

INTERPRETATION NOTE: NO. 77

DATE: 4 March 2014

ACT : INCOME TAX ACT NO. 58 OF 1962
SECTION : PARAGRAPHS 2(b), 2(e), 2(h), 6, 10 AND 13(1) OF THE SEVENTH SCHEDULE
SUBJECT : TAXABLE BENEFIT – USE OF EMPLOYER-PROVIDED TELEPHONE OR COMPUTER EQUIPMENT OR EMPLOYER-FUNDED TELECOMMUNICATION SERVICES

Preamble

In this Note unless the context indicates otherwise –

- “**section**” means a section of the Act;
- “**paragraph**” means a paragraph of the Seventh Schedule to the Act;
- “**the Act**” means the Income Tax Act No. 58 of 1962; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides clarity regarding –

- the determination of the value of the taxable benefit arising from the private or domestic use by an employee of employer-provided or employer-owned telephone or computer equipment (including cellular telephones, laptops, tablets, modems, removable storage devices, printers and software) or telecommunication services; and
- the taxability of any allowance or reimbursement granted by the employer to the employee for the employee’s privately-owned equipment or service contract which is used by the employee for purposes of the employer’s business.

For the purposes of this Note, software is regarded to be computer equipment and should be evaluated on the same basis as any other telephone or computer equipment provided to an employee. The facts and circumstances of the particular case will determine whether the software should be treated as a separate asset for purposes of paragraph 2(b) or whether it should be treated as part of the asset on which the software is installed. For example, operating system software which is acquired as part of the acquisition of an item of equipment, such as a laptop, and the use of which is limited to the equipment acquired, should not be treated as a separate asset. However, software which is acquired separately, even if at the same time as the item of equipment on which it will be installed, or software which is acquired as part of an item of equipment but its use is not restricted to that item of equipment, must be treated as a separate asset.

The Note does not consider paragraph 2(a). Paragraph 2(a) deals with the fringe benefit tax consequences when an employee acquires an asset, which the employee may or may not previously have had the use of, from an employer or associated institution as a benefit of employment.

2. Background

Employers often provide employees with telephones or computer equipment. The intention is that the employee will use the assets for work purposes. However, given that the assets are often used outside of the office, some private or domestic use is inevitable.

Previously, the Seventh Schedule to the Act treated almost all private or domestic use by employees of employer-owned telephones and computer equipment and employer-provided telecommunication services as a taxable benefit under paragraphs 2(b) or 2(e).

The associated compliance and enforcement costs were potentially prohibitive and in 2008 the legislation was amended to provide that in certain circumstances an employee's private or domestic use will not be taxed. This Note discusses the circumstances when an employee's private or domestic use of these benefits will not be subject to taxation.

This Note focuses primarily on the following scenarios:

2.1 Employer-owned (or leased) equipment and related services

In this scenario the employer provides the employee with equipment or related services and incurs the associated cost. Two potentially taxable benefits arise, namely –

- the private or domestic use of an employer-owned or provided asset [paragraph 2(b)]; and
- access to and use of a telecommunication network (for example, line rental, call charges, data downloads) for private or domestic purposes at the employer's cost [which constitutes the provision of free or cheap services under paragraph 2(e)].

2.2 Employee-owned (or leased) equipment and related services

In this scenario the employee would typically have entered into a contract with a service provider for which the employee (and not the employer) has acquired the right to, for example, a cellular telephone (cell phone) or laptop and access to a telecommunication network. The contract with the service provider could take the form of a standard 24-month (or similar) contract between the employee and the service provider or a "prepaid" (or similar) contract.

The employer may require the employee to use his or her private contract or equipment during the course of the employee's employment for work purposes. Typically the employer would grant the employee an allowance or a reimbursement in order to defray the expenditure incurred for business purposes.

3. The law

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

4. Application of the law

4.1 Employer-owned equipment and related services

4.1.1 Right of use of an asset

A taxable benefit arises when an employee is granted the right to use an employer's asset (such as a cell phone or a laptop) for private or domestic purposes.

The amount of the taxable benefit = value of private or domestic use of the asset – any consideration payable by the employee for such use or any amount spent by the employee on repairing and maintaining the asset.

Subject to specified exceptions, the value of private use is calculated using one of the following methods –

- if the asset is held by the employer under a lease or hiring agreement, the *rental* payable by the employer for the period of use; or
- if the asset is owned by the employer, an amount calculated for the period of use at the rate of *15% per annum of the lesser of the cost¹ or the market value* of the asset at the date the employee obtained the use of the asset.

