

Subject : Taxation of Benefits from Employment
Act : Income Tax Act No 9 of 1993 (as amended)
Sections : 18 and 115 to 127
Issue Date : February 2011

Introduction

In terms of the Income Tax Act 1993 (as amended), the Act, employees are taxed on their wages, salaries and on any benefits that arise from their employment. Lesotho law requires that employers operate the pay-as-you-earn (PAYE) system for taxing the normal wages and salaries. For all the benefits, listed in sections 119 to 127 of the Act, provided to the employees, employers have to operate a separate fringe benefit tax (FBT) system or calculations. That is, employment benefits are taxed separately from the normal wages and salaries. This publication deals with taxation of fringe benefits from employment, that is, FBT.

The purpose of this Public Ruling is to:

- Describe the various types of fringe benefits that fall under the FBT regime,
- Illustrate how the Lesotho Revenue Authority (LRA) interprets and applies the law, and
- Help employers comply with the requirements of the law, and in particular the FBT regime.

Definition of Fringe Benefits

What are fringe benefits? A fringe benefit is any monetary or non-monetary benefit derived from employment that does not form part of an employee's normal salary or wage. Fringe benefits are also referred to as benefits in kind. In summary, fringe or benefits in kind refer to earnings, other than in cash, that are received or due to an employee by virtue of an employment relationship with the employer. If fringe benefits are received or enjoyed by an associate of an employee then FBT must be applied.

Note: *Fringe benefits are not tax-free remuneration. They are benefits supplementing normal wages or salaries and are therefore taxable.*

List of Fringe Benefits Covered Under the FBT Regime

i. Section 119 – Car:

This arises when an employee is provided with any kind of a motor vehicle for private use. That is, the employee can use the motor vehicle on non-business activities and travel. An employee has private use of a motor vehicle if:

- The employee is entitled to use the motor vehicle for private purposes, or
- The vehicle is kept at or near the employee's place of residence, or
- The employer is not consistently enforcing prohibition of private use policy that might be in place.

ii. Section 120 – Housing:

This consists of provision of accommodation or housing to the employee by the employer. Provision of accommodation includes the granting of a lease, licence or permission to the employee to occupy any form of accommodation including; a caravan, mobile home, dormitory, living quarters, hotel or guesthouse room. An employer is regarded to have provided accommodation where the employee is reimbursed any payments the employee would have made for the accommodation.

iii. Section 121 – Utilities:

Payments or reimbursements by the employer to the employee for the cost of utilities enjoyed or consumed by an employee constitute utilities fringe benefit. Utilities are;

- Water provision and sewerage/refuse removal,
- Electricity and other fuel supplies, and
- Telephone and other communication provision.

iv. Section 122 – Domestic assistance:

If an employer pays for any domestic assistance, excluding a security guard, on behalf of the employee, then this gives rise to domestic assistance fringe benefit. Domestic assistance includes provision of; a housekeeper, a maid, a babysitter, a chauffer, and a gardener.

v. Section 123 - Meal or refreshment:

Under this benefit, an employer pays for an employee's meals and refreshments. But if the meals are provided in an employer's canteen, cafeteria, dining hall or similar facility and the meals are the same for all employees, then such meals or refreshments are exempt from FBT. However, if the meals are provided on an equal basis by a caterer, hotel, restaurant and similar businesses then the exemption does not apply. In the latter arrangement the employer knows precisely the cost of the meals for each employee, which is very difficult to determine where the employer has established a canteen or cafeteria. In short the exemption is only available if the meals are provided in an employer's canteen, cafeteria or similar establishment.

vi. Section 124 - Medical:

If the employer pays or reimburses an employee for medical bills, hospitalisation, medical scheme premiums, this constitutes a medical fringe benefit. As a social policy consideration, medical fringe benefit is exempt from FBT if all non-casual employees are entitled to equal amounts, in absolute terms. That is, if M500 per month is paid, then this should apply to all employees regardless of their levels in the employer's organisational hierarchy. An entitlement based on a certain percentage for all employees is not on equal terms and therefore, a taxable fringe benefit.

vii. Section 125 - Loan:

A loan fringe benefit considers the interest rate that an employee is charged by the employer on a loan. If the employer's interest rate is less than two thirds ($2/3$) of the Central Bank of Lesotho (CBL) or commercial banks' prime/normal lending rate then, loan fringe benefit arises. If, for example, the commercial lending rate is 15% but instead an employee is charged 8%, then this loan arrangement is subject to FBT. $2/3$ of 15% is 10%, and so at any rate between 10% and 15% there is no FBT, but below 10% FBT is applicable. The term "loan" is broadly defined to include advance of money, allowing credit or any financial arrangement which has the same economic effect as a normal loan.

viii. Section 126 - Debt waiver:

This comprises of any payment by an employer on behalf of an employee, or cancellation of a debt due by an employee. Debt waiver fringe benefit is therefore, very

broad and can take many forms. It extends to other parties, for example, the employee's, debt with other persons other than the employer.

ix. Section 127 - Excessive superannuation:

This applies to contributions by Public International Organisations (PIOs), listed in the First Schedule of the Act. If PIOs make pension and provident fund contributions amounting to more than 20% of the employees' salaries, then such excesses over 20% constitute superannuation fringe benefit.

What Fringe Benefits are Exempted or Excluded?

As indicated above meals and medical fringe benefits provided on an equal basis are exempt from FBT. The following are some of the benefits that, for practical and policy considerations, are not subject to fringe benefit tax.

- Private use of motor vehicle by an employee provided on special occasional hardship circumstances, for example, to take care of funeral or bereavement and emergency situations.
 - Common transportation operated by or on behalf of the employer to transport employees outside the normal 8 am to 5 pm working hours, to remote places where the employer's business is conducted.
 - Small common benefits that are difficult to quantify and place value received by each individual employee, for example, use of an employer's recreational and sporting facilities. Staff parties and functions are typical examples.
 - Accommodation provided on a remote employer camp site.
 - Uniform and similar employer branded attire or clothing.
 - Passage granted to an employee at the commencement or termination of employment if such passage is the actual expenditure incurred for transportation by the employer or represents a reimbursement of actual expenditure. A cash allowance in lieu of passage is taxable.
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What are the Thresholds?

For some types of benefits the whole value of the benefit is taxable while for some only a portion is taxed, that is, not the full value of the benefit. The table below illustrates the extent to which the fringe benefits are taxable.

<i>Benefit</i>	<i>Amount Taxed / (Threshold) / Tax base</i>
Car	= $(15\% \times A \times B/C) - D$ where: A is value of vehicle, B is number of days vehicle is available to employee, C number of days in a year and D is any payment the employee makes for the use of the vehicle.
Housing	= market value of rent but cannot be more than 20% of the employee's salary
Utilities	= total amount of the utilities bills
Domestic assistance	= total employment income paid to the domestic assistant
Medical	= total expense paid
Loan	= difference between CBL rate and employer rate if the latter's rate is less than 2/3 of CBL rate.
Debt	= amount paid or waived
Excessive superannuation	= amount in excess of 20% of employee's salary

Steps in Calculating FBT

- (1) Identify the benefits and characterise them accordingly,
- (2) Determine the value of the benefit. Use market value if benefits are non-cash,
- (3) Determine the taxable threshold or tax base for each benefit using the table above,
- (4) Add all the taxable thresholds and multiply by the "grossing up" factor to arrive at the taxable amount. The "grossing up" factor = $(1 / (1 - B))$ where B is the 40% tax rate,
- (5) Apply the tax rate on the taxable value to get the fringe benefit tax payable.

Example:

The following details relate to Mr Smith, an expatriate who has come to Lesotho to be a CEO of New Bank (Pty) Ltd. Mr Smith will be paid a salary of M20 000 per month.

