

Fringe benefits – Accommodation

Paragraph 2(d) of the 7th Schedule prescribes that a taxable benefit shall be deemed to have been granted where the employer has provided the employee with residential accommodation either free of charge or for a rental consideration which is less than the value of such accommodation.

Value to be placed on the residential accommodation benefit in terms of Paragraph 9 of the 7th Schedule is the greater of –

– an amount determined according to the formula $(A - B) \times C / 100 \times D / 12$

– an amount equal to the cost for the employer (in other words, rentals paid and other expenses defrayed in order to provide such accommodation).

For purposes of the above formula -- A represents the remuneration factor as determined in relation to the tax year;

– B represents an abatement equal to an amount of R43 000, provided that the abatement is reduced to ZERO where:

– the employer is a private company and the employee or his / her spouse controls the company or is one of the persons controlling the company, whether control is exercised directly as a shareholder in the company or as a shareholder in any other company; or

– the employee, his / her spouse or minor child has a right of option or pre-emption granted by the employer or any other person by arrangement with the employer or any associated institution in relation to the employer, whereby the employee, his / her spouse or minor child may become the owner of the accommodation, whether directly or indirectly by virtue of a controlling interest in a company or otherwise;

– C represents a quantity of 17, provided that –

– C represents a quantity of 18 where the accommodation

consists of a house, flat or apartment consisting of at least four rooms; and:

- such accommodation is unfurnished and power or fuel is supplied by the employer; or
- such accommodation is furnished, but power or fuel is not supplied by the employer; or
- C represents a quantity of 19 where the accommodation consists of a house, flat or apartment consisting of at least four rooms and such accommodation is furnished and power or fuel is supplied by the employer; and
- D represents the number of full months in relation to the tax year during which the employee was entitled to the occupation of the accommodation.

Remuneration for purposes of the above formula means, in relation to an employee, the aggregate remuneration as determined for employees' tax purposes including any amount paid to any director of a private company in respect of services rendered or to be rendered, which has been derived by him / her from his / her employer and any associated institution in relation to the employer, but excluding -

- the value of the taxable benefit derived in respect of the private use of a vehicle and the taxable benefit in respect of residential accommodation;
- the amount of the remuneration derived by an employee who is not the controlling shareholder or one of the controlling shareholders of the employer company, from an associated institution in relation to the employer if it is shown to the satisfaction of the Commissioner that the employee's employment with the employer is not in any way connected with the employment with the associated institution; and
- a travel allowance and the allowance paid to a holder of a public office, which is included in remuneration.

Remuneration factor for purposes of the above formula means, in relation to a tax year during which residential accommodation has been occupied, the remuneration derived by the employee during the tax year immediately preceding that

tax year, provided that –

- where the employee was not employed by the employer concerned for the whole of the preceding year, the remuneration he / she received from the employer for the portion of the year he / she was employed by the employer, must be calculated pro rata for the full 365 days; and
- if the employee was not employed by the employer for any portion of the preceding year, the employee's remuneration for the first month he / she is employed by the employer, must be calculated pro rata for a full 365 days.

Value to be placed on holiday accommodation that is occupied temporarily depends on whether the accommodation is owned or hired by the employer: Where such accommodation is hired by the employer from a person other than an associated institution in relation to the employer, so much of the rental payable and any amounts chargeable in respect of meals, refreshments or any other services as have been borne by the employer.

Where such accommodation so owned by the employer or hired by the employer from an associated institution in relation to that employer, an amount calculated at the prevailing rate per day at which such accommodation could normally be let to a person other than an employee.

Employer rents a residence from his / her employee: There is one important exception to the formula method of determining this benefit. This exception occurs when an employer rents from his / her employee a residence in which the employee has an interest.

Paragraph 9(10) of the 7th Schedule prescribes that an employee will be deemed to have an interest in the accommodation if:

- such accommodation is owned by the employee or a connected person in relation to such employee;
- any increase in the value of the accommodation in any manner whatsoever, whether directly or indirectly, accrues for the

benefit of the employee or a connected person in relation to such employee; or

– such employee or a connected person in relation to such employee, has a right to acquire the accommodation from his / her employer.

Employee has an interest in the accommodation: In all cases where it can be said that the employee has an interest in the accommodation and such accommodation has been let to the employer who in turn has granted such employee free or cheap occupation thereof, the value of the benefit is the greater of:

– the value determined in accordance with the formula; or
– an amount equal to the rental together with any other expenditure paid by the employer

and is therefore, fully taxable in the hands of the employee.

Applying the value determined in accordance with the formula:-
The value determined in accordance with the formula (except where the employee has an interest in the accommodation in question) shall apply where –

– it is customary for an employer in the industry concerned to provide free or subsidised accommodation to his / her employees;

– it is necessary for the particular employer, having regard to the particular kind of employment, to provide free or subsidised accommodation –

– for the proper performance by the employees of their duties;

– as a result of the frequent movement of employees; or

– as a result of the lack of employer-owned accommodation; and

– the benefit is provided solely for bona fide business purposes, other than the obtaining of a tax benefit.

Where all three criteria have been met, the formula-based value will be included in the taxable income of the employee, even though the employer does not own the accommodation. The valuation based on the cost for the employer will however, not apply.

Where more than one residential accommodation at different places has been made available to the employee, which he / she is entitled to occupy from time to time while performing his / her duties, the amount of the value of the unit with the highest rental value over the full period during which the employee was entitled to occupy more than one unit, must be included in his / her gross income.

Reducing the determined value: Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value is less than the rental value determined, he / she may determine such rental value at a lower rate / amount which he / she considers fair and reasonable. An application for a ruling for employees' tax purposes should be made to SARS. This ruling must be renewed annually.

No value is placed on any accommodation away from an employee's usual place of residence while such employee is absent from his / her usual place of residence for the purpose of performing his / her duties. This provision does not apply in the circumstances mentioned in the preceding paragraph.

Employees' tax – The cash equivalent of the benefit must be calculated during the year at the same intervals at which the employee receives his / her cash remuneration and employees' tax must be deducted.

IRP 5 – The cash equivalent of the benefit must be reflected under code 3805 on the IRP 5 certificate.