South African Revenue Service

DRAFT INTERPRETATION NOTE 28 (Issue 3)

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTIONS 11(*a*), 11(*d*), 23(*b*) AND 23(*m*)
SUBJECT : DEDUCTIONS OF HOME OFFICE EXPENSES INCURRED BY PERSONS IN EMPLOYMENT OR PERSONS HOLDING AN OFFICE

Please note: This Note was released as a draft in May 2021. The Note has been updated to provide further clarity in response to comments submitted. In addition, an issue addressing the deductibility of interest incurred in connection with a home office has been considered and addressed in **4.6.2(b) Expenses in connection with the premises – Interest**. The position in relation to interest represents a significant change to Issues 1 and 2 of this Note and to the Draft Note issued in May 2021. Accordingly, this updated draft has been issued for a second round of comment and it is proposed that it will be issued on 1 March 2022 and be effective for years of assessment commencing on or after 1 March 2022. Even though it is proposed that the Note will be effective for years of assessment commencing on or after 1 March 2022, the additional clarity given on interpretations which have not changed will provide useful guidance for earlier years of assessment. Additional submissions must be made on or before 14 January 2022. National Treasury is currently reviewing home office allowances; as announced in the 2021 Budget this will be a multi-year project.

Contents

Preamble

In this Note unless the context indicates otherwise –

- **"CGT"** refers to capital gains tax, being the portion of normal tax attributable to the inclusion in taxable income of a taxable capital gain;
- **"paragraph"** means a paragraph of the Eighth Schedule to the Act;
- **"premises"** means a dwelling-house or domestic premises and could include, for example, a standalone house, a townhouse or an apartment, that is a private residence;
- **"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 other word or expression bears the meaning ascribed to it in the Act.

All interpretation notes and guides 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 deductibility of home office expenses incurred by persons in employment or persons holding an office.

This Note incorporates the changes made to section 23(*m*) by section 56(1) of Taxation Laws Amendment Act 31 of 2013 and section 35(1) of Taxation Laws Amendment Act 17 of 2017.

2. Background

It has become common in recent times for employers to require or permit employees to work from home. The reasons for this include supporting flexibility, increasing productivity, health reasons or as a cost-saving measure for employers to minimize work space and related costs. Such arrangements could be temporary in nature or may have a degree of permanency. Persons in employment or persons holding an office may therefore wish to claim a deduction for certain expenses incurred in relation to a home office.

Expenses in maintaining a home office have been a controversial issue since the judgment handed down in *KBI v Van der Walt*.[1] The legislation relating to home office expenditure that a taxpayer may claim, section 23(*b*), has therefore been periodically amended since 1990. The most recent amendment to have an effect on the deduction of home office expenditure was the amendment to section 23(*m*)[2] which, subject to specific exceptions, prohibits the deduction of certain expenditure, losses and allowances that relate to employment or the holding of an office.

The effect of section 23(*b*) and 23(*m*) on the deductibility of home office expenditure for employees and holders of an office is the main focus of this Note.

Recent global developments have resulted in a number employees working from home for varying periods of time. In some instances employees may have directed existing expenditure towards a work purpose or may have incurred additional expenditure for work purposes. It is important to note that the interpretations reflected in this note are based on the provisions of section 23(*b*) and section 23(*m*) which have not been amended since the onset of these developments. Some people may consider the provisions to be overly strict; however, absent legislative amendment they are the provisions which must be applied. Dependent on the facts of a particular employee-employer relationship, an employee who has incurred business expenditure may be able to claim a reimbursement from their employee to offset a financial hardship experienced as a result of incurring additional expenditure for work purposes.

3. The law

For ease of reference, the relevant sections of the Act are quoted in **Annexure B**.

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1 *Kommisaris van Binnelandse Inkomste v van der Walt* 1986 (4) SA 303 (T), 48 SATC 104.

2 For a detailed consideration of the operation of section 23(*m*), see Interpretation Note 13: "Deductions: Limitation of Deductions for Employees and Office Holders".

4. Application of the law on the deductibility of home office expenses

4.1 What constitutes home office expenditure?

Typically, home office expenditure includes the types of expenses referred to in section 23(*b*), namely –

- rent of the premises;
- cost of repairs to the premises; and
- expenses in connection with the premises, which could include –
  - interest on a mortgage bond;
  - rates and taxes;
  - cleaning costs; and
  - electricity.

In addition to these types of expenses, other typical expenditure that could be incurred in maintaining a home office may include –

- phones;
- internet;
- stationery;
- office equipment, furniture and fittings, and repairs thereto; and
- general wear-and-tear.

The two lists above do not reflect expenditure that is necessarily deductible, the lists reflect the types of expenditure that may typically be incurred in relation to maintaining a home office. The deductibility of home office expenditure is considered in **4.2** – **4.6.2**.

4.2 The general rule

The deductibility of expenses relating to a home office is generally determined by reference to section 11, in particular sections 11(*a*), 11(*d*)[3] and 11(*e*),[4] however, depending on the facts, other sections may also be relevant, for example, section 24J or specialised capital allowances. These sections must be read with the prohibitions in section 23, with sections 23(*b*) and 23(*m*) of particular relevance to expenses relating to a home office for employees and holders of an office.

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[3] See Interpretation Note 74 "Deduction and Recoupment of Expenditure on Repairs" for a consideration of repairs under section 11(*d*).

[4] See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance" for a detailed consideration of section 11(*e*).

The deduction sections, for example section 11(*a*), serve as the positive test, as they deal with the deductions that are allowed in the determination of taxable income. If the requirements of the deduction section are met; the prohibitions in section 23 serve as the negative tests, since they prohibit deductions which may otherwise have been allowed in the determination of taxable income.[5]

This means that, for a home office expense to be deductible by an employee or office holder, the requirements of the deduction section must be met and the prohibitions must not apply. The effect of section 23(*b*) and 23(*m*) on the deductibility of home office expenditure for employees and holders of an office is the focus of this Note.

The burden of proof that an amount is deductible from a taxpayer's income lies with the taxpayer.[6]

4.3 Requirements of the section granting a deduction

In order to qualify for a deduction, a home office expense must meet the requirements of section 11 or, if applicable, another section which grants a deduction. Expenditure incurred by the taxpayer seeking to claim the deduction on expenses such as maintenance, rates and taxes, and wear-and-tear on office equipment, would usually satisfy the requirements of the applicable section 11 deduction.

The section granting a deduction, in so far as it relates to home office expenses, does not generally draw a distinction between taxpayers in employment, taxpayers holding an office or other taxpayers.

4.4 Requirements of section 23(*m*)

Section 23(*m*) is applicable if the expenditure, loss or allowance contemplated in section 11, relates to any employment of, or office held by, any taxpayer in respect of which they derive remuneration,[7] unless the taxpayer is an agent or representative whose remuneration is normally derived mainly from commission based on sales or turnover attributable to him or her.

