South African Revenue Service

INTERPRETATION NOTE 45 (Issue 4)

DATE: 25 March 2025

ACT : INCOME TAX ACT 58 OF 1962

SECTION : SECTIONS 11(*a*) AND (*e*), 18A, 22(8), 23(*b*) AND (*g*), 24D, PARAGRAPHS 2(*a*), (*b*), (*e*), (*f*) AND (*h*) OF THE SEVENTH SCHEDULE, PARAGRAPHS 20 AND 53 OF THE EIGHTH SCHEDULE AND PART II OF THE NINTH SCHEDULE

SUBJECT : DEDUCTION OF SECURITY EXPENDITURE

Contents

Preamble

In this Note, unless the context indicates otherwise –

- **"Schedule"** means a Schedule to the Act;
- **"section"** means a section of the Act;
- **"security expenditure"** means expenditure incurred to secure assets and human safety;
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides and interpretation notes referred to in this Note are the latest versions unless the context indicates otherwise and are available on the **SARS website** or via eFiling at **www.sarsefiling.co.za** (guides only).

1. Purpose

This Note provides guidance on the deductibility of security expenditure incurred by a taxpayer for income tax purposes. It also considers the fringe benefits tax implications for employees when their employers fund such expenditure.

2. Background

Some taxpayers incur high costs to secure assets and human safety in South Africa. These costs include, amongst others, alarm and video surveillance systems, access control systems, perimeter fencing, outdoor lighting, security officers, and other security related measures. In addition to incurring these security expenses, many taxpayers also make contributions to organisations that focus on preventing and combatting crime.

Such security expenditure usually falls within one or more of the following categories:

- Expenditure of a domestic or private nature
- Donations
- Business-related expenditure

This Note considers the deductibility of each of these categories of expenditure.

3. The law

The following provisions of the Act are relevant to this Note and are quoted in the **Annexure**:

- Section 11(*a*) – general deduction formula
- Section 11(*e*) – wear-and-tear or depreciation allowance
- Section 18A – deduction of donations to certain organisations
- Section 22(8) – deemed inclusion in income of trading stock
- Section 23(*b*) – prohibition on the deduction of domestic or private expenses
- Section 23(*g*) – prohibition on deduction of moneys not laid out or expended for the purposes of trade

- Section 24D – Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area
- Paragraph 2(*a*), (*b*), (*e*) (*f*) and (*h*) of the Seventh Schedule – taxable benefits derived by reason of employment or holding of any office
- Paragraphs 20 and 53 of the Eighth Schedule – the base cost of assets and the disregarding of capital gains and capital losses on personal-use assets respectively for capital gains tax purposes
- Part II of the Ninth Schedule – public benefit activities (PBAs) for purposes of the approval by the Commissioner of certain organisations under section 18A

4. Application of the law

4.1 Expenditure of a domestic or private nature

The requirements for a deduction under section 11(*a*) are, amongst others, that the expenditure must be incurred for purposes of carrying on a trade and in the production of income (see **4.3.1**). It must furthermore, not be of a capital nature.

Section 23(*b*) prohibits the deduction of domestic or private expenditure, including, amongst others, expenses in connection with any premises not occupied for the purposes of trade or any dwelling-house or domestic premises.

The words "domestic" and "private" are not defined in the Act and should be interpreted according to their ordinary meaning as applied to the subject matter with regard to which they are used, unless there is something which obliges them to be read in a sense that is not in their ordinary sense in the English language as so applied.[1]

The *Oxford English Dictionary*[2] defines "domestic" as –

> "**1.a.** Of or belonging to the home, house, or household; existing, occurring, or produced in the home or within a household; relating to or characteristic of home life, family life, or cohabitation."

The *Merriam-Webster Dictionary*[3] defines "private" as –

> "**1a:** intended for or restricted to the use of a particular person or group or class of persons : not available to the public".

In *CIR v Hickson*,[4] Beyers JA stated the following:

> " 'Domestic and private expenses' are, I should say, without attempting an exhaustive definition, expenses pertaining to the household, and to the taxpayer's private life as opposed to his life as a trader."

The expense of securing an individual's private residence does not qualify as a deduction under section 11(*a*) since it is not incurred in the carrying on of a trade and in the production of income. Such an expense is further prohibited under section 23(*b*). A taxpayer who uses part of a private residence for purposes of trade, for example, a home office, must make an appropriate apportionment of the security expenditure

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1 See Kellaway, E. A. (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills* at 224. Butterworths, citing *Lion Insurance Association v Tucker* (1883) 12 QB 176 at 186.

2 **https://www.oed.com/dictionary/domestic_adj** [Accessed 25 March 2025].

3 **https://www.merriam-webster.com/dictionary/private** [Accessed 25 March 2025].

4 1960 (1) SA 746 (A), 23 SATC 243 at 249.

incurred (see **4.3.3**).[5] A taxpayer that leases their private residence as part of a trade will be entitled to a deduction under section 11(*a*) for security expenditure that are not of a capital nature. If only part of the taxpayer's private residence is leased as part of a trade, an appropriate apportionment of the security expenditure incurred must be made.

Capital gains tax

Security expenditure of a capital nature may qualify as part of the base cost of immovable property held for domestic or private purposes, such as a primary residence or holiday home. Paragraph 20(1)(*e*) of the Eighth Schedule includes in the base cost of an asset –

> "the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset;".

Examples of such improvement or enhancement expenditure include the cost of installing an electric fence or the cost of a burglar alarm system which is integrated into the fabric of a building.

