

INTERPRETATION NOTE 14 (Issue 5)

DATE: 30 March 2021

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 8(1)(a); 8(1)(b) and 8(1)(c) AND PARAGRAPH 1 OF THE FOURTH SCHEDULE
SUBJECT : ALLOWANCES, ADVANCES AND REIMBURSEMENTS

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Preamble

In this Note, unless the context indicates otherwise –

- “**Schedule**” means a Schedule to the Act;
- “**section**” means a section of the Act;
- “**TA Act**” means the Tax Administration Act 28 of 2011;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any word or expression bears the meaning ascribed to it in the Act.

All rulings, notices and tables of rates referred to in this Note are available on the SARS website at www.sars.gov.za. Unless indicated otherwise, the latest issues of these documents should be consulted.

1. Purpose

This Note provides clarity on the tax treatment of allowances, advances and reimbursements granted to employees and office holders, and gives guidance on the record-keeping requirements relating to motor vehicles.

2. Background

Since 1 March 2002, the system of employment income taxation was simplified by consolidating the provisions relating to allowances, advances and reimbursements in section 8(1), and enacting section 23(m) to limit the deductions available to employees and office holders.

Recently, amendments have been made to the tax treatment, for income tax and employees' tax purposes, of reimbursements under the travel allowance system, as well as the rules relating to general reimbursements. In addition, clarity is provided on what the requirements are for a valid logbook, as well as what is required to permit a travel deduction when using alternative transport methods such as taxis. These are explained in the changes to this Note.

3. The nature of allowances, advances and reimbursements

3.1 Definition of the terms “allowance”, “advance” and “reimbursement” for the purposes of section 8(1)

The distinction between an allowance, an advance and a reimbursement for purposes of sections 8(1)(a), (b) and (c) is set out in **3.1.1 – 3.1.3**.

3.1.1 Allowance

An allowance is an amount of money granted by an employer to an employee to incur business-related expenditure on behalf of the employer, without an obligation on the employee to prove or account for the business-related expenditure to the employer. The amount of the allowance is based on the *anticipated* business-related expenditure.

Example 1 – Allowance

Facts:

ABC Ltd requires X to travel for business purposes three or four times a month. ABC Ltd anticipates that X will incur R1 000 per month on business-related expenditure whilst travelling and pays an amount of R1 000 per month to cover the expenditure. X is not required to prove or account for actual business-related expenditure to ABC Ltd.

Result:

X receives an allowance of R1 000 per month for purposes of section 8(1).

3.1.2 Advance

An advance is an amount of money granted by an employer to an employee to incur business-related expenses on behalf of the employer, with an obligation on the employee to prove or account for the business-related expenditure to the employer. The amount of the advance is based on the *anticipated* business-related expenditure. The employer recovers the difference from the employee if the actual expenses incurred are less than the advance granted and *vice versa*.

Example 2 – Advance

Facts:

D works for ABC Ltd. The company has asked D to visit a key client to conduct a client satisfaction survey and, after completing the survey, to entertain the client by way of a business lunch. D is paid an amount of R500 by ABC Ltd to cover the cost of the lunch. D must submit receipts and invoices to the company accountant when returning to the office and must return any portion of the advance not spent as instructed. ABC Ltd does not think the lunch will cost more than R500, however if the client orders indulgently ABC Ltd will make good any shortfall. D is able to provide a receipt and an invoice totalling R400 and returns the remaining R100 to the company.

Result:

D receives an advance of R500 for purposes of section 8(1).

3.1.3 Reimbursement

A reimbursement of business-related expenditure occurs when an employee has incurred and paid for business-related expenses on behalf of an employer without having had the benefit of an allowance or an advance, and is subsequently reimbursed for the exact expenditure by the employer after having proved and accounted for the expenditure to the employer.

Example 3 – Reimbursement

Facts:

F (who works in East London) is required to conduct a two-day training session at the company's Bisho branch. On arrival F discovers that the Bisho branch does not have all of the equipment required in order to adequately deliver the training. F's manager instructs him to purchase the required items out of his own pocket and to submit a claim on returning to East London. F spends R200 on the items and retains the receipts which prove R200 was spent on business-related expenditure. The employer subsequently reimburses F the full R200.

Result:

F receives a reimbursement for purposes of section 8(1).

3.2 General observations on the nature of allowances, advances and reimbursements

The nature of allowances, advances and reimbursements is frequently misunderstood, as are the reasons for granting recipients such amounts. In this regard:

- Any allowance, advance or reimbursement is a reflection of business-related expenditure or anticipated business-related expenditure of the **employer**. A payment to an employee under the guise of an allowance but actually for services rendered or to be rendered is subject to tax under the normal provisions of "gross income" and is not treated as an allowance under section 8(1)(a). The label of a payment does not necessarily correctly reflect the true nature of the payment.
- The judgment in ITC 1523¹ confirmed that when the word "allowance" is used in an employee-employer relationship, it means a grant of something additional to ordinary wages. The taxpayer had received a salary and sought to claim a deemed subsistence expenditure deduction against his salary. The court held that he had not received an allowance as he had not received anything extra and was not automatically entitled to the deduction provided for in section 8(1).
- A typical misconception is that the quantum of an allowance or advance does not have to reflect the *anticipated* business expense. This misconception is sometimes caused by the incorrect understanding that an allowance can, without reference to the actual expenditure anticipated, be based on the amounts of expenditure which are deemed to have been incurred by the Act under specified circumstances and that the employee will automatically be entitled to a tax deduction against that "allowance". The misconception means

¹ 54 SATC 194.

that employees sometimes receive allowances that are much greater than the true anticipated business expense.

4. The law

The relevant sections of the Act are quoted in **Annexure A**.

5. Application of the law

5.1 Inclusion in taxable income – allowances and advances

Section 8(1)(a)(i) –

- deals with **all** allowances and advances paid by a “principal” to a “recipient” (for example, travel, subsistence, public office, cell phone and housing allowances); and
- provides that all such allowances and advances must be included in the recipient’s taxable income –
 - to the extent that they are not expended –²
 - for travelling on business;³ or
 - for accommodation, meals and incidental costs while such 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;⁴ or
 - by reason of the duties attendant upon public office; or
 - unless the allowance or advance, or a portion of the allowance or advance, is exempt from normal tax under section 10.⁵

Taxpayers who claim that amounts should not be included in their taxable income bear the burden of proving that the amount is deductible, may be set off or is exempt.⁶

Section 8(1)(a)(ii) provides that in limited circumstances a reimbursement or advance must not be included in taxable income as otherwise required by section 8(1)(a)(i) (see **5.2**).

5.1.1 The terms “principal” and “recipient”

For purposes of section 8(1)(a) the term “**principal**” includes –

- the employer of the recipient of an allowance; or
- the authority, company, body or other organisation in relation to which any office is held; or
- any “associated institution” as defined in the Seventh Schedule in relation to that employer, authority, company, body or organisation.

² The amounts expended are taken into account by reducing the inclusion in taxable income. In this Note these reductions are referred to as ‘deductions’.

³ See **5.4** for details of allowable deductions.

⁴ See **5.3** for details of allowable deductions.

⁵ Examples include an allowance in respect of foreign service that is exempt under section 10(1)(o)(ii) or the portion of an advance in respect of relocation costs that is exempt under section 10(1)(nB).

⁶ Section 102(1) of the TA Act.

Within the context of section 8(1) the term “**recipient**” means the person who has been paid or granted an allowance, advance or reimbursement by a principal. Having regard to the meaning of the word “principal” in this section, a recipient refers to an employee or the holder of an office.

Although an independent contractor may be an “employee” as defined in the Fourth Schedule for employees’ tax purposes, an independent contractor would not be considered to be an employee in the ordinary meaning of the word as implied in section 8(1), and is not entitled to any deduction under that section.

