

## **BINDING PRIVATE RULING: BPR 136**

DATE: 13 March 2013

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 8(1)**  
**SUBJECT : TAXATION OF SUBSISTENCE ALLOWANCES PAID TO EMPLOYEES**

### **1. Summary**

This ruling deals with subsistence allowances paid by an employer to its employees and the amount of the allowance that will be deemed to have been expended under section 8(1)(a)(i)(bb) read with section 8(1)(c) of the Act.

### **2. Relevant tax laws**

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 14 January 2013 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of section 8(1)(a)(i)(bb) read with section 8(1)(c).

### **3. Parties to the proposed transaction**

The Applicant: An employer providing subsistence and travel benefits to its employees in respect of local travel for business purposes

The Employees: Employees of the Applicant

### **4. Description of the proposed transaction**

The Applicant has a subsistence and travel policy (the policy), in terms of which the Applicant will pay employees, who are required to spend at least one night away from their usual place of residence on local travel for business purposes, an allowance for each night away to cover personal expenses such as meals, refreshments, laundry and room service. The allowance is equal to 80 percent of the Gazetted amount contemplated in section 8(1)(c), regardless of whether the cost for accommodation includes breakfast or not.

‘Subsistence’ is defined in the policy as an allowance that the Applicant will pay to employees in order to cover their meals and incidental costs while away from their usual place of residence for business purposes. The allowance is specifically not for accommodation, since the Applicant will arrange and pay for the accommodation separately. Some of the accommodation establishments include breakfast whilst others do not.

The policy does not apply to employees who are constantly away from their usual place of residence because they are required to render services on the Applicant's offsite facilities situated far from their usual place of residence.

In terms of the policy, when an employee is away for a day but not a night, no subsistence allowance is payable.

## **5. Conditions and assumptions**

This ruling is not subject to any additional conditions and assumptions.

## **6. Ruling**

The ruling made in connection with the proposed transaction is as follows:

For the purposes of section 8(1)(a)(i)(bb):

- An allowance paid by the Applicant in terms of the policy, which amount is less than the *Gazetted* amount contemplated in section 8(1)(c)(ii), will fall within the deeming provisions of section 8(1)(c)(ii) only when the Applicant has not borne any of the expenses in respect of which the allowance is paid.
- If the Applicant bears any of the expenses in respect of which the allowance is payable, the maximum amount deemed to be expended under section 8(1)(c)(ii) will be the *Gazetted* amount, reduced by the amount of expenses borne by the Applicant. For example, in determining the maximum amount that will be deemed to be expended under section 8(1)(c)(ii), the *Gazetted* amount must be reduced by the breakfast charge when the accommodation paid for by the Applicant includes breakfast as a separate charge.
- This ruling is not applicable to subsistence allowance paid in respect of employees that are constantly away from their usual place of residence due to the nature of the business of the Applicant, such as employees at the Applicant's offsite facilities.
- This ruling is also not applicable to subsistence allowance paid in respect of travel outside the Republic for business purposes.

## **7. Period for which this ruling is valid**

This binding private ruling is valid for a period of 3 years from 14 January 2013.

Issued by:

**Legal and Policy Division: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**