Owners of sectional title units have an undivided share in the common property. Sometimes they are required to pay a special levy for the purpose of effecting improvements to the common property, such as the installation of a security fence. Expenditure of this nature will normally be of a capital nature as it provides an enduring benefit. Since it enhances the value of the owner's right in the common property, it forms part of the base cost of the sectional title unit. The same principle applies to owners of share block units who enjoy a right of use in the common property, since such expenditure will enhance the value of their right of use.

Movable assets, used by individuals mainly for non-trade purposes, such as firearms, private vehicle tracking or alarm systems are personal-use assets as contemplated in paragraph 53(2) of the Eighth Schedule, and capital gains and capital losses on the disposal of such assets must be disregarded.

4.2 Donations

Meaning of donation

The word "donation" is defined for purposes of donations tax and means –[6]

> "any gratuitous disposal of property including any gratuitous waiver or renunciation of a right".

The common law meaning of a donation was summarised by Trollip JA in *Ovenstone v SIR* when he stated the following:[7]

> "In a donation the donor disposes of the property gratuitously out of liberality or generosity, the donee being thereby enriched and the donor correspondingly impoverished, so much so that, if the donee gives any consideration at all therefor, it is not a donation . . . ."

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5 For more detail see Interpretation Note 28 "Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding Office".

6 Section 55(1).

7 1980 (2) SA 721 (A), 42 SATC 55 at 73.

In *Welch's Estate v C: SARS* Marais JA stated the following on the meaning of a donation:[8]

> "The test to be applied at common law to determine whether the disposition of an asset amounts to a donation properly so called (as opposed to a remuneratory donation) is so well-settled that it hardly needs repetition. The test is of course that the disposition must have been motivated by 'pure liberality' or 'disinterested benevolence'.
>
> 'In my opinion the legislature has not eliminated from the statutory definition the element which the common law regards as essential to a donation, namely, that the disposition be motivated by pure liberality or disinterested benevolence and not by self-interest or the expectation of a *quid pro quo* of some kind from whatever source it may come.
>
> 'If one were to scour the dictionaries to find a single word apt to convey that the disposition should be motivated by pure liberality and not in expectation of any *quid pro quo* of whatever kind, one would not find a better or more appropriate word than 'gratuitous'. The shorter OED gives the following meaning to the word:
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> > '1. Freely bestowed or obtained; granted without claim or merit; costing nothing to the recipient; free.
> >
> > 2. Done, made, adopted or assumed without any good ground or reason; uncalled for; unjustifiable.' "

In *Estate Sayle v CIR* the court stated the following:[9]

> "In short, liberality at the expense of another is not a '*donatio*'; to be a '*donatio*' the gift must be liberality at the expense of the donor, an act whereby the donee is enriched and the donor correspondingly impoverished."

In *The Master v Thompson's Estate,* the court confirmed that a transaction will not be a donation when something is received in return or when there is some consideration.[10]

LAWSA provides the following on the meaning of a donation:[11]

> "A donation (*donation mera*) is, in its strict legal sense, an agreement which has been induced by pure (or disinterested) benevolence or sheer liberality whereby the donor without a legal obligation undertakes to give something to the donee with the intention of enriching the donee, and without the donor receiving any consideration in return or the expectation of a future advantage."

(Footnotes omitted)

A donation is therefore a gratuitous disposal by the donor out of liberality or generosity, under which the donee[12] is enriched and the donor impoverished. It is a voluntary gift freely given to the donee. There must be no *quid pro quo*, no reciprocal obligations and no personal benefit for the donor. If the donee gives any consideration in exchange, it is not a donation.

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8 2005 (4) SA 173 (SCA), 66 SATC 303 at 312 and 314.

9 1945 AD 388, 13 SATC 170 at 173.

10 1961 (2) SA 20 (FC), 24 SATC 157 at 165.

11 LTC Harms "Donations" 16 (Third Edition Volume) *LAWSA* [online] (My LexisNexis: 31 January 2017) in 19.

12 The term "donee" is defined in section 55(1) and generally means any beneficiary under a donation and includes property that has been disposed of under a donation to any trustee to be administered by the trustee for the benefit of any beneficiary.

Deductibility of donations

Generally, donations are not deductible for income tax purposes because they will either be of a private or domestic nature or not be incurred for purposes of carrying on a trade.

Despite section 23, section 18A(1) provides for the deduction in the determination of the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to –[13]

- a public benefit organisation (PBO) contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1) carrying on in South Africa any PBA in Part II of the Ninth Schedule, which has been approved by the Commissioner under section 30 and under section 18A(1)(*a*)(i);[14]
- an institution, board or body exempt under section 10(1)(*c*A)(i) carrying on in South Africa any PBA in Part II of the Ninth Schedule, which has been approved by the Commissioner under section 18A(1)(*a*)(ii);[15]
- any PBO contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1) approved by the Commissioner under section 30 and section 18A(1)(*b*) providing funds or assets to any PBO approved under section 18A(1)(*a*)(i), institution, board or body approved under section 18A(1)(*a*)(ii), or any department approved under section 18A(1)(*c*);[16]
- any agency,[17] programme,[18] fund,[19] High Commissioner,[20] office,[21] entity[22] or organisation[23] carrying on in South Africa any PBA in Part II of the Ninth Schedule, which has been approved by the Commissioner under section 18A(1)(*b*A)(*dd*);[24]

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13 For commentary, see the *Basic Guide to Section 18A Approval.*

14 For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

15 For commentary, see the *Tax Exemption Guide for Institutions, Boards or Bodies*.

16 For commentary, see the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

17 Any agency contemplated in the definition of "specialized agencies" in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act 37 of 2001 eligible under section 18A(1)(*b*A)(i).

