

It all revolves around
solutions and expertise

HRTorQue (PTY) LTD
OUTSOURCING

The HRTorQue REPORTER

Welcome

HRTorQue welcomes **Marietjie Geldenhuys** and **Shirlee Caffyn-Parsons** to its team of specialist consultants.

Marietjie has 15 years' experience as a Human Resource generalist in the financial industry, manufacturing, local government and consulting to various small and medium enterprises. Her areas of specialisation are Employee Relations, Training and Development, Organizational Transformation and Change Management. Marietjie will be responsible for Coaching, Training and Development, as well as Recruitment services to clients. We have partnered with leading Employment Agencies with vast networks to ensure that you receive great coverage when you entrust us to work with you to find the most suitable candidate.

Shirlee has worked for 6 years in the BEE industry. As part of the first group of companies to become involved in BEE, she has seen the evolution of the codes from their draft form to where they are today. As the technical signatory for one of the SANAS accredited verification agencies, her expertise lies not only in understanding the detail of the codes, but also the documentation and information requirements that underpin a successful verification. Previously, Shirlee worked in the Skills Development arena – facilitating, developing materials and project managing learnerships. What this means is that her approach to EE, SD and BEE is holistic – it is not about compliance for the sake of it, but rather to engage and comply in these areas in such a way that makes business sense and creates opportunities.

Contact HRTorQue

Please contact us if you have any questions regarding the articles in this newsletter, or if you'd like to see a specific topic covered in the next edition. Until next time!

Warm regards
The HRTorQue Team

The HRTorQue Team

Phone: 031 564 1155
Fax: 031 564 1228
Website: www.hrtorque.co.za

163 Umhlanga Rocks Drive
Durban North, KwaZulu-Natal

Payroll

Karen van den Bergh: 031 582 7413
karen@hrtorque.co.za
Karl van der Merwe: 031 582 7407
karl@hrtorque.co.za

HR / ER & Recruitment

Melany Bydowell: 031 582 7425
melany@hrtorque.co.za
Nicky Hardwick: 031 582 7418
nicky@hrtorque.co.za

Tax

Dave Beattie: 031 582 7410
dave@hrtorque.co.za

Accounts

Kacey Chetty: 031 582 7409
kacey@hrtorque.co.za
Cheryl Naidoo: 031 582 7408
cheryl@hrtorque.co.za

Reception

GT Naidoo: 031 564 1155

Dispatch

Karl van der Merwe: 031 582 7407

Provision of Customised Skills Development / Coaching with a Difference!

- **We can assist you to recoup up to 50% of money spent on training from your industry SETA or apply for a grant.**
- **We can also appoint a facilitator in order for you to claim a refund up to 45% of levies paid.**

We have an exciting and effective new offering in the area of Skills Development for our clients and have partnered with specialists in the Human Resources Development, Sales, Tax, Payroll and strategic business development areas to add real value to your overall business. Apart from assisting in the assessment and completion of your skills audit, WSP and ATR we are offering clients meaningful coaching sessions with managers who require skills in various critical areas, from managing employees who are not performing or addressing sick leave and effective conflict management, as well as up skilling on the value, formulation and use of business processes or assistance in formulating a business strategy.

These interventions can be done on site on a one on one basis or within a group setting. In addition, we would like to take you a little further with an approach that is focused not only on compliance for the sake of compliance, but also on an holistic solution which will see your EE and SD being structured so as to maximise your BEE points and, where this is not required, to ensure that your training is targeted to make the required changes in your Employment Equity plan possible.

Our approach is not to necessarily take employees out of their work place for days to attend generic training programmes but to rather develop and customise the development intervention that is required by your specific company and employees, with the aim of adding the most value to the employee in their respective environment and role and the business as a whole. In June of every year, thousands of companies miss out on recovering at least 50% of the skills levies paid during the previous year!

HRTorQue Outsourcing will assist you to benefit if you are one of the companies that do not submit a Workplace Skills Plan and Annual Training Report to your Industry SETA.

HRTorQue Outsourcing has a unique product offering to assist you to not only gain non-tangible benefits from skills development, but to receive money back for training programmes, workshops, conferences employees attend and in some instances, Company sponsored tertiary education of employees.

The product offering comprises a skills audit by a consultant at your premises, a Workplace Skills Plan and an Annual training Plan for submission to the relevant industry SETA. In addition to this, we are well placed to offer high quality in house programmes to meet the skills development needs of your Company and one on one coaching or in groups.

We look forward to partnering with you to ensure that you meet the strategic development needs of your Company and to recoup the maximum on your training spend or to claim a grant from your SETA. Please contact Melany on melany@hrtorque.co.za for more information on this new and exciting product offering.

