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Dear Ms Nkumanda and Ms Collins

Comments on the draft 2014 Taxation Laws Amendment Bill: Employees' Tax

In response to your request for comments on the draft 2014 Taxation Laws Amendment Bill (2014 TLAB), we set out below the comments of the Banking Association of South Africa's Direct Tax Committee on certain aspects of the 2014 TLAB. For purposes of this document, the Income Tax Act No 58 of 1962, as amended, will be referred to as the Act.

1. Clause 13(1)(c) amending section 10(1)(gC)

Problem statement

Section 10(1)(gC) provides for the exemption of foreign sourced pension. The amendment to clarify that the provisions to lump sum payments as well as annuity type payment is welcomed as it has been contentious issue for a number of years.

The use of the words "lump sum benefit" is however problematic when referring to foreign sourced pensions. "Lump sum benefit" is a defined term in both the Act and the Second Schedule to the Act.

Section 1 of the Act

"Lump sum benefit" – means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.

"Retirement fund lump sum benefit" – means an amount determined in terms of paragraph 2 (1) (a) of the Second Schedule.

Paragraph 2(1) of the Second Schedule then determines when a lump sum benefit is derived either on death or retirement or during retrenchments under specific conditions. This provisions also uses the term "lump sum benefit" however, for the

purposes of the Second Schedule the definition of a "lump sum benefit" includes references to pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund all of which are again defined in the Act and in the Second Schedule and in all cases refer to approved funds.

The circular references to "lump sum benefit" in the Act, the Second Schedule and now in the proposed amendments to section 10(1)(gC) create much confusions as it seems to require that to be a lump sum benefit it must originate from an approved fund. This interpretation would then render section 10(1)(gC) completely ineffective as regard foreign funds as these would not be approved funds in South Africa.

Solution

It is suggested that the words "lump sum benefit" be removed from the proposal alternatively the words "lump sum" should be inserted to avoid the cross reference to the Second Schedule definition and approved funds.

2. Clause 70 amending Paragraph 7 of the Seventh Schedule

2.1. Retail market value

Problem statement

While the alignment of the fringe benefit across employers is welcomed, there are some areas that require clarity.

The new determined value is based on the retail market value, however, it is not clear whether the same treatment regarding Value Added Tax remains in effect.

No guidance has been provided on how one can determine the retail market value of a vehicle. The retail market value of a vehicle in Pofadder can be markedly different to the retail market price of the same vehicle in Pretoria and can differ from month to month i.e. when a facelift or new model is due. This could still create disparity between employees driving the same vehicle.

As the fringe benefit is run through a payroll system, currently an invoice reflecting the cost of the vehicle is used to calculate the fringe benefit. A consideration of whether that value equates to retail market value will need to be undertaken however, this is not merely a case of inputting a value and will require additional evidence to determine retail market value.

Solution

Guidance on the VAT treatment in retail market value as well as what objective factors will be considered in determining the retail market value will be welcomed.

2.2. Flexibility

Problem statement

There are numerous instances when an employee is obliged to use a particular vehicle due to business reasons and to promote the brand, eg- Allowing an employee to use a competitors brand will not encourage the employee loyalty that all employers strive for. The current legislation provides for a maximum cap however it would be prudent to allow for a minimum cap as well or commissioner discretion to ensure that lower paid employees are not disadvantaged.

Solution

The inclusion of the words in subparagraph 1(c) " in any other case, the retail market value... or right of use thereof or such other amount as the Commissioner may determine.

2.3. "Or business" insertion

Problem statement

The insertion of the words "or business" into paragraph 7(1)(c) is far too prescriptive. It may occur that a taxpayer carries on business at premises other than his residence or place of employment. Travel from residence to that place of business or client premises would be regarded as business travel if it is different to his place of employment.

For example:

Internal auditors are based at Head Office, however, the nature of their roles require that they are often on-site at various other business premises. Travel to those places of business is not personal travel but required as part of their employment and therefore business in nature.

Solution

If the purpose of the amendment is to clarify that a sole proprietor's travel between home and his place of business is personal, then it is suggested that the use of the words "or business" is inappropriate and

perhaps reference should be made to "the place at which he usually carries on his trade."

3. Clause 71 amending Paragraph 9 of the Seventh Schedule

Problem statement

The proposed changes although welcome only addresses situations where the actual rental is not artificially inflated. This is particularly a problem in some of the mining areas and outer lying areas where the Landlord is unreasonable and due to business reasons the employer is forced to lease the accommodation on a temporary basis.

This is particularly an issue if the rental needs to be paid up front.

Solution

The inclusion in Paragraph 9 of the words, 3(C)(c) - "or the monthly market value as determined by a registered valuator, subject to the Commissioner's discretion" will allow the flexibility required to subject to employees' tax a realistic value without hampering the business growth of the employer.

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We thank you for the opportunity to provide you with our comments.

Yours faithfully



Leon Coetzee
Chairman: The Banking Association Direct Tax Committee