



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 28

DATE: 18 February 2005

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTIONS 11(a), 23(b) and 23(m)

**SUBJECT : DEDUCTIONS: HOME OFFICE EXPENSES INCURRED BY
PERSONS IN EMPLOYMENT OR PERSONS HOLDING AN
OFFICE**

1. Purpose

The purpose of this interpretation note is to provide clarity on the deductibility of home office expenses in respect of persons in employment and persons holding an office.

2. Background

Expenses in maintaining a home office have been a controversial issue since the judgment handed down in *KBI v Van der Walt*, 48 SATC 104, 1986 (4) SA 303 (T).

During 1991 the provisions of section 23(b) of the Act were amended and it was made a requirement that in order to qualify for a deduction, an office at home must be specifically equipped for purposes of a person's trade and must be used regularly and exclusively for purposes of trade.

During 1993 a further amendment was introduced. This amendment focused directly on taxpayers that were in employment or that held an office, and prohibited a deduction unless the taxpayer's employment or office income consisted mainly of commission or other variable payments based on work performance, and the taxpayer's duties were not performed mainly in an office provided by his/her employer.

In 1995 the Act was again amended to relax the prohibition of office expenditure in cases where the employee's or office holder's duties were performed mainly in an office at home.

In the Budget Review of 2002 the Minister of Finance announced that the taxation system relating to employment income will be simplified by, amongst other, clarifying the deductions that are available to employees and to holders of public office. To give effect to his announcement, section 23(m) was introduced into the Act (**please refer to Interpretation Note 13 available on the SARS website.**)

The effect of this section on the deductibility of home office expenditure is the topic of this Interpretation Note.

3. The law

3.1 Section 11(a) of Act

General deductions allowed in determination of taxable income.

"11. 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;"

3.2 Section 23(b) of the Act

Deductions not allowed in determination of taxable income.

"23. No deductions shall in any case be made in respect of the following matters, namely-

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

- (a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and
- (b) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless-
 - (i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; or
 - (ii) his duties are mainly performed in such part;"

3.3 Section 23(m) of the Act

Deductions not allowed in determination of taxable income.

"23. No deductions shall in any case be made in respect of the following matters, namely-

(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 sections 11(k) or (n);
- (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); and
- (iii) any deduction which is allowable under section 11(a) in respect of any premium paid by that person in terms of an insurance policy-
 - (aa) to the extent that it covers that person against the loss of income as a result of illness, injury, disability or unemployment; and
 - (bb) in respect of which all amounts payable in terms of that policy constitutes or will constitute income as defined;"

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

a) **What constitutes home office expenditure?**

Typically, home office expenditure will be the type of expense referred to in section 23(b), namely:

- Rent of the premises
- Interest on bond
- Cost of repairs to the premises
- Other expenses in connection with the premises.

In addition to these expenses, other typical home office expenditure may include:

- Phones
- Stationery
- Rates and taxes
- Cleaning
- Office equipment
- Wear and Tear

b) **The general rule**

The deductibility of expenses relating to a home office is determined by reference to section 11 of the Act, in particular paragraphs (a) and (e), read together with sections 23(b) and 23(m) of the Act. This means that for a home office expense to be deductible the requirements of sections 11, 23(b) and 23(m) of the Act must all be met.

c) **Requirements of section 11**

Typically, it is not difficult to show that a home office expense meets the requirements of section 11 of the Act, provided it is not of a capital nature. Expenditure like maintenance, rates and taxes and wear and tear on office equipment would usually satisfy the requirements of section 11 of the Act. 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.

d) Requirements of section 23(m)

Section 23(m) is applicable if the taxpayer is in receipt of remuneration that is derived from employment or the holding of an office, unless the remuneration is not derived mainly from commission based on sales or turnover (for more details see Interpretation Note 13). If section 23(m) applies, the deductions that are available to the taxpayer are limited to the deductions that are listed in this section. As far as home office expenses are concerned, the taxpayer will only be able to claim wear and tear as permitted under section 11(e) of the Act.