18 The United Nations Development Programme listed in section 18A(1)(*b*A)(ii), the United Nations Environmental Programme listed in section 18A(1)(*b*A)(vii) and the Joint United Nations Programme on HIV/AIDS listed in section 18A(1)(*b*A)(x).

19 The United Nations Children's Fund listed in section 18A(1)(*b*A)(iii) and the United Nations Population Fund listed in section 18A(1)(*b*A)(v).

20 The United Nations High Commissioner for Refugees listed in section 18A(1)(*b*A)(iv) and the Office of the High Commissioner for Human Rights listed in section 18A(1)(*b*A)(xi).

21 The United Nations Office on Drugs and Crime listed in section 18A(1)(*b*A)(vi) and the United Nations Office for the Coordination of Humanitarian Affairs listed in section 18A(1)(*b*A)(xii).

22 The United Nations Entity for Gender, Equality and the Empowerment of Women listed in section 18A(1)(*b*A)(viii).

23 The International Organisation for Migration listed in section 18A(1)(*b*A)(ix).

24 An eligible agency, programme, fund, High Commissioner, office, entity or organisation must furnish the Commissioner with a written undertaking confirming compliance with section 18A and is required to waive diplomatic immunity to allow the Commissioner to invoke non-compliance measures in accordance with section 18A(5)(*i*). See section 18A(1)(*b*A)(*bb*) and (*cc*), respectively.

- any department of government of South Africa in the national, provincial or local sphere as contemplated in section 10(1)(*a*) approved by the Commissioner under section 18A(1)(*c*) to be used for the purpose of any PBA in Part II of the Ninth Schedule.[25]

The protection of the safety of the general public is listed in PBA 1(*k*) in Part II of the Ninth Schedule for purposes of section 18A.

The deduction for all qualifying *bona fide* donations made by a person other than a portfolio of a collective investment scheme[26] is limited to 10% of the taxpayer's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction of donations under sections 18A or 6*quat*(1C). Any qualifying donations that exceed the 10% threshold are carried forward to the next succeeding year of assessment and deemed to be a donation actually paid or transferred in that year.

Any claim by a taxpayer for a deduction of any *bona fide* donation under section 18A(1) will not be allowed unless supported by –[27]

- a section 18A receipt issued by the PBO, institution, board, body, agency, programme, fund, High Commissioner, office, entity or organisation, or the department approved by the Commissioner under section 18A;[28] or
- an employees' tax certificate as defined in the Fourth Schedule issued by the PBO, institution, board, body, agency, programme, fund, High Commissioner, office, entity or organisation, or the department approved by the Commissioner under section 18A to an employer on which the amount of *bona fide* donations contemplated in paragraph 2(4)(*f*) of that Schedule is given.[29]

A donation to a qualifying entity must be distinguished from a contribution made as a member of an organisation that provides protection of the safety of the general public, for example a neighbourhood watch.

Example 1 – Donation made to a PBO

Facts:

Farmer A donated R100 000 to XYZ Farm Safety Patrols and Rural Security Organisation (the Organisation), which was established by the local farming community because of the increase in crime and theft. The sole object of the Organisation is to provide certain security measures such as regular patrols on the farms in the area and to operate a central control room monitoring security cameras along public roads passing the farms in the area to ensure the safety and security of the farmers, their families, workers and livestock. A portion of this donation was used by the Organisation to cover the costs of the security measures the Organisation paid for, installed and claimed ownership of.

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25 For further commentary, see the *Guide to Section 18A Approval of a Department in the National, Provincial and Local Sphere of Government*.

26 The deduction granted to a portfolio of a collective investment scheme is determined by using a formula prescribed under section 18A(1)(A).

27 Section 18A(2).

28 Section 18A(2)(*a*).

29 Section 18A(2)(*b*).

The Organisation is approved by the Commissioner as a PBO under section 30(3) and approved under section 18A(1)(*a*)(i) for carrying on PBA 1(*k*) in Part II of the Ninth Schedule.

Result:

The donation made to the Organisation by Farmer A may qualify for a tax deduction under section 18A(1) provided that the amount is a *bona fide* donation and must be supported by a section 18A receipt issued by the Organisation.

Under section 23(*f*), a deduction of expenditure incurred to produce amounts not constituting income as defined in section 1, is prohibited. Since a PBO approved under section 30 is exempt from income tax under section 10(1)(*c*N), the receipts and accruals will not be included in income and therefore the Organisation will not be allowed to claim a wear-and-tear allowance on the security expenditure.

4.3 Business-related expenditure

4.3.1 Own business expenditure of a revenue nature

For an expense or loss to be deductible under section 11(*a*), it must be –

- actually incurred,
- in the production of income, and
- not of a capital nature.

Conversely, section 23(*g*) denies the deduction of any moneys against income derived from trade to the extent such moneys were not laid out or expended for the purposes of trade.