However, if the employee is granted the sole right of use of the asset over its useful life or a major portion of its useful life, the value of private or domestic use is equal to the *cost of the asset to the employer* and the benefit is held to accrue to the employee on the date the employee was first granted the right to use the asset.² This would often be the case when an employee is granted the use of an employer-purchased laptop or cell phone as employees would generally have the use of these assets over their useful lives.

The word “major” is not defined in the Act and must therefore be given its ordinary meaning. The word means the greater, more important or main part³ or larger in extent, number and so forth.⁴ This means that if the employee is granted the right to use the asset for *more than 50%* of its useful life, it will constitute the right to use the asset for a major portion of its useful life.

No value is placed on the value of private or domestic use of an asset consisting of telephone or computer equipment⁵ which the employee uses **mainly** for the purposes of the employer's business.⁶

The word “mainly” has been interpreted by the courts⁷ to mean a quantitative measure of *more than 50%*. This means that if more than 50% of the total use of the asset is for business purposes then no value will be placed on the private or

¹ The appropriate method to determine cost, for example specific cost, weighted average or marginal cost, will depend on the facts and circumstances of the particular case.

² The Act does not provide for a deduction in the hands of the employee if that employee returns the asset to the employer before the end of its useful life.

³ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

⁴ Collins English Dictionary. 3rd ed. Glasgow: Harper Collins, 1991.

⁵ See 1 for examples of different types of equipment.

⁶ Paragraph 6(4)(bA).

⁷ *Sekretaris van Binnelandse Inkomste v Lourens Erasmus (Eiendoms) Bpk* 1966 (4) SA 434 (A).

domestic use of that asset. The assessment of whether or not the asset is used mainly for business purposes must be determined on a case-by-case basis taking all the facts and circumstances into account.

The particular asset's capabilities and functionality, and the different ways the particular employee uses the asset, will dictate the various aspects of use which are relevant and must be taken into account in determining if an asset is used mainly for business purposes. For example, in the context of smartphones, receiving phone calls, making phone calls, data usage and text messaging may all be relevant.

The identification and determination of what constitutes business use and private use is potentially an extremely detailed task which can be administratively burdensome and onerous. However, it will not always be administratively burdensome and onerous as a detailed analyses of, for example, itemised billings will often not be required in considering and reaching a view on whether an asset is used mainly for business purposes. SARS will consider the facts and the circumstances of the particular employee's case. This will include a consideration of, amongst others, the nature of the employee's work and official duties (that is, job responsibilities), qualifying criteria for entitlement to the use of the asset or service and the conditions of use or terms of the grant. There must be a close link between the grant of use of the asset and the employee's job responsibilities.

In practice the terms of the grant are often documented in a policy document which regulates the use of, for example, cell phones and laptops granted to employees. Policy documents generally specify the terms associated with the use of the asset and the consequences if an employee does not adhere to the policy.

The employer and the employee bear the onus of proving that based on the facts and circumstances the particular asset is required due to the nature of the employee's job and the associated responsibilities and that it is used mainly for business purposes.

Example 1 – The right of use of an asset over its useful life

Facts:

An employer purchases a cell phone costing R4 500. The employer grants an employee (A) the right to use the cell phone for whatever purpose A desires. A is responsible for purchasing the prepaid recharge vouchers for the phone.

A has exclusive use of the phone and is only required to return the phone in 2 years' time at which stage the employer anticipates that the cell phone will be obsolete and will have to be scrapped.

A only uses the cell phone for private purposes and does not pay the employer any consideration for the right of use.

Result:

A has the right of use of an asset for private or domestic purposes. The asset is **not** used mainly for purposes of the employer's business and is a taxable benefit in A's hands. As A has the right to use the cell phone for its useful life, the taxable benefit is R4 500 in the month that the employer granted A the right to use the asset.

Example 2 – The right of use of an asset over its useful life*Facts:*

An employer purchases a cell phone costing R6 000. The employer grants an employee (A) the right to use the cell phone for whatever purpose A desires. A is responsible for purchasing the prepaid recharge vouchers for the phone.

A has exclusive use of the phone and is only required to return the phone in 2 years' time at which stage the employer anticipates that the cell phone will be obsolete and will have to be scrapped.