A holder of an office may also be independent, such as a member of a board or committee established by law. Any travel or subsistence payment made to such independent office holder is paid for the office held, and deductions may be claimed under section 8(1).

5.2 Exclusion from taxable income – reimbursements and advances

Section 8(1)(a)(ii) excludes reimbursements or advances from taxable income if the –

- reimbursement or advance was or must be expended by the recipient in the furtherance of the principal’s trade;
- recipient must produce proof to the principal that the amounts were wholly and actually expended for this purpose;
- recipient must account to the principal for the expenditure;
- expenditure was or will be incurred to acquire any asset and ownership in that asset vests in the principal; and
- the expenditure was incurred either –
 - on the instruction of the principle; or
 - with the permission of the principle, if –
 - the recipient was, whilst on duty, away from the usual place of work or employment for part of a day;
 - the expenditure was for meals or incidental costs; and
 - the reimbursement does not exceed an amount as notified in the *Gazette*.⁷

Any reimbursement that does not meet these requirements, or which exceeds the daily amount specified in the *Gazette*, is taxable and is included in the recipient’s remuneration subject to the deduction or withholding of employees’ tax.

⁷ Currently R139, per Government Notice 173 in *Government Gazette* 44229 of 5 March 2021. This amount applies from 1 March 2021, but may change in future, so taxpayers should check the **SARS website** each year to ensure they use the correct rate for the relevant year of assessment.

Example 4 – Day meal reimbursement

Facts:

A, B and C are employees of FGH Sales (Pty) Ltd. Their usual place of employment is at the premises of the employer in Cape Town. A, B and C undertake a day trip to visit potential clients in Paarl. With their employer's permission, they purchase lunch while they are away on the day business trip. A purchases lunch for R120, B purchases lunch for R150 and C purchases lunch for R180. All three present their receipts to the employer and claim a reimbursement. A and C claim reimbursement of the full amount that they expended, whilst B only claims reimbursement of R139. The employer reimburses them the amount that they claimed.

Result:

The reimbursements paid to A and B are within the limit of R139, and so are not taxable.

R139 of the reimbursement paid to C is not taxable. The excess of R41 (R180 actually reimbursed – R139 tax free limit) is taxable, and is remuneration subject to the deduction of employees' tax.

"Travel reimbursements" by an employer to an employee for the actual business kilometres travelled at an employer-agreed rate per kilometre are "exceptions" to this rule. Accordingly, the provisions of section 8(1)(a)(i) (see **5.1**) and section 8(1)(b) (see **5.4**) must still be applied to travel reimbursements when determining the amount, if any, which must be included in the recipient's taxable income. The inclusion in taxable income will be nil if the amount of the allowable deduction (see **5.4** for further detail) is equal to the amount of the reimbursement, but if the amount of the allowable deduction is less than the amount of the reimbursement, then a net inclusion in taxable income will be required (see **Example 12**).

5.3 Deductions from subsistence allowances

5.3.1 General

A recipient may only deduct subsistence-related expenses from the subsistence allowance granted by the principal if the recipient is obliged to *spend at least one night away from his or her usual place of residence in the Republic* by reason of the duties of his or her office or employment.

A recipient who meets these requirements is allowed to deduct the amount actually expended on accommodation, meals and other incidentals during that period. Section 8(1)(c) specifies two methods to calculate the amount which is deemed to have been actually expended on accommodation, meals and other incidentals, namely, an actual method or a deemed method (see **5.3.2** and **5.3.3**).

By reason of the duties of his or her office or employment

The reason the recipient is away from home must be related to the recipient's office or employment.

Example 5 – By reason of office or employment

Facts:

At the request of his employer, H attended a two-day conference in a wine-making region. The conference started on a Thursday. H's employer paid the accommodation for Thursday night and gave him a subsistence allowance for two days. Instead of driving home after the conference H decided, at his own expense, to extend his stay and spend the weekend exploring the area for potential wedding locations and tasting local wines.

Result:

H will be entitled to deduct the subsistence-related expenses for the period related to the conference from the allowance received from his employer. As the reason for spending the additional time away from home is personal and not work-related, H will not be entitled to deduct the subsistence-related expenses related to the period after the conference from the allowance.

Obligated to spend at least one night away from his or her usual place of residence in the Republic

The word "night" is not defined in the Act. The *Concise Oxford English Dictionary*⁸ defines "night" as "the time between sunset and sunrise". The *Collins English Dictionary*⁹ defines the word as "the period of darkness each 24 hours between sunset and sunrise".

Therefore, in order to qualify to deduct subsistence expenses under section 8(1)(a)(i)(bb), the recipient of a subsistence allowance must be away from his or her usual place of residence in the Republic for at least one full period from sunset of one day to sunrise of the next.

5.3.2 Actual method

Under the actual method the amount the recipient is deemed to have actually expended is equal to –

- the amount he or she proves to the Commissioner was actually incurred;
- for accommodation, meals and other incidentals;
- excluding any amount of expenditure borne by the employer (otherwise than by way of the allowance or advance); but
- limited to the amount of the allowance or advance granted to meet these expenses.¹⁰

In order to be able to prove the amount of expenditure the recipient will need to obtain and retain supporting documentation (for example, invoices and receipts) for the expenditure incurred. The supporting documentation must be kept for five years from the date when the income tax return, which included the claim for the deduction, was

⁸ Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

⁹ 3rd Edition. Glasgow: Harper Collins, 1991.

¹⁰ That is, the amount of the deduction may never exceed the amount of the allowance.

received by SARS. The documentation is not submitted with the income tax return but the recipient must be able to produce such documentation upon request by SARS.

An employer will be considered to have borne the expenditure if –

- the employer pays the expense directly; or
- the recipient pays the expense but is subsequently reimbursed by the employer.

5.3.3 Deemed method

Under the deemed method the amount the recipient is deemed to have actually expended is equal to –

- an amount determined by the Commissioner for the relevant year of assessment by notice in the *Government Gazette*;¹¹
- for meals and other incidental costs, or incidental costs only;
- for each day or part of a day in the period during which the recipient is absent from his or her usual place of residence;
- excluding any amount of expenditure borne by the employer (otherwise than by way of the allowance or advance) for which the allowance was paid or granted for that day or part of that day;¹²
- excluding any amount proven by the recipient to SARS as actual expenditure and claimed as a deduction for meals or incidental costs equal to the actual costs for that day or part of that day; and
- limited to the amount of the allowance or advance granted to meet these expenses.¹²

The amount stipulated in the *Government Gazette* is a daily amount. Accordingly, in calculating the amount of deemed expenditure based on the points listed above, the recipient must multiply the daily amount by the number of days or part of a day that he or she is away on business.¹³ Taxpayers must review the effective date of the particular notice to ensure they apply the correct amounts to the relevant year of assessment.

The *Gazetted* amounts are for meals and other incidentals for local and foreign travel, or incidentals only for local travel, and do not cover accommodation for either local or foreign travel. As a result to the extent a recipient receives an allowance or an advance for accommodation, the recipient must apply the actual method to determine the amount that will be allowed to be deducted from that allowance, or relevant portion of the allowance, for accommodation. There is no “meals only” deemed expenditure amount. Accordingly a recipient, who receives such an allowance, would also have to apply the actual method to calculate the allowable deduction (see **5.3.2**).

¹¹ The relevant notices are available on the **SARS website**.

¹² The deemed subsistence amounts will be reduced by the amount the employer has borne.

¹³ Not forgetting that a prerequisite to any deduction is the requirement that he or she spends at least one night away from his or her usual place of residence – see **5.3.1**.

In practice, accommodation service providers often levy a single charge for bed and breakfast. In these circumstances, the cost of breakfast may be regarded as part of the cost of accommodation (see **Example 8**).¹⁴

Day

The word “day”, which is not defined in the Act, is defined in the *Concise Oxford English Dictionary*¹⁵ to mean –

“a twenty-four-hour period as a unit of time, reckoned from one midnight to the next and corresponding to a rotation of the earth on its axis; the time between sunrise and sunset”.

