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ALGEMENE KENNISGEWING

DEPARTEMENT VAN BINNELANDSE INKOMSTE

KENNISGEWING 570 VAN 1979

BELASTING VAN BYVOORDELE VERBONDE AAN DIENS

Die volgende verslag deur die Staande Kommissie van Ondersoek insake die Belastingbeleid van die Republiek aan die Minister van Finansies in verband met bovermelde onderwerp word hierby ter algemene inligting en vir kommentaar gepubliseer.

Enige kommentaar moet skriftelik wees en moet voor 7 September 1979 aan die Sekretaris van Binnelandse Inkomste, Posbus 402, Pretoria, 0001 gestuur word.

BYVOORDELE VERBONDE AAN DIENS

1. INLEIDING

1.1 Die Kommissie van Ondersoek na die Fiskale en Monetêre Beleid in Suid-Afrika (die Franzsen-Kommissie) het in sy tweede verslag (November 1970) aanbeveel dat die betrokke bepalings van die Inkomstebelastingwet, 1962, uitgebou en versterk word sodat byvoordele verbonde aan diens doeltreffend belas kan word. Die Departement van Binnelandse Inkomste het kort daarna 'n ondersoek uitgevoer waartydens daar gepoog is om vas te stel in watter mate werkgewers byvoordele verskaf as deel van besoldiging en watter vorm hierdie voordele aanneem. Sedertdien het die Kommissie, bygestaan deur die Departement, 'n intensiewe studie van die aangeleentheid gemaak.

1.2 Daar bestaan geen twyfel nie dat die gebruik om werknemers gedeeltelik te vergoed by wyse van nie-kontantvoordele, wat oor die algemeen nie belas word nie, aansienlik toegeneem het, veral wat die hoër besoldigde personeel betref. Daar is nie akkurate statistieke beskikbaar nie, maar sommige ondersoeke wat in die privaatsektor uitgevoer is, toon dat nie-kontantverdienstes in die hoër inkomstegroepe soveel as 25 persent, of selfs meer, van die totale besoldiging bedra.

GENERAL NOTICE

DEPARTMENT OF INLAND REVENUE

NOTICE 570 OF 1979

TAXATION OF FRINGE BENEFITS ATTACHING TO EMPLOYMENT

The following report by the Standing Commission of Inquiry with regard to the Taxation Policy of the Republic to the Minister of Finance on the above subject is hereby published for general information and comment.

Any comment should be in writing and be sent to the Secretary for Inland Revenue, P.O. Box 402, Pretoria, 0001 before 7 September 1979.

FRINGE BENEFITS ATTACHING TO EMPLOYMENT

1. INTRODUCTION

1.1 The Commission of Enquiry into Fiscal and Monetary Policy in South Africa (the Franzsen Commission) recommended in its second report (November 1970) that the appropriate provisions in the Income Tax Act, 1962, should be clarified and tightened up so that fringe benefits derived from employment could be taxed effectively. Shortly thereafter the Department of Inland Revenue carried out a survey in an attempt to assess the extent to which employers were providing fringe benefits as part of remuneration and to ascertain the form which these benefits were taking. Since then this Commission, assisted by the Department, has made an intensive study of the matter.

1.2 There can be no question but that the practice of remunerating employees partly by way of non-cash benefits which generally speaking are not taxed, has become widespread especially in so far as higher paid staff is concerned. There are no accurate statistics available but some surveys made in the private sector put non-cash earnings in the higher income brackets as high as 25 per cent, or even more, of the total remune-

Hierdie neiging is onvermydelik as gevolg van die hoë marginale koerse van persoonlike inkomstebelasting, die ongelykheid tussen hierdie koerse en die maatskappykoerse en die wetlike en praktiese probleme om niekontantvoordele te belas. Die neiging is verstaanbaar, maar die gevolg is 'n ernstige erosie van die belastingbasis, wat op sy beurt bygedra het tot die bestaande hoë persoonlike inkomstebelastingkoerse. Bowenal het werknemers wat in die gelukkige posisie is om hierdie belastingvrye byverdienste te ontvang, wat belasting betref, 'n voordeel teenoor andere wat 'n identiese inkomste ontvang maar wat ten volle belas word. Die Kommissie voel dat dit net tot die bevraagtekening van die belastingstelsel se integriteit kan lei.

1.3 Dit is duidelik die bedoeling van die Inkomstebelastingwet dat nie net geld nie, maar die waarde van enige ander vorm van eiendom of geldelike voordele belas moet word. "Bruto inkomste" word in artikel 1 omskryf as die totale bedrag wat in kontant of andersins ontvang is deur, of toegeval het aan, die belastingbetaler, terwyl paragraaf (i) van die omskrywing "die waarde gedurende die jaar van aanslag van kwartiere of losies of huisvesting of van enige ander voordeel of bate ten opsigte van diens" insluit. Die Kommissie is van mening dat hierdie bepalings so vaag is en vatbaar is vir soveel verskillende vertolkings, dat hulle, met betrekking tot nie-kontantbyvoordele, in groot mate ondoeltreffend geword het. Gevolglik *word aanbeveel* dat omvattende en presiese reëls nou in die Inkomstebelastingwet opgeneem word.

2. ALGEMENE REËLS

2.1 Tans is dit nie duidelik volgens die Wet of die verantwoordelikheid om aan te dui of daar 'n belasbare voordeel volgens die bedoeling van paragraaf (i) van die omskrywing van "bruto inkomste" bestaan of nie, by die belastingbetaler of by die Sekretaris van Binnelandse Inkomste berus nie. Die gevolg is dat in baie gevalle, waarskynlik die meerderheid, hierdie voordele nie gemeld word nie of waar dit wel gemeld word, die waardes wat daaraan geheg word, onrealisties laag is. *Die Kommissie is van mening* dat indien die Wet enigsins doeltreffend moet wees, 'n duidelike verpligting op die *werkgewer* geplaas moet word om 'n waarde aan nie-kontantvoordele te heg wat deur of in opdrag van hom verskaf word en om hierdie waarde by die bepaalde werknemer se besoldiging, ten opsigte waarvan werknemersbelasting betaalbaar is, in te sluit. Die woordomskrywing van "besoldiging" in die Vierde Bylae by die Inkomstebelastingwet moet paslik uitgebrei word om hierdie doel te bereik.

2.2 Dit volg nou dat daar duidelike reëls moet bestaan waarvolgens daardie voordele se waarde bepaal moet word indien 'n verpligting op die werkgewer geplaas word om werknemersbelasting af te trek ten opsigte van die waarde van byvoordele deur hom verskaf. Volgens die bestaande wetgewing beskou die howe die bedrag wat die werknemer se sak gespaar word, as die waarde wat belas moet word. Wat die werknemer se sak gespaar word, kan baie verskil, afhangende van verskillende menings, en daar kan nie van werkgewers verwag word om voordele op hierdie basis te waardeer nie. Die hantering van sekere voordele sal spesifieke reëls vereis, maar die *Kommissie is van mening dat voordele, as 'n algemene reël, gewaardeer moet word teen die koste daarvan vir die werkgewer (of ander verskaffer) om hulle te verskaf, minus wat ook al op die werknemer verhaal is.* Dit sal vir die werkgewer maklik wees om die voordele wat hy verskaf,

ration. The high marginal rates of personal income tax, the disparity between these rates and the company rates and the legal and practical difficulties in the way of taxing non-cash benefits have made this trend inevitable. While the trend is understandable, the result has been a serious erosion of the tax base which, in turn, has contributed to the existing high rates of personal tax. Moreover, employees who are in the fortunate position of being provided with these tax-free perquisites have been placed at an advantage, taxwise, vis-á-vis others enjoying an identical income that is taxed in full. This, the Commission feels, can only lead to the integrity of the tax system being brought into question.

1.3 It is clearly the intention behind the Income Tax Act that not only money but the value of any other form of property or pecuniary benefit should be taxed. "Gross income" is defined in section 1 as the total amount, in cash or otherwise, received by or accrued to the taxpayer, while paragraph (i) of the definition includes "the value during the year of assessment of any quarters or board or residence or of any other benefit or advantage granted in respect of employment". The Commission is of the opinion that these provisions are so vague and capable of so many differing interpretations that, in so far as non-cash fringe benefits are concerned, they have become largely ineffective. Accordingly, *it recommends* that comprehensive and precise rules should now be introduced into the Income Tax Act.

2. GENERAL RULES

2.1 As the law stands it is not clear whether the onus for showing whether or not a taxable benefit exists within the meaning of paragraph (i) of the definition of "gross income" is on the taxpayer or on the Secretary for Inland Revenue. The result is that in many, in fact probably most, cases these benefits are not reported or where they are reported the values fixed are unrealistically low. The *Commission considers* that if the law is to be in any way effective a clear onus must be placed on the *employer* to value non-cash benefits provided by him or at his instance and to include this value in the particular employee's remuneration in respect of which employee's tax is to be paid. The definition of "remuneration" in the Fourth Schedule to the Income Tax Act must be suitably amplified in order to achieve this.

2.2 It follows that, if an onus is placed on the employer to deduct employees' tax in respect of the value of fringe benefits provided by him, there must be precise rules as to how he is to value those benefits. The Courts have held that under the existing law the value to be taxed is what the employee's pocket has been saved. What an employee's pocket has been saved could be largely a matter of opinion and it would be quite out of the question to expect employers to value benefits on this basis. It will be necessary for certain benefits to be dealt with in terms of specific rules, but the *Commission considers that as a general rule benefits should be valued at the cost to the employer (or other provider) in providing them, less whatever may have been recovered from the employee.*

op hierdie basis te waardeer. Verder is die reël logies omdat koste wat vir die werkgewer aftrekbaar is vir belastingdoeleindes, nou belasbare inkomste in die werknemer se hande sal wees.(1) Waar spesiale bepalings op spesifieke soorte voordele toegepas gaan word, moet die belasbare waarde so ver moontlik verteenwoordigend wees van die werkgewer se koste om die voordeel te verskaf.

2.3 Die belasbare voordeel verkry deur 'n skenking of die verkoop van 'n bate teen minder as die werklike waarde daarvan deur die werkgewer aan 'n werknemer moet geraam word—

(i) in die geval van vaste eiendom of roerende bates wat nie deur die werkgewer gebruik is nie, op die koste daarvan vir die werkgewer; of

(ii) in die geval van roerende bates wat deur die werkgewer gebruik is, op die koste daarvan vir hom minus 15 persent vir elke jaar of gedeelte van 'n jaar waartydens hy dit gebruik het;

minus

(iii) enige vergoeding wat deur die werknemer vir die bate betaal is.

Daar sal 'n uitsondering moet wees in gevalle waar die bate bestaan uit 'n uitreiking van aandele in die werkgewer of verskaffer, synde 'n maatskappy, teen geen direkte koste vir een van die twee partye nie. In sodanige gevalle moet die voordeel se waarde vasgestel word op die markwaarde van die aandele. Die markwaarde van nie-genoteerde aandele sou wees soos geraam deur die ouditeure van die betrokke maatskappy—onderworpe aan die Departement se goedkeuring. In die geval van genoteerde aandele sou dit die heersende prys wees ten tyde van die beskikking.

2.4 Waar die voordeel bestaan uit die gebruiksreg van 'n bate, uitgesonderd 'n motor of 'n woning, en eienaarskap nog by die werkgewer berus, moet die jaarlikse belasbare waarde van die voordeel geraam word—

(i) op die huur wat die werkgewer betaal indien die bate deur hom gehuur word; of

(ii) of waar die bate deur die werkgewer besit word, 15 persent van die koste daarvan;

tesame met

(iii) enige uitgawes (nie kapitaal nie) deur die werkgewer gedurende die jaar aangegaan in verband met die bate,

minus

(iv) enige huurgeld gedurende die jaar deur die werknemer betaal vir die gebruik van die bate en enige uitgawes (nie kapitaal nie) gedurende die jaar deur hom gedra in verband daarmee.

2.5 Die bepalings vir belastingheffing moet 'n wye veld dek. Die toets vir belasbaarheid moet wees of die voordeel *verkry is as gevolg van die ontvanger se diens* of nie. Enige voordeel wat deur 'n persoon se werkgewer (insluitend 'n voornemende werkgewer) verskaf word, hetsy vrywillig of onder kontraktuele verpligting, aan daardie persoon of aan 'n familielid van hom (omskryf in artikel 1 van die Inkomstebelastingwet) moet outomaties geag word verkry te wees as gevolg van die diens. 'n Voordeel verskaf deur 'n persoon of 'n maatskappy wat die werkgewer beheer (synde 'n maatskappy) of deur 'n maatskappy beheer deur of

(1) 'n Handige gids met betrekking tot die betekenis van "koste" word verskaf deur die woordomskrywing in artikel 7 (5) van die Verkoopbelastingwet, 1978.

On this basis it will be easy for the employer to value the benefits he provides. Furthermore the rule is logical in that the costs that are tax deductible to the employer will be taxable income in the hands of the employee.(1) Where special rules are to apply to specific types of benefits the taxable value must as far as possible, reflect the cost to the employer of providing the benefit.

2.3 The taxable benefit, derived from a donation or the sale of an asset at undervalue by an employer to an employee should be assessed at—

(i) in the case of immovable property or movable assets that have not been used by the employer, the cost to the employer; or

(ii) in the case of movable assets that have been used by the employer, the cost to him less 15 per cent for each year or part of a year during which they were used by him;

less

(iii) any consideration paid by the employee for the asset.

There would have to be an exception in cases where the asset consists of an issue of shares in the employer or provider, being a company, at no direct cost to either party. In such cases the value of the benefit should be determined at the market value of the shares. The market value of unquoted shares would be as assessed by the auditors of the company concerned subject to approval by the Department. In the case of quoted shares the value would be the ruling price at the time of the disposal.

