

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**

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;
- “**section**” means a section of the Act;
- “**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 working 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.

3. The law

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

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.

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

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

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

² For a detailed discussion on the operation of section 23(m), see Interpretation Note 13: “Deductions: Limitation of Deductions for Employees and Office Holders”.

4.2 The general rule

The deductibility of expenses relating to a home office is determined by reference to section 11, in particular paragraphs (a), (d)³ and (e),⁴ read with section 23(b) and 23(m).

Section 11 serves as the positive test, as it deals with the deductions that are allowed in the determination of taxable income; and subsections 23(b) and 23(m) serve as the negative tests, since they deal with deductions which are not 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 section 11 must be met **and** the prohibitions under section 23(b) and 23(m) must not apply.

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

4.3 Requirements of section 11

In order to qualify for a deduction, a home office expense must meet the requirements of section 11. Expenditure such as maintenance, rates and taxes, and wear-and-tear on office equipment, would usually satisfy the requirements of section 11. Section 11, in so far as it relates to home office expenses, draws no distinction between taxpayers in employment, taxpayers that are holding an office or other taxpayers.

4.4 Requirements of section 23(m)

Section 23(m) is applicable if the taxpayer is in receipt of remuneration derived from employment or the holding of an office, unless the remuneration is derived mainly from commission based on sales or turnover. Deductions available to the taxpayer are limited under section 23(m) to the deductions listed in that section. As far as home office expenses are concerned, the taxpayer will only be able to claim rental, repairs and expenses incurred in relation to a dwelling house or domestic premises under section 11(a) and (d), and wear-and-tear allowances under section 11(e).

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

⁴ See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance" for a detailed discussion on section 11(e).

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 Tax Administration Act 28 of 2011.

4.5 Requirements of section 23(b)

Even though an expense may meet the requirements of section 11 and may be excluded from the prohibition imposed by section 23(m), home office expenditure must still escape the restrictions imposed by section 23(b). The requirements of this section are set out in more detail below.

4.5.1 Must be occupied for purpose of trade

The part of the home in respect of which a deduction is claimed must be occupied for the purposes of **trade**.⁷ A trade includes employment and therefore employees may, subject to the limitations discussed in this Note, qualify for a deduction.

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 Dictionary⁸ 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 Dictionary⁹ 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.

For example, taxpayers that use specialised equipment, such as a mechanic’s tools, an architect’s drawing board or a doctor’s examination room equipment, must ensure that the home office is equipped with these items. For an employee performing office-type work, the likely equipment that the employee would need to have in the home office in order to escape the prohibition from claiming a deduction would include a workstation and chair, as well as computer and communications 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 Dictionary¹⁰ 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.

⁷ As defined in section 1(1).

⁸ Collins English Dictionary. 3rd ed. Glasgow: Harper Collins, 1991. Print.

⁹ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

¹⁰ 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 after deciding that specific equipment at the employer's premises was required, and so only worked from home for 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 2020, 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, this provision 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 where the taxpayer conducts any activities of a private nature in the part used for trade. For this reason, 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.

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 on the premises.

Result:

Z works from a laptop in the dining room on the premises and not from a dedicated space specifically equipped for purposes of Z's trade (a dining room is also used for purposes other than Z's trade). Z therefore does not meet the provisions of section 23(b) in that the home office is not used exclusively for purposes of Z's trade, and will not be entitled to a deduction of home office expenditure.

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, and R's children are permitted to play in the room on winter afternoons and on weekends.

Result:

R's home office is not used exclusively for purposes of R's trade. No home office deduction is permitted.

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 tailor) perform their duties mainly in a home office, which is specifically equipped for purposes of each of their trades, and regularly and exclusively used for such. The area of the home office is 18 m² in relation to the area of the entire dwelling of 110 m². X and Y share this home office space to perform their duties, and wish to claim a deduction for home office expenditure.

Result:

It is a requirement that the home office be **specifically equipped** for purposes of the **taxpayer who is claiming the deduction's** trade; and that it be **exclusively** used for such purposes. Since X and Y share the home office space, it would mean that the home office space used by X would **not** have been specifically equipped solely for X's trade, but also for that of Y, and *vice versa*.

In addition, since both X and Y are sharing the home office space, it cannot be said to have been occupied exclusively for X's trade or exclusively for Y's trade. The use of a home office is therefore partially used for purposes of X's trade and partially for that of Y's trade. As such, the provisions of section 23(b) must be applied, and neither X nor Y can claim a deduction for home office expenditure.

4.5.4 Trade constituting employment

If the trade is employment or the holding of an office, section 23(b) imposes further restrictions on claiming a deduction. 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 this trade must be **mainly** from commission (that is, commission must exceed 50% of the total income from employment or the office)¹¹ or other variable payments which are based on the taxpayer's work performance.

