

SUBSISTENCE AND TRAVEL POLICY

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| | Interpretation Note: No. 14 (Issue 3) | |

1. OBJECTIVES

- 1.1. During performing official duties for the municipality, it will be necessary for officials and Councillors to undertake official trips outside the area of jurisdiction of the municipality. It will also be necessary for persons not employed by or associated with the municipality to make trips to Kouga to attend interviews.
- 1.2. On other occasions it may be necessary for the Executive Mayor, Councillors and senior officials to make official trips to destinations overseas.
- 1.3. In all instances involving travel and accommodation, expenses will be incurred. This policy intends to address the issue of how such expenses will be paid by the municipality and what will be required to be produced by Councillors and officials in order to validate the claim for such expenditure.

2. APPLICATION

- 2.1. This policy applies to all Councillors, employees, ward committee members as well as to persons invited to interviews for vacancies.

3. DEFINITIONS

- 3.1. In this policy the following words shall have the meaning as assigned to them:
 - 3.1.1. **“Area of Jurisdiction”** means the area demarcated as EC 108 by the Municipal Demarcation Board,
 - 3.1.2. **“Candidate”** means any person who has been invited to an interview for a vacant position advertised
 - 3.1.3. **“Councillor”** means a person elected to the position of Councillor for Kouga Municipality in terms of the provisions of the Local Government Municipal Structures Act and includes the Executive Mayor;
 - 3.1.4. **“Director”** means any person appointed as Director of Kouga Municipality in terms the Local Government Municipal Systems Act, or any other person appointed to act in such position;
 - 3.1.5. **“Essential user car scheme”** means a person who is entitled to participate in the car scheme as provided for in the SALBC consolidated agreement.
 - 3.1.6. **“Executive Mayor”** means the Executive Mayor elected by the Municipal Council of Kouga Municipality in a permanent or acting capacity.
 - 3.1.7. **“International Travel”** means any trip outside the boundaries of South Africa;
 - 3.1.8. **“Manager”** means a person employed by Kouga Municipality as a Manager of a Specific Section and who reports directly to a Director.
 - 3.1.9. **“Municipal Manager”** means the Municipal Manager of Kouga Municipality appointed in terms of the Local Government Systems act or any person appointed to act as Municipal Manager;

- 3.1.10. **“Official AA rate”** means the running cost calculated per cc engine capacity and published in the official AA Schedules;
- 3.1.11. **“Official”** means anybody employed by the Kouga Local municipality including the Municipal Manager and Directors
- 3.1.12. **“Official municipal business”** means attending any form of conference, seminar, meeting, workshop, presentation, training, interview, test or examination, the delivering or collection of Material and Equipment or any other goods intended for use by the municipality and/or in respect of which the attendance of the attendee was approved and/or council initiated.
- 3.1.13. **“Vehicle Allowance”** means persons that receives a car allowance as part of his/her remuneration package and as a tool of trade;
- 3.1.14. **“Public Transport”** means a bus, train, taxi and aeroplane;
- 3.1.15. **“Employee”** means the Executive Mayor, Councillors, officials and ward Committee Members duly approved to attend in terms of the provisions of this policy.
- 3.1.16. **“Place of business”** in this policy means all municipal offices in the demarcated Kouga Municipal area's including ward councillor offices.

4. TRIP AUTHORISATIONS

- 4.1. National and Regional trips on official business may only be undertaken if such trip has been authorised by:
 - 4.1.1. In the case of the Executive Mayor – the mayoral committee/municipal manager
 - 4.1.2. In the case of Councillors – The Speaker:
 - 4.1.2.1. In the case of ward committee members – The Speaker;
 - 4.1.2.2. In the case of committee members (example: audit committee members) other than councillors, employees or ward committee members – The Speaker on recommendation by Municipal Manager;
 - 4.1.3. In the case of the Municipal Manager – The Executive Mayor;
 - 4.1.4. In the case of Directors – The Municipal Manager;
 - 4.1.5. In the case of Managers – the relevant Director;
 - 4.1.6. In the case of all other employees – the relevant Director on recommendation by the relevant Manager.
- 4.2. No trip may be undertaken without the required approval as provided for in 4.1. In instances where no prior approval has been obtained the municipality will not be responsible for any costs incurred.

- 4.3. No trip may be approved in instances where there isn't sufficient budget to pay the anticipated cost.
- 4.4. All employees are required to submit a report on the outcome of the meetings, congresses, workshops or other official business attended.

5. REIMBURSEMENT OF TRAVELLING COSTS

- 5.1. Whenever more than one employee is required to attend official Council business outside the municipal area, employees must as far as practically possible, travel together up to a maximum of four persons in a vehicle.
- 5.2. In all cases where employees are required to make official municipal business trips, the method of travelling which is the most beneficial to Council must be used. I.e. where municipal transport is available such transport must be used, however this clause does not apply to employees on the Vehicle Allowance and Essential User Scheme who are expected to use their own vehicles.
- 5.3. The following shall apply to councillors and employees who do not qualify to participate in the essential user, Vehicle allowance scheme or Councillors who are not receiving a vehicle allowance:
 - 5.3.1. When Councillors or officials are required to use their own private vehicle to attend official municipal business within or outside the area of jurisdiction of the municipality they shall be entitled to claim travelling costs based on kilometres travelled to a maximum distance as set out in the attached Annexure A at a rate based on the prevailing SARS rates.
- 5.4. The following shall apply to employees who are on the essential user car scheme and employees who are on the vehicle allowance scheme, as well as Councillors who receive a vehicle allowance:
 - 5.4.1. Officials who are required to use their own private vehicles to attend official business of the municipality shall be entitled to claim travelling costs based on the kilometres set out as the attached annexure A at the prevailing SARS rate.
 - 5.4.2. No reimbursement shall be made in respect of the travelling costs between place of residence and place of work.
 - 5.4.3. All claims shall only be measured from the ordinary place of work to the relevant business destination.
 - 5.4.4. Travelling claims by passengers is not permissible.

6. TOLL FEES AND PARKING COSTS

- 6.1. Claims for reimbursements for toll fees and parking at the airport or any similar car park or parking lot shall only be honoured if supported by documentary proof of payment.

7. CAR HIRE COSTS

- 7.1. Employees, excluding those mentioned in 7.1.2 and 7.1.3, who are required to hire a car when on official municipal business are only entitled to hire a Category A vehicle unless it will be more cost effective to hire a vehicle in a more expensive category such as when the number of employees involved justifies the hire of a micro-bus.
 - 7.1.1. Where an employee wishes to make use of a vehicle in a higher category than provided for herein, such employee may request an upgrade provided that the difference in costs shall be for the account of the employee.
 - 7.1.2. The Executive Mayor, Councillors, the Municipal Manager and Directors may hire a vehicle falling into a Category B. Clause 7.1.1 shall also apply.
 - 7.1.3. Physically disabled Councillors and employees who can only drive automatic vehicles may rent vehicles in the Category D (automatic) rental vehicles, provided that where able-bodied
 - 7.1.4. Councillors/employees are available to drive a manual vehicle as set out herein, such vehicle shall be rented.
 - 7.1.5. Vehicles may only be hired and driven by employees who have a valid driver's license, and where employees do not have a valid driver's license, public transport shall be utilized.
- 7.2. Car rental must be approved as part of the travel package before any official trip is embarked on. An employee who rents a vehicle whilst on business for the municipality without having received prior authorisation will only be reimbursed for the cost of the vehicle rental if proof of expenditure can be produced and the employee can demonstrate that vehicle rental was necessitated by circumstances and was reasonable.
- 7.3. Comprehensive insurance must be included in the daily tariff of all vehicles that are hired.
- 7.4. Notwithstanding the provisions above, all employees must make use of shuttle services if the cost of such a service is below the cost of hiring a vehicle.
- 7.5. The municipal manager must also consider making use of shuttle services if the cost of kilometers claimable by the employee and the cost of parking are higher than the shuttle services.

8. ACCIDENTS OR DAMAGE TO HIRED VEHICLES

- 8.1. The driver of a rental vehicle who is involved in an accident must, immediately after the accident or as soon as practically possible thereafter report the accident to the South African Police Service and obtain a case number. The driver must further at the earliest possible opportunity inform the rental company of such accident.