2.4 Where the benefit consists of the right of use of an asset, excluding a motorcar or dwelling, ownership remaining with the employer, the annual taxable value of the benefit should be assessed at—

(i) the rental paid by the employer if the asset is leased by him; or

(ii) if the asset is owned by the employer, 15 per cent of the cost to him;

together with

(iii) any expenditure (not capital) incurred by the employer during the year in connection with the asset;

less

(iv) any rental paid by the employee for the use of the asset and any expenditure (not capital) incurred by him during the year in connection with it.

2.5 The charging provisions must be widely cast. The test of taxability should be whether or not the benefit was *obtained by reason of the recipient's employment*. Any benefit provided by a person's employer (including a prospective employer), whether voluntarily or under a contractual obligation, either to that person or to a relative of his (defined in section 1 of the Income Tax Act), should be automatically deemed to have been obtained by reason of the employment. A benefit provided by a person or a company controlling the employer (being a company) or by a company controlled by or under the same control as

(1) A useful guide on the meaning of "cost" is provided by the definition in section 7 (5) of the Sales Tax Act, 1978.

onder dieselfde beheer as die werkgewer, moet behandel word asof dit deur die werkgewer verskaf is. "Beheer" oor 'n maatskappy beteken die vermoë om beheer oor die maatskappy se sake uit te oefen, hetsy deur die besit van die grootste deel van die aandelekapitaal of deur stemreg of andersins.

2.6 "Werknemer" moet so omskryf word dat dit die volgende insluit:

(i) Direkteure van alle maatskappye; en

(ii) direkteure of lede van bestuurskomitees van liggame met regspersoonlikheid, uitgesonderd maatskappye.

3. VOORDELIGE LENINGSOOREENKOMSTE

3.1 Die ondersoek wat deur die Departement uitgevoer is, toon dat 'n groot aantal werkgewers voordelige lenings aan werknemers toestaan. Die rentekoers wat gehef word, wissel tussen 0 persent en 5½ persent. Baie, moontlik die meerderheid, van die lenings is vir die doel om huise te koop. Meer word hieroor in paragraaf 4.2 gesê.

3.2 Dit is nie die Departement se beleid om werknemers te belas op die voordele wat hulle as gevolg van hierdie reëlings verkry nie, weens administratiewe probleme en die feit dat dit nie verklaar word nie. Die Kommissie kan geen regverdiging daarvoor vind dat hierdie voordele nie belas word nie en is van mening dat die probleem om die waarde daarvan te bepaal, oorkom kan word met die daarstelling van 'n "amptelike rentekoers" wat deur die Minister van Finansies voorgeskryf word by wyse van 'n kennisgewing in die *Staatskoerant* om as maatstaf te dien. Hierdie "amptelike koers" kan aangepas word wanneer omstandighede dit vereis, maar om die LBS-aftrekkings nie te ingewikkeld te maak nie, moet dit ten minste vir 'n volle belastingjaar vasgestel word en enige verandering moet bekendgemaak word nie later nie as gedurende die Desembermaand wat die belastingjaar waarin die verandering gaan intree, voorafgaan.

3.3 Die Kommissie is nie ten gunste daarvan dat die "amptelike koers" gekoppel moet word aan die bankoortrekking- of die bouverenigingrentekoerse nie. 'n Waardasie op hierdie basis sal verteenwoordigend wees van die werknemer se besparing, 'n basis wat die Kommissie verwerp het. Daar word gevoel dat, met inagneming van die algemene rentekoerse, 'n koers van 10 persent voorlopig redelik sal wees.

3.4 *Die Kommissie beveel gevolglik aan dat—*

(i) waar 'n werknemer of enige van sy familielede (omskryf in artikel 1 van die Inkomstebelastingwet) voorsien word van 'n rentevrye of goedkoop lening as gevolg van sy diens, die voordeel verkry van sodanige reëling as deel van sy besoldiging geag moet word;

(ii) die kontantekwivalent van hierdie voordeel geag word die verskil te wees tussen die rente wat betaalbaar sou wees indien daar van die lener vereis was om rente teen 'n "amptelike koers", wat van tyd tot tyd by regulasie voorgeskryf word, tebetaal en die bedrag rente wat hy in werklikheid betaal het;

(iii) die "amptelike koers" voorlopig vasgestel word op 10 persent;

(iv) daar voorsiening moet wees om 'n lening wat as 'n lokmiddel voor diensaanvaarding toegestaan is, ook binne die bestek van die belasting te bring;

(v) 'n lening wat toegestaan of gereël word deur 'n maatskappy wat in beheer is van die werkgewer of deur 'n maatskappy wat deur die werkgewer beheer word, behandel word asof dit deur die werkgewer toegestaan is;

the employer should be treated as though it were provided by the employer ("control" of a company meaning the ability to exercise control over the company's affairs whether by possessing the greater part of the share capital or voting power or otherwise).

2.6 "Employee" should be defined so as to include—

(i) directors of all companies; and

(ii) directors or members of management committees of bodies corporate other than companies.

3. BENEFICIAL LOAN AGREEMENTS

3.1 The survey made by the Department shows that beneficial loans are being made to their employees by a large number of employers. The rate of interest charged varies from 0 per cent to 5½ per cent. Many, perhaps the majority, of the loans are for the purpose of buying homes. More is said about these in paragraph 4.2.

3.2 It has not been the Department's practice to tax employees on the benefits they derive from these arrangements because of administrative difficulties and the fact that they have not been reported. The Commission can find no justification for not taxing the benefits and considers that the problem of assessing their value could best be met by having an "official interest rate", prescribed by the Minister of Finance by way of a notice in the *Government Gazette*, to be used as a yardstick. This "official rate" could be altered as circumstances warrant, but, so as not to complicate the PAYE deductions, it would have to be fixed for at least the whole of any tax year and any change would have to be notified not later than during the December preceding the tax year in respect of which the change is to take effect.

3.3 The Commission does not favour the "official rate" being linked to either the bank overdraft or the building society interest rates. A valuation on this basis would be representative of the employee's saving, a basis which the Commission has rejected. It feels that, having regard to general interest rates, for the time being a rate of 10 per cent would be reasonable.

3.4 *The Commission accordingly recommends that—*

(i) where by reason of his employment an employee or any of his relatives (defined—section 1 of the Income Tax Act) is provided with an interest-free or cheap loan the benefit derived from such an arrangement be deemed to form part of his remuneration;

(ii) the cash equivalent of this benefit be deemed to be the difference between the interst that would have been payable if the borrower had been required to pay interest at an "official rate", to be prescribed from time to time by regulation, and the amount of interest actually paid by him;

(iii) for the time being the "official rate" be fixed at 10 per cent;

(iv) there be provision to bring a loan that is made as an inducement before employment begins within the scope of the charge;

(v) a loan made or arranged by a company controlling the employer or by a company controlled by the employer be treated as though it were made by the employer;

(vi) die uitdrukking "lening" ruim omskryf word om enige vorm van krediet en 'n lening wat 'n ander vervang, te kan insluit, asook enige reëling waarvolgens 'n werkgewer 'n lening waarborg wat aan 'n werknemer toegestaan word deur 'n derde party of wat die toestaan van sodanige lening vergemaklik;

(vii) ter wille van administratiewe gerief, geen belasting gehef word waar die totale bedrag van enige toevallige korttermynlenings op enige tydstip gedurende die tydperk waarin die kontantekwivalent van die voordeel bepaal moet word, nie R1 000 oorskry nie; en

(viii) aangesien 'n studiebeurs wat deur 'n werkgewer aan 'n werknemer toegestaan word, vrygestel is van belasting [artikel 10 (1) (qA) van die Wet], belasting ook nie gehef moet word nie ten opsigte van enige voordeel wat ontstaan wanneer 'n lening vir studiedoeleindes aan 'n werknemer toegestaan word.

3.5 Daar moet voorsiening wees vir die belasting van die voordeel wat toeval weens die afskrywing of kwytskelding van 'n lening of 'n gedeelte daarvan, hetsy dit 'n voorkeurrentekoers is al dan nie, wat deur 'n persoon (of sy familielid) verkry is as gevolg van sy diens. Dit moet toegepas word selfs al het daardie persoon die betrokke diens verlaat ten tyde van afskrywing of kwytskelding en selfs wanneer kwytskelding by daardie persoon se dood plaasvind.

4. BEHUISINGSVOORDELE: GRATIS OF LAERENTEKOERSVERBANDE EN SUBSIDIES OP VERBANDRENTE

4.1 Huiseienaarskapskemas vir werknemers deur middel van subsidies op verbandafbetalings of deur rentevrye of goedkoop lenings is baie algemeen. Dit sal redelik wees om te sê dat dit oor die algemeen beskou kan word as opregte pogings deur werkgewers om huiseienaarskap by hulle werknemers te bevorder eerder as 'n manier om hulle van belastingvrye vergoeding te voorsien. Die Kommissie is egter nogtans van mening dat die voordele wat werknemers aldus geniet, met reg beskou kan word as inkomste wat belas moet word. As daar anders gehandel word, sal dit onregverdige diskriminasie beteken teenoor die werknemer wat geen bystand van sy werkgewer ontvang nie en geen belastingtoegewings geniet ten opsigte van sy huisverbandverpligtinge nie. Verder is die Kommissie verontrus omdat daar geen eenvormigheid in die belastingbehandeling bestaan nie, selfs van daardie werknemers wat wel bystand ontvang. Staatsamptenare en die werknemers van verskeie rade en ander liggame word spesifiek vrygestel van belasting op die voordele ingevolge artikel 61 van die Konsolidasiewet op Finansie- en Finansiële Reëlingswette, 1977. Om die redes reeds genoem, word werknemers wat bystand ontvang in die vorm van voordelige lenings, vrygestel, maar diegene wat subsidies ontvang op verbandafbetalings, word belas. Die Kommissie vind dit onhoudbaar dat sommige voordele belasting vryspring en ander nie, waar beide wesentlik dieselfde is. Indien alle behuisingsvoordele ten volle of gedeeltelik van belasting vrygestel moet word ten einde 'n mate van regverdigheid mee te bring, moet sekere belastingtoegewings billikheidshalwe gemaak word aan daardie belastingbetalers wat geen bystand ten opsigte van hulle huisverbandverpligtinge ontvang nie. Die Kommissie kan dit nie as 'n oplossing aanbeveel nie vanweë die erosie van die belastingbasis en die skepping van 'n gevaarlike presedent wat die aftrek van huishoudelike uitgawes toelaat—dit is heeltemal apart van die koste, wat aansienlik kan wees. Die

(vi) the term "loan" be widely defined to include any form of credit and a loan that replaces another, as well as any arrangement in terms of which an employer guarantees a loan made to an employee by a third party or facilitates the making of such a loan;

(vii) for the sake of administrative convenience no tax be charged where the total amount of any casual short-term loan does not exceed R1 000 at any one time during the period in relation to which the cash equivalent of the benefit has to be determined; and

(viii) because a study bursary granted by an employer to an employee is exempt from tax [section 10 (1) (qA) of the Act], tax also not be charged in respect of any benefit arising from a loan made to an employee for study purposes.

3.5 There should be provision to tax the benefit that accrues from the writing off or release of a loan or portion of loan, whether it is at a beneficial rate of interest or not, that was obtained by a person (or a relative of his) by reason of his employment. This should apply even though that person may have left the particular employment at the time of the writing off or release and even if the release takes place on the death of that person.

4. HOUSING BENEFITS: FREE OR LOW INTEREST BONDS AND SUBSIDIES ON BOND INTEREST

4.1 Home ownership schemes for employees by way either of subsidies on bond payments or of interest-free or cheap loans are fairly widespread. It would be fair to say that generally speaking these can be seen as genuine attempts by employers to encourage home ownership by their employees rather than as a means of providing them with tax-free remuneration. The Commission considers nonetheless that the benefits enjoyed by the employees can fairly be considered income that should be taxed. To do otherwise would amount to unfair discrimination against the employee who receives no assistance from his employer and enjoys no tax concessions in respect of his home bond commitments. Furthermore, the Commission is disturbed that there is no uniformity in the treatment from the point of view of tax of even those employees who do receive assistance. Public servants and the employees of several boards and other bodies are specifically exempted from tax on the benefits by section 61 of the Finance and Financial Adjustments Acts Consolidation Act, 1977, and for the reasons already stated, employees who receive assistance in the form of beneficial loans are not taxed while those who are paid subsidies on their bond payments are. The Commission finds it quite untenable that some benefits should be exempt from tax and others not, while being essentially the same. If, in order to bring about a measure of equity, all housing benefits were to be exempted from tax, either in full or partially, some tax concessions would in all fairness have to be made to those taxpayers who receive no assistance in respect of their home bond obligations. The Commission cannot recommend this as a solution because of the erosion of the tax base it would entail and because it would create a dangerous precedent, permitting the deduction of domestic expenditure—quite apart from the cost which

Kommissie is van mening dat die enigste oplossing, hoe ongewild dit ook al mag wees, lê in die intrekking van die vrystelling wat verleen word deur die Konsolidasiewet op Finansie- en Finansiële Reëlingswette, 1977. Daar word egter besef dat die onttrekking van die toegewing sonder waarskuwing verleentheid, indien nie ontbering nie, kan veroorsaak en die Kommissie voel dat die toegewing eerder oor 'n periode van vyf jaar uitgefaseer moet word.

