



Circular No. 2 of 2022

Date: 04th February 2022

Clarifications on tax treatment on compensations and overtime pay for employees in the International Trade Zone

The Financial Services Authority (“FSA”) would like to draw the attention of all International Trade Zone (ITZ) licensees on the recent amendments made in relation to the above mentioned subject title.

(A) The amendments in the International Trade Zone (Employment)(Amendment) Regulations, 2022:

1. Redefine the definition of compensation and what are the parameters that entails for a compensation scheme administered by an employer.

“Compensation” means an amount of money paid by an employer to a worker in accordance with regulations stipulated in 31,31A and 31B or in accordance with an approved compensation scheme.

“Compensation scheme” means a scheme administered by an employer or its agent and approved by the Authority under which an employer shall pay compensation to a worker or category of workers at the rate prescribed in regulation 31B or at such higher rate and in accordance with manner stipulated in the scheme.

2. Regulation 31 and 31A provides the eligibility of compensation upon termination, resignation and retirement.

Where a worker is terminated, resigned or retires, that worker would be eligible for compensation on completion of not less than five years’ continuous service. In addition, compensation for length of service shall be payable to such worker, including wages and other benefits earned by the worker, in line with regulation 31B.

However, compensation shall not be payable to a worker where the worker resigns during a period of suspension from the service for disciplinary reasons, or where the circumstances of the resignation are such that serious disciplinary action could have been taken against the worker by the employer.

Lastly, where a worker who has completed not less than five years of continuous service dies while in employment, compensation for length of service shall be payable to the estate or succession of such

worker in accordance with the laws of succession, in addition to the wages and other benefits accumulated by the worker, in line with regulation 31B.

3. Section 31B provides further clarification on the calculation of compensation for workers.

The employer shall pay to the worker compensation calculated at the rate of five-sixths of one day's wage for each completed month of service in the case of contracts of continuous employment. On the other hand, double the rate in the case of fixed term contract.

For the purpose of clarity, any compensation paid by an employer to a worker in excess of one day's wage for every month worked by a worker, such excess amount shall be subject to tax at the rate prescribed under the ***Income and Non-Monetary Benefits Tax Act, 2010 (Cap.273)***.

For the purpose of computing compensation, the wage payable to the worker at the time the contract of employment is terminated. Moreover, in respect of continuous employment, reference to "every month of service" or "completed months of service" means the length of continuous service of the worker with the employer under a contract of continuous employment. Whereas, in respect of a fixed term contract, reference to "every month of service" means the length of the service under the fixed term contract that is subject to termination notwithstanding any length of employment under any previous fixed term contract. The term "wage" includes any responsibility allowance or duty allowance.

For the purpose of entitlement and calculation of compensation upon the commencement of operation of these regulation, the following formula shall apply for the purpose of calculating compensation payable to a worker:

$$\frac{A \times B \times C}{52 \times D}$$

A – stands for salary per year;

B – stands for working hours per day;

C – stands for number of days of completed months of service;

D – stands for number of working hours per week.

Lastly, compensation payable to a part time worker shall be the amount which a full time worker in the same occupation would have received under these Regulations reduced in the proportion that the number of hours which the full-time worker would have worked bears to the number of hours which the part-time worker has worked.

4. Section 31C provides a provision for employers to create a compensation scheme.

An employer may establish and operate a compensation scheme for payment of compensation in circumstances where compensation is due and payable to a worker under these regulations or otherwise. Importantly, a compensation scheme shall be approved by the Authority, under such terms and conditions. A compensation scheme application form must be submitted to the Authority.

Finally, where an employer operates a compensation scheme, a worker shall be entitled to compensation in accordance with the compensation scheme where compensation is due and payable to the worker under these regulations or under the compensation scheme.

(B) The amendments in the Income and Non-Monetary Benefits Tax (Amendment of Second Schedule) Regulations, 2022:

1. Amendment of Second Schedule by inserting the words in paragraph 1(f) *“and the International Trade Zone (Employment) Regulations 1997, (S.I 13 of 1997)”*.

Since the licensees of the SITZ are not within the purview of the Employment Act, any compensation amount paid are not exempted from taxes given that International Trade Zone (Employment) Regulations are not listed in the exempt schedule of the Income and Non-Monetary Benefits Tax Act. Currently, only the Employment Act is listed, thus only compensation paid under the Employment Act shall be exempted.

Based on the amendment in the International Trade Zone (Employment) Regulations 1997 as depicted under (A) above, compensation paid as provided in for under the same regulation, shall now be exempted as per amendment (B) above from tax. **However, for the purpose of clarity, any compensation paid by an employer to a worker in excess of one day’s wage for every month worked by a worker, such excess amount shall be subject to tax at the rate prescribed under the Income and Non-Monetary Benefits Tax Act, 2010 (Cap.273).**

2. Amendment of Second Schedule by inserting the words in paragraph 1(n) *“and regulation 6 of the International Trade (Conditions of Employment) Order 1997, (S.I 14 of 1997)”*.

Similarly, tax treatment for overtime paid to employees under the International Trade (Conditions of Employment) Order 1997 needs to be uniformed as for overtime paid under the Employment (Conditions of Employment) Regulations.

As such, by way of amendment (B) above, overtime paid to employees by an ITZ licensee shall now be exempted from tax treatment.

(C) Refunds

Given that the amendments in the Income and Non-Monetary Benefits Tax (Amendment of Second Schedule) Regulations, 2022 (B above) has a retrospective effect, meaning it is deemed to have come into effect since 1st January 2021, ITZ employees who have been taxed against the provisions of the amendment in the International Trade Zone (Employment)(Amendment) Regulations, 2022 and regulation 6 of the International Trade (Conditions of Employment) Order 1997 are entitled for a refund from the Seychelles Revenue Commission (SRC) through their employers.

ITZ licensees/employers are advised to submit a case for refund to the SRC who shall assess each request for refund on a case-to-case basis. Case for refund should be submitted to the Director of Taxpayers Services, Mrs. Gayathri Andre on gayathri.andre@src.gov.sc or 4293724.

Financial Services Authority