- 8.2. When a hired vehicle has been damaged whilst left unattended, the driver must immediately report the damage to the nearest Police Station, obtain the case number and inform the rental company of the damage.
- 8.3. When a hired vehicle is damaged in an accident involving another vehicle or vehicles, the driver of the rental vehicle shall do the following:
 - 8.3.1. Obtain the names and contact details of the driver of the other vehicle and the names and contact details of any witnesses to the accident;
 - 8.3.2. Note the registration numbers of all vehicles involved in the accident;
 - 8.3.3. Make a sketch and/or take a photograph of the accident scene with explanatory notes;
 - 8.3.4. Report the accident to the person responsible for Council's insurance claims and provide full details of the accident or incident;
 - 8.3.5. Submit any claim or notice served on the driver of the rental vehicle to the person responsible for Council's insurance.
- 8.4. The driver of the rented vehicle involved in the accident may not under any circumstances admit guilt to the accident or accept liability for any damage caused to the rented vehicle or any other vehicle involved in the accident nor may the driver make, or receive, any offer or payment from any of the persons involved in the accident in settlement of any damage.
- 8.5. The Municipality shall not accept any liability in respect of any admission of guilt by any driver of a vehicle rented by an employee whilst of official municipal business nor shall the municipality accept any liability for damages caused if it is found that the damages resulted from gross negligence of the part of the driver, the driver was driving under the influence of drugs or alcohol and/or if the matter has not been reported to the police or Municipal Manager as is required in terms of this policy.
- 8.6. Damage to any vehicle rented by an employee of the Municipality shall be reported in writing to the Municipal Manager by not later than 12:00 on the first working day after returning from the official municipal business attended, provided that where the driver of the vehicle is not physically able to do so because of any injuries that may have been sustained in the accident, the matter shall be reported at the first opportunity presented.
- 8.7. Fines for traffic violations whilst using a rented/hired vehicle, shall be the responsibility of the employee driving the vehicle. If the driver of the rental vehicle did not immediately pay the fine imposed, and the
- 8.8. rental company deducts such amount from the deposit paid by the municipality. The full amount of the fine shall be deducted from the salary or any allowance due to the employee.

9. THEFT OF RENTAL VEHICLE

- 9.1. When a hired vehicle is stolen whilst left unattended the employee must immediately report the theft to the nearest Police Station, obtain the case number and inform the rental company of the theft.
- 9.2. The theft of any vehicle rented by an employee of the Municipality shall be reported in writing to the Municipal Manager no later than 12:00 on the first working day after returning from the official municipal business attended.

10. TRAVELLING COSTS: WARD COMMITTEE MEETINGS

- 10.1. A ward committee member who is required to attend ward committee meetings shall, subject to submitting proof of attendance in the form of an official signed attendance register, be paid for each meeting attended at a rate determined by council from time to time plus the reimbursement of travelling costs, based on a rate per kilometre travelled in excess of 15kms (return trip), measured along the shortest route between the members place of residence and the venue of an official meeting of the ward Committee.

11. INTERNATIONAL TRAVEL

- 11.1. International trips on official municipal business may only be embarked upon after approval by the Mayoral Executive Committee and after such authorisation has been recorded as a special resolution of the Mayoral Executive Committee.
- 11.2. Limits for accommodation costs incurred on international trips shall be determined by the Mayoral Executive Committee considering the ruling exchange rate and the Country being visited on official Council business and any legislative provisions and/or national treasury directives in this regard.

12. ACCOMMODATION PAYMENT

- 12.1. The municipality shall bear the cost of accommodation for official business subject to the following:
 - 12.1.1. The Executive Mayor, Municipal Manager, Councillors and Directors at a rate equivalent to a 4 (four) star hotel, lodge or other similar accommodation establishment.
 - 12.1.2. All other employees and members of Ward Committees at a rate equivalent of a 3 (three) star hotel, lodge or accommodation establishment.
 - 12.1.3. Candidates for interviews shall be housed in an accommodation establishment with an equivalent 3 (three) star rating.
 - 12.1.4. Employees may choose to be placed in an accommodation establishment with a higher grading in which case any additional cost for the upgraded accommodation shall be for the account of the employee.

- 12.2. Employees, Ward Committee Members and candidates may make their own arrangements for accommodation in which case they shall be paid an amount not exceeding the limits as provided for above, subject to documentary proof.
- 12.3. Where it is not possible to include the cost of breakfast, lunch or dinner in an accommodation package and where it is not provided at the venue of the official municipal business, an employee may claim for such meals at the rate determined by SARS from time to time.
- 12.4. Employees may choose to be paid the above meal allowances in lieu of the cost of meals which would have been paid to the accommodation establishment but not in respect of meals provided by the institution where council business is being attended.
- 12.5. No costs incurred on alcohol, non-alcoholic beverages, refreshments, room services or telephone bills shall be reimbursed.
- 12.6. All damages, breakages and losses (inclusive of costs incurred from the honesty fridge or similar facility) shall be for the account of the employee that used the facility and the municipality may recover any such subsistence cost from the salary of the employee.

13. SUBSISTENCE COSTS

- 13.1. In addition to the travel and meal costs, a daily incidental allowance for each day or a part of the day (exceeding 5 hours) in the period during which the employee is absent from his usual place of residence, whilst attending to official municipal business outside the municipality's area of jurisdiction, will be paid:
 - 13.1.1. Only incidental costs at the prevailing SARS rate (R122).
 - 13.1.2. Meals and incidental costs at the prevailing SARS rate (R397).

14. REIMBURSEMENT ARRANGEMENTS FOR SUBSISTANCE AND TRANSPORT COSTS

- 14.1. ***Reimbursement of S and T Claims will be timed to coincide with a salary run. Approved claims must be submitted to the salary section by no later than the closing date that has been set for all additional/exceptional payments to be considered for inclusion in that month salaries run.***
- 14.2. Any claims that are not paid with a salary run will be paid during the week following the week in which the claim was submitted.
- 14.3. No advance payments for S and T will be entertained.
- 14.4. Applications for reimbursements of subsistence and travelling costs must be made on the prescribed form for submission to immediate superior and the following supporting documents must be attached to the claim:
 - 14.4.1. The pre-approval form for attending the official council business;
 - 14.4.2. The invitation to attend;

- 14.4.3. A copy of the attendance register;
- 14.4.4. A report on the event as required in terms of clause 4.5 of this policy.

15. BOOKING ARRANGEMENTS

- 15.1. The Municipal Manager shall designate an official/s of the municipality who shall be responsible for booking all accommodation, transport, car hire or public transport for employees attending official Council business.
- 15.2. Unless changes to accommodation and travelling arrangements is necessitated as a result of operational matters and approved by the municipal manager and/or executive mayor, any changes to such arrangements shall be at the costs of the employee making the request.

16. AIR TRAVEL

- 16.1. When an employee of the municipality is required to travel by air for official municipal business the municipality shall pay all costs involved subject to the following:
 - 16.1.1. All air travel shall be in economy class.
- 16.2. Where any employee or councillor wishes to fly in business class, such employee or councillor may request an upgrade provided that the difference in costs shall be for their own account.
- 16.3. In special circumstances where it is prudent for employees to travel in business class the Executive Mayor or Municipal Manager may authorise the deviation of policy.

17. CONTRAVENTIONS

- 17.1. The following shall be regarded as contraventions of this policy: The submission of a false claim:
 - 17.1.1. A claim that does not reflect the shortest route to and from the business venue;
 - 17.1.2. Claims submitted for official municipal business but not attended. Employees not remaining until the conclusion of the official business but claiming as if they were present for the full duration;
 - 17.1.3. Any false certification of a claim.
- 17.2. Contraventions of this policy shall be regarded as contraventions of Codes of Conduct applicable to Councillors and officials and the necessary disciplinary action will be taken in terms thereof.

18. INDEMNITY

- 18.1. The municipality shall not accept any liability for the payment of damage to, or loss of, any property arising from a claim or incident that may have occurred due to the negligence of any employee.
- 18.2. The municipality shall not entertain any third-party claim for any injury or death that may arise due to the negligence of any employee.

Annexure 'A'

MAXIMUM DISTANCES ALLOWED FOR CLAIMS

The following are the maximum distances that may be claimed for the reimbursement of travelling costs.