In the *Collins English Dictionary*,¹⁶ the word is defined to mean –

“1. the period of time, the calendar day, of 24 hours duration reckoned from one midnight to the next. 2. the period of light between sunrise and sunset, as distinguished from the night”.

It is clear from the context of section 8(1)(c)(ii) that the word “day” must be given the wider meaning of the full period of 24 hours from one midnight to the next.

A “part” means a constituent portion or division of a whole, which is distinct from that whole.¹⁷ A part of a day could be an hour, a half-hour or even a minute. The deemed expenditure is not apportioned if the recipient is only away for part of the day.

5.3.4 Examples

The examples below are for the 2022 year of assessment and the amounts are based on the rates for meals and incidental costs for that year. These rates are normally adjusted annually. The rates that are applicable to prior years of assessment are available on the **SARS website**. Because these rates normally change annually, taxpayers should review the effective date of the particular notice setting out the rates, to ensure that the correct rates are applied to the relevant years of assessment.

Example 6 – Subsistence allowance and amounts included in taxable income

Facts:

During the 2022 year of assessment Y attended a business seminar in Cape Town on behalf of his employer. Y was away from his usual place of residence in Johannesburg for five nights and six days. Y’s employer granted him an allowance of R7 000 for accommodation and R3 000 for meals and incidental costs. Y was not required to refund any excess if the actual expenditure was less than the allowances he received and, similarly, his employer would not reimburse him should the actual expenditure have exceeded the allowances granted to him.

Y did not keep any supporting documentation and he was unable to prove any of the expenditure incurred on accommodation, meals or incidental costs.

¹⁴ Refer also to Binding General Ruling 22: “Subsistence Allowance – Amounts Deemed to be Expended for Business Purposes”.

¹⁵ Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

¹⁶ 3rd Edition. Glasgow: Harper Collins, 1991.

Result:

The full allowance of R7 000 for accommodation must be included in Y's taxable income as he is unable to apply the actual method (see 5.3.2) and the deemed method (see 5.3.3) is not available for accommodation.

In relation to the allowance of R3 000 for meals and incidental costs, Y will be able to apply the deemed method to determine the amount that can be deducted from the allowance. An amount of R2 712 (R452 per day as per the relevant *Government Gazette* x six days) is deemed to have been spent on meals and incidental costs. The balance of R288 (R3 000 – R2 712) must be included in Y's taxable income.

Example 7 – Calculating the subsistence deduction if the employee's expenditure exceeds the allowance granted

Facts:

M was granted an allowance of R5 000 for accommodation and R2 000 for meals and incidental costs during the 2022 year of assessment in order to conduct business-related activities on behalf of her principal. M was away from her usual place of residence for five nights and six days. M spent R5 500 on accommodation and retained the supporting documentation. M was unable to prove any costs for meals or incidentals.

Result:

The actual method may be applied to determine the deduction available for accommodation. The deduction is limited to R5 000 (as this amount is the *allowance* that was granted for accommodation) even though M expended R5 500. Accordingly, the taxable portion of the allowance that must be included in taxable income is Rnil (R5 000 – R5 000). The additional R500 accommodation costs (R5 500 – R5 000) may not be deducted from the meals and incidental subsistence allowance of R2 000.

Under the deemed method, M is deemed to have incurred R2 712 (R452 per day as per the relevant *Government Gazette* x six days) for meals and incidental costs for business purposes. The deduction that may be claimed is, however, limited to the amount of the allowance that was paid, that is, R2 000. Accordingly, there is no amount which must be included in M's taxable income.

Example 8 – Reducing the deemed subsistence expenses if the employer bears a portion of the cost

Facts:

During the 2022 year of assessment B was required to travel within South Africa for business purposes. B spent five nights away from home and returned home on the sixth day. B's employer paid the hotel accommodation costs and breakfast costs. Guests at the hotel were not obliged to eat breakfast at the hotel but on the days they did, the hotel would add the cost of the breakfast ordered to their hotel bill. B settled the hotel bill (accommodation cost of R4 250 and breakfast of R429) using his personal credit card and was subsequently reimbursed by his employer.

The employer also paid B an allowance of R500 per day to enable him to pay for other meals and incidental costs. B received a total allowance of R3 000.

B did not keep any supporting documentation for his expenditure on meals and incidental costs, apart from the cost of breakfast.

Result:

The reimbursement of R4 679 (R4 250 + R429) is not included in B's taxable income.

The total amount deemed to have been actually expended on meals and incidental costs is R2 712 (R452 per day as per the relevant *Government Gazette* × six days) less the breakfast expenditure of R429 borne by the employer by way of a reimbursement, that is, R2 283.

Accordingly, the taxable portion of the allowance which must be included in B's taxable income is R717 (R3 000 – R2 283).

Example 9 – Bed and breakfast accommodation with a single charge for bed and breakfast

Facts:

During the 2022 year of assessment D was required to travel within South Africa for business purposes. D spent five nights away from home and returned home on the sixth day. D's employer paid for the hotel accommodation. The hotel provides bed and breakfast accommodation and levies a single inclusive charge irrespective of whether or not guests eat breakfast. D settled the hotel bill totalling R4 800 using his personal credit card and was subsequently reimbursed by his employer.

The employer also paid D an allowance of R500 per day to pay for other meals and incidental costs. D received a total allowance of R3 000 and did not keep any supporting documentation for expenditure on meals and incidental costs.

Result:

The reimbursement of R4 800 is not included in D's taxable income.

The total amount deemed to have been actually expended on meals and incidental costs is R2 712 (R452 per day as per the relevant *Government Gazette* × six days). The *Gazetted* amount does not need to be reduced for the cost of breakfast because, with bed and breakfast accommodation, the full charge levied by the service provider is considered to be a cost of accommodation.

Accordingly, the taxable portion of the allowance which must be included in taxable income is R288 (R3 000 – R2 712).

5.4 Deductions from travelling allowances and advances

5.4.1 General

An allowance or advance that is granted by a principal to a recipient for travelling on business or for the use of a private motor vehicle for the principal's business purposes is commonly known as a "travel allowance". A "motor vehicle" is a road vehicle powered by a motor or engine, especially an internal-combustion engine.¹⁷ This would include a motorcycle.

The allowance or advance must be included in the recipient's taxable income to the extent that it is not expended on travelling on business (see **5.1**).

In the context of travel, an allowance or advance includes both a travel allowance and a travel reimbursement¹⁸ (see **5.2**).

A recipient who receives a travel allowance and a travel reimbursement must add the amount of the travel reimbursement to the amount of the allowance and calculate the allowable deduction for the number of business kilometres travelled.

A recipient who only receives a travel reimbursement must still determine the allowable deduction because, depending on the facts, the rate at which the recipient was actually reimbursed may exceed the allowable deduction. The allowable deduction is determined by applying the actual cost, deemed rate per kilometre method or the specified rate per kilometre (see **5.4.3** and **5.4.4**).

The amount of the allowable deduction which may be deducted from the travel allowance, advance or reimbursement has two components, namely, the business kilometres travelled (see **5.4.2**) and the expenditure per kilometre. Expenditure per kilometre may be determined using actual costs (see **5.4.3**) or according to the deemed rate per kilometre as determined by the Minister of Finance by notice in the *Government Gazette* (see **5.4.4**).

Amount to be included in taxable income = amount of the allowance, advance or reimbursement received – (business kilometres travelled × expenditure per kilometre)

The amount of the allowable deduction is always limited to the amount of the allowance.

