Discussion Paper on the

Deemed Income Tax Deduction

for International Subsistence Expenses

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Discussion Paper on the Deemed Income Tax Deduction for International Subsistence Expenses under Section 8(1)(*c*)(ii) of the Income Tax Act, 1962 (Act No. 58 of 1962)

Your comments regarding this discussion paper are invited by 30 January 2009. Kindly send the comments by email, with the subject line "International subsistence allowance changes", to policycomments@sars.gov.za or by facsimile to 012-422-5195.

Although individual responses will not be possible, all comments will be acknowledged and taken into account.

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December 2008

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1. Introduction

An employer often grants an employee an allowance to pay for certain business expenses incurred by the employee on behalf of the employer. The allowance is based on reasonably expected business expenses and the employee is not obliged to prove the expenditure to the employer.

From an income tax perspective, only certain allowances can be reduced by actual or deemed expenses before being subjected to tax. An example is a subsistence allowance to defray the costs of accommodation, meals and incidental costs whilst an employee is obliged to spend at least one night away from his usual place of residence, as a result of business commitments.

2. The income tax law[1] and the subsistence allowance

A subsistence allowance is generally not subject to employees' tax (SITE and PAYE). An exception to this is the situation in which an employee has not travelled on business and did not refund the allowance to the employer by the end of the month following the month in which it is paid. Under these circumstances an anti-avoidance rule is triggered. The amount paid is no longer considered to be a subsistence allowance but is deemed to be an amount paid for services rendered that is subject to employees' tax.

A subsistence allowance is included in the total income of the employee and is taxed when the annual income tax return of the employee is assessed, after allowing for deductions against the allowance. The maximum amount that can be claimed as a deduction is limited to the amount of the allowance.

There are two methods for claiming deductions against the subsistence allowance. These are:

2.1. Actual expenses

An employee will be able to claim actual expenses in respect of accommodation, meals and incidental costs against the allowance where the employee has maintained proof of the expenditure. However, this can be tedious and time consuming, especially where travel on business is frequent.

2.2. Deemed expenses

Employees who do not keep proof of actual expenses will still be able to claim a deduction against the subsistence allowance. In this regard, a specified daily amount is deemed to have been expended on subsistence expenses irrespective of the actual expenses. The deemed daily amounts for a year of assessment are published by notice in the *Gazette* before the beginning of the year of assessment for individuals.

[1] Income Tax Act, 1962: Paragraph (*c*) of definition of "gross income" in section 1 and section 8(1)(*a*)(i)(*bb*) read with section 8(1)(*c*) and paragraph (*b*A)(ii) of the definition of "remuneration" in the Fourth Schedule.

The amount that is deemed to have been expended does not include accommodation costs, which means that an employee will still have to maintain proof of accommodation expenditure where the employee is expected to defray this cost from the subsistence allowance. The daily amount that is deemed to have been expended on subsistence costs, therefore, only caters for meals and/or incidental costs.

For the current year of assessment for individuals (ending on 28 February 2009), the amounts that are deemed to have been incurred on subsistence expenses for each day or part of a day are as follows:

Business travel within South Africa:	
Incidental costs only	R 73-50
Meals and incidental costs	R 240-00
Business travel outside South Africa	US$ 215

Further information on the taxation of allowances can be found in Interpretation Note 14, *Allowances, Advances and Reimbursements*, which is available on the SARS website, http://www.sars.gov.za/. The page for Interpretation Notes: Income Tax can be accessed directly via the following electronic link: http://www.sars.gov.za/home.asp?pid=5993

3. Subsistence costs deemed to have been incurred outside South Africa

A single deemed daily amount currently applies for business travel in all countries outside South Africa, including neighbouring countries like Lesotho and Swaziland. This amount has been set bearing in mind the list of subsistence allowances prepared by the Department of Public Service and Administration (DPSA) for Government officials that travel outside South Africa. The list is updated from time to time and sets out subsistence allowances based on the cost of living in different countries.

4. Problems associated with a single deemed daily amount for all countries

Although a single deemed amount may be initially convenient, it is self evident that subsistence expenses vary from country to country around the world, depending on each country's cost of living and particular circumstances. Reasonable subsistence expenses incurred while travelling outside South Africa may be either significantly lower or higher than the single amount. If they are lower, employers and employees may attempt to utilise the subsistence allowances to disguise taxable remuneration as tax-free allowances, despite the clear warnings in this regard in paragraph 6.1 of Interpretation Note 14. If they are higher, employees are forced to maintain proof of expenditure on meals and incidentals to deduct against the higher subsistence allowances they have received.