4.2 Gevolglik *beveel* die Kommissie *aan*—

(i) dat *alle* kontantsubsidies wat deur werknemers ontvang word ten opsigte van hulle verbandverpligtinge as gevolg van hulle diens, beskou moet word as deel van hulle besoldiging; en

(ii) dat die voorgestelde reëls in verband met voordelige lenings deur werkgewers ook van toepassing gemaak moet word in die geval van *alle* rentevrye of goedkoop *huis*lenings wat werknemers geniet as gevolg van hul diens; maar

(iii) dat daar teen die besoldiging 'n aftrekking (wat nie die bedrag van die kontantsubsidie of die kontantekwivalent van die voordeel verkry van 'n voordelige lening daarby ingesluit, oorskry nie) toegelaat word ten bedrae van R1 000 in die jaar waarin die magtigingswetgewing vir die eerste maal van krag word en R800, R600, R400 en R200 onderskeidelik in die daaropvolgende vier jare. Die bedrag van R1 000 is die benaderde maksimum jaarlikse voordeel wat ingevolge die Staatsdienshuiseienaarskema geniet kan word, waar verbandafbetalings op die basis van 'n 30-jaar-delgingstydperk geskied. Dit geld ook in die meerderheid van skemas waar die voordele gedek word deur die vrystelling soos bepaal in die Konsolidasiewet op Finansie- en Finansiële Reëlingswette, 1977.

4.3 Die gevolge van die uitfasering van die bestaande belastingtoegewings soos deur die Kommissie aanbeveel, kan versag word deur 'n baie beskeie salarisverhoging, soos die volgende syfers aandui:

Salaris wat R1 000 subsidie insluit—

	Rand	Rand	Rand	Rand	Rand	Rand
	6 000	8 000	11 000	13 000	16 000	21 000

Inkomste *na* belasting:

Jaar	Rand	Rand	Rand	Rand	Rand	Rand
1.....	5 620	7 300	9 600	11 080	13 180	16 280
2.....	5 600	7 270	9 570	11 020	13 110	16 190
3.....	5 560	7 230	9 510	10 970	13 040	16 100
4.....	5 540	7 190	9 450	10 900	12 970	16 010
5.....	5 500	7 150	9 390	10 850	12 900	15 920
6.....	5 480	7 100	9 340	10 800	12 840	15 840

5. BEHUISINGSVOORDELE: GRATIS EN LAEHUURBEHUISING

5.1 Die Kommissie het aanbeveel dat die belastingvrystelling verleen kragtens die Konsolidasiewet op Finansie- en Finansiële Reëlingswette, 1977, ten opsigte van subsidies wat staatsamptenare en werknemers van sekere ander liggame vir huisverbande ontvang, herroep word (paragraaf 4.1). Dit volg dus dat die aanbeveling ook van toepassing moet wees op die vrystelling verleen ten opsigte van voordele verkry van laehuurbehuising en dat enige reëls om sodanige voordele te belas, in gelyke mate van toepassing moet wees op werknemers in die openbare en die privaatsektor.

could be considerable. In the Commission's opinion the only possible solution, unpopular as it may be, is to withdraw the exemption provided by the Finance and Financial Adjustments Acts Consolidation Act, 1977. It appreciates, however, that there could be cases where withdrawal of the concession without warning would cause embarrassment, if not hardship, and feels that, instead, the concession should be phased out over a period of five years.

4.2 The Commission therefore *recommends*—

(i) that *all* cash subsidies received by employees in respect of their bond commitments by reason of their employment be treated as part of their remuneration; and

(ii) that the proposed rules in regard to beneficial loans by employers be made to apply also in the case of *all* interest-free or cheap *housing* loans that employees enjoy by reason of their employment; but

(iii) that there be allowed against the remuneration a deduction (not exceeding the amount of the cash subsidy or the cash equivalent of the benefit derived from a beneficial loan included therein) of an amount of R1 000 in the year when the enabling legislation first takes effect and R800, R600, R400 an R200 respectively in the four succeeding years. The amount of R1 000 is the approximate maximum annual benefit that could be enjoyed under the Public Service home ownership scheme where bond repayments are based on a 30-year redemption period. This applies also to the majority of schemes the benefits from which are covered by the exemption provided for in the Finance and Financial Adjustments Acts Consolidation Act, 1977.

4.3 The effects of phasing out the existing tax concession along the lines recommended by the Commission could be ameliorated by a very modest salary increase as the following figures show:

Salary including R1 000 subsidy—

	Rand	Rand	Rand	Rand	Rand	Rand
	6 000	8 000	11 000	13 000	16 000	21 000

Income *after* tax:

Year	Rand	Rand	Rand	Rand	Rand	Rand
1.....	5 620	7 300	9 600	11 080	13 180	16 280
2.....	5 600	7 270	9 570	11 020	13 110	16 190
3.....	5 560	7 230	9 510	10 970	13 040	16 100
4.....	5 540	7 190	9 450	10 900	12 970	16 010
5.....	5 500	7 150	9 390	10 850	12 900	15 920
6.....	5 480	7 100	9 340	10 800	12 840	15 840

5. HOUSING BENEFITS: FREE AND LOW RENTAL HOUSING

5.1 The Commission has recommended that the tax exemption conferred by the Finance and Financial Adjustments Acts Consolidation Act, 1977, in respect of subsidies received by public servants and the employees of certain other bodies on housing bonds be withdrawn (paragraph 4.1). It follows that the recommendation should apply also to the exemption conferred in respect of benefits derived from low rental housing and that any rules for taxing such benefits should apply equally to employees in the public and the private sectors.

5.2 Daar is 'n belangrike verskil tussen 'n diensvoordeel by wyse van 'n subsidie op huisverbandrente of 'n laerenteverband en 'n voordeel wat die vorm aanneem van gratis of laehuurbewoning van 'n woonhuis. Daar bestaan geen twyfel nie dat eersgenoemde alleenlik tot die werknemer se voordeel strek. Dit is nie altyd so in laasgenoemde geval nie. Dit is dikwels die geval dat 'n werknemer verplig word om 'n spesifieke woning te bewoon ten einde te doen wat volgens sy diens van hom vereis word. Soos die Engelse howe dit gestel het: ". . . dit is vir hom nodig om die perseel te bewoon as 'n inherente deel van die uitvoering van sy pligte . . . hy bewoon dit nie as deel van sy beloning vir sy dienste nie, maar vir die doel van die uitvoering daarvan". In die Verenigde Koninkryk en die Verenigde State word behuisingsvoordele wat aan hierdie vereiste voldoen, nie belas nie.

5.3 Die Kommissie steun die beginsel dat die gratis of goedkoop bewoning van 'n woonhuis nie belas moet word nie tensy daardie bewoning as bykomende besoldiging deur die werkgewer verskaf is. Terselfdertyd word besef dat dit heeltemal onprakties sal wees om elk geval te beoordeel op die basis van of die eiendom bewoon is met die doel om dienste te lewer of as deel van vergoeding vir dienste gelewer. Uit die aard van die saak sal dit nie moontlik wees om 'n definitiewe skeidslyn te trek nie en die Kommissie is van mening dat die oplossing 'n eenvoudige hoewel arbitrêre reël sal moet wees.

5.4 Die ondersoek wat deur die Departement uitgevoer is, het nie aan die lig gebring dat die verskaffing van behuisingsvoordele grootliks misbruik word nie. Dit is waar dat die verskaffing van prestige-huise aan hooggeplaasde amptenare nie ongewoon is nie, maar wat die laer besoldigde werknemers betref, sal dit billik wees om te sê dat behuising oor die algemeen verskaf word waar dit funksioneel verkieslik of nodig is of waar die plek van diens streeksgebonde is. Die meerderheid van hierdie gevalle sal heel waarskynlik die toets of die huise bewoon word as 'n inherente deel van die werknemers in die uitvoering van hul pligte, deurstaan. 'n Inkomsteperk van R12 000 per jaar sal hierdie groep werknemers dek (dit dek ongeveer 80 persent van alle getroude belastingbetalers) en *die Kommissie is van mening* dat die beste uitweg sou wees om 'n spesifieke vrystelling te verleen ten opsigte van behuisingshuurvoordele waar die werknemer se besoldiging (wat die belasbare waarde van ander voordele ontvang ten opsigte van diens insluit) van sy werkgewer wat die gratis of laehuurbehuising verskaf, nie R12 000 per jaar oorskry nie. Die vrystelling moet nie van toepassing wees waar die werkgewer 'n privaatmaatskappy is en die werknemer 'n direkteur of aandeelhouer of 'n familielid van 'n direkteur of aandeelhouer van daardie maatskappy is nie. Daar sal ongetwyfeld diegene wees wat belas behoort te word maar wat belasting ingevolge die algemene vrystelling sal vryspring, maar volgens die Kommissie se sienswyse sal die bedrag belasting daarby betrokke nie ingewikkelde wetlike reëls, wat onvermydelik tot administratiewe probleme sal lei, regverdig nie.

5.5 Die Kommissie is van mening dat daar ook 'n presiese reël moet wees waarvolgens die belasbare waarde van 'n behuisingsvoordeel aangeslaan moet word in daardie gevalle wat nie binne die voorgestelde vrystelling val nie. In verskeie ander lande, soos die Verenigde Koninkryk, Australië, Nieu-Seeland

5.2 There is an important difference between an employment benefit in the form of a subsidy on home bond interest or a low interest bond and one in the form of the free or low rental occupation of a dwelling. There can be no question but that the former is for the benefit of the employee and the employee only. This is not always so in the case of the latter. It is often the case that the employee is obliged to occupy a particular dwelling in order to do what is required of him in terms of his employment. As the English courts have put it, ". . . it is necessary for him to occupy the premises as an inherent part of the performance of his duties . . . he occupies them not as part of his reward for his services but for the purpose of performing them". In the United Kingdom and the United States housing benefits which meet this test are not taxed.

5.3 The Commission supports the principle that the free or cheap occupation of a dwelling should not be taxed unless that occupation was provided by the employer as an additional emolument. At the same time it appreciates that it would be quite impracticable for every case to be judged on the basis of whether the occupation of the property was for the purpose of performing services or as part of the reward for services. By the nature of things it would not be possible to draw a precise dividing line and in the Commission's opinion the solution will have to be a simple, if arbitrary, rule.

5.4 The survey carried out by the Department did not reveal that the provision of housing benefits was being abused to any great extent. True, the provision of prestige houses for top employees is not uncommon, but so far as concerns the lower paid employees it would be fair to say that generally speaking housing is provided where it is functionally desirable or necessary or where the place of employment is locality bound. The bulk of these cases would probably meet the test of whether or not the houses are occupied as an inherent part of the employees' performance of their duties. An income limit of R12 000 per annum would cover this group of employees (it covers about 80 per cent of all married taxpayers) and *the Commission is of the opinion* that the position would best be met by a specific exemption in respect of housing rental benefits where the employee's remuneration (including the taxable value of other benefits received in respect of employment) from the employer who provides the free or low rental housing does not exceed R12 000 per annum. The exemption should not apply where the employer is a private company and the employee is a director or shareholder or a relative of a director or shareholder of that company. No doubt there will be some who should be taxed who will escape under the blanket exemption but it is the Commission's view that the amount of tax involved would not justify complicated legal rules that would inevitably lead to administrative difficulties.

5.5 The Commission considers that there should also be a precise rule for assessing the taxable value of a housing benefit in those cases that do not fall within the proposed exemption. In several other countries such as the United Kingdom, Australia, New Zealand and Canada the value is determined at the probable rental

en Kanada, word die waarde vasgestel teen die waarskynlike huur wat gehef sal word volgens 'n huurooreenkoms onder beding van uiterste voorwaardes en regstellings word gemaak deur faktore soos afgesonderdheid, onaangename omgewing, die mate van verpligting op die werknemer om die huis te bewoon en die mate waarin dit vir die besigheid of gerief van die werkgewer gebruik word, in aanmerking te neem. Die Kommissie meen dat 'n reëling van dié aard administratief omslagtig sal wees. Dit sal nie noukeurig wees nie en kan homself leen tot wyd uiteenlopende vertolkings. Gevolglik *beveel die Kommissie aan* dat die waarde van 'n *belasbare* behuisingsvoordeel aangeslaan word teen 15 persent van die bedrag (wat nie R60 000 oorskry nie) van die werknemer se besoldiging (insluitend die belasbare waarde van ander voordele verkry ten opsigte van diens) ontvang van die werkgewer wat die behuisingsvoordeel verskaf. Die bedrag aldus vasgestel, moet verminder word met die bedrag van enige huurgeld wat die werknemer vir die eiendom moet betaal.

5.6 Opdat daar nie groot verskille sal wees in die belasting betaalbaar op inkomstes van net oor en net onder R12 000 nie, *beveel die Kommissie verder aan* dat waar die besoldiging (sien paragraaf 5.5) tussen R12 000 en R16 000 is, die belasbare voordeel ooreenkomstig die volgende formule vasgestel word:

$$\frac{\text{Besoldiging–R12 000}}{\text{R16 000–R12 000}} \times 15 \text{ persent van besoldiging.}$$

Op hierdie basis sal die belasbare voordele wees—

Salaris	*Belasbare voordeel*
R	R
13 000	488
14 000	1 050
15 000	1 680
16 000	2 400

5.7 'n Skema wat blykbaar in gewildheid toeneem, is een waarvolgens die werknemer sy eie huis koop en dit aan sy werkgewer verhuur, wat op sy beurt toelaat dat die eiendom gratis of teen 'n lae huur bewoon word. Die huurgeld wat die werkgewer betaal, is gewoonlik genoegsaam om 'n aansienlike deel van die werknemer se verbandverpligtinge te dek. Die reëling gee natuurlik aan die werknemer die voordeel van kapitaalappresiasie en het baie duidelik ten doel om hom te beloon. In die omstandighede kan daar geen regverdiging vir vrystelling van belasting bestaan nie. As subsidies op huisverbande en die voordele van gratis of goedkoop huislenings belas gaan word, soos deur die Kommissie aanbeveel, kan daar bowendien verwag word dat hierdie soort skema uitgebuit sal word. *Die Kommissie beveel* gevolglik *aan* dat nòg die vrystelling aanbeveel in paragraaf 5.4, nòg die toegewing aanbeveel in paragraaf 5.6 van toepassing moet wees in gevalle waar die betrokke woonhuis aan die werknemer of 'n familielid van hom behoort.

