

ETRS/SRTL Public Ruling 2001/13

Public Ruling: The value of “non-wage benefits” for employees of income tax exempt employers

Relying on this Ruling

This is a public ruling within the meaning of Section 66 of Regulation 2000/18 (as amended). Information in this ruling may be relied upon by taxpayers as the basis for determining their tax liability.

Introduction

1. Regulation 2000/18 imposes a wage income tax on “taxable wages” in respect of employment in East Timor. “Taxable wages” are defined in section 3 of the Regulation as “wages” less “exempt wages”. The definition of “wages” includes the value of “non-wage benefits” exceeding \$20 per month provided to employees of employers who are exempt from income tax.
2. The definition of “non-wage benefits” specifically includes five types of “benefit” and provides that the Commissioner shall determine the value of three of those types of non-wage benefit, namely:
 - the provision by the *employer* to an *employee* of the use of a motor vehicle wholly or partly for private purposes of the *employee*;
 - the provision by the *employer* of accommodation or housing; and
 - the provision by an *employer* to an *employee* of a housekeeper, driver, guard, gardener, or other domestic assistant.
3. This Ruling explains the valuation methods used by the Commissioner to determine the value of the three types of non-wage benefits mentioned above.
4. This Ruling does not apply to benefits of the types mentioned above provided to employees of employers who are subject to income tax. In such cases, the employees are not subject to wage income tax or income tax on those benefits, AND the employers are not allowed to claim a deduction for the cost of providing those benefits when calculating their income tax liabilities.

Provision of a motor vehicle

Wholly employment use

5. The provision of a motor vehicle is only a non-wage benefit when the vehicle is used wholly or partly for private purposes of an employee. Where the vehicle can only be used for employment purposes, the provision of the vehicle does not give rise to a non-wage benefit.

Example 1: Roberto works for a government department. As part of his employment, he is required to regularly visit various government offices in Dili and in other parts of East Timor. To carry out his responsibilities, Robert is provided with a motor vehicle. The motor vehicle is parked at his workplace and when he travels for government business, he picks the vehicle up at his office and returns it to the office. He is not permitted to use the vehicle for non-work purposes.

Because there is no personal use of this vehicle, there is no non-wage benefit for Roberto.

Provided by employer or under an arrangement with the employer

6. The provision of a motor vehicle will be a non-wage benefit where the vehicle is provided by an employer or by another person on behalf of the employer.

Example 2: Christo works for a non-profit organisation that assists local coffee growers. The non-profit organisation reaches an agreement with a coffee mill that it will provide marketing assistance to the coffee mill if the mill makes one of its vehicles available to Christo in the evening or on weekends when the vehicle is not required for the mill's purposes.

The provision of the vehicle is a non-wage benefit for Christo and Christo's employer (the non-profit organisation) is responsible for delivering wages tax in respect of the benefit.

Provided to the employee or for the employee's benefit

7. An employee receives a non-wage benefit where a motor vehicle is provided directly to the employee or is made available for the benefit of the employee. For example, if a motor vehicle is made available to the spouse of an employee or is used to transport the employee's children, the provision of the vehicle will be a non-wage benefit to the employee.

Value of the benefit

8. The annual value of a non-wage motor vehicle benefit is calculated as 24 per cent of the market value of the vehicle at the time it is first acquired by the person receiving the non-cash benefit. The

value is prorated by the number of days the vehicle was provided to a person. A vehicle is provided to a person whether or not the person makes use of the vehicle on a particular day. If a vehicle is replaced with another vehicle, the first vehicle is treated as being available the entire changeover day and the replacement vehicle is treated as being available commencing the following day.

Example 3: Augustine is provided with a Toyota vehicle by his employer. On February 28, the vehicle is replaced with a Nissan vehicle, which continues to be provided to him until the end of the year. Augustine's non-wage benefits for the year are calculated as follows:

Toyota: market value of the car when originally provided to Augustine x 24% x 59/365

Nissan: market value of the car when originally provided to Augustine x 24% x 306/365

Example 4: As in example 3 but Augustine travels to Australia for 14 days vacation in January and to Singapore on business for his employer for 21 days in February.

If the employer takes the motor vehicle back from Augustine when he is away and makes it available to another person during that period, the 59 days figure used in the formula in Example 3 will be reduced to 24. However, if the motor vehicle continues to be provided to Augustine while he is away (for example, the employer does not recover the vehicle and instead it remains parked at Augustine's residence and the keys remain with his family), there is no adjustment to the number of days the vehicle was provided.

9. A vehicle will be provided to a person on a day if it is provided on any part of the day.

Employee allowed to take vehicle home

10. In some cases an employer provides a motor vehicle to an employee for business or employment purposes only but allows the employee to store the vehicle at the employee's private residence out of work hours. Where an employee uses a vehicle only to travel from the place of employment to the employee's home and back to work and is not available otherwise for the employee's private travel, the Commissioner will accept as an alternative to the valuation described in paragraph 8 above, a value of \$2 for each occasion a vehicle is taken home and returned. Where this method is used to value the benefit, the employer will be required to keep a record of the number of occasions vehicles are taken home by his/her employees.

