

INTERPRETATION NOTE: NO. 72

DATE: 22 March 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPH 7 OF THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : RIGHT OF USE OF MOTOR VEHICLE

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Preamble

In this Note unless the context indicates otherwise –

- “**employee**” includes the holder of any office; and
- “**paragraph**” means a paragraph of the Seventh Schedule to the Act;
- “**section**” means a section of the Act;
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides guidance on the income tax consequences that arise for an employee when an employer (or an associated institution in relation to an employer) grants that employee the right of use of a motor vehicle, commonly known as a “company car fringe benefit”, with specific reference to the latest legislative amendments to the Fourth and Seventh Schedules to the Act.

2. Background

Employers often grant employees a travelling allowance or the use of an employer-provided motor vehicle (or both) by virtue of the employees’ employment, as a reward for services rendered by the employees or due to the employees’ duties. The right of use of a motor vehicle provided by an employer to an employee for private or domestic purposes is regarded as a taxable benefit in the hands of the employee. The value of this benefit is included in the employees’ gross income under paragraph (j) of the definition of “gross income” in section 1(1).

Paragraph 2(b) read with paragraph 7 deals with the cash equivalent of the value of this taxable benefit.

The latest legislative changes to employer-provided motor vehicles (company cars) are effective from 1 March 2013 and are applicable to years of assessment commencing on or after that date (that is, from the 2014 year of assessment).

3. The law

For ease of reference, the relevant sections of the Act relating to the taxation of the company car fringe benefit are quoted in **Annexure A**.

4. Application of the law

4.1 Taxable benefit

A taxable benefit arises when an employer, or associated institution in relation to the employer, has granted an employee the right of use of a motor vehicle¹ for private or domestic purposes and such use has been granted –

- free of charge; or
- for a consideration payable by the employee which is less than the value of the private or domestic use.

For a taxable benefit to arise the employee must have been given the right to use the company car for private or domestic purposes. The absence of such private use means a taxable benefit does not arise.

Private use includes travelling between the employee's place of residence and place of employment unless the employee is a "Constitutional Court judge" or a "judge", as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001. Travel by Constitutional Court judges and judges between their home and the court over which they preside is deemed to be business travel for a state-owned vehicle.

Interpretation Note No. 14 (Issue 3) "Allowances, Advances and Reimbursements" (20 March 2013), discusses and provides examples of what constitutes business travel and private travel. The same principles apply to distances travelled in company cars.

An employee will be deemed to have been granted a taxable benefit if as a result of the employee's employment, the employer directly or indirectly grants a relative of the employee or another person a benefit, which if granted directly to the employee would have constituted a taxable fringe benefit. In this Note a benefit granted to an employee will include direct and indirect benefits falling within this category.

4.2 Value of the taxable benefit

The cash equivalent of the value of the taxable benefit, which is included in gross income, is equal to:

Value of private use *less* any consideration given by the employee to the employer for the private use (excluding any consideration given for the cost of licences, insurance, maintenance or fuel)

4.2.1 Value of private use

The value of private use is equal to –

- where the vehicle is held by the employer other than under an "operating lease":²

Fixed percentage per month x the determined value of the motor vehicle

OR

¹ A "motor vehicle" includes a motor cycle.

² See 4.4 for a definition of an "operating lease".

- where the employer holds the vehicle under an “operating lease”:

Actual cost incurred under the operating lease + cost of fuel incurred on the same vehicle

These aspects are examined in more detail below.

4.3 Fixed percentage per month x determined value

4.3.1 Fixed percentage

The fixed percentage is generally **3,5%** per month. However, the fixed percentage may be reduced to **3,25%** of the determined value per month if the motor vehicle was the subject of a maintenance plan when it was acquired by the employer.

A maintenance plan is –

- a contractual obligation undertaken by the provider in the ordinary course of trade with the general public;
- to underwrite the costs of all maintenance of that motor vehicle (other than top-up fluids, tyres or abuse of the motor vehicle);
- for a period of at least three years or a distance of 60 000 kilometres, whichever comes first.

In order for the fixed percentage to be reduced, the maintenance plan must commence *at the same time* that the motor vehicle is acquired by the employer. A motor vehicle is not the subject of a maintenance plan if the maintenance plan is either a top-up or an add-on plan that was taken out after the acquisition of the motor vehicle. In these circumstances the rate of 3,5% must be used.

Example 1 – Value of private use if maintenance plan is included

Facts:

Employer XYZ grants the right of use of a motor vehicle to its employee from 1 March 2012. The employer purchased the motor vehicle for R250 000 (including VAT). XYZ was not entitled to an input tax claim for the VAT. The motor vehicle comes standard with a maintenance plan at no extra charge. The employee pays R500 per month for the use of the motor vehicle.

Result:

The “determined value” of the motor vehicle is R250 000.

	R
The monthly value of private use is R250 000 x 3,25%	8 125
Less: Consideration paid by employee for benefit	<u>(500)</u>
Cash equivalent of the value of the taxable benefit per month:	<u>7 625</u>

The rate does not increase to 3,5% once the maintenance plan expires, but remains at 3,25%.

4.3.2 Per month

The value to be placed on the private use of a motor vehicle is determined for each month or part of a month during which an employee was entitled to use the motor vehicle for private purposes. A “month” is defined in paragraph 1 as any of the 12 portions into which any calendar year is divided.

An employee, who only had the use of a motor vehicle for part of a month, must apportion the private value according to the number of days that the employee had the use of the motor vehicle. For example, if an employee is first granted the right to use a motor vehicle in the middle of a month (for example, 15 June), the value of private use must be based on the total number of days that the employee had the right to use that motor vehicle. In other words, 15 days in June divided by the total number of days in that month, that is, 30 days.

The value of private use of the motor vehicle may not be reduced if, for whatever reason, the employee does not temporarily use the motor vehicle for private purposes.

Example 2 – Temporarily not used for private purposes

Facts:

Employee Z has the use of a company car. During the 2013 tax year, Z had a serious car accident and did not drive the motor vehicle for three months while it was being repaired and while Z was recovering from injuries. During the three-month period the motor vehicle was parked in the office garage for part of the time and at Z’s house for part of the time.

Result:

The three-month period represents a period when Z temporarily did not use the motor vehicle for private purposes. The value of private use for those months may not be reduced to take account of the period when Z did not use the motor vehicle.

Example 3 – Temporarily not used for private purposes

Facts:

Employee Z, who lives and works in Johannesburg, has the use of a company car. Z goes to Kenya for two months and had to return the company car to the employer for use by other employees during the two-month absence.

Result:

During the two-month period, Z did not have the right of use of the motor vehicle because the benefit was given to other employees. The fringe benefit ceases for the period Z is away.

