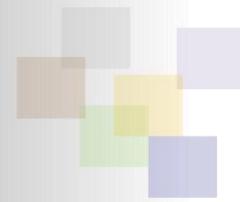


The LIRS issues a public notice on “Reasonable Removal Expenses” to address perceived abuse by employers of labour



Introduction

On Monday 21 August 2017, the Lagos State Internal Revenue Service (“the LIRS”) released a Public Notice captioned “*What Constitutes Reasonable Removal Expenses for the Purposes of Tax Exemption*”.

The Publication defined **Reasonable Removal Expenses** as constituting “any expenses which an employee incurs to move to a new employment location and payment made by an employer results in no net overall benefit to the employee”; or “a payment made to or on behalf of an employee taking up an employment with a new employer such as relocation allowance”.

The LIRS anchored its definition on Section 4(3) c of the Personal Income Tax (Amendment Act) 2011, (PITA) which exempts “reasonable removal expenses” from taxes.

PITA Section 4(3c) states:

*“where those expenses are reasonable removal expenses which may or may not include temporary subsistence allowance incurred by the employer by reason of a **change of the employee’s employment** which requires such employee to **change his place of residence**, and the employee shall not be treated as being in receipt of any remuneration in respect of the allowance...”*

As part of its compliance requirements, the LIRS stated conditions under which reasonable removal expenses may be tax deductible. For this to happen, the expense by an employer must actually be incurred and must be of reasonable amount. It must also be properly documented and necessary.

An employer is expected to keep details and documents that substantiate the removal/relocation of Temporary Subsistence Allowance covering expenses already incurred by the employer will be taxed.

This section of the law on “Reasonable Removal expense” has posed interpretational challenges to many Taxpayers, who wish to determine the extent of the application of this exemption. Below are some of the issues normally raised:

a) What constitute “Change of employment”?

It has often been taken for granted in practice that the phrase “*Change of employment*” also covers situations where an employee working for the same employer and with the same duties is transferred to a new employment location, at the behest of his employer. By this Notice, the LIRS seems to have clarified, in its definition of Removal Expenses, that the “change of employment” as stated in PITA section 4(3c) does not only cover change of employer but also covers change of employment location under existing employment.

b) What constitute “Change of Place of Residence”?

The Notice also stated as an exemption condition that “*Moving house must be necessary in the circumstances*”. However, the PITA refers to “*change of place of residence*”. The Notice did not clarify whether it is necessary for the employee to end the tenancy or dispose of (where owned), his old residence in order to qualify for the exemption. Also, there is no clarification on how the employee will show proof to the Tax Authority that he has “moved house” or prove that “moving house is necessary”. In addition, there is no clarity on whether traveling distance to the new place of work is relevant.



Although, the LIRS stated in its documentation requirement, that the employer needs to show information on distance (km) involved.

c) What is allowable as Removal/Relocation expenses?

The Notice did not also clarify (probably with examples) what is included in or excluded from Removal/Relocation expenses. For instance, does it include items such as cost of selling old home or purchasing new one, loss of rent deposit, damages paid to old landlord, temporary hotel accommodation, travel insurance, compensation for holiday cancellation, etc?

d) What is a “Reasonable amount”?

Reasonability is a subjective concept and is mostly determined on a case-by-case basis. Even where there is a supposed quantitative benchmark, it potentially becomes a subject of legal challenge as only an amendment to the PITA in that regard can fully address this concern.

Conclusion:

The Notice seems generic as against providing specific details that would have properly guided Taxpayers who continue to pay the penalties for ambiguous Tax provisions. For instance, proving reasonability or necessity will continue to remain a controversial area and may eventually require further clarifications from the Tax Authorities, else legal resolution may be required.

It is advisable for Taxpayers who seek to be compliant to seek the Tax Authority’s concurrence with their Reasonable Removal Expenses, as well as seek professional guidance for proper implementation of the Public Notice.

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