6. GRATIS HUISVESTING EN LOSIES

6.1 Hierdie tipe voordeel het nie veel probleme veroorsaak nie en die Departement se ondersoek het nie getoon dat dit enigsins misbruik word nie. Dit sal vir belastingdoeleindes gewaardeer word in ooreenstemming met die voorgestelde reël dat alle byvoordele gewaardeer word volgens die koste daarvan vir die verskaffer. Dit sal geen merkbare verandering meebring nie en *die Kommissie is van mening dat, afgesien van voorsiening vir die twee vrystellings hieronder aanbeveel, geen wetsveranderings nodig is nie.*

that would be charged under an arm's length letting agreement, adjustments being made to take into account such factors as isolation, unpleasant surroundings, the measure of compulsion on the employee to occupy the house and the extent to which it is used for the business or convenience of the employer. The Commission considers that a rule along these lines would be administratively cumbersome. It would lack precision and could lend itself to widely differing interpretations. Accordingly, *the Commission recommends* that the value of a *taxable* housing benefit be assessed at 15 per cent of the amount (not exceeding R60 000) of the employee's remuneration (including the taxable value of other benefits derived in respect of employment) received from the employer providing the housing benefit. The amount so determined should be reduced by the amount of any rental that the employee may be charged for the property.

5.6 In order that there will not be any large difference in the tax payable on incomes just over and just below R12 000 the *Commission recommends further* that where the remuneration (see paragraph 5.5) is between R12 000 and R16 000 the taxable benefit be determined in accordance with the formula—

$$\frac{\text{Remuneration–R12 000}}{\text{R16 000–R12 000}} \text{ 15 per cent of remuneration.}$$

On this basis the taxable benefits would be—

Salary	*Taxable benefit*
R	R
13 000	488
14 000	1 050
15 000	1 680
16 000	2 400

5.7 A scheme that appears to be gaining in popularity is one under which the employee buys his own house and lets it to his employer who in turn permits the free or low rental occupation of the property. The rental paid by the employer is usually sufficient to cover a substantial part of the employee's bond commitments. This arrangement of course gives the employee the benefit of capital appreciation and its purpose is clearly to remunerate him. In the circumstances there can be no justification for any tax exemption. Moreover, if subsidies on home bonds and the benefits from free or cheap housing loans are to be taxed, as the Commission has recommended, it can be expected that this type of scheme will be exploited. Accordingly *the Commission recommends* that neither the exemption recommended in paragraph 5.4 nor the concession recommended in paragraph 5.6 is to apply in cases where the dwelling concerned is owned by the employee or by a relative of his.

6. FREE QUARTERS AND BOARD

6.1 This type of benefit has not presented much difficulty and the Department's survey did not show that it was being misused in any way. It will be valued for tax purposes in accordance with the suggested rule that all fringe benefits be valued at their cost to the provider. This will not bring about any appreciable change and *the Commission considers that, apart from providing the two exemptions recommended below, no legislative changes are necessary.*

6.2 Dit was nog altyd die Departement se gebruik om werknemers nie te belas op die voordeel van gratis of goedkoop maaltye in personeelverversingslokale nie. Die Kommissie voel dat dit toegelaat moet word om voort te gaan en voorsiening moet daarvoor gemaak word deur 'n spesifieke vrystelling.

6.3 Onlangs is skemas te berde gebring waarvolgens werknemers van kleiner ondernemings wat nie eie verversingslokale kan verskaf nie, voorsien sou word van maaltydkoepons. Die waarde van hierdie koepons sal natuurlik belasbare inkomste uitmaak in die hande van die ontvangers daarvan, maar die Kommissie voel dat dit onregverdig sou wees indien die voordeel van gratis maaltye by personeelverversingslokale nie belas word nie. *Gevolglik word aanbeveel* dat 'n vrystelling om die maaltydkoeponvoordele te dek, ingevoer word. Die vereistes vir die vrystelling moet wees dat die koepons—

(a) nie oordraagbaar is nie;

(b) alleenlik vir maaltye gebruik kan word;

(c) beskikbaar is vir *alle* personeellede; en

(d) wat aan werknemers uitgereik word, nie meer as R2 vir elke werksdag werd mag wees nie.

7. VERKRYGING VAN AANDELE DEUR DIREKTEURE EN WERKNEMERS

7.1 Die Inkomstebelastingwet omskrywe "bruto inkomste" as die totale bedrag, hetsy in kontant of andersins, ontvang deur of toegeval aan 'n belastingpligtige. Dus sal 'n werknemer wat sy besoldiging in die vorm van aandele in plaas van kontant ontvang, belas word op die waarde van die aandele. Net so sal 'n werknemer wat weens sy diens in staat is om aandele teen 'n laer waarde as die werklike waarde daarvan te verkry, belas word op die oorskot van hulle waarde bo die bedrag wat hy daarvoor betaal het. (Sien ook paragraaf 2.3.)

7.2 Gedurende die sestigerjare het aandeleopsieskemas vir die voordeel van werknemers en direkteure gewild geword. Ingevolge hierdie skemas is 'n opsie aan die werknemer of direkteur gegee om aandele iewers in die toekoms te verkry teen die prys wat geheers het toe die opsie toegestaan is, met die gevolg dat die werknemer in staat was om aandele teen 'n laer waarde te bekom. Daar is egter aangevoer dat die voordeel wat die werknemer verkry uit hoofde van sy diens die reg was (wat hy ten tyde van die toestaan van die opsie verkry het) teenoor sy werkgewer wat laasgenoemde verbind het om aandele teen 'n sekere prys aan hom te verkoop, en dat dit die waarde van hierdie reg was wat belas kan word en nie die wins wat hy met die uitoefening van sy opsie gemaak het nie. Die Appèlafdeling het hierdie betoog verwerp [Mooi v. S.I.R. (1972(1) SA 674) 34 S.A.T.C. 1]. Artikel 8A is ook in die Inkomstebelastingwet opgeneem om die saak bo alle twyfel te stel. Hierdie artikel bepaal dat enige wins deur 'n direkteur of 'n werknemer gemaak uit hoofde van die uitoefening van 'n opsie om aandele te verkry, by sy bruto inkomste ingesluit moet word indien die reg deur die belastingpligtige as 'n direkteur of ten opsigte van dienste gelewer as 'n werknemer verkry is. Die wins wat by die bruto inkomste ingesluit moet word, is die verskil tussen die waarde van die aandele op die datum waarop die opsie uitgeoefen is en die werklike prys wat die direkteur of werknemer vir hulle betaal het.

6.2 It has always been the Department's practice not to tax employees on the benefit of free or cheap meals in staff canteens. This, the Commission feels, should be allowed to continue and should be provided for by a specific exemption.

6.3 Recently schemes have been mooted under which meal vouchers would be supplied to employees of smaller concerns that could not provide canteen facilities of their own. The value of these vouchers would of course constitute taxable income in the hands of the recipients but this, the Commission feels, would be unfair if the benefit of free meals at staff canteens were not taxed. *Accordingly, it recommends* that an exemption be introduced to cover the meal voucher benefits. The requirements for the exemption should be that the vouchers—

(a) are non-transferable;

(b) can be used for meals only;

(c) are available to *all* members of the staff; and that

(d) the value of vouchers issued to employees does not exceed R2 for each working day.

7. SHARE ACQUISITIONS BY DIRECTORS AND EMPLOYEES

7.1 The Income Tax Act defines "gross income" as the total amount, whether in cash or otherwise, received by or accrued to the taxpayer. Thus an employee who receives his remuneration in the form of shares instead of cash would be taxed on the value of the shares. Likewise, if by reason of his employment, an employee is able to acquire shares at under value he would be taxed on the excess of their value over the price paid. (See also paragraph 2.3.)

7.2 In the 1960s share option schemes for the benefit of employees and directors became popular. Under these schemes the employee or director was given an option to acquire shares at some time in the future at the price ruling at the time of the granting of the option, the effect being that the employee was able to acquire shares at under value. It was contended, however, that the benefit the employee derived by virtue of his employment was the right, acquired at the time of the granting of the option, against his employer, binding the latter to sell him shares at a certain price and that it was the value of this right that could be taxed and not the gain which he made on the exercise of the option. The Appellate Division rejected this contention [Mooi vs. S.I.R. (1972(1) SA 674) 34 S.A.T.C. 1]. Section 8A was also introduced into the Income Tax Act, putting the matter beyond doubt. This section provides that any gain made by a director or an employee by virtue of the exercise of an option to acquire shares is to be included in gross income if the right was acquired by the taxpayer as a director or in respect of services rendered as an employee. The gain to be included in gross income is the difference between the value of the shares at the date on which the option was exercised and the price actually paid for them by the director or employee.

7.3 Die toepassing van artikel 8A het die opsieskemas feitlik laat verdwyn en sedertdien het 'n nuwe soort aandele-aansporingskema vir werknemers van maatskappy ontwikkel. Hierdie skemas bereik presies dieselfde doel as die ou aandele-opsieskemas—die werknemer is in staat om sonder enige risiko hoegenaamd aandele teen 'n laer waarde as die werklike waarde daarvan te verkry, maar die skemas word so ontwerp dat hulle buite die bestek van artikel 8A val. Hulle neem 'n verskeidenheid van vorms aan, maar die wesenlike bestanddele is soos volg:

(i) 'n Trust word gevorm.

(ii) Dit koop of skryf in op aandele in die maatskappy of ander maatskappye in die groep.

(iii) Die fondse vir die verkryging van die aandele word verkry deur lenings deur die maatskappy of groep.

(iv) Die trust bied die aandele aan uitgesoekte werknemers in die maatskappy of groep aan—gewoonlik teen die gemiddelde markprys op die Johannesburgse effektebeurs op die verkoopdag.

(v) 'n Kontantbetaling van 'n nominale bedrag op die koopprys word vereis, die balans bly op die leningsrekening en is betaalbaar hetsy by beëindiging van diens, of by aftrede, of by vroeër afsterwe of teen die einde van 'n voorafbepaalde tydperk.

(vi) Die leningsrekening is somtyds rentevry en somtyds word rente gehef, maar selde teen 'n handelskoers, en daar word altyd voorsorg getref dat die rente wat vir 'n jaar gehef word, beperk word tot die dividende vir die jaar ontvang.

(vii) Die aandele word dadelik die eiendom van die werknemer en word aan hom oorgedra maar word aan die trustees verpand as sekuriteit vir die leningskuld.

(viii) Die aandele word *pari passu* gestel met die ander aandele in die maatskappy se kapitaal, maar die dividende (na belasting) word gewoonlik toegewys aan die betaling van die rente en teen die leningskuld.

(ix) Daar is stopverliesbepalings wat die werknemer beskerm teen enige verlies wat veroorsaak word deur 'n daling in die waarde van die aandele op die tydstip wanneer die leningskuld vereffen moet word. Die aandele word deur die trustees teruggekoop teen die prys waarteen hulle verkry is, of as alternatief word betaling teen die aandele se heersende waarde as voldoende beskou vir die uitstaande balans van die koopsom.

7.4 Daar word aangevoer dat die waardevermeerdering van die aandele verkry, die voordeel vir die werknemer is en dat dit van kapitale aard is. Dit mag so wees, maar die feit bly staan dat hy nie die voordeel verkry het as gevolg van 'n behoorlike belegging van geld nie, maar uit hoofde van sy diens. Inderwaarheid verskil sy posisie geensins van dié van daardie werknemer wat besoldig word by wyse van 'n regstreekse toekenning van aandele nie. Wat hierdie saak betref, is dit van belang wat die Hoofregter in die Mooisaak te sê gehad het:

"In my opinion the right acquired by the appellant lacked any inherent attribute of income and, but for the provisions of paragraph (c) of the definition of 'gross income' would appropriately be regarded as a right of a capital nature. The object of paragraph (c) of the definition is of course to bring into the category of 'gross income' all 'amounts', whether of a capital nature or not, accrued in respect of services . . . Bearing this in mind, it appears to me that what paragraph (c) of the definition of 'gross income' envisages as required to be incorporated into the taxpayer's gross income is the real or true benefit accruing to him in respect of services."

7.3 The introduction of section 8A virtually killed the option schemes and since then a new type of share incentive scheme for employees of companies has developed. These schemes achieve precisely the same end as did the old share option schemes—the employee is able, without any risk whatsoever, to acquire shares at undervalue. But the schemes are so framed that they fall outside the scope of section 8A. They take a variety of forms but the essential ingredients are:

(i) A trust is formed.

(ii) It buys or subscribes for shares in the company or other companies in the group.

(iii) The acquisition of the shares is funded by loans by the company or group.

(iv) The trust offers the shares to selected employees in the company or group, usually at the middle market price on the JSE on the day of sale.

(v) A down payment of some nominal amount is required against of the purchase price and the balance remains on loan account, payable either on termination of employment or on retirement or earlier death, or at the end of some predetermined period.

(vi) The loan account is sometimes interest-free and sometimes interest is charged but rarely at a commercial rate and there is always a safeguard limiting the interest charge for a year to the amount of the dividends received for the year.

(vii) The shares become the property of the employee immediately and are transferred to him but are pledged to the trustees as security for the loan debt.

(viii) The shares rank *pari passu* with the other shares in the company's capital but the dividends are usually appropriated (after tax) towards the payment of the interest and against the loan debt.

(ix) There are "stop loss" provisions which protect the employee against any loss caused by a fall in the value of the shares at the time when settlement of the loan debt becomes due. Either the trustees buy back the shares at the price at which they were acquired or alternatively payment at the current value of the shares is accepted as satisfying the outstanding balance of purchase money.