In addition, expenditure must be claimed during the year of assessment in which they are actually incurred.[30]

Actually incurred

For an expense to be deductible, it must be actually incurred. The words "actually incurred" means that the taxpayer must have a definite and absolute liability to pay an amount[31] or must have suffered the loss. It is not necessary that the expense had to be actually paid to be deductible. Anticipated expenditure and losses are not actually incurred. A liability that is conditional or contingent in any way will not be deductible.[32]

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30 *Sub-Nigel Ltd v CIR* 1948 (4) SA 580 (A), 15 SATC 381 at 390 and ITC 1545 (1992) 54 SATC 464 (C) at 471.

31 *Caltex Oil (SA) Ltd v SIR* 1975 (1) SA 665(A), 37 SATC 1.

32 *Nasionale Pers Bpk v KBI* 1986 (3) SA 549 (A), 48 SATC 55.

In the production of income

Expenditure must have been incurred in the production of income in order to be deductible. In *Port Elizabeth Electric Tramway Company v CIR*, Watermeyer AJP (as he then was) considered the meaning of the words "in the production of income" in which he stated the following:[33]

> "The other question is, what attendant expenses can be deducted? How closely must they be linked to the business operation? Here, in my opinion, all expenses attached to the performance of a business operation bona fide performed for the purpose of earning income are deductible whether such expenses are necessary for its performance or attached to it by chance or are *bona fide* incurred for the more efficient performance of such operation provided they are so closely connected with it that they may be regarded as part of the cost of performing it."

Not of a capital nature

In order for an expense to be deductible it must not be of a capital nature. The capital or revenue nature of an expense will be determined by the facts of the particular case. The courts have developed a number of tests for distinguishing between capital and revenue expenditure.

In *New State Areas v CIR*[34] Watermeyer CJ, after reviewing a number of decisions of the courts in the United Kingdom, established the following principles:

- expenditure incurred as part of the cost of performing the income earning operations (operating the income earning structure) are of a revenue nature; and
- expenditure incurred as part of the cost of establishing or improving or adding to the income earning structure are of a capital nature.

In *Atherton v British Insulated & Helsby Cables, Ltd*[35] Lord Cave said the following:

> "But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable, not to revenue, but to capital."

Recurring costs which do not create an enduring benefit are likely to be of a revenue nature and will be deductible under section 11(*a*). Examples include the monthly service fees for a satellite tracking system for motor vehicles, monthly payments to an armed-response company, salary costs of security personnel and the cost of food and veterinary bills for a guard dog.

Capital expenditure is not deductible under section 11(*a*). Characteristically it is incurred "once and for all" and creates an enduring benefit.[36] Examples of capital expenditure include the cost of installing an alarm system, an electric fence and in acquiring a guard dog.

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33 1936 CPD 241, 8 SATC 13 at 17.

34 1946 AD 610, 14 SATC 155.

35 10 TC 155.

36 For further consideration of the tests applied in distinguishing capital and revenue expenditure, see Chapter 2 of the *Comprehensive Guide to Capital Gains Tax* (Issue 9).

While capital expenditure is not deductible under section 11(*a*), it may qualify for a deduction, albeit over a period, elsewhere under the Act, for example, under section 11(*e*) (wear-and-tear or depreciation allowance – see **4.3.5**) or section 24D (security expenditure – see **4.3.6**).

Persons carrying on farming operations are entitled to claim the cost of fencing under paragraph 12(1)(*e*) of the First Schedule, but the deduction is limited under paragraph 12(3) of the First Schedule to taxable income derived from farming operations, with any excess being carried forward to the succeeding year of assessment.

Section 12U allows a taxpayer to claim a deduction on an amount actually incurred during the year of assessment on, amongst others, the erection of any fence used by such person for the purposes of their trade of generating electricity which exceeds five megawatts from specified sources of renewable energy. In addition to a deduction of the amount incurred on erecting of the fences, the expenditure actually incurred on the foundation or supporting structure designed for such fence and on improvements to the fences, and the foundation or supporting structure for the fences, is also deductible.[37]

Example 2 – Deductibility of security expenditure incurred by a farmer

Facts:

Farmer C is a sheep farmer in the Eastern Cape. During the 2024 year of assessment, Farmer C incurred the following security expenditure in an effort to secure the farming equipment, livestock and family:

- Salary of security personnel patrolling Farmer C's property.
- Monthly service fees for a satellite tracking system for motor vehicles used for farming.
- Security systems protecting farming equipment and livestock.
- Camera systems along public roads next to the farm to monitor the movement of persons and vehicles.
- Alarm system in Farmer C's residence.

Result:

The expenditure related to the salary of security personnel patrolling Farmer C's property and the monthly service fees for a satellite tracking system for motor vehicles used for farming purposes (excluding vehicles used for private purposes) may be deductible under section 11(*a*).[38] This is because these are expenditure incurred as part of the cost of performing the income earning operations and they are not of a capital nature. These expenses are of a recurring nature and do not create an enduring benefit.

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[37] For more detail see the draft Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Electricity from Specified Sources of Renewable Energy.

[38] In the event that money is pooled by a group of farmers to cover security expenditure, an apportionment will have to be made and only the proportionate costs incurred by the farmer in question will be deductible. Under section 102 of the Tax Administration Act 28 of 2011 the onus

The expenditure related to installation of security systems protecting farming equipment and livestock, and installation of camera systems monitoring the movement of persons and vehicles are not deductible under section 11(*a*) since these are considered to be expenditure of a capital nature. This is because these assets form part of the farmer's income-earning structure and have an enduring benefit. Farmer C may claim a wear and tear allowance under section 11(*e*) in respect of qualifying assets.

