

GUIDE TO DETERMINE FRINGE BENEFIT VALUE ON ACCOMMODATION

TABLE OF CONTENTS

1	PURPOSE	3
2	SCOPE	3
3	REFERENCES	3
3.1	LEGISLATION	3
3.2	CROSS REFERENCES	3
4	DEFINITIONS AND ACRONYMS	3
5	BACKGROUND	5
5.1	GOVERNING LEGISLATION	5
5.2	DETERMINING THE VALUE RELATING TO RESIDENTIAL ACCOMMODATION FRINGE BENEFITS	6
6	GENERAL RULES FOR COMPLETING THE APPLICATION FORM FOR A TAX DIRECTIVE	11
7	LAYOUT OF THE APPLICATION FORM	12
7.1	PARTICULARS OF THE EMPLOYER	12
7.2	PART 1: DETAILS OF THE REQUEST	12
7.3	PART 2: ATTACHMENTS TO SUPPORT THE APPLICATION	13
7.4	DETAILS OF THE AFFECTED EMPLOYEES	13
7.5	DECLARATION	14
7.6	PART 5: NOTES	14
8	QUALITY RECORDS	14
9	DOCUMENT MANAGEMENT	14

1 PURPOSE

- The purpose of this guide is to assist employers with regard to the determination of the taxable fringe benefit value relating to residential accommodation provided by employers to employees.

2 SCOPE

- This guide is intended to assist in explaining the requirements when requesting the South African Revenue Service (SARS) to determine a lower residential accommodation fringe benefit amount based on the market related rental thereof, provided it is fair and reasonable.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Income Tax Act No: 58 of 1962: Seventh Schedule paragraph 1, 2(d),3, 4,9(1), 9(2), 9(3), 9(5), 17 and18; Fourth Schedule - Section 1 – definitions; Section 9(2)(g) or (h) Tax Administration Act No. 28 of 2011 Companies' Act No.71 of 2008
Other Legislation:	None
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
EMPRB	Request for determination of accommodation fringe benefit value	All

4 DEFINITIONS AND ACRONYMS

7th Schedule	<ul style="list-style-type: none"> The Seventh Schedule to the Income Tax Act
Association Institution	<ul style="list-style-type: none"> In relation to single employer, means – <ul style="list-style-type: none"> Where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same person; or Where the employer is not a company ,any company which is managed or controlled directly or indirectly by the employer or any partnership of which the employer is a member; or Any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer.
Cash equivalent	<ul style="list-style-type: none"> For taxable benefit purposes as defined in paragraph 2 to the Seventh Schedule, a cash equivalent shall be the value of the taxable benefit less any consideration (if applicable) given by the employee.
Commissioner	<ul style="list-style-type: none"> Commissioner for the South African Revenue Service.

Connected person	<ul style="list-style-type: none"> • In the case of a natural person - <ul style="list-style-type: none"> ▫ any relative or any beneficiary in relation to the trust or any connected person in relation to such beneficiary. • In the case of a partnership - <ul style="list-style-type: none"> ▫ any member of a partnership or any person in relation to the member of such partnership. • In the case of a company - <ul style="list-style-type: none"> ▫ any company which is the member of the same group of companies or any person who holds at least 20% in any company, other than a company as defined in section 1 of the Companies' Act No. 71 of 2008 (Companies' Act).
Consideration	<ul style="list-style-type: none"> • As respects any reference in the Seventh Schedule to the Act, to any consideration given by an employee, does not include any consideration in the form of services rendered or to be rendered by the employee.
Employee	<ul style="list-style-type: none"> • In relation to any employer, means a person who is an employee in relation to such employer for the purpose of the Fourth excluding any persons who prior 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, <ul style="list-style-type: none"> ▫ but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole shareholder or controlling shareholder in such company and, for the purpose of paragraph 2(h) and 13, including any person who has retired as aforesaid and who, after his retirement, is released by his employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on the behalf of the employee or to pay any amount which became owing by the employee to the employer before employee's retirement.
Employees' tax	<ul style="list-style-type: none"> • An amount of tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee.
Employer	<ul style="list-style-type: none"> • Means any person who is an employer as defined in paragraph 1 of Fourth Schedule and includes – <ul style="list-style-type: none"> ▫ Any company; and ▫ For the purposes of paragraph 2 and the determination of the cash equivalent of the value of any taxable benefit granted to any person who derives remuneration as defined in the said paragraph from employment in the public service or any administration or undertaking of the State or who holds office under the Republic, the State.
Employment	<ul style="list-style-type: none"> • Includes any office or employment.
Expatriates	<ul style="list-style-type: none"> • Foreigners working and earning income in South Africa.
Month	<ul style="list-style-type: none"> • Means any of the twelve portions into which any calendar year is divided.
PAYE	<ul style="list-style-type: none"> • Pay-As-You-Earn
Remuneration proxy	<ul style="list-style-type: none"> • Remuneration as defined in paragraph 1 of the Fourth Schedule, received by the employee from the employer during the year of assessment immediately preceding that year of assessment: Provided that – <ul style="list-style-type: none"> ▫ where during a portion of such preceding year the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy for that employee must be deemed to be an amount which bears to the amount of the employee's remuneration for the portion of such preceding year during which the employee was in such employment the same ratio as the period of 365 days bears to the number of days in such last-mentioned portion; ▫ where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy for that employee must be deemed to be an amount which bears to the employee's remuneration

