INTERPRETATION NOTE 111

DATE: 18 March 2019

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 10(2)(*b*) OF THE SEVENTH SCHEDULE
SUBJECT : NO-VALUE PROVISION IN RESPECT OF THE RENDERING OF TRANSPORT SERVICES BY ANY EMPLOYER

Preamble

In this Note unless the context indicates otherwise –

- **"BGR"** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **"employee"** means "employee" as defined in paragraph 1;
- **"employer"** means "employer" as defined in paragraph 1;
- **"paragraph"** means a paragraph of the Seventh Schedule to the Act;
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All rulings referred to in this Note are available on the SARS website at **www.sars.gov.za**. Unless indicated otherwise, the latest issues of these documents should be consulted.

1. Purpose

This Note provides clarity on the no-value provision in respect of the rendering of transport services by an employer to employees in general, and must be read with BGR 42 "No-value Provision in respect of Transport Services".

2. Background

Employers may provide employees with a transport service from their homes to the place of their employment. This transport service is a taxable benefit in the hands of the employee,[1] but may attract no value[2] where certain requirements have been met.

There is uncertainty as to the application of the no-value provision,[3] in terms of what is envisaged in respect of transport services rendered *by the employer* and the transport services that could potentially qualify under the no-value provision, especially where the employer does not provide the transport service directly, but contracts another person to provide the transport service to employees.

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1 Paragraph 2(*e*).
2 Under paragraph 10(2)(*b*).
3 As provided for in paragraph 10(2)(*b*).

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

4. Application of the law

4.1 Taxable benefit in respect of free or cheap services

Paragraph 2(*e*) provides that a taxable benefit is deemed to have been granted by an employer to an employee if any service has, at the expense of the employer, been rendered to the employee (whether by the employer or some other person) for his or her private or domestic purposes.

The focus in paragraph 2(*e*) is on payment by the employer (namely, at the *expense* of the employer) and on the person rendering the service, which is the employer or some other person. The deemed taxable benefit could therefore result from either a transport service rendered by the employer, or a transport service rendered by some other person that could include, for example, a public transport service.

The taxable benefit, which is valued under paragraph 10, is included in paragraph (*i*) of the definition of "gross income",[4] and is subject to income tax.[5] The taxable benefit will further be included in the employee's remuneration[6] and the employer will be obliged to deduct or withhold employees' tax[7] on these amounts.

Paragraph 10(1) provides as follows with regard to the cash equivalent of the value of the taxable benefit in the case of:

(a) A travel facility granted by any employer, that is engaged in the business of conveying passengers for reward by sea or by air, to enable an employee or relative of that employee to travel outside the Republic for private or domestic purposes, an amount equal to the lowest fare[8] less any consideration given by the employee or relative of that employee; or

(b) The rendering of any other service, the cost to the employer in rendering that service or in having that service rendered (which would be by some other person), less any consideration given by the employee for such service.

As seen above, in terms of paragraphs 2(*e*) and 10(1)(*b*), the taxable benefit is deemed to have been granted and valued in respect of transport services rendered by the employer *or some other person*.

4.2 No-value provision

While paragraph 10(1) provides for the cash equivalent of the value of the taxable benefit, paragraph 10(2)(*b*) provides that the taxable benefit will attract *no value* if a transport service is rendered by the employer to employees in general for the

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4 As defined in section 1(1).
5 Section 5(1).
6 Paragraph (*b*) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule.
7 Paragraph 2(1) of the Fourth Schedule.
8 Payable by a passenger using such facility.

conveyance of such employees from their homes to the place of their employment (and *vice versa*).[9]

The focus in paragraph 10(2)(*b*) shifts from the *payment* for or *cost* of service (as provided in both paragraph 2(*e*) and in paragraph 10(1)(*b*)), to the *person* rendering the service – in this case, the employer.

In order for the no-value provision to apply, the employer needs to render the service and not *some other person*. One therefore needs to distinguish between the employer rendering the transport service and the provision of transport by some other person, such as general public transport, in order for the no-value provision to apply.

Transport services rendered by the employer directly will fall squarely within the no-value provision, provided all other requirements are met.

A difficulty, however, arises where the employer does not provide the transport services directly, but indirectly through third party service providers. It will depend on a case-by-case basis whether one can contend that the transport services are rendered by the employer or not. This would require an analysis of the contractual relationship between the service provider and the employer, as well as the terms and conditions under which the employer offers the transport service.

In order to provide certainty as to what will be acceptable to SARS in terms of any *transport service* rendered *by the employer*, refer to BGR 50 "No-value Provision in respect of the Rendering of Transport Services by any Employer" in which it is ruled that, where the employer makes it clear in the conditions under which the transport service is provided to employees in general, it will be acceptable if such transport service is *outsourced* to a specific transport service provider, under the following conditions:

(i) The transport service is provided exclusively to employees on the basis of predetermined routes or under defined conditions.

(ii) The employees cannot in any manner request such transport service from the service provider on an *ad hoc* basis.

(iii) The contract for providing the transport service is between the employer and the transport service provider. The employee is not a party to the contract.

A transport service rendered by the employer would be distinguishable from a transport service offered by some other person (such as general public transport) in that the transport service rendered by the employer would be *exclusive* to employees of that employer, and the conveyance of those employees is solely between their homes and the place of their employment and *vice versa*. In an arrangement of this nature, it would mean the transport services would only be available to these employees and not, for example, the general public, hence its exclusivity.

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[9] An interpretation of what is meant by transport between "home and place of employment (and *vice versa*)" is outlined in BGR 42 and will not be discussed in this Note.

The employer may encourage employees to use general public transport (such as a taxi, train or bus service), which is a transport service that is neither rendered by the employer, nor exclusive, but for which the employer may pay the expense incurred. Examples of such transport services would include monthly or weekly train or bus tickets. Since the taxable benefit will attract *no value* where the transport service is rendered by the employer to employees in general for their conveyance between home and place of employment, the provision of *general public transport* by some other person would not qualify as a transport service rendered by the employer, and would not meet the no-value provisions in paragraph 10(2)(*b*), unless the transport service is outsourced to a specific transport service provider and meets the conditions as laid out in BGR 50.

Example 1 – Transport services rendered by the employer

Facts:

ABC Ltd (the employer) is an employer whose employees are stationed at various borders inland and along the coastal waters of the Republic,[10] often in widespread, isolated areas where transport is infrequent or unavailable.

The employer owns and operates several microbuses, which it uses to transport its employees in general from their homes to the place of their employment and *vice versa*. Without this mode of transport as provided by the employer, many of its employees would not be in a position to realistically be expected to travel between their home and place of employment.

Result:

A taxable benefit is deemed to have been granted by the employer to the employee because the service has, at the expense of the employer, been rendered to the employee for his or her private or domestic purposes, namely, transport between home and place of employment. The value of the taxable benefit is determined under paragraph 10(1)(*b*).

The taxable benefit will, however, attract no value in this case because paragraph 10(2)(*b*) provides for a no-value rule where any transport service is rendered by the employer to employees in general for their conveyance between home and place of employment and *vice versa*. In this case, the transport service is rendered directly by the employer.

Example 2 – Transport services rendered by the employer

Facts:

XYZ Palliative Care Ltd (the employer) offers private care throughout South Africa to patients who have terminal and life-limiting conditions. The employer requires all of its nurses and personal care attendants (the employees) to work shifts in order to provide continuous palliative care and support to its patients. As a result of the shift work requirement, the employer has undertaken to render a transport service that is available to the employees in general, who begin or end their shifts between the hours of 18h00 and 06h00.

[10] As defined in section 1(1).

The employer has entered into a contract with PQ Bus Services Ltd to render an exclusive transport service for the conveyance of employees from their homes to the place of their employment and *vice versa*. The employer has further entered into a collective agreement, which provides that all employees may make use of this service.

Result:

A taxable benefit is deemed to have been granted by the employer to the employee because the service has, at the expense of the employer, been rendered to the employee for his or her private or domestic purposes. The value of the taxable benefit is determined under paragraph 10(1)(*b*).

The taxable benefit will, however, attract no value under paragraph 10(2)(*b*) in this case because the employer has chosen to render a transport service to employees by way of a contractual agreement with a third party, and by further entering into an agreement with employees to provide exclusive transport services for the conveyance of its employees in general between their homes and the place of their employment and *vice versa*.

Example 3 – Transport services rendered by the employer

Facts:

B is temporarily seconded from his place of employment in Durban, where he ordinarily resides, to his employer's head office in Johannesburg to assist with a project. During the 3-month secondment period in Johannesburg, the employer has undertaken to fly B home every weekend, and purchases a return flight ticket between Durban and Johannesburg in B's name.

Result:

The transport service in the form of a return flight between place of home in Durban and place of temporary secondment in Johannesburg is not used by B for his private or domestic purposes. B's place of employment is in Durban and, although seconded to Johannesburg for a 3-month period, this temporary secondment is for business purposes. Paragraph 2(*e*) will not be applicable, so there is no deemed taxable benefit. It is thus not necessary to consider the application of the no-value provisions in paragraph 10(2)(*b*).

Example 4 – Transport services not rendered by the employer

Facts:

RST Company (the employer) wishes to provide transport to all of its 50 employees from their homes to the place of their employment as a result of the employer moving its offices from Rosebank in Johannesburg to Centurion in Pretoria. The employer will purchase monthly train tickets from a public transport provider for all employees required to travel to the new Centurion office.

Result:

A taxable benefit is deemed to have been granted by the employer to the employees because the service has, at the expense of the employer, been rendered to the employees for their private or domestic purposes. The value of the taxable benefit is determined under paragraph 10(1)(*b*).

The taxable benefit will not fulfil the no-value provisions under paragraph 10(2)(*b*) in this case because the employer has not rendered a transport service for the conveyance of its employees in general between their home and the place of their employment and *vice versa*, and has instead merely paid for public transport.

5. Conclusion

Transport services that are rendered directly by the employer – or that meet the conditions laid out in the BGR 50 – for the provision of exclusive transport services to employees in general between their homes and the place of their employment, will fall within the provisions of paragraph 10(2)(*b*).

The provision of, and access to, general public transport will not be regarded as a transport service rendered by the employer and will therefore not qualify for the no-value provisions of paragraph 10(2)(*b*).

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Annexure – The law

Paragraph 2(*e*)

2. For the purposes of this Schedule and of paragraph (*i*) of the definition of "gross income" in section 1 of this Act, a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employee's employment with the employer, if as a benefit or advantage of or by virtue of such employment or as a reward for services rendered or to be rendered by the employee to the employer—

(*e*) any service (other than a service to which the provisions of subparagraph (*j*) or (*k*) or paragraph 9(4)(*a*) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (*a*) of subparagraph (1) of paragraph 10, or the cost referred to in item (*b*) of that subparagraph, as the case may be; or

Paragraphs 10(1) and 10(2)(*b*)

FREE OR CHEAP SERVICES

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

(*a*) in the case of any travel facility granted by any employer who is engaged in the business of conveying passengers for reward by sea or by air to enable any employee or any relative of such employee to travel to any destination outside the Republic for his or her private or domestic purposes, an amount equal to the lowest fare payable by a passenger utilising such facility (had he or she paid the full fare), less the amount of any consideration given by the employee or his or her relative in respect of such facility: Provided that for the purposes hereof a forward journey and a return journey shall be regarded as one journey; or

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

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

(*b*) any transport service rendered by any employer to his employees in general for the conveyance of such employees from their homes to the place of their employment and *vice versa*;

Definitions: Paragraph 1

"employee", in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole holder of shares in or one of the controlling holders of shares in such company and, for the purposes of paragraphs 2 (*h*) and 13, including any person who has retired as aforesaid and who, after the employee's retirement, is released by the employee's employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement;

"employer" means any person who is an employer as defined in paragraph 1 of the Fourth Schedule and includes—

(*a*) any company; and

(*b*) for the purpose of paragraph 2 and the determination of the cash equivalent of the value of any taxable benefit granted to any person who derives remuneration as defined in the said paragraph from employment in the public service or any administration or undertaking of the State or who holds office under the Republic, the State;