

THE CONTROVERSIAL PAYE ON HOTELS & SHARED QUARTERS: By Jonathan Hore

There are instances where one struggles with whether to determine a housing benefit in the hands of employees given the peculiarity of the circumstances under which the benefits arise. For example, does one deduct PAYE from employees who stay for long periods in hotels and lodges? Or, what happens when employees share an apartment, given that there is no public guidance from the taxman on that matter? These issues are dicey by nature and lead to divergent tax views. I will explore the said matters in detail below. In this article, words importing the masculine shall be deemed to include the feminine.

Housing benefit brief

The Income Tax Act or Act requires an employer to bring to tax the value of a housing benefit enjoyed by an employee in respect of accommodation provided by the employer. The section dealing with that aspect states that, 'the annual value of any quarters or residence provided for an employee,' shall form part of an employee's taxable remuneration. That sounds so straightforward until we face the reality of some complex arrangements, some of which are enunciated below. The benefit is determined as 10% of the rateable value of the house as provided by the responsible city/town council or using $P250 \times 8\% \times$ floor area of a house situated in a tribal area.

Hotels and lodges

The extract of the Act referred to above requires that tax be levied on a housing benefit arising from, 'any quarters or residence provided for an employee.' It often happens that employers may win tenders in places which are distant from employees' permanent places of abode, leading to such employees staying in hotels or lodges for long periods. The big issue there is whether a hotel or lodge is 'quarters or residence' as espoused in the Act. Okay, when the legislature came up with that law, did he really mean to tax an employee who is housed in such places or he meant to tax those who are only provided with proper houses?

If the hotels and lodges are housing subject to tax, how do we measure the amount taxable? The difficulty is that lodges and hotels don't necessarily fit within properties one can get rateable values from city or town councils for tax purposes, therefore measuring the tax becomes a quandary. The advice to one who finds themselves in this dilemma is to obtain a ruling from BURS with clear parameters of how the benefit must be measured, if indeed tax is payable on such accommodation.

Shared quarters

It often happens that employees share apartments which may result in say 3 employees staying in one house. The tricky issue there is how the employer must tax each of the employees enjoying the housing benefit. It would be easy to say that one must apportion the benefit per the number of the employees but what if the other employee occupies a larger portion of the house? As a best estimate, it would appear logical to apportion the benefit using the floor area occupied by each respective employee. This may require HR personnel to physically measure the areas of the houses. Alternatively, if the houses are in distant areas, an expert regarding housing may be engaged to provide the square meterage occupied by each employee.

Houses provided by clients

The other difficulty arises when employees are housed in accommodation availed by the employer's clients. In most such instances, a client would have engaged the employer for

some services under an arrangement where the client is required to provide housing to the client's employees. In other words, the housing benefit is provided by a third party who is not the employer and technically PAYE only arises if the accommodation is provided by the employer. It makes tax sense to argue that the employees must still be taxed on such accommodation as it arises from arrangements made by their employer. It cannot be denied that the employees enjoy the benefit from an employment arrangement.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax whatsapp group or know more about our 9 Tax e-books, send me a text on the number below.