Travel reimbursements¹⁹ paid by an employer²⁰ are deemed to accrue to a recipient on the date that they are paid.²¹ Often, business travel undertaken in one year of assessment was only reimbursed to an employee in the following year of assessment. This created the problem that taxpayers who undertook business mileage in, for example, February of a calendar year, but who received their travel reimbursement in March of that calendar year, had the result that the mileage was undertaken in a

¹⁷ *Concise Oxford English Dictionary*. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006. Collins English Dictionary. 3rd Edition. Glasgow: Harper Collins, 1991.

¹⁸ That is, actual business kilometres travelled × an employer agreed rate per kilometre.

¹⁹ As contemplated in section 8(1)(b)(ii) and (iii).

²⁰ As defined in paragraph 1 of the Fourth Schedule.

²¹ Under section 7B(2)(a) read with paragraph (b) of the definition of "variable remuneration" in section 7B(1).

different year of assessment to that in which the travel allowance accrued. No deduction was thus allowed for this mileage.

To resolve this anomaly, the law was amended with effect from 15 January 2020.²² Any distance travelled for business purposes after that date is deemed to have taken place in the year of assessment that the travel reimbursement is paid.²³

The motor vehicle the recipient uses is often owned by the recipient but this is not always the case, for example, it could be a “company car” which the employer has provided to an employee. The allowable deduction against an allowance or advance which is granted to the recipient for a motor vehicle that the recipient has been granted the right to use under paragraph 7 of the Seventh Schedule (that is, a “company car”) is Rnil.²⁴

Section 8(1)(b)(iv) was inserted into the Act in 1990 to address schemes designed to inappropriately benefit from the lower rate of tax effectively levied on taxable benefits at that time. It provides that if an employee, the employee’s spouse or the employee’s child has directly or indirectly let a vehicle to an employer or the employer’s associated institution, the sum of the rental and expenses paid by the employer for the vehicle is treated as an allowance for the employee and not as rental income for the lessor (who may or may not be the employer) and the employee is deemed not to have received a taxable benefit from the employer under the Seventh Schedule (right of use of an employer-provided asset).

5.4.2 Kilometres

Taxpayers wishing to claim the cost of business travel must base their claim on the actual business kilometres travelled and are required to prove the business kilometres travelled to the satisfaction of the Commissioner.

In order to do so recipients must keep accurate written records of their business travel and include, at a minimum, the following information:

- The odometer reading on the first day of the year of assessment.
- The odometer reading on the last day of the year of assessment.
- For all business travel –
 - the date of the travel;
 - the kilometres travelled; and
 - business travel details (to and from where, and reason for trip).

Written records of this information are often referred to as a logbook. It is not necessary to record details of private travel (for example, that the recipient went to the movies on “x” date and the distance travelled was “y” kilometres) or daily opening and closing odometer readings. A logbook which taxpayers may use is available on the **SARS website**.

²² The date of promulgation of the Taxation Laws Amendment Act 34 of 2019.

²³ The provisos to sections 8(1)(b)(ii) and (iii).

²⁴ Effective for years of assessment commencing on or after 1 March 2011.

Reason for trip

The “reason for trip” is a crucial element of a logbook. SARS will not be in a position to fulfil its obligation under the law to test the validity of a travel claim where the “reason for trip” is recorded in a logbook as simply “meeting”, “client”, “business” or similar vague particulars.

The information that taxpayers provide under “reason for trip” must therefore be sufficient to allow SARS to verify that the travel undertaken was for business purposes and qualifies for a deduction. At the very least, this should include the following information:

- Specific details of why the travel was undertaken, for example “presentation to board”, “meeting with supplier” or “delivery to client”.
- Details of the person with or for whom the engagement was undertaken, for example, “head office of ABC Ltd”, “Mr A at LMN Supplies (Pty) Ltd” or “delivery to client Mr Z”.
- If contact details are available these should also be provided.

As much detail should be provided as possible. In many cases, this will permit SARS to verify travel claims without having to request additional information from a taxpayer or to disallow travel claims because of insufficient information that was provided to verify such claims.

The information required to be provided under “reason for trip” is not confidential information. In the same way that taxpayers claiming a deduction for expenditure incurred under, for example, section 11(a) could be required to provide relevant information such as client invoices, client contracts, etc., so too should taxpayers provide full details of business travel to SARS should they wish to claim a travel deduction. It bears pointing out that SARS is bound by the confidentiality provisions of Chapter 6 of the TA Act.

Business and private travel

The accurate determination of what constitutes business travel is critically important and is determined by looking at the purpose of the trip and assessing whether it is for business purposes or private purposes.

In this regard, section 8(1)(b)(i) provides that travelling between a recipient’s place of residence and place of employment or business is private travel. The location of a recipient’s place of employment or place of business is a factual enquiry. In relation to an employee’s place of employment, it is the place at which the employee must render services as agreed with the employer. The term “place of employment” applies when the recipient of the allowance or advance is an employee and the term “place of business” applies when the recipient is a holder of an office.

Travel between the place of employment or business and the place of residence is regarded as private travel even if the travel takes place after normal or during extended working hours.

Examples of **private** travel include, where –

- a tax consultant employed by a law firm in Johannesburg travels from home in Pretoria to the law firm’s office, the travel between home and the office;

- an assistant employed to work as a shop assistant at a V&A Waterfront store in Cape Town (the employer has stores all over South Africa, including other stores in the Cape Town area) travels from a friend's house to the V&A Waterfront store, the travel between the friend's house and the store; and
- an assistant employed to work as a shop assistant at a V&A Waterfront store in Cape Town for two days a week and the Canal Walk Store in Cape Town for three days a week (the employer has stores situated all over South Africa, including other stores in the Cape Town area) travels from home to a store, the travel between home and the Canal Walk Store, or the V&A Waterfront store as appropriate.

Examples of **business** travel include, where –

- an employee whose place of employment is in Johannesburg leaves the office at lunch time to attend a business conference in Krugersdorp, the travel between the office and the conference venue in Krugersdorp;
- a consultant stops to see a client en route to his place of employment, the travel between home and the client's premises and the travel after the meeting from the client's premises to the office;
- a sales assistant normally works at an employer's store in the V&A Waterfront, Cape Town travels directly from home to the employer's store in Pretoria to assist with an annual stock count, the travel between home in Cape Town and Pretoria;
- an employee located in Kimberley is required to assist a client in Upington over a five-day period, the travel from Kimberley to Upington;²⁵ and
- a computer programmer, is allowed to work from home on a permanent basis (that is, the home office is the place of employment) travels to a client's premises to discuss system requirements and functionality, the travel from the home office to the clients' premises.

The examples listed above are merely guidelines to explain the principles involved. Each case must be examined and assessed based on its own unique set of facts.

5.4.3 Expenditure per kilometre – actual costs

In order to be able to use actual costs in determining the amount of the allowable deduction, recipients will need to perform an acceptable calculation based on accurate data. An acceptable "expenditure per kilometre" calculation will contain two elements, namely, total kilometres travelled²⁶ and the total expenditure incurred by the recipient.²⁷ The calculated rate per kilometre would then be multiplied by the business kilometres travelled (see 5.4.2) to determine the allowable deduction.

Recipients must retain supporting documentation in order to prove, if requested, the accuracy of the calculation and the data used.

²⁵ The employee will also incur additional business travel while in Upington, for example, travelling from the guesthouse to the client's premises and travelling to the shops to get supplies.

²⁶ Calculated rate per kilometre = total expenditure / total kilometres travelled.

The recipient's use of the motor vehicle to travel must have given rise to the expenditure. In ITC 1731²⁷ a lease termination payment was held to be related to the termination of the lease and the acquisition of ownership of the vehicle and not to have been an expense incurred as a result of travelling. It accordingly did not fall within the provisions of section 8(1)(a) and (b).

Examples of the type of expenditure which may be included are wear-and-tear or lease payments, fuel, oil, repairs and maintenance, car licence, insurance and finance charges.