The costs related to the installation of an alarm system in Farmer C's residence is considered domestic or private expenditure and thus section 23(*b*) applies that prohibits the deduction of domestic or private expenditure.[39]

4.3.2 Contributions to anti-crime initiatives

Contributions to crime-prevention initiatives may take the form of –

- non-deductible payments;
- donations deductible under section 18A (see **4.2**); or
- advertising or sponsorship expenditure deductible under section 11(*a*).

Sponsorship generally involves the support or promotion of an activity such as a sporting event in return for advertising of the sponsor's products or services. In terms of security expenditure, a company that, for example, provides an armed response service or installs security gates may offer to secure a certain premises in return for extensive advertising of such company's logo at the premises or at a high-profile event. The sponsorship may also take the form of the provision of products related to the advancement of crime-initiative projects.

From an income tax perspective, the question has been raised whether contributions to anti-crime initiatives are deductible under section 11(*a*) read with section 23(*g*). The contributions may take the form of cash, goods and products, or services rendered free of charge. In order for the contributions to qualify as a deduction under section 11(*a*), they must be incurred in the production of income in the carrying on of a trade, such as advertising a contributor's business.

The treatment of the contributions will be as follows:

(a) Cash contributions

The deduction will be limited to so much of the contributions as the taxpayer can prove produced commercial value for the business through exposure of its name or products.

rests on the farmer to prove to SARS that the expenditure was in fact incurred and that the determination applied in calculating the portion of expenditure which is deductible is fair and correct.

[39] In the event that the farmer's business premises, such as a home office, falls within the private residence an apportionment will have to be made.

(b) Contributions of trading stock

The cost of trading stock generally qualifies for deduction under section 11(*a*) and is deductible in the year of assessment in which the trading stock was purchased. The value of trading stock held and not disposed of at the end of a year of assessment must be included in the taxpayer's gross income as closing stock under section 22(1).

Section 22(8) provides for a deemed inclusion in a taxpayer's income when trading stock has been disposed of otherwise than in the ordinary course of trade for a consideration which is not market-related. The deemed inclusion applies, for example, when trading stock is –

- donated;[40]
- disposed of other than in the ordinary course of trade for less than its market value;[41] or
- applied for any other purpose other than the disposal thereof in the ordinary course of trade.[42]

In these circumstances the taxpayer is deemed to have recovered or recouped an amount equal to the market value of the trading stock.[43] If, however, a donation of trading stock qualifies for a deduction under section 18A, the inclusion in income is equal to the value of the trading stock that was taken into account during the year of assessment in question (that is, the cost price less any write-down for loss in value).[44]

A taxpayer who can prove that the contribution of trading stock produced commercial value for the business through exposure of the taxpayer's name or services will be allowed a deemed deduction under paragraph (*a*) of the proviso to section 22(8). Such a deemed deduction could apply, for example, to the contribution of a car by a motor vehicle manufacturer as part of an anti-crime campaign.

(c) Provision of services

The deduction is limited to so much of the actual cost of providing the services as the taxpayer can prove produced commercial value for the business through exposure of its name or services in any anti-crime campaign.

Examples of such services include free airtime supplied by cell phone operators, daily newspapers carrying safety and security messages including theme-related pamphlets, and operating a data centre where the public can blow the whistle on criminals.

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40 Section 22(8)(*b*)(i).
41 Section 22(8)(*b*)(ii).
42 Section 22(8)(*b*)(iv).
43 Section 22(8)(B).
44 Section 22(8)(C).

4.3.3 Dual-purpose expenditure

The Act is not concerned with the method employed in advertising and promoting a taxpayer's business or products. In this regard the courts have looked at the dominant purpose of the expenditure. If a contribution is made with a dual purpose, an apportionment under section 23(*g*) may be made between the expenditure incurred for business purposes and that which relates to philanthropy. Any method of apportionment must be logical, fair and reasonable and take into account the facts and circumstances of the particular case.[45]

At the time the case of *CIR v Pick 'n Pay Wholesalers (Pty) Ltd*[46] was heard, section 23(*g*) required deductible expenditure to be wholly or exclusively laid out for the purpose of trade. The court had to consider whether the taxpayer's purpose was solely the promotion of its business or whether it was of a dual nature, including philanthropy.

The company made a series of donations to the Urban Foundation, an organisation concerned with the upgrading of housing and the provision of community facilities, as a means of "indirect advertising" to secure valuable publicity. The announcement of the donations had a positive effect on its turnover. The majority of the Appellate Division of the Supreme Court found that, on the probabilities, the taxpayer failed to show that in making the donation it did not have a philanthropic purpose as well as a business purpose. As a result, the company's claim for a deduction was disallowed.

However, under the current wording of section 23(*g*), a taxpayer that can justify an apportionment of expenditure between the gratuitous and business-related elements may be able to secure a deduction for the business-related portion.[47]

In ITC 696[48] the taxpayer incurred expenditure for the purchase of footballs which it presented to school football clubs. The footballs were inscribed with words connecting them with articles in which the taxpayer traded. The court held that the expenditure was incurred for advertising purposes and thus qualified as a deduction.

4.3.4 Expenditure incurred in providing security to employees

(a) Employer

Employers sometimes incur security expenses in relation to their employees such as the following:

- The cost of an armed-response service at an employee's home.
- The provision of bodyguards for employees.
- The supply of a guard to protect an employee's home or family while the employee is away on business or on leave.
- The installation of a security system at an employee's home.

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45 See *Commissioner for the South African Revenue Service v Mobile Telephone Network Holdings (Pty) Ltd* 2014 (5) SA 366 (SCA), 76 SATC 205.

