



TANZANIA REVENUE AUTHORITY

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THE INCOME TAX ACT, CAP. 332

PRACTICE NOTE

INCOME FROM EMPLOYMENT

PRACTICE NOTE NO. 11/2013.

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1.0 TAX LAW.

This Practice Note applies in respect of the taxation of income from an employment of an individual.

2.0 INTERPRETATION.

In this Practice Note, unless the context requires otherwise – “Act” means the Income Tax Act, Cap 332.

Definitions and expressions used in this Practice Note that are used in the Act have, unless the context requires otherwise, the same meaning in this Practice Note as they have in the Act.

3.0 THE PURPOSE OF THIS PRACTICE NOTE.

This Practice Note considers the taxation of an individual’s gains or profits from an employment of the individual for a year of income as provided for under section 7 of the Act and covers the following:-

3.1 Definition of the term “employment”.

3.2 Source of payments attributable to an employment.

- 3.3 General rules for taxation of payments from an employment.
- 3.4 Payments to be included in calculating income from an employment.
- 3.5 Payments to be excluded.
- 3.6 Taxation of benefits in kind.
- 3.7 Quantification of taxable benefits in kind.
- 3.8 Provision of employer's motor vehicle for personal use of the employee.
- 3.9 Loans provided in return for services.
- 3.10 Provision of residential housing.
- 3.11 Calculation of income from payment for Redundancy or Termination of Employment.
- 3.12 Other Lumpsum payments.

4.0 HOW THE LAW APPLIES.

4.1 Definition of the term "employment"

The Act defines "employment" as:

- i) a position of an individual in the employment of another person;
- ii) a position of an individual as manager of an entity other than as partner of a partnership;
- iii) a position of an individual entitling the individual to a periodic remuneration in respect of services performed; or
- iv) a public office held by an individual, and includes a past, present and prospective employment.

4.2 Source of payments attributable to an employment

Section 69(i) of the Act provides the source rules for payments attributable to employment exercised or forbearance from exercising employment as follows: -

Payments attributable to employment exercised or a forbearance from exercising employment have a source in the United Republic where –

- i) the employment or the forbearance is exercised in the United Republic, regardless of the place of payment. Exercising in this sense means the actual carrying out of the employment activities which may include physical presence of the employee at the place of employment.

- ii) the payer for the exercising of the employment or the forbearance is the Government of the United Republic, including the Revolutionary Government of Zanzibar (SMZ) or any Tanzania local authority.

4.3 General rule for taxation of income from employment

The general rule for taxation income from employment is that the income shall be “the individual’s gains or profits from any employment for a year of income”. The year of income for employment income shall be the calendar year irrespective of the date in which the employment commences. In instances where the employment commences on dates other than 1st January, the year of income for employment purposes will be period ended on 31st December of the same year. The individual shall account for income tax on employment income on a cash basis and the tax payable calculated based on a twelve months period ending on 31st December each year regardless of the period the employment is exercised.

Generally income from employment is taxed in the year of receipt. Money receipts are received on the earlier of the time payment is made and the time entitlement to payment arises. Non-money (in kind) payments are generally received when provided.

4.4 Payments to be included in calculating income from employment

For the purpose of calculating income from an employment, the following payments shall be included:-

- Payments of wages, salary, payment in lieu of leave, fees, commissions, bonuses, gratuity or any subsistence, travelling, entertainment or other allowance received in respect of the employment or services rendered.
- Payments providing any discharge or reimbursement of expenditure incurred by an individual or an associate of the individual.
- Payments for the employee’s agreement to any conditions of the employment. (includes payments made for working in certain environment or place including those made before the commencement of the employment).
- Retirement contributions and retirement payments.
- Payment for redundancy or loss or termination of employment
- Other payments made in respect of the employment including benefits in kind.

The person liable to the tax on employment income is the person to whose

employment relates, that is the person in the employment of the payer of the income.