	during the first month during which the employee was in the employment of the employer the same ratio as 365 days bears to the number of days during which the employee was in such employment.
Republic	<ul style="list-style-type: none"> • Republic of South Africa
SARS	<ul style="list-style-type: none"> • South African Revenue Service
Taxable benefit	<ul style="list-style-type: none"> • Means taxable benefit as contemplated in paragraph 2, whether the grant of such benefit is voluntary or otherwise, but excluding – <ul style="list-style-type: none"> ▫ Any benefit the amount or value of which is exempt from normal tax under the provision of section 10 of this Act or ▫ Any benefit provided by any benefit fund in respect of medical, dental and similar services, hospital services, nursing services and medicines or ▫ Any lump sum benefit payable by a benefit fund, pension fund, pension preservation fund, provident fund or provident preservation fund being a benefit referred to in the definition of “benefit fund” in section 1 of this Act or in paragraph (i) of proviso to the paragraph (c) of the definition of “pension fund” in that section or in paragraph (a) of the definition of “provident fund” in that section ▫ Any benefit or privilege received by or accrued to a person contemplated in section 9(2)(g) or (h) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.
Trust	<ul style="list-style-type: none"> • Means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in fiduciary capacity. • Where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.

5 BACKGROUND

- The employer must determine the cash equivalent of the value of the residential accommodation taxable fringe benefit. The value of this benefit must be reduced by any rental consideration given by the employee for the accommodation for the applicable year of assessment.

5.1 GOVERNING LEGISLATION

- In terms of paragraph 2(d) of the 7th Schedule, a taxable benefit shall be deemed to have been granted to the employee where the employer has provided the employee with residential accommodation either free of charge or for a rental consideration which is less than the rental value of the accommodation as determined under paragraph 9 of the 7th Schedule.
- Paragraph 3 of the 7th Schedule prescribes that an obligation is placed upon the employer to determine the cash equivalent of the value of a taxable fringe benefit. In terms of paragraph 3(2) of the 7th Schedule, the Commissioner may, if no determination is made, or if the determination appears to him/her to be incorrect, re-determine the cash equivalent –
 - Issue the employer with a Notice of Assessment in terms of paragraph 12 of the Fourth Schedule for the unpaid amount of Employees’ Tax that is required to be deducted or withheld from the cash equivalent or
 - Upon assessment of the tax liability for normal tax of the employee to whom the taxable benefit has been granted.
- Paragraph 4 of the 7th Schedule prescribes that where any associated institution in relation to any employer grants a benefit to an employee as a reward for services rendered, it constitutes a taxable benefit deemed to be granted by the employer to the employee.

