

BINDING GENERAL RULING (INCOME TAX) 50

DATE: 18 March 2019

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 10(2)(b) OF THE SEVENTH SCHEDULE
SUBJECT : NO-VALUE PROVISION IN RESPECT OF THE RENDERING OF TRANSPORT SERVICES BY ANY EMPLOYER

Preamble

For the purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**employee**” means “employee” as defined in paragraph 1;
- “**employer**” means “employer” as defined in paragraph 1;
- “**paragraph**” means a paragraph of the Seventh Schedule to the Act;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides clarity on the no-value provision in respect of the rendering of transport services by an employer to employees in general, and must be read with BGR 42 “No-value Provision in respect of Transport Services”, dated 22 March 2017.

2. Background

Employers may provide employees with transport services from their homes to the place of their employment. These transport services are a taxable benefit in the hands of the employee, but may attract no value where certain requirements have been met. There is uncertainty as to the application of the no-value provision as provided for in paragraph 10(2)(b) in terms of what is envisaged for transport services rendered *by the employer*, especially where the employer does not provide the transport service directly, but contracts another person to provide the transport service to employees.

3. Discussion

Paragraph 2(e) provides that a taxable 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 (whether by the employer or some other person) for his or her private or domestic purposes.

Paragraph 10(2)(b) provides that the taxable benefit will attract *no value* if a transport service is rendered by the employer to its employees in general for the conveyance of such employees from their homes to the place of their employment (and *vice versa*).

The focus on paragraph 10(2)(b) is that, for the no-value provision to apply, the transport service must be rendered by the employer (and not, for example, some other person as is provided in paragraph 2(e)).

In order for the no-value provision to apply, the employer needs to render the service and not *some other person*. One therefore needs to distinguish between the employer rendering the transport service and the provision of transport by some other person, such as general public transport, in order for the no-value provision to apply.

4. Ruling

It is accepted that transport services rendered by the employer to employees in general for the conveyance of such employees between their homes and the place of their employment, will fall within the provisions of paragraph 10(2)(b), if the following conditions have been met:

1. The transport service is rendered directly by the employer.
2. Where the transport service is not rendered directly by the employer (in that it is outsourced to a specific transport service provider), the employer makes it clear in the conditions under which transport service is provided, that –
 - (i) the transport service is provided exclusively to employees on the basis of predetermined routes or 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).

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR applies from 1 March 2019 until it is withdrawn, amended or the relevant legislation is amended.