

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 043

DATE: 22 September 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : PARAGRAPH 7(10) OF THE SEVENTH SCHEDULE TO THE ACT

SUBJECT : PRIVATE USE OF A COMPANY MOTOR VEHICLE

1. Summary

This ruling deals with the question as to whether employees who have been allocated company motor vehicles by their employers for business use receive a taxable benefit in respect of any private use of those vehicles having regard to the nature of the duties of the employees. This would include the regularity of use of the vehicles to perform their duties outside of normal working hours, employer imposed restrictions on private use and whether all other private use of company motor vehicles, besides when the employees are on annual leave, is merely incidental to its business use or is infrequent.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling all legislative references to paragraphs are to paragraphs of the Seventh Schedule to the Act applicable as at 6 January 2009 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of paragraph 7(10) of the Seventh Schedule.

3. Parties to the proposed transaction

The Applicant: A company that provides various services to members of the public

Co-Applicants: Companies within the same group of companies as the Applicant

Employees: Employees of both the Applicant and Co-Applicants who have been allocated company motor vehicles for business use necessary to fulfil their employment duties

4. Description of the proposed transaction

The Applicant and Co-Applicants provide various services to members of the public which require their employees to drive to the client's premises or location.

The Employees' normal working hours as per their contracts of employment are from 8am to 5pm. However, the nature of the work that the Employees perform is such that they are regularly required to perform their duties outside of these hours in order to accommodate the clients.

The Applicant and Co-Applicants will be purchasing motor vehicles which will be branded with the company name and logo. Vehicles will be allocated to specific Employees who will be obliged to use the vehicles during their employment. The Employees will be required to take the motor vehicles home on a daily basis as they will be obliged to use the vehicles after hours and over weekends to perform their employment duties. The use of company motor vehicles is governed by company policy.

In terms of the company's motor vehicle policy, the Employees are not permitted to use company motor vehicles for private purposes other than for –

- travel between the workplace and their place of residence;
- private use that is incidental to its business use, for example, passing by the shops en route to a business appointment or home; and
- private use during the month in which the Employees exercise their annual leave.

The Employees are required in terms of the motor vehicle policy to keep a logbook.

The Employees, who have been allocated a company car ('tool of trade vehicle', which is defined in the company motor vehicle policy as a "vehicle to enable employees to perform their daily tasks") are as follows:

Employee position	Nature of work
Consultant A	<ul style="list-style-type: none"> ▪ Visits clients at their homes to provide services and perform further work on the end-product at the office.
Manager A	<ul style="list-style-type: none"> ▪ Manages the branch at the branch office.

Employee position	Nature of work
	<ul style="list-style-type: none"> Meets with the company's service providers at the service providers' premises.
Executive PA	<ul style="list-style-type: none"> Market research and visits branches.
Consultant B	<ul style="list-style-type: none"> Visits clients at their residences to provide services and sign contracts.
Manager B	<ul style="list-style-type: none"> Accompanies consultants (Consultant B) to appointments. Manages the branch. Meets with service providers at the service providers' premises.
Consultants C	<ul style="list-style-type: none"> Visits clients at their residences or agreed locations to provide services, delivers and collects documents for signature.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the ruling only applies to employees whose normal working hours are from 8am to 5pm;
- employees on a flexible working hour arrangement are excluded from this ruling;
- employees will not be permitted to use company motor vehicles for private purposes, both in terms of the motor vehicle usage policy and company practice prevailing, other than for –
 - travel between the workplace and their place of residence;
 - private use that is incidental to business use; and
 - private use during the month in which the employees exercise their annual leave; and
- the ruling will not apply to employees in non-qualifying job categories (Manager A or Executive PA) described in point 4 above, as they do not qualify.

6. Ruling

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

- Paragraph 7(10) of the Seventh Schedule will apply in respect of the employees in the qualifying job categories stipulated in point 4 above (excluding the non-qualifying job categories mentioned in point 5 above) except in the month in which the employees exercise their annual leave.

- The taxable benefit under paragraph 2(b) of the Seventh Schedule for the right of use of the company motor vehicle, calculated under paragraph 7(4) of the Seventh Schedule, must be included in the remuneration of the employees in the month in which the employees exercise their annual leave.
- With regard to the non-qualifying job categories listed in point 5 above, that is, Manager A and Executive PA, the taxable benefit under paragraph 2(b) of the Seventh Schedule for the private use of the company motor vehicle, calculated under paragraph 7(4) of the Seventh Schedule, must be included on a monthly basis in the employees' remuneration. Those employees in the non-qualifying job categories whose private use travelled in a year is less than 10 000 km, can seek relief on assessment of their liability for normal tax under the provisions of paragraphs 7(7) of the Seventh Schedule by providing, in such manner as the Commissioner may require, a logbook evidencing private and business kilometres travelled.

7. Period for which this letter is valid

This binding ruling is valid for a period of two (2) years as from the date of this ruling until 31 December 2011.

Issued by:

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