7.4 It has been argued that the benefit to the employee is the appreciation in the value of the shares acquired which is in the nature of capital. This may well be so but the fact remains that he acquired the benefit not in consequence of a proper investment of money but by virtue of his employment. His position is in truth no different from that of the employee who is remunerated by way of an outright allotment of shares. On this matter what the Chief Justice had to say in the Mooi case is of interest:

"In my opinion the right acquired by the appellant lacked any inherent attribute of income and, but for the provisions of paragraph (c) of the definition of 'gross income' would appropriately be regarded as a right of a capital nature. The object of paragraph (c) of the definition is of course to bring into the category of 'gross income' all 'amounts', whether of a capital nature or not, accrued in respect of services . . . Bearing this in mind, it appears to me that what paragraph (c) of the definition of 'gross income' envisages as required to be incorporated into the taxpayer's gross income is the real or true benefit accruing to him in respect of services."

7.5 Klaarblyklik is die nuwe aandele-aansporingskemas ontwerp om artikel 8A te omseil en omdat dit blyk dat die doel van hierdie skemas en die ou aandeleopsieskemas dieselfde is, naamlik om werknemers te besoldig, en omdat hulle dieselfde eindresultaat bereik, kan met billikheid gesê word dat die belastinggevolge ook dieselfde moet wees. Dit is die siening van die meerderheid van die lede dat die deelnemer aan 'n aandele-aansporingskema gedurende die jaar waarin hy die onbelemmerde reg verkry om sy aandele van die hand te sit, naamlik wanneer hy vir hulle betaal het, belas moet word op die verskil tussen hulle waarde op daardie datum en die prys waarteen hy hulle gekoop het.

7.6 Die Departement, gesteun deur 'n minderheid van die Kommissielede, deel nie hierdie siening nie. Die Departement is van mening dat dit nie nodig is om verder as die werklike bepalings van die skema te gaan nie. Die voordele van deelneming in aandele-aansporingskemas is eerstens dat die deelnemer voorsien word van gratis of goedkoop krediet om die aankoop van sy aandele te finansier, en tweedens dat hy beskerm word teen enige verlies weens die daling van sy aandele se markwaarde vanaf die tyd van aankope tot die tyd waarop sy aandeleskuld vereffen moet word. Dit is die Departement se siening dat dit hierdie voordele is, gemeet teen die bedrag van die uitgawes of verliese aangegaan of gely deur 'n buite-aandeelhouer wat dieselfde aandele op dieselfde tyd koop en verkoop en die vereiste finansies daarvoor verkry onder beding van uiterste voorwaardes, wat belas moet word. Op hierdie grondslag is die Departement van mening dat wat belas moet word, die volgende is:

(i) Die voordeel, gemeet aan die algemene reël vir voordelige lenings (paragraaf 3.4), van enige rentevrye of goedkoop krediet wat deur die deelnemer in die besondere jaar geniet word; en

(ii) enige uitstaande bedrag ten opsigte van die koopprys van die aandele wat afgeskryf word ingevolge enige stopverliesbepaling; of

(iii) daardie oorskot wat ontstaan as aandele wat aan die skema onderworpe is, ingevolge 'n stopverliesbepaling deur die trustees teruggekoop word teen 'n vergoeding wat meer as hul markwaarde is.

8. GRATIS GEBRUIK VAN MOTORVOERTUIE

8.1 Motorvoertuie vir die privaatgebruik van werknemers is waarskynlik die mees algemene byvoordeel wat deur werkgewers verskaf word. Die feite wissel natuurlik van geval tot geval. In sommige gevalle is die gebruik van die voertuig vir besigheidsdoeleindes onbelangrik en die voorreg is niks anders as 'n bykomstige vergoeding nie. In ander gevalle word die voertuig hoofsaaklik verskaf vir die gerief van die werkgewer, byvoorbeeld waar dit in sy belang is dat die werknemer te alle tye betroubare vervoer tot sy beskikking het. Maar dit kan nie weerspreek word nie dat die gratis privaatgebruik van 'n motor wat die werknemer geniet, 'n voordeel is wat verkry word ten opsigte van sy diens en wat billikheidshalwe belas behoort te word.

8.2 In ooreenstemming met die algemene reëls deur die Kommissie aanbeveel, is die ideale bedrag wat belas moet word, die bedrag wat die privaatgebruik van die voertuig deur die werknemer vir die werkgewer kos. Om 'n raming van sodanige koste moontlik te maak, sal egter vereis dat rekord gehou moet word van die onderhoudskoste en privaatkilometerafstand vir elk van die betrokke voertuie. Die Kommissie is van mening dat die enorme hoeveelheid onproduktiewe werk wat

7.5 Manifestly, the new share incentive schemes have been designed to circumvent section 8A and it would seem that, since the purpose of these schemes and the old share option schemes is the same, namely to remunerate employees, and since they achieve the same end result, it would be fair to say that the tax consequences should also be the same. It is the view of the majority of the members that in the year in which a participant in a share incentive scheme acquires the unfettered right to dispose of his shares, namely when he has paid for them, he should be taxed on the difference between their value at that date and the price at which he bought them.

7.6 The Department, supported by a minority of the Commissioners, does not share this view. It considers that it would not be right to go beyond the actual terms of the scheme. The advantages of participation in share incentive schemes are, firstly, that the participant is provided with free or cheap credit to finance the purchase of his shares and, secondly, that he is protected against any loss due to a drop in the market value of his shares between the time of purchase and the time when settlement of the share debt becomes due. It is the Department's view that it is these benefits, measured against the amount of the expenditure or losses that would have been incurred or suffered by an outside shareholder buying and selling the same shares at the same times and acquiring the finance required on arm's length terms, that should be taxed. On this basis the Department considers that what should be taxed is—

(i) the benefit, measured by the general rule for beneficial loans (paragraph 3.4) of any interest free or cheap credit enjoyed by the participant in a particular year; and

(ii) any amount outstanding in respect of the purchase price of the shares that is written off in terms of any "stop loss" provision; or

(iii) if, in terms of a "stop loss" provision, shares that are subject to the scheme are repurchased by the trustees for a consideration in excess of their market value, that excess.

8. FREE USE OF MOTOR VEHICLES

8.1 The provision of motor vehicles for the private use of employees is probably the most widespread of the fringe benefits being provided by employers. The facts of course vary from case to case. In some the business use of the vehicle is insubstantial and the privilege is nothing less than an additional emolument. In others the vehicle is provided chiefly for the convenience of the employer, for instance where it is in his interests that the employee has reliable transport available at all times. But is cannot be gainsaid that the free private motoring that the employee enjoys is a benefit derived in respect of his employment and that by rights should be taxed.

8.2 Ideally what should be taxed is, in accordance with the general rules recommended by the Commission, the cost to the employer of the use of the vehicle by the employee to the extent that such use relates to private motoring. However, to make it possible for an assessment of this cost to be made would require records to be kept of the running costs and the private mileage of each of the vehicles concerned. The Com-

dit sal meebring, nie geregverdig kan word nie en dit sal in elk geval vir die Departement heeltemal onmoontlik wees om die syfers te kontroleer. Volgens sy siening is die enigste praktiese oplossing om die voordeel wat verkry word deur die gratis gebruik van 'n motorvoertuig, op die basis van 'n billike skatting van die jaarlikse motorkoste van die gemiddelde privaatmotoris te waardeer en te belas.

Dit was vir hierdie doel nodig om sekere veronderstellinge te maak, maar hoewel daar besef word dat hulle nie in elke geval waar sal wees nie, veral sover dit die omvang van privaat- en besigheidsreise onderskeidelik aangaan, is die Kommissie oortuig dat, in die oorgrote meerderheid van gevalle, 'n resultaat wat billik teenoor die belastingbetaler en die fiskus is, verkry sal word.

Miskien was die moeilikste punt waaroor 'n besluit geneem moes word, die afstand wat die gemiddelde motoris jaarliks aflê vir privaatdoeleindes. Klaarblyklik moet dit 'n arbitrêre syfer wees, maar gelukkig is daar 'n paar aanduidings oor wat daardie afstand kan wees. Die eerste en belangrikste is die Automobiel-Assosiasie se skatting van passasiersvoertuie se onderhoudskoste—sien paragraaf 8.3. Daardie skattings is gebaseer op 'n jaarlikse afstand van 16 000 kilometer afgelê en daar word aangeneem dat die voertuie 'n gebruiksduur van ses jaar het. Die Kommissie se eie waarnemings bevestig dat baie persone ten minste 16 000 kilometer per jaar aflê vir privaatdoeleindes en party selfs baie meer. Daar is egter min twyfel dat die afstand afgelê vir privaatdoeleindes van ander motoriste minder as 16 000 kilometer per jaar is, wat beteken dat die aanname van daardie syfer as maatstaf kan veroorsaak dat sommige belastingbetalers onregverdig behandel word, wat geregverdigde rede tot klagte sal gee. Met inagneming van al die omstandighede is die Kommissie van mening dat die billikste optrede in die tussentyd sal wees om aan te neem dat 'n jaarlikse afstand van 10 000 kilometer afgelê word, welke syfer mettertyd hersien kan word, indien nodig, in die lig van omstandighede wat dan bestaan.

Die Kommissie beveel gevolglik aan dat die kontantekwivalent van die privaatgebruik van 'n voertuig deur 'n werkgewer verskaf aan 'n werknemer of sy familielid sonder oordrag van eienaarskap, deur die Minister van Finansies voorgeskryf word by wyse van 'n kennisgewing in die *Staatskoerant*. Hierdie kontantekwivalent kan van tyd tot tyd verander word na gelang van omstandighede, maar om nie LBS-aftrekkings te kompliseer nie, moet enige vasstelling vir ten minste 'n hele belastingjaar onveranderd bly en enige verandering moet bekendgemaak word nie later nie as die Desembermaand wat die belastingjaar ten opsigte waarvan die verandering 'n aanvang sal neem, voorafgaan.

8.3 *Vasstelling van motorkoste*

Wat betref die basis waarop hierdie skatting van die gratis gebruik van 'n motorvoertuig gemaak moet word, het die Kommissie vasgestel dat die Automobiel-Assosiasie periodieke ramings maak van die onderhoudskoste vir verskillende kategorieë voertuie van gewilde fabrikate. Met die maak van hierdie ramings neem die Assosiasie aan dat die voertuig privaat besit en alleenlik vir privaatdoeleindes gebruik sal word en dat 'n afstand van 100 000 kilometer afgelê sal word in 'n tydperk van ses jaar. Met die vasstelling van die jaarlikse toelating vir waardevermindering word die waarskynlike herverkoopwaarde

mission considers that the enormous amount of unproductive work that this would entail could not be justified and in any event it would be quite impossible for the Department to monitor the figures. In its view the only practical solution is for the benefit derived from the free use of a motor vehicle to be assessed and taxed on the basis of a fair estimate of the yearly motoring expenses of the average private motorist.

For this purpose, certain assumptions have, of necessity, had to be made but, while it is realised that they will not be true in every case, especially so far as concerns the amount of private as against business travelling, the Commission is convinced that in the vast majority of cases a result that is fair to both the taxpayer and the fiscus will be obtained.

Perhaps the most difficult point on which a decision has had to be taken is the distance the average motorist covers annually for private purposes. Manifestly this must be an arbitrary figure, but fortunately there are some pointers to what that distance may be. First and foremost are the Automobile Association's estimates of the operating costs of passenger vehicles—see paragraph 8.3. Those estimates are based on an annual distance travelled of 16 000 kilometres, the vehicles having an assumed useful life of six years. The Commission's own observations tended to confirm that many persons cover at least 16 000 kilometres per annum for private purposes, and some very much more. There is little doubt, however, that some other motorists travel less than 16 000 kilometres per annum for private purposes, which means that the adoption of that figure as a yardstick could result in some taxpayers being unfairly treated and given legitimate cause for complaint. Taking all the circumstances into account the Commission feels that for the time being the fairest course would be to assume an annual private distance travelled of 10 000 kilometres, which figure can, if necessary, be reviewed in due course in the light of circumstances then prevailing.

The Commission accordingly recommends that the cash equivalent of the private use by an employee or a relative of his of a vehicle provided by the employer without transfer of ownership to him be prescribed by the Minister of Finance by way of a notice in the *Government Gazette*. These cash equivalents may be altered from time to time as circumstances warrant but, in order not to complicate PAYE deductions, any determination must stand at least for the whole of one tax year and any alteration must be notified not later than during the month of December preceding the tax year in respect of which the change is to take effect.

8.3 *Determination of motoring costs.*

Turning now to the basis on which this estimate of the free use of a motor vehicle is to be made, the Commission has ascertained that the Automobile Association makes periodic assessments of the costs of operating various categories of the popular makes of vehicles. In making these assessments the Association assumes that the vehicle will be privately owned, that it will be used for private purposes only and that during a period of six years a distance of 100 000 kilometres will be covered. In determining the annual allowance for depreciation the probable re-sale value

van die voertuig na ses jaar, in berekening gebring. Verlies aan rente op die kapitaalbesteding teen 8 persent per jaar vir ses jaar word ook ingesluit by die jaarlikse onkoste, bykomend by die gewone uitgawes vir petrol, olie, bande, herstelwerk, lisensie en versekering.

Die Kommissie kan geen fout vind met die Automobiel-Assosiasie se benadering nie, maar het besluit dat aangesien hoofsaaklik besigheidsvoertuie wat ook vir privaatdoeleindes gebruik word, by hierdie berekening betrokke is, dit meer gepas sal wees as die toelating vir slytasie, op die 100 000-kilometergrondslag wat deur die Automobiel-Assosiasie gebruik word, bereken word vir 'n tydperk van slegs drie jaar teen 20 persent per jaar op die afnemende saldobasis. Die verlies aan rente word ook vir 'n tydperk van net drie jaar bereken. Hierdie twee aanpassings bring mee dat die geskatte bedryfskoste van 'n voertuig oor 'n afstand van 100 000 kilometer wesentlik verminder word.