Very Important Newsflash: Penalties From SARS

By Karen van den Bergh

SARS have just announced their policy regarding potential penalties this filing season. We urge all clients and partners to take **very careful** note of the following.

The policy for the raising of penalties on employers for the 'defaults' in the submission of tax certificates for February 2011, as announced on 12 April 2011, is as follows:

1. The administration penalty (a minimum of R250 and a maximum of R 16,000) per tax certificate **will not be raised**.
2. Instead a **10% penalty** will be raised on the employer, calculated on **the total EMP201 tax values for the full 2010/11 year of assessment**. This is done in terms of paragraph 14(6) of the Fourth Schedule.
3. The 10% penalty will be raised under **three** circumstances:
 - a. **Late** submissions (i.e. submissions received after 3 June 2011);

- b. **Incomplete / inaccurate** submissions (i.e. all the tax certificates were not submitted, or mandatory data such as the **employee's income tax number was missing** from one or more of the tax certificates);
 - c. **Inaccurate submissions.**
4. Provision has been made for employers to Request a Remission (RFR) for the penalty amount. SARS have made it clear that **they do not intend to penalise employers who have made every effort to comply with the tax certificate submission requirements** and were prevented from doing so by circumstances beyond their control.
 5. For late submissions, **the 10% will be reduced to 1%** if the submission is made 1 month late, **2% if made 2 months late**, etc. This will be considered on receipt of a RFR only. The penalty remission can however only occur once. Thereafter the normal processes of Objection and Appeal are available.
 6. For incomplete submissions, **employers will be able to submit mitigating circumstances to SARS to justify the reduction or even the cancellation of the penalty.**
 7. **Procedures will be put in place to facilitate the submission of mitigating circumstances** by employers to SARS.
 8. For incomplete submissions (which can include inaccurate data), the position is more complex:
 - a. **Only those tax certificates that are incomplete will be penalised** – the employer must request mitigation of the penalty by stating the facts and requesting relief;
 - b. There are circumstances under which the employer **cannot be reasonably expected to have income tax numbers for all employees** (such as employees who were terminated during 2010/11 and can't be contacted, and 'asylum seekers').
 9. The penalties **will only be raised after the employers filing season has closed** on 3 June 2011.
 10. **SARS will recover unpaid penalties after three months through the use of the ITA88 process. NB - in these instances the employer's bank will be appointed as an agent on behalf of SARS.**

Once again, we would like to urge all clients and partners to take careful note of these announcements from SARS.

Codes of Good Practice

By Shirlee Caffyn-Parsons

As of 9 February 2012, the Codes of Good Practice will have been in place for 5 years and, as envisaged when these were originally gazetted, the targets would be increased on this date as it was believed that companies would have had sufficient time to improve in those areas where such change would be part of a long-term strategy (such as in the Employment Equity realm where you cannot change your demographics overnight).

Employment Equity

The changes to the targets are:

GENERIC (Turnover about R35 million)

Disabled employees = 2% to 3%
 Senior Management = 43% to 60%
 Middle Management = 63% to 75%
 Junior Management = 68% to 80%

QSE (Turnover under R35 million pa)

Management = 40% to 60%
 All employees = 60% to 70%

Preferential Procurement

The changes to the targets are:

GENERIC (Turnover about R35 million)

All procurement = 50% to 70%
 Procurement from QSE's and EME's = 10% to 15%
 Procurement from 50% black owned = 12%
 Procurement from 30% black female owned = 8%

QSE (Turnover under R35 million pa)

All procurement = 40% to 50%

The significant element here is EE as it is only through SD and promotion / employment of designated groups into the management categories that this will be achievable.

According to the South African Police Service, the name clearance criminal check will be discontinued from 1 July 2011. The name clearance check is basic check that is done by SAPS to cross reference an individual's ID number and full name, to identify if the individual may have a criminal record. This check is not 100% accurate due the errors in the SAPS database as well as incorrect ID numbers or names which could result in a false result being returned.

From 1 July 2011, all criminal activity checks will have to be accompanied by fingerprints, which eliminates the potential for identify fraud and ensures that you receive an accurate result on the check being done. Once the system has changed, HRTorQue unfortunately will no longer be able to assist with criminal checks but these can be done directly through [LexisNexis](#) or at your nearest police station.

For more information please contact Nicky: nicky@hrtorque.co.za.

Earnings Threshold

By Karen van den Bergh

At present, the earnings threshold in the Basic Conditions of Employment Act is R 149 736. **It has been announced that, with effect from 1 July 2011, this will change to R 172 000 per annum.** This will have an effect on what and who you should be paying for overtime and work on Sundays. Earnings are your employee's regular annual remuneration before deductions. This does not include any contributions you make for your employee. Subsistence and travel allowances, achievement awards and overtime pay must not be considered as remuneration.