A only uses the cell phone for private purposes. A agreed to pay the employer R1 500 for the use of the phone as the employer was originally only prepared to purchase a phone costing R4 500.

Result:

A has the right of use of an asset for private or domestic purposes. The asset is **not** used mainly for purposes of the employer's business and is a taxable benefit in A's hands. As A has the right to use the cell phone for its useful life, the taxable benefit is R4 500 in the month that the employer granted A the right to use the asset (value of private use R6 000 – consideration paid by A of R1 500).

Example 3 – The right to use an asset mainly for business purposes*Facts:*

Dr C is employed by Good Medical Health (Pty) Ltd (Good Medical Health). Part of Dr C's job responsibilities is to run the emergency phone assistance programme which is available to patients 24 hours a day, 7 days a week. Good Medical Health purchases and gives Dr C a prepaid cell phone to use for purposes of the emergency line.

Good Medical Health also purchases sufficient airtime in case Dr C needs to make a call. However, the purpose of the phone is to keep the line open in order to receive emergency calls and to be able to provide life-saving assistance telephonically. There is limited use of the phone to make calls and it is rarely used to make personal calls.

Result:

The taxable benefit is nil because based on the facts and circumstances of the case Dr C uses the cell phone and prepaid recharge vouchers *mainly* for the purpose of Good Medical Health's business and as a result the private or domestic use of the cell phone is given no value under paragraph 6(4)(bA).

Example 4 – Assets used mainly for purposes of employer's business*Facts:*

ABC Limited purchased a laptop for the sole use by one of its employees, A. A is the company accountant and uses the laptop to perform his duties on a daily basis.

The agreement between ABC Limited and A is that the laptop *must* be used mainly for purposes of the employer's business. A is permitted to use the laptop for occasional private use and is not required to account for business and private usage.

Result:

A uses a computer to perform his job and is *required to use* the computer mainly for the purposes of the employer's business. As a result SARS will accept that the laptop is used mainly for purposes of ABC's business and no value will be placed on the private or domestic use of the computer. This is so despite the fact that A is not required to monitor and maintain records of the actual business and private usage.

Example 5 – Assets not used mainly for purposes of employer's business

Facts:

ABC Limited purchased a laptop which it allows S, the company's receptionist, to use. On receipt of the laptop S signed an IT form confirming receipt of the laptop. The fine print on the form stated that all company assets must be used mainly for work purposes.

As S already has a desktop computer at work, the laptop is left at home. S is generally not required to perform any work outside of normal office hours and uses the laptop at home for private purposes. As an exception to the norm S occasionally assists with capturing data into a company database over the weekend – S does this from home using the company laptop.

Result:

S's job responsibilities do not require the use of a laptop mainly for work purposes. The fact that the IT form stated that the asset must be used mainly for work purposes is not relevant because it is not a condition that is enforced in S's case.

ABC Limited and S will need to determine the value of the private use taking into account the period of use.

Another exception is when the private or domestic use is incidental to the business use. In the case of telephone and computer equipment this exception has effectively been superseded by the exception discussed above, that is, when these assets are used mainly for business purposes. In these circumstances the value of private use will also be nil.

4.1.2 Free or cheap services provided by the employer

A taxable benefit arises to the extent a service, which has been rendered to an employee at the employer's expense, is used for the employee's private or domestic purposes. The service can be rendered by the employer, however, it is often rendered by a service provider as a consequence of an arrangement with the employer. Examples include network access to make and receive telephone calls and internet connectivity.

The amount of the taxable benefit = cost⁸ to the employer of rendering or having the service rendered⁹ – any consideration payable by the employee for such service.

There are exceptions to the general valuation rule noted above. No value is placed on the private use of a communication service *if* the service is used *mainly for business purposes*. An assessment of whether or not the service is used mainly for business purposes must be determined on a case-by-case basis taking all the facts and circumstances into account.

The type of factors which SARS will consider in assessing whether the service is used mainly for business purposes are the same as those discussed in **4.1.1**.

Employers are responsible for ensuring that the services are used mainly for business purposes, failing which they will be required to include a taxable fringe benefit in the employee's gross income and, for purposes of calculating employees' tax, remuneration.

No value is also placed on the private use of a telecommunication service if the service is rendered to employees as a benefit to be enjoyed by them at their place of work, for example, private calls made from the office using the employer's fixed line service.

Example 6 – Taxable benefit for free or cheap services

Facts:

An employee is granted the use of a cell phone as a benefit of employment. The employee uses the phone *mainly* to make and receive personal telephone calls. The employee does not pay for personal calls.