4.3.3 Determined value

“Determined value” in relation to a motor vehicle means –

- the original cost to the employer (excluding any finance charge or interest payable) if the motor vehicle was acquired under a *bona fide* agreement of sale or exchange concluded between parties acting at arm’s length;

- the “cash value”³ of the motor vehicle if the motor vehicle is or was held under a lease contemplated in paragraph (b) of the definition of “instalment credit agreement”;⁴
- the retail market value of the motor vehicle (at the time the employer first obtained the right to use the motor vehicle) if the motor vehicle was held or held and then acquired by the employer under any other lease (other than an “operating lease”); or
- the market value of the motor vehicle at the time when the employer or associated institution first obtained the motor vehicle or the right of use thereof, if the motor vehicle was acquired or held in any other case.

The original cost includes the cost of add-on items, for example, tow bars, media players, air conditioners, smash-and-grab window tinting and security alarms. The original cost does not include the cost of insurance products such as the monthly service fee for vehicle tracking or roadside assistance.

With effect from 1 March 2011, any VAT borne by an employer must be included in the determined value of the motor vehicle. Any determined value calculation performed after 1 March 2011 will include VAT borne by an employer even if the motor vehicle was acquired before 1 March 2011 and irrespective of the fact that, if applicable, the determined value calculation for previous months did not include VAT. ‘Borne’ means that if VAT was applicable the employer was not entitled to an input tax credit for the related VAT. The VAT component must, however, be excluded if the employer was entitled to a deduction of VAT input tax, for example, if the employer is a car dealer that is a registered VAT vendor.

The determined value of the motor vehicle is reduced when the employee is first granted the right of use of the motor vehicle 12 months or more after the employer first acquired the motor vehicle or the right of use thereof. The reduction is by means of a depreciation allowance of 15% according to the reducing-balance method for each completed 12-month period from the date the employer acquired the motor vehicle.

Example 4 – Depreciation allowance

Facts:

An employer, Company XYZ, purchased a motor vehicle for R228 000 (VAT inclusive) on 1 January 2010. An employee who subsequently resigned initially used the motor vehicle. The right of use of the motor vehicle was then granted to another employee, A, on 1 April 2012. Company XYZ was not entitled to a VAT input tax credit on the acquisition of the motor vehicle.

³ See **Annexure C** for the required definition from the Value-Added Tax Act. The residual value under a lease agreement has no bearing on the determined value and must be ignored.

⁴ See **Annexure C** for the required definition from the Value-Added Tax Act. The residual value under a lease agreement has no bearing on the determined value and must be ignored.

Result:

The “determined value” to be used to calculate the value of the taxable benefit is the original cost to the employer (including VAT) less a depreciation allowance of 15% on the reducing balance method for each completed year that Company XYZ had the motor vehicle. The determined value is calculated as follows:

	R
Original cost on acquisition incl. VAT (1 Jan 2010)	228 000
Less: Depreciation allowance: 1 Jan 2010 to 31 Dec 2010 (R228 000 x 15%)	<u>(34 200)</u>
	193 800
Less: Depreciation allowance: 1 Jan 2011 to 31 Dec 2011 (R193 800 x 15%)	<u>(29 070)</u>
	<u>164 730</u>
Adjusted “determined value”	<u>164 730</u>

The determined value is not adjusted for depreciation in the 2012 calendar year because the requirement of a completed 12-month period was not met (only three months were completed).

VAT is included in the determined value calculation as from 1 March 2011 even though the motor vehicle was purchased before that date because the employer was not entitled to a VAT input tax claim at the time of purchase. For purposes of calculating the determined value, VAT is included in the cost of the motor vehicle and is also subject to the depreciation allowance.

A motor vehicle that was acquired by an employer from an associated institution in relation to that employer retains its original determined value if the employee concerned had, before the acquisition, enjoyed the right of use of that motor vehicle. The “original determined value” is the determined value that was calculated when the employee first obtained the right of use of the motor vehicle. The effect of this provision is that the value of private use included in the employee’s gross income will not change.

Example 5 – Employee and motor vehicle both transferred*Facts:*

Company ABC is an associated institution in relation to Company DEF. Company ABC acquired a motor vehicle (at a cost of R250 000, including VAT) on 1 March 2010 and immediately granted the right of use of this motor vehicle to its employee, T. Company ABC was not entitled to an input tax claim for the VAT. On 1 June 2012, T was transferred to Company DEF together with this motor vehicle which Company DEF acquired from Company ABC for R140 000.

Result:

The “determined value” for Company ABC at the date T first obtained the right of use of the motor vehicle was R250 000 (adjusting for the inclusion of VAT as required from 1 March 2011). The determined value will remain R250 000 for Company DEF because T previously enjoyed the use of the motor vehicle under Company ABC, which is an associated institution in relation to Company DEF.

Original cost to the employer

Employees of dealers in new and used motor vehicles and employees of employers in the motor vehicle rental industry may use several "company motor vehicles" over short periods. In these circumstances, as an alternative to determining the actual cost of the particular motor vehicle used during each period, SARS will accept that the cost of the motor vehicle is equal to the average cost of all stock in trade or rental vehicles on hand at the end of the immediately preceding year of assessment of the employer. The method of calculating the average cost must be appropriate to the dealer's circumstances. For example, if the dealer sells new and used motor vehicles but employees only have the use of new motor vehicles or only have the use of used motor vehicles then it may be appropriate to have an average cost for new motor vehicles or an average cost for used motor vehicles.

The average cost of a motor vehicle may not be used if a specific employee is granted the right of use of a specific motor vehicle or if the right of use of a motor vehicle has been granted to a specific employee as a reward for performance or a motivational tool. SARS is of the view that an employee, who has been granted the right of use of a motor vehicle for a period of time which is not considered to be short, will have been granted the use of a specific motor vehicle.

The facts of each case must be considered in deciding whether the period that the employee has the use of a particular motor vehicle is short.

Example 6 – Motor vehicles used by employees of dealers*Facts:*

Z Cars (Pty) Ltd (Z Cars) has a pool of demo vehicles that are used to take potential customers for test drives. In addition, the pool demo vehicles are generally available to and are used by all employees all the time.

Employees do not have the dedicated use of a particular demo vehicle and use whichever motor vehicles are available. They accordingly use a variety of motor vehicles over a short period. Salesperson X, for example, uses on average three different motor vehicles in a month.

In addition to its standard and luxury motor vehicle range, Z Cars recently entered the superior luxury market and sells a top brand sports car. The sports car is not part of the pool of demo vehicles. Salesperson Y was, however, awarded the right of use of a sports car for a month as a reward for being the salesperson with the highest total sales value in February 2013.

One of Z Cars' top branch managers, Manager A, does not like potential daily motor vehicle changes and is granted permission to use a pool demo vehicle for a month before rotating it with another pool demo vehicle. Z Cars agreed that Manager A could rotate motor vehicles he uses on a monthly basis because he is their top manager and Z Cars wants to retain Manager A's services.