The employee's duties may also 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, their duties must be performed **mainly** (more than 50%) **in that part of the private premises** occupied for purposes of trade.

Employees who do not earn commission but who spend the majority of their time on the road visiting clients, perform their duties mainly at their **clients' premises** and, as a result, they do not qualify for a deduction under section 23(b).

Example 5 – 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 6 – 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.

¹¹ *Sekretaris van Binnelandse Inkomste v Lourens Erasmus (Edms) Bpk* 1966 (4) SA 434 (A), 28 SATC 23.

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.

The test under proviso (b)(ii) to section 23 entails that the employee’s duties “are mainly performed in such part”. 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 *requires* the employee to perform the employment duties mainly at home is not the test.

It is for employees to prove on a balance of probabilities that more than 50% of their duties were performed in the home office. Employers often issue letters to employees confirming that they performed their duties mainly in a home office. SARS is unable to accept such letters. 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
- that the employee was not present at the employer’s premises for a particular number of days.

It is not within an employer’s personal knowledge to confirm whether or not the employees performed their duties in the home office.

Example 7 – 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.

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.

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 on assessment. The Addendum does not conclusively achieve the purpose of proving the factual position.

Further, ABC (Pty) Ltd was not entitled to issue the letter to E, because ABC (Pty) Ltd was not aware of E's location for the remaining 3 days per week. The letter was factually incorrect. ABC (Pty) Ltd could only issue a letter confirming that E was not in the office for 3 days of each week.

In this example, 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

SARS accepts that the correct 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 taxpayer must be in a position to prove¹² the exact floor area of the premises and the part attributable to the home office.

Example 8 – 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 m² in extent. The floor area of the main dwelling is 210 m², of a double garage is 18 m², and of workers' quarters is 25 m². X's home office is 4m by 4m, that is, 16 m². X qualifies for a home office deduction. The total expenditure incurred for the period 1 April 2020 to 28 February 2021 amounts to R135 000.

¹² Section 102(1) of the Tax Administration Act 28 of 2011.

Result:

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

$$\begin{aligned} & \text{R135 000} \times (16 \text{ m}^2 / 253 \text{ m}^{2*}) \\ & = \text{R8 537.} \end{aligned}$$

$$* \quad 210 + 18 + 25 \text{ m}^2$$

Notes:

1. The erf size of 600 m² is not relevant in the apportionment calculation.
2. The expenditure cannot be apportioned for a part of the year of assessment by means of a time apportionment (for example months or days), such as for the month of March in this example. The actual expenditure incurred must be determined for the months that the employee does qualify for a deduction.

4.6.2 Permitted expenditure

The expenditure that is permitted by section 23(b) is rent of, cost of repairs of, or expenses in connection with, any premises occupied for purposes of trade.

(a) Repairs

Any repairs to the property must have some relation to the home office in order that the deduction is not prohibited. 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 will not have been incurred for the part of the premises occupied for trade.

If, on the other hand, the entire roof of the property has to be repaired because it is in a state of disrepair, then the cost of such repair, apportioned based on the floor area, may be claimed as a home office deduction.¹³

(b) Expenses in connection with the premises

Expenses **in connection with** a premises that would qualify for a deduction include items such as –

- interest on the mortgage bond;
- rates and taxes, and any other municipal service charges such as sewerage and refuse;
- levies;
- electricity; and
- cleaning costs.

¹³ 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.

Insurance costs are generally not claimable for the following reasons:

- Bond insurance is normally a life insurance product and is specifically prohibited from being deducted,¹⁴ and is most likely capital in nature.
- Household insurance ordinarily relates to the contents of the premises and not the premises itself.

Expenditure such as phone costs (including the monthly charges), stationery, furniture, and computer and communication equipment are not incurred *in connection* with premises, and fall outside of the scope of what is permitted by section 23(b). Equipment may, however, qualify for a wear-and-tear allowance under section 11(e) and would thus be excluded from the section 23(m) prohibition.

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 terminates in an “Optical Network Terminal” (ONT) on the user’s premises. Under most contracts for the provision of fibre, the ONT remains the property of the fibre service provider. Ordinarily an installation fee and connection or activation fee are charged for the initial set up of the fibre, whilst most service providers supply a free wifi router, provided that the user remains a client for a specified period, alternatively that the router be returned in the condition that it was received if the user terminates the contract before a specified period.

Under these circumstances, the initial costs for setting up a fibre installation are not expenses in connection with the premises, and fall outside of what is permitted by section 23(b). Further, the initial costs and monthly subscriptions are prohibited from being deducted by section 23(m). The router, which was received at no cost to the user, and who does not acquire ownership of the router until the effluxion of a period of time, also does not qualify for a wear-and-tear allowance.