46 1987 (3) SA 453 (A), 49 SATC 132.

47 Under section 102(1)(*b*) of the Tax Administration Act 28 of 2011 the onus is on the taxpayer to prove that the amount is deductible.

48 (1950) 17 SATC 86 (C).

From the employer's perspective these expenses are simply an expense of employment or a form of insurance and should qualify for deduction under section 11(*a*), unless they are of a capital nature, in which case the expenditure may qualify for deduction under section 11(*e*) (for example, when the employer retains ownership of the asset supplied to the employee).

(b) Employee

Security expenses incurred by an employer in relation to employees may give rise to a taxable benefit in the hands of the employees under the Seventh Schedule with associated employees' tax implications. A taxable benefit will arise, for instance, when –

- an asset is acquired by an employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset (for example, the employer arranges to have a security system installed at an employee's home and ownership of the system passes to the employee);[49]
- an employee is granted the right to use any asset for private or domestic purposes, either free of charge or for a consideration payable by the employee which is less than the value of such use as determined under paragraph 6 of the Seventh Schedule in the case of an asset other than a motor vehicle or under paragraph 7 of the Seventh Schedule in the case of a motor vehicle (for example, the employer installs a security system at the employee's home but retains ownership of it);[50]
- a service is rendered to an employee by the employer or some other person at the expense of the employer, and that service is used by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10 of the Seventh Schedule, or the cost referred to in item (b) of that subparagraph (for example, the employer pays the monthly cost of an armed-response service);[51]
- an interest-free or low-interest debt[52] is incurred by the employee, whether in favour of the employer or any other person by arrangement with the employer or any associated institution in relation to the employer (for example, to enable the employee to erect a wall or electric fence around the employee's residence);[53] or

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[49] Paragraph 2(*a*) of the Seventh Schedule.

[50] Paragraph 2(*b*) of the Seventh Schedule.

[51] Paragraph 2(*e*) of the Seventh Schedule.

[52] Other than a debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act or the payment of any securities transfer tax payable in respect of that share, or a debt in respect of which a subsidy is payable as contemplated in subparagraph (*g*A).

[53] Paragraph 2(*f*) of the Seventh Schedule.

- an employer pays the debt of an employee without requiring reimbursement from the employee or an employer releases the employee from a debt due to the employer (for example, the employee borrows funds from the employer to erect a wall and the employer releases the employee from the debt, or the employee borrows the funds from a third party and the employer settles the debt on the employee's behalf without requiring reimbursement).[54]

4.3.5 Wear-and-tear or depreciation allowance

The cost or value of specified capital assets may qualify for a deduction by way of an allowance under section 11(*e*). For qualifying assets, the expense will usually be allowed over a number of years of assessment.

For the purposes of section 11(*e*), individual items costing less than R7 000 which do not form part of a set may be written off in full in the year of assessment in which the expenditure is incurred.

Removable security systems may be written off over five years of assessment. This write-off period as well as the threshold of qualifying assets can be found in the Annexure to Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

Security expenditure comprising a structure or work of a permanent nature will not qualify for the wear-and-tear or depreciation allowance under section 11(*e*).[55] Examples of such structures include walls or electric fences around the perimeter of business premises. See, for example, ITC 773[56] in which the cost of erecting a partition in leased premises to protect trading stock was held to be a structure of a permanent nature, and ITC 225[57] in which the court held that the cost of erecting fencing was a work of a permanent nature.

4.3.6 Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area under section 24D

Section 24D is restrictive in its application and is relevant only to a limited number of taxpayers.

It provides a deduction for specified security expenditure actually incurred by a taxpayer in a year of assessment which is not otherwise allowable as a deduction under the Act.[58] The expenditure actually incurred by the taxpayer during the year of assessment must be directly –

- in the performance of any act ordered, performed or executed under the National Key Points Act 102 of 1980, in respect of any National Key Point or Key Point as defined in section 1 of that Act;[59] or

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54 Paragraph 2(*h*) of the Seventh Schedule.
55 Paragraph (ii) of the proviso to section 11(*e*).
56 (1953) 19 SATC 308 (C).
57 (1931) 6 SATC 158 (U).
58 Section 24D(2)(*b*).
59 Section 24D(1)(*a*).

- in providing efficient security against loss, damage, disruption or immobilization of any place or area as defined in section 1 of that Act which, although not declared a National Key Point under that Act, has been evaluated and approved by the Minister of Defence or any person or committee appointed by him as such a place or area in respect of which measures for the efficient security of that place or area ought to be taken by such taxpayer.[60]

No expenditure shall be deducted under section 24D unless the Minister of Defence or any person or committee appointed by the Minister has confirmed in writing that the expenditure incurred was deemed necessary or expedient.[61]

5. Conclusion

In considering whether the security expenditure incurred by a taxpayer qualifies for a deduction, regard must be had to –

- whether the expenditure is of a domestic or private nature;
- whether a donation meets the requirements under section 18A(1);
- whether the business-related expenditure meets the requirements under section 11(*a*) read with section 23(*g*) that it be actually incurred, in the production of income and not be of a capital nature; and
- any expenditure incurred is in respect of any National Key Point or specified important place or area under section 24D.

Capital assets may qualify for a deduction of wear and tear under section 11(*e*).

Security expenditure of a capital nature may qualify as part of the base cost of immovable property held for domestic or private purposes, such as a primary residence or holiday home.