If applicable, section 23(*m*) prohibits the deduction of any expenditure, loss or allowance other than the deductions specifically excluded from the prohibition under section 23(*m*)(i) – (iv). Deductions available to taxpayers are therefore limited under section 23(*m*) to the deductions listed in that section.[8]

As far as home office expenses are concerned, the taxpayer will only be able to claim rental, repairs and expenses incurred in connection with the part of the premises qualifying for a deduction under section 11(*a*) and (*d*) [9] and not prohibited by section 23(*b)* (see below); and wear-and-tear allowances on non-permanent assets used for purposes of trade qualifying for an allowance under section 11(*e*).[10] For example, if an employee, who does not normally derive remuneration mainly in the form of

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5 *Commissioner for Inland Revenue v Nemojim (Pty) Ltd* 1983 (4) SA 935 (A), 45 SATC 241 at 254 – 255.

6 Section 102(1) of the TA Act.

7 As defined in paragraph 1 of the Fourth Schedule to the Act.

8 For a detailed consideration of section 23(*m*), see Interpretation Note 13: "Deductions: Limitation of Deductions for Employees and Office Holders".

9 Section 23(*m*)(iv).

10 Section 23(*m*)(ii).

commission, purchased stationery specifically and exclusively for use in his trade of employment, it would meet the requirements of section 11(*a*) and not be denied under section 23(*b*), however section 23(*m*) would prohibit the deduction as it is not one of the deductions specifically listed as allowable in that section. The stationery expense is not "in connection with any dwelling house or domestic premises" (see **4.6.2(b)**) and therefore the deduction is prohibited.

4.5 Requirements of section 23(*b*)

Even though an expense may meet the requirements for deduction under section 11 or another section, for a deduction to be granted the home office expenditure must not be subject to the prohibition imposed by section 23(*m*) (see **4.4**) or the prohibition imposed by section 23(*b*). The requirements of section 23(*b*) are set out in more detail below.

Section 23(*b*) prohibits the deduction of home office expenditure in connection with any premises except in respect of such part occupied for the purposes of trade (see **4.5.1**).

Proviso (*a*) to section 23(*b*) provides that a part will be deemed not to have been occupied for the purposes of trade unless such part is specifically equipped for purposes of the taxpayer's trade (see **4.5.2**) and is regularly and exclusively used for such purposes (see **4.5.3**). For a deduction to be allowed these requirements *must* be satisfied.

Proviso (*b*) to section 23(*m*) provides that, even if the part is occupied for the purposes of trade, if the taxpayer's trade is employment or office (see **4.5.4**) then a deduction will still be prohibited unless the taxpayer's –

- income from that employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance; and the taxpayer's duties are mainly performed otherwise than in an office which is provided by the taxpayer's employer (see **4.5.4(a)**); or
- duties are mainly performed in the part of the premises specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes (see **4.5.4(b)**).

4.5.1 Must be occupied for purpose of trade

The part of the premises in respect of which a deduction is claimed must be occupied for the purposes of trade.[11] A trade includes employment and therefore employees may, subject to the limitations discussed in this Note, qualify for a deduction for home office expenses. As noted above, proviso (*a*) to section 23(*b*) provides that a part will be deemed not to have been occupied for the purposes of trade unless such part is specifically equipped for purposes of the taxpayer's trade (see **4.5.2**) and is regularly and exclusively used for such purposes (see **4.5.3**).

[11] As defined in section 1(1).

4.5.2 Specifically equipped for purpose of trade

The part that is so occupied must be specifically equipped for purposes of the trade.

The word "specifically" is the adverb of "specific". The Collins English Dictionary[12] defines the word "specific" to mean "relating to a specified or particular thing". The same dictionary defines the word "equip", of which "equipped" is the adjective, to mean "to furnish with". The Concise Oxford English Dictionary[13] defines "specific" as "relating uniquely to a particular subject" and "equip" to mean "supply with the items needed for a particular purpose".

It is clear from these definitions that, in order for a part of the premises to be considered "specifically equipped" for the purposes of trade, that part must be fitted with the instruments, tools and equipment required to conduct that trade.

Whether the part of the premises is specifically equipped for the taxpayer's trade must be determined on a case-by-case basis, since what a taxpayer requires to conduct their trade is dependent on their specific trade. Some taxpayer's trades require that they use specialised equipment, for example, a mechanic needs tools, an architect needs a drawing board and a doctor needs examination room equipment, and in each of these cases the mechanic, architect and doctor must ensure that the home office is equipped with these items. The likely equipment that an employee performing office-type work would need to have in the home office in order for the part of the premises to be regarded as being specifically equipped for purposes of trade would include a workstation and chair, as well as a computer and communication equipment.

4.5.3 Regular and exclusive trade use

The part must be regularly and exclusively used for purposes of the trade.

The Concise Oxford English Dictionary[14] defines "regularly" to mean "done or happening frequently", and "exclusively" to mean "excluding or not admitting other things; excluding all but what is specified".

As each case will have to be decided on its own merits, it is not possible to define what would be *acceptable* as regular usage for the purposes of trade. However, a home office that is maintained and is only used occasionally, for example, once on a weekend due to the taxpayer maintaining separate business premises, is not used frequently enough to constitute "regular" use.

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12 Collins English Dictionary. 3rd ed. Glasgow: Harper Collins, 1991. Print.

13 Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

14 Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

Example 1 – Regularity test

Facts:

ABC (Pty) Ltd permits employees to work from home for four days per week. The remaining working day is reserved for meetings and administration from the employer's office premises, which is equipped with hot desking that can be used on a first-come-first-serve basis.

P is an architect employed by ABC (Pty) Ltd. For the period March 2020 to December 2020, P took advantage of the employer's permission to work from home for four days per week. For January and February 2021, P worked from ABC (Pty) Ltd's premises most of the time as specific equipment that P required for the projects worked on in this period was available only at the employer's premises. During January and February 2021 P only worked from home one day every alternate week.

Result:

For the period March 2020 to December 2020, P satisfies the regularity test and could qualify for a home office deduction in respect of expenditure incurred during that period.

For the period January and February 2021, P will not meet the regularity test. One working day out of every two weeks is not sufficient to qualify as "regular" and no deduction will be permitted in respect of expenditure incurred during this period.

Regarding the requirement of exclusivity, section 23(*b*) contemplates that the part used for trade may not be used for *any* purpose other than the taxpayer's trade. A deduction is not permitted if the taxpayer or any other person conducts any activities that are not part of the taxpayer's trade (for example, activities of a private nature) in the part used for trade. For this reason, although a part of a room constitutes a part of a premises, it is submitted that taxpayers will have great difficulty satisfying the burden of proof that the part was used exclusively for purposes of trade, if the part does not constitute a separate room in the premises. For example, if the part of the room is within a room that would normally be used for private activities, practically it will be significantly more difficult for a taxpayer to be able to provide evidence proving exclusive use, that is, no non-trade use during or outside of work hours, throughout the relevant period. There may be exceptional cases, for example, a separate room in which two taxpayers have separate, not shared, space specifically equipped for their trade, in which the burden of proof, depending on the facts, could be met.

Example 2 – Exclusivity test

Facts:

Z's employer permitted Z, who is a computer services agent, to work remotely from home on a permanent basis. Z's work entails uploading and upgrading computer software and resolving queries remotely.

Z works remotely from a laptop on the dining room table in the dining room of the premises. Outside of Z's working hours and on the weekend, the dining rooms is used for purposes other than Z's trade, such as eating meals, playing games and building puzzles.