A. **Between towns within the municipality's area of jurisdiction:**

| | |
|-----------------------------------|------|
| Jeffreys Bay to Thornhill | 40km |
| Jeffreys Bay to Loerie | 35km |
| Jeffreys Bay to Humansdorp | 15km |
| Jeffreys Bay to St Francis Bay | 37km |
| Jeffreys Bay to Hankey | 44km |
| Jeffreys Bay to Patensie | 58km |
| Hankey to Patensie | 14km |
| Hankey to St Francis Bay | 28km |
| Humansdorp to Hankey | 28km |
| Humansdorp to Patensie | 42km |
| St Francis Bay to Humansdorp | 22km |
| St Francis Bay to Cape St Francis | 13km |

B. **To other major centres:**

| | |
|------------------------------------|--------|
| Jeffreys Bay to Port Elizabeth | 80km |
| Jeffreys Bay to East London | 390km |
| Jeffreys Bay to Bloemfontein | 724km |
| Jeffreys Bay to Johannesburg | 1127km |
| Jeffreys Bay to Plettenberg Bay | 115km |
| Jeffreys Bay to Pretoria | 1186km |
| Jeffreys Bay to Umtata | 497km |
| Jeffreys Bay to King Williams Town | 327km |
| Jeffreys Bay to Bisho | 335km |
| Jeffreys Bay to Cape Town | 680km |
| Hankey to Port Elizabeth | 80km |
| Humansdorp to Port Elizabeth | 95km |
| Humansdorp to East London | 427km |
| Humansdorp to Umtata | 640km |
| Patensie to Port Elizabeth | 117km |
| St Francis Bay to Port Elizabeth | 117km |
| St Francis Bay to East London | 427km |
| St Francis Bay to Umtata | 662km |

Kilometers will be calculated as per the AA Road Atlas in respect of trips not listed above.

Annexure "B"



INTERPRETATION NOTE: NO. 14 (Issue 3)

DATE: 20 March 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act) SECTION : SECTIONS 8(1)(a); 8(1)(b) and 8(1)(c) AND PARAGRAPH 1 OF THE FOURTH SCHEDULE
SUBJECT : ALLOWANCES, ADVANCES AND REIMBURSEMENTS

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Preamble

In this Note, unless the context indicates otherwise –

- “**section**” means a section of the Act; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides clarity on the tax treatment of allowances, advances and reimbursements granted to employees and office holders and gives guidance on the record-keeping requirements relating to motor vehicles.

The Note updates and replaces Issue 2 which was published on 8 January 2008 and incorporates relevant legislation changes up to and including the Taxation Laws Amendment Act No. 22 of 2012.

2. Background

In line with the 2002 Budget Review proposal to simplify the system of employment income taxation, the provisions relating to allowances, advances and reimbursements were previously consolidated in section 8(1). Section 23(m) was also previously enacted to limit the deductions available to employees and office holders.

Since Issue 2 of this Note, substantial amendments have been made to the travel allowance system. These include the removal of the “deemed kilometre” method of calculating the allowable deduction as well as amendments to the employees’ tax withholding requirements on allowances and advances.

The update to this Note includes these amendments and clarifies what constitutes business travel and private travel.

3. The nature of allowances, advances and reimbursements

3.1. Definition of the terms “allowance”, “advance” and “reimbursement” for the purposes of section 8(1)

The distinction between an allowance, an advance and a reimbursement for purposes of sections 8(1)(a), (b) and (c) is set out in **3.1.1 – 3.1.3**.

3.1.1. Allowance

An allowance is an amount of money granted by an employer to an employee to incur business-related expenditure on behalf of the employer, without an obligation on the employee to prove or account for the business-related expenditure to the employer. The amount of the allowance is based on the *anticipated* business-related expenditure.

Example 1 – Allowance

Facts:

ABC Ltd requires X to travel for business purposes three or four times a month. ABC Ltd anticipates that X will incur R1 000 per month on business-related expenditure whilst travelling and pays an amount of R1 000 per month to cover the expenditure. X is not required to prove or account for actual business-related expenditure to ABC Ltd.

Result:

X receives an allowance of R1 000 per month for purposes of section 8(1).

3.1.2. Advance

An advance is an amount of money granted by an employer to an employee to incur business-related expenses on behalf of the employer, with an obligation on the employee to prove or account for the business-related expenditure to the employer. The amount of the advance is based on the *anticipated* business-related expenditure. The employer recovers the difference from the employee if the actual expenses incurred are less than the advance granted and *vice versa*.

Example 2 – Advance

Facts:

A works for ABC Ltd. The company has asked A to visit a key client to conduct a client satisfaction survey and, after completing the survey, to entertain the client by way of a business lunch. A is paid an amount of R500 by ABC Ltd to cover the cost of the lunch. A must submit receipts and invoices to the company accountant when returning to the office and must return any portion of the advance not spent as instructed. ABC Ltd does not think the lunch will cost more than R500, however if the client orders indulgently ABC Ltd will make good any shortfall. A is able to provide a receipt and an invoice totalling R400 and returns the remaining R100 to the company.

Result:

A receives an advance of R500 for purposes of section 8(1).

3.1.3. Reimbursement

A reimbursement of business-related expenditure occurs when an employee has incurred and paid for business-related expenses on behalf of an employer without having had the benefit of an allowance or an advance and is subsequently reimbursed for the exact expenditure by the employer after having proved and accounted for the expenditure to the employer.

Example 3 – Reimbursement

Facts:

A (who works in East London) is required to conduct a two-day training session at the company's Grahamstown branch. On arrival A discovers that the Grahamstown branch does not have all of the equipment required in order to adequately deliver the training. A's manager asked A to purchase the required items out of A's own pocket and to submit a claim on returning to East London. A spent R200 on the items and retained the receipts which prove R200 was spent on business-related expenditure.

The employer subsequently reimburses A the full R200.

Result:

A receives a reimbursement for purposes of section 8(1).

3.2. General observations on the nature of allowances, advances and reimbursements

The nature of allowances, advances and reimbursements is frequently misunderstood, as are the reasons for granting recipients such amounts. In this regard:

- Any allowance, advance or reimbursement is a reflection of business-related expenditure or anticipated business-related expenditure of the **employer**. A payment to an employee under the disguise of an allowance but actually for services rendered or to be rendered is subject to tax under the normal provisions of "gross income" and is not treated as an allowance under the provisions of section 8(1)(a). The label of a payment does not necessarily correctly reflect the true nature of the payment.
- The judgment in ITC 1523¹ confirmed that when the word "allowance" is used in an employee-employer relationship, it means a grant of something additional to ordinary wages. The taxpayer had received a salary and sought to claim a deemed subsistence expenditure deduction against his salary. The court held that he had not received an allowance as he had not
- received anything extra and was not automatically entitled to the deduction provided for in section 8(1).
- A typical misconception is that the quantum of an allowance or advance does not have to reflect the *anticipated* business expense. This misconception is sometimes caused by the incorrect understanding that an allowance can, without reference to the actual expenditure anticipated, be based on the amounts of expenditure which are deemed to have been incurred by the Act under specified

circumstances and that the employee will automatically be entitled to a tax deduction against that "allowance". The misconception means that employees sometimes receive allowances that are much greater than the true anticipated business expense.

4. The law

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

Annexure A.

5. Application of the law

5.1. Inclusion in taxable income – allowances and advances

Section 8(1)(a)(i) –

- deals with **all** allowances and advances paid by a "principal" to a "recipient" (for example, travel, subsistence, public office, cell phone and housing allowances); and
- provides that all such allowances and advances must be included in the recipient's taxable income to the extent that they are not expended¹ –
 - for travelling on business;² or
 - for accommodation, meals and incidental costs while such office holder or employee is obliged to spend at least one night away from his or her usual place of residence as a result of business or official purposes;³ or
 - by reason of the duties attendant upon public office.

Section 8(1)(a)(ii) provides that in limited circumstances a reimbursement or advance must not be included in taxable income as otherwise required by section 8(1)(a)(i) (see **5.2**).

5.1.1. The terms "principal" and "recipient"

For purposes of section 8(1)(a) the term "**principal**" includes –

- the employer of the recipient of an allowance; or
- the authority, company, body or other organisation in relation to which any office is held; or

¹54 SATC 194.

²the amounts expended are taken into account by reducing the inclusion in taxable income. In this Note these reductions are referred to as 'deductions'.

³ See **5.4** for details of allowable deductions.

⁴ See **5.3** for details of allowable deductions.

- any “associated institution” as defined in the Seventh Schedule in relation to that employer, authority, company, body or organisation.

Within the context of section 8(1) the term “**recipient**” means the person who has been paid or granted an allowance, advance or reimbursement by a principal. Having regard to the meaning of the word “principal” in this section, a recipient refers to an employee or an office holder.

For example, although an independent contractor may be an employee as defined under the Fourth Schedule to the Act for employees’ tax purposes, an independent contractor would not be considered to be an employee in the ordinary meaning of the word as implied in section 8(1).