Security expenses incurred by an employer in relation to employees may give rise to a taxable benefit in the hands of the employees under the Seventh Schedule with associated employees' tax implications.

The facts and circumstances of each case must be taken into account.

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[60] Section 24D(1)(*b*).
[61] Section 24D(2).

Annexure – The law

Section 11(*a*) and (*e*)

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;

…

(*e*) save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12BA 12C, 12DA, 12E(1), 12U or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (*a*) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment: Provided that—

(i) . . . . . .

(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (*a*) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act;

(ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;

(iiA) where any machinery, implement, utensil or article qualifying for an allowance under this paragraph is mounted on or affixed to any concrete or other foundation or supporting structure and—

(*aa*) the foundation or supporting structure is designed for such machinery, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, implement, utensil or article; and

(*bb*) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, implement, utensil or article mounted thereon or affixed thereto,

the said foundation or supporting structure shall for the purposes of this paragraph not be deemed to be a structure or work of a permanent nature but shall for the purposes of this Act be deemed to be a part of the machinery, implement, utensil or article mounted thereon or affixed thereto;

(iii) . . . . . .

(iiiA) no allowance shall be made under this paragraph in respect of any machinery, implement, utensil or article of which the cost has been allowed as a deduction from the taxpayer's income under the provisions of section 24D;

(iv) . . . . . .

(v) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be increased by the amount of any expenditure (other than expenditure referred to in paragraph (*a*)) which is incurred by the taxpayer in moving such machinery, implements, utensils or articles from one location to another;

(vi) . . . . . .

(vii) where the value of any such machinery, implements, utensils and articles acquired by the taxpayer on or after 15 March 1984 is for the purposes of this paragraph to be determined having regard to the cost of such machinery, implements, utensils and articles, such cost shall be deemed to be the cost which a person would, if he had acquired such machinery, implements, utensils and articles under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of such machinery, implements, utensils and articles was in fact concluded, have incurred in respect of the direct cost of the acquisition of such machinery, implements, utensils and articles, including the direct cost of the installation or erection thereof; and

(viii) . . . . . .

(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous year of assessment or years of assessment for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years the period in use of such asset during such previous year or years shall be taken into account in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished;

(x) no allowance may be made in respect of any machinery, plant, implement, utensil or article acquired by the taxpayer as or with a "government grant" as defined in section 12P(1);

Section 18A

18A. Deduction of donations to certain organisations.—(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted in the determination of the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to—

(*a*) any—

(i) public benefit organisation contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1) approved by the Commissioner under section 30; or

(ii) institution, board or body contemplated in section 10(1)(*c*A)(i),

which—

(*aa*) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;

(*bb*) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); and

(*cc*) has been approved by the Commissioner for the purposes of this section;

(*b*) any public benefit organisation contemplated in paragraph (*a*)(i) of the definition of "public benefit organisation" in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (*a*), or any department contemplated in paragraph (*c*) and which has been approved by the Commissioner for the purposes of this section; or

(*b*A) (i) any agency contemplated in the definition of "specialized agencies" in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);

(ii) the United Nations Development Programme (UNDP);

(iii) the United Nations Children's Fund (UNICEF);

(iv) the United Nations High Commissioner for Refugees (UNHCR);

(v) the United Nations Population Fund (UNFPA);

(vi) the United Nations Office on Drugs and Crime (UNODC);

(vii) the United Nations Environmental Programme (UNEP);

(viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);

(ix) the International Organisation for Migration (IOM);

(x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);

(xi) the Office of the High Commissioner for Human Rights (OHCHR); or

(xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),

if that agency, programme, fund, High Commissioner, office, entity or organisation—

(*aa*) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section;

(*bb*) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section;

(*cc*) waives diplomatic immunity for the purposes of subsection (5)(i); and

(*dd*) has been approved by the Commissioner for the purposes of this section; or

(*c*) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(*a*), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0{,}005$$

in which formula:

(AA) "A" represents the amount to be determined;

(BB) "B" represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6*quat*(1C):

Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

Section 22(8)

22. Amounts to be taken into account in respect of values of trading stocks.—

(8) If during any year of assessment—

(*a*) any taxpayer has applied trading stock to his private or domestic use or consumption; or

(*b*) any—

(i) taxpayer has applied trading stock for the purpose of making any donation thereof;

(ii) taxpayer has disposed of trading stock, other than in the ordinary course of his or her trade for a consideration less than the market value thereof;

(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* to any holder of shares in that company;

(iv) taxpayer has applied any trading stock for any other purpose other than the disposal thereof in the ordinary course of his trade and under circumstances other than those contemplated in paragraph (*a*) or subparagraph (i), (ii) or (iii) of this paragraph; or

(v) assets which were held as trading stock by any taxpayer cease to be held as trading stock by such taxpayer,

and the cost price of such trading stock has been taken into account in the determination of the taxable income of the taxpayer for any year of assessment, the taxpayer shall be deemed to have recovered or recouped—

(A) where such trading stock has been applied in a manner contemplated in paragraph (*a*), an amount equal to the cost price to him of such trading stock (less any sum which has been deducted therefrom under the provisions of subsection (1)) or where the cost price cannot be readily determined, the market value of such trading stock; or

(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (*b*) (otherwise than in the manner contemplated in paragraph (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock; or

(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock,

and such amount shall be included in the income of the taxpayer for the year of assessment during which such trading stock was so applied, disposed of, distributed or ceased to be held as trading stock: Provided that where—

(*a*) an asset consisting of trading stock so applied is used or consumed by the taxpayer in carrying on his trade, the amount included in his income under this subsection shall for the purposes of this Act be deemed to be expenditure incurred in respect of the acquisition by him of such asset;

(*b*) the provisions of paragraph (*b*)(ii) apply and any consideration contemplated in that paragraph has been received by or accrued to the taxpayer, the amount included in his income in terms of this subsection shall be reduced by such consideration;

(*c*) such trading stock consists of livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable, the provisions of this subsection shall not apply; or

(*d*) such trading stock consists of assets in respect of which any amount received or accrued from the disposal thereof is or will be included in the gross income of the taxpayer in terms of paragraph (*j*A) of the definition of "gross income", the provisions of paragraph (*b*)(iv) shall not apply.

