sait South African Institute of Tax Professionals

23 January 2018

The South African Revenue Service
Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

BY EMAIL: policycomments@sars.gov.za

Sir,

COMMENT ON THE DRAFT RULING AND DRAFT INTERPRETATION NOTE: NO-VALUE PROVISION IN RESPECT OF TRANSPORT SERVICES

We refer to the request for comment on the following:

- Draft BGR on no-value provision in respect of transport services rendered by any employer
- Draft IN on no-value provision in respect of transport services rendered by any employer

Herewith, please find our comments with regard to the above.

The relevant legislation:

It is appropriate to start with the law relating to the no value of transport services.

- The benefit enjoyed by an employee, arises where "*any service (other than a service to which the provisions of subparagraph (j) or (k) or paragraph 9 (4) (a) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person)*". This is in terms of paragraph 2(*e*) of the Seventh Schedule.

- The no value provision reads as follows:
  "*any transport service rendered by any employer to his employees in general for the conveyance of such employees from their homes to the place of their employment and* vice versa". This is in terms of paragraph 10(2)(*b*) of the Seventh Schedule.

The purpose of the ruling:

It appears that the only 'clarification' provided for in the draft ruling is with regard to the services '*rendered by the employer*'. It is clear that SARS sees a difference in the wording in paragraph 2(*e*) (and in paragraph 10(1)(*b*)) and paragraph 10(2)(*b*).

T (012) 941 0400
F (086) 626 0650
E info@thesait.org.za
W www.thesait.org.za
Riverwalk Office Park, Building A
C/O Garsfontein & Matroosberg
Roads, Pretoria, South Africa, 0081
Reg no 2007/014730/08
PO Box 712
Menlyn Retail Park
0063

In other words, a benefit of a transport service can be "*at the expense of the employer … (whether by the employer or by some other person)*" and is then deemed to have "*been rendered to the employee*", but for purposes of the no-value provision, it only applies where the transport service was rendered by the employer itself.

The draft ruling, copied below, then extends the interpretation of the words "*rendered by the employer*". It reads as follows:

> "*Where the transport service is not rendered directly by the employer (for example, where it is outsourced to a specific transport service provider), the employer makes it clear in the service conditions that –*
>
> *(i)* *the transport service is provided exclusively to employees on the basis of predetermined routes or under defined conditions;*
>
> *(ii)* *the employees cannot in any manner request such transport service from the service provider on an* ad hoc *basis; and*
>
> (iii) *the contract for providing the transport service is between the employer and the transport service provider, and the employee is not a party to the contract.*"
>
> "*The provision of and access to general public transport will not be regarded as a transport service rendered by the employer and will therefore not qualify for the no-value provisions of paragraph 10(2)*(b)."

Our comments:

1. With regard to the requirement that the employer must make it clear in the service conditions

   It is suggested that the words, 'the service conditions', be changed to 'the transport service conditions' in order to provide clarity. In other words, it is not the intention to incorporate that in the employment conditions of the employees.

2. With regard to the 'for example, where it is outsourced to a specific transport service provider'
   The practice generally prevailing (in the draft), is that *the provision of, and access to, general public transport will not be regarded as a transport service rendered by the employer and will therefore not qualify for the no-value provisions of paragraph 10(2)*(b).
   It does however, state that where "*the transport service is outsourced to a specific transport service provider and meets the conditions as laid out in the BGR*", it will constitute a "*transport service rendered by any employer to his employees*".
   The draft binding general ruling reads follows:

   > "… *the transport service is not rendered directly by the employer (for example, where it is outsourced to a specific transport service provider)*, …"

The use of the words, "*for example*" in this part, can be interpreted to mean that it is not limited to instances where the services is outsourced. It is merely an example of where it is outsourced.

Suggestion:

It is suggested that the binding general ruling deal with it as follows:

Where the transport service is not rendered directly by the employer, the contract for providing the transport service must be between the employer and the transport service provider, and an employee, of the employer, must not be a party to the contract.

It should then set out the conditions that must be included in the 'transport services contract'. We agree that these conditions should include that –

- the transport service is provided exclusively to employees on the basis of predetermined routes;
- the employees cannot in any manner request such transport service from the service provider on an *ad hoc* basis.

The draft ruling, adds 'or under defined conditions', to the first bullet above. As the purpose is to provide clarity, it is suggested that the 'other conditions' that SARS have in mind should be included here.

You are welcome to contact us should you have any questions with regard to our comments and suggestions in this document.

Yours faithfully,

Piet Nel

T (012) 941 0400
F (086) 626 0650
E info@thesait.org.za
W www.thesait.org.za

Riverwalk Office Park, Building A
C/O Garsfontein & Matroosberg
Roads, Pretoria, South Africa, 0081
Reg no 2007/014730/08

PO Box 712
Menlyn Retail Park
0063