

INTERPRETATION NOTE 66

DATE: 01 March 2012

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 10(1)(q) AND THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : SCHOLARSHIPS OR BURSARIES

Preamble

In this Note –

- references to sections are to sections of the Act;
- references to paragraphs are to paragraphs of the Seventh Schedule to the Act unless otherwise stated; and
- unless the context indicates otherwise, any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides clarity on the tax implications of any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution. Practice Note No. 17 of 12 March 1993 is hereby withdrawn.

2. Background

Generally, any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution is exempt from normal tax. This exemption is, however, subject to certain conditions, particularly where the scholarship or bursary is granted by an employer (or an associated institution in relation to that employer) to an employee or to a relative of such employee.

3. The law

For ease of reference, the relevant sections of the Act are quoted in **Annexure A**, and are discussed in more detail below.

4. Interpretation of words and phrases

4.1 “*Bona fide* scholarship or bursary granted”

The phrase “*bona fide* scholarship or bursary granted” refers to financial or similar assistance granted to enable a person to study at a recognised educational or research institution. Such financial aid may be awarded with or without taking into account academic merit, and would include a grant which is, in terms of a written agreement, conditional upon the fulfilment of certain stipulated requirements. The

grantee may, for example, be required to obtain a qualification within a certain period, or take up employment with the grantor on completion of the course of study.

The grant must be made to enable the grantee to pursue a course of study for the purpose of gaining or expanding knowledge, aptitude or skills.

A reward or reimbursement of study expenses, borne by a person, after completion of studies, does not qualify for the exemption, as the grant must have been made solely to enable or assist the grantee to study. The tax position relative to scholarships, bursaries and study loans is dealt with in **5** of this Note.

A *bona fide* scholarship or bursary could include the cost of the following:

- Tuition fees
- Registration fees
- Examination fees
- Books
- Equipment (required in that particular field of study, for example, financial or scientific calculators)
- Accommodation (other than the person's home)
- Meals or meal voucher/card
- Transport (from residence to campus and vice versa).

A direct payment of fees, for example, to a university for the purpose of an employee's studies, is regarded as falling within the ambit of a *bona fide* scholarship or bursary.

4.2 “Recognised educational or research institution”

The scholarship or bursary must be granted to study at a “recognised educational or research institution”. SARS will accept that an educational or research institution qualifies as “recognised” if that institution has been established by or registered under the laws of South Africa, for example the Higher Education Act, 1997, the Skills Development Act, 1998 or the National Research Foundation Act, 1998.

It will also be acceptable if a scholarship or bursary is granted to study at a foreign educational or research institution if the qualification obtained from that institution upon completion of such studies would be recognised by the South African Qualifications Authority under the National Qualifications Framework Act, 2008.

In cases where the educational or research institution does not fall into one of the above categories, the local SARS office should be approached for confirmation whether or not the institution qualifies.

4.3 “To study”

The words “to study” refer to the formal process whereby the person to whom the scholarship or bursary has been granted gains or enhances his or her knowledge, aptitude or expertise in the pursuit of learning. It is not a requirement that a degree, diploma or certificate be attained on completion of the course of study.

Research undertaken by a person for the benefit of another person, for example, an employer, a business or sponsor, is not regarded as “studies”. Funding of such research will not constitute a *bona fide* scholarship or bursary granted to enable or assist the researcher to study. See 5 below for the tax implications in this regard.

A grant to a visiting academic for the purpose of lecturing students does not satisfy the study requirement, as the object of the grant will be to impart and not to gain knowledge.

4.4 “Remuneration”

The word “remuneration” refers to the amounts payable by the employer to an employee for services rendered or by virtue of employment. For example, where an employer has granted a travelling allowance to the employee, the full amount of the allowance will be taken into account to determine if the remuneration derived by the employee during the year of assessment exceeded R100 000, as referred to in section 10(1)(q)(ii)(aa). It is clear, therefore, that the meaning of remuneration in this regard is not “remuneration” as defined in paragraph 1 of the Fourth Schedule to the Act.

4.5 “Fund”

The word “fund” is not defined in the Act and must therefore be given its ordinary meaning. The Oxford Dictionary & Thesaurus¹ defines the word “fund” to mean “a stock of money, esp. one set apart for a purpose”. The Concise Oxford English Dictionary² defines “fund” as a “sum of money saved or made available for a particular purpose”.

