and started to work for a new employer for the remaining six months of the year of assessment (50% of the working days in the year of assessment). The new employer allowed the employee to work from home during this period.

40. As the employee has not worked “mainly” (**more than 50%**) of the working days in the year of assessment (only 50%), the employee would be denied any home office allowance deductions incurred during this period.

41. Submission: We submit that the deduction of the home office allowance should be based on the requirement to mainly work from home in respect of each home office expenditure item during which income was earned and not merely on the working days in a year of assessment as the above example illustrates.

Paragraph 4.6.1 – Apportionment

42. This section attempts to clarify that when calculating an apportionment ratio, one must not only use the floor area of the main dwelling, but the floor area of all the buildings on the property must be used in calculating the apportionment ratio.

43. The application of this statement to sectional titles is unclear and requires further clarification. Furthermore, clarity is required on whether helpers’ quarters and unattached extensions on the property are also included in this calculation. For example, certain taxpayers have cottages on their properties or certain properties have 3 houses on one property. If these are being rented out for example, how is this situation dealt with from an apportionment perspective.



44. Submission: Clarity should be provided in the draft IN on the above concerns raised.

Paragraph 4.6.2 – Permitted expenditure: (b) Interest

45. The Draft IN states that 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.

46. The fact that SARS previous interpretation was to treat interest similar to rates and allow for the deduction would imply that the intention of the legislation was to allow this as a deduction.

47. The change in relation to the deduction of bond interest will have a significant impact on taxpayers as it is probably one of the largest expenses that a taxpayer will have.

48. Submission: Interest on mortgage bond is an expense which is in connection with the premises and should therefore be allowed to the extent that the premises are occupied for trade as interest is not prohibited in terms of section 23(b) and the interest expense is in line with other expenses in connection with the premise that are allowed as a deduction, for example, rental expenses.

49. *Proposed legislative amendment*. Section 23(b) should be amended to refer to interest which is deductible under section 11(a) and section 24J(2).

Example 11 – Limitation of deduction when income is not derived mainly from commission

50. Examples 11 provides examples of what expenditure will be allowed and disallowed, for employees with income not derived mainly from commission, in terms of section 23(m) assuming that all the requirements of section 23(b) are met for.

51. The home office expenditure allowed to be deducted for salaried employees is very limited when compared to a taxpayer who mainly earns commission. Many employers are not reimbursing their salaried employees that are now required to work from home for the business expenses that they incur as they either don't have the funds for the reimbursement or they argue, *inter alia*, that the employees are saving on travelling costs. It is uncertain why there should be different treatment if similar work/tasks are being completed by each employee at home. Thus, if an expense was incurred solely for purposes of a trade, surely these must be allowed as a deduction.

52. Submission: The requirement for remunerated taxpayers to receive commission or variable income in section 23(m) should be deleted. There seems to be no policy rationale to distinguish between commission and other remuneration earners when in both instances they are required to work from home. This seems a historically factually limitation when most persons who factually worked from home were earning such types of income. That is not true anymore.

53. *Proposed legislative amendment:* The ambit of section 23(b) expenses should be expanded. An example of items that should be included in the section and allowed as a deduction, would be a salaried employee meeting all the requirements of sections 23(m) and 23(b), having to incur costs such as printing paper, cartridges, stationary, fast/stable internet (such as fibre), security costs etc. to continue to work from home.
54. Regarding internet costs, taxpayers have had to upgrade their internet and telecommunications systems in order to increase bandwidth so that they can carry out their employment duties effectively, including participating in virtual meetings/video conferences, being available on their cell phones (sometimes requiring the installation of boosters etc).
55. Once-off expenses incurred specifically due to working from home e.g. a generator and internet installation costs should also be considered for a deduction or at least they should qualify for a wear and tear allowance.
56. If employers were reimbursing employees for these costs, it would be understandable that the employees would be restricted from claiming these expenses. However, many employers only covered the costs of data, but the rest of the costs of setting up a home office are not reimbursed. Many employees have thus had to validly spend a lot on office tables and chairs and phones and setting up wifi where employees did not have these. So in reality many costs are not reimbursed by employers and hence employees are left with no relief for certain expenses for which other allowances (such as section 11(e)) are available.
57. In view of the above, we submit that the interpretation of the provision “*expenses in connection with premises*” in section 23(b) should be extended to include the costs of equipping the home office with the necessary consumables (stationery, insurance etc) and running costs (e.g. monthly charges in respect of communication services).
58. *Suggested legislative amendment needed:* Should the above not be acceptable, then the legislation should be amended to accommodate the deduction of these costs considering the unprecedented times that we are living in.
59. Costs that should be included in the section and allowed as a deduction for a salaried employee meeting all the other requirements of sections 23(m) and 23(b), would include costs such as printing paper, cartridges, stationery, fast/stable internet (such as fibre), security costs, UPS etc. relating to working from home. These costs would be subject to the same normal apportionment rules if not exclusively used for trade purposes.
60. Regarding internet costs and telephone costs, taxpayers have had to use their internet and telecommunications systems in order to carry out their employment duties effectively, including participating in virtual meetings/video conferences and being available on their cell phones (sometimes requiring the installation of boosters etc). Currently a disparity exists between those whose employers are willing to pay these costs versus those who are already disadvantaged by not having this benefit as paragraph 6(4)(bA) and 10(2)(bA) of the Seventh Schedule **correctly in our view** already places a zero value on these costs for employees. We submit that section 23(m) should mirror these provisions.

61. Employers are claiming significantly reduced office expenses, i.e. tea, coffee, milk, electricity costs etc. Therefore, more expenses should be allowed as a deduction by salaried employees (earning less than 50% commission) who are covering these costs at home, not just the expenses related to the property as listed in s23(m)(iv).

Paragraph 4.7 – Capital gains tax consequences

62. It is appreciated that it is made clear in the draft IN that the primary residency exclusion of R2 million must be apportioned for non- residential use and that if more than 50% of property is used for business purposes, then it is not a primary residence.

63. However, what is not sufficiently clear or explained in the draft IN is what happens where a taxpayer is a co-owner of the property and each owner might want to claim the same home office space as a deduction in each of their tax returns. Aligned to this is what is the position where taxpayers are renting a property but incur costs in this regard. Even if the answer is that they can't claim these expenses, this needs to be addressed as not everyone owns the properties but some have home offices and have made adjustments or improvements to the properties.

64. Submission: The draft IN should provide specific examples of these scenarios and how to treat them from an income tax and capital gains tax perspective.

Conclusion

65. Section 23(b) has an extremely narrow application and should be expanded to accommodate the “new normal”.

66. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

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

Yours sincerely

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The South African Institute of Chartered Accountants