Result:

Z Cars may use the average cost method for calculating the determined value for Salesperson X because the motor vehicles Salesperson X uses are part of the pool of demo vehicles which are available to and used by all employees all of the time.

In relation to Salesperson Y's right of use of the sports car, the determined value will be equal to the actual cost of the motor vehicle because Salesperson Y was awarded the dedicated use of the sports car for a month as a reward for performance.

In relation to Manager A the determined value will also be equal to the actual cost of the motor vehicle because under the circumstances the one month period is considered to be of sufficient duration to constitute the granting of the right of use of a specific motor vehicle to a specific employee.

Cost for Z Cars excludes VAT as Z Cars is a motor dealer and will be entitled to a VAT input tax claim on motor vehicles purchased from manufacturers.

In the past, manufacturers of motor vehicles have been permitted to use the cost of manufacture as the determined value of a motor vehicle. Manufactured motor vehicles are, however, not acquired under an agreement of sale or exchange. Accordingly, the determined value of a manufactured motor vehicle will be equal to the market value of the motor vehicle at the time the employer first obtained the right to use the motor vehicle. This paragraph takes effect from the date of this Note.

SARS will accept the "Dealer Billing Price" of the motor vehicle as the market value of the vehicle in the case of manufacturers of motor vehicles.

In certain circumstances, an employee may make a contribution towards the cost of a motor vehicle. For example, an employer may place a limit on the cost price of the motor vehicle but allows the employee to select a motor vehicle that exceeds that limit on the basis that the employee contributes the difference between the full cost price of the motor vehicle and the limit set by the employer. In these circumstances when determining "the original cost to the employer", the employer may deduct the employee's contribution from the full cost price of the motor vehicle.

In the context of determined value, "cost to the employer" is only relevant when the employer acquired the motor vehicle under an agreement of sale or exchange. In all other situations, the determined value is equal to either the "retail market value", the "cash value" or the "market value" of the motor vehicle. The determined value may not be reduced by any contribution paid by the employee towards the cost of the vehicle.

Use of the same vehicle by more than one employee

The grant of a right to use a motor vehicle is the fringe benefit that is subject to taxation. An employer who allows more than one employee to use the same motor vehicle for private or domestic purposes is granting each of the employees a right to use the vehicle. Each employee must therefore be taxed on the full value of the benefit as calculated under 4.3 or 4.4 (**assuming the no value rules in 4.6 do not apply**).

4.4 Vehicle held under an operating lease

The number of vehicles held by employers under “operating leases” has increased.

An “operating lease” relates to moveable property and is defined in section 23A. In order for a vehicle lease arrangement to constitute an “operating lease” the lease arrangement must contain the following elements:

- The employer must lease the vehicle from a lessor in the ordinary course of the lessor’s business (not being a banking, financial services or insurance business);
- The vehicle must be available to lease to the general public for a period of less than a month;
- The costs of maintaining the vehicle (including any repairs to the vehicle necessary due to normal wear and tear) must be borne by the lessor; and
- Subject to the claim a lessor may have against a lessee for failing to take proper care of the vehicle, the risk of loss or destruction of the vehicle must not be assumed by the lessee.

Any lease which does not satisfy these requirements (for example, a “finance lease”) is not an “operating lease”, as defined.

The value of private use of a vehicle which is held by the employer under an “operating lease” and which was concluded by parties who are not connected persons and who transacted at arm’s length is –

- the actual cost incurred by the employer under the operating lease; and
- the cost of fuel in respect of that vehicle.

In circumstances where the above-mentioned requirements are not met, the fixed percentage per month of determined value method must be used to calculate the value of private use (see 4.3).

4.5 Reduction of the value of private use on assessment

The value of private use calculation (that is, fixed % per month x determined value of the motor vehicle *or* actual costs incurred under an “operating lease” plus fuel) is based on the assumption that the motor vehicle is only used for private purposes (the employee does not use it for any business purposes) and that the employer bears all of the operating expenses.

The Act, however, recognises that employees may use the motor vehicle for business purposes and may bear some of the costs associated with the motor vehicles. Accordingly, the Act provides that the value of private use may be reduced in specific circumstances at the end of the tax year when the employee submits a tax return and is assessed – see 4.5.1 – 4.5.3.

None of these reductions may reduce the value of private use to a value which is less than zero.

4.5.1 Right of use of more than one motor vehicle for private purposes

An employer may grant an employee the right to use more than one motor vehicle at the same time. Each motor vehicle represents a separate taxable fringe benefit and on a monthly basis the employer will have to calculate the value of the taxable benefit for each motor vehicle, as discussed in 4.3 and 4.4, for employees' tax purposes (see 4.8).

However, if the Commissioner is satisfied that during the year of assessment the employee used each motor vehicle primarily for business purposes, the value of private use on **all** the motor vehicles will be deemed to be that of only the vehicle having the highest value of private use or such other motor vehicle as the Commissioner may direct. "Primarily for business purposes" means that more than 50% of the total distance travelled during the tax year in the motor vehicle concerned was for business purposes. This reduction is claimed in the tax return and is not available if the employee applies the business use or expense reductions in 4.5.2 or 4.5.3.

In order to qualify for this reduction, employees must maintain actual records of business travel, generally done in the form of a logbook.

Example 7 – Employee has the use of more than one company car

Facts:

Company ABC provided one of its employees, Z, with the use of a company car in 2009. During the 2013 tax year, Z had the use of the motor vehicle for the full year but was also granted the use of a new company car on 15 February 2013.

The 2009 company car cost Company ABC R200 000 (including VAT). Z travelled 8 000 km during the 2013 year of which 6 500 km were for business purposes.

The 2013 company car cost Company ABC R300 000 (including VAT). Z travelled 500 km during the month of February of which 300 km were for business purposes.

Company ABC is not entitled to an input tax claim for VAT.

Z maintains a logbook detailing business-related travel.

Result:

The 2009 company car was used 81% for business purposes (6 500 km / 8 000 km) and the 2013 company was used 60% for business purposes (300 km / 500 km).

On the basis that accurate logbooks were kept and that both motor vehicles were primarily used for business purposes, at year-end when submitting a tax return, Z may elect to calculate the cash equivalent of the taxable value of the benefit for both motor vehicles on the highest calculated value of private use of the two motor vehicles. Z may, however, only do this if the business reduction (see 4.5.2) or cost reduction (see 4.5.3) alternatives are not applied.

Value of private use for February 2013

The value of the private use for February 2013 is equal to the value of private use for the 2009 company car from 1 February 2013 to 14 February 2013 + the highest calculated value of private use of the 2009 and 2013 company car from 15 February 2013 to 29 February 2013.