Result:

A taxable benefit arises under paragraph 2(e) because the service, which has been provided by arrangement with the employer, has been used for private purposes and the employee has not paid any consideration for that private use. The amount of the benefit is equal to the cost to the employer of having that service rendered but limited to the extent it was used for private purposes. Accordingly, the monthly subscription and any call charges borne by the employer will need to be allocated between business use and private use. The amount of the taxable benefit will be equal to the portion attributable to the private use.

Example 7 – Taxable benefit for the right of use of an asset and free and cheap services

Facts:

An employer enters into a cell phone contract with ABC Service Provider. The subscription is R300 per month and includes a "free cell phone" and "100 free minutes" per month. The contract is for a period of 24 months.

⁸ The appropriate method to determine cost, for example, specific cost, weighted average or marginal cost will depend on the facts and circumstances of the particular case.

⁹ To the extent the service is used for private or domestic purposes.

The employer grants the right of use of the cell phone to the employee for the period of the contract based on the understanding that the employee has to be available and be able to make business calls if necessary when the manager is away on business. This happens every few months. Other than that the employee uses the phone mainly to receive and make private calls and for private emails.

During the month of February 2014 the employee used 40 minutes for business calls and 50 for private calls. The employee only used email for private purposes and it was estimated that 80% of the calls received were private.

The employee does not pay any consideration for this fringe benefit.

Result:

The employer is paying R300 per month for the subscription, which includes a “free cell phone” (depending on the contract this may be structured as the right of use of the cell phone with ownership transferring on termination of the contract) and “free minutes”.

The employee’s use is mainly for private or domestic purposes and **not** mainly for purposes of the employer’s business. Based on the cell phone’s capabilities and functions and the employee’s actual use of the phone, the number of minutes are considered to be an accurate reflection of business and private use.

The taxable benefit for February 2014 is calculated as follows:

$$R300 \times 50 / 90 = R166,67.$$

Example 8 – Free or cheap services used mainly for business purposes

Facts:

An employee is granted internet access at home by the employer in order to be able to conduct the employer’s business outside of office hours. The employee accesses the internet at home on a personal computer in order to conduct research for purposes of the employer’s business. The employee occasionally uses the internet for private purposes. The monthly internet subscription is paid by the employer.

Result:

No value is placed on the taxable benefit because based on the facts and circumstances of the case the internet access provided by the employer is a telecommunication service used *mainly* for purposes of the employer’s business.

4.2 Employee-owned equipment and services

Employees may incur business-related expenses if they use a privately-owned cell phone or laptop (or any other privately-owned telephone or computer equipment or telecommunication service) for business purposes.¹⁰ Employers generally use one of two methods to compensate employees for the business-related expenditure incurred, namely, a reimbursement or an allowance. The income tax implications are discussed below.

4.2.1 Reimbursement

An employee may be reimbursed for actual business expenditure incurred on behalf of the employer.

Reimbursements of expenditure, which were incurred on the instruction of the employer and where the employee is required to provide the employer with proof (for example, itemised billing statements) that the amounts were expended as instructed, are excluded from taxable income.¹¹ Refer to Interpretation Note No. 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements”, for an analysis of the income tax treatment of reimbursements.

Reimbursements at an amount greater than the cost incurred for business purposes will be included in remuneration and are subject to tax to the extent the amount reimbursed exceeds that cost.

Example 9 – Calculation of the reimbursement for business use

Facts:

An employee enters into a cell phone contract with ABC Service Provider. The subscription is R600 per month for a period of 24 months. The employee is entitled to a free cell phone and 500 free minutes per month.

During the month of February 2014 the employee used 150 minutes for business purposes and 300 minutes for private purposes.

Based on the cell phone’s capabilities and functions and the employee’s actual use of the phone, the number of minutes are considered to be an accurate reflection of business and private use.

Result:

The total of February’s bill was R600.

The business portion of the employee’s actual expenditure for February 2014 is calculated as follows:

$$R600 \times 150 / (150 + 300) = R200$$

Business use = R200 for February 2014

¹⁰ Section 23(m) does not restrict an employee from claiming a section 11(e) wear-and-tear deduction (see Interpretation Note No. 13 (Issue 3) dated 15 March 2011 “Deductions: Limitation of Deductions for Employees and Office Holders” for more information). However, the cost of the asset on which the allowance is based may be nil depending on the particular contract.

