

# Table of Contents

1. Interpretation .....	2
2. Explanatory notes .....	4
3. Purpose .....	5
4. Scope .....	6
5. Application of tables .....	6
6. Tax rebate .....	6
7. Apportionment of the tax rebate .....	7
8. Categories of tables.....	7
9. Registration of employer .....	7
10. Employees' tax.....	7
11. Tax period.....	8
12. Making payments.....	8
13. Allocation of payments .....	9
14. The employer .....	9
15. Liability.....	10
16. Interest and penalty .....	10
17. Employer registration requirements .....	11
18. Tax certificates .....	12
19. Duplicate tax certificates .....	12
20. Year-end PAYE reconciliation statements .....	13
21. Final Deduction System (FDS) .....	13
22. Refunds .....	14
23. Employees outside Swaziland .....	14
24. Special cases.....	14
25. Companies.....	15
26. Offences and penalties.....	15
27. Forms required to be completed by employers.....	16
28. Documents available from the SRA .....	16
29. How to read the tables .....	16
30. How to apply the tax deduction tables.....	16
31. How to calculate tax deductions on bonuses/periodic payments.....	17
32. Exceptional payments .....	20
33. Tax Deduction Directives.....	21
34. Remuneration of persons not in full time employment .....	22
35. Withholding tax for non-residents.....	24
36. Arbitration awards .....	24
37. Taxation of benefits in kind and certain allowances .....	25
38. The Tax Treatment of free passage.....	42
39. Determination of severance allowance.....	44
40. Tax treatment of notice pay.....	47
41. Tax treatment of retirement payments .....	49
42. Tax rebate for amounts paid in respect of life insurance premiums.....	51
43. Tax deduction directives in respect of lump sum payments.....	52
44. Factors to be evaluated in determining the status of an employee .....	55
45. Rules on the operation of the Final Deduction System.....	57
46. Rates of normal tax in the case of individuals.....	68
47. Persons over the age of 60 years .....	68
48. Concessionary rates in the case of retirees or redundant employees .....	70

# BASIC GUIDE TO PAYE SYSTEM

## 1. Interpretation

**“Employee”** has been defined, in the context of the Second Schedule, to mean any person (other than a company) who in respect of employment, receives remuneration from an employer or to whom remuneration accrues, including:

- (a) any former employee who receives remuneration which accrued before the termination of the contract of employment;
- (b) any former employee who receives remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) any labour broker;
- (d) any personal service company; and
- (e) any personal service trust.

**“Employment”** means:

- (a) the position of an individual in the employ of another person; or
- (b) a directorship of a company; or
- (c) a position entitling the holder to a fixed or ascertainable remuneration; or
- (d) a public officer.

**“Employees’ tax”** means the tax which an employer is required or requested to deduct or withhold from remuneration paid or payable to an employee.

**“Employer”**, in the context of the Second Schedule, means any authority or person who pays or is liable to pay to any person other than a company, any amount by way of remuneration. The word “employer” has an extended meaning for the purposes of the Second Schedule and includes any person, acting in a fiduciary capacity, as a trustee of an insolvent estate, an executor or administrator of a pension fund, provident fund, benefit fund, retirement annuity fund or any other fund.

The expression ‘any authority or person’ refers to the principal or the legal representative of the principal and extends to Departments of the Government, local authorities, hospitals, churches, charities, schools and other organisations or entities.

**“Labour broker”** means any person who conducts or carries on any business whereby such person provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client for reward, for which services or work such other persons are remunerated by such person.

**“Personal service company”** means any company (other than a company which is a labour broker), where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is an associate in relation to such company, and:

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; or

- (b) such person or such company is subject to the control or supervision of such client as to the manner in which the duties are performed or to be performed in rendering such service and must be mainly performed at the premises of the client; or
- (c) where more than eighty per cent of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from one client of such company, in relation to such client, except where such company throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business of company rendering any such service, other than any employee who is a shareholder or member of the company or is an associate in relation to such person.

**“Personal service trust”** means any trust (other than a trust which is a labour broker), where any service rendered on behalf of such trust to a client of such trust is rendered personally by any person who is an associate in relation to such trust, and:

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client other than on behalf of such trust; or
- (b) such person or such trust is subject to the control or supervision of such client as to the manner in which the duties are performed or to be performed in rendering such service and those duties must be mainly performed at the premises of the client; or
- (c) where more than eighty per cent of the income of such trust during the year of assessment, from services rendered, consists of or likely to consist of amounts received directly or indirectly from any one client of such trust, in relation to such client, except where such trust throughout the year of assessment, employs three or more full-time employees who are on full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is an associate in relation to such person or such trust.

**“Remuneration”** has an extended meaning in the Second Schedule to mean any amount of income paid or payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, honorarium, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including:

- (a) an amount referred to in paragraph (a), (b) and (c) of the definition of “gross income” in section 7 of the Income Tax Order;
- (b) the annual value of such benefit or benefits referred to in paragraphs (f) and (ff) of the definition of “gross income” in section 7 of the Order, as the Commissioner may, from time to time, determine in respect of a year of assessment;
- (c) any allowance or advance, which must be included in the taxable income of that person in terms of section 11 (8);
- (d) any amount required to be included in such person’s gross income under paragraphs (k), (l), (m), and (n) of that definition; and,
- (e) fifty per cent of the total amount paid by an employer during any year of assessment directly or indirectly, by way of contribution to any approved bursary scheme for the benefit or educational assistance of the children of any employee or dependents of such employee,

but not including –

- (f) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;

- (g) any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment; or,
- (h) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant where the income tax payable on such taxable income for the year of assessment is equal to or less than the amount of the personal tax rebate allowed to such person.

**“Representative employer”** means the public officer of any company or, where such a company is placed in liquidation or under judicial management, the liquidator or judicial manager; the officer responsible for paying remuneration to the employees of Government departments, local authorities or bodies other than companies; the guardian, curator or any other person having control of the affairs of a person under legal disability and the agent responsible for paying remuneration on behalf of any employer not ordinarily living in Swaziland.

## 2. Explanatory Notes

2.1 **Definition of Employee:** the expanded definition of employee seeks to curb the avoidance of application of the provisions on the withholding of employees’ tax where an employee’s remuneration is not paid or payable by the firm using his services but an agency. The definition of employee has been extended to include “any labour broker”, “any personal service company” and “personal service trust”. In the operation of employees’ tax under the Second Schedule, there sometimes arises the difficulty to determine whether the person remunerated is being remunerated as an employee or as an independent contractor. Common law general tests as to whether a person is an employee or an independent contractor, is whether the person paying has the right to control:

- the end to be achieved by the person’s labour and the general line of authority to be followed; and
- the detailed manner in which the work is to be performed.

Thus, a person is not considered to be an independent contractor if he is subject to the control or supervision of any other person as to the manner in which his duties are performed or to be performed or as to his hours of work. The new definition aims to counteract the potential abuse of the Second Schedule by persons using such devices to avoid the application of the Second Schedule. *(For details see Legal Notice No. 37 of 2005 on pages 62-63).*

2.2 **Definition of Employment:** the term is defined as the holding of an office or appointment. An employment relationship will not exist where a person is genuinely engaged as an independent contractor. The determination of whether a person is an employee or independent contractor involves looking at a number of factors, including whether the hirer has the legal right to control the manner in which work is to be performed, and the degree of integration of the service provider within the hirer’s business. This will depend on such things as:

- whether the service provider is engaged on a continuous basis;
- where (place) the services are performed;
- whether the hirer controls the timing and scheduling of work; and
- whether the hirer provides the working tools, plant, and other relevant facilities.

Each case shall be decided on its own merits.

This term is relevant to identifying who is an employee or employer; both terms are separately defined in the Second Schedule. It is also relevant to the determination of what is “remuneration (i.e. employment income)”, and the application of employees’ withholding tax (pay-as-you-earn). *(For details see Legal Notice No. 37 of 2005).*

2.3 **Labour Broker:** refers to the provision/procurement of workers as opposed to the provision of service. A labour arrangement involves three parties, namely, the client, labour broker and the workers.

- *Client*: – the person who specifies the workers required. Payments for the workers’ services are made to the labour broker. There is usually a written/oral contract where service conditions of the workers may or may not be stipulated.
- *Labour broker*: – the labour broker is a person who, for reward, provides and remunerates workers for the client. The labour broker either makes available his own employees to perform work for a client or he procures workers for a client and pays the workers.

2.4 **Personal Service Company**: refers to an employee who offers his services to an employer through the medium of a private company.

2.5 **Personal Service Trust**: relates to an employee who offers his services to an employer through the medium of a trust.

2.6 **Rules to determine if an employee is a personal service company /trust**: a personal service company/trust, where services are rendered personally by connected person in relation to such company/trust and:

- the person rendering the service would be regarded as an officer or employee of the client, had such service been performed directly to the client;
- the person rendering the service is subject to the control and the supervision of the client as to the manner in which the duties are performed in rendering such service and must be mainly performed at the premises of the client; or
- more than 80% of the income of the company is derived from one client during the tax year.

The employee will be deemed to be a personal service company or personal service trust if any of the above scenarios apply.

**Exclusion**: a company/trust who employs throughout the tax year, three or more employees (other than shareholders, members or connected person) who are on a full-time basis engaged in the business of the company/trust of rendering any service.

2.7 **“Associate”**: The definition of “associate” in section 2 of the Income Tax Order is a new definition that is relevant to a number of provisions in the Order which are of an anti-avoidance nature. The term is also relevant to the definitions of “personal service company” and “personal service trust” that are material to the operation of the Second schedule to the Order.

- The term is defined in broad and general terms, rather than seeking to specify every relationship which will give rise to persons being associates for the purposes of the Order. It is common, particularly in tax avoidance activities, for associates to consort together. Accordingly, the Order in many situations treats the acts of an associate of the taxpayer as the acts of the taxpayer.
- The definition makes it clear that it is not necessary for a person to be obliged to act in accordance with the directions of the taxpayer in order to be an associate. Merely acting on the taxpayer’s suggestions will suffice. Moreover it is not necessary for the taxpayer to actually communicate with another person before that person can be an associate.
- Generally, it can be expected that a taxpayer’s spouse, children, parents, siblings will be regarded as associates of the taxpayer, as will be companies and trusts controlled by the taxpayer.

### 3. Purpose

3.1 The purpose of this Guide is to assist employers in understanding their obligations relating to employees’ tax and the operation of the Final Deduction System (FDS).

3.2 The Employees’ Tax Deduction Tables are obtainable from the Swaziland Revenue Authority (SRA).

#### 4. Scope

4.1 This Guide is issued in terms of paragraph 9 (1) of the Second Schedule to the Income Tax Order 1975, as amended. It prescribes the Employees' Tax Deduction Tables applicable to employees and the manner in which the tables must be applied by the employer.

#### 5. Application of Tables

5.1 The Employees' Tax Deduction Tables are prescribed by the Commissioner General, having regard to the rates of normal tax fixed by the Minister of Finance under section 6 (3) of the Income Tax Order of 1975, as amended. These Employees Tax Deduction Tables come into force on such a date as may be notified by the Minister of Finance in the Government Gazette and remain in force until withdrawn.

5.2 In the absence of a Tax Directive to the contrary as prescribed in paragraphs 9 (3), 10 and 11, employers must make use of the Employees Tax Deduction Tables prescribed by the Commissioner General or use the statutory rates as an alternative.

5.3 The tables have been designed to cover most categories of remuneration (*see definition of "remuneration" above*) and should be applied as follows:

**A** Where the Monthly Tables are inadequate, the annual equivalent of the monthly remuneration must be established; the tax determined according to the normal tax rates and results divided by 12 to establish the monthly deduction.

**B** Where the Weekly or Daily Tables are inadequate, the monthly equivalent of the weekly or daily remuneration must be established, the tax determined according to the Monthly Table and the result divided by 4 or 30 to obtain the weekly or daily deductions respectively.

**C** Where the remuneration exceeds E200 000 per annum: add 33% of the remuneration in excess of this figure to E47 500.

5.4 The annual equivalent must be used when an employees' tax period is shorter than a full tax year in order to determine the amount of employees' tax deductible.

5.5 The following are the rates of tax to be levied, in the case of employees, for the year of assessment ending 30<sup>th</sup> June 2014:

#### RATES OF NORMAL TAX FOR INDIVIDUALS FOR 2013/2014

Taxable income		Rates of tax
Exceeds E	Does not exceed E	
0	100 000	0 + 20% of the excess over E0
100 000	150 000	E20 000 + 25% of the excess over E100 000
150 000	200 000	E32 500 + 30% of the excess over E150 000
200 000		E47 500 + 33% of the excess over E200 000

5.6 The prescribed rates of tax in paragraph 5.5 shall be reduced by way of a rebate of an amount not exceeding the sum of eight thousand two hundred emalangeni (E8 200) in any year of assessment.

#### 6. Tax Rebate

6.1 Note the following:

- (a) The tax payable by an individual must be reduced by way of a rebate as highlighted in 5.6 above; that is, E683.33 on a monthly basis.

- (b) When the tax rebate of E8 200 is combined with the lowest marginal tax rate of 20%, one has an effective tax free threshold of E41 000. But if the period assessed is less than a full year, the tax rebate shall be the same ratio such period bears to twelve months.
- (c) The new rates of tax will be applicable on the amount exceeding E41 000 in any year of assessment.
- (d) The daily, weekly, and monthly PAYE deduction tables prescribed herein have already been reduced by the tax rebate of E8 200. It is only when applying the rates of tax on paragraph 5.5 of these Employees' Tax Deduction Tables that the tax payable must be reduced by a rebate not exceeding E8 200 in any year of assessment.
- (e) The tax rebate does not apply if the tax payable is subject to the concessionary rates of tax prescribed in Part III of the Third Schedule to the Income Tax Order.

## 7. Apportionment of the Tax Rebate

7.1 Since in terms of the law, the tax rebate must be apportioned according to the number of months that the employee has worked, the apportionment must be calculated as follows:

- (a) The annual equivalent of the monthly remuneration is first established;
- (b) The tax on the annual amount is then calculated;
- (c) The amount of tax is divided by 12 months, and then multiplied by the number of months worked to arrive at the correct tax for that period;
- (d) The rebate is also apportioned accordingly.

## 8. Categories of Tables

8.1 Deduction tables applicable to full time employees:

DAILY	-	Green	A
WEEKLY	-	White	B
MONTHLY	-	Blue	C

## 9. Registration as an Employer

9.1 In terms of paragraph 15 of the Second Schedule to the Income Tax Order, every person who becomes an employer must register with the Swaziland Revenue Authority (SRA). Such registration must be done within 14 days after such person becomes an employer. Application to register as an employer must be made on *SRA Registration for Taxpayer Identification Number Form* which is available in all the SRA Service Centres.

9.2 Where an employer has for registration purposes applied for separate registration of branches of his undertaking, each branch shall be deemed to be a separate employer. Application to register a branch separately from the main branch must be done by completing the *SRA Registration for Taxpayer Identification Number Form*.

9.3 Where one is already registered with the SRA for other tax types and has been issued with a Taxpayer Identification Number (TIN), they should apply to be registered as an employer, but use the same TIN.

## 10. Employees' Tax

10.1 Where an employer pays remuneration to an employee, the employer must deduct employees' tax from the remuneration and pay the tax deducted to the Commissioner General on a monthly basis.

10.2 Paragraph 2 of the Second Schedule requires the presence of three elements before employees' tax may be deducted, namely, an **employer**, paying **remuneration**, to an **employee**.

- 10.3 The employees' tax to be deducted is calculated on the balance of the amount of remuneration remaining after deducting the statutory contributions to a pension fund or to an approved provident fund.
- 10.4 The maximum allowable current pension contribution to a pension fund established by law or approved by the Commissioner General is 10% of an employee's pensionable salary in any year of assessment. The employee's statutory contributions to Swaziland National Provident Fund (SNPF) must also be deducted before determining employees' tax as the fund falls within the ambit of the definition of a "pension fund", since it is established by law. The definition of a "pension fund" includes a provident fund established by law.
- 10.5 In the case of current contributions made by Members of Parliament to the Members of Parliament and Designated Office Bearers Pension Fund, such contributions are limited to 15% of the member's pensionable salary.
- 10.6 The employees' tax must be paid over to the SRA within **seven days** after the end of the month during which the amount was deducted. Where the employer has registered for e-filing, such P.A.Y.E should be remitted within 14 days after the end of the month during which such amount was deducted.
- 10.7 The employer must submit a **P.A.Y.E MONTHLY RETURN FORM** or such other form as the Commissioner General may prescribe, when making payment. The prescribed P.A.Y.E monthly Return Form is supplied to the employer for payment purposes each month.
- 10.8 A registered employer is required to submit the P.A.Y.E monthly Return Form to the SRA in the form prescribed and attach the proof of payment of the employees' tax paid.
- 10.9 Payments of Employees' tax must be reflected correctly and separately on the Bank Deposit Slip in order to avoid the incorrect allocation of these payments and the unnecessary issue of final demands.
- 10.10 **Estimated assessments:** The Commissioner General may estimate the amount of employees' tax:
- Where the employer fails to submit the P.A.Y.E Monthly Return Form on the due dates;
  - Where the employer fails to deduct or withhold the correct amount of employees' tax;
  - Where the employer fails to pay over the employees' tax deducted on the due dates.
- 10.11 Any estimate of the amount of employees' tax is subject to objection and appeal.

## 11. Tax Period

- 11.1 The tax period in relation to an employer is 12 months, ending on the last day of June of the relevant tax year.
- 11.2 In relation to an employee, is a period from 1 July to 30 June of the following year, or any unbroken period during the tax year during which the employee was employed by a single employer.

## 12. Making Payments

- 12.1 Payments to the SRA may be made using any of the following means:
- 12.1.1 **Over the counter payments** - cash payments of up to E10 000 may be made at any SRA cash office. Cheque payments of up to E500 000 may also be made at cash offices. However, the use of cheques to make tax payments is ONLY allowed on prior approval by the SRA.
- 12.1.2 **Direct deposits** - taxpayers may make either cash or cheque deposits directly into the SRA accounts. Note that the SRA has custom made deposit slips for direct deposits and they are available in all banks operating in Swaziland.
- 12.1.3 **Electronic funds transfer (EFT).**

12.1.4 **Same bank Account-to-Account transfers** - Each of the banks have custom made instruction forms for making account to account transfers.

12.2 Payments may be made into any of the following bank accounts:

BANK	Account Name: DOMESTIC TAXES	BRANCH CODE	SWIFT CODE
Swazi Bank	1241024551201	770009	SDSBS
Standard Bank	0140042751301	663164	SBICSZMX
FNB	62265857965	280164	FIRNSZMX
Nedbank	020000473716	360164	NESWSZMX
Swaziland Building Society	10974386	140166	NONE

**NOTE:** The SRA will only process payment once funds have been cleared into the SRA account. To avoid undue delays, it is advised that payment be made into the same bank as the taxpayer's transacting account. E.g. payments made from an FNB account must be made into the SRA FNB account and so forth. Taxpayers are urged to ensure that their payments are deposited into the correct SRA account to avoid delays in crediting their account and interest being charged for late payments.

12.3 To facilitate the expeditious processing of payments made to the SRA, it is important that the following information be provided as a reference:

- (a) The correct Taxpayer Identification Number (TIN);
- (b) Tax Item code (for PAYE the code is IT);
- (c) The calendar period for which the payment is being made; i.e. the calendar year and the first three letters of the calendar month.

E.g. a taxpayer whose TIN is 100 234 567 remitting PAYE in respect of July 2013 will reference as follows:



12.3.1 In all instances it is imperative that the correct payment reference information is provided to ensure that tax payments can be identified and correctly allocated upon receipt by SRA.

### 13. Allocation of Payments

13.1 Where any payment is made by an employer in respect of employees' tax, such payment will be allocated in the following manner:

- (a) In respect of penalty, (where the return or payment was received late);
- (b) In respect of interest, to the extent to which the payment exceeds the amount of penalty;
- (c) In respect of employees' tax, to the extent to which the payment exceeds the amount of interest;
- (d) Where there is a shortfall after the allocation of penalties and interest and the outstanding tax has not been covered in full, interest will continue to accrue on the outstanding tax.

### 14. The Employer

14.1 The Employees Tax Deduction Tables have been prepared reflecting daily, weekly and monthly remuneration. If difficulties are encountered in determining deductions in exceptional cases, the Swaziland Revenue Authority should be contacted.