Section 23(*b*) and (*g*)

23. Deductions not allowed in determination of taxable income.—No deductions shall in any case be made in respect of the following matters, namely—

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

(*a*) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and

(*b*) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless—

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

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

(*g*) any moneys, claimed as a deduction from income derived from trade, to the extent to which such moneys were not laid out or expended for the purposes of trade;

Section 24D

24D. Deduction of certain expenditure incurred in respect of any National Key Point or specified important place or area.—(1) There shall be allowed to be deducted from the income of any taxpayer for any year of assessment so much of any expenditure actually incurred by the taxpayer during such year—

(*a*) directly in the performance of any act ordered, performed or executed under the provisions of the National Key Points Act, 1980 (Act No. 102 of 1980), in respect of any National Key Point or Key Point as defined in section 1 of that Act; or

(*b*) directly in providing efficient security against loss, damage, disruption or immobilization of any place or area as defined in section 1 of the said Act which, although not declared a National Key Point under the provisions of the said Act, has been evaluated and approved by the Minister of Defence or any person or committee appointed by him as such a place or area in respect of which measures for the efficient security thereof ought to be taken by such taxpayer.

(2) The amount of any expenditure allowed to be deducted under the provisions of subsection (1) shall be restricted to expenditure—

(*a*) actually incurred by the taxpayer on or after 1 September 1978; and

(*b*) which was or is not otherwise allowable as a deduction under the provisions of this Act,

and no expenditure shall be deducted under the provisions of this section unless the Minister of Defence or any person or committee appointed by that Minister has confirmed in writing that it was deemed necessary or expedient that the expenditure in question be incurred by the taxpayer concerned.

(3) Where an amount has been paid by the State to a taxpayer in respect of expenditure incurred by him prior to 1 July 1983 which has qualified for deduction from his income under subsection (1) and the Minister, person or committee referred to in subsection (2) confirms that such amount was paid as a supplement to the benefit which the taxpayer has enjoyed or will enjoy by way of the said deduction, the provisions of section 8(4)(*a*) shall not apply in respect of the said amount.

Paragraphs 2(*a*), (*b*), (*e*), (*f*) and (*h*) of the Seventh Schedule

2. For the purposes of this Schedule and of paragraph (i) of the definition of "gross income" in section 1 of this Act, a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employee's employment with the employer, if as a benefit or advantage of or by virtue of such employment or as a reward for services rendered or to be rendered by the employee to the employer—

(*a*) any asset consisting of any goods, commodity, financial instrument or property of any nature (other than money) has been acquired by the employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset, as determined under paragraph 5(2): Provided that the provisions of this subparagraph shall not apply in respect of—

(i) any meal, refreshment, voucher, board, fuel, power or water with which the employee has been provided as contemplated in subparagraph (*c*) or (*d*);

(ii) any marketable security acquired by the exercise by the employee, as contemplated in section 8A, of any right to acquire any marketable security;

(iii) any qualifying equity share acquired by an employee as contemplated in section 8B; or

(iv) any equity instrument contemplated in section 8C; or

(*b*) the employee has been granted the right to use any asset (other than any residential accommodation or household goods supplied with such accommodation) for his or her private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, as determined under paragraph 6 in the case of an asset other than a motor vehicle or under paragraph 7 in the case of a motor vehicle; or

…

(*e*) any service (other than a service to which the provisions of subparagraph (*j*) or (*k*) or paragraph 9(4)(*a*) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (*a*) of subparagraph (1) of paragraph 10, or the cost referred to in item (*b*) of that subparagraph, as the case may be; or

(*f*) a debt (other than a debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act or the payment of any securities transfer tax payable in respect of that share, or a debt in respect of which a subsidy is payable as contemplated in subparagraph (*g*A)) has been incurred by the employee, whether in favour of the employer or in favour of any other person by arrangement with the employer or any associated institution in relation to the employer, and either—

(i) no interest is payable by the employee in respect of such debt; or

(ii) interest is payable by the employee in respect thereof at a rate of lower than the official rate of interest; or

(*h*) the employer has, whether directly or indirectly, paid any debt owing by the employee to any third person (other than an amount in respect of which item (*i*) or (*j*) applies), without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any debt owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the debt owing or caused the running of the prescription to be interrupted, unless the employer's failure to recover the debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or

Paragraph 20(1)(*e*) of the Eighth Schedule

20. Base cost of asset.—(1) Despite section 23(*b*) and (*f*), but subject to paragraphs 24, 25 and 32 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of—

(*e*) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset;

Paragraph 53(2) of the Eighth Schedule

53. Personal-use assets.—

(2) A personal-use asset is an asset of a natural person or a special trust that is used mainly for purposes other than the carrying on of a trade.