5. Proposed changes to address the problems

In order to address the problems identified, a change to the subsistence allowance for business travel outside South Africa was announced by the Minister of Finance in the 2006 Budget Review. The intention was to align the deemed amounts by country more closely with the actual costs likely to be incurred in the respective countries. This announcement was the basis for the 2006 legislative amendment to section 8(1)(*c*)(ii) of the Income Tax Act, 1962.

Section 8(1)(*c*)(ii), amongst other things, now empowers the Commissioner to determine the amounts deemed to have been expended by the recipient of a subsistence allowance on meals and/or incidental costs for each day or part of a day he or she is absent from his or her usual place of residence. Where such allowance relates to travel outside South Africa, the amounts can be fixed by country or by region.

The deemed amount by country approach has not been implemented to date due to practical constraints that may face employers, payroll service providers, and SARS. SARS is mindful that each party has to be given sufficient notice to make the necessary adjustments to its systems and operations, hence the release of this discussion paper.

It is now proposed that the current single deemed amount for all countries outside South Africa be replaced by more accurate amounts by country, based on the list that is used by the DPSA for Government officials travelling to the respective countries. The deemed amounts proposed are set out in the Annexure and are 10 per cent higher than those used by the DPSA to cater for high ranking employees.

Examples of countries that use the deemed amount by country approach include Australia, the United Kingdom and the United States of America. Australia divides countries into six cost groups, with three sub groups per group, depending on employees' salaries. The United Kingdom and United States of America provide a detailed list by country and, in many cases, by region in each country.

6. Administrative impact of the proposed changes

Employers are not obliged to use the stipulated deemed daily amounts in the list published by SARS when setting their subsistence allowances, but should set appropriate rates based on anticipated actual expenditure.

However, they will need to make use of the list to determine the tax implications for the amounts that they pay to employees as subsistence allowances whilst the employees are travelling on business outside South Africa. They can then make the necessary adjustments to the payroll to ensure that the amounts paid appear against the correct codes on the employees' payslips and IRP 5 certificates.

Where employers make use of payroll software to administer the taxability of subsistence allowances, the software will have to be adjusted by them or their payroll software providers to cater for the changes.

SARS will also have to upgrade its systems and procedures to deal with the changes.

7. Invitation for comments on the proposed changes

Comments are invited on the proposed changes by 30 January 2009. Kindly send the comments by email, with the subject line "International subsistence allowance changes", to policycomments@sars.gov.za or by facsimile to 012-422-5195.

Although individual responses will not be possible, all comments will be acknowledged and taken into account in the final decision by SARS on the implementation of the proposed changes. Specific comment is invited on the lead time required to implement the proposed changes and whether it will be possible to implement them for the year of assessment commencing on 1 March 2009.

Whether or not the proposed changes are implemented for the year of assessment commencing on 1 March 2009, the annual notice that sets the deemed subsistence amounts for business travel within and outside South Africa will be published in the *Gazette* and on the SARS website by the end of February 2009.

ANNEXURE

Country	**Currency**	**Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962**
Albania	Euro	97
Algeria	Euro	136
Angola	US $	191
Antigua and Barbuda	US $	220
Argentina	US $	75
Armenia	US $	279
Austria	Euro	108
Australia	Australian $	175
Azerbaijani	US $	145
Bahamas	US $	191
Bahrain	B Dinars	36
Bangladesh	US $	79
Barbados	US $	202
Belarus	Euro	117
Belgium	Euro	124
Belize	US $	152
Benin	Euro	89
Bolivia	US $	53
Bosnia-Herzegovina	Euro	112
Botswana	Pula	799
Brazil	US $	133
Brunei Darussalam	US $	88
Bulgaria	Euro	89
Burkina Faso	Euro	100
Burundi	US $	138
Cambodia	US $	90
Cameroon	Euro	100
Canada	Canadian $	156
Cape Verde Islands	Euro	88
Central African Republic	Euro	96
Chad	Euro	121