These principles would also apply to other telecommunication expenses.¹⁵

4.6.3 Calculation

The expenditure that is not prohibited by section 23(b) must be determined separately to other expenditure. Only the expenditure relating to rent of, cost of repairs of, and expenses in connection with, the premises, is required to be apportioned based on floor area. Other expenses may be claimed in full, provided such expenses are for purposes of trade and meet the other requirements for deductibility.

¹⁴ Section 23(r).

¹⁵ For more detail on this aspect, see Interpretation Note 77 “Taxable Benefit – Use of Employer-provided Telephone or Computer Equipment or Employer-funded Telecommunication Services”.

Example 9 – 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 m² in relation to the total area of the premises which is 200 m².

X had 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 had also 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, the restrictions imposed by section 23(m) will not apply. Furthermore, X maintains a home office which is regularly and exclusively used for the purposes of trade. The home office has been specifically equipped for the purposes of X's trade and X's employment duties are mainly performed other than in an office provided by the employer. 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 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
- Interest on bond of R4 500 (10% of R45 000)*
- Rates and taxes of R1 250 (10% of R12 500)*

* X may claim a proportionate portion of the interest on bond and the rates and taxes, being expenses in connection with a dwelling house or domestic premises, 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 m²).

Example 10 – 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 [m²]) of the home office is 20 m² in relation to the total area of the premises which is 200 m².

Y had 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. Renovation 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 has also incurred commission-related business expenses of R9 000 consisting of cell phone expenses and consumable stationery costs.

Result:

Since less than 50% of Y's total income consists of commission, the restrictions imposed by section 23(m) will apply. Y meets the requirements of section 23(b), that is, Y maintains a home office which is regularly and exclusively used for the purposes of trade, and the home office has been specifically equipped and is mainly used for the purposes of her trade. Y will be limited to the following deductions:

- 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
- Interest on bond of R4 500 (10% of R45 000)*
- Rates and taxes of R1 250 (10% of R12 500)*
- Renovation costs of R1 000 (10% of R10 000)*

* Y will be entitled to claim a proportionate portion of the interest on bond, rates and taxes and renovation costs in respect of the home office, being expenditure in connection with the premises. The proportionate claim 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 m²).

The following expenses will be **disallowed** under section 23(m):

- Cell phone expenses and consumable stationery costs of R9 000
- Repair costs of computer of R2 000

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

The first R2 million of a capital gain or capital loss on the disposal of a primary residence must ordinarily be disregarded for CGT purposes.¹⁶ If the proceeds in respect of the disposal of the primary residence are R2 million or less, any capital gain thereon must also be disregarded.¹⁷

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

- the primary residence exclusion of R2 million must be apportioned for the non-residential use;¹⁸ and
- the R2 million-proceeds rule for disregarding any capital gain, does not apply to the part of the premises used for purposes of trade.¹⁹

The apportionment will be based on the proportion of the floor area used for business and private use, and must be applied to the total capital gain to arrive at a private portion of the capital gain, and a business portion of the capital gain.

The private portion of the capital gain is eligible to be reduced by the primary residence exclusion of R2 million. The business portion of the capital gain will be fully subject to CGT. Note that if more than 50% of the property is used for business purposes, the property will not be a “primary residence” as defined²⁰ and the total gain, including any gain on the private portion of the residence, will be subject to CGT.

CGT is payable on the business portion of the capital gain *whether or not* the taxpayer claimed, or was entitled to claim, a deduction against income in respect of home-office expenses.

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

Example 11 – 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.

¹⁶ Paragraph 45(1)(a).

¹⁷ Paragraph 45(1)(b).

¹⁸ Paragraph 49.

¹⁹ Paragraph 45(4)(b).

²⁰ Paragraph 44.

Result:

The CGT calculation is as follows:

	R
Proceeds on disposal	3 700 000
Less: base cost (R800 000 + R300 000)	<u>(1 100 000)</u>
Capital gain	2 600 000
Less: Gain attributable to the business use for the period (7 years) that the property was partially used as a home office [(R2 600 000 x 7/17) x 20%]	<u>(214 117)</u>
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)	<u>(2 000 000)</u>
Capital gain from private portion	385 883
Add: capital gain from business portion	<u>214 117</u>
Total capital gain	600 000
Less: Annual exclusion – paragraph 5	<u>(40 000)</u>
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 x 40% = R224 000) is added to G's taxable income and will be taxed at the applicable marginal rate of tax.

5. Conclusion

In the event that section 23(m) applies, and the requirements of section 23(b) are met, the deductible home office expenses are limited to rental, repairs and expenses incurred in relation to a dwelling house or domestic premises under section 11(a) and (d), and wear-and-tear allowances under section 11(e) for items such as office equipment used by the taxpayer for the purpose of his or her trade (employment).

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

Leveraged Legal Products

SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 18 February 2005

Date of 2nd issue : 15 March 2011

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(nA) or (nB); 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);