- Paragraph 17 of the 7th Schedule prescribes that every employer must deliver Employees' Tax Certificates [IRP5/IT3(a)s] to the employees within 30 days after the end of any year or period of assessment or within the further period as the Commissioner may approve. The nature of the taxable benefit and the cash equivalent of the value thereof must be reflected on the IRP5/IT3(a) certificate of the employee of such employer.
- Paragraph 18 of the 7th Schedule states that the employer must declare under the return referred to in paragraph 14 that all taxable fringe benefits enjoyed by the employees of the employer for the period covered by the return are included in the IRP5/IT3(a).
 - This declaration forms part of the Employer Reconciliation Declaration (EMP501) (the return) that must be submitted annually or as required by the Commissioner.

5.2 DETERMINING THE VALUE RELATING TO RESIDENTIAL ACCOMMODATION FRINGE BENEFITS

- In terms of paragraph 9(5) of the 7th Schedule, the employer can apply for a directive to determine the value relating to residential accommodation fringe benefit if the situation, nature or condition of the accommodation as determined according to the formula or rental value does not represent a reasonable and fair value.
- The application form may be obtained by:
 - Visiting the SARS website www.sars.gov.za
 - Calling the SARS Contact Centre on 0800 00 SARS (7277)
 - Visiting the SARS branch nearest you.
- Where the Commissioner is satisfied that the value determined by the employer on the residential accommodation benefit does not represent a fair and reasonable value, he/she may in terms of paragraph 9(5) of the 7th Schedule determine a rental value at a lower rate/amount which he/she considers to be fair and reasonable.
- This determination may only be done if one or more of the following reasons exist:
 - **Situation of the accommodation:** The property is situated in a remote area (e.g. small mining town) where there is no or limited choice of accommodation for employees and there is a lack of accommodation available to employees to own their own property.
 - **Nature or condition of the accommodation:** Where the condition of the residential accommodation (e.g. damaged house) will result in the house selling for a much lower amount than the average market value of the house.
 - **Other factors:**
 - The employee is forced due to his/her duties to stay near or on the employer's business premises (e.g. proto-team members, security members, etc.).
 - The employee is highly paid and the average value of the accommodation in the area where it is situated is much less than the value determined in accordance with the formula.
- **Requirements when an employer applies for a directive:**
 - The employer must indicate the proposed value which he/she deems to be fair and reasonable on the application form.
 - Reasons must be provided why this proposed value is deemed to be fair and reasonable.
 - Relevant material must be submitted together with the application form. Relevant material may include:
 - Valuation lists of rental properties available in the relevant area obtained from estate agents (minimum of two)
 - Pictures of a property
 - How many types of a specific property are in the area
 - Name of the region and a description of the area
 - Average salary of the affected group of employees

- Rental values.
- Where the employee does not meet the above request criteria, the formula below in terms of Paragraph 9(3) will apply:
 - $(A-B) \times \frac{C}{100} \times \frac{D}{12}$

In which formula:

 - “A” represents the remuneration proxy as determined in relation to the year of assessment.
 - “B” represents an abatement equal to an amount of R70 700 : Provided that in any case where –
 - The employer is a private company and the employee or his/her spouse controls the company or is one of the persons controlling the company, whether control is exercised directly as a shareholder in the company or as a shareholder in any other company; or
 - The employee, his/her spouse or minor child has a right of option or pre-emption granted by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employee, his/her spouse or minor child may become the owner of the accommodation, whether directly or indirectly by virtue of a controlling interest in company or otherwise, the said abatement shall be reduced to zero.
 - “C” represents a quantity of 17: provided that where the accommodation consists of a house, flat or apartment consisting of at least four rooms –
 - However, “C” will represent a quantity of 18 if –
 - such accommodation is unfurnished and power or fuel is supplied by the employer
 - such accommodation is furnished but power or fuel is not supplied by the employer; or
 - “C” may also represents a quantity of 19 if –
 - such accommodation is furnished and power or fuel is supplied by the employer.
 - “D” represents the number of months in relation to a year of assessment during which the employee was entitled to occupation of such accommodation.
- The value of the residential accommodation is calculated by using the above formula only, in the following circumstances:
 - The full
 - The full ownership of the accommodation vests in the employer or an associated institution, and the employee does not have an interest in the accommodation, or
 - The full ownership does not vest in the employer or an associated institution, and -
 - It is customary for the employer in the industry concerned to provide free or subsidised accommodation to his/her/its employees; and
 - It is necessary for the particular employer, having regard to the particular kind of employment, to provide free or subsidised accommodation:
 - For the proper performance by the employees of their duties; or
 - As a result of the frequent movement of employees; or
 - As a result of the lack of employer-owned accommodation.
 - The benefit is provided solely for *bona fide* business purposes, other than the obtaining of a tax benefit, and
 - The employee does not have an interest in the accommodation.
- Where all the above criteria have been met, the formula-based value will be included in the taxable income of the employee, even though the employer does not own the accommodation.
- The valuation based on the cost to the employer will however, not apply.