- 14.2 The rates of deduction are in accordance with the tables prescribed in the Employees' Tax Deduction Tables.
- 14.3 An employer will not be allowed to make a lesser tax deduction than specified by the tax table.
- 14.4 The employees' tax deduction takes precedence over any other claims against an employee's remuneration, such as repayments of debts due by the employee.
- 14.5 An employer will not be concerned with any additional income accruing to his employees apart from the remuneration paid to them. The responsibility to declare such additional income rests upon that employee receiving such income.

## **15. Liability**

- 15.1 All employees' tax deducted by the employer must be paid to the SRA in full before the seventh day of the following month or any further time as the Commissioner General may allow, and submitted together with the P.A.Y.E Monthly Return Form (Form PAYE 04).
- 15.2 The employer will be held personally liable for the amount of the employees' tax due from persons in his employ. The Commissioner General's claim in respect of employees' tax will take precedence against the employer's estate in the event of death or insolvency. These provisions also apply to a representative employer.
- 15.3 The representative employer is not relieved from any liability, responsibility or duty of the employer and is therefore subject to the same duties, responsibilities and liabilities as the employer.
- 15.4 An employer and employee may under no circumstance conclude an agreement whereby the employer undertakes not to deduct or withhold employees' tax. Such an agreement is void in terms of paragraph 7 of the Second Schedule.
- 15.5 In accordance with paragraph 8 of the Second Schedule, an employee is not entitled to recover from an employer any PAYE amount deducted or withheld by the employer from such employee's remuneration.

## **16. Interest and Penalty**

- 16.1 If an employer fails to pay the full amount deducted, or should have been deducted, from his employees by the following month, he will be liable to a penalty of 20 per cent of the amount outstanding, in addition to the interest charges of 18 per cent per annum.
- 16.2 The penalty and the amount of employees' tax to which it refers shall be payable to the SRA at the same time or within such further period as the Commissioner General may approve.
- 16.3 Where the employer has failed to deduct the employees' tax and the Commissioner General is satisfied that this was not done with an intent to postpone payment or to avoid the employer's responsibilities, the Commissioner General may, if he is satisfied that there is a reasonable prospect of recovery from the employee, absolve the employer.
- 16.4 An employer not so absolved, will have the right of recovery of the tax against employees and may deduct money which they have had to pay the Commissioner General on behalf of employees, from future payments of remuneration in accordance with the Commissioner General's direction.
- 16.5 Where the employer has the right of recovery of the tax against an employee, such employee is not entitled to receive from the employer an employees' tax certificate until such time as the employee pays to his employer any amount which is due to the employer as stated in paragraph 15.3 above.

## Waiving of Penalties

16.6 **Circumstances and factors to be considered in waiving of penalties:** It is prescribed in paragraph 6(2) of the Second Schedule to the Order, that the Commissioner General may waive any penalty charged in full or in part if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligation under the law and was not designed to enable the employee concerned to evade such employee's obligation under the Income Tax Order. The Commissioner General may consider waiving the penalty after considering the following conditions:

- (a) History of filing and payment (compliance history) – if the taxpayer is not a habitual defaulter.
- (b) The number of tax periods and number of defaults involved.
- (c) Whether there is a reasonable cause for the default by the taxpayer.
  - o Factors that support a claim for reasonable cause:
    - Disasters, such as flood or fire that destroyed or caused damage to the business records.
    - Civil disturbances or disruption in services such as strikes, demonstrations etc.
    - Serious illness or accident or death of person responsible for the payment or preparation of books (proof to be submitted with application).

The following are the rules applied in waiving penalties:

- (a) If the defaulting periods are less than 3 months and the employer had voluntarily reported the cause for default citing any of the factors highlighted above, the Commissioner General may waive the penalty up to 50% of the penalty charged;
- (b) Where the employer had not voluntarily disclosed the cause for the default, but any of the factors above are cited, the penalty may be waived up to 40%;
- (c) Over and above 3 months default, then no waiver can be granted.
  - (i) In the case of **Public Enterprises** that receive full subvention from Government, the penalty waiver may be granted if the Commissioner General is satisfied that the subvention was received late and that no employee was paid during the period in question.
  - (ii) In the case of **Public Enterprises** that are partly sub-vented by Government, the Commissioner General may not waive the penalty charged.
- (d) Where there was incorrect or erroneous advice given in writing by an officer of the SRA, the Commissioner General may waive the whole penalty charged.

## 17. Employer Registration Requirements

17.1 The SRA will supply all PAYE forms to employers. Persons who become employers must register with the SRA within fourteen days of becoming an employer and obtain all necessary forms. A company that trades under a different title to its registered name must provide the SRA its trade name. A head office which has no employee, but which has branches registered as employers, must also register as an employer.

17.2 *It is a requirement for an Employer to obtain a TIN/Graded Tax Number from an employee on employment in preparation for the year end reconciliation.*

### Keeping of Records

17.3 All employers must keep records of all remuneration paid to each employee, and the employees' tax deducted in respect of each employee. These records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner General. Such record must be kept for a period of 5 years from the date of the last entry and must be available for examination by the SRA as and when required to do so.

### Change of Details Requirement

17.4 An employer must inform the Commissioner in writing within fourteen days of any change in registered particulars (e.g. changes of name, address or when they cease to be an employer.

## 18. Tax Certificates

- 18.1 A registered employer is required to issue tax certificates to all employees irrespective of their salaries, and even where tax is not deductible. The certificate should be filled in by the employer and must show the total remuneration and the full amount of tax deducted from the employee's remuneration. Except where, in special circumstances, the Commissioner General has agreed to extend the relevant periods, the certificate must be handed to the employee within fourteen days of the end of the tax year, or within fourteen days of the employee leaving the employer's service.
- 18.2 Where an employee is transferred between branches, the branch where the employee has worked until the date of transfer must issue an employee's tax certificate for the period 1 July (or date of commencement of employment if such date was after 1 July) up to the date preceding the transfer. The branch to which the employee was transferred must issue the employees' tax certificate to cover the period from the date of transfer up to the end of June (or other date e.g., where the employee's service was terminated).
- 18.3 A tax certificate must also be issued within seven days of an employer's closing down business, an employee's death where an employee dies or when the employee leaves such employer.
- 18.4 Where an employer has paid to the SRA employee's tax that he has not, in fact, deducted from an employee's remuneration, the employee is not entitled to a tax certificate for the amount unless he has reimbursed the employer.
- 18.5 The onus of proof that employees' tax has been deducted rests on the employee, but a certificate provided by the employer is *prima facie* evidence that the tax was deducted and paid to the SRA.
- 18.6 Where an employer uses employees' tax certificates printed on the continuous paper, the employee's tax certificates must be completed in triplicate; the top copy for the employee, the first carbon copy for the SRA and the second carbon copy for the employer's own records.
- 18.7 Where an employer uses the laser A4 printed stationery, the employees' tax certificate must be completed in duplicate. The original is issued to the employee and the copy to SRA Commissioner Domestic Taxes Department.
- 18.8 The employer is required by law to retain any cancelled or spoiled employees' tax certificates until the Commissioner General requires them to be surrendered to SRA Domestic Taxes Department.
- 18.9 The Commissioner General controls the issue to employers of stocks of unused employees' tax certificates and prescribes conditions for the use of such certificates and the surrender of unused stocks of such certificates. Every employer has to account to the Commissioner General for used, unused, cancelled or spoiled certificates as and when required by the Commissioner General.
- 18.10 Every person who ceases to be an employer must, within fourteen days of ceasing to be an employer, surrender to the Commissioner General all unused employees' tax certificates in his possession.
- 18.11 In the case of an employer who has an electronic accounting system, the Commissioner General shall approve the issuance by such employer of employees' tax certificates in a form other than the form prescribed for general use.

## 19. Duplicate Tax Certificates

- 19.1 An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate, but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate. A special Form PAYE 05(A) will be supplied. Employees must, however, be told to safeguard the original certificate given to them.

- 19.2 Unless permitted by the Commissioner General, no duplicate employees' tax certificate may be issued by an employer other than in the instance of an employee or former employee.

## **20. Year-End PAYE Reconciliation Statements**

- 20.1 In terms of section 37(1) as read with paragraph 14(3) of the Second Schedule, every employer is required to render to the Commissioner General a return after the end of the year of assessment, showing the names and addresses of all persons who, during the period of assessment, were employed by the employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax withheld from the remuneration of each employee during the year.
- 20.2 The employer is required to submit a reconciliation statement (using Form PAYE 16) to the SRA within fourteen (14) days of the end of the tax year. The statement must reconcile the total amount of tax paid to the SRA during the year, with the amounts of employee's tax reflected on certificates issued to employees.
- 20.3 The copies of the certificates must be submitted to the SRA together with the reconciliation statement.
- 20.4 Apart from reconciling amounts paid and certificates issued, the employer must also give account of certificates issued, cancelled and adjusted by him and of those in stock, on Form PAYE 16. When the SRA changes the colour of the tax certificate PAYE 05, all unused stocks must be returned to the SRA Domestic Taxes Department.

## **21. Final Deduction System (FDS)**

- 21.1 The FDS applies only to employees who are in continuous employment with a single employer in any year of assessment, regardless of temporary breaks in employment. The expression "continuous employment" is not defined in the Order, but for the purposes of the Final Deduction System it means a period of unbroken service with the same employer, including a period of unbroken service as a temporary employee with a single employer, in any year of assessment.
- 21.2 The FDS constitutes a final liability to tax. Under the FDS the employer deducts employees' tax (PAYE) as final tax, but the Commissioner General is empowered to make changes in certain specified circumstances.
- 21.3 Under FDS employers are charged with the final responsibility of deducting and recovering of income tax due from the employees having only employment income. They have the duty not only to determine the correct taxable income but also allow all deductions/rebates permitted under the Income Tax Order. An Annual Salaries Return Form PAYE 15 has been prescribed to help employers discharge this responsibility effectively. All employers are required to submit the Annual Salaries Return to the SRA on or before 30 September of each year.
- 21.4 Where, during the course of the tax year, a new employee joins or an employee leaves the service, appropriate mention should be made in the "REMARKS" column to this effect. A certificate of remuneration paid and tax deducted should be issued to the employee within 14 days of leaving employment.
- 21.5 Employees receiving remuneration of over E41 000 will have the employees' tax deducted by their employers from payments due to them. These deductions will constitute a final tax for those employees receiving employment income only (refer to the rules on Final Deduction System (FDS)).
- 21.6 Under FDS an employee has an obligation to furnish accurate information as required by the employer, and has the right to:

- (a) Be issued with an employees' tax certificate (PAYE 05) after the end of the year of assessment;
- (b) Have employees' tax (PAYE) correctly calculated;
- (c) Be refunded any excess employees' tax (PAYE) after year-end adjustment.

21.7 The employee must supply the following particulars to his employer to ensure that the employees' tax calculations are correct:

- (a) Surname and full names of employee;
- (b) Address (both postal and physical) of the employee;
- (c) The Personal Identification Number (PIN) of the employee;
- (d) Employee's date of birth;
- (e) Employee's Taxpayer Identification Number (TIN), if registered with the SRA;
- (f) Proof of age.

21.8 The obligations of the employer under FDS are to:

- (a) Deduct correct employees' tax (PAYE) on employees' remuneration;
- (b) Remit employees' tax (PAYE) to the SRA by the 7<sup>th</sup> of the month following the month for which the PAYE is withheld together with the monthly P.A.Y.E Return Form;
- (c) Make monthly and final end of year adjustments to PAYE;
- (d) Keep employees' payroll records, employment contracts and produce them to the Tax Auditors;
- (e) Make good any shortfalls or refunds at the end of the year of assessment.

21.9 The employer must issue to the employees certificates showing the total amount of taxes deducted, within fourteen days of the end of tax year – (the last day of June) and within fourteen days of an employee's leaving his job,. The employee must demand his certificate where it is not handed to him in the time provided.

21.10 After the close of the tax year, employees receiving income from other sources must submit to the SRA a completed **RETURN OF INCOME FORM** together with the Employees' Tax Certificate and proof of other income received (see rules on the operation of FDS).

## 22. Refunds

22.1 In the case of employees receiving income from other sources, tax assessments will be made in the normal way. If the total amount of the tax deducted by the employer as shown on the certificate exceeds the tax due as assessed, the SRA will issue a refund for the difference when sending out the assessment notice. Refunds of tax by the SRA are paid through the employees' bank account. It is therefore important that the correct bank account details are provided to the SRA.

## 23. Employees outside Swaziland

23.1 Employees' tax need not be deducted from remuneration paid to the full time representatives of Swaziland companies in countries outside Swaziland. The tax must, however, be deducted where the representative is only absent from Swaziland for brief periods at a time.

23.2 Employees of the Government, who are permanently stationed outside Swaziland, are liable to Swaziland taxes.

## 24. Special Cases

24.1 Tax deductions are made on the basis that the amount of remuneration from which the taxes are deducted, is being earned for the full year. Where a person who has been unemployed for a lengthy period resumes working, it is possible that deductions in accordance with the tables will cause hardship. In such cases the Commissioner General may issue a directive to the employer to deduct less tax than shown in the tables.

- 24.2 *Voluntary employees' tax deduction:* Some employees who have other sources of income may find that they have to pay large amounts of tax at the end of the year. To reduce the amount payable at year-end, employees may request their employers to deduct additional employees' tax from their remuneration (i.e. an amount over that prescribed in the tables). A tax deduction directive is not required in such circumstances but the request to the employer should be in writing.
- 24.3 *Variation of circumstances:* where the Commissioner General is satisfied that circumstances warrant a variation of the basis for the determination of employees' tax to be deducted from remuneration of an employee, he may agree with the employer as to the basis of determination of the amounts to be applied by such employer.
- 24.4 *Hardship due to illness or other circumstances:* The Commissioner General may, having regard for the circumstances of the case, issue a directive authorising the employer to refrain from deducting any employees' tax or to deduct a specified amount or specified rate to alleviate hardship due to illness or other circumstances or to correct an error in the calculation of an employees' tax. The employer must comply with such directive.

## 25. Companies

- 25.1 All companies, whether they have people in their employ or not, are regarded as employers and must register as such. Companies, which pay remuneration that is below the taxable threshold (less than E41 000 per annum) will have to submit "NIL" returns to the SRA at monthly intervals.
- 25.2 Companies are not regarded as employees and therefore, no employees' tax is deductible from any income accruing to a company.

## 26. Offences and Penalties

- 26.1 A person who contravenes the provisions of the Income Tax Order governing the PAYE system is liable, on conviction, to a fine of up to E10 000 or imprisonment for up to a year, or both. For more serious offences the fine is up to E50 000 or imprisonment for up to five years, or both. Penalties are imposed for the following offences:
- (a) Failure to deduct employees' tax from the remuneration paid to employees, failure to remit the employees' tax to the SRA or using the employees' tax deducted for any other purpose than paying it to the Commissioner General;
  - (b) Failure to implement a directive from the Commissioner General without just cause;
  - (c) Not issuing an employee or former employee with a tax certificate to which such employee is entitled;
  - (d) Failure to register as an employer when you qualify to do so;
  - (e) Failure to notify the SRA of a change of address or other relevant information;
  - (f) Failure to keep records of employee's tax deductions and remuneration or to keep such records for a period of five years after the last entry has been made;
  - (g) Failure to adhere to the conditions governing the use of employees' tax certificates, to surrender the unused stocks of tax certificates on ceasing to be an employer, or failing to account for used, unused or spoiled tax certificates;
  - (h) Altering an employee's tax certificate or obtaining any credit on the strength of a tax certificate.

Interest and penalty payments levied on incorrect or late payments of employees' tax are detailed in another chapter below.

- 26.2 An employer, who fails to make a deduction or withhold the full amount of employees' tax, shall be personally liable for the payment of the amount that he failed to deduct or withhold in terms of paragraph 5(1), Part II of the Second Schedule to the Order.

## 27. Forms required to be completed by Employers

- (a) Registration form
- (b) P.A.Y.E monthly Return Form
- (c) Employees' Tax Certificate
- (d) Duplicate Employees' Tax Certificate
- (e) Request for a Tax Deduction Directive – Terminal Benefits
- (f) Annual Return of Salaries
- (g) Reconciliation of Tax Deductions made and a stock of Employees' Tax Certificates

## 28. Documents available from the SRA

- (a) Employees' Tax Deduction Directive
- (b) Employees' Tax Deduction Tables
- (c) Advice of Employees' Tax Certificates Issued

## 29. How to read the tables

29.1 **The first column:** Daily, weekly or monthly remuneration as defined above less current contributions to a pension fund established by law (e.g. PSPF and SNPF) or a pension fund duly approved by the Commissioner General subject to a maximum of 10% of such employee's pensionable salary in any year of assessment.

The first and last amount shown in this column are both included in the respective income block. In the case of monthly and weekly **remuneration**, any cents appearing in the amount of the remuneration must be ignored and in the case of the **Daily Table** the amount of remuneration must be taken to the nearest 10c.

29.2 The other column represents the tax deductible from the employees' remuneration.

### Example

To determine the monthly tax to be deducted from an employee whose monthly remuneration after deduction of pension contribution is E8 702.

Read off tax deduction from Table (C)

Monthly Remuneration	Tax Deductible
E8 701 – E8 702	E1075.38
E8 702 – E8 703	E1075.63
E8 703 – E8 704	E1075.88

The amount shown in the block opposite the monthly remuneration of E8 702 – E8 703 is the amount that has to be deducted (i.e. E1075.63).

## 30. How to apply the Tax Deduction Tables

- A. Use the Daily, Weekly or Monthly Tables, depending on whether the employee is paid daily, weekly or monthly.

### Example

An employee's remuneration is calculated at E300.00 per day but he is paid weekly; in his case the **Weekly Table** must be used. Another employee's wages are calculated at the rate of E300.00 per day, in respect of each day worked, and he receives his remuneration at the end of each day. In such a case the **Daily Table** must be used.

- B. The Daily Table must also be used where a weekly or monthly paid employee has only worked part of the week or month.

### Example 1

After working 3 days, a weekly-paid employee is paid E900.00 for the three days, the daily equivalent is  $E900.00 \div 3 = E300.00$

The **Daily Table** (Table "A") must be used to determine the tax amount, read from the income block of E300.00. The tax thereon will be E38.84.

The tax on E900.00 will therefore be  $3 \times 38.84 = E116.52$ .

The same applies in the case of a monthly paid employee who resigns or is appointed during the month. The remuneration payable to him for the portion of the month is divided by the number of days worked during the month. The result is used to read off from the Daily Table the tax applicable to one day. The amount thus read from the daily table is multiplied by the number of days worked.

### Example 2

A monthly paid employee leaves your employ on the 15th of the month, and is paid E6 000 for the portion of the month. The daily equivalent is

$$E6\ 000 \div 15 = E400.00$$

Read off the **Daily Table** the tax on E400.00 and multiply by 15 to arrive at the tax on E6 000.

Tax thereon would be  $E63.84 \times 15 = E957.60$

### C. Alternative methods of determining the tax deduction where a monthly or weekly paid employee is appointed or has his services terminated during the month or week.

A person whose fixed remuneration is E6 000 per month works for only 15 days during the month either as the result of being appointed or his services being terminated during the month.

Read off the Monthly table (Table C) the tax on E6 000.

Tax on 15 days is therefore

$$\frac{15}{30} \times E516.77 = E258.39$$

## 31. How to calculate tax deductions on annual bonuses/periodic payments

### Example 1

An annual bonus of E39 380 is received in addition to a monthly salary of E 32 817. Assuming bonus is calculated at 10% of the annual salary.