The expenditure related to finance charges and depreciation are based on actual costs subject to limitations as set out in section 8(1)(b)(iiiA). Section 8(1)(b)(iiiA) provides –

- that in relation to a leased vehicle, the lease payments included may not exceed the fixed cost element determined in the *Government Gazette* for the particular category of vehicle (see **5.4.4**); and
- in all other cases –
 - wear-and-tear must be determined over a seven-year period from the original date of acquisition by the recipient;
 - the cost of the vehicle must be limited to R665 000;²⁸ and
 - the finance charges incurred for any debt incurred for the purchase must be limited to an amount which would have been incurred had the original debt been R665 000.²⁹

Example 10 – Travelling deductions if record of actual expenses was kept

Facts:

S received a travel allowance of R96 000 during the 2021 year of assessment. A total of 23 881 kilometres was travelled during the year, of which 7 338 kilometres was for business travel. S purchased a motor vehicle on 1 March 2016 and it has a value of R353 248. S kept proof of the following travelling expenses:

	R
Fuel and oil	26 910
Maintenance and repairs	4 422
Insurance and licence fees	15 327
Wear-and-tear (R353 248 / 7 years)	50 464
Finance charges	<u>32 880</u>
Total costs	<u>130 003</u>

²⁷ 64 SATC 395.

²⁸ This value is effective from years of assessment commencing on or after 1 March 2020, under section 5 of the Rates and Monetary Amounts and Amendment of Revenue Laws Act 22 of 2020.

Result:

	R
Travel allowance received	96 000

The deduction for business travel will be calculated as follows:

(Total costs / total kilometres) × business kilometres	
= (R130 003 / 23 881 km) × 7 338 km	39 946

S is entitled to the full deduction of R39 946 against the travel allowance and must include R56 054 (R96 000 – R39 946) in taxable income.

5.4.4 Expenditure per kilometre – deemed rate per kilometre

The deemed rate per kilometre, which is determined by the Minister of Finance by notice in the *Government Gazette*, has the following three components:

- A **fixed component** – this component represents fixed costs, for example, finance charges, insurance, depreciation and licensing. The rand value per the cost scale table (explained below) must be divided by the total kilometres (private and business) travelled in the year of assessment and must also be apportioned if the vehicle was only used for business purposes for part of the year.

The word “used” must be given its ordinary grammatical meaning, taking into account the context in which it appears and consistent with the purpose of the legislation.²⁹ The starting point is the meaning ascribed in dictionaries. The word “used” is the past tense of the verb “use”, whose meanings include “take, hold or deploy as a means of achieving something; take or consume (an amount) from a limited supply; treat in a particular way;”³⁰ as well as “to put into service or action; employ for a given purpose; to consume, expend, or exhaust; the ability, right or permission to use; the occasion to use;”³¹

Contextually the word “used” relates to the period that a motor vehicle is used during a year of assessment for business purposes, as compared to the period that it is used during that same period for private purposes. The purpose of the provision in which the word “used” appears, is to determine a fair apportionment of fixed costs between the business and private use of a motor vehicle.

Taking these factors into account, the word “used” means the period that the vehicle was put into service or action during which the taxpayer had the ability to use the vehicle, that is, when it was available for the taxpayer to use. The period of business use will thus commence from the date that an employee becomes *required* to use a vehicle for business purposes, and has a vehicle available for such purpose. A vehicle therefore does not need to be actually

²⁹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), approved by the Constitutional Court in *Municipal Employees Pension Fund v Natal Joint Municipal Pension Fund (Superannuation) and Others* 2018 (2) BCLR 157 (CC); see also *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC).

³⁰ *Concise Oxford English Dictionary*. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

³¹ *Collins English Dictionary*. 3rd Edition. Glasgow: Harper Collins, 1991.

used every day during a particular period, in order for that day to qualify as a period of “use”.

Apportionment is based on the days in a full year; in other words it is irrelevant if a day is a business day, a Saturday, Sunday or public holiday.

Example 11 – Travelling deduction if vehicle was available for use for business for a portion of the year of assessment

Facts:

M owned a private vehicle for the entire 2021 year of assessment. The vehicle originally cost M R125 000, including VAT, but excluding interest and finance charges. M was employed from 1 March 2018 as an administrative office assistant, and was not required to travel for business purposes.

On 1 August 2020, M received a promotion and was appointed as a sales consultant. M's job required that he travel for business purposes, and he accordingly received a travel allowance of R5 000 per month. On average, M travelled for business purposes three times per week. The other two week days, M generally worked at the office. On weekends, M only travelled for private purposes.

Result:

M may not claim the full fixed cost on assessment. The fixed cost must be apportioned for only the period that the vehicle was used for business purposes. The vehicle was brought into use for business purposes on 1 August 2020.

The fixed cost in the 2021 year of assessment for a vehicle that originally cost R125 000 was R55 894, and must be apportioned as follows:

1 August 2020 to 28 February 2021 = 212 days

$(212 / 365) \times R55\,894 = R32\,464$

The fixed cost for purposes of calculating M's deduction is R32 464.

- A **fuel cost component** – this component may only be included if the recipient bears the *full* cost of fuel. Employees who are provided with employer-owned petrol or garage cards are regarded as having borne the full cost of fuel if the full amount expended on that card during the year of assessment is included in their travel allowance and is taxed as remuneration in the manner set out in 5.1.
- A **maintenance cost component** – this component may only be included if the recipient bears the *full* cost of maintenance. A recipient will be considered to bear the full cost of maintenance if the recipient takes out a maintenance plan either as a top-up or add-on plan after the acquisition of the vehicle and is responsible for the cost of that maintenance plan and all maintenance costs not covered by the maintenance plan (for example, top-up fluids, tyres or maintenance required as a result of abuse of the motor vehicle). A maintenance cost component may not be claimed if the vehicle was the subject of a maintenance plan when it was acquired by the recipient as the value of the vehicle (see below) will effectively include an element for maintenance.

The three components are included in a cost scale table and the recipient must select the appropriate figures based on the value of the vehicle. The value of the vehicle generally includes VAT but excludes interest – refer to **Annexure B** for detail. The value of the vehicle includes the cost of a maintenance plan when the vehicle is the subject of a maintenance plan, that is if the maintenance plan commences at the same time the motor vehicle is acquired by the recipient irrespective of whether the cost of the plan is separately invoiced or included in the vehicle purchase price.

The cost scale table which is applicable for the 2020/2021 year of assessment, that is, from 1 March 2020 to 28 February 2021, is included in **Annexure B**. The tables applicable to the other years of assessment (including the 2021/2022 year of assessment) are available on the **SARS website**. As these tables change periodically, taxpayers should review the effective date of the particular notice to ensure the correct costs are applied to the relevant years of assessment.

As an alternative to calculating the deemed rate according to the cost scale table, the notice (see **Annexure B**) provides that taxpayers may choose to use a simplified method to calculate the travel deduction. The simplified method uses a specified fixed rate (currently R3,82³² per kilometre for the 2021/2022 year of assessment),³³ provided the recipient received no other compensation in the form of a travel allowance or reimbursement (other than for parking and toll fees).

Before the 2019 year of assessment, the simplified method only applied if a prescribed mileage limit was not exceeded.³⁴ The mileage limit was removed with effect from 1 March 2018,³⁵ and the simplified method now applies to unlimited business kilometres.

Example 12 – Travelling deduction if no record of actual expenses was kept

Facts:

J received a travel allowance of R36 000 for the year of assessment ending 28 February 2021. J's opening odometer reading on 1 March 2020 was 17 005 kilometres and the closing odometer reading on 28 February 2021 was 48 091 kilometres. J kept an accurate logbook detailing all of the business trips taken, 14 115 kilometres were travelled for business purposes. No records of actual costs relating to the motor vehicle were kept. J pays all the fuel and maintenance costs. The value of J's vehicle is R180 000 and he wishes to claim a travel deduction for the 2021 year of assessment.