- The value to be placed on the residential accommodation benefit:
 - Where the employer owns the residential accommodation and the employee does NOT have an interest in the accommodation and is not a controlling shareholder nor has a pre-emptive rights (Refer to B definition above), the value of the fringe benefit is -
 - determined in accordance with the formula as prescribed in paragraph 9(3).
 - Where the employer owns the residential accommodation and the employee does NOT have an interest in the accommodation but have pre-emptive rights (Refer to B definition above). The value of the fringe benefit is -
 - determined in accordance with the formula as prescribed in paragraph 9(3), and
 - B must be nil, in the formula.
 - Where the employer owns the accommodation and the employee has an interest in the accommodation, the provisions of paragraph 9(3B) shall apply. The value of the fringe benefit is the greater of:
 - The formula but **B** is nil, or
 - The total amount of the rentals payable for the accommodation by the employer or associated institution in relation to the employer and any other expenditure contributed by the employer or associated institution in respect of the accommodation.
 - Where the employer rents accommodation and it is not customary for the employer to provide accommodation, the value of the fringe benefit is the greater of -
 - The formula but **B** is nil, or
 - The total amount of the rentals payable for the accommodation by the employer or associated institution in relation to the employer and any other expenditure contributed by the employer or associated institution in respect of the accommodation.
 - Where the employer rents the accommodation and it is customary for the employer to provide the accommodation for the proper performance of the employee's duties, the value of the fringe benefit is determined in accordance with the formula.
- **Employee has an interest in the accommodation and lets such accommodation to the employer or associated institution as prescribed in paragraph 9(9):**
 - Where an employee who has an interest in the accommodation and lets such accommodation to the employer or an associated institution in relation to the employer and is then given the free use of such accommodation, the value of the fringe benefit is the greater of -
 - The formula but **B** is nil, or
 - The total amount of the rentals payable for the accommodation by the employer or associated institution in relation to the employer and any other expenditure contributed by the employer or associated institution in respect of the accommodation.
 - In terms of paragraph 9(3B), where the employee has an interest in the accommodation in question, the value of the fringe benefit must be determined in accordance with the formula as prescribed in paragraph 9(3).
- **An employee is deemed to have an interest in the accommodation in the following situations as prescribed in paragraph 9(10):**
 - The accommodation is owned by the employee or a connected person in relation to the employee, or
 - Any increase in the value of the accommodation in any manner, whether directly or indirectly accrues for the benefit of the employer or a connected person of the employee, or
 - The employee or a connected person in relation to the employee has a right to acquire the accommodation from employer.

• **Example 1: Employer owns the accommodation**

- Mr A's employer provided him with residential accommodation for the entire year of assessment at an annual rental of R12 940
- Mr A is not a controlling shareholder in the employer company. The accommodation is unfurnished and is provided without any services
- Mr A's remuneration from his employer in the previous year of assessment comprised a cash salary of R280 000 and the use of a motor vehicle giving rise to a taxable benefit with a cash equivalent of R3 024 during the year.
- The value of the taxable benefit must be determined as follows:

$$\text{Rental value} = (A - B) \times C/100 \times D/12$$

A = remuneration proxy R280 000

B = R70 700

C = 17 (the accommodation is unfurnished and provided without services) +

D = 12 months

Therefore, rental value = $(R280\,000 - R70\,700) \times 17/100 \times 12/12 = R35\,581$