Result:

Z works from a laptop in the dining room of the premises which is not a dedicated space used by Z for purposes of Z's trade only. The space is also used by the family during meal times and for recreational purposes. Z does not therefore meet the exclusivity test.

Example 3 – Exclusivity test

Facts:

R is employed as a tax consultant. On R's premises is a separate room that is used as a home office, which is specifically equipped and regularly used for purposes of R's employment. The office is the only north-facing room on the premises. During the week after work and on weekends, family members play and conduct hobby-related activities in the room.

Result:

R's home office is not used exclusively for purposes of R's trade.

Example 4 – Exclusivity test

Facts:

X and Y, who are married, are both required by their employers to work from home. With effect from 1 April 2020, X (who is a lecturer) and Y (who is a paralegal) perform their duties mainly in a home office. The equipment required for each of their trades are similar, being office equipment – a desk and chair, a laptop, internet connectivity and stationery. The home office is located in a separate room in the premises. X and Y's work schedules allow them to share the space and equipment to perform their duties.

Result:

The space and equipment is not exclusively used by X or Y, therefore the exclusivity requirement is not met for either X or Y and no deduction is permitted.

Example 5 – Exclusivity test

Facts:

X and Y, who are married, are both required by their employers to work from home. With effect from 1 April 2020, X (who is a lecturer) and Y (who is a tailor) perform their duties mainly in a home office, which is a separate room in the premises. X and Y have divided the room into two distinct parts and each one uses only the separate part of the room allocated to them and specifically equipped for their respective trades.

Result:

It is a requirement that the home office be specifically equipped for purposes of the trade of the taxpayer who is claiming the deduction; and that it be exclusively used for such purposes. Since X and Y have separate areas in the room that they have

specifically equipped solely for the purposes for their trade, it means they meet the specifically equipped and exclusivity test in section 23(*b*).

Practically, since X and Y have separated their respective home office areas which are appropriately equipped for each trade, X and Y may find it easier to provide evidence supporting the position that these requirements have been met and discharging their burden of proof.

There is no exclusion from "exclusively used" in section 23(*b*) for incidental private use. However, the law does not concern itself about trifles[15] and so inconsequential private use, such as, for example, answering a private telephone call in the home office whilst working, or walking through the home office after work to an outside patio, will not render the use to be not exclusively for purposes of trade.

4.5.4 Trade constituting employment or office

If the trade is employment or the holding of an office, section 23(*b*) imposes further restrictions on claiming a deduction and prohibits a deduction if the requirements set out below are not met. The restriction depends on whether or not the income from employment that the employee receives constitutes mainly commission.

(a) Commission-earners

The income derived from the trade of employment or office must be mainly from commission or other variable payments which are based on the taxpayer's work performance (that is, commission and other variable payments based on work performance must exceed 50% of the total income from employment or the office).[16] The assessment is performed for the year of assessment. In addition, the employee's duties may not be performed mainly in an office provided by his or her employer. Typical examples of employees who could meet this requirement are travelling sales representatives who spend the majority of their time on the road visiting clients; and commission-earning information technology consultants who spend the majority of their time at their client's premises.

(b) Non-commission earners

For employees who do not earn mainly commission or other variable payments, their duties must be performed mainly (more than 50%) in the part of premises occupied for purposes of trade.

In *Sekretaris vir Binnelandse Inkomste v Lourens Erasmus (Edms) Bpk*[17] Botha JA held that, in the context of an exemption for the previously applicable undistributed profits tax, the word "mainly" prescribed a purely quantitative standard of more than 50%. The court was also required to consider whether, in determining if the total net-profit was derived solely or mainly from dividends, one took only the particular year of assessment into account or a longer period. Taking into account the wording in the exemption and the definition of "total net-profit", which was defined with regard

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15 Represented by the maxim *de minimis non curat lex* – see *Municipal Council of Bulawayo v Bulawayo Waterworks Co Ltd* 1915 AD 611.

16 *Sekretaris van Binnelandse Inlomste v Lourens Erasmus (Edms) Bpk* 1966 (4) SA 434 (A), 28 SATC 233.

17 1966 (4) SA 434(A), 28 SATC 233 at 245.

to a year of assessment, the court held that the determination must be made with reference to the current year of assessment.

In the context of proviso (*b)* to section 23(*b*) "mainly" is also interpreted to mean "more than 50%". Further, taking the wording of the preamble to proviso (*b*) to section 23(*b*), the purpose of the requirement and the consistency in approach with paragraph (i) of proviso (*b*), the assessment must be performed for the year of assessment.

Therefore to satisfy the "mainly" requirement the employee must spend more than 50% of his or her working time during the particular year of assessment rendering employment services at the home office. The test is performed for the year of assessment even if the employee works for only a portion of the year for an employer that permitted services to be rendered at a home office. For example, if the taxpayer worked at Employer X's premises for 9 months of the year of assessment and from a home office for 3 months of the year of assessment while working for Employer X or another Employer, the assessment is done taking into account the full 12-month period.

Employees who do not earn commission but who spend the majority of their time on the road visiting clients, perform their duties mainly at a place other than their home office and, as a result, section 23(*b*) would prohibit the deduction.

Example 6 – Mainly test

Facts:

L, a law researcher, worked from a home office on Mondays, Wednesdays and Fridays, and from the employer's premises on Tuesdays and Thursdays. This resulted in L working from a home office for 150 working days during the year of assessment and 100 working days at the employer's premises.

Result:

L performed employment duties in the home office for 60% of the year of assessment (150 / 250 working days). As this exceeds the 50% requirement, L's duties were performed "mainly" in the part of the home occupied for trade.

Example 7 – Mainly test

Facts:

Due to restrictions imposed by national government, H, a software developer, was forced to work from home from 1 April 2020 to 30 October 2020. For the month of March 2020, and for the period 1 November 2020 to 28 February 2021, H worked from the employer's premises. H was on leave from 1 to 31 December 2020.

Result:

For the period 1 April 2020 to 31 October 2020, there were 146 working days that H worked from home. There were 22 working days in March 2020 and 61 working days for the period 1 November 2020 to 28 February 2021, excluding December.

Total working days: 22 + 146 + 61 = 229

146 / 229 = 63,76%

H performed employment duties for 63,76% of the 2021 year of assessment in the part of the premises occupied for purposes of trade. H therefore meets the "mainly" requirement.

As noted above, the test under proviso (*b*)(ii) to section 23(*b*) entails that the employee's duties are mainly performed in the part of the premises occupied for purposes of trade. This wording postulates an objective factual enquiry as to whether the employee actually performed more than 50% of the employment duties in such part. Whether or not the employer permits or requires the employee to perform the employment duties mainly at home is not the test.

It is for employees to prove that more than 50% of their duties were performed in the home office. Employers sometimes issue letters to employees confirming that they performed their duties mainly in a home office. SARS is unable to accept such letters as absolute proof of the fact that the employees worked mainly in their home office. An employer is ordinarily only able to confirm –

- that the employee is permitted under the employment agreement to render employment services away from the employer's premises; and
- the number of days that the employee was present at the employer's premises (if the employer kept records of this).[18]

It is often not within an employer's personal knowledge whether or an employee performed their duties in their home office or another location and therefore they are unable to provide such confirmation.