Result:

Travel allowance received R36 000

The business portion of the expenses incurred in travelling on business will be determined as follows:

Opening kilometres: (01/03/2020)	17 005
Closing kilometres: (28/02/2021)	<u>48 091</u>
Total kilometres travelled	<u>31 086</u>

³² Paragraph 4 of Government Notice 174 in *Government Gazette* 44229 of 5 March 2021.

³³ This rate changes periodically.

³⁴ 12 000km for the 2018 year of assessment; and 8 000km for years prior to 2018.

³⁵ Paragraph 4 of Government Notice 170 in *Government Gazette* 41473 of 2 March 2018.

The fixed cost for the vehicle amounting to R180 000 is R55 894.

The fixed cost amount must be divided by the total distance travelled (both private and business):

R55 894 / 31 086 km × 100 / 1	179,8c
Fuel cost per kilometre	118,1c
Maintenance cost per kilometre	<u>46,8c</u>
Total cost per kilometre	<u>344,7c</u>

14 115 business kilometres × 344,7c × 1 / 100 R48 654

The travel deduction of R48 654 is limited to the travelling allowance received, being R36 000. The excess of R12 654 is disregarded. Rnil is included in taxable income.

Example 13 – Travelling deduction if no record of actual expenses was kept and the employee receives a travel allowance and a reimbursive travel claim

Facts:

J received a travel allowance of R36 000 for the year of assessment ending 28 February 2021. J's employer also reimburses him at a rate of R4,25 per kilometre. J's opening odometer reading on 1 March 2020 was 17 005 kilometres and closing odometer reading on 28 February 2021 was 48 091 kilometres. J kept an accurate logbook detailing all of his business trips, 8 200 kilometres were travelled for business purposes. No records of actual costs relating to J's motor vehicle were kept. The value of his motor vehicle is R180 000 and he wishes to claim a travel deduction for the 2021 year of assessment.

Result:

The business portion of the expenses incurred in travelling on business will be determined as follows:

	R
Travel allowance received	36 000
Reimbursive claim (8 200 km × R4,25)	<u>34 850</u>
Total	70 850
Opening kilometres: (01/03/2020)	17 005
Closing kilometres: (28/02/2021)	<u>48 091</u>
Total kilometres travelled	<u>31 086</u>

The fixed cost for the vehicle amounting to R180 000 is R55 894.

The fixed cost amount must be divided by the total distance travelled (both private and business):

R55 894 / 31 086 km × 100 / 1	179,8c
Fuel cost per kilometre	118,1c
Maintenance cost per kilometre	<u>46,8c</u>
Total cost per kilometre	<u>344,7c</u>

8 200 business kilometres × 344,7c × 1 / 100 R 28 265

Amount included in taxable income (R70 850 – R28 265) 42 585

5.4.5 Expenditure incurred on outsourced travel

In recent years, it has become more common for persons who travel for business purposes to use transportation other than their own vehicles. The most common method uses mobile application-based ridesharing platforms (apps) that match passengers looking for transportation, with drivers with vehicles for hire.³⁶

Section 8(1)(a)(i)(aa), read with section 8(1)(b)(i), permit the deduction of expenditure incurred on this form of travelling, provided that the travel was undertaken for business and not private purposes, and the taxpayer is able to provide sufficient evidence to show that the travel was undertaken for business purposes.

Most app-based ridesharing platforms provide a receipt to a passenger upon completion of the trip. Typically, these receipts show the time, commencement and termination point, distance travelled, and cost, in respect of the trip.

However, this data is not sufficient for a taxpayer to claim a deduction, because it does not explain the “reason for trip” requirement as set out in **5.4.2**. A taxpayer will thus still be required to maintain detailed records of each instance of business travel that records the “reason for trip” as set out in **5.4.2**. The principles explained in **5.4.2** regarding what constitutes business travel and what constitutes private travel will apply equally to ridesharing trips.

The availability of a deduction for expenditure incurred on outsourced travel costs is not limited to travel undertaken using ridesharing apps. Meter-taxis may be used for business travel, or commuter rail systems such as the Gautrain, or other forms of public transport. In order to claim a travel deduction for such travel, the information set out in **5.4.2** regarding the record of business travel is also required. A taxpayer would **not** be able to prove an entitlement to a deduction if the transport providers do not provide the taxpayer with proof of expenditure incurred.

5.5 Deduction under section 11(a)

Section 23(m) generally prohibits employees and office holders from claiming a deduction for business-related travel expenditure under section 11(a).

There are limited circumstances, for example, an agent or representative whose remuneration is normally derived mainly from commissions based on sales or turnover, who are not automatically prohibited by section 23(m) from deducting business-related travel expenditure under section 11(a).³⁷

Taxpayers who are not subject to section 8(1), for example, an independent contractor (see **5.1.1**), may seek to claim business-related travel expenditure under section 11(a). In this regard the calculation of the deduction available, assuming all the requirements of section 11(a) are met, must be based on actual expenditure and actual business kilometres travelled. Taxpayers seeking to claim a deduction bear the onus of proving that the amount is deductible³⁸ and, if required, will need to produce proof of the expenditure incurred and the business kilometres travelled. (See **5.4.2** for details on what SARS considers to be accurate written records of business kilometres travelled.)

³⁶ Common examples of ridesharing apps used in South Africa are the Uber and Bolt apps.

³⁷ Taxpayers in these circumstances will need to consider the interaction between sections 8(1), 11(a), 23(m) and 23B.

³⁸ Section 102 of the TA Act.

A method which merely regards, for example, 20% of total travelling expenses as private is not acceptable. Practice Note 24³⁹ was withdrawn with effect from years of assessment commencing on or after 1 March 2010.

6. Employees' tax

6.1 General

All allowances or advances, except for those discussed in **6.2** and **6.3**,⁴⁰ required to be included in taxable income under section 8(1)(a)(i) must be included in remuneration for the purposes of employees' tax.

Reimbursement of actual expenditure is not subject to employees' tax, unless the rules for a valid tax free reimbursement as set out in **5.2** are not met, in which case the amount of the reimbursement must be included in an employee's remuneration.

6.2 Subsistence allowances

Subsistence allowances are generally not subject to employees' tax. However, if a subsistence allowance or advance is paid or granted to an employee during any month, and that employee had not spent the anticipated time away from his or her usual place of residence on business by the end of the month following the month in which the allowance or advance was paid or granted, it will be subject to employees' tax if the employee has not refunded such amount to the employer.⁴¹ This ensures that subsistence allowances or advances are not used as a form of salary structuring by employers and do not result in employees receiving a tax-free allowance which is not provided for by legislation.

The amount of the allowance must be included in remuneration in the month following the month in which the allowance or advance was paid if the employee did not spend the time away from home as anticipated.

6.3 Travel allowance and reimbursive travel claims

6.3.1 Travel allowance

The definition of the term "remuneration"⁴² was amended with effect from 1 March 2010 to include 80% of the travel allowance or advance as remuneration. However, should an employer be satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance is included as remuneration and is subject to employees' tax.⁴³

This does not mean that only a portion (80% or 20%, as the case may be) is subject to tax. The full allowance or advance is potentially taxable if the taxpayer is unable to claim a sufficient deduction for business travel when submitting his or her income tax return. It is only for the purposes of employees' tax that 80% or 20%, as the case may be, is included in remuneration.

³⁹ "Income Tax – Private Use of a Motor Vehicle" (issued on 8 August 1994) – this note previously dealt with the determination of the private use of a motor vehicle.

⁴⁰ The employees' tax consequences are also different for the holder of public office allowances – these are not discussed in this Note.

⁴¹ Paragraph (bA)(ii) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule.

⁴² Paragraph 1 of the Fourth Schedule to the Act.