• **Example 2: Employer rents the accommodation**

- Use the same example above but here the employer rents the accommodation from the owner at a cost of R10 000 per year.
- The value of the taxable benefit is the greater of the formula or rental paid, and is determined as follows:

$$\text{Rental value} = (A - B) \times C/100 \times D/12$$

A = remuneration proxy R280 000

B = R70 700

C = 17 (the accommodation is unfurnished and provided without services) +

D = 12 months

Therefore, rental value = $(R280\,000 - R70\,700) \times 17/100 \times 12/12 = R35\,581$

The benefit is the greater of:

The formula above = R35 581

Total amount paid by the employer = R10 000

The taxable benefit is therefore = R35 581

Less consideration paid	12 940
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Value of taxable benefit	R22 641
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• **Example 3: Employee has an interest in the accommodation**

- Mr V and his family are beneficiaries of the V Family Trust. The trust owns a ten-roomed house which it rents to Mr Employer (XYZ (Pty) Ltd for R10 000 per month. The monthly payments incurred by the trust in respect of the house are:
 - Bond interest R7 000
 - Bond capital payments R2 000
 - Sundry expenses R1 000
- Mr V receives salary of R100 000 per annum as well as use of the house. XYZ pays for all power (R8 000 for the year). The house is unfurnished and Mr V salary for the previous year was R90 000.
- The value of a taxable benefit in respect of the use of the house is the greater of:

$$\text{Rental value} = (A - B) \times C/100 \times D/12$$

A = remuneration proxy R280 000

B = R70 700

C = 17 (the accommodation is unfurnished and provided without services) +

D = 12 months

Therefore, rental value = $(R280\,000 - R70\,700) \times 17/100 \times 12/12 = R35\,581$

Annual rental + R8,000 for power = R128,000

The value as determined using the formula

$(90\,000 - 70\,700) \times 18\% \times 12/12 = R3\,474$

The amount of the fringe benefit to be included in Mr V's income for the year of assessment in respect of residential accommodation is R128, 000

Note: in terms of para 9(9) the rent of R120 000 received by the trust is deemed not to be received by the trust for tax purposes, which means that the trust cannot claim a deduction in respect of any expenditure it incurred in connection with the house

6 GENERAL RULES FOR COMPLETING THE APPLICATION FORM FOR A TAX DIRECTIVE

- All instructions must be read before attempting to complete the application form.
- Should you experience any difficulty in completing the application form, contact the SARS Contact Centre 0800 00 SARS (7277).

Please note: The application form is available on the SARS website www.sars.gov.za

- Write clearly, using a **blue** or **black** pen only.
- Use BLOCK LETTERS and write one character in each block, for example:

M	A	G	S	N	,
---	---	---	---	---	---
- Place an X in the block applicable to your selection where choice blocks are applicable.
- Any alterations on the application form must be initialled.
- You are obliged to make a full and accurate disclosure of all relevant information on the application form (where applicable). Misrepresentation, neglect, furnishing false information or non-submission of your application could lead to prosecution.
- The application must be signed by the applicant. If the application is not signed it will be considered as not having been received. This could result in unnecessary delays in request being approved or rejected by SARS.
- Once completed, you are required to submit the application in person to your nearest SARS branch in the area where your business is situated.
- The turnaround time for the application to be processed will depend on successful validation and verification of the information.
- Once the request has been successfully processed, an approval/rejection letter will be posted to you.

Note: An employer is deemed not to have applied until the application form has been completed in full and all the required information and documentation has been submitted.

7 LAYOUT OF THE APPLICATION FORM

- The application form consists of the following parts:
 - Part 1: Details of the Request
 - Part 2: Attachments to support the application
 - Part 3: Details of affected employees
 - Part 5: Declaration
 - Part 6: Notes

Note: Part 7.1 requires the details of the person requesting the directive relating to the residential accommodation taxable fringe benefit.

7.1 PARTICULARS OF THE EMPLOYER

Trading or
other name

7.1.1 TRADING OR OTHER NAME

- The trading name is the name under which your business trades. It is also the name known by your suppliers or customers and it may be different from your business' legal name.
- If your business has more than one trading name, provide the trading name for the main activity in the blocks provided and a separate list of all other trading names as an annexure to the application form.

7.1.2 INCOME TAX REFERENCE NUMBER

- Complete the Income Tax reference number of the applicant in the blocks provided.
- Where the entity is not registered for Income Tax purposes, leave the blocks BLANK.