	R
Value of private use of the 2009 company car from 1 February 2013 to 14 February 2013 (3,5% x R200 000 x 14 / 28)	3 500
Value of private use from 15 February to 28 February 2013:	
• 2009 company car = 3,5% x R200 000 x 14 / 28 = R3 500	
• 2013 company car = 3,5% x R300 000 x 14 / 28 = R5 250	
• Therefore, highest value of private use for the period	<u>5 250</u>
Value of private use 1 February to 28 February 2013	8 750

Value of the taxable benefit for February 2013

Value of the private use February 2013	8 750
Less consideration	<u>(nil)</u>
Cash equivalent of the value of the taxable benefit for February 2013	8 750

Value of the taxable benefit for the 2013 tax year

Value of private use 1 March 2012 to 31 January 2013 (3,5% x R200 000 x 11 months)	77 000
Value of private use for February 2013	8 750
Less consideration	<u>(nil)</u>
Cash equivalent of the value of the taxable benefit for the 2013 tax year	85 750

4.5.2 Reduction for business use

SARS will, upon assessment of the employee's liability for normal tax for the year of assessment, reduce the value placed on the private use of the motor vehicle if it is proved to the satisfaction of the Commissioner that a taxpayer has kept accurate records of the distances travelled for business purposes.

The amount of the business use reduction is determined by applying a ratio of business kilometres travelled to total kilometres travelled in the motor vehicle to the value of private use. Namely, business reduction = (business mileage / total mileage) x value of private use.

The answer (which is the value of the *business use*) is then subtracted from the value of private use on assessment.

It is crucial that employees keep accurate records (for example, in the form of a logbook) of business mileage travelled. SARS will not permit a reduction for the business use of the motor vehicle if accurate records are not kept.

Logbooks must include, at a minimum, the following information:

- The odometer reading on the first day of the tax year.
- The odometer reading on the last day of the tax year.

- For all business travel –
 - the date of the travel;
 - the kilometres travelled; and
 - business travel details (where and reason for trip).

It is not necessary to record details of private travel (for example, that the recipient went to the movies on “x” date and the distance travelled was “y” kilometres) or daily opening and closing odometer readings. A logbook which taxpayers may use is available on the SARS website (www.sars.gov.za).

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

Example 8 – Business use reduction

Facts:

Employer DEF purchased a motor vehicle for R300 000 (VAT inclusive) for the sole use by the General Manager, C, as from 1 March 2012. C maintains a logbook indicating 40 000 km travelled, of which 10 000 km are business kilometres. The employer pays all costs. C pays DEF R1 000 per month for the use of the motor vehicle. The employer was not entitled to an input tax claim for VAT.

Result:

The value of the taxable benefit for C will be determined as follows:

	R
The monthly private value of the fringe benefit is R300 000 x 3,5%	<u>10 500</u>
Annual value of private use (R10 500 x 12)	126 000
Less: Business use reduction	<u>(31 500)</u>
= value of private use x business km / total km	
= (R126 000 x 10 000 km / 40 000 km)	
Adjusted value of private use	94 500
Less: Consideration	<u>(12 000)</u>
Cash equivalent of the value of the taxable benefit	82 500
(that is, the value of the benefit subject to income tax on assessment)	

4.5.3 Reduction when the employee incurs expenditure in relation to the motor vehicle

An employee who bears the **full** cost of the licence, insurance or maintenance of the motor vehicle or the **full** cost of the fuel for the private use of the motor vehicle, may be entitled to a reduction of the value of private use provided the Commissioner is satisfied that accurate records of distances travelled for private purposes have been retained.

The reductions discussed in this paragraph are not applicable if the vehicle is held by the employer under an “operating lease”.

The logbook referred to in 4.5.1 and 4.5.2 is an acceptable record to SARS of private mileage travelled. Note that this reduction can only take place upon assessment for normal tax.

The employee bearing the “full cost” means that the employee must bear 100% of the cost, without any form of reimbursement, for the entire period the employee had the use of the motor vehicle during the year of assessment.

An employee who bears the full cost of the above-mentioned expenses may receive an allowance for the expenditure from his or her employer. The receipt of the allowance does not alter the fact that the employee has borne 100% of the expense. The allowance is fully taxable without any allowable deductions,⁵ however when calculating the value of private use for the company car fringe benefit, an employee may be entitled to claim a deduction if the employee does not receive any reimbursement (full or partial) from the employer.

Licence, insurance and maintenance costs

An employee who bears the full cost of the licence or insurance or maintenance may obtain a reduction for the private element of the relevant full costs incurred by applying a ratio of private mileage travelled over total mileage travelled to the actual costs incurred. Namely:

$$\text{Expense reduction} = (\text{private mileage} / \text{total mileage}) \times \text{full cost of licence, insurance or maintenance (as appropriate)}.$$

The expense reduction is subtracted from the value of private use on assessment.

Example 9 – Employee bears part of the maintenance costs

Facts:

Z, an employee of Company Y, has been granted the right to use Company Y’s motor vehicle. Company Y is responsible for all licence, insurance and fuel costs. In relation to maintenance costs, Company Y introduced a company policy aimed at encouraging employees to look after company motor vehicles which stipulates that employees are responsible for any maintenance expenses in excess of R2 000 a year. Z maintains a logbook.

During the 2013 year of assessment, the maintenance costs totalled R2 500. Z agreed with Company Y to pay R500 over five months with the first payment of R100 per month due at the end of March 2012.

Result:

Z will not be entitled to a deduction for the R500 because Z has not borne the *full* cost of maintenance on the company car.

⁵ See 4.9.3 which refers to a “travel allowance”, but the same principle applies equally to specific allowances, for example, a maintenance-focussed allowance.

Fuel costs

An employee who carries the full cost of fuel for private purposes is entitled to a reduction for the private element of the fuel cost based on the deemed rate per kilometre for fuel, as fixed by the Minister of Finance in the *Gazette*.⁶ This deemed rate per kilometre is applied to the total private kilometres travelled in the motor vehicle. Namely:

$$\text{Private fuel reduction} = \text{private mileage} \times \text{deemed fuel rate per kilometre as per the Gazette.}$$

Upon assessment, the private fuel reduction must be deducted from the value of private use.

The determination of whether an employee has borne the full cost of fuel only takes place on assessment. The employee is responsible for making this determination (provision is made in the ITR12 income tax return).

Example 10 – Employee bears costs*Facts:*

Y, an employee of Company ABC, has been granted the right to use Company ABC's motor vehicle. The motor vehicle was acquired by Company ABC at a cost of R400 000 (including VAT) and included a maintenance plan. Y maintains a logbook which proves that 36 000 km were travelled during the year of assessment, of which 17 000 km are business kilometres. Y is responsible for all licence, insurance and fuel costs incurred on the motor vehicle, which amounted to R650, R16 200 and R30 000, respectively. Y also pays Company ABC R1 000 per month for the use of the motor vehicle. Company ABC is not entitled to an input tax claim for VAT.

Y had the use of the motor vehicle for the full year of assessment.

⁶ See **Annexure B**.