e) Requirements of section 23(b)

An expense must still meet the requirements of section 23(b) of the Act even though it meets the requirements of section 11 and is allowed under the provisions of section 23(m) of the Act. The requirements of section 23(b) are as follows:

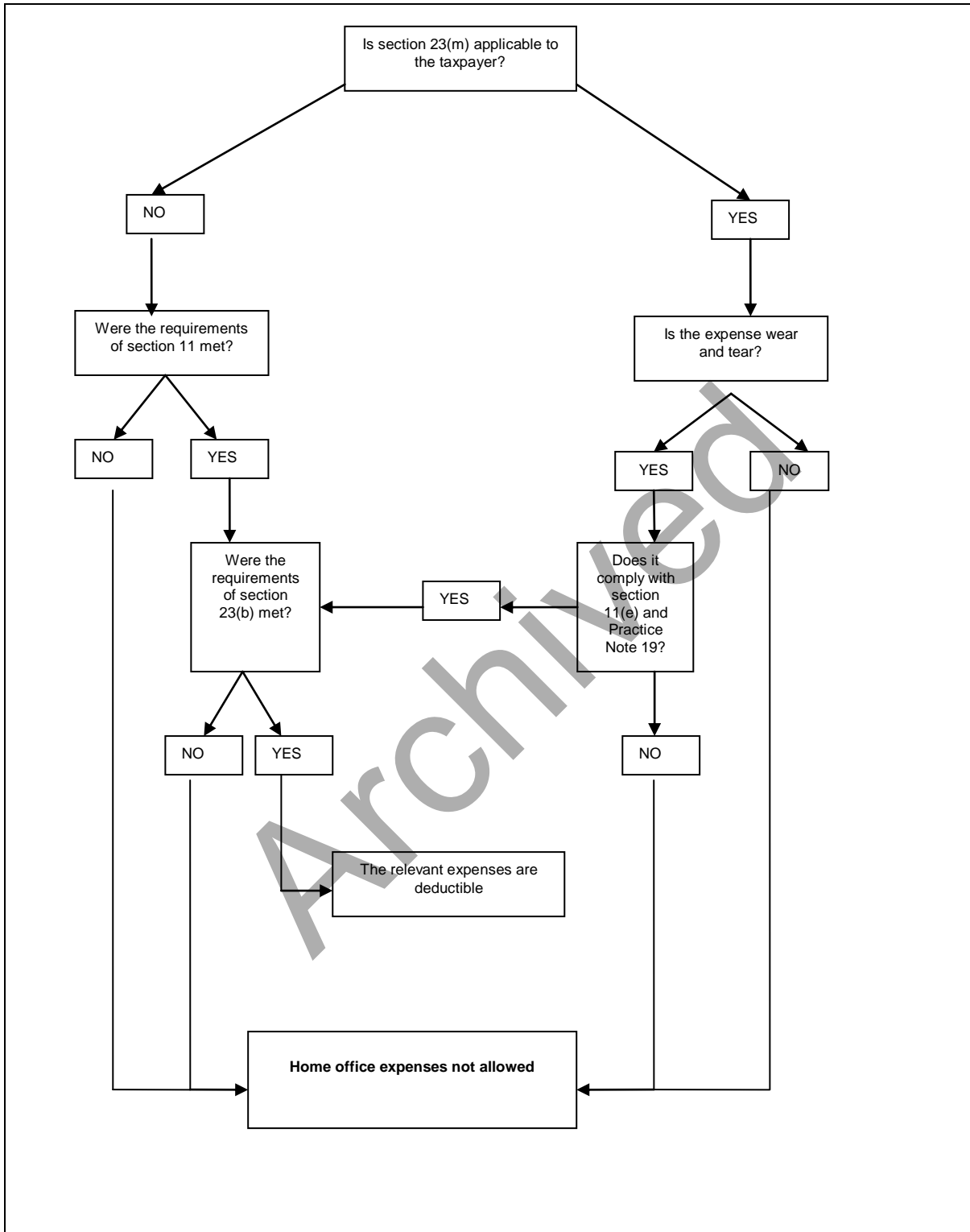
- The part of the home in respect of which a claim is submitted must be occupied for purposes of a trade (as defined in section 1 of the Act);
- The part that is so occupied must be specifically equipped for purposes of the trade;
- The part must be regularly and exclusively used for purposes of the trade;
- If the trade is employment or the holding of an office:
 - the income derived from this trade must be mainly (i.e. must exceed 50% of total income from employment or office) commission or other variable payments which are based on the taxpayer's work performance, and the taxpayer's duties were not performed mainly in an office provided by his or her employer; or
 - the taxpayer's duties must be mainly performed in that part.