⁴³ Effective years of assessment commencing on or after 1 March 2011.

Employers must be *satisfied* that at least 80% of the use of the vehicle is for business purposes when assessing whether 80% or 20% of the travel allowance or advance should be included in “remuneration”. The word “satisfied” suggests that the employer must actively look into the facts of each employee’s circumstances and objectively weigh up and determine whether or not the employee should qualify.

Employers must satisfy themselves that employees will use their vehicles for at least 80% business use. This can be done by –

- regularly reviewing employees’ logbooks which detail business and private travel; and
- taking into consideration changes in the roles or functions of the employees.

Example 14 – Determination of the travelling allowance inclusion rate by the employer

Facts:

M is paid a travel allowance of R5 000 per month by her employer, JKL (Pty) Ltd. Under the employment duties M is required to provide services to all clients of JKL (Pty) Ltd who are based in Gauteng. During the full 2020 year of assessment M maintained a detailed logbook, which disclosed M had travelled a total of 61 015 kilometres, of which 53 092 kilometres were for business travel. M and the financial director of JKL (Pty) Ltd agree that M’s functions will remain much the same during the 2021 year of assessment.

Result:

Determination of expected percentage business travel:

$$53\,092\text{ km} / 61\,015\text{ km} = 87\%$$

87% of M’s travel in the 2020 year of assessment was for business purposes. In March 2020 (the start of the 2021 year of assessment), JKL (Pty) Ltd is likely to be satisfied that at least 80% of the use of M’s motor vehicle for the 2021 year of assessment will be for business purposes based on the logbook for the 2020 year of assessment and the fact that M’s job profile and responsibilities are not expected to change.

Accordingly, only 20% of the travel allowance, that is, R1 000 (R5 000 × 20%) may be included in M’s remuneration for employees’ tax purposes. The full allowance of R5 000, less any allowable deduction, will need to be included in M’s taxable income when M submits an income tax return.

The method set out above is not the only method that an employer can use to assess whether an employee will travel more than 80% for business purposes. There may be other acceptable methods that employers can use to satisfy themselves of the 80% requirement based on the particular employee’s circumstances. SARS will, if applicable, consider whether other methods applied by an employer demonstrate that the employer did in fact properly apply its mind to the particular case. For example, with new employees or employees who change job positions, a prior year logbook may not necessarily be appropriate.

If employees' tax has been withheld on 20% of a recipient's travel allowance and circumstances change such that the employer realises that the employee will no longer use the vehicle more than 80% for business purposes for the year of assessment, from the month in which the circumstances change, employees' tax must be withheld on 80% of a recipient's travel allowance. The adjustment does not need to be made retrospectively; the change must merely be made from the month during which the employer reasonably became aware of the change in the employee's circumstances.

6.3.2 Reimbursive travel claim

Before 1 March 2018, reimbursive travel claims were not subject to the deduction or withholding of employees' tax.⁴⁴ They were required to be included in taxable income, subject to the deduction of any allowable deductions, when the recipient submitted his or her income tax return.

With effect from 1 March 2018, certain travel reimbursements are included in remuneration.⁴⁵ The definition of "remuneration" was amended to include the amount of reimbursements paid **in excess of the rate per kilometre** specified in the simplified method under the notice.

Only the amount that exceeds the prescribed rate must be included in remuneration. The portion of the reimbursement that is below the prescribed rate is not remuneration, and is not subject to the deduction or withholding of employees' tax. Reimbursements below the prescribed rate are also not remuneration.

It should be noted that the 80% / 20% rule does not apply to the excess of travel reimbursements. The total amount of the excess must be included in remuneration, even if more than 80% of the employee's or office holder's travel is for business purposes.

Example 15 – Reimbursement in excess of prescribed rate per kilometre

Facts:

T, a sales consultant, travelled 7 892 kilometres for business purposes during March 2020, and was reimbursed by his employer at a rate of R4,25 per kilometre.

Result:

	R
The amount to be included in remuneration will be determined as follows:	
Total business kilometres travelled for the month (7 892km)	
Total reimbursement received (7 892km × R4,25)	33 541
Total business kilometres × (reimbursive rate – rate per kilometre)	
7 892km × (R4,25 – R3,98*)	2 130

Only R2 130 of the total reimbursement of R33 541 must thus be included in remuneration, being 100% of the portion of the reimbursement paid or granted by the employer that exceeds the allowance based on the rate per kilometre.

⁴⁴ Under the discretion exercised by the Commissioner under paragraph 2(1) of the Fourth Schedule.

⁴⁵ Tax Administration Laws Amendment Act 13 of 2017. The exercise of the Commissioner's discretion was simultaneously withdrawn.

* the rate per kilometre applicable for the 2021 year of assessment.

7. Conclusion

Section 8(1)(a) –

- deals with **all** allowances and advances paid by a “principal” to a “recipient” (for example, travel, subsistence, public office, cell phone and housing allowances);
- provides that all such allowances and advances must be included in the recipient’s taxable income to the extent that they were not expended as specified in section 8(1); and
- provides that, if reimbursements meet the qualifying requirements, they are not included in taxable income.

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. The method of calculating the amount of the allowable deduction is specified in section 8(1). This Note discussed the methods of calculating the allowable deduction which, in the case of the travel allowance, includes actual business kilometres and an actual rate per kilometre or a deemed rate per kilometre as determined by the Minister of Finance in the *Government Gazette*. The allowable deduction for subsistence expenses may, depending on the circumstances, be based on a deemed rate per the *Government Gazette* or on actual expenditure.

Employers are generally required to calculate and withhold employees’ tax on a monthly basis on all advances and allowances. With effect from 1 March 2011 employers must include 80% of the travel allowance in remuneration. However, should an employer be satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance is included as remuneration and is subject to employees’ tax. The portion of travel reimbursements that exceed the prescribed rate per kilometre determined by the Minister by notice in the *Government Gazette* must be included in remuneration. Reimbursements below the prescribed rate are not subject to the deduction or withholding of employees’ tax. Subsistence allowances are generally not subject to employees’ tax. The amount of the subsistence allowance must be included in remuneration in the month following the month in which the allowance was paid to an employee if the employee receives a subsistence allowance but does not spend the anticipated time away from home.

Leveraged Legal Products

SOUTH AFRICAN REVENUE SERVICE

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Annexure A – The law

Section 8

8. Certain amounts to be included in income or taxable income.—(1)(a)(i) There shall be included in the taxable income of any person (hereinafter referred to as the “recipient”) for any year of assessment any amount which has been paid or granted during that year by his or her principal as an allowance or advance, excluding any portion of any allowance or advance to the extent that the allowance or advance or a portion of the allowance or advance is exempt from normal tax under section 10(1) or has actually been expended by that recipient—

- (aa) on travelling on business, as contemplated in paragraph (b), unless an allowance or advance has been granted by an employer in respect of the use of a motor vehicle as contemplated in paragraph 7 of the Seventh Schedule;
- (bb) on any accommodation, meals and other incidental costs, as contemplated in paragraph (c), while such recipient is by reason of the duties of his or her office or employment obliged to spend at least one night away from his or her usual place of residence in the Republic; or
- (cc) by reason of the duties attendant upon his or her office, as contemplated in paragraph (d).

(ii) There shall not be included in the taxable income of a person in terms of the provisions of paragraph (a)(i), any amount paid or granted by a principal in reimbursement of, or as an advance for, any expenditure incurred or to be incurred by the recipient—

- (aa) (A) on the instruction of his or her principal; or
 - (B) where the recipient is allowed by his or her principal to incur expenditure on meals and other incidental costs while such recipient is by reason of the duties of his or her office or employment obliged to spend a part of a day away from his or her usual place of work or employment, not exceeding an amount determined by way of notice in the *Gazette*,
 - in the furtherance of the trade of that principal; and
- (bb) where that recipient must produce proof to that principal that such expenditure was wholly incurred as aforesaid and must account to that principal for that expenditure:

Provided that where that expenditure was incurred to acquire any asset, the ownership in that asset must vest in that principal.

