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# Deductions available for commission earners

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Commission earners could make an argument to Sars that they should be allowed to deduct their normal range of business expenses, even if commission is no longer more than 50% of their total remuneration under the exceptional circumstances of the Covid-19 pandemic.


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## Who is a commission earner?

Commission earners who earn more than 50% of their total remuneration as commission income are not limited in the type of business expenses they can claim, as long as these are incurred in the production of their income and are not capital or personal in nature.

To determine if these employees are entitled to claim business expenses, commission income recorded under code 3606 should be more than 50% of the total remuneration on the IRP5, which is the sum of gross retirement funding income (3697) and gross non-retirement funding income (3698). Total remuneration includes basic salary, medical aid contributions, group life premiums and any retirement fund contributions made by the employer.

## Remuneration subject to PAYE

A commission can be a flat fee or a percentage of transaction value. It is an amount paid for executing a transaction. Although a commission earner can be referred as an "agent" or "representative", the individual is regarded as an "employee" in the Fourth Schedule of the Income Tax Act. Commission income is variable income. The employer is deemed to incur the commission earned and the employee deemed to accrue the amount in the month of payment, regardless when the sales or turnover amounts forming the basis of the commission calculations have taken place.

In many ways, the deductions for business expenses available to these commission earners are similar to those available to individuals who are sole proprietors or independent contractors. Typically, these commission earners would apply for fixed percentage directives using the IRP 3(b) form which requires a detailed income and expenditure statement to be included with the application. The detailed income and expenditure statement should contain projected income amounts, which can be based on amounts earned in the latest year of assessment, adjusted for any increases, and a breakdown of anticipated expenses with corresponding upward adjustments. The fixed percentage directives would provide for the percentage of employees' tax (PAYE) that their employers should withhold on remuneration paid to them.

## Types of expenses claimed as deductions

Unlike other salaried employees, these commission earners are able to claim actual travel expenses as deductions even if they do not receive a travel allowance or the use of a company vehicle from their employers. They will be able to claim wear-and-tear allowances on vehicle costs, interest and fees on the instalment sale agreements, and maintenance, fuel, licence and insurance costs. They should maintain logbooks recording business kilometres with dates, kilometres travelled and purposes of travel. The logbook will assist in apportioning travel expenses according to business versus total kilometres.

These commission earners are also able to claim home office expenses proportionate to the area used for business on rent, rates, water and electricity, interest and fees on the mortgage bond, cleaning, internet connectivity, and wear and tear allowances on business equipment. Cellphone invoices with a sample of business use relative to personal use calls should be maintained for verification purposes. Repairs to the home office specifically will be allowed in full. Repairs to the building in general, however, must not be included in total costs.

Unlike other salaried employees, the room containing the home office need not be regularly and exclusively used by the individual to work for the employer from which they earn remuneration. These commission earners can claim for home office expenses if their work performance and duties are mainly in their home offices, i.e. more than 50%.

Other expenses which commission earners can claim include any service fees such as accounting, legal, administration, and sales and marketing fees paid to service providers. (Non-commission salaried earners are only allowed accountancy fees if they receive income other than salary, pension or annuities.)

Commission earners can claim entertainment expenses for various sales and marketing initiatives. It would be advisable to compile a spreadsheet together with the names of clients and reasons for the expenses which reconciles with the relevant invoices, receipts or statements of account. Notably, other salaried employees who do not earn commissions at all, or who earn less than 50% of total remuneration in commissions, cannot claim any entertainment expenses. These salaried employees should rather claim reimbursements for entertainment expenses from their employers, based on supporting invoices.

As with any claims for deductions, supporting documents in the form of schedules, invoices, receipts, statements of accounts and calculations with amounts on schedules reconciling with the source documents should be retained for five years and submitted to SARS if the ITR12 return is selected for verification. Bank statements or credit card statements are not accepted as supporting documents. An apportionment calculation of square meter of home office area relative to the total residence, with the same ratio applied to expenses such as rates and interest, must also be submitted. Expenses which are not allocated a code on the ITR12 should be claimed using code 4016.

## Reduction in commission income due to Covid-19 lockdowns

Unfortunately, the Covid-19 lockdown conditions have resulted in devastating reductions in commission income for some of these individuals. Where the anticipated commission income in the 2021 year of assessment is likely to fall below 50% of total remuneration due to the economic impact of the lockdown, there is an argument to be made that these commission earners should still be allowed to claim all the business expenses regardless. This is because their remuneration is normally derived mainly from commissions based on sales or turnover attributable to them. Covid-19 times are unprecedented, and the OECD has acknowledged this period is exceptional and temporary in nature, i.e. not normal. The same should be the case in determining whether a commission earner meets the 50% threshold in the 2021 year of assessment.

It would be a good idea to anticipate this issue in a verification, to prevent SARS disallowing expenses claimed and having to object to the additional assessment. The commission earner should provide a schedule with commission income 3606 amounts comprising more than 50% of the total remuneration in the 2019 years of assessment and beyond. Communication from the employer on pre-lockdown sales targets to be reached in 2020 and further communication with reduced lockdown targets would also assist in demonstrating that the decrease in sales (and corresponding decrease in commission income) is due to the lockdown and exceptional in nature.

Where the decrease in commission income is not expected to fall below 50% of total remuneration, the commission earner could request a revised fixed percentage directive to reduce the percentage of PAYE to be withheld by the employer due to the reduced remuneration. Commission earners should consult their tax advisers on whether to submit a new request. Their employers should continue to withhold PAYE according to the existing fixed percentage directive until provided with a new directive.


## ABOUT JOON CHONG

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