Die resultate van die Kommissie se berekening word in die volgende tabel getoon:

of the vehicle after six years is taken into account. Loss of interest on the capital outlay at 8 per cent per annum for six years is also included in the annual costs in addition to the usual charges for petrol, oil, tyres, repairs, licence and insurance.

The Commission can find no fault with the approach of the Automobile Association, but has decided that since it is business vehicles also used for private purposes that are largely involved in this exercise, it would be more appropriate if the wear and tear allowance for the 100 000 kilometre basis used by the Automobile Association were calculated over a period of three years only at 20 per cent per annum on the diminishing balance basis. The loss of interest has also been calculated for a three year period only. These two modifications have the effect of materially reducing the estimated cost of operating a vehicle over a distance of 100 000 kilometres.

The results of the Commission's exercise are shown in the table that follows:

BEPALING VAN MOTORKOSTE

(Die syfers wat gebruik word, is slegs vir doeleindes van illustrasie en sal hersien word in die lig van heersende koste).

	Koste van voertuig				
	Bo R7 000		Onder R7 000		
	Bo R12 500	Onder R12 500	Groot motors (bo 2 500 cm³)	Middelslag motors (bo 1 300 cm³)	Klein motors (onder 1 300 cm³)
AA se raming van koste vir 100 000 km gereis	R 21 324	R 21 324	R 14 912	R 12 640	R 10 299
Kommissie se aangepaste raming vir 100 000 km gereis	17 680	13 735	10 538	8 977	7 238
Kommissie se verminderde raming van jaarlikse voordeel uit privaatgebruik van voertuig	1 750	1 350	1 050	900	700
Benaderde reiskoste per kilometer	17,6c	13,7c	10,5c	8,9c	7,2c

DETERMINATION OF MOTORING COSTS

(The figures used are for illustrative purposes only and will be revised in the light of current costs).

	Cost of vehicle				
	Over R7 000		Under R7 000		
	Over R12 500	Under R12 500	Large cars (over 2 500 cm³)	Medium cars (over 1 300 cm³)	Small cars (under 1 300 cm³)
AA's assessment of costs for 100 000 km travelled	R 21 324	R 21 324	R 14 912	R 12 640	R 10 299
Commission's adjusted assessment for 100 000 km travelled	17 680	13 735	10 538	8 977	7 238
Commission's assessment of annual benefit from private use of vehicle	1 750	1 350	1 050	900	700
Estimated cost of travelling per kilometre	17,6c	13,7c	10,5c	8,9c	7,2c

Uit bostaande tabel kan geredelik gesien word dat 'n werknemer wat die gebruik het van 'n voertuig wat aan die werkgewer behoort en wat R10 000 kos, op 'n bedrag van R1 350 belas sal word. Indien die voertuig egter R6 000 kos en die enjin se kapasiteit twee liter is, sal die belasbare waarde van die voordeel slegs R900 wees.

It will readily be seen from the table above that an employee who has the use of an employer-owned vehicle costing R10 000 will be taxed on an amount of R1 350. If however, the vehicle cost R6 000 and has an engine capacity of two litres, the taxable value of the benefit will be only R900.

Die Kommissie het kennis geneem dat die werkgewer in sommige gevalle die werknemer belas vir die privaatgebruik van die voertuig. Hierdie las kan die vorm aanneem van 'n vaste som (sê R30 per maand) of 'n bedrag van sê 5c per kilometer. Wat ook al die basis van die las is, aanvaar die Kommissie dat die belasbare bedrag vir die gratis gebruik van die voertuig, soos vasgestel in ooreenstemming met die tabel, verminder moet word met die bedrag wat die werknemer aan sy werkgewer betaal het.

8.4 Die Kommissie is daarvan oortuig dat hierdie betreklik eenvoudige reëls 'n billike resultaat in die meerderheid van gevalle sal verskaf. Daar word egter erken dat daar uitsonderlike gevalle is, in die besonder waar die werknemer se gebruiksreg op sy werkgewer se voertuig so beperk is dat dit onregverdig sal wees om 'n waarde daarop te plaas vir inkomstebelastingdoeleindes. Gevolglik *beveel die Kommissie verder aan* dat vrystelling verleen word waar die volgende omstandighede teenwoordig is:

(i) Die voertuig is beskikbaar vir, en word in werklikheid gebruik deur, meer as een werknemer.

(ii) Die privaatgebruik van die voertuig is bloot bykomstig by die besigheidsgebruik daarvan.

(iii) Die voertuig word normaalweg nie by of naby enige van die werknemers se wonings gehou nie.

8.5 Wat in die voorgaande paragrawe behandel is, is die waarde wat geplaas moet word op òf die gratis gebruik òf die gebruik teen 'n nominale heffing deur werknemers van motorvoertuie wat aan die werkgewers behoort. Daar is egter ander bykomstige sake wat die Kommissie in die loop van hierdie berekening oorweeg het en dit word hieronder behandel:

8.5.1 By sommige ondernemings is die aantal reise wat 'n werknemer verplig is om te onderneem ten einde sy pligte uit te voer, onvoldoende om die verskaffing van 'n voertuig aan hom te regverdig. In ander gevalle mag die werkgewer dit om die een of ander rede nie wenslik ag, of nie in staat wees, om 'n voertuig aan 'n werknemer te verskaf nie selfs al sou 'n sekere vorm van vervoer deur die werknemer benodig word vir die uitvoering van sy pligte. Wat ook al die omstandighede, die werknemer word sonder uitsondering vergoed op een van die volgende wyses:

(i) Die werkgewer betaal hom 'n bedrag per kilometer vir reise wat ter wille van hom onderneem word; of

(ii) die werknemer word 'n kontanttoelae betaal, gewoonlik op 'n maandelikse basis.

8.5.2 Oor die algemeen het die Kommissie min probleme in verband met vergoeding op die eerste van hierdie twee basisse, mits daar aangetoon kan word dat die reise in werklikheid onderneem is en dat hulle onderneem is vir besigheidsdoeleindes, maar is van mening dat die tabel in paragraaf 8.3 geraadpleeg moet word om te kan vasstel of die werknemer 'n belasbare voordeel geniet het al dan nie. Waar 'n werknemer byvoorbeeld 'n 1 600 cc-motorvoertuig gebruik wat minder as R7 000 kos, en betaal word teen 'n koers van 12c per kilometer vir 'n afstand van 400 kilometer wat hy vir sy werkgewer se besigheid afgelê het, sal hy 'n belasbare voordeel van 3,1c per kilometer geniet (12c minus 8,9c soos in die tabel), dit wil sê R12,40.

8.5.3 Moeiliker gevalle is dié waar die werknemer, in plaas daarvan dat die gebruik van 'n voertuig verskaf word, gewoonlik 'n ruim kontanttoelae betaal word en daar dan van hom verwag word om sy eie voertuig te gebruik en sy eie onkoste in verband met

The Commission has noted that in some cases the employer raises a charge on the employee for the private use of the vehicle. This charge may take the form of a fixed sum (say R30 per month) or an amount of so much (say 5c) per kilometre. Whatever the basis of the charge the Commission accepts that the taxable value of the free use of the vehicle, as determined in accordance with the table, should be reduced by the amount paid by the employee to his employer.

8.4 The Commission is satisfied that these relatively simple rules will provide an equitable result in the majority of cases. It recognises however that there are exceptional cases, particularly where the employee's right of use of his employer's vehicle is so restricted that it would be unfair to place a value on it for income tax purposes. *It recommends further*, therefore, that an exemption be provided where the following circumstances are present:

(i) The vehicle is available to, and is in fact used by, more than one employee;

(ii) the private use of the vehicle is merely incidental to its business use; and

(iii) the vehicle is not normally garaged at or near the residence of any of the employees.

8.5 In the foregoing paragraphs what has been dealt with is the value to be placed on the use by employees of employer-owned motor vehicles either free of charge or at a nominal charge. There are, however, other incidental matters which the Commission has considered in the course of this exercise, and these are dealt with below:

8.5.1 In some undertakings the amount of travelling an employee is obliged to do in carrying out his duties is insufficient to justify providing him with a vehicle. In other cases the employer may for some reason or another not wish, or not be able, to provide an employee with a vehicle even though some form of transport is needed by the employee in order to carry out his duties. Whatever the circumstances, the employee is invariably reimbursed in one or other of the following ways:

(i) The employer pays him an amount per kilometre for journeys undertaken on his behalf; or

(ii) the employee is paid a cash allowance, usually on a monthly basis.

8.5.2 In general, the Commission has little difficulty in regard to reimbursements made on the first of these two bases provided it can be shown that the journeys were in fact made and that they were undertaken for business purposes, but considers that in determining whether or not the employee has enjoyed a taxable benefit reference must be made to the table given in paragraph 8.3. For example where an employee who operates a 1600cc motor vehicle which cost less than R7 000 is paid for 400 kilometres covered on his employer's business at the rate of 12c per kilometre he will be enjoying a taxable benefit of 3,1c per kilometre (12c minus 8,9c as shown in the table), i.e. R12,40.

8.5.3 More difficult are the cases where the employee, instead of being provided with the use of a vehicle, is paid a cash allowance, usually generous, and is then required to use his own vehicle, and pay his own expenses, in connection with the employer's business.

die werkgewer se besigheid te betaal. Wat in sodanige gevalle belas moet word, is die oorskot van die toelae ontvang bo die uitgawe aangegaan op besigheidsreise. Die Kommissie meen egter dat dit onprakties sal wees om van werknemers te verwag om rekord van hulle besigheidsreiskoste te hou en *beveel aan dat* die aftrekbare uitgawes toegelaat word teen die koste per kilometer volgens die skaal van onkoste vir die afstand op besigheid afgelê, uitsluitend reise tussen die woon- en die werkplek. Dit beteken natuurlik dat hierdie soort werknemer rekords sal moet hou van afstande gereis vir privaat en vir besigheid onderskeidelik.

8.6 Die Departement stem nie heeltemal saam met die Kommissie se aanbeveling nie. Die Departement sal geen beswaar teen die voorgestelde reël hê nie as dit toegepas word in daardie gevalle waar die toelae bereken word met betrekking tot die afstand vir besigheidsdoeleindes gereis, maar dit het voorbehoude wat betref die gevalle waar 'n vaste rondesomtoelae betaal word sonder dat die werknemer op enige wyse aan die werkgewer verslag moet doen. Baie werknemers hou nie behoorlik boek van hulle privaat- en besigheidsreise nie, behalwe as hulle deur hulle werkgewers daartoe verplig word, en in die omstandighede sou dit vir die Departement heeltemal onmoontlik wees om te probeer om enige arbitrêre toedelings deur hulle gemaak, te kontroleer. Die kontantekwivalent van die voordeel van die gebruik van 'n voertuig wat aan die werkgewer behoort, moet, soos die Kommissie aanbeveel het, geraam word teen die koste van 10 000 kilometer veronderstelde privaateise, en die Departement se voorstel is dat 'n soortgelyke voorstel gemaak moet word in die gevalle waar 'n rondesom-reistoelae betaal word. Met ander woorde, 10 000 kilometer van die totale afstand afgelê, moet as privaat beskou word en die toelaatbare uitgawes moet bereken word op die balans van die koste per kilometer ooreenkomstig die tabel in paragraaf 8.3. Op hierdie basis sal diegene wat 'n reistoelae ontvang en diegene wat gratis privaatvervoer geniet, presies dieselfde behandel word en voorts sal dit in ooreenstemming wees met die Kommissie se benadering ten opsigte van kontantonthaaltoelaes—sien paragraaf 9.3.

8.7 Verdere voordele by wyse van bystand met die verkryging van eienaarskap van die voertuig word somtyds deur werkgewers verskaf. Hierdie bystand neem gewoonlik die vorm aan van òf goedkoop of gratis krediet vir die aankoop van die voertuig òf 'n ooreenkoms waarvolgens die werknemer in staat is om na 'n relatief kort tydperk (24 tot 30 maande), die voertuig teen 'n laer waarde as die werklike waarde daarvan te koop. Hierdie bykomstige voordele ontstaan baie duidelik as gevolg van diens en moet dus belas word, en die *Kommissie beveel aan* dat hulle binne die bestek van die voorgestelde reëls vir die belasbaarheid van die voordele verkry uit voordelige lenings (paragraaf 3.4) of verkope van bates teen 'n laer waarde as die werklike waarde daarvan (paragraaf 2.3) gebring word.

9. ONTHAALKOSTE EN TOELAES

9.1 Onthaalkoste, wat kontanttoelaes betaal aan direkteure of werknemers insluit, lewer 'n moeilike probleem op. Die afgelope aantal jare is daar 'n toenemende neiging onder werkgewers om ver meer as die koste van die tradisionele besigheidsete te betaal en in plaas daarvan vir verskillende uitgawes op te

What should be taxed in such cases is the excess of the allowance received over the expense incurred on business travelling. The Commission, however, considers that it would be impracticable to require employees to keep records of their business travelling expenses and *it recommends that* the deductible expenditure be admitted at the cost per kilometre according to the scale of charges for the distance travelled on business excluding travelling between home and place of employment. This of course means that this class of employee will have to keep records of distances travelled privately and on business respectively.

8.6 The Department is not entirely in agreement with the Commission's recommendation. It would have no objection to the proposed rule being applied in those cases where the allowance paid is calculated in relation to the distance travelled on business, but it has reservations in regard to the cases where a fixed round sum allowance is paid without the employee having to account in any way to the employer. Many employees do not keep proper records of private and business travelling unless they are obliged to do so by their employers and in the circumstances it would be quite impossible for the Department to attempt to monitor any arbitrary apportionments made by them. The cash equivalent of the benefit of the use of an employer-owned vehicle is, so the Commission has recommended, to be assessed at the cost of 10 000 kilometres assumed private travelling and the Department's suggestion is that a like assumption be made in the cases where a round sum travelling allowance is paid. In other words 10 000 kilometres of the total distance travelled should be deemed to be private and the admissible expenditure should be calculated on the balance at the cost per kilometre according to the table in paragraph 8.3. On this basis those who receive travelling allowances and those who enjoy free private motoring will be treated precisely the same and, moreover, the approach would be consistent with that taken by the Commission in regard to cash entertainment allowances—see paragraph 9.3.