Result:

The cash equivalent of the value of the taxable benefit for Y is calculated as follows:

	R
The monthly value of private use is R400 000 x 3.25%	13 000
Annual value of private use (R13 000 x 12)	156 000
Less: Business use reduction	(73 667)
= value of private use x business km / total km	
= (R156 000 x 17 000 km / 36 000 km)	
Less: Licence cost reduction	(343)
= actual costs x private km / total km	
= (R650 x 19 000 km / 36 000 km)	
Less: Insurance cost reduction	(8 550)
= actual costs x private km / total km	
= (R16 200 x 19 000 km / 36 000 km)	
Less: Maintenance cost reduction	(0)
= not applicable as Y did not bear the full maintenance costs	
Less: Fuel cost reduction:	(22 667)
= private km x fuel rate per kilometre per <i>Gazette</i>	
= (19 000 km x R1,193 ^a)	
Adjusted value of private use	50 773
Less: Consideration	(12 000)
Cash equivalent of the value of the taxable benefit	38 773
(that is, the value of the benefit subject to income tax on assessment)	

^a As per the cost table in **Annexure B**.

Note: The cash equivalent is calculated at 3,25% because the motor vehicle was subject to a maintenance plan at the time of acquisition. Y did not therefore incur the full cost of maintenance and may not claim a reduction in respect of any maintenance costs.

Example 11 – Employee receives a travel allowance and pays the costs

Facts:

Y, an employee of Company ABC, has been granted the right to use Company ABC's motor vehicle. The motor vehicle was acquired by Company ABC at a cost of R400 000 (including VAT) and included a maintenance plan. Y maintains a logbook which proves that 36 000 km were travelled during the year of assessment, of which 17 000 km are business kilometres. Y is responsible for all licence, insurance and fuel costs incurred on the motor vehicle, which amounted to R650, R16 200 and R30 000 respectively. Y also pays Company ABC R1 000 per month for the use of the motor vehicle. Company ABC pays all employees who travel for work (including Y) a travel allowance of R2 000 per month. Company ABC is not entitled to an input tax claim for VAT.

Y had the use of the motor vehicle for the full year of assessment.

<i>Result:</i>	
	R
Allowance included in taxable income (section 8(1) – no deduction for costs incurred)	24 000
The cash equivalent of the value of the taxable benefit for Y, which will also be included in taxable income, is calculated as follows:	
The monthly value of private use is R400 000 x 3,25%	13 000
Annual value of private use (R13 000 x 12)	156 000
Less: Business use reduction = value of private use x business km/total km = (R156 000 x 17 000km / 36 000 km)	(73 667)
Less: Licence cost reduction = actual costs x private km/total km = (R650 x 19 000km/36 000km)	(343)
Less: Insurance cost reduction = actual costs x private km / total km = (R16 200 x 19 000 km / 36 000 km)	(8 550)
Less: Maintenance cost reduction = not applicable as Y did not bear the full maintenance costs	(0)
Less: Fuel cost component = private km x fuel rate per kilometre per <i>Gazette</i> (19 000km x R1,193 ^a)	<u>(22 667)</u>
Adjusted value of private use	50 773
Less: Consideration	<u>(12 000)</u>
Cash equivalent of the value of the taxable benefit (that is, the value of the benefit subject to income tax on assessment)	38 773
^a As per the cost table in Annexure B .	
The cash equivalent is calculated at 3,25% because the motor vehicle was subject to a maintenance plan at the time of acquisition. Y did not incur the full cost of maintenance and may not claim a reduction in respect of any maintenance costs.	

4.6 Circumstances under which the value of private use is deemed to be nil

4.6.1 Available for use by employees in general

The value of private use of the motor vehicle by an employee is deemed to be nil, if all three of the following requirements are met:

- The motor vehicle is available and used by employees of the employer in general (that is, the motor vehicle is a pool car generally used by employees for business purposes and which is not allocated to a particular employee);
- The private use of the motor vehicle by the employee is infrequent or merely incidental to business use; and
- The motor vehicle is not normally kept at or near the residence of the employee when not in use outside of business hours.

4.6.2 Nature of employee duties

The value of private use of the motor vehicle by an employee is deemed to be nil, if –

- the nature of the employee’s duties are such that the employee is regularly required to use the motor vehicle for the performance of those duties outside normal hours of work; and
- the employee is not permitted to use that motor vehicle for private purposes other than –
 - travelling between his or her place of residence and his or her place of work; or
 - private use which is infrequent or is merely incidental to its business.

For this purpose, “normal working hours” are considered to be the regular, usual or typical hours that the employee who is provided with the right of use of the motor vehicle renders his or her services. Normal working hours will, therefore, be different for each person and must be determined with reference to a particular employee’s terms and conditions of employment.

The no-value rule will only apply if the use outside of an employee’s normal working hours occurs “regularly”. The Concise Oxford Dictionary⁷ defines “regularly” to mean “done or happening frequently”. What constitutes regular performance of duties outside normal work hours is not standard and must be assessed on a case-by-case basis taking into account the particular job and its responsibilities. A motor vehicle that is only used occasionally outside normal work will not be frequent enough to constitute regular use.

The onus rests on an employer to prove that the requirements for the nil value provisions have been met.

Example 12 – No value is placed on the private use of a company motor vehicle

Facts:

Y is employed by Superior Lift Maintenance Pty Ltd (Superior Lift Maintenance) as a lift engineer and lift maintenance expert. Y works 8am – 4pm, Monday to Friday, and is always on call after hours for emergency lift repairs. Superior Lift Maintenance has provided Y with the use of a company car as Y is regularly called out after normal working hours to conduct emergency lift repairs. Y uses the company car when attending to any work call.

Y is allowed to use the motor vehicle to travel between work and home and to park it at home when not using it for work. Y has a private motor vehicle for other private travel and the logbook indicates that Y rarely uses the company motor vehicle for any private travel (other than home to office and *vice versa*).

Result:

Y will not qualify for a nil value of private use under the provision discussed in **4.6.1** because the motor vehicle is not available to or used by employees in general and the motor vehicle is kept at Y’s home outside office hours.

⁷ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

However, Y may qualify for a nil value of private use under the provision discussed in 4.6.2 because the nature of Y's duties regularly requires Y to go out to clients after normal work hours. Y's private use is limited to travelling between work and home.

4.7 Consideration

"Consideration", defined in paragraph 1, does not include any consideration in the form of services rendered by the employee. It would generally include any form of compensation, reimbursement, payment or recompense given by the employee to the employer for being given the right of use of the motor vehicle. The most common form of consideration involves a cash payment by the employee to the employer.

4.8 Employees' tax

Taxable benefits are included as "remuneration" in the Fourth Schedule to the Act and are subject to the deduction of employees' tax. In order to more closely align the travel allowance and company car taxation rules, the definition of "remuneration" in the Fourth Schedule to the Act was amended with effect from 1 March 2011 to include 80% of the cash equivalent of the taxable benefit as remuneration. This reduced inclusion for the right of use of a motor vehicle (previously 100% was included) takes into account potential adjustments for business travel on assessment for normal tax.