(a)	Find annual equivalent to E32 817 by multiplying by 12	E393 804
(b)	Add the annual bonus	E 39 380
		E433 184
(c)	Read off from the normal tax rates; First the tax on E433 184 (see computation below)	(a) E116 250.72
	and then the tax on E393 804 (see computation below)	(b) E103 255.32
	Therefore tax on bonus is (a) – (b)	E 12 995.40

### 31.1 Tax computation

(a)	Annual Salary including the bonus	
	Tax on the first E200 000	E 47 500.00
	Tax on the balance of 233 184 @ 33%	E 76 950.72
		E124 450.72
	<b>Less:</b> tax rebate	E 8 200.00
		E116 250.72
(b)	Annual Salary excluding the bonus	
	Tax on the first E200 000	E 47 500.00
	Tax on balance of 193 804 @ 33%	E 63 955.32
		E111 455.32
	<b>Less:</b> tax rebate	E 8 200.00
		E103 255.32

#### Example 2

Monthly Production Bonus Paid to weekly paid employees

- (a) Employee receives the following weekly wages and monthly bonuses:

Week	Wages	Bonus	
1	E1 000.00	-	
2	E1 000.00	E1 000.00	(Earned during the previous month only paid during second week of following month)
3	E1 000.00	-	
4	E1 000.00	-	
5	E1 000.00	-	

- (i) Read off the Table "B" the tax on wages for weeks 1,2,3,4 and 5.
- (ii) Divide the monthly bonus by the number of weeks during which it was earned, in this case 4 weeks,
- $$\frac{E1,000}{4} = E250.00$$
- (iii) Add the above (E250.00) to week 2 wage of E1,000.00 (i.e. E1,000.00 + E250.00 = E1,250.00)
- (iv) Read off from Table "B"

Tax on E1 250.00
Less tax on E1 000.00
Difference

Tax Deductible	
	E92.41
	E42.41
	E50.00

- (v) Multiply the difference by the number of weeks during which the bonus was earned (i.e. 4 weeks). Therefore tax to be deducted from bonus is 4 x E50.00 = E200.00.

(vi) In week 2 the following tax deduction should be made:

Tax on wages E1 000.00  
Tax on bonus E1 000

Tax Deductible
E 42.41
E200.00
E241.41

(b) An alternative method that can be used especially where the bonus is paid with the last week's wage is:

Wage	Wage	Bonus	Total	Tax Deduction
1.....	E1 000	-	E1 000	E42.41
2.....	E1 000	-	E1 000	E42.41
3.....	E1 000	-	E1 000	E42.41
4.....	E1 000	E1 000	E2 000	E...
	E 4000	E1 000	E 5000	E127.23

The tax to be deducted in week 4 is calculated as follows:

	Tax Deductible
(i) Read from Monthly Table "C" Tax on an income of E5 000	(a) E316.77
(ii) Deduct aggregate of taxes for weeks 1,2 and 3	(b) E127.23
(iii) Tax to be deducted in week 4	(a)-(b) E189.54

(c) **Overtime/bonus earned in one month by monthly paid employees but only paid out during the following month**

An employee earns E7 500 in July and is paid E1 000 overtime on the 15<sup>th</sup> August for overtime worked in July.

Add the overtime pay to the salary earned  
in July i.e. E7 500 + E1 000 = E8 500

Tax on E8 500 (Table C)

Tax on E7 500

Therefore tax to be deducted from E1 000

Tax Deductible
E1025.13
E 816.77
E 208.36

**Example 3**

**Monthly salary plus Quarterly Commission**

An employee receives a monthly salary of E8 800 and depending on results, is paid commission every three months. Assume for the purpose of this example that the commission amounts to E2 200.

(i) Divide the commission by the number of months in respect of which it is paid

$$\frac{E2\,200}{3} = E733.33$$

3

- (ii) Then add the above (E733.30) to the E8 800 salary  
(i.e. E8 800 + E733.30 = E9 533.33)

- (iii) Read off from the Table C

Tax on E9 533.33  
Less tax on E8 800.00  
Difference

Tax Deductible	
	E 1 283.38
	E 1 100.13
	E 183.25

- (iv) Multiply the difference by the number of months (3)

Therefore tax on Commission of E2 200 is E183.25 x 3 = E549.75

Tax deductible this month -

Tax on salary of E8 800  
Tax on Commission of E2 200  
  
Tax for this month

Tax Deductible	
	E 1 100.13
	E 549.75
	E 1 649.88

## 32. Exceptional Payments

32.1 If any difficulty is experienced in the method of deducting tax from exceptional payments, the SRA Domestic Taxes Department must be consulted. Some of the more common types of exceptional payments and methods of determining tax deductions from these are set out below.

- (a) Lump sum of payments on redundancy or retirement.  
(b) Advance payment of salary when an employee goes on leave or payment of arrear wages in lump sum.

32.2 Where an employee is paid a lump sum in respect of future or arrear wages the following procedure must be applied

### Example 1

Mr A. is paid E5 000 when he goes on six months leave for the period 1<sup>st</sup> April 2013 to 30<sup>th</sup> September 2013. This amount represents his remuneration for the period and is not a payment for accumulated leave on retirement.

This leave payment covers two tax years, that is; tax year ending 30<sup>th</sup> June 2013 and tax year ending 30<sup>th</sup> June 2014 (1<sup>st</sup> April, 2013 to 30<sup>th</sup> September, 2013). The leave payment all received in the 2013 tax year is therefore taxable in its entirety in that tax year. Therefore in calculating tax deductible from the leave payment, this would be treated as you would annual bonuses (see Example1) under paragraph 31 above.

### Example 2

An employee receives E15 000 in September 2013 being unpaid remuneration which accrued to him during July, August and September 2013.

- (i) Divide the amount payable by the number of months to which it applies –  
$$\frac{E15\ 000}{3} = E5\ 000$$

- (ii) Read off from Table C  
The tax on E5 000
- (iii) Multiply by the number of months
- (iv) Tax deductible from E15 000

<b>Tax Deductible</b>
E316.67
x 3
E950.01

### Example 3

An employee is paid a salary of E6 500 per month for the months of April 2013 to September 2013. In September 2013 an increase of E3 000 per month, is retrospectively paid to him from 1<sup>st</sup> April 2013.

At the end of September, 2013	E 9 500
Arrear increase for months April to August 2013 (E3 000 x 5)	E15 000
Total	E24 500

- Read off Table C the tax on E9 500
- Read off Table C the tax on E6 500
- Difference due to increase salary

<b>Tax Deductible</b>
E1 274.88
E 616.57
E 658.31

Amount to be deducted at the end of September 2013 from E9 500 current salaries	E1 274.88
From E3 000 arrear increase in salaries (5 x 658.31)	E3 291.55
Total Tax	E4 566.43

## 33. Tax Directives

### 33.1 Purpose of a Tax Directive

In accordance with paragraph 9 (3) of the Second Schedule to the Income Tax Order, a tax directive is issued by the Commissioner General to instruct the employer to deduct employees' tax from certain payments where the prescribed tax tables do not cater for certain remuneration or other payments.

- 33.2 Tax calculations according to the tax directive should be regarded as a mere estimate as some employees may find that they still have to pay in substantial amounts or that a credit may be due to them once the final liability has been determined on assessment.
- 33.3 The following rules relate to a tax directive –
  - (a) A tax directive is only valid for the tax year or period stated thereon;
  - (b) The employer should only act upon the original copy of a directive;
  - (c) Under no circumstances should the employer deviate from the instructions of the directive;
  - (d) The employer must apply the percentage of employees' tax as indicated on the tax directive prior to taking into account allowable deductions for employees' tax purposes (e.g. pension contributions, SNPF contributions etc.).

- 33.4 When applying for a tax directive, the employer must ensure that the correct application form is used according to the reason for the exit from the employer's service / fund and nature of the amount payable to the employee/member of the fund.
- 33.5 A directive must be obtained from the SRA in each of the following cases before the amount is paid out to an employee:

Payment of gratuity, bonus, severance allowance, amount in commutation of pension on termination of employment, lump sum amounts from pension, provident and benefit funds, and all other lump sum amounts falling within paragraphs (b), (c), and (l) of the definition of "gross income" in the Income Tax Order.

## 34. Remuneration of Persons not in Full Time Employment

### 34.1 Scholars and full-time University Students

Where a scholar or full-time student is employed during his vacation or in a part-time capacity, employees' tax must be deducted from his remuneration. Employers must obtain completed **PAYE 2 forms** from such students and endorse them "full-time students", employed during vacation or "part-time". If the aggregate remuneration will exceed E41 000 for the tax year concerned, the employer must deduct employees' tax.

### 34.2 Non-resident Pensioners

In the case of payments to non-resident pensioners, the minimum tax payable is 3% of the pensioner's taxable income. If the amount of tax shown in the tables is less than 3% of the taxable income, the deduction made by the employer must be increased to a figure equal to 3%.

### 34.3 Part-time Employees

For the purposes of employee's tax, "*part-time employee*" means a person who is not in your full-time employ and who is not remunerated as a full-time employee for any services rendered. The expression excludes unskilled labourers whose remuneration does not exceed E3 416.67 on a monthly basis.

- (a) The rates of withholding tax prescribed hereunder shall apply in the determination of employees' tax to be deducted on any amount payable by way of remuneration to a part-time employee in any year of assessment:

<b>Remuneration</b> Exceeds	<b>Rate of withholding tax</b>	
<b>E</b>	<b>Rate of withholding tax</b> But does Not exceed	<b>E</b>
0	8 333	20%
8 333	12 500	25%
12 500	16 666	30%
16 666		33%

- (b) Note that when applying these rates the rebates should not be taken into account. Part-time employees are still required to file returns of income at the end of a year of assessment, the Final Deduction System notwithstanding. Tax rebates will be granted on assessment in these cases. Employees' tax certificates (PAYE 5) must be issued to such employees within the stipulated period in accordance with the requirements of paragraph 13 of the Second Schedule.

### 34.4 What constitutes part-time remuneration?

Part-time remuneration includes the following -

- (a) Casual payments for irregular services rendered,  
 (b) Fees paid to part-time lecturers,

- (c) Honoraria paid to office-bearers of bodies, clubs, societies etc,
- (d) Remuneration paid for occasional services rendered, and
- (e) Any payment that cannot be regarded as full-time remuneration.

### **Examples**

- (i) Mr. A. works for **Firm B** during the day and acts as cashier for **Firm C** for a few hours in the evening. He is regarded as a part-time employee of **Firm C**.
- (ii) Mr. Z. is a clerk at an insurance company and receives a fixed monthly salary. In his spare-time he canvasses business for his company and is paid separately for such work. The commission he receives for spare-time work is regarded as – “part-time remuneration” and tax should be deducted therefrom according to the withholding rates prescribed in paragraph 37.1 above.

If the commission is paid with his regular monthly salary, it forms part of his monthly remuneration and tax should be deducted according to the monthly table.

### **34.5 What does not constitute part-time remuneration?**

- (a) Notwithstanding paragraph 39.1 above, the part-time remuneration of an employee does not include:
  - (i) Fees paid to professional persons such as medical practitioners, attorneys, advocates, accountants, auditors, architects, and quantity surveyors etc., that is, fees paid to a person for services rendered by him in the course of any trade conducted by him.
  - (ii) Remuneration paid to a person whose contract of employment requires that person to work during either the morning or afternoon only of each working day.
- (b) Pensions are not regarded as part-time remuneration irrespective of whether or not the pensioner receives any other remuneration.
- (c) Where there is doubt as to whether a payment should be regarded as part-time or full-time remuneration, the SRA should be consulted.

### **34.6 Fees/allowances payable to non-executive directors/members of statutory boards**

- (a) Payments made to non-executive directors/members of statutory boards are classified as remuneration and are subject to the deduction of employees' tax.

For purposes of this guide, “employee” means any person who receives remuneration from an employer or to whom remuneration accrues.

- (b) Employers are directed to deduct employees' tax (PAYE) on allowances, fees and any other remuneration payable to such non-executive directors or Members of Statutory or other similar Boards (including Members of Executive Committee of NGO's or Councils of similar bodies or entities). The withholding rate of tax that must be applied on the amounts payable to such persons is 33%, which is the top marginal rate applicable to individuals. The withholding rate takes into account that such persons may have other sources of income in addition to the fees/allowances etc. being paid.
- (c) Since the amounts payable to the members of board of directors or similar entities are subject to the deduction of employees' tax, employees' tax certificates must be issued to such employees within the stipulated period in accordance with the requirements of paragraph 13 of the Second Schedule.

## 35. Withholding Tax For Non-Residents

- 35.1 In the case of a Non-resident entertainer, such as a theatre, motion picture, radio, or television Artiste, or a Musician, or a Sportsperson, the income derived from that person's activities performed or rendered in Swaziland is taxable in Swaziland, and is subject to the withholding tax of 15% on the gross remuneration or gross receipts accrued to or payable to such persons (refer to section 32A).
- 35.2 In the case of income derived by a Non-resident Professional in respect of professional services or other activities of an independent character performed or rendered in Swaziland such income is taxable in Swaziland and is subject to a withholding tax of **15%** on the gross amount in accordance with the provisions of section 59A of the Order.
- 35.3 For the purposes of subparagraph (2), the term "*professional services*" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers (attorneys and advocates), engineers, quantity surveyors, architects, dentists, accountants and auditors etc.
- 35.4 The income or remuneration paid to such persons (mentioned in subparagraphs (1) and (2)) is not subject to a tax directive or the provisions of the Second Schedule with regard to the withholding of employees' tax from remuneration.

## 36. Arbitration Awards

- 36.1 An employer must ascertain from the SRA the amount of employees' tax to be deducted from an amount awarded in respect of a settlement agreement or a court order before such amount is paid to the employee or former employee.
- 36.2 An application form must be submitted to the SRA by the employer for the amount awarded to an employee or former employee in respect of CMAC and Industrial Court awards. A copy of the court order or settlement agreement must accompany the application form.
- 36.3 The Industrial Court or CMAC awards can be classified into three categories:
- (a) *Unfair Dismissals*: amounts awarded in respect of unfair dismissals (including voluntary payments) are remuneration as defined in the Second Schedule and are therefore subject to the deduction of employees' tax. Such amounts come within the purview of section 7(c) of the definition of gross income.
  - (b) *Termination of contract of service prior to its expiry date*: amounts awarded in respect of termination of an employment contract prior to its expiry date are remuneration as defined and therefore subject to the deduction of employees' tax as such amounts fall within the ambit of section 7(c) – definition of gross income.
  - (c) *Unfair labour practices*: amounts paid accrued as a result of unfair labour practice, may be included in remuneration as defined. The Commissioner will examine the facts of the case and the nature of amounts awarded when application for a tax directive is received from the employer.
- 36.4 Awards (Industrial Court and CMAC awards) are remuneration as defined (see definition of remuneration) if it can be established that the award is actually in respect of services rendered.

## 37. Taxation of Benefits-In-Kind And Certain Allowances

LEGAL NOTICE NO.4 OF 2007

THE INCOME TAX ORDER, 1975  
(Order No. 21 of 1975)

### **INCOME TAX: TAXATION OF BENEFITS IN KIND AND CERTAIN ALLOWANCES NOTICE, 2007**

In exercise of the powers conferred by section 5 of the Income Tax (Amendment) Act, 1988 the Commissioner of Taxes hereby issues the following notice.

#### **Citation and commencement**

This notice may be cited as Practice Note No. 157, Taxation of Benefits in Kind and Certain Allowances Arising from Employment Notice, 2007 and shall come into effect on 1 July 2007.

### **PART A PRELIMINARY**

#### **Interpretation**

1. For the purposes of this Practice Note, unless the context otherwise indicates –  
“*Domestic assistant*” includes a chauffeur, cook, domestic servant, gardener, housekeeper, housemaid, nursemaid, security guard, body guard, or other domestic assistant;

“*Educational assistance*” means a contribution or financial aid or subsidy granted to the children of the employee by the employer to enable or assist such children to study at a recognized educational institution, and including school fees, boarding fees and other educational expenses paid by the employer on account of the education of the employee’s children;

“*Employee*” means any person who is an employee as defined in paragraph 1 of the Second Schedule;

“*Employer*” means any person who is an employer as defined in paragraph 1 of the Second Schedule;

“*Medical expenses*” includes a premium or other amount paid for medical insurance and a contribution to a medical aid fund.

“*Official rate of interest*”, in relation to a year of assessment, means the Central Bank of Swaziland discount rate as at the commencement of the year of assessment;”

“*Utilities expenditure*” means any expenditure for fuel, power, water, sewerage, or telephone in respect of an employee’s place of residence.

## **PART B THE LAW**

### **2. Requirements of section 7(f)**

- 2.1 The annual value of any benefit or advantage accruing by way of employment (including that of any quarters, board or residence) is part of gross income of an employee, in terms of section 7(f) of the Income Tax Order 1975, as amended.
- 2.2 The Second Schedule to the Income Tax Order 1975, as amended, makes it compulsory for employers to deduct PAYE on such benefits in kind bestowed on employees.
- 2.3 A benefit provided by an employer to an employee means a benefit that:
  - (a) is provided by an employer, by an associate of the employer, or by a third party under an arrangement with the employer or associate of the employer; and
  - (b) is provided to an employee or to an associate of the employee.

### **3. Valuation**

- 3.1 The valuation of benefits for the purposes of section 7 (f) of the Order shall be determined in accordance with this practice note.
- 3.2 The value of a benefit in kind is the market value of the benefit on the date the benefit is taken into account for tax purposes.
- 3.3 The market value of a benefit is determined without regard to any restriction on transfer or to the fact that it is not otherwise convertible to cash.
- 3.4 Disagreements over the valuations placed, shall be subject to objection and appeal in terms of the relevant provisions of the Income Tax Order 1975, as amended. A directive may be requested in respect of the determination of any benefit value.
- 3.5 In all cases where it appears to the Commissioner that benefits in kind are given as a part of a tax avoidance scheme or as part of a remuneration package which confers property on any person either directly or through a company controlled either by or indirectly by that person then the full market value of the benefit(s) will be used in the assessment to tax of the employee.

### **4. Period of Assessment**

- 4.1 If the period assessed is less than twelve months, the income shall be the ratio such period bears to twelve months.

### **5. Those affected**

- 5.1 This notification will apply to all employees and company directors.

### **6. Validity of this Practice Note**

- 6.1 This Practice Note is of application with effect from 1 July 2007. It supersedes the contents of all other Practice Notes previously issued in respect of the same subject.

## **PART C TAXABLE BENEFITS**

### **1. Free and subsidised housing**

- 1.1 Where a benefit provided by an employer to an employee consists of accommodation or housing, the value of the benefit is the open market rent of the accommodation or housing, reduced by any payment made by the employee for the benefit.

Provided that where the employer owns the accommodation or housing, the value of the benefit is the rental benefit value of the accommodation or housing determined in accordance with the table in Schedule A, the valuations depend on the size and location of the house.

- 1.2 Where an employer rents from an employee the employee's private residence and then grants such employee free or cheap occupation thereof, the rental is deemed to be a taxable benefit, the value of the benefit to the employee is the rental received.
- 1.3 Where an employer provides accommodation or housing to employees on a sharing basis, the rental benefit value shall be determined *pro rata*.

## 2. Private use of motor vehicles (including any aircraft)

- 2.1 Where a benefit provided by an employer to an employee consists of the use, or availability for use, of a motor vehicle (including any aircraft or helicopter) wholly or in partly for the private purposes of the employee, the value of the benefit is calculated according to the following formula:

$$(20\% \times A \times B/C) - D$$

Where:

- A. is the market value of the motor vehicle at the time when it was first provided for the private use of the employee;
  - B. is the number of days in the year of assessment on which the motor vehicle was used or available for use for private purposes by the employee for all or a part of the day;
  - C. is the number of days in the year of assessment;
  - D. is any payment made by the employee for the benefit.
- 2.2 The market value of the car is the cost to the employer at the time it was first provided to the employee. The market value of second-hand cars is shown in the Auto Dealer's Guide<sup>1</sup>. For vehicles that were purchased in Swaziland, this value may be adjusted to 110/114(96.5%) or 112/114(98.25%) of the Guide value, depending on the rate of Value Added Tax in force in Swaziland at the time the vehicle was purchased.
  - 2.3 Where an employee is provided with more than one vehicle, taxable benefits will be evaluated on an individual basis.

## 3. Employee assisted with purchase of vehicle, as part of perks from employment

- 3.1 Where an employee purchases a personal vehicle with assistance from the employer as part of a benefit or advantage accruing by way of employment, the fixed allowances given towards the costs of the vehicle are taxable benefits.

## 4. Employee using personal vehicle on employer's business

- 4.1 Where an employee uses a personal vehicle on employer's business, the annual value of benefits attributable to such an employee for use of the vehicle for private purposes will be determined in accordance with the following formula:

$$A = \frac{B - (C \times D)}{E}$$

<sup>1</sup>Published by Mead & Mc Grouther (PTY) LTD  
P.O. Box 1240, Randburg 2125

Where,

- A. is the amount to be included in taxable income;
- B. is the car allowances received (car allowance defined as all cash allowances plus market value of any free benefit i.e. free fuel);
- C. is the actual expenditure on fixed and running costs (net of any recoupments); or is the deemed fixed and running costs, where accurate records are not kept;
- D. is the business mileage as recorded in a log book or number record; or the deemed business mileage of 6 000 kilometres where accurate records are not kept;
- E. is the total mileage; or deemed total mileage of 24 000 kilometres where accurate records are not kept.

