



More changes to the taxation of employer-provided accommodation

A matter of days prior to the recently amended legislation coming into effect, the Minister announced further changes to the legislation that taxes residential accommodation provided to expatriate employees. On the surface the changes appear to be beneficial to expatriates and their employers, as the tax-free period has been extended to 24 months from 12 months. However, there are some complicating factors and the additional period is offset by a capping of the maximum tax-free benefit.

Currently, effective 1 March 2008, employer-provided accommodation to expatriates will only be regarded as tax-free for the first 12 months of the assignment. Thereafter, the accommodation will be regarded as a taxable fringe benefit. There is also a proviso that the provisions relating to this beneficial tax treatment will not apply if the expatriate employee was present in South Africa for a period exceeding 30 days in the 12-month period immediately preceding the date of his arrival.

Proposed changes

The 2008 Budget announcement and draft Taxation Laws Amendment Bill issued for comment propose the following changes:

(i) The period the employer-provided accommodation may be regarded as tax free is increased to 24 months in line with the current period allowed for an intra-company work permit;

(ii) If the employee was present in South Africa for less than 90 days in the fiscal year, the accommodation will be regarded as tax-free; and

(iii) The tax-free element of the provision of expatriate accommodation is limited to the lower of:

-25% of the employee's remuneration; or
-R25,000 per month

It should be noted that the 30-day proviso mentioned above continues to apply to both (i) and (ii) above.

It is not clear what situation is being envisaged by the inclusion of (ii). In many cases, the employee should be exempt from tax in terms of a relevant DTA or the accommodation will be exempted in terms of (i). It is therefore assumed that this was introduced to prevent short-term business travellers from being subject to tax on accommodation provided, even where they may have been seconded to South Africa previously (and exceeded an aggregate period of 24 months), or where in aggregate the short visits may exceed 24 months over time, but they spent less than 90 days in SA in that particular fiscal year. If this is the case, the exemption appears to be nullified in most cases by the 30-day exclusion.

We will be submitting representations to the effect that the relief granted in (ii) above should not be subject to the 30-day prior presence exclusion.

Monthly cap

Whilst it seems sensible to provide for a maximum monthly cap, it is important that this cap will increase by at least inflation each year. Also, accommodation provided to many expatriate employees is significantly

in excess of R25,000 on average per month. In particular, in the Johannesburg area, rentals of between R40,000 to R60,000 per month are not uncommon. A capping limit further prejudices expatriates with families who require secure accommodation close to relevant schooling, which carries a significant premium, as opposed to single employees or families without children who, generally speaking will need smaller accommodation and can be accommodated in secure areas away from the premium school locations.

We will also suggest in our representations that the cap should be increased where the expatriates are accompanied by one or more dependent children to an average rental of R50,000 per month.

Effective date

The proposed amendments are stated as coming into operation on 1 January 2009 and applicable to years of assessment ending on or after 1 January 2009, i.e. the year of assessment beginning 1 March 2008. This situation is going to create significant uncertainty and

complications for expatriate payrolls, as the current rules should be applied until 1 January 2009, after which the amended rules should be applied. Given the extension of the qualifying period and the capping that will be applicable retrospectively, we will be suggesting that the legislation should be deemed to come into effect from 1 March 2008 on promulgation of the Taxation Laws Amendment Act, 2008. Until such time as clarification is provided, employers should apply the legislation as at 1 March 2008.

For further information on the impact of this legislation on tax costs of your assignee population, please contact:

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