

No fun allowed

By Tina Collins



The tax implications of incentive programmes for employees are one of the many thorny issues companies need to deal with. How can the employer ensure that his incentive programme is tax effective and not a burden on the employee? What are the implications of the employee's partner joining the programme or other staff members travelling as organisers? These are just a few related questions.

Under the SA Income Tax Act employers are liable for deducting and paying PAYE to SARS for remuneration paid to an employee. Remuneration should according to paragraph 2 of the 7th Schedule of the Act include the value of "fringe benefits" if they were received as a reward for services rendered or performance by the employee or a relative of the employee and if the benefit has been utilised by the employee for his/her private or domestic purposes. This is supported by a recent tax court case, ITC 12244 heard by the Tax Court in Cape Town when "Erasmus J ruled that the utilisation of timeshare (points granted by the employer to his employee) constituted primarily a reward for services rendered" and that the reward had a money value and thus had to be added to the employee's remuneration for PAYE purposes.

Business travel, on the other hand, is not subjected to tax as long as it enables or contributes to the business's ability to earn a taxable income and there is no personal benefit to directors, shareholders or employees.

What's the solution?

For incentive programmes to be excluded from PAYE, the following guidelines need to be considered. In each case the company has to be able to substantiate the claim that the primary and overriding purpose of the trip was for business purposes and that the expenses incurred from the trip were for the production of business income.

Steer away from labelling trips as incentive programmes; rather link the trip to activities, e.g. training sessions that can clearly be shown to benefit the business by developing more highly skilled or trained staff.

Avoid any casual link between performance or services rendered and attendance of the programme or trip.

The trip must be seen to be non-optional and should be included in staff development and training plans.

The more relevant the business sessions to the business and the longer the proportion of time allocated to attending these business sessions, the stronger the argument that the expenses are incurred in the production of business income.

Team building sessions can be included in the programme as long as the purpose of the sessions is to benefit the business and not the employee.

Business sessions must be held on the majority of the days with limited relaxation or free time included. The choice of speaker is not relevant as long as the session is beneficial to the company. Business sessions do not have to be arranged on the days that the person travels or over weekends as long as weekends do not form a substantial portion of the trip. If they do the monetary value of the personal benefit will have to be included for PAYE purposes.

The trip should be exclusively for the employee. If the employee's partner joins the trip, all the benefits provided to the partner will have to be included in the partner's taxable income. Even if the partner joins business sessions, it would be difficult to argue that the company benefited. Reduction in costs, e.g. downgrading air tickets or accommodation to benefit the partner is not a means to reduce the partner's taxable income, as the amounts paid are not for trade purposes.

Trips funded by associated institutions are still seen as a benefit to the employee and are taxable.

Staff members travelling as part of the organisers will not have to pay tax as long as the purpose of the trip benefited the business and not the individual.

If trips are to be excluded from PAYE, the company must be able to clearly show that the trip has been undertaken for the benefit of the business. If there is a benefit to the employee the extent that it is coincidental rather than intentional will increase the likelihood of such a benefit being accepted by the courts as not being a fringe benefit for PAYE purposes.

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