4.5 Payments that are excluded in calculating individual's income from employment.

In calculating gains or profits from an employment of an individual for a year of income, not all payments will be included as some payments are statutorily excluded including exempted payments under section 10 of the Act. The following payments are excluded in calculating an employee's income from an employment:

- Any allowance that represents solely reimbursement to the employee of expenditure spent wholly and exclusively in the production of the income of the employer.
- Medical services, payment for medical services and payment for insurance for medical services provided to the employee, the employee's spouse and up to four of the employee's children and such services or payments are available on a non-discriminatory basis to all employees of the employer. Such services or payments must be available to all employees and provided without discrimination.
- Benefits derived from the use of motor vehicle by the employee for the employee's personal use is generally taxed as a benefit in kind provided the employer claims relief or deduction in relation to ownership, maintenance or operation of the vehicle. However, if the employer does not claim the deduction or relief the benefit is excluded from the income of the employee. Since the Government does not pay income tax from business activities that are the functions of the government and therefore does not claim deductions. Government employees do not pay tax on this benefit.
- Benefit derived from the use of residential premises by an employee of the Government or any institution whose budget is fully or substantially out of Government budget subvention.
- Where an employer makes payment for providing travelling for the employee, the employee's spouse and up to four children between the place of work and the place of domicile which is more than 20 miles away, the payment is not included in calculating the employee's income from the employment provided that the employee is recruited or engaged for employment solely in the service of the employer at the place of employment. For example an employer provides passage costs for the employee to commence the employment or to go on leave for the employee and the employee's family, the payment for the passages

is not included in calculating the employee's income subject to meeting those requirements.

- On premises cafeteria services available on a non-discriminatory basis to all employees of an employer are not taxable as a benefit in kind. For the purpose of this Act, if employees are provided different types of cafeteria services based on seniority e.g. management staff consume different food stuff from the rest of the staff, this should not be construed as discrimination.
- Benefits or payments that are unreasonable or administratively impracticable for the employer to account or allocate to their recipients are also excluded in calculating income from employment.
- Allowance payable to an employee's offering intramural private service to patients in a public hospital.
- Housing, transport, responsibility, extra duty, overtime, hardship and honoraria allowances payable to an employee of the Government or an institution whose budget is fully or substantially paid out of Government budget subvention.
- Retirement contributions paid by an employer on behalf of the employees towards approved retirement funds, subject to the limit of the actual contribution or the statutory amount.

4.6 Taxation of benefits in kind

Where an employer makes payment for the personal needs of an employee through providing the employee with goods or services (as opposed to money) these are called benefits in kind. Taxable benefits in kind typically include those benefits which are for the personal use or consumption needs of the employee (e.g. employer providing housing for employee, employer providing for education of the employee's children, employer giving goods or services free or at a cost lower than the market value to the employees).

4.7 Quantification of taxable benefits in kind

4.7.1 Quantification according to market value

In general, the value of benefit in kind is quantified according to market value of the benefit; that means, the amount that an independent person would have to pay in the market to receive the same good or service.

However, special quantification rules apply to provision of motor

vehicle, subsidized loans and provision of housing.

Where an employer provides a benefit which is chargeable on the employee which is not easily attributable to a particular month, then for the purposes of taxation, the amount of the benefit shall be treated as paid to the employee proportionately over each month during the year of income the payment or benefit is provided.

4.7.2 Provision of motor vehicle for personal use by the employee

Where an employer provides a motor vehicle for the private use of the employee, this is a taxable benefit to the employee. "Private use" includes home to work place travel. However, where the employer does not claim a deduction in relation to ownership, maintenance or operation of the vehicle the benefit is not taxable on the employee. Where the benefit is taxable, it is quantified using the following table:

Engine Size of Vehicle	Quantity of payment	
	Vehicle less than 5 years old	Vehicle more than 5 years old
Not exceeding 1000cc	TZS. 250,000	TZS. 125,000
Above 1000cc but not exceeding 2000cc	TZS. 500,000	TZS. 250,000
Above 2000cc but not exceeding 3000cc	TZS. 1,000,000	TZS. 500,000
Above 3000cc	TZS. 1,500,000	TZS. 750,000

The age of the motor vehicle is calculated from the date of the first registration of the vehicle in Tanzania.

Illustration

An employer provides a new self drive car for the employee's private use, which is 3000 cc. The company claims expenditure on the car maintenance and ownership against their taxable income. The car benefit is calculated as follows:

Engine capacity is 3000 cc, Age is less than 5 years.