5.2. Exclusion from taxable income – reimbursements and advances

Section 8(1)(a)(ii) excludes reimbursements or advances from taxable income if –

- the reimbursement or advance was or must be expended by the recipient on instruction of the principal in the furtherance of the principal’s trade;
- the recipient must produce proof to the principal that the amounts were wholly and actually expended for this purpose;
- the recipient must account to the principal for the expenditure; and
- the expenditure was or will be incurred to acquire any asset and ownership in that asset vests in the principal.

This is consistent with the definitions in **3.1.2** and **3.1.3**.

“Travel reimbursements” by an employer to an employee for the actual business kilometres travelled at an employer-agreed rate per kilometre are “exceptions” to this rule. Accordingly, the provisions of section 8(1)(a)(i) (see **5.1**) and section 8(1)(b) (see **5.4**) must still be applied to travel reimbursements when determining the amount, if any, which must be included in the recipient’s taxable income. The inclusion in taxable income will be nil if the amount of the allowable deduction (see **5.4** for further detail) is equal to the amount of the reimbursement, but if the amount of the allowable deduction is less than the amount of the reimbursement, then a net inclusion in taxable income will be required (see Example 12 in **5.4.4**).

5.3. Deductions from subsistence allowances

5.3.1. General

A recipient may only deduct subsistence-related expenses from the subsistence allowance granted by the principal if the recipient is obliged to *spend at least one night away from his or her usual place of residence in the Republic* by reason of the duties of his or her office or employment.

A recipient who meets these requirements is allowed to deduct the amount actually expended on accommodation, meals and other incidentals during that period. Section 8(1)(c) specifies two methods to calculate the amount which is deemed to have been actually expended on accommodation, meals

and other incidentals, namely, an actual method or a deemed method (see **5.3.2** and **5.3.3**).

By reason of the duties of his or her office or employment

The reason the recipient is away from home must be related to the recipient's office or employment.

Example 4 – By reason of office or employment *Facts:*

At the request of his employer, A attended a two-day conference in a wine-making region. The conference started on a Thursday. A's employer paid A's accommodation for Thursday night and gave him a subsistence allowance for two days. Instead of driving home after the conference A decided, at his own expense, to extend his stay and spend the weekend exploring the area for potential wedding locations and tasting local wines.

Result:

A will be entitled to deduct the subsistence-related expenses for the period related to the conference from the allowance received from his employer. As the reason for spending the additional time away from home is personal and not work-related, A will not be entitled to deduct the subsistence-related expenses related to the period after the conference from the allowance.

Obligated to spend at least one night away from his or her usual place of residence in the Republic

The word "night" is not defined in the Act and, according to the rules of interpretation of statutes, must be given its ordinary grammatical meaning. The Concise Oxford English Dictionary⁴ defines "night" as "*the time between sunset and sunrise*". The Collins English Dictionary⁵⁶ defines the word as "*the period of darkness each 24 hours between sunset and sunrise*".

Therefore, in order to qualify to deduct subsistence expenses under section 8(1)(a)(i)(bb), the recipient of a subsistence allowance must be away from his or her usual place of residence in the Republic for at least one full period from sunset of one day to sunrise of the next.

⁴ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

⁵ Collins English Dictionary. 3rd Edition. Glasgow: Harper Collins, 1991.

⁶ SATC 445.

In ITC 1668⁷ employees who lived relatively far from their place of employment were paid an accommodation allowance, for example, an employee who worked in Vanderbijlpark but whose family lived approximately 360 km⁷ away in Bloemfontein received an allowance. Van Dijkhorst J drew a distinction between an employee who chooses to live so far from his or her place of employment that he or she needs to find accommodation closer to his or her place of employment versus an employee whose duties require spending night/s away from home (for example, working overtime or working on a project in a location which is not the normal office location). In the first situation the new accommodation would become the employee's usual place of residence and no deductions would be available under sections 8(1)(a)(i)(bb) and (1)(c). In the latter situation the employee's work duties necessitate that on a temporary basis the employee spends time away from home and, assuming all the other requirements are met, the employee would be entitled to a deduction.

5.3.2. Actual method

Under the actual method the amount the recipient is deemed to have actually expended is equal to –

- the amount he or she proves to the Commissioner was actually incurred;
- for accommodation, meals and other incidentals;
- excluding any amount of expenditure borne by the employer (otherwise than by way of the allowance or advance); but
- limited to the amount of the allowance or advance granted to meet these expenses.⁸

In order to be able to prove the amount of expenditure the recipient will need to obtain and retain supporting documentation (for example, invoices and receipts) for the expenditure incurred. The supporting documentation must be kept for five years from the date when the income tax return, which included the claim for the deduction, was received by SARS. The documentation is not submitted with the income tax return, but the recipient must be able to produce such documentation upon request by SARS.

An employer will be considered to have borne the expenditure if –

- the employer pays the expense directly; or
- the recipient pays the expense but is subsequently reimbursed by the employer.

5.3.3. Deemed method

⁷ www.saexplorer.co.za/south-africa/distance/travel_distance_calculator.asp [13 March 2012].

⁸ That is, the amount of the deduction may never exceed the amount of the allowance.

Under the deemed method the amount the recipient is deemed to have actually expended is equal to –

- an amount determined by the Commissioner for the relevant year of assessment by way of notice in the *Gazette*;⁹
- for meals and other incidental costs, or incidental costs only;
- for each day or part of a day in the period during which the recipient is absent from his or her usual place of residence;
- excluding any amount of expenditure borne by the employer (otherwise than by way of the allowance or advance) for which the allowance was paid or granted for that day or part of that day;¹⁰
- excluding any amount proven by the recipient to SARS as actual expenditure and claimed as a deduction for meals or incidental costs equal to the actual costs for that day or part of that day; and
- limited to the amount of the allowance or advance granted to meet these expenses.¹¹

The amount stipulated in the *Gazette* is a daily amount. Accordingly, in calculating the amount of deemed expenditure based on the points listed above, the recipient must multiply the daily amount by the number of days or part of a day that he or she is away on business.¹² Taxpayers must review the effective date of the particular notice to ensure they apply the correct amounts to the correct year of assessment.

The *Gazetted* amounts are for meals and other incidentals for local and foreign travel, or incidentals only for local travel, and do not cover accommodation for either local or foreign travel. As a result, to the extent a recipient receives an allowance or an advance for accommodation, the recipient must apply the actual method to determine the amount that will be allowed to be deducted from that allowance, or relevant portion of the allowance, for accommodation. There is no “meals only” deemed expenditure amount. Accordingly, a recipient, who receives such an allowance, would also have to apply the actual method to calculate the allowable deduction (see **5.3.2**). In practice, accommodation service providers often levy a single charge for bed and breakfast. In these circumstances, the cost of breakfast may be regarded as part of the cost of accommodation (see **Example 8**).

Day

⁹ The relevant notices are available on the SARS website, www.sars.gov.za.

¹⁰ The deemed subsistence amounts will be reduced by the amount the employer has borne.

¹¹ That is, the amount of the deduction may never exceed the amount of the allowance.

¹² Not forgetting that a prerequisite to any deduction is the requirement that he or she spends at least one night away from his or her usual place of residence – see **5.3.1**.

The word “day”, which is not defined in the Act, is defined in the Concise Oxford English Dictionary¹³ to mean – “a twenty-four-hour period as a unit of time, reckoned from one midnight to the next and corresponding to a rotation of the earth on its axis; the time between sunrise and sunset”. In the Collins English Dictionary,¹⁴ the word is defined to mean – “1. the period of time, the calendar day, of 24 hours duration reckoned from one midnight to the next. 2. the period of light between sunrise and sunset, as distinguished from the night”. It is clear from the context of section 8(1)(c)(ii) that the word “day” must be given the wider meaning of the full period of 24 hours from one midnight to the next.

A “part” means a constituent portion or division of a whole, which is distinct from that whole.¹⁵ A part of a day could be an hour, a half-hour or even a minute. The deemed expenditure is not apportioned if the recipient is only away for part of the day.

5.3.4. Examples

Example 5 – Subsistence allowance and amounts included in taxable income

Facts:

During the 2013 year of assessment Y attended a business seminar in Cape Town on behalf of his employer. Y was away from his normal home in Johannesburg for five nights and six days. His employer granted him an allowance of R7 000 for accommodation and R2 500 for meals and incidental costs. He was not required to refund any excess if his actual expenditure was less than the allowances he received and similarly his employer would not reimburse him should his actual expenditure exceed the allowances granted to him.

Y did not keep any supporting documentation and he was unable to prove any of the expenditure incurred on accommodation, meals or incidental costs.

Result:

The full allowance of R7 000 for accommodation must be included in Y's taxable income as he is unable to apply the actual method (see **5.3.2**) and the deemed method (see **5.3.3**) is not available for accommodation.