Deemed expenditure is determined on the following basis:

**Fixed Costs:** 25 per cent of the original cost to the taxpayer of the vehicle in each year

<b>Running Costs per kilometre:</b>	up to 1600cc	54c per km
	1600cc to 2000cc	76c per km
	Over 2000cc	85c per km

4.2 Monthly PAYE will be deducted on the basis of the formula using the deemed expenditure and mileage. However, since in terms of the subsequent subparagraph 4.3 (e) the employee is required to keep a record of the mileage in respect of business and private travel, at the year-end under FDS or periodically the actual figures can be used and the necessary adjustment made.

4.3 The rule in paragraph 4.1 above will only apply if:

- (a) the employee is, in terms of the written contract of employment, required to have such a vehicle for the performance of employee's duties;
- (b) the size and type of vehicle relates to the duties to be performed in terms of the written contract of employment;
- (c) the employee is, in terms of the contract of employment, required to provide the employer with such details and evidence which would reasonably, in the circumstances, be expected of him as to the actual expenditure incurred in respect of fixed, capital and running costs;
- (d) the employee uses the vehicle for the business of the employer;
- (e) the employee is required to keep a record of the mileage in respect of business and private travel.

4.4 For the purposes of paragraphs 3 and 4, the costs of the vehicle means the costs of the vehicles, as quoted by the manufacturer or what the purchaser paid, and any additions and accessories such as air-conditioning, radio-tape, burglar alarm *et cetera*, excluding finance charges."

4.5 Where an employee owns or leases a motor vehicle and rents it to the employer, the rental paid by the employer and any expenses borne by employer in respect of the vehicle are deemed to be an allowance in respect of travelling expenses which has been paid to the employee.

## 5. Provision of Domestic Assistants

5.1 Where a benefit provided by an employer to an employee consists of the provision of a domestic assistant, the value of the benefit is the remuneration paid to the domestic assistant in respect of the services rendered to the employee.

5.2 It is expected that the value of this benefit will not be less than the minimum wages as set out in the Wages Act<sup>2</sup> or Legal Notice issued in terms thereof for the regulation of wages.

<sup>2</sup>Act No. 16 of 1964

## **6. Utilities**

- 6.1 Where a benefit provided by an employer to an employee consists of the reimbursement or discharge by an employer of an employee's utilities expenditure, the value of the benefit is the amount of the reimbursement or discharge, if separately metered.
- 6.2 Where the utilities are not metered and paid separately, 10% of the housing benefit value for each service.

## **7. Children's Educational Assistance Benefits**

- 7.1 Where a benefit provided by an employer to an employee consists of the provision of educational assistance in connection with the education of an employee's children, the value of the benefit is the cost of the benefit to the employer for providing such educational assistance.
- 7.2 In many instances, the children's educational assistance benefits are paid by employers on a lump sum basis and at irregular intervals, for example, at the end of each academic year. Employers are permitted to use their discretion and to operate PAYE provisions in relation to such payments, after consultation with the employees concerned so as not to cause undue hardship to such employees.
- 7.3 Employers should ensure, however, that the full amount of PAYE due on the children's educational benefits paid to each employee is deducted within the year of assessment.

## **8. Soft Loans**

- 8.1 A taxable benefit accrues to an employee where:
  - (a) a loan is granted to an employee and either the employee pays no interest on the loan or pays interest at less than the official rate of interest;
  - (b) an employer has paid a subsidy in respect of capital repayment or interest on a loan; or
  - (c) an employer pays a lender a subsidy in respect of capital repayment or interest on a loan to an employee.
- 8.2 For the purposes of subparagraph 8.1:
  - (a) In respect of any other loan, the value of the taxable benefit for any year of assessment shall be the interest on the loan calculated at the official rate less the amount of interest (if any) that the employee actually incurred during the year of assessment.
  - (b) In respect of a loan whose duration is two years or more and in respect of which the repayment amount is a fixed periodic or monthly installment calculated to amortize the loan over a future period, the value of the benefit for the year of assessment shall be the difference between the redemption amount actually incurred or paid by the employee and the redemption amount that would have been payable if the redemption amount had been determined over the same future period using the official rate of interest.

## **9. Meals, Refreshment or Entertainment**

- 9.1 Where a benefit provided by an employer to an employee consists of the provision of any meal, refreshment, or entertainment, the value of the benefit is the cost to the employer of providing the meal, refreshment, or entertainment.

## **10. Debt Waivers**

- 10.1 Where a benefit provided by an employer to an employee consists of waiver by the employer of an obligation of the employee to pay or to repay an amount owing to the employer or to any other person, the value of the benefit is the amount of the payment or repayment waived.

## 11. Property Transfers

11.1 Where a benefit provided by an employer consists of the transfer or use of property or the provision of services, the value of the benefit is the market value of the benefit, reduced by any payment made by the employee for the benefit.

## 12. Employer Contribution to a medical benefit fund on behalf of employees

12.1 Where an employer makes a contribution to a medical benefit fund on behalf of an employee, any such amount that has been paid by the employer during any year of assessment, directly or indirectly, by way of contribution or payment to such fund for the benefit of any employee or the dependents of any such employee, which exceeds two thirds of the total contribution or payment in relation to such employee or dependents during such period, shall be deemed to be part of the taxable income of such employee for that year of assessment.

## 13. Miscellaneous benefits

13.1 The value of any benefit provided by an employer to an employee that is not covered in the previous paragraphs is the market value of the benefit, reduced by any payment made by the employee for the benefit.

13.2 Note paragraph 13.1 above, would include inter alia, the following:

- (a) Free medical attention or allowance, or any reimbursement of an employee's medical expenses not exempt in terms of section 7 (f) (i).
- (b) The value of free passages by rail, steamer or air for an employee if not exempt under section 7 (f) (ii) and (iii).

## PART D ALLOWANCES

## 14. Allowances

14.1 Any amount paid by an employer to an employee, as an allowance, is a taxable benefit; such allowance is income in the hands of the employee as it forms part of what the employee is paid for services rendered

14.2 **Reimbursement allowance:** where an allowance or advance is paid by the employer to an employee in respect of expenses for travelling, entertainment or other service, as is not actually expended for official purposes, will be regarded as taxable benefits in the hands of the employee. The value of the benefit is determined according to the following formula:

$$A = (B - C)$$

Where:

- A** is the taxable benefit;
- B** is the actual amount paid by the employer to the employee;
- C** is the justifiable official expense incurred by the employee.

14.3 Where an employee incurs expenditure on travel, entertainment or other service while on the employer's business and the latter reimburses such employee the precise amount of his expenditure and where the employer pays an allowance in respect of the use of the employee's private vehicle for the employer's business at fixed rates per kilometre (which rates approximate the rates published by AA of South Africa), the amount so received is not income in the hands of the employee but merely a reimbursement of expenses, which the employee incurred on behalf of his employer.

Provided that if an employee receives a fixed allowance towards the running costs of a vehicle and also receives a 'distance traveled allowance' as contemplated in this paragraph, then such fixed allowance shall be taxable in full.

- 14.4 Note that since in terms of the law, there must be clear evidence that the allowance was paid to meet or reimburse expenses incurred by the employee in the performance of employee's duties. The employee must provide such details and evidence that would, reasonably such circumstances, be expected of such employee. This requires the employee to produce proof to the employer that such expenditure was actually incurred and has been accounted for.

## PART E EXEMPT BENEFITS

### 15. Benefits not forming part of gross income

15.1 Notwithstanding the previous paragraphs the following benefits are exempt from tax and do not form part of the remuneration of an employee:

- A. The value of any free medical attention or any allowance, or any reimbursement of, an employee's medical expenses where the free medical attention, allowance or reimbursement is available to all non-casual employees on equal terms.

Provided that where a reimbursement or cash allowance is provided for or paid to an employee in respect of medical expenses, the employee must produce proof to the employer that such expenditure was actually incurred and has been accounted for.

- B. The value of any free passage by rail, road, steamer or air provided for an employee or the holder of an office or appointment:

- (a) at the commencement of such employment if the duration of such employment is two years or more; or where it is less than two years, if such employment is not subject to renewal; and
- (b) on termination of such employment where the employee or holder of an office or appointment permanently returns to his place of recruitment.

- C. The value of any meal or refreshment provided in a canteen, cafeteria, or dining room operated by, or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms.

- D. A benefit, the value of which (after taking into account the frequency with which similar benefits are provided by the employer) is so small as to make accounting for it unreasonable or administratively impracticable.

- E. For the purposes of paragraph (7), the value of any transportation of employee's children provided by the employer solely for the benefit of employees and which is available to all non-casual employees on equal terms.

- F. In cases of benefits falling under paragraph 8.1 (a), the benefit of low interest or no interest on loan granted to an employee is excluded from gross income in respect of any casual loan not exceeding in aggregate E3 000 at any one time during the year of assessment.

**NOTE:**

- (a) In terms of paragraph 5 (1), Part II of the Second Schedule to the Income Tax Order 1975, as amended, any employer, who fails to make deduction or withhold the full amount of employees' tax, shall be personally liable for the payment of the amount which he fails to deduct or withhold.
- (b) In all cases where you are uncertain as to the tax treatment of any benefit subject to this practice note, or where the value determined is considered unrealistic, you should request a directive from the Commissioner General.

## Revocation of legal Notice No. 20 of 2003

The taxation of benefits in kind and certain allowances Notice 2003 is revoked.

### SCHEDULE A

Rental category	Floor area	Area A Taxable benefit Per month E	Area B Taxable benefit Per month E	Area C Taxable benefit Per month E
<b>Prime location</b> 3-5 bedrooms 2-3 bathrooms Double garage Servant quarters Secure perimeter <b>1 500 sq.m and above lot</b>	250 sq.m and above	4 607	3 915	2 740
As above, but smaller	200 sq.m and above	4 145	3 524	2 465
3 bedrooms 2 bathrooms a garage servants quarters secure perimeter <b>700 sq.m and above lot</b>	150sq.m and above	3 686	3 133	2 193
<b>Lesser than prime location</b> 3 bedrooms 1-2 bathrooms <b>700sq.m and above lot</b>	120sq.m and above	3 190	2 710	1 899
2-3 bedrooms 1 bathroom or shower	100 sq.m and above	2 393	2 033	1 422
2-3 bedrooms 1 bathroom or shower	70-100sq.m	1 612	1 370	960
2-3 bedrooms 1 bathroom or shower	40-70sq.m	1 330	1 129	790
1 bedroom	70sq.m and above	910	773	542
1 bedroom	Under 70sq.m	761	648	452
Bedsitters	Under 70sq. m	531	452	317
Quarters	Under 70sq.m	213	180	110

In this schedule, the locations are designated in categories A, B, C, and are detailed as follows:

- Area A:** is accommodation or housing situated in the residential areas of Mbabane Municipal area, Waterford, Pine Valley, Coates Valley, Extension 6, Madonsa Township, Thomasdale and within ten kilometers from the old Mbabane/Manzini road.
- Area B:** is accommodation or housing situated in the residential areas of Manzini and surrounds; except Coates Valley, Extension 6, Madonsa Township and Thomasdale.
- Area C:** is accommodation or housing situated in the major agricultural and industrial sectors and other towns.

## EXPLANATORY NOTES

### PART A PRELIMINARY

#### Interpretation

##### Paragraph 1

The term “employee” for the purposes of this practice note has the meaning assigned to it in the Second Schedule to the Order. The term employee is defined in the Second Schedule to mean “any person (other than a company) who in respect of employment, office or appointment, receives remuneration from an employer or to whom remuneration accrues; the term includes a former employee who receives remuneration which accrued before the termination of the contract of employment”.

For the purposes of the practice note, the term employer has the meaning assigned to it in the Second Schedule to the Order. The definition of employer, in the context of the Second Schedule, means any authority or company or any person who pays or is liable to pay to any person other than a company any amount by way of remuneration. The word employer has an extended meaning for the purposes of the Second Schedule; it includes any person, acting in a fiduciary capacity, as a trustee of an insolvent estate, an executor or administrator of a pension fund, provident fund, benefit fund, retirement annuity fund, or any other fund.

### PART B

#### THE LAW

##### Paragraph 2

In paragraph 2.1, the intention of sections 7 (f) and (ff) of the Order is to tax, in addition to the income earned by an employee, all the benefits or advantages afforded to an employee from employment.

In paragraph 2.2, the definition of “remuneration”, has an extended meaning in the Second Schedule to include the annual value of such benefit or benefits referred to in section 7 (f) of the Income Tax Order. The inclusion of benefits in the definition of remuneration makes it compulsory for employers to deduct PAYE on such benefits.

In paragraph 2.3 (a), the definition of benefit refers to benefits provided by an employer or an associate of the employer. The inclusion of an associate of the employer (for example, a related company) is to ensure that benefits provided by an associate of the employer to an employee of the employer are subject to tax in the hands of the employee. This rule is only relevant where the benefit provided by the associate is not a reward for services rendered by the employee to the associate.

In paragraph 2.3 (b), a benefit is defined to include a benefit provided to an associate of the employee. The inclusion of associate ensures that benefits provided by an employer, directly to, for example, the spouse, children, or family company or trust of an employee is subject to tax.

#### Practice

##### Paragraph 3

*Valuations of benefits or advantages:* Although the valuations placed on the benefits are not specified in the Income Tax Order 1975, section 5 of the Income Tax (Amendment) Act No. 5 of 1988 empowers the Commissioner to determine the basis for valuations of such benefits. The definition of “remuneration” as embodied in the Second Schedule contains the wording “... or the annual value of such benefits or benefits referred to in section 7 (f) as the Commissioner may, from time to time, determine in respect of a year of assessment, ...” The foregoing wording makes it clear that the Commissioner is vested with the powers to set the basis for valuations of benefits in kind.

In accordance with the provisions of paragraph 3.2, with effect from 1 July 2003 benefits in kind coming within the purview of section 7 (f) of the Order are taxed at their market values. However, the move to market value was

introduced on a phased-in basis over a period of five years, the 2008-year of assessment being the fifth year. The taxation of such benefits on a phased in basis was to prevent the levying of tax on the taxable portions of the values of other benefits; especially in those cases where tax had not been levied in the past, from imposing an unduly increased burden on those concerned.

**Valuation:** the value of a benefit in kind is the market value of the benefit on the date the benefit is taken into account for tax purposes, and the market value of a benefit is determined without regard to any restriction on transfer or to the fact that it is not otherwise convertible to cash.

## Those Affected

### Paragraph 5

*Scope of the Practice Note:* The practice note applies to employees and holder of office or appointment (for example, a company director, member of board of directors, a public servant, a member of parliament, a cabinet minister etc.).

## PART C TAXABLE BENEFITS

### Free and subsidized housing or accommodation

#### Paragraph 1

*Housing fringe benefit:* Under paragraph 1.1, the provision of accommodation or housing by an employer to an employee is a housing fringe benefit. This is intended to cover a lease or licence granted by an employer to an employee to occupy or use a house, flat, unit, caravan, mobile home, bunkhouse or living quarters. It also includes the payment or reimbursement by an employer of hotel, guesthouse, or hostel accommodation for an employee. The taxable value of a housing or accommodation fringe benefit is provided in paragraph 1.1 as the open market rent of the accommodation or housing, In the case of hotel or similar accommodation, the tariff charged by the hotel for the room occupied by the employee would normally be treated as the open market rent of the accommodation.

In accordance with the proviso to paragraph 1.1, where the employer owns the accommodation or housing, the value of the benefit is the rental benefit value determined on the basis of the monetary values prescribed in Schedule A.

*The basis for the use of the monetary values:* The monetary values prescribed in Schedule A are based on the Government's report on valuation of Government houses for taxation purposes of 13 February 1998. The figures have been adjusted over the years using a rate of 10 per cent to make them more realistic. With effect from 1 July 2004, the formula for determining the rental value where the housing or accommodation is owned by the employer is substituted for the monetary values as determined by the Government. These monetary values form the basis of values to be attached to housing benefits.

The values are what is considered to be open market rental values of the Government owned houses throughout the country. The values determined by the Government are used as a benchmark in setting taxable values in respect of housing or accommodation owned by an employer.

*Employer rents housing from employee:* Under paragraph 1.2, where an employer rents from an employee the employee's private residence and then grants such employee free or cheap occupation thereof. The situation would arise where the nature of the employer's trade is such that he would normally provide his employees with official housing. Although the transaction takes the form of a rental, the rent paid by the employer to the employee is in effect nothing more than a housing allowance. In this instance, the benefit to the employee is the rental he receives. Accordingly the rental received by the employee will not be taxable under the ordinary provisions of the law [see paragraph 3.5 on anti-avoidance schemes].

## Private use of motor vehicles (including any aircraft)

### Paragraph 2

*Private use of employer's vehicles under paragraph 2.1*, a motor vehicle which is provided by an employer for the private use of an employee or which is available to the employee for private use is a taxable benefit. The private use by an employee, of an employer's motor vehicle will include travelling between his place of residence and his place of employment. The reference to "motor vehicle" is intended to cover a motor car, station wagon, panel van, utility, or similar vehicle. Private use includes any use that is not exclusively for the business purposes of the employer. For example, the use of a motor vehicle to travel to and from the employee's place of work would be regarded as private use. An employee does not actually have to use the motor vehicle for private purposes for there to be a taxable benefit, the availability of the vehicle for private use being enough. A motor vehicle is considered to be available for private use:

- (a) if the employee is entitled to use the vehicle for private use; or
- (b) it is kept or garaged at or near the employee's place of residence; or
- (c) the employee has custody or control of the vehicle while not performing his or her duties of employment; or
- (d) where an employer places a prohibition on an employee's private use of a motor vehicle but that prohibition is not consistently enforced by the employer; the vehicle may still be treated as being used for private purposes despite the prohibition.

However, the private use of a vehicle is deemed to have no value if:

- (a) the vehicle is also used by other employees ("pool vehicles"); or
- (b) the private use thereof is infrequent or merely incidental to its business use; or
- (c) it is not kept at or near the employee's residence when not in use outside business hours; or
- (d) the employee's duties are such that he frequently uses the vehicle to perform such duties outside his normal hours of work and the private use thereof is restricted merely to travelling between his place of residence and his place of employment.

The taxable benefit value in respect of provision of a motor vehicle is determined in terms of the formula prescribed in paragraph 2.1 of Part C. The taxable value is 20% of the market value of the car at the date it was first provided for private use. This amount is pro-rated where the vehicle is not used for private purposes or available for such use on some part of every day of the year of assessment. For example, if a vehicle is only used or available for private use on weekends, the fraction for pro-ration is 104/365. If the motor vehicle is used or available for private use on some part of day, then the whole of the day counts as a day of private use.

*Market value:* In paragraph 2.2,:

- (a) where the vehicle has been acquired by the employer under a bona fide agreement of sale or exchange, the market value of the car is the cost to the employer at the time it was first provided to the employee, excluding finance charges; or
- (b) where the vehicle is held by the employer under a lease or ownership thereof was acquired by him on the termination of a lease, the retail market value thereof at the time when the right of use was first obtained by the employer; or

- (c) in any other case, the market value of the vehicle at the time when the vehicle or the right to use it, was first obtained by the employer.

*Meaning of cost:* Paragraph 2.2 defines the market value of the car as the cost to the employer at the time it was first provided to the employee. It should be noted that no distinction must be drawn between (i) the variable costs (for example, fuel and garage requirements) and (ii) the basic non-variable costs (for example, licence, insurance, depreciation) relating to the vehicle. The principle is that, although paid by the employer, non-variable costs such as licence, insurance et cetera also inure to the benefit of the employee.

For the purposes of paragraph 2.1, the value of a benefit of this nature is to be determined by reference to the cost to the employer. This cost includes items such as insurance, licensing charges and depreciation – the latter, since the extent to which a vehicle is used will affect the extent to which it depreciates; and this is a cost to the employer whether it is represented by the agreed written-off portion of the purchase price in any particular year, or a genuine attempt to assess its diminished value.

The fixed or non-variable costs are equally an advantage or benefit to the employee, since he is spared having to incur them himself. It is clearly the intention of the legislature to include in the tax net all and any such benefits or advantages. Thus, the sums paid by an employer as insurance and licensing of a motor vehicle are clearly part of the cost to the employer of owning such motor vehicle, as well as whatever wastage or reduction in value flowing from depreciation.

### Employee using personal vehicle on employer's business

#### Paragraph 4

*Employee using personal vehicle for employer's business:* It is common practice amongst employers to encourage employees to purchase their own vehicles for the purpose of caring for the vehicle, as well as providing a fixed allowance in respect of running of such vehicle. The ostensible advantages to the company are that –

1. Capital is not utilized in financing vehicles and can be better utilized for business purposes; and
2. Savings is made in operating costs as employees tend to look after their own vehicles better than company vehicles.

Prior to 1 July 2003, car allowances paid to employees were taxed on the same basis as the provision of a company car, in that the employee was taxed the free benefit value attributable to the company vehicle or the free benefit value attributable to the vehicle used by the employee and funded by the allowance received. Consequently, many companies introduced a car allowance scheme for employees, even when no significant business mileage was required from the employee, by reason of the significant tax savings that could be achieved consequent thereto as the allowance could be considerably greater than the taxable value attributed in terms of the Departmental practice prior to 1 July 2003.

With effect from 1 July 2003 the Department changed the departmental practice and required that vehicle allowances be taxed in full or in certain circumstances be taxed at 30% of the allowance in terms of a directive issued on 29 March 2004. The 30% rule was only applicable relative to the year of assessment ending 30 June 2004.

Commencing on 1 July 2004, the annual value of benefits attributable to employees, for use of the vehicles for private purposes is determined in terms of the formula prescribed in paragraph 4.1. An illustration is provided hereunder:

**Example:** Original cost of vehicle E200 000. Vehicle is 2000cc engine capacity. Monthly car allowance E5 000. Calculation on annual basis using deemed expenditure and mileage:

Allowance		60 000
Fixed costs (25% of E200 000)	50 000	
Running costs (24 000) @ 76c	<u>18 240</u>	
	<u>68 240</u>	
Deemed business usage (E68 240 x 6000km/24000km)		<u>17 060</u>
Taxable portion		<u>42 940</u>

*Employee rents his vehicle to his employer:* Where an employee owns or leases his own motor vehicle and rents it to his employer, the rental paid by the employer and any expenses borne by him in respect of the vehicle are deemed to be an allowance in respect of travelling expenses, which has been paid to the employee.

### Domestic assistance

#### Paragraph 5

Under paragraph 5, the provision by an employer to an employee, of a housekeeper, chauffeur, gardener, or other domestic assistant is a deemed benefit. An employer may provide such benefit either by meeting the cost of the domestic assistant directly or reimbursing the employee for such cost. The taxable value of a domestic assistant benefit is the total remuneration paid to the domestic assistant for services rendered to the employee.

### Utilities

#### Paragraph 6

Under paragraph 6.1, the reimbursement or discharge by the employer of an employee's utilities expenditure is a benefit. Utilities expenditure is defined in paragraph 1. The taxable value of a utilities benefit as provided for in paragraph 6.1 is the amount of such expenditure that is reimbursed or discharged by the employer.

### Educational assistance

#### Paragraph 7

*Educational assistance:* The educational assistance given to an employee in connection with the education of such employee's children is a taxable benefit. This is not only in keeping with the statutory provisions, but also accords with the case law position, that such payments prima facie meant the settlement, by the employer, of a personal liability of the employee. Paragraph 1 [of Part A] defines educational assistance to mean a contribution or financial aid or subsidy granted to the children of the employee by the employer to enable or assist such children to study at a recognized educational institution. And it covers school fees and other educational expenses paid by the employer on account of the education of the employee's children.

Excluded from the scope of paragraph 7, is the value of any transportation of employee's children provided by the employer solely for the benefit of employees where such benefit is made available to all non-casual employees on equal terms.

*Bursaries:* In terms of the provisions of section 12 (1) (f) of the Order, a bona fide bursary is not subjected to tax in the hands of the recipient thereof. A bursary granted to a relative of an employee is, however, deemed to be a taxable benefit which must be taxed in the hands of the employee notwithstanding the provisions of section 12 (1) (f); and as such must be taxed in accordance with the rule prescribed in paragraph 7.

### Soft loans

#### Paragraph 8

*Soft loans:* The granting of any loan, whether interest free or at the payment of interest at a rate which is lower than the "official rate of interest" by an employer or an associated institution to an employee is, deemed a taxable benefit. This is a loan provided by an employer to an employee at an interest rate, which is below the Central Bank of Swaziland discount rate. "Loan" is intended to be interpreted broadly covering an advance of money, provision of credit or other financial accommodation, or any transaction that in substance effects a loan of money.

*Housing loans and mortgage subsidies:* The provisions of paragraph (ff) of section 7 as outlined in paragraph 7

of the practice note also apply to housing loans and mortgage subsidies. Paragraph 7 therefore extends to the acquisition, erection, extension or improvement of an employee's private residence or loan subsidies granted in terms of an approved housing scheme.

*In paragraph 8.1(a):* The taxable benefit is the difference between the interest at official rate and the interest paid by the employee (see section 7 (ff) paragraph (a)).

*In paragraph 8.1(b):* A subsidy paid by an employer to an employee in terms of home ownership or house scheme in respect of amounts of interest or capital repayments payable by the employee is, deemed to be a taxable benefit (see section 7 (ff) paragraph (b)). In accordance with section 7 (ff) (b) a benefit arises whenever an employer has paid any subsidy in respect of capital or interest on any loan.

*In paragraph 8.1(c):* Is applicable in a situation where the employer pays a subsidy in respect of a loan to an employee. If the amount paid by the employer together with the interest paid by the employee exceeds the official rate of interest on the loan, the full amount paid by the employer would be treated as a taxable benefit. Certain housing assistance schemes are structured in such way that an employer arranges with a third party, usually a financial institution, for a loan to be granted to his employee at a low rate of interest, subject to an additional payment by the employer which effectively provides the third party with a market related rate of interest on the loan. In terms of section 7 (ff) (c) where the interest paid by the employee and the additional payment by the employer under such a scheme together exceed the amount of interest which would be payable on the loan at the official rate of interest, the additional payment by the employer is deemed to be a subsidy. The provision will also apply to loans granted for purposes other than housing.

## **Meals, refreshment or entertainment**

### **Paragraph 9**

Under paragraph 9, the provision by an employer to an employee, of a meal or refreshment is a benefit. This is intended to cover a meal or refreshment provided either at the employee's place of work (for example, in an executive dining room), or at a restaurant or café. "Refreshment" is intended to be interpreted broadly and would include the provision of drinks. A meal or refreshment is provided by an employer where the employer meets the cost of the meal or refreshment, or reimburses an employee for costs incurred by the employee for a meal or refreshment.

## **Medical aid contribution**

### **Paragraph 12**

An individual's contributions to a medical aid scheme are for the most part not deductible by an individual. The company can, however, contract with an employee in his employment contract to provide a non-contributory medical aid. This can be done on a "salary sacrifice" basis or as a benefit over and above the normal remuneration package. The effect of this is a tax saving in the hands of the employee in respect of the amount of the medical premiums. With effect from 1 July 2008, any amount which has been paid by an employer during any year of assessment directly or indirectly, by way of contribution or payment to any medical benefit fund for the benefit of any employee or dependants of any such employee, which exceeds two-thirds of the total contribution or payment in relation to such employee or dependants during such period, shall be deemed to be part of the taxable income of such employee for that year of assessment.

## **Miscellaneous benefits**

### **Free passage to employees or holders of office or appointment**

#### **Paragraph 13.2**

The exclusion of free passage from the provisions of section 7 (f) is premised on the notion that the provision of such outward passage though made under a term of the contract of employment is something antecedent to the employment per se. It is distinct from the employment as not to be a benefit or advantage granted or enjoyed in respect of the employment.

In other words the free passage provided at the expense of the employer at commencement of employment is not a benefit or advantage to the employee. The employee is not better off as a result of it. The rationale being that the employee's remuneration starts when such an employee commences work at the place of employment. To have such a person as an employee, the employer has originally to take such person to the place of employment. All that the employee has enjoyed is that the employee has employment. The value of that is what the employee earns at it.

Please note that this differs from a case in which in the course of employment the employee is entitled to be taken to and from a place for the purpose of enjoying leave. Such situations are not excluded from the ambit of section 7 (f), as they do not fall within the wording of the proviso.

It is evident that in the absence of this particular proviso the free passage at the commencement of employment would not have constituted a benefit or advantage as envisaged in section 7(f). So the first part of the proviso seeks to enshrine this principle. But the free passage borne by the employer, at termination of the contract of service, would have come within the purview of the definition of gross income and therefore taxable. It is in this light that the exclusion of the free passage at termination is the only benefit that is being conferred by the Order. For the exemption to apply, the law requires that the duration of such employment, office or appointment should be two years or more. However, where the duration is less than two years such employment, office or appointment must not be subject to renewal.

**EXAMPLE:**

*If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years); was taken to Swaziland at the start, at the expense of the employer and at the termination of the contract of service permanently returns to Nigeria where such employee was recruited then both the free passages at commencement and termination of such employment would not constitute a benefit or advantage as contemplated by section 7(f) as such benefit squarely comes within the proviso to paragraph (f) of section 7 of the Order.*

If the employee at the termination of the contract does not permanently return to the place of recruitment then such allowances or free passages provided at the expense of the employer would constitute a benefit or advantage to the employee and therefore taxable under section 7(f).

As pointed out before, this is aimed at counteracting the abuse that arises with regard to free passage at the termination of the contract of service. Thus, in view of the new proviso all free passages that are availed to an employee in terms of a contract of employment for the purposes of enjoying leave or in respect of a renewal contract would fall into the scope of section 7(f) save for the free passage provided at the expense of the employer where the termination of the contract is not subject to renewal and the employee returns permanently to his place of recruitment.

**EXAMPLE:**

*If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years); was taken to Swaziland at the start, at the expense of the employer and the contract of employment provides for free passage back to Nigeria for the enjoying of leave or anywhere else – such free passage(s) would fall into gross income and be taxable. This is so notwithstanding that both the free passages at commencement and termination of the contract of service (permanently returns to Nigeria where such employee was recruited) -would not constitute a benefit or advantage under section 7(f) of the Order.*

## **Exemption of meals or refreshment provided in canteen or cafeteria**

### **Paragraph 13.3**

Paragraph 13.3 treats as an exempt fringe benefit, a meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms. The expressions "canteen", "cafeteria", and "dining room" are intended to have their ordinary meaning and, in particular, "canteen" is intended to include a bar operated by the employer. It is not necessary that the facility be on employer's business premises provided it is operated by or on behalf of

the employer. The reference to “operated ... on behalf of the employer” is intended to cover, for example, a facility operated by an associate company of the employer which is available to all employees of the corporate group. To qualify for the exemption, the facility must be available to all non-casual employees of the employer on equal terms. As a result, a facility which is only available to senior employees will not qualify for the exemption, nor will a facility available to all non-casual employees but with entitlements depending on seniority.

### Exemption of *de minimus* benefits

#### Paragraph 13.4

Paragraph 13.4 refers to benefits whose value is so small as to make it unreasonable or administratively impracticable to account for them for tax purposes. In determining whether it is unreasonable or impracticable to account for the benefit, regard must be had to the frequency with which the benefit is provided to the employee and to other employees. A small value fringe benefit provided to an employee regularly would not normally be considered an exempt fringe benefit, nor would a small value fringe benefit provided to a large number of employees (where it is not unreasonable to account for it). For example fringe benefits that may qualify for exemption under paragraph 12.4 include occasional departmental or celebratory lunches or dinners, occasional cocktail parties or firm picnics, birthday cakes for employees, or one-off private use of a car.

### Allowances

#### Paragraph 14

**Allowances:** The salary paid to an employee is usually a fixed basic amount, but the employer may supplement it by way of further allowance. These allowances whether paid on a voluntarily basis or in terms of a contract of employment are in fact nothing else but additional remuneration or extra earnings and must be included in the employee’s taxable income. These allowances represent benefits attaching to the person’s office or employment, and include inter alia, car allowance, commuted car allowance, climatic allowance, garden allowance, cost of living allowance, housing allowance, subsistence allowance, holiday bonus, cashier’s allowance, household allowance, entertainment allowance, allowance for attendance at meetings, allowance in lieu of private practice, education allowance, uniform allowance, resettlement allowance, sitting allowances/fees etc.

The reimbursement of the income tax paid or payable by ministers; members of certain bodies like SNC or payment of an employee’s income tax by employer is a taxable benefit, on the principle that if an employer pays and bears the income tax of an employee or holder of an office or appointment, this is a benefit derived from employment and the amount should be included as a bonus in the year in which the claim is made.

**Reimbursement allowances:** In terms of section 11 (8) of the Income Tax Order, if an employee fails to satisfy that he has expended the whole allowance paid to him by his employer in connection with travelling and entertainment expenses incurred by him in the furtherance of his employer’s business, the amount not spent in the course of his duties must be included in his income and subject to tax.

The classes of cases to be dealt with may be divided into the following:

- (a) Commercial travellers who receive salary and/or commission and pay their own expenses.

So as concerns the employer, portion of the claim may be disallowed only if it can be shown that the charge is from the point of view of the assessment of the employer excessive or unreasonable. The fact that the employee may make a profit out of the allowance is not itself sufficient grounds for disallowing any portion of the employer’s claim. If, however, the employee is able to make a very large profit, there is prima facie evidence that the allowance has been calculated on a scale having little or no relation to actualities and if, the employee and the employer cannot be regarded as being at arm’s length so much of the charges as is considered to be excessive should not be allowed as a deduction in terms of section 14 (1) (a) and 15 (g) of the Order.

- (b) Employees whose expenses are paid by the firm on submission of vouchers or other evidence satisfactory to the employer.

In respect of cases falling within (b) a certificate from the employer to the effect that in his opinion the allowances paid cover reasonable expenses and do not admit of a profit being made by the employee, will be accepted as conclusive proof that no portion of the allowance should be included in taxable income in terms of section 11 (8).

(c) Employees who receive salary plus allowances.

In the generality of cases falling within (c) a certificate from the employer to the effect that in his opinion the allowances paid cover reasonable expenses and do not admit of a profit being made by the employee, would be accepted. Where, however, there is reason to believe that such a certificate may not be in accordance with facts, satisfactory proof should be obtained before excluding the whole or any portion of the allowances from taxable income.

(d) Directors or employees who are in a position to influence the amounts of travelling and entertainment allowances payable to themselves.

In respect of cases falling within (d) supporting evidence would be called for.

The travelling, entertainment or other service envisaged in section 11(8) must be travelling, entertainment or other services undertaken in connection with the particular business carried on by the employer. In other words, so much of an allowance or advance in respect of transport expenses as has been expended on private travelling, for instance, travelling between a person's place of residence and the place of employment or business and other travelling done in respect of private or domestic purposes, shall be deemed not to have been expended for business purposes.

**Luncheon vouchers:** The value of free meal coupons represents a benefit or advantage in respect of employment and is, therefore, taxable.

## 38. The Tax Treatment Of Free Passage To Employees

LEGAL NOTICE NO.171 OF 2004

THE INCOME TAX ORDER, 1975  
(Order No. 21 of 1975)

### **INCOME TAX: THE TAX TREATMENT OF 'FREE PASSAGE' TO EMPLOYEES OR HOLDERS OF OFFICE OR APPOINTMENT**

In terms of the powers conferred by the Income Tax Order, 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

#### **Citation and commencement**

This notice may be cited as Practice Note No. 157A on the tax treatment of free passage to employees or holders of office or appointment under section 7(f) of the Order notice, 2004 and shall be deemed to have come into effect on 1 July 2001.

#### **The tax treatment of 'free passage' to employees or holders of office or appointment**

1. In terms of the second proviso to section 7 (f) of the Income Tax order 1975, as amended, any free passage provided to employees or holders of office or appointment is excluded from the purview of section 7 (f) of the aforesaid Order. Section 7 (f) brings into gross income, the annual value of any benefit or advantage accruing by way of employment, including that of any quarters, board or residence.
2. This Practice Note seeks to clarify the application of the law consequent to the amendment brought into effect by the Income Tax (Amendment) Act, 2000 that came into operation on the 1 July 2001.

## The Law

3. Prior to 1 July 2001 the second proviso to section 7 (f) of the 1975 Order provided that:  
“any free passage by rail, steamer or air provided for an employee or the holder of an office or appointment at the commencement and termination of such employment, office or appointment shall not be included if the duration of such employment, office or appointment is two years or more or where it is less than two years, if such employment, office or appointment is not subject to renewal.”
4. The aforesaid proviso was replaced by section 4 of the Income Tax (Amendment) Act, 2000 which provides:
  - “(ii) any free passage by rail, road, steamer or air provided for an employee or the holder of an office or appointment at the commencement of such employment, office or appointment shall not be included if the duration of such employment, office or appointment is two years or more or where it is less than two years, if such employment, office or appointment is not subject to renewal.
  - “(iii) any free passage by rail, road, steamer or air provided for an employee or the holder of an office or appointment shall, on termination of such employment, office or appointment, not be included if the employee or holder of such an office or appointment permanently returns to his place of recruitment.”

## Application of the law

5. The exclusion of free passage from the provisions of section 7 (f) is premised on the notion that the provision of such outward passages though made under a term of the contract of employment is something antecedent to the employment per se. It is distinct from the employment as not to be a benefit or advantage granted or enjoyed in respect of the employment. In other words the free passage provided at the expense of the employer at commencement of employment is not a benefit or advantage to the employee. The employee is not better off as a result of it.
6. The employee’s remuneration starts when such an employee commences work at the place of employment. To have such a person as an employee, the employer, has originally to take him to the place of employment. All that the employee has enjoyed is that the employee has employment. The value of that is what the employee earns at it.
7. Note that this differs from a case in which in the course of employment the employee is entitled to be taken to and from a place for the purpose of enjoying leave. Such situations are not excluded from the ambit of section 7 (f), as they do not fall within the wording of the proviso.
8. It is evident that in the absence of this particular proviso the free passage at the commencement of employment would not have constituted a benefit or advantage as envisaged in section 7 (f). So the first part of the proviso seeks to enshrine this principle. But the free passage borne by the employer, at termination of the contract of service, would have come within the purview of the definition of gross income and therefore taxable. It is in this light that the exclusion of the free passage at termination is the only benefit that is being conferred by the Order.
9. The amendment embodied in section 4 of the Amending Act seeks to remove the potential abuse inherent in the old proviso to paragraph (f). It is now manifestly clear that the exclusion is only applicable at:
  - (a) the commencement of the contract; and
  - (b) termination of the contract where the employee or holder of such an office or appointment permanently returns to his place of retirement.
10. For the exemption to apply, the law requires that the duration of such employment, office or appointment should be two years or more. However, where the duration is less than two years such employment, office or appointment must not be subject to renewal.

### EXAMPLE 1

*If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years); was taken to Swaziland at the start, at the expense of the employer and at the termination of the contract of service permanently returns to Nigeria where such employee was recruited, then both the free passages at commencement and termination of such employment would not constitute a benefit or advantage as contemplated by section 7(f) as such benefit squarely comes within the proviso to paragraph (f) of section 7 of the Order.*

11. If the employee at the termination of the contract does not permanently return to his place of recruitment then such allowances or free passages provided at the expense of the employer would constitute a benefit or advantage to the employee and therefore taxable under section 7 (f).
12. As pointed out before, this is aimed at counteracting the abuse that arises with regard to free passage at the termination of the contract of service. Thus, in view of the new proviso, all free passages that are availed to an employee in terms of a contract of employment for the purposes of enjoying leave or in respect of a renewal contract would fall into the scope of section 7 (f) save for the free passage provided at the expense of the employer where the termination of the contract is not subject to renewal and the employee returns permanently to his place of recruitment.

### EXAMPLE 2

*If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years), was taken to Swaziland at the start, at the expense of the employer and the contract of employment provides for free passage back to Nigeria for the enjoying of leave or anywhere else – **such free passage(s) would fall into gross income and be taxable.** This is so notwithstanding that both the free passages at commencement and termination of the contract of service (when the employee permanently returns to Nigeria where such employee was recruited) -would not constitute a benefit or advantage under section 7 (f) of the Order.*

## 39. Determination Of Severance Allowance

LEGAL NOTICE NO.170 OF 2004

THE INCOME TAX ORDER 1975  
(Order No. 21 of 1975)

### **INCOME TAX: DETERMINATION OF THE TAX-FREE ELEMENT IN THE PAYMENT OF SEVERANCE ALLOWANCE**

In exercise of the powers conferred by the Income Tax Order 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

#### **Citation and commencement**

This notice may be cited as Practice Note No. 169 on determination of the tax-free element in the payment of severance allowance in terms of section 12 (1) (j) (iii) of the Income Tax Order notice, 2004 and shall come into effect on 1 July 2004.

#### **Determination of the tax-free element in the payment of severance allowance**

#### **The law**

1. In terms of section 12 (1) (j) (iii) of the Income Tax Order, 1975, as amended, any amount received or accruing to any person on bona fide termination of employment in respect of an amount payable, as determined in terms of the provisions of the Employment Act, as severance allowance is exempt from normal tax.
  - 1.1 In terms of section 34 (1) of the Employment Act 1980 certain categories of persons, whose employment is terminated, shall be granted, as part of the benefits accruing under the contract of

service, a severance amounting to ten working days' wages for each completed year of service in excess of one year in respect of the period of continuous employment with the employer.

- 1.2 The categories of persons to whom severance shall be paid are as follows:
- (a) Persons who are retired in terms of section 36 (k) of the Employment Act, having reached the normal age for retirement in the undertaking;
  - (b) Persons who are declared redundant in terms of section 36 (j) of the Employment Act;
  - (c) Severance allowance may also be paid to a person by award of the Industrial Court in terms of the Industrial Relations Act in respect of an employee whose services the court has held to have been terminated unfairly.
- 1.3 Severance allowance paid by award of the Industrial Court has the same consequence and attracts the same tax obligations as payment in terms of (a) and (b) above.
- 1.4 The following categories of persons are not entitled, by law, to be paid severance allowance:
- (a) persons who resign their employment voluntarily; and
  - (b) persons whose employment has been terminated fairly.
- 1.5 An employer who elects, ex-gratia, to make any payment to either of the two categories mentioned in paragraph 1.4 shall treat all such payment as normal income for the purposes of taxation as it does not qualify as severance allowance.

#### Practice

2. Severance allowance payment is a lump sum payment payable at the termination of employment. Thus, a tax directive is required in terms of paragraph 9 (3) of the Second Schedule to the Income Tax Order, before the employer makes payment of this amount to the employee concerned.
- 2.1 A request for a tax directive, which includes details of computation, should be completed by the employer and forwarded to the Commissioner. No directive would be issued without the submission of such a request and the employer must not make any payment of severance allowance without the receipt of the required tax directive from the Commissioner.
- 2.2 The requests for tax directives submitted would be scrutinized by the department so as to ensure that payments for services rendered are not cloaked as "severance allowance" in order to obtain the tax benefit under section 12 (1) (j) (iii) of the Order.
- 2.3 The following example provides a general guide-line in computing the tax-free element in the payment of severance allowance:

#### Example

##### Years Qualifying for Severance Allowance

Date of commencement of employment	01.05.1995
Date of termination of employment	<u>28.02.2013</u>
Total period employed	17 years 9 months
No. of completed years for severance allowance purposes (note 1.1)	17 years
<b>Less:</b>	<u>01 year</u>
Number of years qualifying for severance allowance	<u>16 years</u>

## Computation of Severance Allowance

Daily wage at the date of termination (Note (d); & para 2.5 below)	= E310.50 per day
10 working day for each completed year in excess of one year (16 years x 10 days = 160 working days)	= 160 working days
Severance allowance payable	= No. of Working Days x Daily wage = 160 x 310.50 = <u>E49 680.00</u>
Amount qualifying for exemption	= <u>E49 680.00</u>

### NOTES:

- (a) In terms of section 34 (1) of the Employment Act 1980, severance allowance is calculated for each completed year of service; periods not amounting to a completed year (calculated as from the date of commencement of employment) should not be taken into account when determining the severance allowance to be received by or accrued to an employee.
  - (b) It may happen that, in certain instances, the employer may, of his own volition, decide to round off the completed years by the addition of a few months. In this case, 18 years. The additional payment, arising from such rounding off, is strictly not severance allowance payable in terms of section 34 (1) of the Employment Act and will attract normal tax.
  - (c) The period qualifying for calculation should be in excess of one year.
  - (d) Wages, for the purposes of severance allowance calculations, mean the wages payable to the employee at the time his services were terminated (section 34 (5), of the Employment Act). Where such wages are calculated other than on a daily basis, then such wages should be converted to a daily basis for the purposes of severance allowance calculations.
- 2.4 “Working day” – there is no specific formula by which amounts payable in respect of “working day” may be determined; any reference to the Wages Regulations or Orders under the Wages Act could be misleading.
- 2.5 The concept of a “working day”, however, is extracted from what is commonly called the “annual average”. This method is generally accepted as being equitable and accurate; its use is widespread.

### Example:

(a) **The Five Day Week:**

$$\frac{5 \text{ (day week)} \times 52 \text{ (weeks per annum)}}{12 \text{ months per year}} = 21.67$$

Amounts payable per working day = the monthly wage is divided by 21.67: thus

$$\frac{E3\ 000 \text{ per month}}{21.67} = E138.44 \text{ per day}$$

(b) **The Five and Half Day Week:**

$$\frac{5 \frac{1}{2} \text{ (day week)} \times 52 \text{ (weeks per annum)}}{12 \text{ months per year}} = 23.83$$

Amounts payable per working day = the monthly wage is divided by 23.83: thus

$$\frac{E3\ 000 \text{ per month}}{23.83} = E125.90 \text{ per day}$$

(c) **The Six Day Week:**

$$\frac{6 \text{ (day week)} \times 52 \text{ (weeks per annum)}}{12 \text{ months per year}} = 26$$

Amounts payable per working day = the monthly wage is divided by 26: thus

$$\frac{\text{E3 000 per month}}{26} = \text{E115.38 per day}$$

2.6 Computations that do not come within the above general framework of calculations would be examined on a case-by-case basis.

2.7 The Tax Auditors will, *inter alia*, concern themselves with the above workings for the purpose of:

- (a) determining whether the payment is in fact a bona fide "severance allowance" payment, being paid in accordance with the Employment Act; not some other payment disguised under "Severance allowance" for the purpose of obtaining tax benefits; and
- (b) if it is, then the correct determination of the tax-free element of such severance allowance.

#### 40. Tax Treatment Of Notice Pay

LEGAL NOTICE NO.181 OF 2004

THE INCOME TAX ORDER 1975  
(Order No. 21 of 1975)

#### **INCOME TAX: TAX TREATMENT OF AMOUNTS PAID IN LIEU OF NOTICE (NOTICE PAY) IN TERMS OF SECTION 12 (1) (j) (iii)**

In exercise of the powers conferred by the Income Tax Order 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

##### **Citation and commencement**

This notice may be cited as Practice Note No. 170 on the tax treatment of amounts paid in lieu of notice under section 12 (1) (j) (iii) notice, 2004 and shall come into effect 1 July 2004.

##### **Tax treatment of amounts paid in lieu of notice**

1. In terms of section 12 (1) (j) (iii) of the Income Tax Order, any amount received by or accrued to a person on *bona fide* termination of employment in respect of any amount payable in lieu of notice, as notice pay, under the Employment Act is exempt from normal tax.

##### **Definition of notice and notice pay**

2. Notice is the period given to an employee by an employer, before the employee leaves the employment, to enable that employee to look for alternative employment or to prepare himself otherwise. Notice therefore applies where the services of an employee are terminated at either party's initiative.
3. In order to determine the meaning of notice pay in relation to section 12 (1) (j) (iii) of the Order, reference must be made to section 33 (5) of the Employment Act. This section states that an employer or employee may terminate the employment contract and instead of the employee serving notice, the terminating party shall pay the other party an amount equal to the basic wage that the employee would have earned had notice been served in terms of section 33. Therefore notice pay for the purposes of section 12 (1) (j) (iii), is the amount paid to an employee when the stipulated period of notice **is not served** on termination of employment.

4. The period of notice that an employee will be required to serve will be stipulated in the contract of employment, or there may be a collective agreement under which it is specified.

**Circumstances under which notice applies (NB notice pay is paid by the party terminating the services)**

5. (a) Where the services of an employee are terminated at the employer's initiative –
  - (i) Retrenchments or any general reduction in staff, including closing down of business.
  - (ii) General incompetence
  - (iii) Termination of service at the instance of both parties, for example on retirement
  - (iv) Termination of service for which no suitable justification can be applied, for example
- (b) Where the employee leaves employment voluntarily –
  - (i) on retirement
  - (ii) on resignation

**Circumstances under which the exemption on notice pay will not apply**

6. (i) If it is established that an amount purporting to be notice pay is not actually notice pay; for instance when notice has already been served, there is no reason to make further payment in this respect. Therefore before an exemption for genuine notice pay is granted, it must be established from the contract or collective agreement, the period of notice that the employee was expected to serve. Such period must correspond with the amount paid in lieu of notice.
- (ii) Any other amount paid as "additional notice pay". This may be an amount that the employer elects to give the employee in excess of the actual notice pay calculated in relation to the period of notice in (i) above.
- (iii) Where an employee has been dismissed.
- (iv) On the death of an employee.

**Example**

Since section 12 (1) (j) (iii) exempts notice pay as occurring in the Employment Act, where an employee has served notice, and in addition is being paid notice pay, this is not "notice pay under the Employment Act" which is why it cannot enjoy the exemption.

The length of notice is by law determined by the employee's length of service or collective agreement, etc. Whether an employer is obliged to pay an employee in lieu of notice

7. In terms of section 33 of the Employment Act the employer may require an employee to serve notice, during which period he will continue to be paid his basic wage; or the employer may not require the employee to serve notice, in which case payment in lieu of notice will be made to that employee.
8. Section 12 (1) (j) (iii) then, applies to any employee on bona fide termination of employment. The salient principle under this particular section is that there must be bona fide termination of employment, which is a question of fact. The Commissioner is entitled to look at the circumstances giving rise to the payments so as to ensure that they do meet the requirements of the law.
9. Where there is any doubt as to the nature of any amounts paid on termination of employment, this must be ascertained or clarified with the employer or from the employment contract before any exemption is granted.
10. The payment in lieu of notice must therefore correspond with the period of notice that was agreed in the contract and this shall form the basis of the amount claimed as an exemption. In all cases in which notice pay is being paid, the application for a tax deduction directive must be accompanied by:

- (iv) The contract of employment or collective agreement pertaining to that particular industry or employee, which should specify the period of notice that the employee is expected to serve;
- (v) The letter or other document terminating the employment.

#### **41. Tax Treatment Of Redundancy Or Retirement Payments**

LEGAL NOTICE NO.180 OF 2004

THE INCOME TAX ORDER 1975  
(Order No. 21 of 1975)

### **INCOME TAX: THE TAX TREATMENT OF AMOUNTS PAYABLE TO EMPLOYEES ON REDUNDANCY OR RETIREMENT**

In terms of the powers conferred by the Income Tax Order 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

#### **Citation and commencement**

This notice may be cited as Practice Note No.171 on the tax treatment of amounts payable to employees on redundancy or retirement under section 12 (1) (j) (iv) of the Order notice, 2004 and shall come into effect on 1 July 2004.

#### **The tax treatment of amounts payable to employees on redundancy or retirement**

1. Section 12 (1) (j) (iv) of the Order, provides an exemption on any lump sum referred to in section 7 (c) of the definition of "gross income" as does not exceed thirty thousand emalangeni. The exemption is available when the termination of the employee's service is due to:
  - (a) the employer having ceased carrying on trade in respect of which such employee was employed; or
  - (b) such employee having become redundant in consequence of the employer having effected a general reduction or reduction of a particular class of employees; or
  - (c) the employee having reached the retiring age or the termination of employment of such is due to ill-health or infirmity.
2. The situation in paragraph 1 (a) may occur as a result of the closing down of the business or liquidation.
3. The effect of the provision that when the person's redundancy results from a reduction of employees, in paragraph 1 (b) that reduction must be -
  - (a) a general reduction; or
  - (b) a reduction of a particular class of employees.
4. In granting the exemption on lump sum payments arising as a result of retrenchment in terms of paragraph (3), the retrenchment must be part of a general reduction of staff or a reduction in the complement of a particular class of employees. Whether a redundancy has been effected or not in terms of the foregoing, is a question of fact which can be substantiated by the production of relevant proof to that effect.
5. In the case of redundancy coming within the ambit of paragraphs 1(a) and (b), the following information must be provided:

- (a) the number of employees being made redundant;
  - (b) the occupations and remunerations of the employees affected;
  - (c) the reasons for the redundancies;
  - (d) the date when the redundancies would take effect; or
  - (e) a copy of the report submitted to the Labour Commissioner where the termination of employment affects five or more employees.
6. The exemption extends to all lump payments made to a taxpayer in terms of section 7 (c) of the Order as a result of redundancy or normal retirement (including early retirement) or medical grounds.
7. (a) In terms of section 7 (c) (i) of the definition of "gross income", any amount, including any voluntary award, received or accrued in commutation of amounts due under any contract of employment or service, is to be included in "gross income". The words "received" or "accrued", refers to those amounts, which the taxpayer is entitled, and "amounts due" indicates amounts relating to the future as well as present payments.
- (b) Section 7 (c) (ii) relates to the type of award in respect of relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment. Where, for one of the reasons mentioned in section 7 (c) (ii), the employment or office of the employee or office holder has come to an end whereas ordinarily such would have continued, in terms of the employee's rights and in lieu of such continuation, the employee receives payment which falls into gross income. Paragraph (c) (ii) applies to any employee as so defined in the Second Schedule to the Income Tax Order where the period of the employee's employment does not continue for its full period, or at its full remuneration in accordance with the contractual rights that the employee may have for such continuation of employment.
8. There are three instances that give rise to the conferral of the thirty thousand emalangenzi exemption.
- (a) Where the employer ceases to trade.
  - (b) Where the redundancy is as a result of a general reduction or reduction of a particular class of employees.
  - (c) The employee reaches the retiring age or the termination of employment is due to medical reasons.
9. In terms of the proviso to section 12 (1) (j) (iv) any amount in excess of thirty thousand emalangenzi is taxable at the special concessionary rates prescribed in Part III of the Third Schedule to the Income Tax Order, 1975, as amended.

## 42. Tax Rebate For Amounts Paid In Respect Of Life Insurance Premiums

LEGAL NOTICE NO.172 OF 2004

THE INCOME TAX ORDER, 1975  
(Order No. 21 of 2004)

### **INCOME TAX: TAX REBATE CLAIM BY EMPLOYEES ON LIFE INSURANCE PREMIUMS DEDUCTED AT SOURCE AND REMITTED TO THE INSURANCE COMPANIES**

In exercise of the powers conferred by the Income Tax Order 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

#### **Citation and commencement**

1. This notice may be cited as Practice Note No.180 on tax rebate claim by employees on life insurance premiums in accordance with section 8 (1) (b) (ii) of the Income Tax Order notice, 2004 and shall come into effect on 1 July 2004.

#### **Tax rebate in respect of life insurance premiums**

2. Section 8 (1) (b) (ii) of the Income Tax Order 1975, as amended, provides that in the case of a natural person the tax payable in terms of section 6 shall, save as is otherwise provided in this Order, be reduced by an amount equal to ten per cent of the amount paid for each lilangeni or part thereof in respect of the premium paid by a person during the year of assessment upon a policy under which that person, the spouse or child of that person is insured against death, accident or sickness.
3. In terms of this section the insurance cover is an insurance to provide benefit for the assured, the person's spouse and children at the end of a specified period or on the happening of a stated event in return for a premium paid by such person. The tax rebate can only be given under this section "for a premium paid by the assured during the year of assessment".
4. The rebate is equal to 10% of the premium paid within the year of assessment subject to an overall maximum of E360.00 for rebates claimable under section 8.
5. It has come to my attention that certain employees have made arrangement with their employers to deduct and pay premiums to insurance companies on behalf of such employees where they have effected life insurance policies with such insurance companies. It has been a departmental practice to require the furnishing of a return of income by persons wishing to claim a tax rebate for premiums paid for life insurance falling within the ambit of section 8 as stated. This has been the practice notwithstanding that employment income is now subject to the Final Deduction System which no longer requires employees to furnish returns at the end of a year of assessment.
6. With effect from the year of assessment 1 July 2004, premiums which are deducted at source and paid over to insurance companies shall be claimable under the Final Deduction System. This means the employer will automatically grant the tax rebate without the need for such employees to furnish a return of income at the end of the year of assessment in order to claim the rebate. Employees concerned must provide, to the employer, a copy of the policy document as evidence of a contract of insurance between the life assured and the insurer.
7. Employees whose premiums are not deducted at source must produce proof of payment and a copy of the policy document to the employer, before the end of a year of assessment, to claim the tax rebate.
8. Section 8 (1) (b) (ii) of the Order, applies only to life cover policies, which provide protection to the life assured against death, accident or sickness. In other words, a life policy means a policy of insurance on human life. It excludes premiums paid in respect of investment policies and individual retirements or

pension policies. Note that premiums for insuring property like premiums paid in respect of a mortgage protection assurance or motor vehicle assurance etc. does not qualify for a tax rebate under section 8 of the Order.

9. The premiums in respect of mortgage assurance are excluded from the ambit of section 8 notwithstanding that under the bank's mortgage protection scheme there is "life assurance" in issue. The question is for whose benefit is this assurance? If the master policy is in the name of the bank and benefits payable under the policy are payable to the bank: thus, the bank is the beneficiary. The policy is no more than an "insurance" to safeguard the bank against loss of unpaid loan moneys in the event of the death of a borrower.
10. The bank effects the insurance and pays the premiums to the Corporation. It is true that the bank, as one of its terms of lending, require the borrower to repay the premium. As far as the borrower is concerned there is no full life assurance benefit accruing to the borrower. There is no participation in profits and the only time that a surrender value could arise is when he repays to the bank the balance of the advance at least more than one year prior to the redemption date. Thus, in terms of section 8, a premium paid in respect of a mortgage protection assurance does not qualify for a tax rebate.

### **43. Tax Deduction Directives In Respect Of Lump Sum Payments**

LEGAL NOTICE NO.146 OF 2004

THE INCOME TAX ORDER, 1975  
**(Order No. 21 of 1975)**

#### **INCOME TAX: THE ISSUANCE OF TAX DEDUCTION DIRECTIVES BY THE COMMISSIONER OF TAXES IN RESPECT OF LUMP SUM PAYMENTS PAYABLE TO EMPLOYEES, NOTICE 2004**

In exercise of the powers conferred by paragraph 9 (3) of the Second Schedule to the Income Tax Order 1975, as amended, the Commissioner of Taxes hereby issues the following notice:

##### **Citation and commencement**

This notice may be cited as Practice Note No. 164 on the issuance of tax deduction directives by the Commissioner of Taxes in respect of lump sum payments payable to employees notice, 2004 and shall be deemed to have come into effect on 1 January 2003.

#### **THE ISSUANCE OF TAX DEDUCTION DIRECTIVES BY THE COMMISSIONER OF TAXES IN RESPECT OF LUMP SUM PAYMENTS PAYABLE TO EMPLOYEES**

##### **A. Object**

The purpose of this practice note is:

- (a) To dispense with the present practice where employees' tax deducted or withheld on lump sum payments made in accordance with a directive issued by the Commissioner under paragraph 9 (3) of the Second Schedule to the Income Tax Order 1975, as amended, is separately accounted for and remitted directly into the tax account of an employee and not reflected in the employees' tax certificate issued to such employee or former employee in the year of assessment when the payment and deduction is made.
- (b) To require employers to reflect both the Lump sum payments in respect of which employees' tax was deducted and employees' tax deducted or withheld as per the directive issued in accordance with the said paragraph 9 (3), in the employees' tax certificate issued to an employee in terms of paragraph 13 of the Second Schedule.

- (c) To dispense with the present practice of recovering arrear tax, by means of the tax deduction directive, on account of the tax otherwise due from the employee concerned. Arrear tax that may be due from an employee will be recovered by issuance of a separate legal instrument under section 49 of the Income Tax Order.

**B. The law**

1. Tax deduction directives required before payment of any lump sum payments falling within the definition of remuneration are issued by the Commissioner of Taxes under paragraph 9 (3) of the Second Schedule to the Income Tax Order 1975, as amended.
2. In terms of paragraph 9 (3) directives for ascertaining the amount to be deducted in respect of employees' tax are required by employers before payment of lump sum payments coming within the ambit of gross income, or any other lump sum to which the employee is entitled by virtue of the employee's agreement of employment. Tax directives are thus required from the Commissioner for the release of any lump sum payment by any "employer", whether or not such lump sum attracts tax. The lump sum amounts that would be subject to the requirement of the said paragraph would be those falling into gross income, in particular paragraphs (a), (b) or (c) of section 7 and all the amounts coming within the purview of the word "remuneration" as so defined in paragraph 1 of the Second Schedule to the Order.
3. For the purposes of the Second Schedule, the term "employee" has been defined to mean any person (other than a company) who in respect of an employment, office or appointment, receives remuneration from an employer or to whom remuneration accrues and includes a former employee who receives remuneration which accrued before the termination of the contract of employment.
4. The definition of "employer", in the context of the Second Schedule, means any authority or person who pays or is liable to pay to any person other than a company any amount by way of remuneration and any company. It should be noted that the word "employer" has an extended meaning for the purposes of the Second Schedule; it includes any person, acting in a fiduciary capacity, as a trustee of an insolvent estate, an executor or administrator of a pension fund, provident fund, benefit fund, retirement annuity fund or any other fund.
5. The word "remuneration", likewise, has an extended meaning in the Second Schedule to mean any amount of income paid or payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend and whether or not in respect of services rendered, including an amount referred to in sections 7 (a), (b) and (c) or the annual value of such benefit or benefits referred to in section 7(f) as the Commissioner may, from time to time, determine in respect of a year of assessment.
6. In accordance with paragraph 2 (1), it is peremptory for every person who pays or becomes liable to pay any amount by way of remuneration to any employee, to deduct or withhold from such amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, in respect of the liability for normal tax of such employee and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld. And paragraph 4 provides that, "any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the Government, and the employer concerned shall, save as otherwise provided, be absolutely liable for the due payment thereof to the Commissioner".
7. The determinant factor as to whether a deduction and remittance of employees' tax from any amount should be made is whether such amount is being paid by way of remuneration as defined in paragraph 1 of the said Second Schedule, and if the answer is to the affirmative, then in terms of the law, it is mandatory to deduct or withhold employees' tax and remit the same within the stipulated period to the Commissioner.
8. Paragraph 13 (1) of the Second Schedule, then requires every person who during the year of assessment deducts or withholds any amount by way of employees' tax as required by paragraph 2, to deliver to each

employee or former employee to whom remuneration has during the period in question been paid or become due by such person, an employees' tax certificate (PAYE 5), that must show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during such period.

### C. Practice

- (a) With effect from 1 January 2003, where a directive is required for the release of lump sum payments falling within the ambit of the definition of "remuneration" as stated in paragraph 4 above, an employees' tax certificate shall only be issued to an employee or former employee after receipt of such a directive from the Commissioner.
- (b) The employees' tax certificate must reflect the total remuneration (including the lump sum payments subject to the tax directive) of the employee or former employee and the sum of the amounts of employees' tax deducted or withheld (including the employees' tax deducted under the tax directive) by the employer from such remuneration during such period.
- (c) The employees' tax deducted or withheld in terms of a directive issued under paragraph 9(3) of the Second Schedule to the Order, must be remitted under the normal pay-as-you-earn procedure in the name of the employer and not directly in the account of the employee (the person from whom the employees' tax was deducted).
- (d) Applications for tax directives should be made one month before paying out such lump sum. The applications must be accompanied by supporting documents or any information that may be material in dealing with the matter, in particular where an exemption or deduction is sought in respect of the lump sum payments.
- (e) The following documents or information must accompany an application for a directive:
  1. in the case of an employee retiring on medical grounds, a copy of the doctor's certificate;
  2. in the case of redundancy, the following information must be provided –
    - (a) the number of employees being made redundant;
    - (b) the occupations and remunerations of the employees affected;
    - (c) the reasons for the redundancies;
    - (d) the date when the redundancies would take effect; or
    - (e) a copy of the report submitted to the Labour Commissioner where the termination of employment affects five or more employees.
  3. in the case of benefits payable on death of an employee, a copy of the deceased's death certificate; or
  4. in any other case, a letter from the employer stating the reasons for the termination of employment and a copy of the contract of employment or service.
    - (f) Please note that directives issued in terms of paragraph 9 (3) of the Second Schedule shall be forwarded directly to the employers and not to any other person and under no circumstances would the directive be issued to the beneficiary or the person to whom the payment is to be made.
  - (g) Since the definition of employer in the context of the Second Schedule, includes administrators of retirement funds, then such funds must register for PAYE purposes so as to comply with the requirements of this practice note.

## 44. Factors To Be Evaluated In Determining The Status Of An Employee

LEGAL NOTICE NO.37 OF 2005

THE INCOME TAX ORDER, 1975  
(Order No. 21 of 1975)

### **INCOME TAX: FACTORS TO BE EVALUATED IN DETERMINING THE STATUS OF AN EMPLOYEE FOR THE PURPOSES OF THE SECOND SCHEDULE TO THE INCOME TAX ORDER NOTICE, 2006**

In exercise of the powers conferred by the Income Tax Order as amended, the Commissioner of Taxes hereby issues the following notice –

#### **Citation and Commencement**

1. This notice may be cited as the factors to be evaluated in determining the status of an employee for the purpose of the Second Schedule to the Order Notice, 2000 and shall come into effect on 1 March 2006.

#### **Definition of employment**

2. In the Second Schedule to the Order, the term “employment” is defined broadly, to mean employment as the term is generally understood and to the holding of an office or appointment. An employment relationship will not exist where a person is genuinely engaged as an independent contractor. The determination of whether a person is an employee or independent contractor involves looking at a number of factors, including whether the hirer has the legal right to control the manner in which the work is to be performed and the degree of integration of this service provided within the hirer’s business. This latter point will depend on such things as:
  - Whether the service provider is engaged on a continuous basis;
  - Where the services are performed;
  - Whether the hirer controls the timing and scheduling of work; and
  - Whether the hirer provides the working tools, plant, and other relevant facilities
3. The term is relevant to identifying who is an employee or employer and also to the determination of what is remuneration (employment income), the taxation of fringe benefits, and the deduction of employees’ tax (PAYE).
4. The notice identifies 20 factors to be evaluated in determining the status of an employee and which have been converted into questions for easier use. The 20 factors are the so-called common law criteria for classifying employees. An employee determined to be an employee under these criteria is a common law employee, who is then covered by the second schedule rules for the purpose of pay-as-you-earn. The key variable the 20 factors attempt to measure is the degree of control over the employee. “Yes” answers tend to indicate employee status. “No” answers tend to indicate independent contractor status.
5. In many cases, only some of the questions actually apply. And, a “yes” response to the majority of relevant questions does not automatically mean the worker is an employee. The same is true for “no” answers. For example, if all 20 questions are relevant and there are only six “yes” responses and 14 “no” responses, the worker may still be an employee – if those six are the most important questions for the job.

	Yes	No
1. Does the worker receive instructions about where, when, and how to perform the work?		
2. Does the worker receive training? An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.		
3. Are the worker's services integrated with the employer's business? An employee's going services are usually important to the business. An independent contractor's services are often intended to achieve only a specific, one-time result (like the design of a new computerized control system).		
4. Must the services be rendered personally by the worker?		
5. Does the "employer" hire the worker's assistants? An employee works for an employer who hires, supervises, and pays co-workers and assistants. Independent contractors can generally hire, supervise, and pay their own assistants as they see fit.		
6. Is there a continuing relationship?		
7. Are the set working hours?		
8. Is a full-time commitment required? An employee is usually required to work or be available full-time. Independent contractors can work when and for whom they choose.		
9. Is the work done on the employer's premises?		
10. Is the performed according to set sequence? An employee may be required to perform services in order or sequence set by an employer. This shows the existence of control by the employer. Independent contractors generally make their own decisions about the sequence of tasks.		
11. Must the worker submit regular reports concerning the work's progress?		
12. Are payments based on time rather than completion of the job? An independent contractor is usually paid by the job or on a straight commission.		
13. Does the "employer" pay the worker's expenses? Independent contractors generally pay their own expenses as a cost of doing business?		
14. Does the employer supply tools and materials?		
15. Does the worker have little or no investment at stake? Independent contractors often have significant investments in the equipment and facilities used in performing services.		
16. Is the worker protected against loss? An independent contractor can generally make a profit or suffer a loss on a job. An employee can generally only make money under the arrangement with an employer.		
17. Does the worker have only one "client" or "customer"? Independent contractors typically provide services to two or more unrelated persons or firms at the same time.		
18. Does the worker forgo offering services to the public?		
19. Is there a right to fire? An employee can be fired by an employer. An independent contractor cannot be fired (or must be terminated in accordance with provisions spelled out in the contract) as long as he/she produces results meeting the specifications of the contract.		
20. Is there a right to quit? An employee can generally quit at any time without incurring liability. An independent contractor is responsible for satisfactory completion of the job and is usually legally obligated to make good or suffer penalties.		

## 45. Rules On The Operation Of The Final Deduction System (FDS)

LEGAL NOTICE NO.003 OF 2005

THE INCOME TAX ORDER, 1975  
(Order No. 21 of 1975)

### **INCOME TAX: REVISED RULES ON THE OPERATION OF THE FINAL DEDUCTION SYSTEM (FDS), NOTICE 2005**

In exercise of the powers conferred by the Income Tax Order, 1975, as amended, the Commissioner of Taxes hereby issues the following notice.

#### **Citation and commencement**

This notice may be cited as the revised rules on the operation of the Final Deduction System (FDS) notice 2005 and shall come into effect on 1 July 2005.

#### **The Final Deduction System (FDS)**

In terms of the Income Tax (Amendment) Act No. 6 of 1994 read as one with the Income Tax Order 1975, as amended, employment income is subject to a Final deduction System (hereinafter referred to as the "FDS"). The FDS came into operation on 1 July 1993.

## **PART A**

### **INTRODUCTION**

The basic objective of the Final Deduction System is to:

1. Remove the obligation to furnish returns for employees deriving only employment income, which is subject to a P.A.Y.E. withholding.
2. Eliminate any inaccuracies in the P.A.Y.E. system while improving the monitoring system. For the system to work effectively co-operation by all parties is absolutely essential. The Ministry of Finance, Commissioner of Taxes, employers, employees and other taxpayers should be satisfied that the correct tax is being paid under the Final Deduction System as would if the employees were assessed.

To achieve that objective the following will need to happen:

- (a) There must be accurate calculation of P.A.Y.E.
- (b) There must be timely remittance of such P.A.Y.E. by employers.
- (c) Employees' queries should be speedily attended to in a manner that cultivates trust.
- (d) The SRA Domestic Taxes Department should be able to carry out verifying audits to check the accuracy of P.A.Y.E. deductions.

## **PART B**

### **INTERPRETATION**

"employee", has been defined in the context of the Second Schedule, to mean any person (other than a company) who in respect of an employment, receives remuneration from an employer or to whom remuneration accrues, and including:

- (a) any former employee who receives remuneration which accrued before the termination of the contract of employment;
- (b) any former employee who receives remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) any labour broker;
- (d) any personal service company; and
- (e) any personal service trust.

“employment” means:

- (e) the position of an individual in the employ of another person; or
- (f) a directorship of a company; or
- (g) a position entitling the holder to a fixed or ascertainable remuneration; or
- (h) a public officer.

“employees’ tax” means the tax which an employee is required or requested to deduct or withhold from remuneration paid or payable to an employee.

“employer” means any authority or person who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any company. It should be noted that the word “employer” has an extended meaning for the purposes of the Second Schedule, it includes any person, acting in a fiduciary capacity, as a trustee of an insolvent estate, an executor or administrator of a pension fund, provident fund, benefit fund, retirement annuity fund or any other fund.

“remuneration”, is defined in the Second Schedule, to mean any amount of income paid or is payable to any person by way of salary, Leave pay, Allowance, wage, Overtime pay, Bonus, Gratuity, Commission, Fee, Emolument, Pension, Superannuation allowance, Honorarium, Retiring allowance, or Stipend, whether in cash or otherwise and whether or not in respect of services rendered, including:

- (a) an amount referred to in paragraph (a), (b) and (c) of the definition of “gross income” in section 7 of the Income Tax Order;
- (b) the annual value of such benefit or benefits referred to in paragraphs (f) and (ff) of the definition of “gross income” in section 7 of the Order, as the Commissioner, may from time to time, determine in respect of a year of assessment;
- (c) any allowance or advance, which must be included in the taxable income of that person in terms of section 11 (8);
- (d) any amount required to be included in such person’s gross income under paragraphs (k), (l), (m), and (n) of that definition; and,
- (e) fifty per cent of the total amount paid by an employer during any year of assessment directly or indirectly, by way of contribution to any approved bursary scheme for the benefit or educational assistance of the children of any employee or dependents of such employee,  
  
but not including –
  - (f) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;
  - (g) any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment; or,
  - (h) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant where the income tax payable on such taxable income for the year of assessment is equal to or less than the amount of the personal tax rebate allowed to such person.

## PART C

### BASIC FEATURES

The salient features of the Final Deduction System are as follows:

1. FDS constitutes a final liability to tax. Under the FDS the employer deducts employee's tax (PAYE) as a final tax, but the Commissioner is empowered to make refunds in certain specified circumstances. FDS is related to a full year of assessment (which normally consists of a 12-month period –that is 1<sup>st</sup> July to 30<sup>th</sup> June).
2. All employees, no matter how much they earn, are subject to the FDS, provided they have not derived any other taxable income during the year of assessment. The employee is not required to furnish an income tax return where the gross income for a year of assessment consists exclusively of employment income derived from a single employer from whom tax has been withheld in accordance with the rules of the FDS.

### WHO IS AFFECTED?

#### A. Employees in continuous employment with one employer

FDS applies only to those employees who are in continuous employment with the same employer in any year of assessment (which is from July to the last day of June the following year), regardless of temporary breaks in employment. The expression "continuous employment" is not defined in the Order, but for the purposes of the Final Deduction System it means a period of unbroken service with the same employer, including a period of unbroken service as a temporary employee with the same employer, in any year of assessment; and for the purposes of this definition the following shall not constitute a break in service:

- (a) Absence from work due to sickness, injury or maternity certified by a medical practitioner;
- (b) Absence from work due to a trade dispute where the employee resumes his employment on the next working day following the settlement of the dispute;
- (c) Absence from work due to a temporary cessation of work in the undertaking;
- (d) Absence from work on leave or for any other cause approved by the employer;
- (e) An employee who dies during the year of assessment;
- (f) An employee who works part of the year either when his employment commences or is terminated during the course of the year of assessment

#### B. Employees not affected by the final deduction system

The final deduction system will not apply:

- (a) If the employee changes employers during the year of assessment;
- (b) If the employee has two or more sources of remuneration, such as a part-time employment, director's fees and/or remuneration from a different employer;
- (c) If the employee derives business or property income in addition to the employment income

Since the above categories of employees are not affected by the system, they are required to furnish returns to the Commissioner, but in all cases the respective employer, as usual, will deduct employee's tax on the remuneration paid in accordance with the Employees' Tax Deduction Tables (PAYE 10) and furnish a certificate (employees' tax certificate – PAYE 5) to the employee.

### Obligations of the Department

The Department of Taxes undertakes to:

1. Provide the necessary forms.
2. Educate employers and employees on the FDS.
3. Carry out periodic audits.
4. Assist the employer with any inquiries.
5. Assist employees with any inquiries.

### **C. THE EMPLOYER**

The employer is required to make normal employees' tax deductions in accordance with the tax tables issued in terms of paragraph 9(1) of the Second Schedule to the Income Tax Order, on remuneration paid during the course of the year of assessment.

The employer must deduct PAYE based on a calculation of the employees' remuneration reduced by contributions to an approved pension fund made by the employee not exceeding 10% of such employee's pensionable salary in any year of assessment and also deduct the statutory contributions made by an employee to the Swaziland National provident Fund. The deductions must be allowed monthly, ensuring that the maximum of 10% of such employee's pensionable salary in any year of assessment is not exceeded. In other words the monthly deduction should not exceed the actual contribution made. And in the case of a Member of Parliament the remuneration will be reduced by the contribution made to the Members of Parliament and Designated Office Bearers Pension Fund not exceeding 15% of the pensionable salary of such a member.

### **DETAILED CALCULATION**

#### **MANUAL PAYROLL**

If the employer is using a manual payroll the following method will apply in the calculation of PAYE. The employer is required to use daily, weekly and monthly tables in the calculation of PAYE as usual. At the end of each quarter the employer shall determine the correct tax payable and compare with actual PAYE deductions made during the quarter. In the case of an over-deduction, the employer must refund the excess to the employee before remitting the PAYE to the Commissioner.

In the case of under deduction, the employer must make good the shortfall and remit the correct amount to the Commissioner. The employer will recover the shortfall from the employee's salary for the following month. In summary the employer must carry out a quarterly adjustment, this is meant to avoid causing employees undue hardships.

#### **COMPUTER PAYROLL**

Where the employer is using a payroll written to the standard recommended by the Swaziland Government Computer Department, the adjustments must be done on a monthly basis.

#### **END OF YEAR ADJUSTMENT**

At the end of the year of assessment the employer must determine the normal tax payable in accordance with the prescribed normal tax (income tax) rates. The employer must then compare this amount with the actual employees' tax deducted in the year of assessment.

Where the employer's calculation at the end of a year of assessment reveals that the total amount of employees' tax withheld exceeds the amount of FDS payable then the employer must refund the excess to the employee. The employer must recover the amount so refunded by him from the next remittance of employees' tax (PAYE). Only at the end of the year of assessment may an employer make a refund of employees' tax, if due to the employee.

Where the amount deducted at the end of a year of assessment is less than the amount of FDS determined, the employer must pay the shortfall to the Commissioner and recover it from the employee.

Refunds will under certain circumstances be made by the Commissioner [in cases where the employee is required to furnish a return] – see paragraph B.4 above.

The employees' tax certificate (PAYE 5) must be issued to the employee after the final tax liability has been ascertained and the necessary adjustments made.

The correct amount of employees' tax must be reflected on the employees' tax certificate (PAYE 5).

An employer who under-deducts PAYE will be liable to penalties and interest on the amounts under-deducted.

The employer must in all cases do an FDS calculation at the end of the year of assessment and, where necessary, make adjustments to the PAYE deducted during the year of assessment.

**Note: It is important for the employer to make accurate deductions of PAYE, because where there is an under-deduction, and the employee leaves the services of such an employer, the employer shall be responsible for making good the shortfall.**

#### **D. EMPLOYEE**

The employee is not required to furnish an income tax return if his income consists solely of employment income, which is subject to FDS.

An employee, who is subject to FDS only, is not required to register for income tax purposes and consequently income tax returns will not be issued to such an employee.

Should an employee be in receipt of other taxable income not subject to FDS such as rentals *et cetera* all his income including that subject to FDS will be aggregated in order to determine an employee tax liability. Thus, an employee who earns any taxable income not subject to FDS apart from employment income must furnish an income tax return. "Taxable income" in this context excludes interest derived from financial institutions, Unit Trust Company, building society, mutual loan association or co-operative society and dividends if subject to a withholding tax at source.

Any employee, who comes within the ambit of any of the categories mentioned in paragraph B.4 above, is required to furnish a return of income.

Even though, in some circumstances, employees may not be required to furnish a return of income, the employees' tax certificate (PAYE 5) issued by the employer must be kept for three years by the employee as the Commissioner may, at any time, require an employee to furnish a return.

#### **OBLIGATIONS AND RIGHTS OF EMPLOYEE**

Under FDS an employee has an obligation to furnish accurate information as required by the employer; and

(a) Has the right to:

- Be issued with an employees' tax certificate (PAYE 05) after the end of the year of assessment;
- Have employees' tax (PAYE) correctly calculated;
- Be refunded any excess PAYE after year-end adjustment.

## **PART D**

### **ANNUAL SALARIES RETURN**

In terms of section 37 (1) and paragraph 14 (3) of the Second Schedule to the Income Tax Order 1975, as amended, every employer is required to render to the Commissioner of Taxes a return after the end of the year of assessment, showing the names and address of all persons who during the period of assessment were employees in relation to the employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax withheld from the remuneration of each employee during the year.

Under FDS the employers are charged with the final responsibility of deducting and recovering of the normal tax (income tax) due from the employees having only employment income. They have the duty not only to correctly determine the correct taxable income but also allow all deductions/rebates permitted under the Income Tax Order. With a view to help the employers discharge this responsibility effectively; an annual return of salaries in the form **FDS 001** is hereby prescribed. All employers are required to submit the annual return so as to reach the office of the Commissioner of Taxes on or before the 31 July of each ensuing year of assessment.

Where during the course of year of assessment, a new employee joins or an employee leaves the service, appropriate mention should be made in the "REMARKS" column. A certificate for remuneration paid and tax deducted (including graded tax) should be issued to the employee leaving service.

## OBLIGATIONS OF THE EMPLOYER

In summary the obligations of the employer under FDS are to:

- (a) Deduct correctly PAYE on employees' remuneration.
- (b) Remit PAYE to the Commissioner of Taxes by the 7th of the month following the month for which the PAYE is withheld.
- (c) Make monthly and final end of year adjustments to PAYE.
- (d) Keep employees' payroll records and produce them to the Tax Auditors.
- (e) Make good any shortfalls or refunds at the end of the year of assessment.

## PART E

### A. FINAL DEDUCTION SYSTEM VERIFICATION AUDITS

In order to assist employers and also ensure that costly errors do not creep into the system the Department will carry out periodic checks with the companies. These checks will cover the following areas:

- (i) Promptness of remittances to the Department;
- (ii) Accuracy of the tax calculations;
- (iii) Verification of benefits – basis of valuation and tax treatment;
- (iv) Verification of employment contracts; and
- (v) Verification of deductions and rebates given

The employers are required to assist the auditors during the FDS audits by –

- (a) Ensuring that employment contracts are available for inspection;
- (b) Ensuring that all documentations and records relative to employment income and operation of FDS/PAYE system are available for inspection by the auditors before they arrive, preferably a day before they call;
- (c) Ensuring that the Annual Return Salaries furnished and the other remuneration records are available for inspection;
- (d) Extending all cooperation to the visiting auditors from the Department of Taxes;
- (e) Ensuring that the new monthly tax remittance returns (reconciliation of tax deductions PAYE 5(amended 2003)) are available for inspection;
- (f) Ensuring that the information relating to valuation and taxing of benefits are readily available;
- (g) Ensuring that the information relating to deductions and rebates are also readily available

## THE APPLICATION OF THE FINAL DEDUCTION SYSTEM (FDS)

### Tax computation at year-end for a person who is in continuous employment with one employer

#### EXAMPLE 1

A person is employed by XYZ (PTY) LTD for the whole year of assessment commencing July 2013.

(a) Salary earned	E 80 000.00
(b) PAYE deducted during the year	E 6 800.00
(c) Contribution to an approved pension fund	E 3 500.00
(d) SNPF contributions	E 1 020.00
(e) Contribution to an approved provident fund	E 3 600.00

#### End of year adjustment

Gross Income (salary) E 80 000.00

#### Less: allowable deductions

Pension fund contributions (max 10% of pensionable salary)	3 500.00	
SNPF contributions	<u>1 020.00</u>	<u>(4 520.00)</u>
<b>Taxable income</b>		<u><b>75 480.00</b></u>

Tax on first E75 480.00 (20% of 75 480.00)	15,096.00	
<b>Less:</b> General tax rebate	<u>(8,200.00)</u>	
Tax Payable	6,896.00	
<b>Less:</b> Other Rebates		
Contribution to approved provident fund	<u>(360.00)</u>	
Tax assessed		6 536.00
<b>Less:</b> tax paid		<u>6 800.00</u>
<b>Refund due</b> to employee		<u>(264.00)</u>

The above example reveals that the total amount of employee's tax withheld exceeds the amount of FDS payable by E264.00. The employer must refund the excess to the employee, by offsetting it against the next payment of PAYE. The employee's contributions to an approved provident fund, other than such established by law, do not qualify for a **deduction** but only for a rebate calculated in accordance with section 8(ii) of the income Tax Order up to a maximum of E360.00 per annum.

## EXAMPLE 2

A person is employed for the whole year of assessment commencing July 2013, by a single employer.

(a) Salary earned	E80 000.00
(b) PAYE deducted during the year	E32 405.15
(c) The employer provides a 3 bedroom house accommodation owned by the employer measuring 190sq.m situated 8km from the Manzini/Mbabane corridor (old road). Employee pays E150 per month for the accommodation	(E1 800.00)
(d) Employee is required to use his 1800cc motor vehicle in the business of the employer. The value of the MV is E250 000. Employer provides E 80 000.00 annual cash allowance to meet both fixed and running costs of the employee. Employee does not keep proper records.	
(e) Employer pays E200 per month for employee's water services.	E2 400.00
(f) Employer pays E4 500.00 for employee's maid.	
(g) Employer pays school fees and boarding fees for employee's child	E5 000.00
(h)	E3 500.00
(i) SNPF contributions	E1 020.00

### End of year of adjustments

Gross salary		80 000.00
<b>Add:</b> <i>benefits/allowances</i>		
Free/Subsidised housing (See <b>W1</b> )	42 432.00	
Private use of motor vehicle (see <b>W2</b> )	59 815.00	
Water services (E200 x 12)	2 400.00	
Domestic servant (4 500)	4 500.00	
Educational allowance (100% of the cost is taxable)	<u>5 000.00</u>	<u>114 147.00</u>
<b>Gross Income</b>		194 147.00
<b>Less:</b> <i>allowable deductions</i>		
Pension fund contribution (limit 10% of pens. salary)	3 500.00	
SNPF statutory contribution	<u>1 020.00</u>	<u>(4 520.00)</u>
<b>Taxable income</b>		<u>189 627.00</u>

Tax on first E150 000	32 500.00	
Tax on the next E39 627 @ 30%	<u>11 888.10</u>	
Normal tax	44 388.10	
<b>Less:</b> General Tax Rebate	<u>8 200.00</u>	36 188.10
<b>Less:</b> tax paid		<u>32 405.15</u>
<b>Tax due</b>		<u>3 782.95</u>

In the above example, the amount paid by PAYE is less than the amount of FDS determined, and as such the employer must deduct the shortfall and remit it to the Commissioner.

### EXAMPLE 2 (a)

A person is employed for the whole year of assessment commencing July 2013, by a single employer.

(a) Salary earned	E80 000.00
(b) PAYE deducted during the year	E37 858.50
(c) The employer provides accommodation secured in an open market, the monthly rental is E6 000.00. The employer contributes 2/3 towards the rent and the employee pays the 1/3 thereof.	
(d) Employee is required to use his 1800cc motor vehicle in the business of the employer. The value of the Motor Vehicle is E250 000. Employer provides E80 000.00 annual cash allowance to meet both fixed and running costs of the employee. Employee does not keep proper records.	
(e) Employer pays E200 per month for employee's water services.	E2 400.00
(f) Employer pays E4 500.00 for employee's maid.	
(g) Employer pays school fees and boarding fees for employee's child of	E5 000.00
(h) Contribution to an approved pension fund, amounting to	E3 500.00
(i) SNPF contributions	E1 020.00

### End of year of adjustments

Gross salary		80 000.00
<b>Add: benefits/allowances</b>		
Free/Subsidised housing (See <b>W3</b> )	48 000.00	
Private use of motor vehicle (see <b>W2</b> )	59 815.00	
Water services (E200 x 12)	2 400.00	
Domestic servant (4 500)	4 500.00	
Educational allowance (100% of the cost is taxable)	<u>5 000.00</u>	<u>119 715.00</u>
<b>Gross income</b>		199 715.00
<b>Less: allowable deductions</b>		
Pension fund contribution (limit 10% of pens. salary)	3 500.00	
SNPF statutory contribution	1 020.00	(4 520.00)
Taxable income		195 195.00
Tax on first E150 000	32 500.00	
Tax on the next E45 195 @ 30%	<u>13 558.50</u>	
Normal tax	46 058.50	
<b>Less:</b> General Tax Rebate	<u>8 200.00</u>	37 858.50
<b>Less:</b> tax paid		<u>37 858.50</u>
Tax due		<u>0.00</u>

### EXAMPLE 3

An employee is accommodated in a 4 bedroom house situated in an agricultural area. The employer owns the house.

(a)	Salary earned	E250 000.00
(b)	PAYE deducted during the year	E 78 723.22
(c)	<b>Employer</b> provides a 2000cc motor vehicle for use by the employee. The market value of the motor vehicle when it was first provided to the <b>employee</b> was E190 000.00. Number of days available for use 255 days	
(d)	Employer pays E200.00 per month for employee's water services.	
(e)	Employer pays E4 500.00 for employee's maid.	
(f)	Employer pays school fees and boarding fees for employee's child of	E5 000.00
(g)	Contributions to an approved pension fund amounting to	E3 500.00
(h)	SNPF Contributions	E1 020.00
(i)	Contributions to a life assurance policy	E 720.00
(j)	Contributions to an approved provident fund	E3 600.00

#### End of year adjustments

Gross salary		250 000.00
<b>Add: Benefits/allowances</b>		
Free/subsidized housing (see <b>W4</b> )	32 880.00	
Private use of motor vehicle (see <b>W5</b> )	26 547.95	
Water services (200 x 12)	2 400.00	
Domestic servant (4 500)	4 500.00	
Educational allowance (100% of the cost is taxable)	<u>5 000.00</u>	<u>71 327.95</u>
Gross income		321 327.95
<b>Less: allowable deductions</b>		
Pension fund contribution (restricted to 10% pens salary)	3 500.00	
SNPF statutory contribution	<u>1 020.00</u>	<u>4 520.00</u>
<b>Taxable income</b>		<u><u>316 807.95</u></u>
Tax on first E200 000.00	47 500.00	
Tax on the next E116 807@ 33%	38 546.62	
Normal tax	86 046.62	
<b>Less: General Tax Rebate</b>	<u>8 200.00</u>	77 486.62
<b>Less: Other rebates</b>		
Contribution to life assurance (10% E720)	72.00	
Contribution to an approved provident fund (10% of E3 600)*	<u>360.00</u>	<u>360.00*</u>
Tax assessed		77 486.62
<b>Less: tax paid</b>		<u>78 723.22</u>
Refund due to the employee		<u>(1 236.60)</u>

\*Note that the insurance premiums, contributions to a benefit or provident fund, and unemployment are 10 % of the amount subject to an overall limit of E360. In the above, the total claim is E432 which is restricted to limit of E360.

The above example reveals that the total amount of employee's tax withheld exceeds the amount of FDS payable by E1 236.60. The employer must refund the excess to the employee, by offsetting it against the next payment of PAYE.

**NOTE:** The value of the benefits must be determined by the employer in accordance with the Practice Note on Taxation of Benefits-in-Kind (contained in this **Guide**). Employers must take notice that in terms of paragraph 5 (1) of the second schedule to the Income Tax Order 1975, as amended, an employer, who fails to make deduction or withhold the full amount of employee's tax, shall be personally liable for the payment of the amount which he fails to deduct or withhold.

#### EXAMPLE 4

A person is employed for 3 months in a tax year commencing 1 April 2013.

Salary per month	E11 700.00
PAYE deducted	E 1 678.75
Pension fund contributions	E 500.00
SNPF contributions	E 85.00

#### End of year adjustment

The monthly salary, PAYE and other contributions have to be annualised first in order to determine the correct taxable income for the period.

Gross Income	E 140 400
<b>Less: allowable deductions</b>	
Pension contributions	6 000
SNPF contributions	<u>1 020</u>
<b>Taxable income</b>	<u>E 133 380</u>

#### Normal Tax

Tax on first E100 000	E 20 000
Tax on balance of E33 380@ 25%	<u>E 8 345</u>
Total tax	<u>E 28 345</u>

#### Apportion normal tax to establish the tax payable for the period

$$\frac{\text{No. of months worked}}{12 \text{ months}} \times \text{Normal tax}$$

$$= \frac{3}{12} \times E28 345$$

$$= E7 086.25$$

#### Apportion rebate

$$\frac{\text{No. of months worked}}{12 \text{ months}} \times \text{Tax rebate}$$

$$= \frac{3}{12} \times E8 200$$

$$= E2 050.00$$

Tax payable for the period	=	E 7 086.25
Less: apportioned rebate	=	<u>E 2 050.00</u>
		E 5 036.25
Less: PAYE already paid (E1 678.75x 3)		<u>E 5 036.25</u>
Tax/Refund due		<u>E 0.00</u>

## WORKINGS

### W1 (See Schedule A of Practice Note 157)

#### Accommodation in Area A

	44 232.00
Taxable benefit as prescribed in Schedule A of practice note 157*	<u>- 1800.00</u>
Taxable benefit (3 686 pm x 12)	<b><u>42 432.00</u></b>

### W2 (see Paragraph 4 of Practice Note 157)

**Note:** In determining the taxable benefit under paragraph 4 of practice note 157 the emphasis is on business usage of the motor vehicle. Employee has to provide documented evidence that his/her motor vehicle was used in the business of the employer.

A	=	$B - \frac{(C \times D)}{E}$	
B	=	E80 000.00	
C	=	Fixed cost (25% of E250 000)	E62 500.00
	=	Running cost (24 000 x 76 cents)	<u>E18 240.00</u>
	=		<u>E80 740.00</u>
D	=	6 000 km	
E	=	24 000 km	
A	=	$80\,000 - \frac{(80\,740 \times 6\,000 \text{ km})}{24\,000 \text{ km}}$	
	=	80 000 – 20 185	
Taxable benefit	=	<u>E59 815.00</u>	

### W3 (See Schedule A of practice Note 157)

#### Open Market Accommodation

Employer's contribution (2/3 x 6000)	4 000	
Employee's contribution to rental (1/3 x 6000)	<u>2 000</u>	
Monthly rental for accommodation	<u>6 000</u>	
Annual Taxable benefit (4 000 x 12)		<b><u>48 000.00</u></b>

### W4 (See Schedule A of practice Note 157)

#### Accommodation in Area C

Taxable benefit as prescribed in Schedule A *	
Taxable benefit (100% of 32 880.00)	<b><u>32 880.00</u></b>
* Monthly taxable benefit is E2 740.00	

### W5 (See Paragraph 2.1 of Practice Note 157)

**Note:** When ascertaining the benefit value under paragraph 2.1 of practice note 157 the emphasis is on private usage of the motor vehicle.

$$\text{Benefit Value} = (20\% \times A \times \frac{B}{C}) - D$$

A	=	E190 000
B	=	255 days
C	=	365days
D	=	0

$$\begin{aligned} \text{Taxable benefit} &= (20\% \times 190\,000 \times \frac{255}{365}) - 0 \\ &= \underline{\underline{E26\,547.95}} \end{aligned}$$

#### 46. Rates Of Normal Tax In The Case Of Individuals

TAXABLE INCOME		RATES OF TAX
EXCEEDS	DOES NOT EXCEED	
0	100 000	0 + 20% of the excess over 0
100 000	150 000	20 000 + 25% of the excess over 100 000
150 000	200 000	32 500 + 30% of the excess over 150 000
200 000		47 500 + 33% of the excess over 200 000

#### NOTES

When applying the above rates, your attention is drawn to the following:

- That the tax payable by a natural person will be reduced by an amount not exceeding E8 200 per tax year.
- That the new rates will be applicable on the amount exceeding E41 000 per annum.
- That when a tax rebate of E8 200 is combined with the lowest marginal rate of 20%, one has an effective threshold of E41 000, but if the period assessed is less than a full year, the tax rebate shall be the same ratio such period bears to twelve months.
- That the tax rebate does not apply if the tax payable is subject to the concessionary rates of tax prescribed in Part III of the Third Schedule to the Income Tax Order 1975.
- That the daily, weekly, and monthly PAYE deduction tables prescribed in these Employees' Tax Deduction Tables have already been reduced by the tax rebate of E8 200.
- That it is only when applying the new rates above that the tax payable must be reduced by a rebate not exceeding E8 200 in any year of assessment.

#### 47. Persons Over The Age Of 60 Years

**NOTE** that the Daily, Weekly, and Monthly Tax Tables prescribed in this booklet are only applicable to individuals below the age of 60 on the last day of the year of assessment. Thus, in the case of individuals over the age of 60 on the last day of the year of assessment the monthly employees' tax should be determined as follows:

- Calculation of Employees' Tax (PAYE)
  - To determine monthly PAYE:** the annual equivalent of the monthly remuneration must be established, the tax determined according to the normal tax rates (above) and results divided by 12 to establish the monthly deduction.
  - To determine weekly or daily deductions:** the monthly equivalent of the weekly or daily remuneration must be established, that tax determined according to A to establish the monthly deduction and the result divided by 4 or 30 to obtain the weekly or daily deductions respectively.

- 1.2 The employees' tax (PAYE) to be deducted is calculated on the balance of the amount of remuneration after deducting the SNPF statutory contributions; and any current contribution by the employee concerned to any approved pension fund subject to a maximum of 10% of such employee's pensionable salary in any year of assessment.
- 1.3 The tax payable by an individual over the age of 60 years must be reduced by way of a rebate of an amount not exceeding the sum of ten thousand nine hundred emalangenzi (E10 900) in any year of assessment, that is, E908.33 per month.
- 1.4 The secondary tax rebate which benefits the elderly, that is, persons over the age of sixty years on the last day of the year of assessment, is an amount not exceeding the sum of E2 700 per tax year. This means that an elderly person will have an effective tax rebate of E10 900 since the secondary tax rebate is in addition to the primary tax rebate of E8 200. Effectively a person over the age of sixty years is entitled to both the primary tax rebate of E8 200 plus the secondary tax rebate of E2 700.
- 1.5 When a tax rebate of E10 900 is combined with the lowest marginal tax rate of 20%, a person over the age of 60 has an effective threshold of E54 500, but, if the period is less than a full year, the tax rebate shall be the same ratio such period bears to twelve months.
- 1.6 The new rates will be applicable, in the case of a person over the age of 60 years, on the amount exceeding E54 500 in any year of assessment.
- 1.7 The tax rebates do not apply if the tax payable is subject to the concessionary rates of tax prescribed in Part III of the Third Schedule to the Order.
- 1.8 The tax payable must be reduced by way of rebates not exceeding the amounts stipulated in paragraph 1.3 above, in any year of assessment but if the period assessed is less than a full year, the tax rebates shall be the same ratio such period bears to twelve months.
- 1.9 The tax rebate must be apportioned according to the number of months that the employee has worked and the apportionment must be made as follows –
  - (a) The annual equivalent of the monthly remuneration is first established.
  - (b) The tax on the annual amount is then calculated.
  - (c) The amount of tax is divided by 12 months, and then multiplied by the number of months of worked to arrive at the correct tax for the period.
  - (d) The rebate is also apportioned accordingly.

## EXAMPLE 2

A person is over 60 years of age and receives the following income in a tax year commencing 2013

(a) Pension per month	9 000.00
(b) Director fees per month	2 000.00
(c) PAYE	(See working below)

The monthly pension and the director's fees have to be annualized

Gross annual pension (9000*12)	108 000
Gross director's fees (2000*12)	<u>24 000</u>
	<u>132 000</u>

### Normal Tax

Tax on first E100 000	20 000.00
Tax on Balance of E32 000 @ 25%	<u>8 000.00</u>
Total tax	28 000.00
Tax rebate (8 200 + 2 700)	<u>10 900.00</u>
Tax payable (annual)	<u>17 100.00</u>

#### 48. Concessionary Rates Of Normal Tax Applicable To Employees At The Time Of Redundancy Or Retirement

Paragraph (f) of Part 1 of the Third Schedule to the Order, provides that the rates of normal tax to be applied in the case of lump sum amount received by or accrued to or in favour of an individual by reason of redundancy or retirement, be as prescribed in Part III

##### PART III

Rates of normal tax in the case of a redundancy or retiring individual shall be as follow

TAXABLE INCOME		RATES OF TAX
EXCEEDS	DOES NOT EXCEED	
0	200 000	0 + 25% of the excess over 0
200 000	300 000	50 000 + 30% of the excess over 200 000
300 000		80 000 + 33% of the excess over 300 000

Please note that before any lump sum payments can be made to any employee a tax directive must be sought from the Commissioner (see Legal Notice No. 146 of 2004 which contains the full text of Practice Note No. 164 on pages 52-54 of this Guide).