Annual value of the benefit is TZS 1,000,000/=

Monthly car benefits (1,000,000/12)

TZS 83,333/= per month

4.7.3 Loans provided by employer

Basically an employer is not responsible for provision of loans to its employees. However as an incentive to the employees, employer may undertake the function of providing softer terms loans to its employees compared to what a free market may offer. Where an employer provides a loan to the employee and where the term of the loan is twelve months or more and the aggregate amount of the

loan and any other similar loans outstanding at any time during the previous twelve months exceeds three months basic pay, with no interest or interest rate below the statutory rate; the foregone interest amount on the loan is a taxable benefit.

The benefit for the year of income is quantified as the difference between the interest the employee pays (if any) and the interest that would have been paid using the applicable statutory interest rate. Statutory rate means the prevailing discount rate as provided by the Bank of Tanzania.

Illustration

An employer provides an interest free loan of TZS.3,000,000 payable in 24 monthly installments (Assume the applicable statutory rate was 12%, and the aggregate amount of the loan and any other similar loans outstanding at any time during the previous twelve months exceeds three months basic pay)

Loan interest

Interest per statutory rate	= $\frac{12\% \times 3,000,000}{12}$
	= TZS 30,000/=
Less interest paid	NIL

Loan Interest benefit = TZS. 30,000/=per month-

Beneficial loans include any amount the loan written off by the employer, unless the employee has died.

4.7.4 Provision of residential premises.

The value of premises for residential occupation, including any furniture or other contents, is calculated as the lesser of -

- i) the annual market value of the rental of the house; or
- ii) the greater of 15% of the employee's total income for the year excluding the housing benefit component and the expenditure claimed as a deduction by the employer in respect of the premises during the year of income.

Where the premises are occupied by the employee for only part of the year of income, the benefit is apportioned as appropriate, that is the portion of the period the premises are occupied over the year of income.

Illustration

Where an employer provides residential premises to the employee whose salary is TZS. 60,000,000/= for year, for which market rental

value is TZS. 12,000,000/= per year and the employer claims a deduction of TZS. 15,000,000/= per year the housing benefit is calculated as follows:

- i) Market rental value: TZS 12,000,000
 - ii) 15% of the salary: TZS 9,000,000
- Deduction claimed: TZS 15,000,000

The value of the benefit is TZS 12,000,000 reduced by any rent paid and greater of 9,000,000 and TZS 15,000,000 i.e. the lesser of TZS 12,000,000 and TZS.15,000,000 Hence the value of housing benefit is **TZS 12,000,000** for the year of income, which is TZS 1,000,000 per month less rent paid by the employee.

4.7.5 Other benefits.

The rules of quantification are as prescribed in the regulations, or in the absence of regulations, the market value, less if any, part of the cost of the benefit made good by the employee to the provider (employer.)

4.8 Calculation of income from payment for Redundancy or Loss or Termination of Employment.

Payments on termination are not taxable on the general earnings rule (cash basis) because they are not in return for the services rendered. However they are taxable. Receipts on termination, both cash and in kind should be taxed.

In calculating an individual's gains or profit from payment for redundancy or loss or termination of employment, any payment received in respect of a year of income which expired earlier than five years prior to the year of income in which it was received, or which the employment or services ceased, if earlier such payment shall, for the purposes of calculation of the tax payable thereon, be allocated equally between the years of income in which it is received or, if the employment or services ceased in an earlier year between such earlier year of income and the five years immediately preceding such year of income in which such payment is so received or as the case may be, such earlier year of income in which the employment or services ceased, and each such portion, allocated to any such year of income shall be deemed to be income of that year of income in addition to any other income in that year of income.

Illustration

An employee is paid by the employer Sh. 28,000,000/= for termination of the employment in the year 2007 when the employment actually ceased.

The payment relates to years 1996 to 2007, inclusive and is allocated by the employer as Sh. 2,000,000 for each of the years 1996 to 2002 and TZS. 2,500,000 for 2003, and 2004 and Sh. 3,000,000 years 2005, 2006 and 2007. Allocate the terminal payment for calculating income tax of the employee.