Country	**Currency**	**Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962**
Chile	US $	105
Colombia	US $	94
Comoros	Euro	85
Cook Islands	New Zealand $	391
Cote D'Ivoire	Euro	124
Costa Rica	US $	62
Croatia	Euro	105
Cuba	Euro	107
Cyprus	Euro	116
Czech Republic	Euro	80
Democratic Republic of Congo	US $	193
Denmark	Euro	185
Djibouti	US $	99
Dominican Republic	US $	99
Ecuador	US $	92
Egypt	US $	90
El Salvador	US $	80
Equatorial Guinea	Euro	130
Eritrea	US $	106
Estonia	Euro	91
Ethiopia	US $	65
Fiji	US $	100
Finland	Euro	140
France	Euro	149
Gabon	Euro	228
Gambia	Euro	110
Georgia	US $	261
Germany	Euro	107
Ghana	Euro	110
Greece	Euro	114
Grenada	US $	151
Guatemala	US $	85
Guinea	Euro	78
Guinea Bissau	Euro	59

Country	**Currency**	**Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962**
Guyana	US $	118
Haiti	US $	109
Honduras	US $	67
Hong Kong	Hong Kong $	1,000
Hungary	Euro	80
Iceland	ISK	30,320
India	US $	139
Indonesia	US $	86
Iran	US $	67
Iraq	US $	125
Ireland	Euro	233
Israel	US $	122
Italy	Euro	120
Jamaica	US $	151
Japan	Yen	18,363
Jordan	US $	128
Kazakhstan	US $	103
Kenya	US $	102
Kiribati	Australian $	233
Korea	WON	145,574
Kuwait	US $	152
Kyrgyzstan	US $	196
Laos	US $	100
Latvia	Euro	74
Lebanon	US $	120
Lesotho	Rand	750
Liberia	US $	97
Libya	US $	111
Lithuania	Euro	154
Macau	Hong Kong $	1,196
Macedonia	Euro	100
Madagascar	Euro	107
Madeira	Euro	290
Malawi	US $	70

Country	Currency	Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962
Malaysia	US $	308
Maldives	US $	202
Mali	Euro	101
Malta	Euro	132
Marshall Islands	US $	255
Mauritania	Euro	178
Mauritius	US $	215
Mexico	US $	86
Moldova	US $	165
Mongolia	US $	69
Montenegro	Euro	109
Morocco	US $	106
Mozambique	US $	69
Myanmar (Burma)	US $	74
Namibia	Rand	660
Nauru	Australian $	278
Nepal	US $	64
Netherlands	Euro	127
New Zealand	New Zealand $	160
Nicaragua	US $	65
Niger	Euro	99
Nigeria	US $	121
Niue	New Zealand $	252
Norway	NOK	1,647
Oman	Rials Omani	55
Pakistan	US $	53
Palau	US $	252
Panama	US $	108
Papa New Guinea	Kina	285
Paraguay	US $	43
People's Republic of China	US $	157
Peru	US $	111
Philippines	US $	92
Poland	Euro	97

Country	Currency	Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962
Portugal	Euro	113
Qatar	Qatar Riyals	523
Republic of Congo	Euro	149
Reunion	Euro	164
Romania	Euro	78
Russia	Euro	154
Rwanda	US $	119
Samoa	Tala	243
Sao Tome	Euro	86
Saudi Arabia	Saudi Riyal	431
Senegal	Euro	150
Serbia	Euro	95
Seychelles	Euro	275
Sierra Leone	US $	90
Singapore	Singapore $	180
Slovakia	Euro	81
Slovenia	Euro	73
Solomon Islands	Sol Islands $	811
Spain	Euro	109
Sri Lanka	US $	74
St. Kitts & Nevis	US $	227
St. Lucia	US $	215
St. Vincent & The Grenadines	US $	187
Sudan	US $	121
Suriname	US $	107
Swaziland	Rand	411
Sweden	Swedish Krona	843
Switzerland	S Franc	230
Syria	US $	98
Taiwan	New Taiwan $	3,628
Tajikistan	US $	117
Tanzania	US $	85
Thailand	Thai Baht	3,050
Togo	Euro	78

Country	**Currency**	**Maximum amounts deemed to have been actually expended outside the Republic in terms of section 8(1)(*c*)(ii) of the Income Tax Act, 1962**
Tonga	Pa'anga	174
Trinidad & Tobago	US $	213
Tunisia	Tunisian Dinar	108
Turkey	US $	125
Turkmenistan	US $	125
Tuvalu	Australian $	339
Uganda	US $	78
Ukraine	Euro	131
United Arab Emirates	Dirhams	410
United Kingdom	B Pounds	107
Uruguay	US $	91
USA	US $	157
Uzbekistan	US $	116
Vanuatu	US $	131
Venezuela	US $	117
Vietnam	US $	88
Yemen	US $	94
Zambia	US $	119
Zimbabwe	US $	264
Other countries not listed	US$	215

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