5. Overall effect on persons in employment and holders of office

Where the provisions of section 23(m) applies, and where the requirements of section 23(b) are met, it effectively means that deductible home office expenses are limited to a wear and tear allowance in terms of section 11(e) of the Act in respect of items such as office equipment used by the taxpayer for the purpose of his/her trade (employment).

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6. Decision chart – home office expenses



7. Examples

Example 1

X is an employee, who is in receipt of commission income of R50 000, a salary of R20 000 and a travel allowance of R3 000, per annum. X is obliged in terms of his employment contract to work from home since his employer does not provide him with an office at work. He maintains a home office which he has specifically set up for the purposes of his employment duties. The home office is used regularly and exclusively for the purposes of work. His duties are performed mainly in the home office. The total area (square metres) of the home study is 20 sq. metres in relation to the total area of his house which is 200 sq. metres. The percentage area of the home office in relation to the total area of the house is 10% (20/200). He has purchased a computer costing R12 000, an office desk costing R2 000 and an office chair costing R800 for the home office. The interest on his household bond amounts to R25 000 per annum. The rates and taxes for the year amounts to R2 500. X contributes R5 000 per annum to a pension fund and has also incurred commission related business expenses of R9 000 consisting of cell phone expenses and stationery costs.

Since more than 50% of X's total income consists of commission, the restrictions imposed by section 23(m) of the Act will not apply. Furthermore, he maintains a home office which is regularly and exclusively used for the purposes of earning income. The home office has been specifically equipped for the purposes of his trade and is mainly used by him to perform his duties. Subject to section 23(b), X can therefore claim a deduction in respect of the following:

- Pension fund contributions of R5 000
- Cell phone expenses and stationery expenses of R9 000
- Wear and tear allowance in terms of section 11(e) of the Act for the computer, office desk and office chair
- Travel deduction
- Interest on bond of R2 500
- Rates and taxes of R250

10% of the total area of the house relates to the home office. Therefore 10% of the interest on bond and rates and taxes will be allowed as a deduction.

Example 2

Y is an employee, who is in receipt of a salary of R50 000, commission of R20 000 and a travel allowance of R3 000 per annum. Y is obliged in terms of her employment contract to work from home since her employer does not provide her with an office at work. She maintains a home office which she has specifically set up for the purposes of her employment duties. The home office is used regularly and exclusively for the purposes of work. Her duties are performed mainly in the home office. The total area (square metres) of the home study is 20 sq. metres in relation to the total area of her house which is 200 sq. metres. The percentage area of the home office in relation to the total area of the house is 10% (20/200). She has purchased a computer costing R12 000, an office desk costing R2 000 and an office chair costing R800 for the home office. The interest on her household bond amounts to R25 000 per annum. The rates and taxes for the year is R2 500. Y contributes R5 000 per annum to a pension fund and has also incurred commission related business expenses of R9 000 consisting of cell phone expenses and stationery costs.

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

- Pension fund contributions of R5 000
- Wear and tear allowance in terms of section 11(e) of the Act for the computer, office desk and office chair
- Travel deduction