In relation to the allowance of R2 500 for meals and incidental costs, Y will be able to apply the deemed method to determine the amount he can deduct from the allowance. An amount of R1 818 (R303 per day as per the relevant *Gazette* × six days) is deemed to have been spent on meals and incidental costs. The balance of R682 (R2 500 – R1 818) must be included in Y's taxable income.

Example 6 – Calculating the subsistence deduction if the employee's expenditure exceeds the allowance granted

Facts:

¹³ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

¹⁴ Collins English Dictionary. 3rd Edition. Glasgow: Harper Collins, 1991.

¹⁵ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

A was granted an allowance of R5 000 for accommodation and R2 000 for meals and incidental costs during the 2013 year of assessment in order to conduct business-related activities on behalf of her principal. A was away from her usual place of residence for five nights and six days. A spent R5 500 on accommodation and retained the supporting documentation. A was unable to prove any costs for meals or incidentals.

Result:

The actual method may be applied to determine the deduction available for accommodation, the deduction is limited to R5 000 even though A expended R5 500. According

ly, the taxable portion of the allowance which must be included in taxable income is Rnil (R5 000 – R5 000). The additional R500 accommodation costs (R5 500 – R5 000) may not be deducted from the meals and incidental subsistence allowance of R2 000.

Under the deemed method A is deemed to have incurred R1 818 (R303 per day as per the relevant *Gazette* × six days) for meals and incidental costs for business purposes. Accordingly, the taxable portion of the allowance which must be included in taxable income is R182 (R2 000 – R1 818).

Example 7 – Reducing the deemed subsistence expenses if the employer bears a portion of the cost *Facts:*

During the 2013 year of assessment B was required to travel within South Africa for business purposes. B spent five nights away from home and returned home on the sixth day. His employer paid his hotel accommodation costs and breakfast costs. Guests at the hotel were not obliged to eat breakfast at the hotel but on the days they did the hotel would add the cost of the breakfast ordered to their hotel bill. B settled the hotel bill (accommodation cost R4 250 and breakfast R429) using his personal credit card and his employer subsequently reimbursed him.

The employer also paid B an allowance of R350 per day to enable B to pay for other meals and incidental costs. B received a total allowance of R2 100.

B did not keep any supporting documentation for his expenditure on meals and incidental costs. *Result:*

The reimbursement of R4 679 (R4 250 + R429) is not included in B's taxable income. The total amount deemed to have been actually expended on meals and incidental costs is R1 818 (R303 per day as per the relevant *Gazette* × six days) less the breakfast expenditure of R429 borne by the employer by way of reimbursement. That is, R1 389.

Accordingly, the taxable portion of the allowance which must be included in taxable income is R711 (R2 100 – R1 389)

Example 8 – Bed and breakfast accommodation with a single charge for bed and breakfast *Facts:*

During the 2013 year of assessment B was required to travel within South Africa for business purposes. He spent five nights away from home and returned home on the sixth day. His employer paid his hotel accommodation. The hotel he stayed at provides bed and breakfast accommodation and

levies a single inclusive charge irrespective of whether or not guests eat breakfast. B settled the hotel bill totaling R4 800 using his personal credit card and his employer subsequently reimbursed him.

The employer also paid B an allowance of R350 per day to pay for other meals and incidental costs. B received a total allowance of R2 100. B did not keep any supporting documentation for expenditure on meals and incidental costs.

Result:

The reimbursement of R4 800 is not included in B's taxable income.

The total amount deemed to have been actually expended on meals and incidental costs is R1 818 (R303 per day as per the relevant *Gazette* × six days). The *Gazetted* amount does not need to be reduced for the cost of breakfast because with bed and breakfast accommodation the full charge levied by the service provider is considered to be a cost of accommodation.

Accordingly, the taxable portion of the allowance which must be included in taxable income is R282 (R2 100 – R1 818).

5.4. Deductions from travelling allowances and advances

5.4.1. General

This Note discusses the granting of an allowance or advance by a principal to a recipient for the use of a private motor vehicle for the principal's business purposes, commonly known as a "travel allowance".

A "motor vehicle" is a road vehicle powered by a motor or engine, especially an internal-combustion engine.¹⁶ This would include a motorcycle.

The allowance or advance must be included in the recipient's taxable income to the extent that it is not expended on travelling on business (see **5.1**).

In the context of travel, an allowance or advance includes both a travel allowance and a travel reimbursement¹⁷ (see **5.2**).

A recipient who receives a travel allowance and a travel reimbursement must add the amount of the travel reimbursement to the amount of the allowance and calculate the allowable deduction for the number of business kilometres travelled.

A recipient who only receives a travel reimbursement must still determine the allowable deduction because, depending on the facts, the rate at which the recipient was actually reimbursed may exceed the allowable deduction. The allowable deduction is determined by applying the actual cost, deemed rate per kilometre method or the specified rate per kilometre (see **5.4.3** and **5.4.4**).

The amount of the allowable deduction which may be deducted from the travel allowance, advance or reimbursement has two components, namely, the business kilometres travelled (see **5.4.2**) and the expenditure per kilometre. Expenditure per kilometre may be determined using actual costs (see **5.4.3**) or

¹⁶ Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006. Collins English Dictionary. 3rd Edition. Glasgow: Harper Collins, 1991.

¹⁷ That is, actual business kilometres travelled × an employer agreed rate per kilometre.

according to the deemed rate per kilometre as determined by the Minister of Finance by notice in the *Gazette* (see **5.4.4**).

Amount to be included in taxable income = amount of the allowance, advance or reimbursement received – (business kilometres travelled × expenditure per kilometre)

The amount of the allowable deduction is always limited to the amount of the allowance.

The motor vehicle the recipient uses is often owned by the recipient, but this is not always the case, for example, it could be a “company car” which the employer has provided to an employee. The allowable deduction against an allowance or advance which is granted to the recipient for a motor vehicle that the recipient has been granted the right to use under paragraph 7 of the Seventh Schedule to the Act (that is, a “company car”) is R nil.¹⁸

Section 8(1)(b)(iv) was inserted into the Act in 1990 to address schemes designed to inappropriately benefit from the lower rate of tax effectively levied on fringe benefits.

It provides that where an employee, the employee's spouse or the employee's child has directly or indirectly let a vehicle to an employer or the employer's associated institution, the sum of the rental and expenses paid by the employer for the vehicle is treated as an allowance for the employee and not as rental income for the lessor (who may or may not be the employer) and the employee is deemed not to have received a fringe benefit from the employer under the Seventh Schedule to the Act (right of use of an employer-provided asset).

Paragraph **5.4** of this Note discusses the granting of an allowance or advance by a principal to a recipient for the use of a motor vehicle for business purposes.

5.4.2. Kilometres

With effect from 1 March 2010 the deemed kilometre method was deleted from the Act. Taxpayers wishing to claim the cost of business travel must base their claim on the actual business kilometres travelled and are required to prove the business kilometres travelled to the satisfaction of the Commissioner. In order to do so recipients must keep accurate written records of their business travel and include, at a minimum, the following information:

- The odometer reading on the first day of the year of assessment.
- The odometer reading on the last day of the year of assessment.
- For all business travel –
 - the date of the travel;
 - the kilometres travelled; and
 - business travel details (where and reason for trip).

¹⁸ Effective years of assessment commencing on or after 1 March 2011.

Written records of this information are often referred to as a logbook. 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.

In this regard, section 8(1)(b)(i) provides that travelling between a recipient's place of residence and place of employment or business is private travel. The location of a recipient's place of employment or place of business is a factual enquiry. In relation to an employee's place of employment, it is the place at which the employee must render services as agreed with the employer. The term “place of employment” applies when the recipient of the allowance or advance is an employee and the term “place of business” applies when the recipient is a holder of an office.

Travel between the place of employment or business and the place of residence is regarded as private travel even if the travel takes place after normal or during extended working hours.

Examples of **private** travel include, where –

- a tax consultant employed by a law firm in Johannesburg travels from home in Pretoria to the law firm's office, the travel between home and the office;
- an assistant who is employed to work as a shop assistant at a V&A Waterfront store in Cape Town (the employer has stores all over South Africa, including other stores in the Cape Town area) travels from a friend's house to the V&A Waterfront store, the travel between the friend's house and the store; and
- an assistant who is employed to work as a shop assistant at a V&A Waterfront store in Cape Town for two days a week and the Canal Walk Store in Cape Town for three days a week (the employer has stores situated all over South Africa, including other stores in the Cape Town area) travels from home to a store, the travel between home and the Canal Walk Store, or the V&A Waterfront store as appropriate.