However, in the event that an employer is satisfied that at least 80% of the use of the motor vehicle during a year of assessment will be for business purposes, only 20% of the cash equivalent of the taxable benefit is included as remuneration and is subject to employees' tax.

This does not mean that only a portion (80% or 20%, as the case may be) is subject to income tax. The full taxable benefit (that is, 100%) is potentially taxable when the employee or office holder submits an annual tax return and the employee is unable to claim sufficient reductions for business travel or the cost of the expenses borne. It is only for the purposes of employees' tax that 80% or 20%, as the case may be, is subject to tax.

Employers that are *satisfied* that at least 80% of the use of the motor vehicle is for business purposes should include only 20% of the cash equivalent in "remuneration". The word "satisfied" suggests that the employer must actively look into the facts of each employee's circumstances and objectively weigh up and apply its mind to whether or not the employee would qualify.

Employers can satisfy themselves that employees will use their vehicles for at least 80% business use by –

- regularly reviewing employees' logbooks which detail business and private travel; and
- taking into consideration changes in the role or function of the employee.

Example 13 – Determination of whether an employer can be satisfied that an employee will use the company car for business purposes at least 80% of the time

Facts:

M is employed by JKL (Pty) Ltd. In terms of M's employment duties M is required to provide services to all of JKL (Pty) Ltd's clients who are based in Gauteng. During the previous full year of assessment M maintained a logbook which disclosed the distance travelled as 61 015 km, of which 53 092 km were attributable to business travel. M and the financial director of JKL (Pty) Ltd agree that M's functions will remain much the same during the current year of assessment.

Result:

Determination of expected percentage business travel:

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

87% of M's travel in the previous year of assessment was conducted for business purposes. As the logbook discloses more than four months of accurate data and M's job profile and responsibilities are not expected to change, JKL (Pty) Ltd is likely to be satisfied that at least 80% of the use of M's motor vehicle for the current year of assessment will be for business purposes.

Accordingly, only 20% of the cash equivalent of the value of the taxable benefit must be included in M's remuneration for employees' tax purposes. The full cash equivalent of the value of the taxable benefit will need to be included in M's taxable income when submitting the tax return (subject to qualifying for any of the reductions discussed previously).

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

If employees' tax has been withheld on 20% of the cash equivalent of the value of the taxable benefit and the circumstances change such that the employer realises that the employee will no longer use the vehicle more than 80% for business purposes, the inclusion rate must be adjusted to 80% immediately in the month that the circumstances change. The inclusion rate need only be adjusted from the month during which the employer reasonably became aware of the change in the employee's circumstances and not for the entire year of assessment.

Paragraph 2(2) of the Fourth Schedule provides that an employer may, at the written request of any employee, deduct or withhold additional amounts of employees' tax from an employee's remuneration. This is relevant for employees who are concerned that they will not be able to claim a sufficient reduction for business use discussed in **4.5.2** or as a result of incurring the expenses discussed in **4.5.3** with the result that they may be burdened with an unexpected tax cash flow on assessment. Employees in this situation may request that the employer include 100% (or any percentage

above 80%) of the cash equivalent of the value of the taxable benefit in their remuneration as opposed to the 80% required by legislation. Employees must submit the request in writing to the employer before the employer implements the increased employees' tax withholding.

4.9 Sundry provisions

4.9.1 Transfer of employer's rights and obligations under a lease

An employer is deemed to have granted an employee the right to use a motor vehicle if the employer leased a motor vehicle and subsequently transferred its rights and obligations under that lease to the employee. The deemed right of use arises on the date the rights and obligations were transferred to the employee and continues for the remainder of the period of the lease. The cash equivalent of the value of the taxable benefit is calculated as discussed above, however, it is noted that –

- any rentals becoming payable by the employee under the lease shall be deemed to be consideration payable by that employee for the said right, for example, if the value of private use of the motor vehicle amounts to R2 500 and the employee pays a monthly rental (under the lease) of R1 900, the value of private use to be included in the employee's income will be R600 per month (R2 500 less R1 900);
- the determined value of the motor vehicle shall be deemed to be the retail market value at the time the employer first obtained the right of use of the motor vehicle under a finance lease or the "cash value" thereof under a lease contemplated in paragraph (b) of the definition of an "instalment credit agreement" (see **4.3.3**); and
- if the employee acquires the motor vehicle at the end of the lease the employee may have received an additional taxable benefit (see **4.9.4**).

4.9.2 Motor vehicle rented to the employer by the employee, his or her spouse or child – section 8(1)(b)(iv)

In circumstances when –

- a motor vehicle which is owned or leased by an employee, his or her spouse or his or her child (whether directly or indirectly by virtue of an interest in a company, trust or otherwise) has been let to the employer or an associated institution; and
- the employer then grants the right of use of that motor vehicle back to the employee concerned,
- the sum of the rental paid by the employer, plus any expenditure on the motor vehicle borne by the employer, will be deemed to be a travelling allowance in the hands of the employee.

In such a case –

- the deemed travelling allowance less the deductions permitted under section 8(1) must be included in the employee's taxable income;
- the travel allowance is 'remuneration' in the hands of the employee and must be included in the monthly employees' tax calculations;
- no deductions may be claimed against the rental income under the general deduction formula; and

- the motor vehicle is not treated as a company car in the employee's hands.

4.9.3 Company car and travelling allowance in respect of the same motor vehicle

Generally, an employee who is granted a travelling allowance may claim a deduction for the portion of the allowance expended during the year of assessment for business purposes. The amount of the deduction is determined using actual costs or a deemed rate per kilometre.

A deduction is not, however, available when an employee is granted the right of use of the employer's motor vehicle and a travelling allowance *in respect of the same motor vehicle*. In this situation the employee is not permitted to claim any deduction for business travel against the travel allowance. Any adjustments to taxable income must be made to the cash equivalent of the value of the taxable benefit of the company car under the business use reductions set out in **4.5.2**.

The treatment of allowances and the allowable deductions are discussed in detail in Interpretation Note No. 14 (Issue 3) (20 March 2013).

4.9.4 Acquisition of an asset – paragraph 2(a) and 5(2)

In some circumstances, employers allow employees to acquire a motor vehicle that they previously *had the right to use*. Generally, should the disposal to the employee occur for no consideration or for consideration that is less than the market value of the motor vehicle, a taxable benefit will arise under paragraphs 2(a) and 5(2). Paragraph 2(a) applies when an employee acquires an asset from the employer, an associated institution or any person by arrangement with the employer.

The taxable benefit is equal to the value of the motor vehicle less any consideration paid by the employee. The value of the motor vehicle is equal to market value at the time it was acquired by the employee or if it was specifically acquired by the employer to dispose of to the employee then the cost thereof or if the employer is in the motor industry and the vehicle constitutes trading stock then the lower of cost or market value.

