

10 CLAUSE 40 : Amendment to Para 9, 7th Schedule ITA

10.1 It is not clear what situation is being envisaged by the inclusion of sub-para (7A)(b). This provides for no rental value to be placed on employer-provided residential accommodation where the employee is present in SA for less than 90 days in a fiscal year. In most cases, the employee should be exempt from tax in terms of a relevant double tax treaty or will be exempt in terms of (7A)(a). 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.

10.2 Notwithstanding that many of such persons would be exempt from tax in terms of a relevant DTA, the relief provided in either scenarios would appear very limited due to the requirement of being subject to subparagraph (7B). In addition it is very difficult to ascertain when the arrival is for the short term visitor as he may have several visits over a short period. It is also unclear why fiscal year is used in (7A)(b) as opposed to 12 month period used in (7B)(i).

10.3 Submission : For (7A)(b) to provide any meaningful exemption, it should not be subject to subparagraph (7B).

10.4 Whilst we accept that it is sensible to cap the amount, please confirm that it is intended to increase this cap by 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 that 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.

10.5 Submission : 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.

10.6 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 will create significant uncertainty and complications, as it appears that the current rules should be applied until 1 January 2009, after which the amended rules should be applied (presumably retrospectively). There could be situations where accommodation provided to expatriates are wholly exempt in terms of the law in force at the time, and then when the amended legislation become operational the amounts do not then qualify for full exemption (this would be the case where the maximum cap is exceeded). In addition, a situation could arise whereby the accommodation does not meet the criteria for exemption (e.g. is in his second year of the assignment) and then from 1 January 2009 the accommodation is exempt (presumably retrospectively).

10.7 Submission : It is suggested that the legislation should be expressly deemed to come into effect from 1 March 2008.