(iii) For the purposes of this paragraph, “**principal**” in relation to a recipient includes his or her employer or the authority, company, body or other organisation in relation to which any office is held, or any associated institution, as defined in the Seventh Schedule, in relation to such employer, authority, company, body or organisation.

(iv) The provisions of this paragraph shall not apply in respect of any amount paid or granted as an allowance or advance that is received by or accrued to a person in respect of—

- (aa) the holding of a public office by that person as contemplated in section 9(2)(g); or
- (bb) services rendered or work or labour performed by that person as contemplated in section 9(2)(h),

if that person is stationed outside the Republic and that amount is attributable to services rendered by that person outside the Republic.

(b) For the purposes of paragraph (a)(i)(aa)—

- (i) any allowance or advance in respect of transport expenses shall, to the extent to which such allowance or advance has been expended by the recipient on private travelling (including travelling between his or her place of residence and his or her place of employment or business or any other travelling done for his or her private or domestic purposes), be deemed not to have been actually expended on travelling on business;

- (ii) subject to the provisions of subparagraph (iii), where such allowance or advance has been paid to the recipient in order that it may be utilized for defraying expenditure in respect of any motor vehicle used by the recipient, the portion of the allowance expended by the recipient during the year of assessment for business purposes shall, unless an acceptable calculation based on accurate data is furnished by the recipient, be deemed to be an amount calculated by applying the rate per kilometre determined in the manner prescribed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used, on a distance travelled during the said year for business purposes (other than private travelling as contemplated in subparagraph (i)): Provided that where an allowance or advance is deemed to have accrued under section 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid
- (iii) where such allowance or advance is based on the actual distance travelled by the recipient in using a motor vehicle on business (excluding the said private travelling), or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient, the amount expended by the recipient on such business travelling shall, unless the contrary appears, be deemed to be an amount determined on such actual distance at the rate per kilometre fixed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used: Provided that where an allowance or advance is deemed to have accrued under section 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid;
- (iiiA) where the portion of the allowance or advance which is claimed by the recipient to be actually expended is calculated based on accurate data furnished by the recipient in respect of any vehicle—
 - (aa) in the case of a vehicle that is being leased, the total amount of payments in respect of that lease may not in any year of assessment exceed an amount of the fixed cost determined by the Minister in the notice contemplated in subparagraph (ii), for the category of vehicle used;
 - (bb) in any other case—
 - (A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to R665 000, or such other amount determined by the Minister by notice in the *Gazette*; and
 - (B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been R665 000, or such other amount determined by the Minister in terms of subitem (A);
- (iv) where any motor vehicle which is owned or leased by an employee, his spouse or his child, whether directly or indirectly by virtue of an interest in a company or trust or otherwise, has been let to the employer or any associated institution in relation to the employer, the sum of the rental paid by the employer or associated institution and any expenditure defrayed by the employer or associated institution in respect of the vehicle, shall be deemed to be an allowance paid to the employee in respect of transport expenses, and in such case the said rental shall for the purposes of this Act (excluding this paragraph) be deemed not to have been received by or to have accrued to the lessor of such motor vehicle, and for the purposes of paragraph 2(b) of the Seventh Schedule such employee shall be deemed not to have been granted the right to use such motor vehicle.

(c) A recipient shall, for the purposes of paragraph (a)(i)(bb), be deemed to have actually expended,—

- (i) where that recipient proves to the Commissioner the amount of the expenses incurred by him or her in respect of accommodation, meals or other incidental costs (other than any amount of expenditure borne by the employer otherwise than by way of payment or granting of the allowance), the amount so actually incurred but limited to the amount of the allowance or advance paid or granted to meet those expenses; or
- (ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, such amount in respect of meals and other incidental costs, or incidental costs only, as the Commissioner may determine for a country or region for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses: Provided that this subparagraph does not apply to the extent that—
 - (aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day; or
 - (bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for that day or part of that day, as contemplated in subparagraph (i).

Section 11

11. General deductions allowed in determination of taxable income.—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;

Definition of “remuneration” in paragraph 1 of the Fourth Schedule

“**remuneration**” means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including—

- (cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) that is based on the actual distance travelled by the recipient: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;
- (cB) ...
- (cC) 100 per cent of so much of the amount paid or granted as an allowance or advance referred to in section 8(1)(b)(iii) as exceeds the amount determined by applying the rate per kilometre for the simplified method in the notice fixing the rate per kilometre under section 8(1)(b)(ii) and (iii) to the actual distance travelled;

Annexure B – Table of rate per kilometre⁴⁶

1. Definition

In this Schedule, “value” in relation to a motor vehicle used by the recipient of an allowance as contemplated in section 8(1)(b)(ii) and (iii) of the Income Tax Act, 1962, means—

- (a) where that motor vehicle (not being a motor vehicle in respect of which paragraph (b)(i) of this definition applies) was acquired by that recipient under a *bona fide* agreement of sale or exchange concluded by parties dealing at arm's length, the original cost thereof to him/her, including any value-added tax but excluding any finance charge or interest payable by him/her in respect of the acquisition thereof;
- (b) where that motor vehicle—
 - (i) is held by that recipient under a lease contemplated in paragraph (b) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act, 1991; or
 - (ii) was held by him/her under such a lease and the ownership thereof was acquired by him/her on the termination of the lease,

the cash value thereof as contemplated in the definition of "cash value" in section 1 of the Value-Added Tax Act; or
- (c) in any other case, the market value of that motor vehicle at the time when that recipient first obtained the vehicle or the right of use thereof, plus an amount equal to value added tax which would have been payable in respect of the purchase of the vehicle had it been purchased by the recipient at that time at a price equal to that market value.

2. Determination of rate per kilometre

The rate per kilometre referred to in section 8(1)(b)(ii) and (iii) must, subject to the provisions of paragraph 4, be determined in accordance with the cost scale set out in paragraph 3, and must be the sum of—

- (a) the fixed cost divided by the total distance in kilometres (for both private and business purposes) shown to have been travelled in the vehicle during the year of assessment: Provided that, where the vehicle has been used for business purposes during a period in that year which is less than the full period of that year, the fixed cost must be an amount which bears to the fixed cost the same ratio as the period of use for business purposes bears to 365 days;
- (b) where the recipient of the allowance has borne the full cost of the fuel used in the vehicle, the fuel cost; and
- (c) where that recipient has borne the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the maintenance cost.

⁴⁶ Government Notice 271 in *Government Gazette* 43073 of 6 March 2020.

Where the value of the vehicle –	Fixed cost R	Fuel cost c/km	Maintenance cost c/km
does not exceed R95 000	31 332	105.8	37.4
exceeds R95 000, but does not exceed R190 000	55 894	118.1	46.8
exceeds R190 000, but does not exceed R285 000	80 539	128.3	51.6
exceeds R285 000, but does not exceed R380 000	102 211	138.0	56.4
exceeds R380 000, but does not exceed R475 000	123 955	147.7	66.2
exceeds R475 000, but does not exceed R570 000	146 753	169.4	77.8
exceeds R570 000, but does not exceed R665 000	169 552	175.1	96.6
exceeds R665 000	169 552	175.1	96.6

4. Simplified method

Where—

- (a) the provisions of section 8(1)(b)(iii) are applicable in respect of the recipient of an allowance or advance; and
- (b) no other compensation in the form of a further allowance or reimbursement (other than for parking or toll fees) is payable by the employer to that recipient,

that rate per kilometre is, at the option of the recipient, equal to 398 cents per kilometre.

5. Effective date

The rate per kilometre determined in terms of this Schedule applies in respect of years of assessment commencing on or after 1 March 2020.