8.7 Further benefits in the form of assistance in acquiring ownership of the vehicle are sometimes provided by employers. This assistance usually takes the form of either cheap or free credit for the purchase of the vehicle or an arrangement under which the employee is able after a relatively short time, 24 to 30 months, to purchase the vehicle at undervalue. These additional benefits clearly arise from employment and as such should be taxed and *the Commission recommends* that they be brought within the scope of the rules proposed for taxing the benefits derived from beneficial loans (paragraph 3.4) or sales of assets at undervalue (paragraph 2.3).

9. ENTERTAINMENT EXPENSES AND ALLOWANCES

9.1 Entertainment expenses, including cash allowances paid to directors or employees, present a difficult problem. In recent years there has been a growing tendency for employers to go far beyond meeting the cost of the traditional business lunch and instead to foot the

dok, waarvan die volgende maar 'n paar voorbeelde is:

(i) "Daknatmaak"-partytjie vir 'n belangrike klant se huis.

(ii) Bevoorrading van 'n direkteur se wynkelder of kroeg om hom in staat te stel om klante te onthaal.

(iii) Weelderige eetkamers op sakepersele waar klante onthaal word.

(iv) Onthale by geleentheid van die opening van nuwe projekte.

(v) Die neem van kliënte na vakansie-oorde, oënskynlik met die doel om besigheidstransaksies te beklink.

(vi) Rolprentvertonings by direkteure se huise.

Volgens 'n streng vertolking van die Wet is dit waarskynlik dat uitgawes van hierdie aard nie toegelaat moet word nie, omdat dit geensins seker is dat dit in werklikheid aangegaan is by die voortbrenging van inkomste nie [wat 'n vereiste van artikel 11 (a) is] of dat dit geheel en al of uitsluitlik vir bedryfsdoeleindes bestee is nie [wat 'n vereiste van artikel 23 (g) is]. In werklikheid het beide die Departement en die howe natuurlik 'n meer liberale houding ingeneem en is hulle bereid om te aanvaar dat baie van die meer algemene tipes onthaal 'n toelaatbare uitgawe vir inkomstebelastingdoeleindes is. In watter mate die toenemende vrygewigheid met betrekking tot die kontanttoelaes wat betaal word, of die groter omvang van die uitgawes waarvoor werkgewers bereid is om op te dok, deur hierdie houding aangemoedig is, is 'n betwisbare punt.

In Brittanje is die veelbesproke vraagstuk van onthaaluitgawes opgelos deur 'n eenvoudige, hoewel miskien drastiese uitweg, naamlik om alle sodanige uitgawes deur 'n werkgewer aangegaan, nie toe te laat nie, hetsy dit direk deur hom gedra word of die vorm aanneem van kontanttoelaes aan sy werknemers. Die kontanttoelae verteenwoordig bruto inkomste in die hande van die werknemer waarteen hy geregtig is om uitgawes te eis wat hy kan bewys dat dit "heeltemal of uitsluitlik en noodsaaklikerwys aangegaan is in die uitvoering van sy pligte". Daar is slegs een uitsondering op hierdie algemene reël van ontoelaatbaarheid van onthaalkoste, en dit is waar sodanige koste deur 'n Britse handelaar aangegaan is om Britse uitvoere te bevorder. Die Kommissie het met belangstelling kennis geneem dat alhoewel hierdie reëls so lank gelede as 1965 ingestel is, die Britse owerhede nog nie verplig was om hulle enigsins te wysig nie.

Voorstelle dat belastingaftrekkings ten opsigte van besigheidsonthale aansienlik verminder moet word, is onlangs deur die Kongres van die Verenigde State oorweeg, maar in direkte teenstelling met wat in Brittanje plaasgevind het, is hierdie voorstelle uiteindelik in 'n baie afgewaterde vorm aanvaar. Al wat in die praktyk nie toegelaat gaan word nie, is uitgawes aan fasiliteite wat vir besigheidsonthaal onderhou word, soos seiljagte, jagtershutte en visvangkampe, en vir klubledegelde.

9.2 Alhoewel daar vanuit die administratiewe oogpunt veel gesê kan word oor die nie-toelating van alle onthaalkoste, twyfel die Kommissie of sulke drastiese optrede werklik geregverdig kan word. Die sleutelvraag is of besigheidsonthale bydra tot die voortbrenging van winste. 'n Mens kan nie by die feit verbykom nie dat onthaal, hetsy dit nodig is of nie, deel geword het van die manier waarop sake gedoen word—daar word gesê "Onthaal is vir die besigheid wat kunsmis vir boerdery is". Wanneer daar eers aanvaar

bill for various types of expenditure, of which the following are but a few examples:

(i) "Roof wetting" party for an important customer's house.

(ii) Stocking a director's wine cellar and bar to enable him to entertain customers.

(iii) Luxury dining rooms on business premises where customers are entertained.

(iv) Banquets on the occasion of the opening of new projects.

(v) Taking clients to holiday resorts, purportedly to discuss business deals.

(vi) Film shows at directors' homes.

On a strict interpretation of the Act it is probable that expenditure of this nature should not be admitted for it is by no means certain that it really is incurred in the production of income [which is a requirement of section 11 (a)] or that it is wholly or exclusively laid out for the purposes of trade [which is a requirement of section 23 (g)]. In point of fact, of course, both the Department and the courts have adopted a more liberal approach and are prepared to accept that much of the more normal type of entertaining that is done is an admissible expense for income tax purposes. To what extent this attitude has encouraged the increasing liberality of the cash allowances being paid, or the widening scope of the expenditure for which employers are prepared to foot the bill, is a debatable point.

In Britain, the vexed question of entertaining expenses has been resolved by the simple, if drastic, expedient of disallowing all such expenses incurred by an employer, whether they are borne by him directly or take the form of cash allowances to his employees. In the hands of the employee, the cash allowance constitutes gross income against which he is entitled to claim expenses which he is able to show were "wholly or exclusively and necessarily incurred in the performance of his duties". There is only one exception to this general rule of the inadmissibility of entertaining expenses and that is where such expenses are incurred by a British trader in promoting British exports. The Commission has noted with interest that although these rules were introduced as long ago as 1965 the British authorities have not been obliged to modify them in any way.

Proposals that tax deductions in respect of business entertaining be substantially reduced have recently been considered by the United States Congress but, in direct contrast with what took place in Britain, these proposals were eventually passed in a much attenuated form. All that is in practice to be disallowed is expenditure on facilities maintained for business entertaining such as yachts, hunting lodges and fishing camps and club subscriptions.

9.2 Although there may be much to be said from the administrative point of view for disallowing all entertainment expenditure the Commission doubts whether such drastic action can really be justified. The key question is whether or not business entertaining helps to produce profits. One cannot get away from the fact that whether it is necessary or not, entertaining has become part of the way of doing business—it has been said that "entertaining is to the selling business what fertilizer is to the farming business". Once it is accepted

is dat besigheidsonthale se doel is om inkomste te verdien, kan daar net so min regverdiging vir die nie-toelating van die koste wees as wat daar kan wees vir die nie-toelating van salarisse, huurgelde of enigiets anders wat veronderstel is om winste voort te bring. Dit is waar dat daar soms onnodiglik kwistig onthaal word en dat dit soms sonder twyfel geen inkomste voortbring nie. Maar geld word ook verkwis, byvoorbeeld op onnodige weelderige kantore of onbevoegde personeel, en tog word daar nie gedink aan die nie-toelating van hierdie uitgawes nie. Dit moet aan die besture van besighede oorgelaat word om verkwisting te bekamp. Per slot van rekening erodeer verkwiste uitgawes winste, selfs al is hulle aftrekbaar vir belasting.

9.3 Die Kommissie is egter verontrus deur die groeiende praktyk om kwistige onthaaltoelaes aan werknemers en direkteure te betaal wat in waarskynlik die meerderheid van gevalle, niks anders is nie as 'n metode om onbelaste besoldiging in die sakke van werknemers te plaas. Daar word selde van werknemers vereis om verslag te doen oor hulle toelaes en hulle hou ook nie boek van hoe die geld bestee is nie. Die Departement het ongelukkig onvoldoende hulpbronne om in lang uitgerekte korrespondensie en argumente, en moontlik regsgedinge, betrokke te raak oor hierdie toelaes. Dit volg dan dat uitgawes wat glad nie gestaaf is nie, geëis en dikwels toegelaat word. Die Kommissie voel dat hierdie misbruik nie toegelaat moet word om voort te duur nie.

9.4 Met die oog daarop om hierdie meer blatante tipe misbruik te beveg, terwyl daar ook besef word dat 'n groot deel van die onthaalkoste werklik vir besigheidsdoeleindes aangegaan word, *beveel die Kommissie soos volg aan:*

(i) Alle onthaaltoelaes, hetsy in kontant of in natura (byvoorbeeld kroegvoorrade), wat deur werknemers of direkteure van maatskappye ontvang word, moet in die hande van die ontvangers daarvan belas word, sonder aftrekking van enige onkoste wat daardie persone aangegaan het. Daar moet geen uitsonderings op hierdie reël wees nie.

(ii) Werklike onthaalkoste deur werkgewers aangegaan, hetsy in die vorm van koste direk deur hulle gedra of in die vorm van toelaes in kontant of in natura aan werknemers of direkteure betaal, moet steeds toegelaat word as 'n aftrekking ingevolge artikel 11 (a) van die Wet.

9.5 Daar kan miskien geargumenteer word dat die oplossing deur die Kommissie aanbeveel, uitermate streng is op die werknemer wie se taak dit is om te onthaal ten einde sy werkgewer se besigheid te behou en uit te brei en aan wie daar tot dusver 'n kontant toelae vir daardie doel betaal is. Die algemene antwoord op hierdie argument is dat die oplossing by die werkgewer lê wat vry is om sy werknemer te vergoed vir uitgawes aangegaan met die onthaal van klante of voornemende klante as bewyse daarvoor voorgelê word. Daar word egter besef dat dit nie altyd vir die werknemer moontlik is om boek te hou van, of bewysstukke te verkry vir, elke bedrag wat vir die onthaal van sy werkgewer se klante bestee is nie. Verder het die Kommissie nie die feit oor die hoof gesien nie dat die wetgewer ingevolge artikel 11 (u) van die Inkomstebelastingwet 'n toegewing gemaak het aan 'n sekere groep belastingbetalers wie se onthaalkoste nie by die voortbrenging van inkomste aangegaan is nie en daarom nie as 'n aftrekking volgens die algemene oogmerk van die Wet toelaatbaar is nie.

that the purpose of business entertaining is to earn income there can be as little justification for disallowing the expense as there can be for disallowing salaries, rents or anything else supposed to generate profits. True, some entertaining may be needlessly lavish and much of it no doubt produces no income. But money is also wasted on, for instance, needlessly lavish offices or incompetent staff, yet there is no thought of disallowing this expenditure. It must be left to the managements of businesses to control waste. After all, wasted expenditure, even though tax deductible, erodes profits.

9.3 The Commission is disturbed, however, at the growing practice of paying generous entertainment allowances to employees and directors, which it fears is, in probably the majority of cases, nothing more than a means of putting untaxed remuneration in employees' pockets. Rarely are the employees required to account for their allowances, nor do they keep any record of how the money has been spent. The Department, unfortunately, has insufficient resources to enter into protracted correspondence and arguments, and possibly litigation, over these allowances. The result is that expenditure that is quite unvouched for is being claimed and, frequently, allowed. This abuse, the Commission considers, must not be allowed to continue.

9.4 With a view then to combating this more blatant type of abuse while at the same time recognising that a great deal of entertaining expenditure is genuinely incurred for business purposes, *the Commission recommends that—*

(i) all entertaining allowances, whether in cash or in kind (e.g. bar stocks) received by employees or by directors of companies be taxed in the hands of the recipients without the deduction of any expenses that may have been incurred by those persons. There must be no exception to this rule;

(ii) genuine entertaining expenses incurred by employers, whether in the form of costs directly borne by them or in the form of allowances in cash or in kind paid to employees or directors, continue to be allowed as a deduction within the terms of section 11 (a) of the Act.

9.5 It can perhaps be argued that the solution recommended by the Commission is unduly hard on the employee whose job it is to entertain in order to retain and expand the business of his employer and who has hitherto been paid a cash allowance for that purpose. The general answer to that argument is that the remedy lies with the employer who is free to reimburse his employee on the production of evidence of expenditure incurred in entertaining clients or prospective clients. It is realised, however, that it is not always possible for an employee to keep a record of, or to obtain a voucher for, every amount spent on entertaining his employer's customers. Moreover the Commission has not overlooked the fact that the legislature has, in terms of section 11 (u) of the Income Tax Act, granted a concession to a certain class of taxpayers whose entertaining expenses are not incurred in the production of income and are therefore not admissible as a deduction under the general scheme of the Act.

In die omstandighede is die Kommissie van mening dat 'n mate van verligting toegestaan moet word aan daardie werknemers aan wie 'n onthaaltoelae betaal word en wie se pligte noodsaaklikerwys onthaal meebring, en *beveel aan* dat artikel 11 (u) van die Wet, indien nodig, so gewysig word om dit moontlik te maak.

9.6 Met die oorweging van die kwessie van onthaalkoste het die Kommissie opgemerk dat die aftrekking toelaatbaar ingevolge artikel 11 (u) van die Inkomstebelastingwet onveranderd op R300 (£150) gebly het sedert dit in 1954 ingestel is.