Examples of **business** travel include, where –

- an employee whose place of employment is in Johannesburg leaves the office at lunch time to attend a business conference in Krugersdorp, the travel between the office and the conference venue in Krugersdorp;

- a consultant stops to see a client en route to his place of employment, the travel between home and the client's premises and the travel after the meeting from the client's premises to the office;
- a sales assistant who normally works at an employer's store in the V&A Waterfront, Cape Town travels directly from home to the employer's store in
- Pretoria to assist with an annual stock count, the travel between home in Cape Town and Pretoria;
- an employee located in Kimberley is required to assist a client in Upington over a five-day period, the travel from Kimberley to Upington;¹⁹ and
- a computer Programme, who is allowed to work from home on a permanent basis (that is, the home office is the place of employment) travels to a client's premises to discuss system requirements and functionality, the travel from the home office to the clients' premises.

The examples listed above are merely guidelines to explain the principles involved. Each case must be examined and assessed based on its own unique set of facts.

5.4.3. Expenditure per kilometre – actual costs

In order to be able to use actual costs in determining the amount of the allowable deduction, recipients will need to perform an acceptable calculation based on accurate data. An acceptable "expenditure per kilometre" calculation will contain two elements, namely, total kilometres travelled²⁰ and the total expenditure incurred by the recipient.²² The calculated rate per kilometre would then be multiplied by the business kilometres travelled (see **5.4.2**) to determine the allowable deduction.

Recipients must retain supporting documentation in order to prove, if requested, the accuracy of the calculation and the data used. The recipient's use of the motor vehicle to travel must have given rise to the expenditure. In ITC 1731²³ a lease termination payment was held to be related to the termination of the lease and the acquisition of ownership of the vehicle and not to have been an expense incurred as a result of travelling. It accordingly did not fall within the provisions of section 8(1)(a) and (b).

Examples of the type of expenditure which may be included are wear-and-tear or lease payments, fuel, oil, repairs and maintenance, car licence, insurance and finance charges.

¹⁹ The employee will also incur additional business travel while in Upington, for example, travelling from the guesthouse to the client's premises and travelling to the shops to get supplies.

²⁰ Calculated rate per kilometre = total expenditure / total kilometres travelled. ²²

The expenditure related to finance charges and depreciation are based on actual costs subject to limitations as set out in section 8(1)(b)(iiiA). Section 8(1)(b)(iiiA) provides –

- that in relation to a leased vehicle, the lease payments included may not exceed the fixed cost element determined in the *Gazette* for the particular category of vehicle (see **5.4.4**); and
- In all other cases –
 - wear-and-tear must be determined over a seven-year period from the original date of acquisition by the recipient;
 - the cost of the vehicle must be limited to R480 000;²¹ and
 - the finance charges incurred for any debt incurred for the purchase must be limited to an amount which would have been incurred had the original debt been R480 000.²²

Example 9 – Travelling deductions where record of actual expenses was kept

²³Facts:

S received a travel allowance of R96 000 during the 2013 year of assessment. A total of 23 881 kilometres was travelled during the year, of which 7 338 kilometres was for business travel. S purchased a motor vehicle on 1 March 2008 and it has a value of R353 248. S kept proof of the following travelling expenses:

| | | | |
|------------------------------------|---------------|----------------------------|----------------|
| R Fuel and oil | 26 910 | | |
| Maintenance and repairs | 4 422 | Insurance and licence fees | 15 327 |
| Wear-and-tear (R353 248 / 7 years) | 50 464 | | |
| Finance charges | <u>32 880</u> | Total costs | <u>130 003</u> |

Result:

Travel allowance received 96 000
 The deduction for business travel will be calculated as follows:
 (Total costs / total kilometres) × business kilometres
 = (R130 003 / 23 881 km) × 7 338 km 39 946
 S is entitled to the full deduction of R39 946 against the travel allowance and must include R56 054 (R96 000 – R39 946) in taxable income.

5.4.4. Expenditure per kilometre – deemed rate per kilometre

The deemed rate per kilometre, which is determined by the Minister of Finance by notice in the *Gazette*, has the following three components:

- A fixed component – the rand value per the cost scale table (explained below) must be divided by the total kilometres (private and business)

²¹ This value is effective from years of assessment commencing on or after 1 March 2011.

²² This value is effective from years of assessment commencing on or after 1 March 2011.

²³ SATC 395.

travelled in the year of assessment and must also be apportioned if the vehicle was only used for business purposes for part of the year. Apportionment is based on the days in a full year, in other words it is irrelevant if a day is a business day, a Saturday, Sunday or public holiday.

- A fuel cost component – this component may only be included if the recipient bears the *full* cost of fuel. Employees who are provided with employer-owned petrol or garage cards are
- regarded as having borne the full cost of fuel if the full amount expended on that card during the year of assessment is included in their travel allowance and is taxed as remuneration in the manner set out in **6.3.1**.
- A maintenance cost component – this component may only be included if the recipient bears the *full* cost of maintenance. A recipient will be considered to bear the full cost of maintenance if the recipient takes out a maintenance plan either as a top-up or add-on plan after the acquisition of the vehicle and is responsible for the cost of that maintenance plan and all maintenance costs not covered by the maintenance plan (for example, top-up fluids, tyres or maintenance required as a result of abuse of the motor vehicle). A maintenance cost component may not be claimed if the vehicle was the subject of a maintenance plan when it was acquired by the recipient as the value of the vehicle (see below) will effectively include an element for maintenance.

The three components are included in a cost scale table and the recipient must select the appropriate figures based on the value of the vehicle. The value of the vehicle generally includes VAT but excludes interest – refer **Annexure B** for detail. The value of the vehicle includes the cost of a maintenance plan when the vehicle is the subject of a maintenance plan, that is if the maintenance plan commences at the same time the motor vehicle is acquired by the recipient irrespective of whether the cost of the plan is separately invoiced or included in the vehicle purchase price.

The cost scale table which is applicable for the 2012/2013 year of assessment, that is, from 1 March 2012 to 28 February 2013, is included in **Annexure B**. The tables which are applicable to the other years of assessment (including the 2013/2014 year of assessment) are available on the SARS website (www.sars.gov.za). As these tables change periodically, taxpayers should review the effective date of the particular notice to ensure the correct costs are applied to the correct years of assessment.

As an alternative to calculating the deemed rate according to the cost scale table, the notice (see **Annexure B**) provides that taxpayers may choose to use a specified rate of R3,16 per kilometre (in the case of the 2012/2013 year of assessment)²⁴ provided –

²⁴ This rate changes periodically.

- the business kilometres travelled in the vehicle/s used do not exceed 8 000 kilometres in total during the particular year of assessment; and
- the recipient received no other compensation in the form of a travel allowance or reimbursement.

Example 10 – Travelling deduction where no record of actual expenses was kept

Facts:

J received a travel allowance of R36 000 for the year of assessment ending 28 February 2013. His opening odometer reading on 1 March 2012 was 17 005 kilometres and his closing odometer reading on 28 February 2013 was 48 091 kilometres. He kept an accurate logbook detailing all of his business trips, 14 115 kilometres were travelled for business purposes. No records of actual costs relating to the motor vehicle were kept. J pays all the fuel and maintenance costs. The value of his motor vehicle is R180 000 and he wishes to claim a travel deduction for the 2013 year of assessment.

Result:

| | |
|--|---------------|
| Travel allowance received | R 36 000 |
| The business portion of the expenses incurred in travelling on business will be determined as follows: | |
| Opening kilometres: (01/03/2012) | 17 005 |
| Closing kilometres: (28/02/2013) | <u>48 091</u> |
| Total kilometres travelled | <u>31 086</u> |

The fixed cost for the vehicle amounting to R180 000 is R52 594.

The fixed cost amount must be divided by the total distance travelled (both private and business):

| | |
|------------------------------------|----------------------|
| R52 594 / 31 086 km × 100/1 | 169,1c |
| Add Fuel cost per kilometre | 81,5c |
| Add Maintenance cost per kilometre | <u>32,3c</u> |
| Total cost per kilometre | <u>282,9c</u> |

14 115 business kilometres × 282,9c × 1/100 **39 931**

The travel deduction of R39 931 is limited to the travelling allowance received, being R36 000. The excess of R3 931 is disregarded. Rnil is included in taxable income.

Example 11 – Reimbursive travel claim where no record of actual expenses was kept

Facts:

BA used his private car in December 2012 when he went on a road show to promote one of his employer's new products. Before the start of the road show his employer agreed to reimburse him at a rate of R4,25 per kilometre. He kept a logbook so that he could calculate the total kilometres travelled but did not keep other supporting documentation for the expenses he incurred. The road show was the only time he used his private car to travel for work purposes. BA travelled 3 538 kilometres during the road show.

Result:

BA could use the cost scale table or the specified rate to determine the amount of the deduction he will be entitled to deduct from the allowance received. He has elected to use the specified rate.

The business portion of the expenses incurred in travelling on business will accordingly be determined as follows:

| | R |
|---|------------------|
| Kilometres travelled | 3 538 |
| Specified rate per the <i>Gazette</i> | R3,16 |
| Total amount of deemed expenditure (3 538 km × R3,16) | <u>11 180,08</u> |
| Reimbursive travel claim received (3 538 km × R4,25) | 15 036,50 |
| Amount included in taxable income (R15 036,50 – R11 180,08) | 3 856,42 |

Example 12 – Travelling deduction where no record of actual expenses was kept and the employee receives a travel allowance and a reimbursive travel claim *Facts:*

J received a travel allowance of R36 000 for the year of assessment ending 28 February 2013. His employer also reimburses him at a rate of R4,25 per kilometre. His opening odometer reading on 1 March 2012 was 17 005 kilometres and his closing odometer reading on 28 February 2013 was 48 091 kilometres. He kept an accurate logbook detailing all of his business trips, 8 200 kilometres were travelled for business purposes. No records of actual costs relating to his motor vehicle were kept.

The value of his motor vehicle is R180 000 and he wishes to claim a travel deduction for the 2013 year of assessment.

Result:

The business portion of the expenses incurred in travelling on business will be determined as follows:

| | R |
|--------------------------------------|---------------|
| Travel allowance received | |
| 36 000 | |
| Reimbursive claim (8 200 km × R4,25) | <u>34 850</u> |
| Total | 70 850 |

| | |
|----------------------------------|---------------|
| Opening kilometres: (01/03/2012) | 17 005 |
| Closing kilometres: (28/02/2013) | <u>48 091</u> |
| Total kilometres travelled | <u>31 086</u> |

The fixed cost for the vehicle amounting to R180 000 is R52 594.

The fixed cost amount must be divided by the total distance travelled (both private and business).

| | | |
|---|----------------------|------------------|
| R52 594 / 31 086 km × 100 / 1 | 169,1c | |
| Add Fuel cost per kilometre | 81,5c | |
| Add Maintenance cost per kilometre | <u>32,3c</u> | |
| Total cost per kilometre | <u>282,9c</u> | |
| 8 200 business kilometres × 282,9c × 1 / 100 | | 23 197,80 |
| Amount included in taxable income (R70 850,00 – R23 197,80) | | 47 652,20 |

5.5. Deduction under section 11(a)

Section 23(m) generally prohibits employees and office holders from claiming a deduction for business-related travel expenditure under section 11(a).

There are limited circumstances, for example, an agent or representative whose remuneration is mainly derived from commissions based on sales or turnover, who are not automatically prohibited by section 23(m) from deducting business-related travel expenditure under section 11(a).²⁵

Taxpayers who are not subject to section 8(1), for example, an independent contractor (see **5.1.1**), may seek to claim business-related travel expenditure under section 11(a). In this regard the calculation of the deduction available, assuming all the requirements of section 11(a) are met, must be based on actual expenditure and actual business kilometres travelled. Taxpayers seeking to claim a deduction bear the onus of proving that the amount is deductible²⁶ and, if required, will need to produce proof of the expenditure incurred and the business kilometres travelled.

See **5.4.2** for details on what SARS considers to be accurate written records of business kilometres travelled. A method which merely regards, for example, 20% of total travelling expenses as private is not acceptable.

Practice Note No. 24²⁷ has been withdrawn with effect from years of assessment commencing on or after 1 March 2010.

6. Employees' tax

6.1. General

All allowances or advances, except for those discussed in **6.2** and **6.3**,²⁸ required to be included in taxable income under section 8(1)(a)(i) must be included in remuneration for the purposes of employees' tax.

Reimbursement of actual expenditure is not subject to employees' tax.

6.2. Subsistence allowances

Subsistence allowances are generally not subject to employees' tax. However, if a subsistence allowance or advance is paid or granted to an employee during any month, and that employee had not spent the anticipated time away from his or her usual place of residence on business by the end of the month following the month in which the allowance or advance was paid or granted, it will be subject to employees' tax if the employee has not refunded

²⁵ Taxpayer's in these circumstances will need to consider the interaction between sections 8(1), 11(a), 23(m) and 23B.

²⁶ Section 102 of the Tax Administration Act No. 28 of 2011.

²⁷ "Income Tax - Private Use of a Motor Vehicle" (issued on 8 August 1994) – this note previously dealt with the determination of the private use of a motor vehicle.

²⁸ The employees' tax consequences are also different for the holder of public office allowances – these are not discussed in this Note.

such amount to the employer. This ensures that subsistence allowances or advances are not used as a form of salary structuring by employers and do not result in employees receiving a tax-free allowance which is not provided for by legislation.

The amount of the allowance must be included in remuneration in the month following the month in which the allowance or advance was paid if the employee did not spend the time away from home as anticipated.

6.3. Travel allowance and reimbursive travel claims

6.3.1. Travel allowance

The definition of the term "remuneration" in the Fourth Schedule to the Act was amended with effect from 1 March 2010 to include 80% of the travel allowance or advance as remuneration. However, in the event that an employer is satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance is included as remuneration and is subject to employees' tax.²⁹

This does not mean that only a portion (80% or 20%, as the case may be) is subject to tax. The full allowance or advance is potentially taxable if the taxpayer is unable to claim a sufficient deduction for business travel when submitting his or her annual tax return. It is only for the purposes of employees' tax that 80% or 20%, as the case may be, is included in remuneration.

Employers must be *satisfied* that at least 80% of the use of the vehicle is for business purposes when assessing whether 80% or 20% of the travel allowance or advance should be included 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 determine whether or not the employee should qualify.

Employers must satisfy themselves that employees will use their vehicles for at least 80% business use. This can be done by –

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

²⁹ Effective years of assessment commencing on or after 1 March 2011.

Example 13 – Determination of the travelling allowance inclusion rate by the employer

Facts:

M is paid a travel allowance of R5 000 per month by her employer, JKL (Pty) Ltd. In terms of her 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 detailed logbook which disclosed she had travelled a total of 61 015 kilometres, of which 53 092 kilometres were business travel. M and the financial director of JKL (Pty) Ltd agree that her 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 for business purposes. In March 2012 based on the logbook for the previous year of assessment and the fact that 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 travel allowance, that is, R1 000 ($R5\,000 \times 20\%$) may be included in M's remuneration for employees' tax purposes. The full allowance of R5 000, less any allowable deduction, will need to be included in M's taxable income when she submits her tax return.

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 employers can use to satisfy themselves 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 a recipient's travel allowance and circumstances change such that the employer realizes that the employee will no longer use the vehicle more than 80% for business purposes for the year of assessment, from the month in which the circumstances change, employees tax must be withheld on 80% of a recipient's travel allowance. The adjustment does not need to be made retrospectively; the change must merely be made from the month during which the employer reasonably became aware of the change in the employee's circumstances.

6.3.2. Reimbursive travel claim

Reimbursive travel claims are not subject to employees' tax. They must be included in taxable income, subject to the deduction of any allowable deductions, when the recipient submits his or her tax return.

7. Conclusion

Section 8(1)(a)(i) –

- deals with **all** allowances and advances paid by a “principal” to a “recipient” (for example, travel, subsistence, public office, cell phone and housing allowances); and
- provides that all such allowances and advances must be included in the recipient's taxable income to the extent that it was not expended as specified in section 8(1).

Section 8(1) only permits a deduction for expenditure incurred in relation to travelling on business, expenditure incurred for accommodation, meals and incidental costs while an office holder or employee is obliged to spend at least one night away from his or her usual place of residence as a result of business or official purposes and expenditure incurred by reason of the duties attendant upon public office. The method of calculating the amount of the allowable deduction is specified in section 8(1). This Note discussed the methods of calculating the allowable deduction which, in the case of the travel allowance, includes actual business kilometres and an actual rate per kilometre or a deemed rate per kilometre as determined by the Minister of Finance in the *Gazette*. The allowable deduction for subsistence expenses may, depending on the circumstances, be based on a deemed rate per the *Gazette* or on actual expenditure.

Employers are generally required to calculate and withhold employees' tax on a monthly basis on all advances and allowances. With effect from 1 March 2011 employers must include 80% of the travel allowance in remuneration. However, in the event that an employer is satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance is included as remuneration and is subject to employees' tax. Subsistence allowances are generally not subject to employees' tax. The amount of the subsistence allowance must be included in remuneration in the month following the month in which the allowance was paid to an employee if the employee receives a subsistence allowance but does not spend the anticipated time away from home.

Legal and Policy Division SOUTH AFRICAN REVENUE SERVICE

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Annexure A – The law

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| <p>8. Certain amounts to be included in income or taxable income.—(1)(a)(i) There shall be included in the taxable income of any person (hereinafter referred to as the “recipient”) for any year of assessment any amount which has been paid or granted during that year by his or her principal as an allowance or advance, excluding any portion of any allowance or advance actually expended by that recipient—</p> |
|--|

(aa) on travelling on business, as contemplated in paragraph (b), unless an allowance or advance has been granted by an employer in respect of the use of a motor vehicle as contemplated in paragraph 7 of the Seventh Schedule;
(bb) on any accommodation, meals and other incidental costs, as contemplated in paragraph (c), while such recipient is by reason of the duties of his or her office or employment obliged to spend at least one night away from his or her usual place of residence in the Republic; or
(cc) by reason of the duties attendant upon his or her office, as contemplated in paragraph (d).

(ii) There shall not be included in the taxable income of a person in terms of the provisions of paragraph (a)(i), any amount paid or granted by a principal in reimbursement of, or as an advance for, any expenditure incurred or to be incurred by the recipient—

(aa) on the instruction of his or her principal in the furtherance of the trade of that principal; and

(bb) where that recipient must produce proof to that principal that such expenditure was wholly incurred as aforesaid and must account to that principal for that expenditure:

Provided that where that expenditure was incurred to acquire any asset, the ownership in that asset must vest in that principal.

(iii) For the purposes of this paragraph, “**principal**” in relation to a recipient includes his or her employer or the authority, company, body or other organisation in relation to which any office is held, or any associated institution, as defined in the Seventh Schedule, in relation to such employer, authority, company, body or organisation.

(iv) The provisions of this paragraph shall not apply in respect of any amount paid or granted as an allowance or advance that is received by or accrued to a person in respect of—

(aa) the holding of a public office by that person as contemplated in section 9(2)(g); or

(bb) services rendered or work or labour performed by that person as contemplated in section 9(2)(h),

if that person is stationed outside the Republic and that amount is attributable to services rendered by that person outside the Republic.

(b) For the purposes of paragraph (a)(i)(aa)—

(i) any allowance or advance in respect of transport expenses shall, to the extent to which such allowance or advance has been expended by the recipient on private travelling (including travelling between his place of residence and his place of employment or business or any other travelling done for his private or domestic purposes), be deemed not to have been actually expended on travelling on business;

(ii) subject to the provisions of subparagraph (iii), where such allowance or advance has been paid to the recipient in order that it may be utilized for defraying expenditure in respect of any motor vehicle used by the recipient, the portion of the allowance expended by the recipient during the year of assessment for business purposes shall, unless an acceptable calculation based on accurate data is furnished by the recipient, be deemed to be an amount calculated by applying the rate per kilometre determined in the manner prescribed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used, on a distance

travelled during the said year for business purposes (other than private travelling as contemplated in subparagraph (i));

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(iii) where such allowance or advance is based on the actual distance travelled by the recipient in using a motor vehicle on business (excluding the said private travelling), or such actual distance is proved to the satisfaction of the Commissioner to have been travelled by the recipient, the amount expended by the recipient on such business travelling shall, unless the contrary appears, be deemed to be an amount determined on such actual distance at the rate per kilometre fixed by the Minister of Finance by notice in the *Gazette* for the category of vehicle used;

(iiiA) where the portion of the allowance or advance which is claimed by the recipient to be actually expended is calculated based on accurate data furnished by the recipient in respect of any vehicle—

(aa) in the case of a vehicle that is being leased, the total amount of payments in respect of that lease may not in any year of assessment exceed an amount of the fixed cost determined by the Minister in the notice contemplated in subparagraph (ii), for the category of vehicle used;

(bb) in any other case—

(A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to R480 000, or such other amount determined by the Minister by notice in the *Gazette*; and

(B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been R480 000, or such other amount determined by the Minister in terms of subitem (A);

(iv) where any motor vehicle which is owned or leased by an employee, his spouse or his child, whether directly or indirectly by virtue of an interest in a company or trust or otherwise, has been let to the employer or any associated institution in relation to the employer, the sum of the rental paid by the employer or associated

institution and any expenditure defrayed by the employer or associated institution in respect of the vehicle, shall be deemed to be an allowance paid to the employee in respect of transport expenses, and in such case the said rental shall for the purposes of this Act (excluding this paragraph) be deemed not to have been received by or to have accrued to the lessor of such motor vehicle, and for the purposes of paragraph 2(b) of the Seventh Schedule such employee shall be deemed not to have been granted the right to use such motor vehicle.

(c) A recipient shall, for the purposes of paragraph (a)(i)(bb), be deemed to have actually expended,—

(i) where that recipient proves to the Commissioner the amount of the expenses incurred by him or her in respect of accommodation, meals or other incidental costs (other than any amount of expenditure borne by the employer otherwise than by way of payment or granting of the allowance), the amount so actually incurred but limited to the amount of the allowance or advance paid or granted to meet those expenses; or

(ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, such amount in respect of meals and other

incidental costs, or incidental costs only, as the Commissioner may determine for a country or region for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses: Provided that this subparagraph does not apply to the extent that—

(aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day; or

(bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for that day or part of that day, as contemplated in subparagraph (i).

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11. General deductions allowed in determination of taxable income.—For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

(a) expenditure and losses actually incurred in the production of the income, provided

Definition of “remuneration” in 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— (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;

Annexure B – Table of rate per kilometre

1. Definition

In this Schedule, “**value**” in relation to a motor vehicle used by the recipient of an allowance as contemplated in section 8(1)(b)(ii) and (iii) of the Income Tax Act, 1962, means—

- (a) where that motor vehicle (not being a motor vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by that recipient under a *bona fide* agreement of sale or exchange concluded by parties dealing at arm's length, the original cost thereof to him/her, including any sales tax or value-added tax but excluding any finance charge or interest payable by him/her in respect of the acquisition thereof;

(b) where that motor vehicle—

(i) is held by that recipient under a lease contemplated in paragraph (b) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act, 1991; or

(ii) was held by him/her under such a lease and the ownership thereof was acquired by him/her on the termination of the lease,

the cash value thereof as contemplated in the definition of "cash value" in section 1 of the Value-Added Tax Act; or

(c) in any other case, the market value of that motor vehicle at the time when that recipient first obtained the vehicle or the right of use thereof, plus an amount equal to the sales tax or value added tax which would have been payable in respect of the purchase of the vehicle had it been purchased by the recipient at that time at a price equal to that market value.

2. Determination of rate per kilometre

The rate per kilometre referred to in **section 8(1)(b)(ii)** and **(iii)** must, subject to the provisions of paragraph 4, be determined in accordance with the cost scale set out in paragraph 3, and must be the sum of—

(a) the fixed cost divided by the total distance in kilometres (for both private and business purposes) shown to have been travelled in the vehicle during the year of assessment: Provided that, where the vehicle has been used for business purposes during a period in that year which is less than the full period of that year, the fixed cost must

(b) be an amount which bears to the fixed cost the same ratio as the period of use for business purposes bears to 365 days;

(c) where the recipient of the allowance has borne the full cost of the fuel used in the vehicle, the fuel cost; and

(d) where that recipient has borne the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the maintenance cost.

3. Cost scale

| Where the value of the vehicle - | Fixed costs R | Fuel costs c/km | Maintenance cost 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 |

4. Simplified method for distances less than 8 000 kilometres

Where—

- (a) the provisions of **section 8(1)(b)(iii)** are applicable in respect of the recipient of an allowance or advance;
- (b) the distance travelled in the vehicle for business purposes during the year of assessment does not exceed 8 000 kilometres, or where more than one vehicle has been used during the year of assessment the total distance travelled in those vehicles for business purposes does not exceed 8 000 kilometres; and
- (c) no other compensation in the form of a further allowance or reimbursement is payable by the employer to that recipient, that rate per kilometre is, at the option of the recipient, equal to 316 cents per kilometre.

5. Effective date

The rate per kilometre determined in terms of this Schedule applies in respect of years of assessment commencing on or after 1 March 2012.



C DU PLESSIS
MUNICIPAL MANAGER

30 October 2018

DATE