Ref#: 398282
Submission File

31 May 2012

Legal & Policy Division
SARS
PO Box 402
Pretoria
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BY E-MAIL: policycomments@sars.gov.za

Dear Sir/Madam

CALL FOR COMMENTS: DRAFT INTERPRETATION NOTE – RIGHT OF USE OF MOTOR VEHICLE

We refer to the call for comments on the above mentioned Draft Interpretation Note (‘DIN’). Set out below please find the SAICA National Tax Committee’s submission comments.

General comments
We are of the opinion that the proposed interpretation note will be a very useful document to provide guidance on the company car fringe benefit.

Specific comments
Clause 1 – Purpose
Although use of a motor vehicle granted to the holder of an office is mentioned in paragraph 2, we feel it would be clearer if from the outset, i.e. in paragraph 1, it is also clarified that the note applies to the right of use of a motor vehicle granted to an employee ‘or the holder of an office by an employer or an associated institution’.

Clause 2 – Background
The second sentence advises that: "The right of use of a motor vehicle provided by an employer to an employee (....) is regarded as a taxable benefit in the hands of the employee.” In our view, this sentence should be amended to read as follows: “The right of use of a motor vehicle provided by an employer to an employee (....) ‘for his or her private or domestic purposes’ is regarded as a taxable benefit in the hands of the employee’;

Clause 3 – The law
The contents of paragraph (i) of the definition of gross income in section 1 of the Income Tax Act (‘the Act’) is very relevant and should be included in Annexure A, dealing with the law.
The reference to in the first sentence to “company car” should be changed to ‘employer provided car’.

Clause 4.1 – Taxable benefit
The words “and services rendered” which are contained in the first sentence of the last paragraph do not, in our view, appear to be relevant and should therefore be removed.

Clause 4.2 – Value of taxable benefit
Under the brief definition given in the block, the minus sign (“-”) should be replaced with the word ‘less’.

Clause 4.3.2 – Per month
The DIN does not address the situation where more than one employee has the right of use of a motor vehicle and that motor vehicle does not qualify for a nil value of private use. This will occur when an employer gives the right of use of a specific vehicle to more than one specific employee for their combined private and business use. As the vehicle is not available for use by “employees in general”, but to specific employees, the value of private use will not be deemed to be nil.

Examples are given of the apportionment of the taxable value for the right of use of a motor vehicle, where the right of use of the same vehicle was given to more than one employee at different times. However, an apportionment is not addressed for the situation where more than one employee has the right of use of the same vehicle at the same time.

Example:
An employer provides the right of use of a motor vehicle with a determined value of R250 000 to 3 named employees. The vehicle is not subject to a maintenance plan. These employees live in the same accommodation and travel together, to and from work, in the motor vehicle provided by the employer. Outside of business hours all 3 employees may use the vehicle for private purposes as they require. The right use of the motor vehicle is at no time exclusively that of any one of the 3 employees.

Therefore, the right of use of the vehicle will constitute a taxable benefit in the hands of each of the employees.

<table>
<thead>
<tr>
<th></th>
<th>Determined value</th>
<th>Taxable benefit (per month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee 1</td>
<td>R 250 000</td>
<td>R 8 750</td>
</tr>
<tr>
<td>Employee 2</td>
<td>R 250 000</td>
<td>R 8 750</td>
</tr>
<tr>
<td>Employee 3</td>
<td>R 250 000</td>
<td>R 8 750</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>R 26 250</td>
</tr>
</tbody>
</table>

As illustrated in the table above, the right of use of the specific motor vehicle will effectively be taxed 3 times.
**Proposed solution**

We propose that paragraph 4.3.2 be expanded to allow for an apportionment of the value of private use based on the number of employees that have the right of use of the motor vehicle. The motor vehicle cannot be said to be used by each of the users thereof in the same manner as one who has the full use thereof. Taxing each user at the same value would therefore create an inequitable position for those individuals.

**Example:**

In the same circumstances as the example above, the taxable benefit should be divided equally between the 3 employees as each of them has an equal right to use the specific motor vehicle.

<table>
<thead>
<tr>
<th>Determined value</th>
<th>Taxable benefit (per month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee 1</td>
<td>R 250 000</td>
</tr>
<tr>
<td></td>
<td>R 8 750 ÷ 3 = R 2916.67</td>
</tr>
<tr>
<td>Employee 2</td>
<td>R 250 000</td>
</tr>
<tr>
<td></td>
<td>R 8 750 ÷ 3 = R 2916.67</td>
</tr>
<tr>
<td>Employee 3</td>
<td>R 250 000</td>
</tr>
<tr>
<td></td>
<td>R 8 750 ÷ 3 = R 2916.67</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R 8 750.01</td>
</tr>
</tbody>
</table>

The explanation deals only with the outcome that the employee may not reduce the value of the fringe benefit, but in the following examples, example 3 deals with the situation in which they may reduce the value. The explanation given in this paragraph should be expanded to address the possibility dealt with in Example 3.

**Clause 4.3.3 – Determined value**

Reference is made to the “original cost to the employer” in relation to the “determined value” of vehicles provided to employees of motor vehicle manufacturers. Previously motor vehicle manufacturers were allowed to use the “cost of manufacture” as the “determined value of the vehicle”. This was confirmed in previous versions of the SARS “Guide for Employers in respect of Fringe Benefits” (i.e. 2011).