Example 8 – Mainly test

Facts:

ABC (Pty) Ltd permits its tele-sales employees to work from home, maintaining hot desking in a smaller office for purposes of rotational meetings and administration. ABC (Pty) Ltd drafted an addendum to the employees' contracts of employment allowing employees to work mainly from home.

E is a salaried employee of ABC (Pty) Ltd. E is in a relationship with F. E and F own and reside in separate properties. E's property has a separate home office specifically equipped and exclusively used for purposes of E's trade.

During the year of assessment in question, E performed employment duties at ABC (Pty) Ltd's premises for 2 days per week, for every week of the year of assessment. For another 2 days every week, employment duties were rendered at E's home office. The last day of the week, E performed employment duties from F's dining room table. This detail was contained in a schedule prepared by E.

ABC (Pty) Ltd has issued a letter to E, confirming that E performed employment services for 60% of the year of assessment from a home office.

[18] For example, many employers operate security-controlled entrance and exit points at their premises and are able to provide written confirmation of the days that their employees were in the office for those employees to submit to SARS.

Result:

While the addendum to E's employment contract might *allow* E to work mainly from home, whether the requirements of section 23(*b*) are met is a question of fact, which the employees are required to substantiate. The Addendum provides proof that E is permitted to work from E's home office but does not conclusively address or prove the factual position of where E actually worked.

ABC (Pty) Ltd was not aware of the location that E worked from for the 3 days per week that E did not work from office. The letter ABC (Pty) Ltd issued was factually incorrect. The letter cannot be accepted as proof of E having worked from E's home office for 3 days of each week. ABC (Pty) Ltd should only have issued a letter confirming that E was entitled to work mainly from home and was not in the office for 3 days of each week.

E only performed employment duties in the home office for 2 days every week of the year. This amounts to 40% of the year of assessment and does not meet the requirement of the "mainly" test.

4.6 Calculating the deduction

In determining the deduction that may be claimed for expenditure incurred in respect of a home office, both the apportionment ratio and the expenditure that is subject to apportionment must be determined.

4.6.1 Apportionment

Generally the expenditure relating to the rent of, the cost of repairs of and in connection with the premises, is determined on the basis of apportionment considered below. There may be instances where this type of expenditure is not subject to this apportionment and is, for example, fully excluded or included (see **4.6.2 (a)** for examples).

SARS accepts that the correct apportionment method to calculate the proportion of expenditure attributable to a part of a premises occupied for purposes of trade, is apportionment based on floor area of the premises.

When using this methodology, it is imperative that the entire area of all of the buildings on the property are used to calculate the portion of expenditure attributable to the home office and not only the area of the main dwelling. Under no circumstances will an estimate of the floor area be allowed, the apportionment must be based on actual measurements. The taxpayer must be in a position to prove[19] the actual floor area of the premises and the part attributable to the home office. For example, an approved building plan or a hand-drawn floor plan, with dimensions, could also suffice, provided that the premises' dimensions were accurately measured and not estimated.

[19] Section 102(1) of the TA Act.

Example 9 – Apportionment

Facts:

With effect from 1 April 2020, X worked from home and was no longer provided with an office by the employer. Before 1 April 2020, the home office had been used as a storage room in X's home. X's home is situated on an erf totalling 600 m^2 in extent. The floor area of the main dwelling, which includes the storage area, is 210 m^2, of a double garage is 18 m^2, and of workers' quarters is 25 m^2. X's home office is 4m by 4m, that is, 16 m^2. X qualifies for a home office deduction. The total expenditure related to premises incurred by X for the period 1 April 2020 to 28 February 2021 amounts to R135 000.

Result:

The expenditure that X may claim in relation to a home office must be apportioned as follows:

R135 000 × (16 m^2 / 253 m^2*****)

= R8 537.

***** 210 + 18 + 25 m^2

Notes:

1. The erf size of 600 m^2 is not relevant in X's apportionment calculation.
2. The total expenditure for the year of assessment cannot be apportioned for the part of the year of assessment that the home office was used for purposes of trade by means of a time apportionment method (for example months or days), such as for the months of April to February in this example. The actual expenditure incurred for the months that the employee qualifies for a deduction must be determined and apportioned based on floor area. Expenditure incurred in respect of March is not deductible.

After the apportionment based on the floor area of the premises and, if applicable, a full inclusion or exclusion of some expenses (see above), the amount so calculated does not need to be apportioned further based on the proportion of time that the employee spends in the home office. For example, an employee that works from a home office for three days out of five every working week may claim the amount so calculated in respect of maintaining the home office, not only three fifths of the expense. This follows from the fact that if the part of the premises is, amongst others, not exclusively used for purposes of the trade, section 23(*b*) does not permit any deduction.

4.6.2 Permitted expenditure

Section 23(*b*) prohibits a deduction in respect of domestic or private expenditure, which specifically includes the rent of, cost of repairs of, or expenses in connection with, any premises to the extent that it is not occupied for the purposes of trade. The expenditure that is excluded from the prohibition in section 23(*b*) and is therefore permitted by section 23(*b*)[20] is the rent of, cost of repairs of or expenses in connection with the part of premises occupied for purposes of trade, that is, the home office.[21]

Even if the home office expenditure is not prohibited by section 23(*b*), the provisions of section 23(*m*) must be considered to see if that section prohibits the deduction. See below for further detail on some of these aspects.

(a) Cost of repairs of the premises

Any repairs to the property must be related to the home office (that is, the part occupied for purposes of trade) in order for the deduction not to be prohibited under section 23(*b*). For example, if the garage interior or bathroom is repainted, or a window in the master bedroom repaired, no portion of such repair may be claimed, as that expense has no connection with and was not incurred for the part of the premises occupied for trade. Conversely, a repair to the wall or window of a home office room (not a part of a room) is permitted to be claimed in full and no apportionment is necessary.

An apportionment will be required if the expense relates to both the part of premises not used for purposes of trade and the part used for purposes of trade. For example, if the entire roof of the property had to be repaired because it was in a state of disrepair, the cost of such repair[22] apportioned based on the floor area, may be claimed as a home office deduction if the requirements of section 11(*d*) read with the exclusions in section 23(*b*) or section 23(*m*) are met.[23]

(b) Expenses in connection with the premises

The words “in connection with” have received much attention from the courts. In *S v Engelbrecht*[24] the following was stated: [25]

> “A generally accepted meaning of these words is "having to do with". The words include matters occurring prior to as well as subsequent to or consequent upon so long as they are related to the principal thing. … The most important consideration, however, is the context in which these words appear.”

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20 This assumes that the requirements in **4.5** were met such that the deduction is not prohibited under section 23(*b*).

21 See **4.5.1**.

22 See Interpretation Note 74 “Deduction and Recoupment of Expenditure on Repairs” for a more detailed analysis of the expenditure in respect of repairs that is permitted to be deducted.

23 Exclusion to the prohibition under section 23(*m*)(iv).

24 1975 (4) SA 909 (N).

25 At page 911.

In a fiscal context, the words “in connection with” as they appear in section 6(1)(*c*) of the Transfer Duty Act 40 of 1949 were the subject of judicial scrutiny in *Secretary for Inland Revenue v Wispeco Housing (Pty) Ltd*.[26] Ogilvie Thompson CJ stated the following:[27]

> “The expression ‘in connection with’ *prima facie* extends the ambit of matters comprehended in *casu,* the consideration upon which duty is payable. As KITTO, J., put it in Berry's case, supra at p. 658,
>
> > “a consideration may be 'in connection with' more things than that 'for' which it is received”.
>
> As appears from all the aforegoing, the context wherein the expressions "in respect of" and "in connection with" occur is of vital importance. The true position was, in my opinion, happily summarised by SCHREINER, J.A., in *Rabinowitz and Another* v. *De Beer’s Consolidated Mines Ltd. and Another*, 1958 (3) S.A. 619 (A.D.) at p. 631, as follows:
>
> > ‘Expressions like “in respect of” and “in connection with”, though they may sometimes be used to cover a wide range of association, must in other cases be limited to the closer or more direct forms of association indicated by the context.’ ”

Similarly, in *ITC 885*[28] the phrase “in connection with” was considered in relation to farming operations. The court held as follows:[29]

> “One must give to the phrase ‘a wide and comprehensive meaning’ but not so wide and comprehensive as to embrace a remote and indirect connection. There must be something in the nature of a direct connection and this must be subservient and ancillary to the particular business under consideration.
>
> …
>
> To insist that the ‘connection’ or ‘relationship’ with the farming operations should be so close as virtually to be part thereof would be to err on the one side; to allow any relationship however remote would equally lead to error on the other side. The true position is that while the closest and most intimate relationship is not necessary it is not enough to show merely a loose and remote one.”

These cases indicate that it is critical to consider the context in which the words are used. In section 23(*b*), the words “in connection with” appear in the following text: “rent of or cost of repairs of or expenses in connection with any premises … or of any dwelling-house or domestic premises …” The words “rent” and “cost of repairs” are expenses directly related to the physical premises and restrict the scope of the more general words “expenses in connection with any premises … or of any dwelling-house or domestic premises”[30] indicating that a more direct relationship with the physical premises is required. Expenditure incurred on an item used in performing a taxpayer’s employment duties or office that is located in the premises, for example stationery purchased for trade purposes, is insufficient on its own to create the required link to the premises itself, and represents a loose or indirect connection to the premises.

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26 1973 (1) SA 783 (A).
27 At page 793.
28 (1959) 23 SATC 336(C).
29 At 338.
30 Applying the *eiusdem generis* rule of interpretation – see *Ovenstone v Secretary for Inland Revenue* 1980 (2) SA 721 (A), 42 SATC 55; *Poovalingam v Rajbansi* 1992 (1) SA 283 (A) – and the purpose of the prohibition in section 23(*b*).

Expenses in connection with a premises that could qualify for a deduction and not be prohibited under section 23(*b*) to the extent the part of the premises are occupied for the purposes of trade include items such as –

- interest on the mortgage bond (see "*Interest*" below for detail on a significant limitation which means that in most cases interest will not be deductible);
- rates and taxes, and any other municipal service charges such as sewerage and refuse;
- electricity;
- homeowners insurance to the extent that it insures against damage to the premises;
- costs in relation to security of the premises (other than capital costs); and
- cleaning costs.

Interest

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

Depending on the facts, however, interest incurred on most loans used to acquire a premise will meet the requirements for deduction under section 24J and will therefore be deductible under section 24J and not section 11(*a*). If the interest expense meets the requirements in section 24J, it means the portion of interest incurred in connection with the part of the premises used for purposes of trade (the home office) will be prohibited by section 23(*m*)[31] and is not deductible.

Insurance

The following insurance costs are not claimable for the reasons provided:

- Bond insurance is normally a life insurance product and is specifically prohibited from being deducted.[32]
- Household insurance relating to the contents of the premises as it does not relate to the premises itself.

Electricity generation

Most expenditure on solar systems used for the purposes of trade will qualify for an allowance under section 12B(*h*) provided the detailed requirements of that section are met. In the context of home office expenditure this would potentially be a proportional amount (see **4.6.1**), however see below for restrictions.

If the expenditure on solar systems used for the purposes of trade does not qualify for an allowance under section 12B(*h),* it may qualify for a wear-and-tear allowance under section 11(*e*) if the detailed requirements of that section are met. In the context of home office expenditure this would be a proportional amount (see **4.6.1**). No allowance will be permitted under section 11(*e*) if the solar systems are affixed to

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31 It will not meet the exclusion in section 23(*m*)(iv) which requires that the amount must be deductible under section 11(*a*) or (*d*).

32 Section 23(*r*).

a premise so as to become a work of a permanent nature. Whether a solar system is a work of a permanent nature must be determined on the facts of the particular case. Many solar systems will be a work of a permanent nature, since they are wired into the electrical system of the premises and become integrated into the permanent structure. See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance" for further detail. If the expenditure on a solar system qualifies for an allowance under section 12B(*h),* it cannot qualify for an allowance under section 11(*e*).

If section 23(*m*) is applicable (see **4.4**), it prohibits the deduction of the allowance otherwise available under section 12B in connection with the part of the premises used for purposes of trade (the home office) so no deduction will be allowed. If the allowance qualifies for deduction under section 11(*e*) (see above for likely limited circumstances in which this could be the case), the allowance is not prohibited.

The above principles also apply to generators and inverters, if they are integrated into the permanent structure of the premises and become works of a permanent nature, they will not qualify for an allowance under section 11(*e*).

(c) Other expenses

Expenditure such as phone costs (including the monthly charges); stationery; furniture; tea, coffee and other refreshments; computer and communication equipment; and monthly subscription fees for fibre (see below), are not incurred *in connection* with premises. Depending on the facts, these expenses may be incurred by the taxpayer for the purposes of trade and therefore not be private or domestic expenditure[33] which is prohibited by section 23(*b*). However, even if trade related a deduction for some of these expenses will be prohibited under section 23(*m*). Capital costs such as equipment and furniture which meet the requirements of and qualify for a wear-and-tear allowance under section 11(*e*) are excluded from the prohibition in section 23(*m*)[34] and therefore allowed as a deduction. However, the prohibition in section 23(*m*) would apply to the other expenses mentioned because they are not incurred in respect of the rent of, the cost of repairs of, or expenses in connection with any premises occupied for purposes of trade premises.[35]

Fibre

In modern times, many taxpayers have fibre optic cabling (fibre) installed to their homes, which may be used, in part at least, for purposes of their trade. The fibre cabling generally terminates in an "Optical Network Terminal" (ONT) on the user's premises. A WiFi router, which is plugged into the ONT, is also required. Depending on the facts of the particular case, the taxpayer may or may not incur a cost in respect of these components and may or may not be the owner of the components. Further, a taxpayer may or may not incur an installation fee and a connection or activation fee for the initial activation of the telecommunication service. Taxpayers also incur monthly subscription fees.

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33 Section 23(*b*) includes the rent of, cost of repairs of or expenses in connection with any premises in respect of the part not used for trade, in private or domestic expenditure which is prohibited from being deducted unless the additional requirements are met – see **4.5**. These examples are not "rent of, cost of repairs of or expenses in connection with any premises".

34 Section 23(*m*)(iv).

35 Section 23(*m*)(iv).

To the extent any of these elements are used for private or domestic purposes and not for purposes of trade, they will not qualify for deduction.[36] To the extent incurred for purposes of trade they may qualify for deduction, however in many cases the deduction will be denied under section 23(*m*).

In relation to the ONT and installation, the costs related to this are unlikely to meet the revenue nature requirement in section 11(*a*), being of a capital nature. It will depend on the facts of the particular case, but often the requirements of section 11(*e*) will not be met. For example, often the taxpayer is not the owner or on installation it becomes a work of a permanent nature. However, if the taxpayer meets the requirements of section 11(*e*), the allowance granted for the trade use will not be denied under either section 23(*b*) or section 23(*m*).[37]

In relation to the router, whether a taxpayer meets the requirements for deduction in section 11(*e*) will similarly depend on the facts of the case, for example, they may or may not meet the ownership requirement. If the taxpayer meets the requirements of section 11(*e*), the allowance granted for the trade use will not be denied under either section 23(*b*) or section 23(*m*).[38]

The monthly subscription fees are not expenses *in connection with* the premises but are expenses in connection with telecommunication services. The service is provided in the premise but is not provided in connection with the premise (see **4.6.2(b)**). Accordingly, although not prohibited from deduction under section 23(*b*) to the extent incurred for trade, the deduction under section 11(*a*) for the portion incurred for the purpose of trade will be prohibited under section 23(*m*).[39] The connection or activation fee is unlikely to meet the revenue nature requirement in section 11(*a*), however, even if it did it would similarly be denied a deduction under section 23(*m*).

These principles would also apply to other telecommunication expenses.

Levies

The body corporate of a section title scheme is, under the Sectional Titles Schemes Management Act,[40] responsible for the control, administration and management of the common property of that scheme. The body corporate must establish an administrative fund[41] and a reserve fund[42] for the purpose of, amongst others, maintaining the common property, payment of rates and taxes and municipal service charges, and insurance premiums for the land or buildings.[43]

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36 See requirements of the relevant deduction or allowance section and section 23(*b*).
37 Section 23(m)(iv).
38 Section 23(m)(iv).
39 Falls outside the exclusion from prohibition in section 23(*m*)(iv).
40 Sectional Titles Schemes Management Act 8 of 2011 (the STSMA).
41 Section 3(1)(*a*) of the STSMA.
42 Section 3(1)(*b*) of the STSMA.
43 See *Prag NO and Another v Trustees for the time being of the Mitchell's Plain Industrial Enterprises Sectional Title Scheme Body Corporate and Others*, as yet unreported judgment of the Western Cape High Court under case number A260/2020, [2021] ZAWCHC 132, dated 16 July 2021 paragraphs 11-12.

To the extent that the levies payable by sectional title section owners relate to the common property and not their own section, such levies are not "expenses in connection with" the premises of the taxpayer occupied for purposes of trade and are prohibited by section 23(*b*) and 23(*m*).

In many modern sectional title schemes the section owner is often directly responsible for, for example, the rates and taxes and electricity in respect of the section owned. In such cases, the levy would likely be primarily attributable to common property and not to the taxpayer's premises, and, to that extent, a deduction would be prohibited by sections 23(*b*) and (*m*). Expenditure incurred in respect of the taxpayer's premises and which is incurred in respect of the home office, such as the rates and taxes and electricity, would, subject to apportionment as explained in **4.6.1**, fall within permitted expenditure (see **4.6.2 (b)**).

In sectional title schemes where the body corporate remains responsible for rates and taxes and all municipal charges, the proportion of the levy attributable to the expenses in connection with taxpayer's section and which is incurred in respect of the home office, such as rates and taxes and electricity, must be determined. Such portion would qualify as an expense in connection with premises and not prohibited by section 23(*b*) or 23(*m*), but subject to apportionment as explained in **4.6.1**.[44]

4.6.3 Calculation

As noted above, in determining the deduction that may be claimed for expenditure incurred in respect of a home office, it is necessary to consider and determine the expenditure which meets the requirements of a deduction section and is not subject to the prohibition under section 23(*b*).[45] It is also necessary to determine home office expenditure which meets the requirements of a deduction section and although not prohibited under section 23(*b*) may be subject to the prohibition in section 23(*m*). See **4.6.1** for a consideration of the expenditure which needs to be apportioned.

Example 10 – Determination of home office deduction by an employee with income derived mainly from commission

Facts:

X is an employee who is in receipt of commission income of R500 000, a salary of R200 000 and a travel allowance of R30 000 a year. X is obliged in terms of an employment contract to work from home since the employer does not provide an office at work. X maintains a home office which has been specifically set up for the purposes of performing employment duties. The home office is used regularly and exclusively for the purposes of X's trade. X's duties are performed mainly in the home office. The total area of the home office is 20 m^2 in relation to the total area of the premises which is 200 m^2.

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[44] If the portion of the levy relating to the taxpayer's section and the portion relating to the common property cannot be determined, no deduction is permitted, as the taxpayer would not be able to satisfy the burden imposed by section 102 of the TA Act of proving that an amount is deductible.

[45] That is expenditure relating to rent of, cost of repairs of, and expenses in connection with the part of the premises used for trade and not subject to the restrictions in section 23(*b*).

X purchased a computer for R12 000, an office desk for R3 000 and an office chair for R1 800 for the home office. The interest on the household bond amounts to R45 000 for the year of assessment. The rates and taxes for the year amount to R12 500. X contributes R15 000 for the year of assessment to a pension fund and incurred commission-related business expenses of R9 000 consisting of cell phone expenses and consumable stationery costs.

Result:

Since more than 50% of X's total income consists of commission (R500 000 / R730 000), the restrictions imposed by section 23(*m*) will not apply.

X maintains a home office which is regularly and exclusively used for the purposes of trade and has been specifically equipped for the purposes of X's trade. X's employment income is mainly from commission and X's employment duties are mainly performed other than in an office provided by the employer. Therefore, the prohibition in section 23(*b*) does not apply.

X can therefore claim a deduction for the following:

- Pension fund contributions of R15 000, subject to the limits imposed by section 11F
- Cell phone expenses and consumable stationery expenses of R9 000 under section 11(*a*) against commission income
- Wear-and-tear allowance under section 11(*e*) for the computer, office desk and office chair
- Travel deduction against the travel allowance under section 8(1)
- Interest on bond of R4 500 (10% of R45 000)*
- Rates and taxes of R1 250 (10% of R12 500)***** under section 11(*a*)

***** X may claim a portion of the interest on bond and the rates and taxes, being expenses in connection with a part of a premise used for purposes of trade, that is in respect of the home office. The proportion that may be claimed is based on the area of the home office expressed as a percentage of the total area of the house, which is 10% (20 / 200 m^2).

Example 11 – Determination of a home office deduction by employee with income not derived mainly from commission

Facts:

Y is an employee who is in receipt of a salary of R500 000, commission of R20 000 and a travel allowance of R30 000 for the year of assessment. Y is obliged in terms of an employment contract to work from home since the employer does not provide an office at work. Y maintains a home office which has been specifically set up for the purposes of employment duties. The home office is used regularly and exclusively for the purposes of work. Y's duties are performed mainly in the home office. The total area (square metres [m^2]) of the home office is 20 m^2 in relation to the total area of the premises which is 200 m^2.

Y purchased a computer for R12 000 and incurred computer repair costs of R2 000, an office desk for R3 000 and an office chair for R1 800 for the home office. The interest on the household bond amounts to R45 000 for the year of assessment. The rates and taxes for the year are R12 500. Repair costs to the roof of the property amount to R10 000. Y contributes R15 000 for the year of assessment to a pension fund and also incurred expenses of R9 000, consisting of cell phone expenses, monthly fibre costs and consumable stationery costs, related to Y's trade.

Result:

Since less than 50% of Y's total income consists of commission (R20 000 / R730 000), the restrictions imposed by section 23(*m*) will apply.

Y maintains a home office which is regularly and exclusively used for the purposes of trade and has been specifically equipped for the purposes of Y's trade. Y's employment duties were mainly performed in the home office. Therefore, the prohibition in section 23(*b*) does not apply and a proportion of the relevant expenses may be deducted.

Y can therefore claim a deduction for the following:

- Pension fund contributions of R15 000, subject to the limits imposed by section 11F
- Wear-and-tear allowance under section 11(*e*) for the computer, office desk and office chair
- Travel deduction against the travel allowance under section 8(1)
- Rates and taxes of R1 250 (10% of R12 500)***** under section 11(*a*)
- Repair costs of R1 000 (10% of R10 000)***** under section 11(*d*)

***** Y will be entitled to claim a portion of the rates and taxes and repair costs in respect of the home office, being expenditure in connection with the premises. The portion that may be claimed is based on the area of the home office expressed as a percentage of the total area of the house, which is 10% (20 / 200 m^2).

The following expenses will be prohibited from deduction under section 23(*m*):

- Interest on bond of R4 500 (10% of R45 000, portion relating to the home office) – see **4.6.2(b) Expenses in connection with the premises – Interest** for detail on the reason why this portion of the interest is not deductible for years of assessment commencing on or after 1 March 2022.[46] The interest of R40 500 (R45 000 − R4 500) does not qualify for deduction under section 11(*a*) read with section 23(*b).*
- Cell phone expenses, monthly fibre and consumable stationery costs of R9 000
- Repair costs of computer of R2 000

[46] For years of assessment commencing before 1 March 2022, this portion of the interest is deductible.

4.7 Capital gains tax consequences on the disposal of a primary residence used partially for purposes of trade

The first R2 million[47] of a capital gain or capital loss on the disposal of a "primary residence"[48] by a natural person or special trust or, in certain instances, the total capital gain if the proceeds from the disposal of the primary residence are R2 million or less, must be disregarded.[49]

However, if a primary residence or part of the primary residence has been used by a taxpayer or the taxpayer's spouse for purposes of carrying on a trade, such as in the case of a taxpayer that makes use of a home office, then –

- the R2 million or less-proceeds rule for disregarding any capital gain, does not apply;[50] and
- the capital gain or loss on the disposal of the primary residence must be apportioned between its tainted (part of the primary residence used for purposes of trade) and untainted elements. The exclusion of R2 million is available for set-off against the untainted portion of the capital gain or loss, while the tainted portion of the capital gain must be fully brought to account, subject to the availability of the annual exclusion. The exclusion of R2 million remains intact and is not apportioned. The manner in which the capital gain or loss is so apportioned will depend on the facts and circumstances of the particular situation, for example, it may need to be based on floor area, the time used for a particular purposes or a combination of the two methods.[51]

As noted above, a primary residence becomes tainted during any period in which a part of it is used by a taxpayer or the taxpayer's spouse for the purpose of trade. It is technically irrelevant whether the taxpayer claimed, or was entitled to claim, a deduction against income in respect of home-office expenses.[52] However, if a deduction is not claimed, depending on the facts of the particular case, the relevant use will generally not be regarded as used mainly for purposes of trade, [53] and therefore not regarded as tainted use, when performing the apportionment of the capital gain or loss on disposal between trade and non-trade use.[54]

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47 Paragraph 45(1)(*a*).

48 Paragraph 44

49 Paragraph 45(1)(*b*). In conjunction with paragraph 49, this ensures that the portion of a capital gain or loss that does not relate to the use of a residence as a primary residence is brought to account as a capital gain or loss. A taxpayer who has such a tainted primary residence will similarly not qualify for the exclusion of R2 million on the 'tainted' portion of any capital gain or loss.

50 Paragraph 45(4).

51 Paragraph 49.

52 Paragraphs 45(4) and 49.

53 Paragraph 49 requires apportionment of the gain when the primary residence is not used for domestic purposes or a part is not used *mainly* for purposes other than carrying on a trade.

54 See the section in the *Comprehensive Guide to Capital Gains Tax* dealing with paragraph 49 for detail and, in particular, Example 3.

Note that if more than 50% of the property is used by a natural person holding an interest in the property or used by that person's spouse, for business purposes, the property will not be a "primary residence" as defined[55] and the total gain, including any gain on the private portion of the residence, must be taken into account when determining the taxpayer's aggregate capital gain or aggregate capital loss for CGT purposes.

For a detailed discussion on the determination of primary residence exclusions, please refer to the *Comprehensive Guide to Capital Gains Tax*.

Example 12 – CGT consequences

Facts:

G purchased a primary residence on 1 October 2002 for R800 000. G began performing employment duties from home on 1 October 2012. G carried out renovations to the home amounting to R300 000 (not deductible as home office expenditure). 20% of the premises' floor area was used for business purposes. G also claimed 20% of the permissible costs relating to the primary residence as expenses incurred in carrying on a trade, that is, a home office deduction, for the 2013 to 2020 years of assessment. On 1 October 2019, G sold the property for R3,7 million.

Result:

The CGT calculation is as follows:

	R
Proceeds on disposal	3 700 000
Less: base cost (R800 000 + R300 000)	(1 100 000)
Capital gain	2 600 000
Less: Tainted capital gain – gain attributable to the business use for the period (7 years) that the property was partially used as a home office [(R2 600 000 × 7 / 17) × 20%]	(214 117)
Untainted capital gain – portion of the capital gain attributable to the property's use as a primary residence	2 385 883
Less: Primary residence exclusion – paragraph 45(1)(*a*)	(2 000 000)
Capital gain from private portion	385 883
Add: capital gain from business portion	214 117
Total capital gain	600 000
Less: Annual exclusion – paragraph 5	(40 000)
Aggregate capital gain	560 000

The taxable capital gain for individuals is 40% of the aggregate capital gain for a year. This means that 40% of the gain (that is, R560 000 × 40% = R224 000) is added to G's taxable income and will be taxed at the applicable marginal rate of tax.

[55] Paragraph 44.