Example 5: Angelo receives a wage of \$200 per month and takes a car owned by his income tax exempt employer home,

for security reasons, on 15 occasions during March 2002. As Angelo's employer does not allow him to use the car for other private purposes, the use of the car can be valued at \$2 per return trip. For the purpose of calculating wage income tax, Angelo's wage income for March is considered to be \$230 with \$13 tax (10% of excess over \$100) payable. Angelo would therefore receive \$187 from his employer

Example 6: During April 2002, Angelo took the car home on 8 occasions and received no other non-wage benefits. The provision of the car would not be subject to wage income tax as Angelo's employer is exempt from income tax and the value of non-wage benefits provided to Angelo for the month (\$16) was not greater than \$20. In this case, only Angelo's wage of \$200 would be subject to wage income tax

Employee's contributions to vehicle costs

11. The value of a motor vehicle non-wage benefit (calculated as per paragraph 8 or 10 above) is reduced by any contribution the employee makes towards the acquisition or running costs of the vehicle. Thus, for example, if an employee personally pays for fuel for the vehicle and is not reimbursed by the employer for those costs, the value is reduced by the employee's payments. There is no reduction of the value if the employee pays for running costs such as fuel, maintenance or repairs and is subsequently reimbursed by the employer or another person for those expenses.

12. An employee claiming a reduction in the value of a non-wage benefit on the basis of the employee's contributions to the costs of the vehicle must substantiate the expenses with receipts or other proof of payment. False claims may result in the imposition of penalties including, in the case of actual or attempted evasion of tax, a penalty of up to the higher of \$1,000 and two hundred percent (200%) of the tax evaded; and imprisonment for a period up to five years (see section 81 of Regulation 2000/18 (as amended)).

Provision of Accommodation

13. An employer can typically provide an employee with accommodation assistance in any of four different ways, namely:
- by paying the employee an allowance towards his/her accommodation costs
 - by reimbursing the employee for some or all of his/her actual accommodation costs
 - by providing an employee with accommodation directly, where that accommodation is owned by another person and the employer pays rent directly to that person

- by providing an employee with accommodation directly, where that accommodation is owned by the employer.

14. The value of accommodation provided in any of these manners falls into the definition of a non-wage benefit if the provision of accommodation is a reward for the services of the employee.

Situations where accommodation assistance is not a reward for services

15. In ETRS Ruling 2001/5, the Commissioner indicated that some of the value of accommodation provided by way of a housing allowance will not be considered to be a reward for services where the employee is living away from his primary place of residence. While that Ruling only looked at the situation where the employee maintained a primary home or similar place of residence outside East Timor, the Commissioner considers the same principle to apply if an employee maintains a primary home elsewhere in East Timor.

16. ETRS Ruling 2001/5 also states that the Commissioner accepts that where the employee maintains a primary place of residence outside East Timor and either has accommodation provided by the employer or is reimbursed for accommodation costs, the value of the accommodation benefit is not subject to wage income tax as it will not be a reward for services. The Commissioner considers the same principle to also apply if an employee maintains a primary home or similar place of residence elsewhere in East Timor.

Value of the benefit

17. Where an employer provides an employee with residential accommodation and the employer has acquired that accommodation from a third party for an arm's length rent to the third party, the value of the non-wage benefit is the rental cost to the employer for the accommodation.

18. Where the employer provides residential accommodation to an employee and has not acquired the accommodation from a third party for an arm's length rent, the Commissioner has determined that the value of the non-wage benefit for a year is 10 per cent of the market value of the property provided.

Shared accommodation

19. The value of accommodation provided to an employee will also depend on the number of persons living in the premises. Thus, if an employee is provided with exclusive use of an entire premises, the value of the non-wage benefit will (unless there is an arm's length

rental) be 10 per cent of the market value of the property. If two unrelated persons share a premises, the value of the accommodation provided to each person would be one-half the full value of the accommodation.

20. When calculating the value of accommodation provided to an employee, the Commissioner considers accommodation provided to relatives of an employee to be provided for the benefit of the employee.

Example 7: A government department provides a house in Dili to two government employees. John lives in the house alone and Ronald lives in the house with his wife and three children. The house has a market value of \$50,000.

The value of the accommodation provided to Ronald is calculated as follows:

$$(10\% \times 50,000) \div 2 = \$2,500$$

Since Ronald is living with his entire family, he will not be able to provide the Commissioner with evidence that he has a primary home or similar accommodation outside or elsewhere in East Timor and the value of his non-wage benefit will therefore be \$2,500 for the year.

The value of the accommodation provided to John is the same as the value of the accommodation provided to Ronald but if John is able to provide the Commissioner with evidence that he has a primary home or similar accommodation outside or elsewhere in East Timor (for example, (a) if the rest of his family continues to reside in a family home elsewhere, or (b) if he is unmarried but maintains a primary home elsewhere that is not being rented), the value of his non-wage benefit will be NIL

Provision of accommodation for part of a year

21. Where accommodation is provided for only part of a year, the value of the non-wage benefit, where it has been calculated for a year on the market value of the property, will be reduced on a pro-rata basis. The Commissioner considers accommodation to be provided to an employee on a day on which it is provided for any part of the day.

Employee's contributions to accommodation costs

22. The value of an accommodation non-wage benefit is reduced by any contribution that the employee makes to the employer for use of the accommodation. The employee must be able to substantiate the payment of such amounts. Payments made by the employee relating to

the use of utilities (such as electricity, water and telephone) will however not reduce the value of the benefit.

Domestic staff

23. The Commissioner considers the value of domestic staff such as a maid, guard, or driver provided to an employee to be the value of wages and non-wage benefits provided to the staff person.

24. The value of a domestic staff non-wage benefit is reduced by any contribution that the employee makes to the employer for the provision of domestic staff. The employee must be able to substantiate the payment of such amounts. Payments made by the employee for items such as food given to the domestic staff will however not reduce the value of the benefit.

Date of effect

25. This ruling has effect from 1 January 2002.

Graham Burnett
Acting Commissioner of East Timor Revenue Service
14 December 2001

Legislative references:

definition of “wages”	Reg 2000/18	s 3
definition of “non-wage benefits”	Reg 2000/18	s 3