The 2012 and 2013 versions of the SARS “Guide for Employers in respect of Fringe Benefits” no longer make reference to the use of the “cost of manufacture” for motor vehicle manufacturers. The intention to no longer allow the “cost of manufacture” is confirmed by the comments in the DIN on pages 8 and 9.

“In the past, manufacturers of motor vehicles have been permitted to use the cost of manufacture as the determined value of a motor vehicle. Manufactured motor vehicles are, however, not acquired under an agreement of sale or exchange. Accordingly, the determined value of a manufactured motor vehicle will be equal to the market value of the motor vehicle at the time the employer first obtained the right to use the motor vehicle.”

By changing the “determined value” from the “cost of manufacture” to the “market value”, there will be a significant increase in the taxable benefit in the hands of the employee. As the purpose of the DIN is to provide guidance with specific reference to the legislative changes,
effective 1 March 2011, the statement that the “determined value” is the “market value” will place most motor vehicle manufacturers and their employees, who receive the right of use of a motor vehicle, in a position of an under declaration and underpayment of employee’s tax (“PAYE”) and Income Tax from 1 March 2011. This will result in penalties and interest for the employer and the employee.

**Proposed solution**

We propose that the previous practice of allowing motor vehicle manufacturers to use the “cost of manufacture” as the “determined value” be continued. The practice that has been allowed in the past was one which had merit, given that the “cost to the employer” of the vehicles is substantially lower than the market value thereof.

Alternatively, we propose that the use of the “market value” as the “determined value” only apply from a specified future date, so ensuring that retrospective penalties and interest do not apply.

Example 6 and several other places refer to "its' ..." to indicate possession. The apostrophe is incorrect and should be removed.

**Clause 4.4.3 – Reductions where employee incurs some expenditure in relation to the motor vehicle**

Example 11 reflects the following emphasised statement “no deduction for costs incurred” in the middle of the page. The word “deduction” should be replaced with the word ‘reduction’, since amounts allowed against a travel allowances are not ‘deductions’ in a strict Income Tax sense. Such amounts merely reduce the amount that is included in taxable income.

**Clause 4.5.2 – Nature of employee duties**

In the third paragraph the word ‘basis’ should be inserted after the phrase "case by case".

The use of the word “exemption” in the first sentence of the third paragraph is wrong. Paragraph 7(10) provides for instances where the private use is deemed to have a nil value, not the exemption.

**Clause 4.6 – Consideration**

We recommend including a clause that consideration for a motor vehicle could also include a payment made by the employee to a motor vehicle dealer that allows the employer company to obtain the vehicle at a reduced cost (similar to clause 4.3).

**Clause 4.7 – Employees’ tax**

The last sentence of the first paragraph suggests that the inclusion for employees’ tax was previously 100% of the allowance. Our understanding is that it was previously 60%. This is repeated in the conclusion paragraph, and the motivation for the % inclusion would also need to be amended.
The first sentence of the fourth paragraph reads as follows: “When assessing whether 80% or 20% of the cash equivalent should be included in “remuneration”, employers must be ‘satisfied’ that at least 80% of the use of the motor vehicle is for business purposes.” In our view, this sentence should be amended to read as follows: “Only 20% of the cash equivalent should be included in ‘remuneration’, where employers are ‘satisfied’ that at least 80% of the use of the motor vehicle is for business purposes.”

In Example 13, a statement is made that “As the logbook discloses more than 4 months of accurate data and Ms 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 Ms M’s motor vehicle for the current year of assessment will be for business purposes”. There does not appear to be any basis in law for the use of “4 months” as a basis for the decision whether or not at least 80 % of the use of the motor vehicle is for business purposes. The relevance of the 4 month period, and circumstances in which it should be used by taxpayers, should be explained in the note.

Clause 4.8.2 – Motor vehicle rented to the employer by the employee
It may be helpful to include an explanation of why this anti-avoidance provision was needed.

Clause 4.8.3 – Company car and travelling allowance in respect of the same motor vehicle
The word “deduction” is used in the context of an amount to be allowed against a travel allowance. The word “deduction” should be replaced with the word ‘reduction’.

Clause 4.8.4 – Acquisition of an asset
This clause deals with the fringe benefit implications of an employee acquiring a company car from the employer and states that the employee will be taxed on the difference between the market value of the car at the time of acquisition and the consideration given by the employee. Guidance as to what would be acceptable as a market value will be appreciated. Does the employer need to obtain quotes from car dealers and if so, how many and can the lowest value be used?

We also ask SARS to consider whether the market value of the vehicle purchased by the employee can be reduced proportionally in instances where the employee initially contributed towards the purchase price of the motor vehicle. E.g. Vehicle cost R700,000 employee contributed R200,000 = R500,000 cost to employer. At the end of the period employee pays R1 and market value is R100,000. Can the fringe benefit be limited to R500,000/R700,000 x R100,000 (market value) less R1 purchase consideration = R70,714 x fringe benefit tax?

The DIN does not deal with company cars which are branded by the employer but the right to use given to employees.

Please do not hesitate to contact us, should you have any questions regarding the above.
Yours faithfully

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The South African Institute of Chartered Accountants

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