¹¹ Section 8(1)(a)(ii).

The employee may therefore be reimbursed up to R200 and it will not be subject to income tax. Any reimbursement in excess of this amount is a reimbursement of private expenditure and is subject to taxation.

Example 10 – Calculation of the reimbursement for business use

Facts:

An employee enters into a cell phone contract with ABC Service Provider (ABC). The subscription is R600 per month for a period of 24 months. The employee is entitled to a free cell phone and 500 free minutes per month. ABC charges R2 per minute for calls in excess of 500 minutes.

During February 2014, the employee used 250 minutes for business calls and 570 for private calls. The itemised billing statement indicates that of the minutes that exceeded the 500 free minutes, 210 were for business calls and 110 were for private calls.

Based on the cell phone's capabilities and functions and the employee's actual use of the phone, the number of minutes are considered to be an accurate reflection of business and private use.

Result:

The total of February's bill was (R600 + (320 × R2) per minute) = R1 240.

The business portion of the employee's actual expenditure for February 2014 is calculated as follows:

- Business portion of the monthly subscription (based on call minutes that are considered to be reflective of business and private use) plus the actual cost of business calls
- = (R600 × 250 total business minutes / 820 total minutes) + (210 paid business minutes × R2 per minute)
- = R602,93.

The employee may therefore be reimbursed up to R602,93 and it will not be subject to income tax. Any reimbursement in excess of this amount is a reimbursement of private expenditure and is subject to taxation.

An employee must retain records of business expenditure claimed for a period of five years from the date when the employee's tax return is submitted to SARS.¹²

In the context of telephones and computers, "advances" are not used as frequently as reimbursements. However, if an employee is given an advance to fund business-related expenditure incurred on the employer's instructions and the employee is subsequently obliged to prove and account for the expenditure and to refund any excess (or claim the shortfall) then the tax treatment is the same as that set out above for reimbursements.

¹² Section 29(3)(a) of the Tax Administration Act No. 28 of 2011.

4.2.2 Allowance

An employee may receive an allowance from an employer when the employer is satisfied that the employee will incur business-related expenditure on behalf of the employer. The employee is not obliged to prove or account for the actual business expenditure to the employer.

The allowance must be included in the employee's taxable income under the provisions of section 8(1)(a)(i). Generally, no deduction may be claimed against this allowance in determining the amount to be included in taxable income.¹³ See Interpretation Note No. 14 (Issue 3) for an analysis of the tax treatment of allowances.

Employers that pay employees a "predetermined reimbursement" based on expected business usage are not paying a "reimbursement" within the true meaning of the word. Payments based on expected or anticipated business usage and not linked to actual expenditure are treated as allowances and not as reimbursements.

An allowance is included in taxable income and is also included in remuneration for purposes of calculating monthly employees' tax deductions.

Example 11 – Reimbursive allowance

Facts:

Z works for BB Shuttle Services as a vehicle service technician. BB Shuttle Services pays him a predetermined reimbursement of R600 per month (based on expected business usage). Z uses his own cell phone and is only required and entitled to submit claims if his business calls exceed R600.

Result:

The full amount of R600 a month must be included in Z's taxable income as an 'allowance'. The act of paying a "predetermined amount" based on expected business usage constitutes the paying of an allowance [section 8(1)(a)(i)]. Accordingly, the amount must be included in taxable income and will also be subject to the monthly withholding of employees' tax. Any reimbursement for business calls in excess of R600 will not be subject to tax.

4.3 Prepaid airtime

The value of a prepaid recharge voucher granted by an employer to an employee is a taxable benefit to the extent it is used by the employee for private or domestic purposes. The rules as discussed in 4.1.1 and 4.1.2 are applicable to prepaid recharge vouchers.

¹³ Section 8(1) specifies certain circumstances in which a deduction from the amount to be included in taxable income will be allowed. However, the circumstances are not applicable to the subject of this Note. Section 8(1) does not exclude a deduction under section 11(e) if the requirements of that section are met.

Example 12 – Prepaid airtime: cell phone*Facts:*

X is a manager at ZM Motors Limited (ZM Motors). X uses his own cell phone but, due to his position in the company, ZM Motors gives him a R500 airtime voucher every month. X is allowed to use the airtime for his private or domestic purposes.

Result:

In the absence of detail regarding his job responsibilities and the requirement that the voucher must be used mainly for business purposes, SARS will not, without additional evidence or support, accept that the airtime voucher is used mainly for purposes of ZM Motors' business.

This means ZM Motors will have to determine the portion of the airtime voucher and the cost that was used for private purposes and treat it as a taxable fringe benefit.

The full value of the airtime voucher will be included in X's taxable income if X only made personal calls or if the decision was simply made not to allocate the total cost between private and business use.

4.4 Split billing between the employer and employee

Split billing occurs when both the employer and the employee are contractually obliged to pay amounts directly to a telecommunication service provider for services provided to the employee. Examples of this are where the obligation to pay the monthly subscription vests in the employer and any call charges are payable by the employee or situations where the employer places a limit on the amount of the call charges they will pay and any excess must be settled by the employee.

4.4.1 Debts owing by the employer

The portion of the bill that is for the employer's account is a free or cheap service and must be dealt with as discussed in 4.1.2. See **Example 13**.

4.4.2 Debts owing by the employee

In the context of split billing, the portion of the bill that is for the account of the employee will often be settled via a direct debit against the employee's bank account. In this case a taxable fringe benefit does not arise because the employee is settling the relevant portion of the debt. However, the amount paid by the employee may impact on the calculation of the taxable fringe benefit – see **Example 14**.

There may be circumstances in which the employer will pay the service provider the portion of the bill owing by the employee. This constitutes the payment of an amount owing by the employee to a third person and is a taxable fringe benefit if the employer does not require full reimbursement from the employee.¹⁴ In the absence of reimbursement, the amount paid by the employer and not recovered from the employee is a taxable benefit.

¹⁴ Paragraph 2(h).

Example 13 – Debt vests with the employee*Facts:*

FGH Limited (FGH) has entered into a cell phone contract with Cell Phone Service Provider Company. The subscription is R350 per month. Under the split billing agreement between FGH, Cell Phone Service Provider Company and Employee Z, any call charges that exceed the free minute allocation are payable by Employee Z. Cell Phone Service Provider Company will recover all call charges directly from Employee Z's bank account but if unsuccessful may collect the amount from FGH.

Result:

Any amount paid by FGH for the call charges which it fails to recover from Employee Z is a taxable benefit in Employee Z's hands.

Whether or not FGH's payment of the monthly subscription gives rise to a taxable fringe benefit will depend on the facts – see 4.1.2.

Example 14 – Split billing*Facts:*

An employer (X) and an employee (Z) enter into a split billing arrangement with ABC Service Provider. X pays the monthly subscription of R400 which includes 100 free minutes and a free cell phone. Z is responsible for any usage charges which are payable over and above the monthly subscription (for example, call, text or data charges not included in the monthly subscription).

During the month of January 2014, Z made calls totalling 240 minutes of which 110 minutes were for business purposes. ABC Service Provider deducted the usage charges for the excess 140 minutes of R280 directly from Z's bank account. Z analysed the itemised billing statement and determined that of the 140 minutes which exceeded the 100 free minutes, 50 were for business calls and 90 were for private calls.

Result:

A taxable fringe benefit does not arise for the usage charges settled directly by Z.

In relation to the subscription paid by X, there is insufficient information to support an assessment that, taking all of the aspects of use into account, the phone was used mainly for business purposes. Accordingly, the value of private use must be determined. It is accepted that the number of minutes calls are made is an accurate reflection of business and private use.

The private portion of the total bill for January 2014 may be calculated as follows:

- Private portion of the monthly subscription (based on call minutes which are considered to be reflective of business and private use) plus the actual cost of private calls
- = [(R400) subscription × (240 – 110) private minutes / 240 total minutes] + (90 chargeable private minutes × R2 / minute)
- = R396,67

Private portion of the total bill paid for by X = R396,67 – R280 paid by Z* = R116,67**

* Allocate amount paid by employee to private use first

** Limited to nil

5. Conclusion

The facts and circumstances of a particular employee's case will determine whether the use of an employer-provided telephone, computer equipment or employer-funded telecommunication service gives rise to a taxable fringe benefit.

A taxable fringe benefit will not arise if the facts and circumstances indicate that the employee uses the asset or telecommunication service mainly for the purposes of the employer's business. "Mainly" in this context means that more than 50% of the total use of the asset or service is for business purposes.