Solution

For calculating the income of the employee the terminal payment is treated as follows:

The employer has allocated the payment as follows

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Amount	2.0m	2.0m	2.0m	2.0m	2.0m	2.0m	2.0m	2.5m	2.5m	3.0m	3.0m	3.0m

- The income for years 1996 to 2001 (Sh. 12.0m) is to be allocated equally over the prior six years to 2007 i.e. Sh. 2.0m for each year.
- The allocation for calculating tax purposes is as follows

Year	2002	2003	2004	2005	2006	2007
Income spread back (TZS.)	2.0m	2.0m	2.0m	2.0m	2.0m	2.0m
Allocated (TZS.)	2.0m	2.5m	2.5m	3.0m	3.0m	3.0m
Total reallocated (terminal payment (TZS.))	4.0m	4.5m	4.5m	5.0m	5.0m	5.0m

The income as reallocated is assessable in the six years between 2002 and 2007, additional to any income previously declared or assessed. No terminal payment will be assessed for years 1996 to 2001.

4.9 Calculation of income received as Compensation for the termination of any contract of employment.

4.9.1 Contract for a specified term.

Payments to which the employee is contractually entitled are taxable. Tax on payment for compensation of any contract of employment is restricted in accordance with the formula indicated below:-

If the contract is for a specified term, the amount to be included in calculating the gains or profit on termination shall not exceed the amount which would have been received in respect of the unexpired period of such contract and shall be deemed to have accrued evenly in such unexpired period.

Illustration.

An employee who has a contract of employment for five years from 1/1/2006 to 31/12/2010 is having the contract terminated on 31/12/2007 and paid Sh. 72,000,000 for the termination of the contract.

The compensation amount of Sh. 72,000,000 shall be allocated evenly over the unexpired period of the contract, i.e. 1st January, 2008 to 31st December, 2010, as Sh. 24,000,000 for each of the years 2008, 2009 and 2010. None of the amount shall be allocated to the expired period of the contract.

4.9.2 Contract for unspecified term but provides for compensation

If the contract is for unspecified term and provides for compensation on termination thereof, such compensation shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum, of the gains from the contract received immediately prior to such termination.

Illustration.

An employee had a contract of employment for unspecified period which provided for compensation on termination. The contract was terminated on 31st December, 2006. During the year 2006 the employee was receiving gross remuneration of Sh. 18,000,000. On 4th January, 2007 the employee received as compensation for the termination of the contract a payment of Sh. 58,000,000.

For purpose of calculating the employee's income tax, the payment will be allocated evenly for the period immediately after such termination at the annual rate of the income the employee received immediately before the termination as follows:

Salary for year 2006	TZS. 18,000,000
Compensation payment year 2007	TZS. 18,000,000

Compensation payment year 2008	TZS. 18,000,000
Compensation payment year 2009	TZS. 18,000,000
Compensation payment year 2010	TZS. 4,000,000

The compensation payment of TZS. 58,000,000 will be assessed for years 2007, 2008, 2009 and 2010 as shown above.

4.9.3 Contract for unspecified period and doesn't provide for

If the contract is for an unspecified term and does not provide for compensation on its termination any compensation amount received shall be deemed to accrue in the period immediately following such termination at a rate equal to the gain of such contract received immediately prior to such termination but the amount shall not exceed three years remuneration at such rate.

An employee had a contract of employment of unspecified period which did not provide for compensation on its termination. The contract was terminated on 31stDecember, 2006. During the year 2006 the employee received from the contracted employment TZS.18,000,000. On 4th January, 2007 the employee received a payment for the compensation of the contract of TZS. 58,000,000.

For purposes of calculating the employee's income tax the compensation payment shall be deemed to have accrued in the period immediately after the termination and based on the rate of payment received immediately before such termination exceed the amount of three years remuneration as follows:

Salary for year 2006	TZS. 18,000,000
Compensation payment year 2007	TZS. 18,000,000
Compensation payment year 2008	TZS. 18,000,000
Compensation payment year 2009	TZS. 18,000,000
Compensation payment year 2010	TZS. 4,000,000

The compensation payment will be assessed for years 2007, 2008 and 2009 at TZS. 18,000,000 for each year. The balance of TZS. 4,000,000 will not be taxed.

4.10 Other Lumpsum Payments

Where lump sums are received otherwise than in connection with the termination of employment they will be taxable if they are derived from the employment under the general rules i.e. taxable on the year of receipt (cash basis).

5.0 REVOCATION.

Pursuant to the provisions of Section 130(2) the Practice Note Number 10/2004 issued on 15th December, 2004 is hereby revoked.

Signed.....
Commissioner
1st November, 2013.