5. Record keeping for tax purposes

It is essential that any claim for a home office deduction is supported by sufficient evidence proving that all the requirements that are necessary to claim a deduction have been met.[56] These records must be retained for a period of five years from the date upon which the tax return was submitted to SARS[57] and must be produced should the taxpayer be selected for inspection, verification or audit.[58]

There is no closed list of documents or evidence that can prove a claim for a deduction for home office expenses. However the following documentation would typically be required to support such a claim in circumstances where the taxpayer's home office is a separate room:

- Schedule setting out details of each amount claimed, as well as the apportionment calculations.
- Floor plan of the premise clearly showing the home office and including the actual dimensions of each part. If other buildings are required to be included in the apportionment calculations, a plan showing all the buildings on the property, including the actual dimensions of each.
- Photographs of the home office showing the dedicated space, specifically equipped.
- Documentation supporting the incurral of each expense claimed and proof of payment, for example:
  - Municipal accounts for rates and taxes, electricity and other municipal services, or an electricity bill from a managing agent, or a prepaid electricity voucher and proof of payment.
  - Bond statement reflecting the interest portion of the mortgage bond repayment.
  - Copy of the insurance policy and proof of payment of insurance premiums.
  - Schedule of rent paid, copy of lease agreement and proof of payment.
  - Schedule of repairs, including invoices and proof of payments.
  - Proof of acquisition or of the lease of assets used for purpose of trade for which wear-and-tear is claimed and proof of payment.
- Schedule of dates[59] detailing when the employee worked from home during the year of assessment, and a calculation proving that the employee worked mainly from the home office during the year of assessment.
- Letter from the employer, on the employer's letterhead, confirming that the employee was permitted to work from home, including the periods that the employee was permitted to work from home and, if available, those periods that the employee did not report to the office.

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56 Under section 102(1)(*b*) of the TA Act a taxpayer carries the burden to prove on that an amount is deductible.

57 Section 29(3)(*a*) of the TA Act. Under section 32 of that Act for the 5-year period may be extended in the case of an audit, investigation or an objection and appeal.

58 Under Chapter 5 of the TA Act.

59 And times if the employee works from more than one location on the same date.

The burden of proof is very difficult in cases where the claim is in respect of a part of a room that would ordinarily be used for private purposes. Taxpayers will need to consider what additional evidence they can provide to prove that the part was used exclusively for trade, with no other use during or after work hours, throughout the relevant period. The more that a particular type of room would ordinarily be used for private purposes, the more difficult the taxpayer's burden of proof will be that a part of that room was used exclusively for purposes of trade.

The information listed above is neither comprehensive nor exclusive, and each employee may provide whatever evidence supports his or her particular factual position. For example, affidavits may need to be submitted to support some factual assertions. The information should be prepared and retained so that it can be submitted if requested.

6. Other

Refer to **Annexure A** for a decision chart, which will assist taxpayers in identifying if home office expenses may be deducted.

7. Effective date

This Note is effective for years of assessment commencing on or after 1 March 2022.

8. Conclusion

In the event that section 23(*m*) and section 23(*b*) apply, but the specific exclusions in those sections are met, the deductible home office expenses are limited to rental, repairs and expenses incurred in relation to premises under section 11(*a*) and (*d*), and wear-and-tear allowances under section 11(*e*) on, for example, office equipment used by the taxpayer for the purpose of his or her trade (employment or office).

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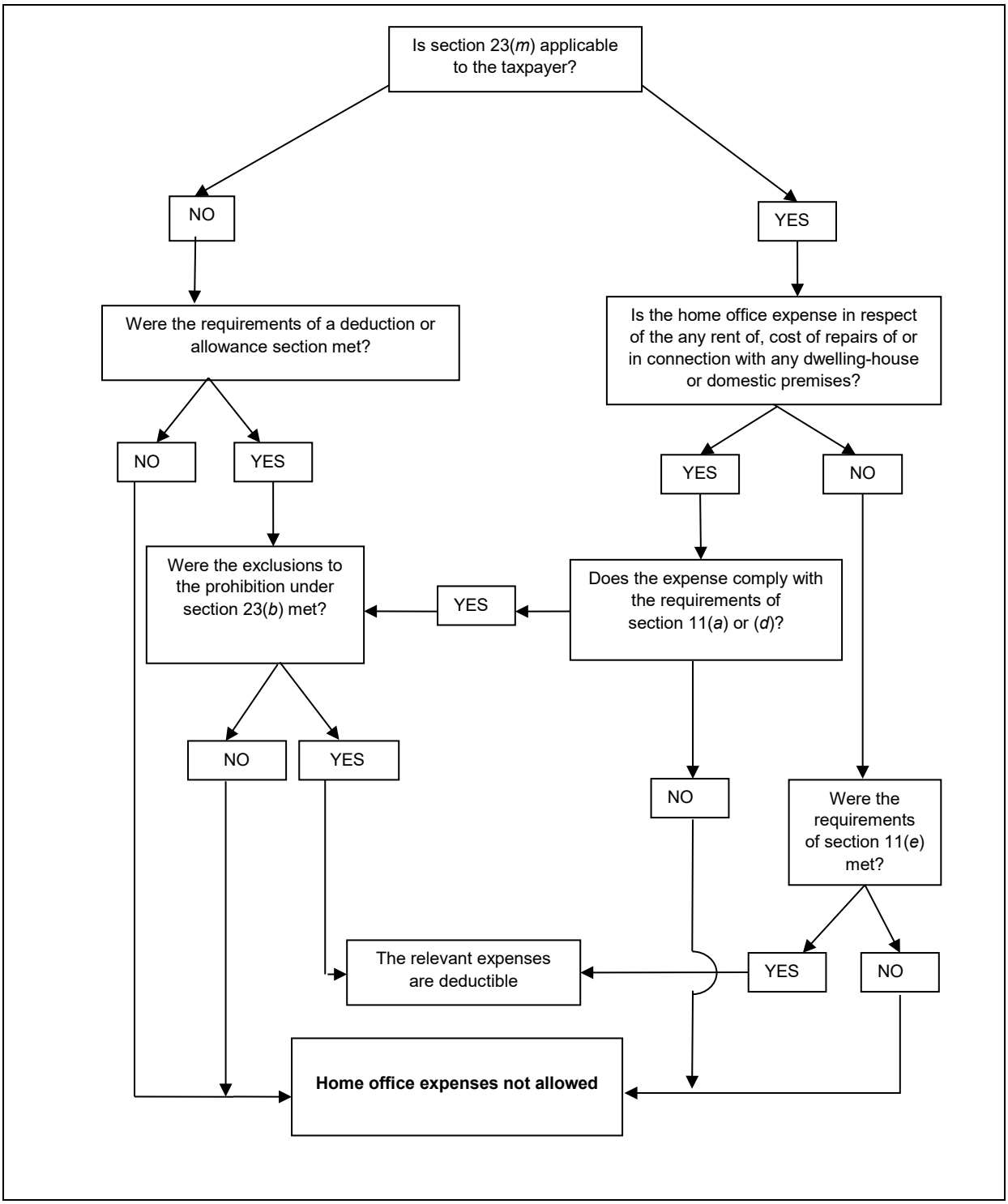
Annexure A – Decision chart: Home office expenses



Annexure B – The law

Sections 11(*a*) and 11(*d*)

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;

(*b*) – (*c*) . . . . . .

(*d*) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;

Sections 23(*b*) and 23(*m*)

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

(*a*) ……

(*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;

(*c*) – (*l*) . . . . .

(*m*) subject to paragraph (*k*), any expenditure, loss or allowance, contemplated in section 11, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration, as defined in paragraph 1 of the Fourth Schedule, other than—

(i) any contributions to a pension or retirement annuity fund as may be deducted from the income of that person in terms of section 11F;

(ii) any allowance or expense which may be deducted from the income of that person in terms of section 11(*c*), (*e*), (*i*) or (*j*);

(iiA) any deduction which is allowable under section 11(*n*A) or (*n*B); and

(iii) ……

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