It is evident from the above dictionary definitions that the meaning of the word “fund” in sub-paragraph (c) of the definition of “associated institution” is very wide. As soon as a sum of money is set aside for a particular purpose (for example, to grant scholarships or bursaries), the said sum of money is a fund and is, in itself, classed as an associated institution in relation to the employer if it is solely or mainly established to provide benefits to employees or former employees of a particular employer.

Example 1 – A fund

Facts:

Company A set aside R1 million for various corporate responsibilities. R350 000 was set aside for corporate social responsibility, R200 000 for providing bursaries, and R450 000 for research and development. How will the R1 million be viewed for tax purposes?

Result:

Each of the allocated amounts is to be regarded as a “fund” on its own.

¹ The Oxford Dictionary & Thesaurus, first published by Oxford University Press, 1993 as The Readers Digest Oxford Wordfinder.

² Concise Oxford English Dictionary edited by Catherine Soanes, Angus Stevenson. 11th ed. rev New York; Oxford University Press, 2006.

5. Application of the law

5.1 Exemption

Generally, *bona fide* scholarships or bursaries are fully exempt from normal tax, provided –

- they are awarded solely on merit to any applicant and are not to any extent confined solely to employees or relatives of employees of a particular employer;
- the scholarship or bursary is awarded to enable the scholarship-holder to study at a recognised educational or research institution; and
- certain conditions are met.

5.2 Conditions

The exemption of a scholarship or bursary granted by the employer (or by an associated institution in relation to the employer) to the employee or to a relative of such employee is subject to the following conditions:

- a) A scholarship or bursary awarded to the **employee** is not exempt from normal tax in the hands of the employee unless he or she agrees to reimburse his or her employer for the scholarship or bursary if he or she fails to complete his or her studies for reasons other than death, ill-health or injury. See section 10(1)(q)(i).

The Explanatory Memorandum on the Revenue Laws Amendment Bill, 2006, explains that bursaries granted to employees are exempt from tax –

“...as long as the employee agrees to repay the employer if the employee fails to fulfil his or her scholarship or bursary obligation... This repayment clause provides an incentive for employees to take their scholarship or bursary commitments seriously.”

The obligation of an employee to complete his or her studies therefore refers to the study obligations imposed on the employee under the scholarship or bursary.

A scholarship or bursary will not qualify for the exemption if there is no repayment clause in the agreement with the employer.

Example 2 – Conditional scholarship or bursary

Facts:

Z and J are each awarded a bursary from their employer, ABC (Pty) Ltd, to study at a recognised university. The bursary is granted on condition that the employees reimburse ABC (Pty) Ltd for the bursary if they fail to complete their studies for reasons other than death, ill-health or injury.

Z was injured in a car accident and could not write her examination.

J wrote his examination, but was unsuccessful in meeting the minimum requirements for a pass.

Result:

The bursary granted to Z will be exempt from normal tax in her hands.

The bursary granted to J will be exempt from normal tax if J reimburses ABC (Pty) Ltd for the bursary. The bursary will not be exempt from normal tax in J's hands if he is not required to reimburse his employer.

Example 3 – Conditional scholarship or bursary

Facts:

M, an employee of FGH Ltd, was awarded a bursary to study at a national university, on condition that she reimburses FGH Ltd if she fails to complete her studies for reasons other than death, ill-health or injury. The bursary was granted for the successful completion of 8 modules, failing which, FGH would not grant M a further bursary until all of those subjects were passed.

M passed seven of her eight modules in the current year. She had to repay FGH Limited only for the subject that she failed.

Result:

M's bursary will be exempt from normal tax under section 10(1)(q).

- b) A scholarship or bursary awarded to a relative of an employee is not exempt from normal tax in the hands of the employee if the remuneration derived by the employee during the year of assessment exceeded R100 000. The first R10 000 of a scholarship or bursary awarded during the year of assessment, where the remuneration derived by the employee during the year of assessment does not exceed R100 000, is exempt from normal tax in the hands of the employee. The R10 000 exemption limit applies to each relative of the employee who is granted a scholarship or bursary.

To the extent that the scholarships or bursaries granted to the relatives of the employee are not exempt from normal tax in terms of section (10)(1)(q)(ii), the scholarships or bursaries will be subject to normal tax in the hands of the employee. The amount of the scholarship or bursary paid by the employer, in this instance, will be regarded as a payment of the employee's debt, which is a taxable benefit in terms of paragraph 2(h), read with paragraph 13. Although the scholarship or bursary is granted to the relative of the employee (and not to the employee), paragraph 16 deems any benefit or advantage of this nature granted by the employer to the relative of such employee to be a taxable benefit in the hands of such employee.