Employment Equity

By Nicky Hardwick

- **Fines will be imposed as a % of the annual turnover of the company on non-complying employers.**
- **The bill seeks to change this to 2% of annual turnover.**
- **The maximum fine for those guilty of "four previous contraventions in respect of the same provisions within three years" becomes 10% of annual turnover.**

On 20 December 2010, the Department of Labour published a bill which proposed certain amendments to the Employment Equity Act. Some of these proposed amendments have caused great concern for business owners and their ability to run their businesses effectively with the right people being employed. These amendments have not yet been promulgated but, with less than 5 months to go until the Employment Equity Submission deadline, it is important to ensure that you understand how these amendments can affect your Employment Equity reporting as well as your business in the event that they are promulgated.

There've been a number of minor and major amendments and we'll be highlighting the more pertinent proposals:

1. **Definition of South African Citizens:** The definition of designated groups has been expanded to state that designated groups are black people, women and people with disabilities who are citizens of RSA by birth or descent.
2. **Equal pay for work of equal value:** This new clause attempts to which seeks to stop abusive practices by ensuring that employees who work for the same employer receive the same pay as other employees doing the same or substantially the same work. Any difference in terms and conditions of employment between employees of the same employer performing same or substantially the same work or work of equal value is a form of unfair discrimination. Designated employers are now also required to take steps to progressively reduce income differentials.
3. **Amendments to the fines for contravention:** Amendments have been proposed which empower the Director General to impose fines as a percentage of the annual turnover of the company on non-complying employers who fail to prepare and implement an employment equity plan. The bill seeks to change this to 2% of annual turnover, while the maximum fine for those guilty of "four previous contraventions in respect of the same provisions within three years" becomes 10% of annual turnover.
4. **Definition of Independent Contractor:** A definition of an independent contract has been included due to the confusion in the past.

If you would like more information on these proposed amendments and/or assistance in ensuring you are Employment Equity compliant, please contact Nicky: nicky@hrtorque.co.za.

The Consumer Protection Act was published in the government gazette on 29 April 2009 and came into force on 31 March 2011. This Act is going to have a huge impact on almost every business in South Africa.

The Consumer Protection Act will fundamentally change the way business is done in South Africa and it requires businesses to transform the way in which they interact with consumers and to ensure that all their dealings with consumers are fair, reasonable and honest. South African consumers are now extremely protected and if your business is consumer facing, you need to ensure that your staff understand the consequences of their actions.

HRTorQue is able to review your contract of employment that you are currently using in your organisation and we will look at whether or not the clauses are still legislatively applicable. We will also include a generic clause to protect your organisation in keeping with the Consumer Protection Act from an employee perspective. This will not however protect you in respect of the other legal aspects of your business.

If you do need assistance in this area we do have access to attorneys who specialise in this area and who will be able to assist you in this regard. For more information or assistance please contact Nicky: nicky@hrtorque.co.za.

Downloading of New Tax Reference Numbers

By Karen van den Bergh

In September / October last year, all IRP5's that were sent to SARS without an Employee Tax Reference Number (TRN) were meant to "automatically" be registered and the appropriate number issued back to Employers via e-Filing / e@syFile in time for this filing season. There were instances where TRN's would not be issued (i.e. where the employee was already registered and / or the data supplied was incorrect / different to what SARS have on their files), so these specific employees who did not get a TRN issued by SARS, would have to go to their local SARS office to get their information in order and confirmed.

Employers were however, for the majority of unregistered employees, expecting these numbers to be issued during the course of April / May. In a number of instances this download function has not worked properly (i.e. only downloading half the file, unable to connect to SARS, etc). SARS are aware of these issues and are addressing them. We should have some official feedback from SARS shortly and will advise you on the steps to take to get the TRN's downloaded.

In fact, our understanding is that SARS will issue some form of notice to all employers about this issue (and the issue of associated penalties!) in the next few days.

Company Vehicles

By Karen van den Bergh

The value of the Company Vehicle now has to include VAT and any Maintenance Plans, when calculating the total value of the vehicle for Fringe Benefit tax purposes.

The question was asked about whether or not the depreciated value (i.e. at the depreciated rate of 15% per annum) could also be taken into account when determining the "present" value of the vehicle, even if the vehicle had not changed hands. SARS has confirmed that you cannot reduce the original base value of the car by the 15% per annum depreciation allowance, unless the vehicle has changed hands (i.e. been provided for use by another employee).