7.2 PART 1: DETAILS OF THE REQUEST

PART 1: DETAILS OF THE REQUEST

Reason for the request: Situation of accommodation Nature or condition of accommodation Other factor, namely

Proposed value which is deemed to be fair and reasonable R , per month

Explain how the proposed value was determined

7.2.1 STATE THE REASON(S) FOR THE REQUEST

- If based on reasonable grounds, it is believed that the value determined according to the formula with regard to residential accommodation benefit does not represent a fair and reasonable value; the employer must place an "X" in the applicable box.
- Where an "X" is placed in the "other factor, namely" box, complete the reason in the space provided.

7.2.2 PROPOSED VALUE WHICH IS DEEMED FAIR AND REASONABLE

- The employer must give the proposed amount and indicate how the amount was calculated.

7.2.3 EXPLAIN HOW THE PROPOSED VALUE WAS DETERMINED

- The employer must provide an explanation as to how the amount which is deemed to be fair and reasonable was calculated.

7.3 PART 2: ATTACHMENTS TO SUPPORT THE APPLICATION**PART 2: ATTACHMENTS TO SUPPORT THE APPLICATION**

The following documents have been attached: 2 valuation lists 2 pictures of the property

The employee's monthly remuneration is R

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Note: The employee's monthly remuneration must be stated if the reason for the application in Part 1 is indicated as "other factor"

7.3.1 THE FOLLOWING DOCUMENTS HAVE BEEN ATTACHED

- Place an "X" in the relevant block.

7.3.2 THE EMPLOYEES' MONTHLY REMUNERATION

- Complete the employees' monthly remuneration in the blocks provided.
- The amount must be completed in both rands and cents.
- The information concerning the employees' remuneration must only be provided where the reason for the request is "other factors".

7.4 DETAILS OF THE AFFECTED EMPLOYEES**PART 3: DETAILS OF AFFECTED EMPLOYEES****Employee 1**

Surname																																																														
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7.4.1 SURNAME AND INITIALS

- Complete the surname and initials of the employee.

7.4.2 DATE OF BIRTH

- Complete the date of birth of the employee, for example:

1	9	7	0	-	0	5	-	0	5
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7.4.3 IDENTITY NUMBER OR PASSPORT NUMBER

- Complete the identity number of the employee.
- Complete the employee's passport number for an employee who is not an "ordinarily resident" in South Africa in terms of Interpretation Note No.3 not a South African resident) .

7.4.4 IF NOT A SOUTH AFRICAN RESIDENT STATE COUNTRY OF RESIDENCE

- Where an employee is not a South African resident complete the employee's country of residence.
- Where the person satisfies the definition of a "resident", leave this BLANK.

7.4.5 RESIDENTIAL ADDRESS AND POSTAL CODE

- Complete the residential address and the postal code of the employee.

7.5 DECLARATION

PART 4: DECLARATION

I declare that:

- I am the employer and that the information furnished is true and correct, and that all the required documents are attached; and
- I am fully aware of my responsibilities as per paragraph 9(5) of the Seventh Schedule to the Income Tax Act No. 58 of 1962.

Surname

Initials Date (CCYYMMDD) For enquiries go to www.sars.gov.za or call 0800 00 SARS (7277)

Signature

7.5.1 PART 4: DECLARATION

- The employer or representative employer must complete this part.
- The employer's or representative employer's surname and initials must be completed.
- Once the employer or representative employer is satisfied that all information provided in the application is accurate and complete, the application form must be signed.

7.6 PART 5: NOTES

- It is recommended that all persons applying for a directive relating to the residential accommodation taxable fringe benefit value read the Guide for employers in respect of Employees' Tax available on the SARS website www.sars.gov.za
- A rejection or approval letter will be issued in respect of your application.

8 QUALITY RECORDS

Number	Title
EMPRB	Request for determination of accommodation fringe benefit value
EMP501	Employer Reconciliation Declaration

9 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	GE: Centralised Processing Operations
Policy Owner:	Executive: Enterprise Business Enablement (EBE)
Author:	Patricia Khoncha
Detail of change from previous revision:	Updated to include 2014 Budget Speech changes
Template number and revision	POL-TM-07 REV. 0