The employer will have to calculate the value of the taxable fringe benefit if the asset or service is not used mainly for business purposes. In the case of –

- the use of an asset, the value of the taxable fringe benefit is, depending on the facts, equal to either the rental cost or the 15% calculated amount or the cost to the employer, less any consideration payable by the employee for such use; or
- the use of a telecommunication service, the value of the taxable fringe benefit is the cost to the employer of rendering or having the service rendered but only to the extent it is used for private or domestic purposes less any consideration payable by the employee for such service.

Allowances received in anticipation of an employee incurring business-related expenditure for telephone and computer equipment or telecommunication services must be included in taxable income and generally do not qualify for any reductions or deductions in determining the amount of the allowance which must be included in taxable income.

Reimbursements of expenditure, which was incurred on the instruction of the employer and where the employee is required to provide the employer with proof of the expenditure, are excluded from taxable income. "Predetermined reimbursements" based on expected business usage are treated as allowances and not as reimbursements. "Reimbursements" are taxable to the extent they exceed the cost incurred by the employee for business purposes.

In context, "advances" are not used as frequently as allowances or reimbursements. Depending on the detail, the treatment may be the same as that for reimbursements.

Annexure A – The law

Paragraphs 2(b), (e) and (h) – Taxable benefits

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
- (c) ...
- (d) ...
- (e) any service (other than a service to which the provisions of subparagraph (j) or (k) or paragraph 9(4)(a) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10, or the cost referred to in item (b) of that subparagraph, as the case may be; or
- (f) ...
- (g) ...
- (gA) ...
- (h) the employer has, whether directly or indirectly, paid any debt owing by the employee to any third person (other than an amount in respect of which item (i) or (j) applies), without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any debt owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the debt owing or caused the running of the prescription to be interrupted, unless it is shown to the satisfaction of the Commissioner that the employer’s failure to recover the debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or

Paragraph 6 – Right of use of any asset (other than residential accommodation or any motor vehicle)

6. (1) Where an employee has been granted the right to use any asset (other than residential accommodation or 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 or domestic use of such asset (as determined under subparagraph (2) of this paragraph for the period of use) as exceeds any consideration given by the employee for the use of such asset during such period or any amount expended by the employee on the maintenance or repair of such asset.

(2) The value to be placed on the private or domestic use of such asset shall be—

- (a) where the asset is held by the employer as the lessee under a lease or hiring agreement, the amount of the rental payable by the employer in respect of the period during which the employee has the use of the asset; or
- (b) where the asset is owned by the employer, an amount calculated for the period during which the employee has the use of the asset at the rate of 15 per cent per annum on the lesser of the cost of such asset to the employer or the market value thereof at the date of commencement of the period of use: Provided that where an employee is granted the sole right of the use of the asset for a period extending over the useful life of the asset or over a major portion thereof, the value to be placed on the private or domestic use of the asset shall be the cost thereof to the employer, and in such case the taxable benefit in respect of such use shall be deemed to have accrued to the employee on the date on which he was first granted the right of use of such asset.

(3) ...

(4) No value shall be placed under this paragraph on the private or domestic use of an asset by an employee, if—

- (a) such use is incidental to the use of the asset for the purposes of the employer's business ...
- (b) ...
- (bA) the asset consists of telephone or computer equipment which the employee uses mainly for the purposes of the employer's business; or
- (c) ...

Paragraph 10 – Free or cheap services

10. (1) The cash equivalent of the value of any taxable benefit derived from the rendering of a service to any employee as contemplated in paragraph 2(e) shall be—

- (a) ...
- (b) in the case of the rendering of any other service as contemplated in the said paragraph, the cost to the employer in rendering such service or having such service rendered, less the amount of any consideration given by the employee in respect of such service.

(2) No value shall be placed under this paragraph on—

- (a) ...
- (b) ...
- (bA) any communication service provided to an employee if the service is used mainly for the purposes of the employer's business;

- (c) any services rendered by an employer to his employees at their place of work for the better performance of their duties or as a benefit to be enjoyed by them at that place or for recreational purposes at that place or a place of recreation provided by the employer for the use of his employees in general; or

Paragraph 13(1) – Payment of employee’s debt or release of employee from obligation to pay a debt

13. (1) The cash equivalent of the value of the taxable benefit derived by reason of the payment of any amount by an employer in the circumstances contemplated in paragraph 2(h) shall be an amount equal to such amount and the cash equivalent of the benefit to an employee by reason of his release from the obligation to pay an amount owing, as contemplated in the said paragraph, shall be an amount equal to the amount that was owing.