Example 4 – Calculation of exempt portion for employees' relatives

Facts:

A and B (Z's children) and R (J's child) were awarded a scholarship of R17 000 each by ABC (Pty) Ltd to study at a university of technology. The remuneration earned by Z and J during the current year of assessment was R100 000 and R105 000, respectively.

Result:

Z's remuneration did not exceed R100 000. She will therefore receive an exemption of R10 000 in respect of each scholarship received by her children. The taxable

portion of each scholarship received will thus amount to R7 000 (R17 000 less R10 000). An amount of R14 000 (2 x R7 000) is deemed to be a taxable benefit in Z's hands.

J's remuneration exceeded R100 000. The full scholarship amount of R17 000 awarded to his child is subject to normal tax in J's hands.

5.3 Retired employees

Scholarships or bursaries granted to a relative of an employee who retired on or after 1 March 1992, irrespective of the reason for the retirement, will be subject to the limitations referred to in **5.2** regardless of whether the scholarship or bursary was granted before or after the employee's retirement. This is due to the definition of "employee" in paragraph 1 including employees who retired on or after 1 March 1992.

5.4 Research

The payment received by a person who undertakes research for the benefit of another person (see **4.2**), will be subject to normal tax in his or her hands and he or she will not qualify for the exemption in terms of section 10(1)(g). The person paying the amount will qualify for a deduction, subject to the provisions of sections 11(a) and 23.

5.5 Recoupment

Any amount recouped by a taxpayer which arises in respect of a scholarship or bursary granted by such taxpayer, where the amount of the scholarship or bursary has been allowed as a deduction against the income of such taxpayer will, in terms of section 8(4)(a), be included in such taxpayer's income in the year of assessment in which such amount is recouped.

5.6 Study loans

A loan does not constitute income for normal tax purposes as a loan is of a capital nature and is, therefore, not taxable. Personal study loans obtained from a financial institution or from any other source unrelated to employment are not taken into consideration for purposes of section 10(1)(g), nor are the study expenses incurred by the holder of the loan, including the interest payable thereon, deductible from the income of the borrower. These privately-funded loans are, therefore, neither taxable nor tax deductible.

In terms of paragraph 11(4)(b), no value is placed on a taxable benefit derived by an employee in consequence of the grant by any employer to an employee of any low-interest or interest-free loan for the purpose of enabling that employee to further his or her own studies.

Any scholarship or bursary which is granted subject to repayment due to non-fulfilment of conditions stipulated in a written agreement will be treated as a *bona fide* scholarship or bursary as indicated in **5.2** until such time as the non-compliance provisions of the agreement are invoked. In the year of assessment in which such provisions are invoked, the amount or amounts of the scholarship or bursary will be regarded as a loan and, if relevant, any benefit which an employee may have received by way of an interest-free or low-interest loan will constitute a taxable benefit in terms of paragraph 2(f). The employee will not qualify for the exemption contained in paragraph 11(4)(b), as the loan was not granted to enable the employee to study.

An employee will have received a taxable benefit in terms of paragraph 2(h) if he or she is absolved from repaying a loan received from his or her employer to enable him or her to study.

5.7 Reimbursement of study expenses

As mentioned in 4.1, a reward or reimbursement to an employee for a qualification, or for having successfully completed a course of studies, or reimbursement for study expenses borne by the employee, will represent (in the case of such reward), taxable remuneration. In the case of the reimbursement of expenses, such reimbursement is gross income in terms of paragraph (c) of that definition in section 1.

5.8 Study loans or bursaries taken over by new employer

An employee who had been granted a bursary, study loan or similar assistance on condition that the employee will render services to that employer for an agreed period, is generally required to refund that employer the full amount or a portion of the amount of the bursary if the employee leaves the employment of that employer before the expiry of the agreed period.

No value shall be placed on the benefit (that is, payment of employee's debt by the new employer) if the employee has undertaken to work for the new employer for at least the unexpired period that had not been worked for the former employer, if the above is applicable and the new employer has paid a debt owed by the new employee to the former employer of such employee. This means that the benefit will not be subject to tax in the hands of such employee.

