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17 April 2007

TO THE HEADS OF ALL DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS

ATTENTION: CHIEF FINANCIAL OFFICERS/HEADS OF CORPORATE SERVICES/HR MANAGERS)

INCOME TAX: STATE AND OTHER HOUSING

1. This Department has in circular minute dated 8 March 2006 communicated to all departments South African Revenue Service's (SARS) method of taxing residential accommodation for employees in the Public Service.
2. According to a ruling issued by SARS on its letter dated 6 February 2006, the taxable benefit will be limited to R976 per month where it is found that employees occupy the premises under unique circumstances. This meant that an affected employee has a nil taxable benefit where the employee contributed R976 per month for the residential accommodation that was provided by his/her employer.
3. Please note that SARS has increased the limited amount of R976 referred to above to **R1 020** per month for the 2007 tax year. The details of the increase are contained in the attached letter dated 2 April 2007 from SARS.
4. Departments are therefore expected to effect the implementation of the said increase in the 2007 tax year.


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Date
02 April 2006



Attention: Mr Phopho Thwala
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Dear Mr. Thwala

INCOME TAX: FREE OR CHEAP RESIDENTIAL ACCOMMODATION FOR EMPLOYEES IN THE PUBLIC SERVICE

I refer to our previous letter dated 15 March 2006. Please be advised that the previous ruling issued in terms of the same letter is hereby withdrawn and replaced by the following:

1. In terms of paragraph 2(d) of the Seventh Schedule to the Income Tax Act, 1962 (the Seventh Schedule), a taxable benefit shall be deemed to have accrued to all employees who have been granted residential accommodation by their employers either free of charge or for a consideration which is less than the rental values for such properties.
2. The value of this taxable benefit shall be **the greater of:**
 - 2.1 the amount calculated according to a formula in paragraph 9(3) of the Seventh Schedule (the formula) (Annexure B); or
 - 2.2 the total amount of rentals, and any other expenses paid by the employer for the accommodation.
3. This value must be reduced by any amount paid by the employee in respect of the use of the accommodation for residential purposes.
4. A ruling issued on 15 March 2006 states that the taxable benefit will be limited to R976 per month **where it is found that the employees occupy the premises under unique circumstances.**

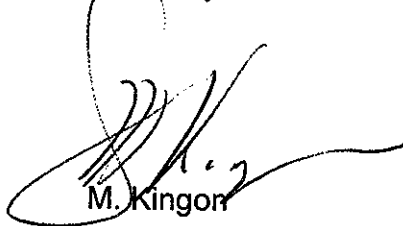
5. This meant that an affected employee had a nil taxable benefit where the employee contributed R976.00 per month for the residential accommodation that was provided by his or her employer.
6. There was a need to review this ruling in light of the date on which it was issued and the effects of inflation since then.
7. It was therefore decided to increase the amount of R976,00 mentioned in 4 above, to an amount of R 1020.00
8. Situations of an employee occupying residential accommodation, provided by the employer, **under unique circumstances** include:
 - Where the very nature of an employee's duties dictate that the employee has to live in the residential accommodation provided by the employer, i.e. the employee has no choice in where he or she wants to live. An example of this is a caretaker of boarding house for school children has to stay on the premises to take care of the needs of the children. The mere insistence of an employer that the employee live in residential accommodation provided by the employer is not sufficient for the reduced taxable benefit – the nature of the duties of the employee and the freedom of the employee to choose where he or she wants to live must be taken in account (see Annexure A for examples).
 - Where the premises will not be able draw rentals similar to other premises of the same size on the market (see Annexure A for examples)
9. The effect of increasing the capping in 4 above from R976.00 to R1020.00 is that the maximum amount of tax payable by an employee on the taxable benefit will be R408,00 per month for the 2008 tax year, based on the assumption that the employee will not contribute any amounts for the accommodation.
10. Where an affected employee pays an amount of R200 per month for the accommodation, the taxable benefit must be reduced by this amount, i.e. the capped taxable benefit will be reduced from R1020.00 to R820.00 per month. This employee will pay tax up to a **maximum** of R328.00 per month for the 2008 tax year.
11. Since the formula is based on the ability of the employee to pay income tax, it is possible for employees in the lower income brackets to have taxable benefits that are less than the capped amount of

R1020.00 In these cases, the lesser amount must be used as the taxable benefit.

12. Due to practical constraints, specific rulings will not be issued to each employer confirming whether or not the R1020.00 limitation is applicable. Employers must make the final decision based on the guidance provided in this ruling.
13. This ruling is applicable with effect from 01 March 2007 year of assessment until further notice from the South African Revenue Service.

Should you have any problems with the amount of R 1020.00 as the Value of a taxable benefit, feel free to contact my office on the details provided above.