Any consideration paid by the employee for the use of that motor vehicle whilst it was a company car may not be offset against the taxable benefit arising on acquisition.

5. Conclusion

The use of a company car for private or domestic purposes gives rise to a taxable benefit under the Seventh Schedule of the Act. The cash equivalent of the taxable benefit which must be included in the employee's gross income is equal to the value of the private use less any consideration paid by the employee for that benefit.

The value of private use of a vehicle held by an employer otherwise than under an "operating lease" is generally equal to 3,5% per month of the determined value of the motor vehicle. The amount calculated must be apportioned if the motor vehicle is only used for part of a month (that is, 3,5% of the determined value of the motor vehicle multiplied by the number days of use of the motor vehicle in the month divided by the number of days in the month). The percentage may be reduced to 3,25% if the motor vehicle was the subject of a maintenance plan when it was acquired by the employer. The value of private use may not be reduced for temporary absences such as when the employee is away on work or the car is in for a car service.

The value of private use of a vehicle held by an employer under an “operating lease” is equal to the actual cost incurred under the operating lease plus the cost of fuel incurred on the same vehicle.

The calculation of the value of private use assumes the employee only uses the motor vehicle for private purposes and that the employer bears all the operating costs. However, on assessment an employee may, depending on the circumstances, qualify for a reduction in the value of private use to the extent the motor vehicle:

- is used for business purposes;
- to the extent the employee has borne the full costs of licence, insurance or maintenance (reduction not available if the vehicle is held under an operating lease); and
- to the extent the employee has borne the cost of fuel for private use (reduction not available if the vehicle is held under an operating lease).

Employees must maintain detailed records of business travel if they wish to claim these reductions, this is generally done in the form of a logbook. Special rules apply to an employee who has the right of use of more than one company car, and potentially, if the company car is a pool vehicle available to employees in general, or if the employee is regularly required to perform duties outside of normal office hours.

Employers are required to calculate and withhold employees’ tax on a monthly basis. With effect from 1 March 2011 when calculating the monthly employees’ tax withholdings, employers must include 80% of the cash equivalent of the taxable benefit as remuneration. This reduced withholding (previously 100% was included) takes into account potential reductions which may take place on assessment, for example, the business reduction. However, in the event that an employer is satisfied that at least 80% of the use of the motor vehicle during a year of assessment will be for business purposes, then only 20% of the cash equivalent of the taxable benefit is included as remuneration and is subject to employees’ tax.

Annexure A – The law

Section 1(1) Definition of the term “gross income”

“**gross income**”, in relation to any year or period of assessment, means—

- (i) . . .
- (ii) . . .

..but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—

(a) – (h). . .

- (i) the cash equivalent, as determined under the provisions of the Seventh Schedule, of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Schedule, and any amount required to be included in the taxpayer’s income under section 8A;

Paragraph 1 of the Fourth Schedule

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

- (a) any amount referred to in paragraph (a), (c), (cA), (d), (e), (eA) or (f) of the definition of “gross income” in section 1 of this Act;
- (cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii): Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;

Paragraph 1 of the Seventh Schedule

“**associated institution**”, in relation to any single employer, means—

- (a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or
- (b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
- (c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;

“consideration”, as respects any reference in this Schedule to any consideration given by an employee, does not include any consideration in the form of services rendered or to be rendered by the employee;

Paragraph 2(b) of the Seventh Schedule

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

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

Paragraph 4 of the Seventh Schedule

4. Where any associated institution in relation to any employer has given any employee of that employer, by reason of the fact that the employee is in the employment of the employer, or as a benefit or advantage of such employment or as a reward for services rendered or to be rendered by the employee to the employer any benefit or advantage which, if such benefit or advantage had been given to the employee directly by the employer in the circumstances contemplated in paragraph 2, would have constituted a taxable benefit, such benefit or advantage shall for the purposes of this Schedule be deemed to be a taxable benefit granted by the employer to the employee and the cash equivalent of the value of such taxable benefit shall be determined accordingly.

Paragraph 7 of the Seventh Schedule

(1) For the purposes of this paragraph, **“determined value”**, in relation to a motor vehicle, means—

- (a) where such motor vehicle (not being a vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by the employer under a bona fide agreement of sale or exchange concluded by parties acting at arm’s length, the original cost thereof to the employer (excluding any finance charge or interest payable by the employer in respect of the employer’s acquisition thereof); or
- (b) where such motor vehicle—
 - (i) is held by the employer under a lease (other than an “operating lease” as defined in section 23A (1)); or
 - (ii) was held by the employer under a lease (other than an “operating lease” as defined in section 23A (1)) and the ownership thereof was acquired by the employer on the termination of the lease,

the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was a lease contemplated in paragraph (b) of the definition of “instalment credit agreement” in section 1 of the Value-added Tax Act, 1991 (Act No. 89 of 1991), the cash value thereof as contemplated in the definition of “cash value” in the said section; or

- (c) in any other case, the market value of such motor vehicle at the time when the employer first obtained the vehicle or the right of use thereof:

Provided that—

- (a) where an employee has been granted the right of use of such motor vehicle as contemplated in subparagraph (2) (other than a motor vehicle acquired under an operating lease as defined in section 23A (1)) and such vehicle, or the right of use thereof, was acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount determined under the foregoing provisions of this subparagraph a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and
- (b) where such motor vehicle was acquired by the employer from an associated institution in relation to the employer and the employee concerned had, prior to such acquisition, enjoyed the right of use of such motor vehicle, the determined value shall be the determined value as at the date on which the employee was granted the right of use of such motor vehicle for the first time.

(1A)

(2) Where an employee has been granted the right to use any motor vehicle as contemplated in paragraph 2(b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private use of such vehicle (as determined under this paragraph in respect of the period of use) as exceeds any consideration given by the employee to the employer for the use of such vehicle during such period, other than consideration in respect of the cost of the licence, insurance, maintenance or fuel in respect of such vehicle.

(3) (a) Where an employer's rights and obligations under a lease in respect of a motor vehicle are transferred to his employee the employer shall for the purposes of this Schedule be deemed to have granted the employee the right to use such vehicle for the remainder of the period of the lease.

(b) In such case—

- (i) any rentals becoming payable by the employee under the lease shall be deemed to be a consideration payable by him for the said right; and
- (ii) the determined value of the vehicle shall be deemed to be an amount determined in accordance with the provisions of subparagraph (1)(b);

(4) Subject to subparagraph (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee's place of residence and his or her place of employment) and the said value shall—

(a) as respects each such month—

- (i) be an amount equal to 3,5 per cent of the determined value of such motor vehicle: Provided that where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25 per cent of the determined value of the motor vehicle; or
- (ii) where such vehicle is acquired by the employer under an "operating lease" as defined in section 23A (1) concluded by parties transacting at arm's length and that are not connected persons in relation to each other, be—
 - (aa) the actual cost to the employer incurred under that operating lease; and
 - (bb) the cost of fuel in respect of that vehicle; and

(b) as respects any such part of a month, be an amount which bears to the appropriate amount determined in accordance with item (a)(i) or (ii) for a month the same ratio as the number of days in such part of a month bears to the number of days in the month in which such part falls.

