

20 OCTOBER 2023

Tax & Exchange Control ALERT

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Tempers continue to cool: Are uniform allowances (for nurses) taxable?

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Tempers continue to cool: Are uniform allowances (for nurses) taxable?

The inclusion of any part of an allowance paid or payable in an employee's taxable income is governed by section 8(1)(a) of the Income Tax Act 58 of 1962 (Act).

In terms of section 8(1)(a)(i) of the Act, a taxpayer is required to include, in its taxable income, an amount which is paid or granted by their principal as an allowance or advance, unless the allowance or advance is exempt from normal tax in terms of section 10(1) of the Act.

The types of allowances that may be paid by an employer to an employee include (but are not limited to) a travel allowance, subsistence allowance and other allowances received by virtue of the employee's office or duties, for example a uniform allowance or a cell phone allowance.

It has recently been reported in the news that the Department of Health has agreed to pay a temporary allowance to nurses in the public sector to enable them to buy uniforms. According to a news article, the nurses had threatened to work in their own clothes if problems over uniforms were not resolved.

According to the article, nurses had been receiving a uniform allowance since 2005. However, this changed on 31 March 2023 when the Public Health and Social Development Sectoral Bargaining Council agreed to the receipt of uniforms as opposed to the payment of an allowance. The uniforms were supposed to be handed out to the nurses on 1 October 2023, however, the department was unable to deliver them in time, which resulted in the stand-off with the nurses and the threat to wear their own clothes to work.

In an effort to cool tempers, the Department of Health agreed to temporarily re-initiate the allowance until it was able to deliver the uniforms, which has been estimated to be from January 2023 to January 2025. Until then, the department has undertaken to pay the nurses an allowance of R3,153 by 20 November 2023.



Tax 2023 Rankings

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From a tax perspective, this amount will potentially not be subject to tax. In terms of section 10(1)(nA) of the Act, where an employee is, as a condition of their employment, required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of such uniform, or any allowance provided *in lieu* of any such uniform, given to the employee by his employer, will be exempt from normal tax and therefore not subject to tax.

However, the value of the allowance must still be reflected on the employee's IRP5/IT3(a) under source code 3714.

Exemption conditions

In terms of section 10(1)(nA) of the Act, in order to qualify for the exemption:

1. The wearing of a uniform needs to be a condition of employment. In practice, the relevant employee's employment contract must incorporate this condition and may have to provide for disciplinary action in circumstances where the condition is not fulfilled.
2. The uniform must be a "special" uniform which is distinguishable from ordinary clothing. Therefore, requiring one's employees to wear black jeans and a black top while on duty will potentially not qualify for a uniform allowance exemption as these items of clothing are likely not readily distinguishable from ordinary clothing, notwithstanding that wearing them may be a condition of employment. Examples of the type of uniforms that could qualify for exemption include nurses uniforms and firefighters uniforms.
3. The value of the uniform given and the amount of the allowance paid by the employer must be reasonable. This is a question of fact having regard to the circumstances.

Allowances that are not exempt from taxable income as contemplated in section 10(1) will likely be subject to employees' tax as envisaged in

the Fourth Schedule to the Act. The deduction of employees' tax from various types of allowances is governed by the definition of "remuneration" in paragraph 1 of the Fourth Schedule to the Act. In this context, employees' tax must be deducted from an allowance paid or payable by an employer that falls within the definition of "remuneration", unless specifically excluded.

If you are uncertain about the tax treatment of a particular allowance or advance, you should obtain tax advice, as under-declaring tax on an allowance or advance granted may result in the imposition of penalties and interest that could adversely impact the employer and employee, and nobody wants that.

Puleng Mothabeng

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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