Sincerely



M. Kingon

for COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

ANNEXURE A – EXAMPLES

1. Mr. X is a prison warden employed by the Department of Correctional Services. His conditions of service stipulate that he must reside on the premises of the prison to be available at all times should there be a prison riot or break. He was therefore provided with an official residence on the prison premises. He pays R200 per month to the Department of Correctional Services as rental for the residential accommodation. In this case, Mr. X will qualify for the capping of the taxable benefit due to the nature of his duties, his conditions of service and the fact that he does not have choice to live wherever he chooses. The value of the taxable benefit will therefore be the lower of the value determined by using the formula or an amount of R1020.00 per month, less any amount paid by Mr. X in respect of renting the accommodation from his employer. If, therefore, the formula calculates the benefit to be R1 500 per month, the value of the taxable benefit must be limited to R1020.00 less R200 per month, i.e. R820.00 per month. This taxable benefit of R820.00 will be added to his gross salary and employees' tax (e.g. PAYE) will be deducted from the total amount.

2. Due to her vast expertise, Dr. Y was requested by the Department of Health to promote primary health care in a hospital in a rural area in the Limpopo Province for two years. She has a house in Durban and has no intention of settling in the Limpopo Province. The Limpopo Provincial Government therefore provided her with residential accommodation in an area close to the hospital but where the rental value for properties of a class similar to the residential accommodation is well below the average national rental value of properties of a similar class. She does not pay any consideration for the use of residential accommodation. In this case, she will qualify for the capping for the taxable fringe benefit. The value of the taxable benefit must be calculated by using the formula and then limiting it to an amount of R1020.00 per month. If, therefore, the formula calculates the benefit to be R3 000 per month, the value of the taxable benefit would be limited to R1020.00 per month. This taxable benefit of R1020.00 will be added to her gross salary and employees' tax (e.g. PAYE) will be deducted from the total amount.

3. Mr. A is a Director in the South African Police Service (SAPS). As part of his conditions of employment, he has the **option** of occupying residential accommodation owned by the SAPS. The residential accommodation is in

an active rental market which results in the market rental value of the residential accommodation being more or less the same value determined by using the formula. He pays R200 per month to the SAPS as rental for the use of the residential accommodation. In this case, the capping is not applicable which means that the value of the taxable benefit will be the value determined by using the formula. If, therefore, the formula calculates the benefit to be R3 000 per month, the value of the taxable benefit would be R3 000 less R200, i.e. R2 800 per month. This taxable benefit of R2 800 will be added to his gross income and employees' tax (e.g. PAYE) will be deducted from the total amount.

4. Ms. B was requested to serve her internship (to become a medical doctor) in a hospital in a remote part of the Eastern Cape. She will have to be on call for at least four nights per week. There are no flats or houses which she can rent or buy close to the hospital. To ensure her immediate availability for service, the Eastern Cape Provincial Government provided her with residential accommodation on the premises of the hospital. She will not pay any consideration for the use of the accommodation. In this case, she will qualify for the capping for the taxable fringe benefit. The value of the taxable benefit must be calculated by using the formula and then limiting it to an amount of R1020.00 per month. Since interns are not paid high salaries, the formula calculates the benefit to be R700 per month, which is less than the capped amount of R1020.00. In this case the R1020.00 capping is applicable but it will be necessary to use the lesser amount of R700, which is the actual benefit according to the formula. This taxable benefit of R700 will be added to her gross salary and employees' tax (e.g. PAYE) will be deducted from the total amount.

ANNEXURE B – THE FORMULA

The formula in paragraph 9(3) of the Seventh Schedule is as follows:

$$(A - B) \times \frac{C}{100} \times \frac{D}{12}$$

in which formula –

- (i) 'A' represent the remuneration factor as determined in relation to the year of assessment;
- (ii) 'B' represents an abatement equal to an amount of R40 000:
Provided that ...
- (iii) 'C' represents a quantity of 17: Provided that where the accommodation consists of a house, flat or apartment consisting of at least four rooms –
 - (aa) 'C' represents a quantity of 18 if –
 - (A) such accommodation is unfurnished and power or fuel is supplied by the employer; or
 - (B) such accommodation is furnished but power or fuel is not supplied; or
 - (bb) 'C' represents a quantity of 19 if such accommodation is furnished and power or fuel is supplied by the employer; and
- (iv) 'D' represents the number of months in relation to a year of assessment during which the employee was entitled to occupation of such accommodation;

"remuneration" in relation to any employee, means the aggregate of the amounts of remuneration (as determined in accordance with the definition of 'remuneration' in paragraph 1 of the Fourth Schedule but excluding any amounts referred to in paragraph (c) and including any amounts referred to in paragraph (vii) of that definition) which have been derived by him or her from his or her employer and any companies and funds which are associated institutions in relation to the employer but excluding –

- (a) the value of any benefit or taxable benefit derived from private use of any motor vehicle or the occupation of residential accommodation;
- (b) the amount of any remuneration ...
- (c) any amount referred to in paragraph (iii) of the proviso to paragraph (c) of the definition of 'gross income' in section 1 of this Act;

'remuneration factor', in relation to a year of assessment during which an employee has occupied residential accommodation, means the remuneration derived by him or her during the year of assessment immediately preceding the first mentioned year of assessment: Provided that –

- (i) where during a portion of such preceding year the employee was not in the employment of the employer ...;
- (ii) where during the whole of such preceding year, the employee was not in the employment of the employer ...