Are there tax benefits to providing free employee transport?

By Louis Botha

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SARS has released Binding Private Ruling 262 (BPR 262) on 30 January 2017 and Binding General Ruling (Income Tax) 42 (BGR 42) on 22 March 2017, both of which deal with the issues of whether free transport for employees is a fringe benefit.

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In many businesses, it is common for employers to provide their employees with free or low-cost transport services, from their homes to their place of employment. However, in terms of the Income Tax Act, No 58 of 1962 (Act), such arrangements could constitute a taxable fringe benefit in the hands of the employees, depending on the circumstances and facts of the case.

Facts of BPR 262

In BPR 262, the relevant facts were as follows:

- The applicant, a South African resident company, proposes to implement a transport scheme to assist its employees to travel to and from work safely and more efficiently. The nature of the applicant's business requires its employees to commence and end their normal working days at times when public transport is either unavailable or very limited.
- The applicant proposes two transport service types to implement the scheme namely, the shuttle service concept (shuttle service) and the direct service concept (direct service).
- The shuttle service entails that a shuttle service will connect each of the applicant's business units to a public transport interchange nearest to the relevant business unit and will serve employees who work shifts during normal working hours.
- The shuttle service will be available where the nearest interchange is situated more than 500 metres walking distance from the business unit where the employee works and the employees will use the shuttle service between the transport interchange and the relevant business unit. However, the employees will make use of public transport services to travel from their homes to this nearest transport interchange.

- In terms of the direct service, a dedicated transport service will be provided between a specifically identified central point in a residential area where an employee resides and the business unit where the employee works. The direct service will only be available to employees whose work is core to the applicant's operations and who work shifts that are difficult to align with existing transport services.
- The direct service will only be available where the nearest available public transport is situated more than 500 metres walking distance from the business unit where the employee works. Employees will be required to organise their own transport from their homes to the collection points and back.
- It should also be noted that the applicant will fairly distribute the collection points in its discretion and design the routes in a circular format to allow maximum coverage of the particular area, taking into account its size and density.
- From a cost perspective, the applicant will engage with independent shuttle transport service providers to pick up and drop off the employees in implementing the shuttle service and the direct service.
- The service providers will invoice the applicant directly, while the applicant will bear the cost of providing the shuttle services and the employees will not be required to pay anything for these services.

SARS' Ruling in BPR 262

In light of the abovementioned facts, SARS ruled that no value will be placed on the taxable benefit to be granted to the applicant's employees in providing them with the Direct Service and the Shuttle Service.

Analysis of BPR 262 in light of the Act and BGR 42

To determine whether the provision of a free transportation service by an employer to its employees constitutes a taxable benefit, one must consider paragraphs 2 and 10 of the Seventh Schedule to the Act (Seventh Schedule).

- Paragraph 2(e) of the Seventh Schedule states that a taxable benefit (ie a fringe benefit) is deemed to have been granted by an employer to an employee if any service has, at the expense of the employer, been rendered to the employee for his or her private or domestic purposes. In terms of South African tax law, expenses incurred in travelling between one's home and place of employment are considered to be expenses of a domestic and personal nature. To determine the cash equivalent of the value of this fringe benefit, one must apply paragraphs 10(1) and (2) of the Seventh Schedule.

- Paragraph 10 of the Seventh Schedule deals with the provision of free or cheap services. In terms of paragraph 10(1)(b), the cash equivalent of the value to be placed on the fringe benefit, including services such as the Direct Service and the Shuttle Service, will be the employer's expense in rendering the service less any amount paid by the employee as consideration. However, paragraph 10(2)(b) of the Seventh Schedule states that "no value shall be placed...on any transport service rendered by an employer to his employees in general for the conveyance of such employees from their homes to the place of their employment and vice versa."

In BGR 42, SARS acknowledges that there is uncertainty as to the application of the no-value provision contained in paragraph 10(2)(b). In BGR 42, SARS states that the word "homes" need not be restricted to the exact position of an

employee's specific dwelling, as an employee could live in a block of flats, on a farm, or in a rural area with little or no accessible roads. Under certain circumstances, an employee would, therefore, be required to walk to the nearest accessible road to obtain the transport service which, could be a few kilometres away from the employee's dwelling.

In light of these circumstances, SARS states in BGR 42 that an employer may arrange for employees living within a certain radius to be collected from or dropped off at a common area or central point between the employees' homes and place of employment. An employer may also provide transport services for only part of the trip between the employees' homes and place of employment.

SARS now provides clarity on the interpretation of paragraph 10(2)(b) and has ruled in BGR 42 that "transport services provided to employees to and from any collection or drop-off point en route to or from the employees' homes and place of employment is accepted to fall within the provisions of paragraph 10(2)(b). No value will, therefore, be placed on these transport services."

The clarity provided by BGR 42 is welcomed. From a practical perspective, the fact that no value is placed on these transport services means that no tax will be payable by these employees in receiving such transport services, even though it still constitutes a fringe benefit.

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