Die Kommissie *beveel aan* dat dié aftrekking vermeerder word tot R600.

9.7 Die Kommissie besef dat indien die toegewing in paragraaf 9.5 hierbo aanbeveel, aanvaar en toegepas word, dit die onderwerp kan word van ernstige misbruik, want werkgewers kan in die versoeking wees om tot R600 van 'n werknemer se besoldiging as onthaaltoelae te klassifiseer in die hoop dat dit belasting sal vryspring ingevolge artikel 11 (u) van die Inkomstebelastingwet.

Dit is duidelik dat die posisie deur die Departement dopgehou sal moet word en indien die Sekretaris van Binnelandse Inkomste vind dat misbruik inderdaad plaasvind, sal die Kommissie nie huiwer om aan te beveel dat die toegewing herroep word nie.

10. BEURSE

10.1 Sekere belastingbetalers bedryf al baie jare lank beursskemas wat sonder twyfel beplan is om verdienstelike studente te help wat andersins nie in staat sou wees om met hulle studies voort te gaan nie. Die beurse word alleenlik volgens meriete toegeken en die houer staan onder geen verpligting teenoor die gewer nie. Wat die belastingbetaler betref, is die betaling in die vorm van 'n skenking en is dit nie aftrekbaar by die vasstelling van die belasbare inkomste nie. Die beurshouer is vrygestel van belasting op die beurs ingevolge artikel 10 (1) (qA) van die Inkomstebelastingwet.

Ander belastingbetalers bedryf skemas waarvolgens die beurshouer verplig is om 'n studierigting te volg wat by die werksaamhede van hul besigheid inskakel. Terselfdertyd verbind die beurshouer hom om vir 'n minimum aantal jare na die voltooiing van sy studies vir die betrokke belastingbetaler te werk. Tensy die beurs uitermate rojaal is, word die belastingbetaler toegelaat om dit af te trek by die vasstelling van sy belasbare inkomste, en die beurshouer is vrygestel van belasting daarop ingevolge artikel 10 (1) (qA).

In nog ander gevalle is die besigheid van die belastingbetaler geleë in 'n afgesonderde gebied en werknemers moet hulle kinders na ver verwyderde stede stuur ten einde hoërskole by te woon. Sommige van hierdie werkgewers betaal al baie jare lank die koste van die sekondêre opvoeding.

10.2 Die afgelope aantal jare het sommige werkgewers gepoog om skemas in te stel wat, hoewel dit die voorkoms van egte beursskemas het, in werklikheid 'n wyse is om bykomstige vergoeding aan die werknemer te betaal. Ingevolge sommige van hierdie skemas, wat alleenlik tot die beskikking is van afhanklikes van permanente werknemers, afgetrede personeel of personeellede wat in diens gesterf het, word 'n sekere mate van keuring van beurshouers toegepas, maar die voorwaardes van sodanige keuring is so wyd dat dit in die praktyk moontlik is om aan byna enige afhanklike 'n beurs toe te ken.

In the circumstances the Commission is of the opinion that a measure of relief should be granted to those employees who are paid an entertainment allowance and whose duties necessarily involve entertaining and *it recommends that if necessary section* 11 (u) *of the Act should be amended in such a way as to make this possible.*

9.6 In considering the matter of entertaining expenses the Commission has noted that the deduction allowable in terms of section 11 (u) of the Income Tax Act has remained unaltered at R300 (£150) since it was introduced in 1954.

The Commission recommends that this deduction be increased to R600.

9.7 The Commission realises that if the concession recommended in paragraph 9.5 above is accepted and implemented it would become the subject of severe abuse for employers may be tempted to classify up to R600 of an employee's remuneration as an entertainment allowance in the hope that it will escape tax in terms of section 11 (u) of the Income Tax Act.

Clearly the position will have to be watched by the Department, and if the Secretary for Inland Revenue finds that abuse is in fact taking place the Commission will not hesitate to recommend the withdrawal of the concession.

10. BURSARIES

10.1 Certain taxpayers have for many years operated bursary schemes that without doubt are designed solely to help deserving students who would otherwise not have been able to continue with their studies. The bursaries are awarded solely on merit and the holder is not placed under any obligation to the grantor. As far as the taxpayer is concerned the payment is in the nature of a donation and it is not deductible in the determination of taxable income. The bursary holder is exempt from tax on the bursary in terms of section 10 (1) (qA) of the Income Tax Act.

Other taxpayers operate schemes under which the bursary holder is obliged to pursue a field of study which fits in with their business operations. At the same time the bursary holder binds himself to work for the taxpayer concerned for a minimum number of years after completing his studies. Unless the bursary is unduly generous, the taxpayer is allowed to deduct it in determining his taxable income and the bursary holder is exempt from tax thereon in terms of section 10 (1) (qA).

In yet other cases the business of the taxpayer is situated in a remote area and employees have to send their children to distant cities in order to attend high schools. Some of these employers have for many years met the cost of this secondary education.

10.2 In recent years some employers have endeavoured to introduce schemes which, while having the appearance of genuine bursary schemes, are in reality a means of paying additional remuneration to the employee. In terms of some such schemes, which are open only to dependants of permanent employees, retired staff or staff members who have died in service, some measure of selection of bursary holders is applied, but the terms of such selection are so wide that in practice it is possible to award a bursary to almost any dependant.

Ander werkgewers doen nie moeite om 'n formele skema daar te stel nie, maar betaal bloot die koste van die universitêre of ander opleiding van die kinders van sekere werknemers. In miskien die mees blatante geval wat teengekom is, het die werkgewer aansienlike "beurse" betaal aan jong kinders wat 'n Staatslaerskool bygewoon het.

10.3 In sommige gevalle word geredeneer dat die belastingbetaler nie sonder die ruim hulp van sy werkgewer sy kind na 'n duur privaatskool sou gestuur het nie, maar na die Staatskool net om die hoek. Sy besparing is dus nul en gevolglik is daar geen voordeel om te belas nie. In ander gevalle is beweer dat dit die werkgewer se begeerte was om die beurshouer te help en dat dit bloot toevallig was dat die beurshouer 'n kind van 'n werknemer was.

Die Kommissie het hierdie en ander argumente oorweeg en tot die slotsom gekom dat alhoewel hulle in sommige gevalle geldig is, hulle in baie gevalle nie geld nie. Gevolglik word as *'n algemene reël aanbeveel* dat die voorstelle in paragraaf 2.5 vervat, saamgelees met paragraaf 2.6, toegepas word op beurse, hetsy in kontant betaal of in die vorm van betalings aan opvoedkundige inrigtings.

10.4 Met inagneming van die feit dat, soos in paragraaf 10.1 genoem, sekere skemas sonder twyfel ontwerp is om verdienstelike studente te help, selfs wanneer dit mag gebeur dat hulle afhanklikes is van die werknemers van die skenker, is die Kommissie egter van mening dat dit billik sal wees om 'n uitsondering te maak in gevalle waar die skema voldoen aan sekere voorwaardes wat in die Inkomstebelastingwet gestel moet word, en *beveel gevolglik so aan.*

Die voorwaardes wat die Kommissie in gedagte het, is kortliks soos volg:

(a) Die skema moet beheer word deur behoorlik gedefinieerde reëls wat nie onderworpe is aan verandering weens 'n gier van die skenker nie.

(b) Die voorgenome toekenning van beurse moet in die openbaar geadverteer word.

(c) Die beurse moet oop wees vir mededinging deur die algemene publiek en nie beperk word tot die afhanklikes van werknemers van die skenker nie.

(d) Die aansoeke om beurse moet deur 'n onafhanklike, onpartydige liggaam oorweeg word.

10.5 Die Kommissie het ook ernstige oorweging geskenk aan 'n versoek dat 'n spesiale vrystelling ingevoer moet word om die tipe geval te dek wat in die derde subparagraaf van paragraaf 10.1 bedoel word, dit is, waar die werkgewer wie se besigheid in 'n afgeleë gebied geleë is, vir die sekondêre onderrig van kinders betaal wat ver verwyderde skole moet bywoon.

Dit is onmoontlik om nie 'n mate van simpatie te hê nie met die spesifieke ouers wat weens 'n gebrek aan fasiliteite in die gebied waar hulle werksaam is, verplig word om hulle kinders na ander plekke te stuur vir hulle onderrig. Daar moet egter onthou word dat dieselfde probleem duisende ander ouers dwarsoor die land wat te ver van skole woon om hulle kinders elke dag heen en weer te vervoer, in die gesig staar. Die enigste beskikbare oplossing vir hierdie ouers is om hulle kinders in skoolkoshuise te plaas en die koste daaraan verbonde word betaal uit inkomste wat reeds belas is. Dit volg dus dat indien 'n goedhartige werkgewer werknemers betaal vir die skoolopleiding van hul kinders wat in ander sentra op skool is en die waarde van daardie voordeel wat hulle geniet, nie belas

Other employers do not bother to set up any formal scheme but merely meet the cost of the university or other education of the children of certain employees. In perhaps the most blatant case that has been observed, the employer paid substantial "bursaries" to young children who were being educated at a State primary school.

10.3 In some cases it has been argued that without the generous aid of his employer the taxpayer would not have sent his child to an expensive private school but would instead have sent him to the State school around the corner. His saving is therefore nil and, that being the case, there is no benefit to tax. In other cases it has been suggested that it was the employer's desire to assist the bursary holder and that it was purely coincidental that the bursary holder was the child of an employee.

The Commission has considered these and other arguments and has come to the conclusion that, while they may well be valid in some cases, in many cases they are not. *It recommends therefore* that, *as a general rule,* the proposals embodied in paragraph 2.5, as read with paragraph 2.6, should apply to bursaries, whether paid in cash or in the form of payments to educational institutions.

10.4 Having regard, however, to the fact that, as stated in paragraph 10.1, certain schemes are without doubt genuinely designed to assist deserving students even when they may happen to be dependants of employees of the grantor, the Commission considers that it would be equitable to make an exception in cases where the scheme complies with certain conditions which would have to be laid down in the Income Tax Act, and *it recommends that this be done.*

The conditions the Commission has in mind are broadly as follows:

(a) The scheme must be governed by properly defined rules that will not be subject to change at the whim of the grantor.

(b) The intended award of bursaries must be publicly advertised.

(c) The bursaries must be open for competition by the general public and not be restricted to the dependants of employees of the grantor.

(d) The applications for bursaries must be considered by an independent, impartial body.

10.5 The Commission has also given serious consideration to a plea that a special exemption should be introduced to cover the type of case referred to in the third subparagraph of paragraph 10.1, that is where an employer whose business is situated in a remote area pays for the secondary education of children who have to attend schools in distant centres.

It is impossible not to have a measure of sympathy for these particular parents who, because of a lack of facilities in the area where they are employed, are obliged to send their children to other places in order to have them educated. It must be remembered however that the same problem faces thousands of other parents throughout the land who live far enough away from schools to make it impossible for them to transport their children to and fro every day. The only solution available to these parents is to place their children in school hostels, the cost of keeping the children there being met out of income which has already borne tax. It follows that if those employees whose children's schooling at another centre is paid for by a generous employer are not to be taxed on the

gaan word nie, sal al daardie ouers wat geen ander keuse het as om hulle kinders op eie koste in kosskole te plaas, 'n onbetwisbare saak vir belastingverligting hê.

Omdat opleidingskoste van 'n kind ongetwyfeld 'n uitgawe van private aard is, kan die Kommissie nie aanbeveel dat enige verligting aan 'n belastingbetaler in laasgenoemde geval verleen word nie. Om dieselfde rede kan daar nie aanbeveel word dat, waar die kind se skoolopleidingskoste deur die werkgewer gedra word, die gevolglike voordeel van belasting vrygestel moet word nie.

11. SLOTSOM

Dit is duidelik dat daar nie 'n enkele, ideale oplossing kan wees nie vir so 'n ingewikkelde probleem soos hierdie, nl. om te poog om vir inkomstebelastingdoeleindes 'n waarde te heg aan byvoordele. Miskien is die beste waarop gehoop kan word, om ten minste 'n redelike deel van daardie bedrae wat tans belasting vryspring, binne die belastingnetwerk te bring.

Daar is op die aanbevelings in die voorgaande paragrawe besluit eers nadat die beskikbare alternatiewe oplossings ten volle oorweeg is, en die Kommissie is van mening dat dié aanbevelings 'n oplossing bied wat so regverdig en prakties is as waarvoor gehoop kan word. Hy is nogtans die mening toegedaan dat hierdie voorstelle moontlik verder verfyn kan word as die sienswyses van ander belanghebbende partye verkry kan word, en vir daardie doel word aanbeveel dat hierdie dokument vir algemene inligting gepubliseer word.

(Dr.) J. H. DE LOOR, Voorsitter.

value of the benefit they enjoy, all those parents who have no option but to keep their children at boarding school at their own expense will have an unassailable case for tax relief.

Since the cost of educating one's children is without doubt an expense of a private nature the Commission cannot recommend that any relief be granted to this latter class of taxpayer. By the same token it cannot recommend that where the cost of the child's schooling is met by the employer the resultant benefit should be exempted from tax.

11. CONCLUSION

It is manifest that there can be no single, ideal solution to a problem as complex as that of attempting to place a value on fringe benefits for income tax purposes. Perhaps the best that can be hoped for is to bring at least a reasonable portion of those amounts that are at present escaping tax within the tax net.

The recommendations made in the foregoing paragraphs were decided upon only after a full consideration of the alternative solutions available and the Commission is of the opinion that they represent as fair and practical a solution as can be hoped for. It is nevertheless considered that the proposals could perhaps be refined if the views of other interested parties were obtained and for that purpose it is recommended that this document be published for general information.

(Dr.) J. H. DE LOOR, Chairman.

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