- Because of security reasons and no proper shelter at the place of work, New Bank has decided that the company Mercedes Benz worth M520 000 should be parked at his place every night. To give him peace of mind and to compensate for the inconvenience, the company has agreed to pay M1000 for a security guard and a further M1000 for the house boy who cleans the sedan, the garage and driveway. M1500 is to be paid to a maid
- Mr Smith stays freely in a house leased by the Bank from a property developer. This option is cheaper than paying employees a housing allowance. The annual lease payment made directly to the property developer by the Bank is M60 000.
- The company had paid M40 000 for a business class air ticket and an allowance of M20 000 to Mr Smith to take care of other travel related expenses when he was coming to Lesotho to take up his position.
- To enable him buy furniture and other essentials the New Bank has granted him a M100 000, 5% loan as he is also considered a low risk client. Outside clients are currently borrowing at 15%.
- Mr Smith, like every other employee, is entitled to 10% of his salary as medical aid contribution.
- Because all senior management are expected to attend to clients all the time, there is no official lunch break. The Bank has made an arrangement with a local hotel to supply pre-packed lunch at a negotiated reduced price of M50 per day, five days a week. They take this meal in the company's small dining room, where at times they have working lunch.
- To compensate for the reduced salary that he gets in Lesotho the Bank will contribute 30% of his salary to a pension scheme.

What is the FBT on the benefits enjoyed by Mr Smith?

Solution and Workings

<i>Benefit</i>	<i>Total value</i>	<i>Amount tax/threshold</i>
Car	M520 000 ¹	15% x 520 000 x 365 / 365 = M78 000
Housing	M60 000	20% x (20 000 x 12) = M48 000
Domestic assistance - Security - House boy - Maid	M1000 x 12 = M12 000 M1000 x 12 = M12 000 M1500 x 12 = M18 000	Exempt = M0.00 100% = M12 000 100% = M18 000
Debt waiver - Ticket - Incidentals	= M40 000 = M20 000	Exempt = M0.00 100% = M20 000
Loan (interest forgone) ²	15% - 5% (100 000) = M10 000	100% = M10 000
Medical	10% x 20 000 x 12 = 24 000	100% = M24 000
Excessive superannuation	30% of annual salary = M72 000 20% of annual salary = M48 000	difference = M24 000 ³
Meals	M50 x 5 x 52 weeks = M13 000	100% = M13 000
Total	= M257 000	= M223 000

Taxable amount = M223 000 x (1 / (1 - 40%)) = 223 000 x 1.67 = M372 410.

Fringe benefit tax due = taxable amount x tax rate = M372 410 x 40% = M148 964.

Quarterly instalments = M148 964 / 4⁴ = M37 241.

¹ Only depreciation on this amount is deductible as expense for the year, not the full amount.

² Note that this is not claimed as an expense in the profit and loss

³ If the Bank was a PIO it will include this amount as a taxable FBT. Note that in this case it will only claim M48 000 as an expense and not the whole M72 000.

⁴ This assumes that the amounts remained constant throughout the year, otherwise computations are needed for the actual quarterly amounts.

Accounting for Fringe Benefits

- The employer claims M257 000 (cost of benefits) and the depreciation for the vehicle in calculating the profits for the year.
- The employer's deduction is reduced by the excess superannuation contribution, that is, it is limited to M48 000 shown above.
- FBT due/paid of M148 964 is deducted "*as an expense*" in the profit and loss.

Points to Note

- It is important to note that FBT applies to employees and not independent contractors and businesses that are otherwise engaged by "*an employer*" or business. If they receive these benefits the employer is not entitled to deductions on the cost of these benefits.
- All cash "allowances or bonuses" other than for the fringe benefits listed above should be added to the normal salary and taxed under PAYE.
- The market value of the benefits is to be assigned. If this is not possible the LRA will provide valuation rules.
- For a "self-employed" sole trader or other taxpayer the benefits above will, by definition, not be deductible as business expenses and consequently such a person will not operate FB

Disclaimer

The information contained in this ruling provides broad principles in interpreting the legislation. The facts and circumstances pertaining to cases where FBT provisions have to be invoked may differ, hence each case shall be considered on its own merits. This interpretation note has no binding force and does not affect a taxpayer's right of objection and appeal to the Commissioner General, the Revenue Tribunal or the Courts and shall not affect the taxpayer's right to argue for a different interpretation, where necessary, in any appeal process, as stipulated in the revenue laws.