(5) No reduction in the value determined under subparagraph (4) shall be made for the purposes of item (b) of that subparagraph by reason of the fact that the vehicle in question was during any period for any reason temporarily not used by the employee for private purposes.

(6) Where more than one motor vehicle is made available by an employer to a particular employee at the same time and the Commissioner is satisfied that each such vehicle was used by the employee during the year of assessment primarily for business purposes, the value to be placed on the private use of all the said vehicles shall be deemed to be the value of the private use of the vehicle having the highest value of private use or such other vehicle as the Commissioner may direct: Provided that the preceding provisions of this subparagraph shall not apply where the provisions of subparagraph (7) or (8) are applied.

(7) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for business purposes in such vehicle are kept, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of the vehicle, calculated under subparagraph (4), by an amount that bears to that calculated value the same ratio as the number of kilometres travelled for business purposes bears to the total amount of kilometres travelled in such vehicle during that year of assessment.

(8) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for private purposes in such vehicle (other than a vehicle acquired as contemplated in subparagraph (4)(a)(ii)) are kept and the employee bears—

- (a)
 - (i) the full cost of the licence for such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the licence for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;
 - (ii) the full cost of the insurance of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the insurance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment; or
 - (iii) the full cost of the maintenance of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the maintenance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;
- (b) the full cost of fuel for private use of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of the vehicle during that year of assessment calculated under subparagraph (4) by an amount determined for the total kilometres travelled for private purposes by applying the rate per kilometre for fuel fixed by the Minister in the Gazette for the purposes of section 8(1)(b)(ii) and (iii).

(8A) For the purposes of subparagraphs (7) and (8), if the employee contemplated in those subparagraphs is a "judge" or a "Constitutional Court judge" as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), the kilometres travelled between the judge's place of residence and the court over which the judge presides must be deemed to be kilometres travelled for business purposes and not for private purposes.

(9)

(10) For the purposes of this paragraph the private use by an employee of a motor vehicle shall be deemed to have no value, if—

- (a)
 - (i) the vehicle is available to and is in fact used by employees of the employer in general;
 - (ii) the private use of the vehicle by the employee concerned is infrequent or is merely incidental to its business use; and
 - (iii) the vehicle is not normally kept at or near the residence of the employee concerned when not in use outside of business hours; or
- (b) the nature of the employee's duties are such that he or she is regularly required to use the vehicle for the performance of those duties outside his or her normal hours of work, and he or she is not permitted to use that vehicle for private purposes other than—
 - (i) travelling between his or her place of residence and his or her place of work; or
 - (ii) private use which is infrequent or is merely incidental to its business use.

(11) For the purposes of this paragraph, “**maintenance plan**”, in relation to a motor vehicle, means a contractual obligation undertaken by a provider in the ordinary course of trade with the general public to underwrite the costs of all maintenance of that motor vehicle, other than the costs related to top-up fluids, tyres or abuse of the motor vehicle, for at least a period of not less than three years and a distance travelled by the motor vehicle of not less than 60 000 kilometres from the date that the provider undertakes the contractual obligation: Provided that the contractual obligation may terminate at the earlier of—

- (a) the end of the period of three years; or
- (b) the date on which the distance of 60 000 kilometres is travelled by that motor vehicle.

Annexure B – Extract of income tax regulation: Fixing of rate per kilometre in respect of motor vehicles for the purposes of section 8(1)(b)(ii) and (iii) with effect from 1 March 2012

Where the value of the vehicle –	Fixed cost	Fuel cost	Maintenance cost
	R	c/km	c/km
does not exceed R60 000	19 492	73.7	25.7
exceeds R60 000, but does not exceed R120 000	38 726	77.6	29.0
exceeds R120 000, but does not exceed R180 000	52 594	81.5	32.3
exceeds R180 000, but does not exceed R240 000	66 440	89.6	36.9
exceeds R240 000, but does not exceed R300 000	79 185	102.7	45.2
exceeds R300 000, but does not exceed R360 000	91 873	117.1	53.7
exceeds R360 000, but does not exceed R420 000	105 809	119.3	65.2
exceeds R420 000, but does not exceed R480 000	119 683	133.6	68.3
exceeds R480 000	119 683	133.6	68.3

This cost scale table which is applicable to the 2012/2013 tax year, that is, from 1 March 2012 to 29 February 2013. The tables which are applicable to other tax years (including the 2011/2012 tax year) are available on the SARS website (www.sars.gov.za). The tables change periodically so it is important that taxpayers review the effective date of the particular notice to ensure they apply the correct costs to the correct tax years.

Interpretation Note No. 14 (Issue 3) discusses and explains how this table operates. It also provides examples of what constitutes business travel and private travel.

Annexure C – Extract from the Value-Added Tax Act No. 89 of 1991

“**cash value**”, in relation to the supply of goods supplied under an instalment credit agreement, means—

- (a) where the seller or lessor is a banker or financier, an amount equal to or exceeding the sum of the cost to the banker or financier of the goods, including any cost of erection, construction, assembly or installation of the goods borne by the banker or financier and the tax leviable under section 7(1)(a) in respect of such supply by the banker or financier; or
- (b) where the seller or lessor is a dealer, an amount equal to or exceeding the price (including tax) at which the goods are normally sold by him for cash or may normally be acquired from him for cash (including tax) and any charge (including tax) made by the seller or lessor in respect of the erection, construction, assembly or installation of the goods if such charge is financed by the seller or lessor under the instalment credit agreement;

“**instalment credit agreement**” means any agreement entered into on or after the commencement date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable—

- (a)
 - (b) are supplied under a lease under which—
 - (i) the rent consists of a stated or determinable sum of money payable at a stated or determinable future date or periodically in whole or in part in instalments over a period in the future; and
 - (ii) such sum of money includes finance charges, including any amount determined with reference to the time value of money, stipulated in the lease; and
 - (iii) the aggregate of the amounts payable under such lease by the lessee to the lessor for the period of such lease (disregarding the right of any party thereto to terminate the lease before the end of such period) and any residual value of the leased goods on termination of the lease, as stipulated in the lease, exceeds the cash value of the supply; and
 - (iv) the lessee is entitled to the possession, use or enjoyment of those goods for a period of at least 12 months; and
 - (v) (aa) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force; or
 - (bb) (A) the lessor accepts the full risk of destruction or loss of, or other disadvantage to those goods and assumes all obligations of whatever nature arising in connection with the insurance of those goods; and
 - (B) the lessee accepts the full risk of maintenance and repair of those goods and reimburses the lessor for the insurance of those goods,
- while the agreement remains in force;