Example 5 – Study loan taken over by new employer

Facts:

T was granted a bursary of R10 000 by his employer on condition that he renders services to that employer for at least one year after the completion of that academic year. He is required to repay a pro-rata portion relating to the period not complied with. After he has worked for a period of seven months out of the required 12 months, T accepts a new position with another employer. The new employer settles the debt of R4 167 (that is, $5/12 \times R10\ 000$) owed by T which arose as result of the condition imposed in the bursary contract.

Result:

There will be no value placed on the benefit of R4 167 paid by the new employer (that is, the benefit will not be subject to income or employees' tax in T's hands), if T gives an undertaking that he will work for the new employer for at least five months (in consideration of the payment of R4 167). However, if such an undertaking has not been given by him, the benefit will be subject to employees' tax in his hands. Accordingly, the new employer will be required to include this benefit in T's IRP5 certificate.

Note: The amount refunded (as per the above example), will be subject to normal tax as a recoupment in the hands of the former employer, had the bursary amount been allowed as a deduction for normal tax purposes in the hands of the former employer in the year of assessment in which the bursary was granted (refer to 5.5).

5.9 Other forms of study assistance

5.9.1 Specialised training courses

Expenditure in connection with in-house or on-the-job training or courses presented by training institutions for or on behalf of employers does not represent a taxable benefit in the hands of the employees of the employer if the training is job-related and at the employer's premises. This is in terms of paragraph 10(2)(c), which provides that no value will be placed on the benefit derived by employees on services rendered by the employer to his or her or its employees at their place of work for the better performance of their duties.

The types of training courses envisaged under this heading could include the following:

- Computer and word-processing courses
- Management and administration courses
- Bookkeeping courses
- Sales courses
- Courses in operating office and technical equipment
- Language courses for employees whose home language is not one of the official languages
- Public relations courses
- In-house courses presented by banks or building societies
- Soft-skill training, for example, work-life balance or employment equity training.

In-house or on-the-job training, research and education of the nature described above must be distinguished from professional and formal education resulting in qualifications attaching to the person of an employee. The employee will, subject to the provisions of section 10(1)(q), be regarded as having received a taxable benefit if, for example, admission to a particular profession or the ability to perform certain specialised duties is dependent on the employee obtaining an appropriate qualification and the employer meets the employee's costs of obtaining the required qualification.

Fees payable by an employer in terms of a law, such as the Skills Development Act No. 97 of 1998, on prescribed classes or courses attended by his or hers or its employees, or fees refundable for the aforementioned reasons, will not constitute a taxable benefit in the employees' hands. These types of courses are not granted to employees as a benefit or advantage of or by virtue of employment, or as a reward for services rendered or to be rendered, but by virtue of an obligation imposed by law. They are therefore not benefits under the Seventh Schedule. The employer will qualify for a deduction on these payments in terms of section 11(a).

5.9.2 Remission of study fees by virtue of employment (teachers, lecturers and their relatives)

It is common practice for certain educational institutions, notably universities and private schools, to allow their employees and such employees' close relatives to study at these institutions free of charge or at greatly reduced fees. While the marginal cost of the education of such employees and their relatives represents a

taxable benefit under the Seventh Schedule, this benefit is regarded as a scholarship or bursary as contemplated in section 10(1)(g), and to which the limits discussed in 5.2 apply.

6. PAYE

The Guidelines for Employers (AS-PAYE-05-G1) which is available on the SARS website www.sars.gov.za contains instructions relating to the employees' tax position of taxable scholarships, bursaries, study loans and benefits relative thereto, and the duties of employers in this regard.

7. Conclusion

This Note provided clarity on the tax implications of any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution. Matters not covered by this Note, or instances of uncertainty, should be taken up with the local SARS office, citing full details.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

Annexure A – The law

Section 10(1)(q)

(1) There shall be exempt from normal tax—

- (q) any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognized educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee, the exemption under this paragraph shall not apply—
 - (i) in the case of a scholarship or bursary granted to so enable or assist any such employee, unless the employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury;
 - (ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study—
 - (aa) if the remuneration derived by the employee during the year of assessment exceeded R100 000; and
 - (bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such relative exceeds R10 000 during the year of assessment;

Paragraph 1 of the Seventh Schedule – “associated institution”

“associated institution”, in relation to any single employer, means—

- (a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; or
- (b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
- (c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;

Paragraph 1 of the Seventh Schedule – “employee”

“employee”, in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole shareholder or one of the controlling shareholders in such company and, for the purposes of paragraphs 2(h) and 13, including any person who has retired as aforesaid and who, after his retirement, is released by his employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement;