HRTorQue Reporter
September 2020

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Should you require any further detail on any of these topics, please feel free to contact us at info@hrtorque.co.za

1) Where to now for the South African economy?

Author: Jonathan Aitken

This is a fundamental question for our country. In our view it comes down to one issue. Whether government is brave enough to take the steps necessary to reduce public spending and realign it to what we can actually afford!

Through the last few months, the private sector has taken all the pain. Employees have been retrenched or placed on short time and many sectors have faced severe hardship. In the public sector however there has been little or no reduction in employment or pay. In most cases public sector employees are working reduced hours, but still drawing a full salary.

This is not sustainable as SARS has already announced a material reduction in tax recoveries driven by a combination of lower profitability, lower collections from VAT and Income Tax. The public accounts need to be adjusted to reflect the lower income.

The only solution for government is to reduce the public sector wage bill. This however is not easy given the close political relationship with COSATU and the already strained relationships in this area politically. It is also not in the ANC's DNA, nor President Ramaphosa's for that matter, to have direct confrontations, so don't expect any fanfare, headlines or Thatcheresque "drawing of lines".

Instead we predict the usual political rhetoric with government kicking the can down the road without making any fundamental changes.

At some point this will translate into a weakening exchange rate (worse than where we are now) as international investors lose confidence in the ability of South Africa to meet its obligations. Assuming the Reserve Bank acts as it has in the past then they will raise interest rates in response to any inflation (which would be likely if the exchange rate deteriorates and imports become more expensive). Higher interest rates would place more pressure on the economy and already stretched households.

So, while we can hope for the best, it is important in our view to plan for the worst and try and build businesses to weather the difficult times ahead. Some things to think about as you do:

- How can we diversify our earnings to help reduce risk and particularly increase offshore earnings?
- How can we reduce our cash flow exposure to government/public sector (as the pressure increases third party suppliers are likely to feel the pain in order for public sector bodies to pay wages)?
- How can we make our business more flexible and able to react quickly to changing events?

2) Do I need to submit a personal income tax return?

Author: Megan Yeoman

Please see below requirements/criteria to be met for individuals to submit an income tax return:

("if you answered yes to any of the following questions you will need to submit an income tax return")

Do any of the following apply to you for the tax year 1 March 2019 to 29 February 2020?

- *Did you conduct any trade* in South Africa or if you are a South African tax resident did you conduct any trade*?*
- *Did you receive an allowance such as a travel, subsistence or office bearer allowance? Check your IRP5/IT3(a) if unsure.*
- *Did you hold any funds in foreign currency or assets outside South Africa that have a combined total value of more than R225 000 at any stage during the tax year?*
- *Did you have Capital Gains or Capital Losses exceeding R40 000?*
- *Was any income or a Capital Gain from funds in foreign currency or assets outside the Republic attributed to you?*
- *Do you hold any rights in a Controlled Foreign Company?*

**The term "trade" means every profession, trade, business, calling, occupation or venture, including the letting of any property but excluding any employment.*

Filing deadlines:

- *1 September to 16 November – taxpayers who file online*
- *1 September to 22 October – taxpayers who cannot file online can do so at a SARS branch by appointment*
- *1 September to 29 January 2021 – provisional taxpayers who file online*

https://www.sars.gov.za/TaxTypes/PIT/Pages/Do-you-need-to-submit-a-return.aspx

3) Employment Equity Draft Bill – some key point to note

Author: Denelle Gopal

Editor's note: please be very wary of the new Employment Equity Bill. In our view it gives excessive powers to the Department of Labour which could make employers' lives very difficult.

On the 20th July 2020, the latest draft of the Employment Equity Bill was published and will be on its way to Parliament.

This Bill gives the Minister far greater powers to intervene and has increased the requirements for the employer to comply. One of the amendments includes Section 53 which requires that an annual certificate of compliance is issued and failure to receive this certificate will affect your ability to do business with the State and its Organs.

One of the biggest changes taking place, which I believe will hugely impact employers' ability to comply, is the introduction of sectoral targets. The Minister will now establish numerical targets for employers in specific economic sectors and employers must comply with these targets. It is not clear whether these targets will be further drilled down to include other factors such as business type; location; size business and turnover of business which could largely affect employer's ability to meet the targets.

In August 2019 the Employment and Labour Minister reiterated that those that did not comply would be punished and that the need for Sectoral Targets was due to the continued non-compliance of Employers.

These amendments clearly indicate "unhappiness" at the slow rate of transformation of business in South Africa and seem to be trying to force employers to transform at a faster rate. Whether this is feasible remains to be seen but feasible or not it is still coming, and business needs to start preparing.

Our biggest concern is that while the intention is for this to impact employers who supply services to public entities, it will be rolled out through the BEE legislation and impact all employers wishing to get a valid BEE rating e.g. the DTI may require a certificate of employment equity compliance before a rating is given. This would be extremely problematic in our eyes particularly where the Minister is setting targets. Imagine a scenario where the Minister sets targets for an industry in JHB where an employer might have access to a wide labour pool yet the same targets might apply for an organization in the Western Cape where the labour demographics are different…and how long might all employers have to comply…there are just too many variables and unknowns here for a Ministry that has shown little pragmatism in the past.

What to do in the short term…?

It is clear from the proposed amendments and the many inspections that the expectations for employers to transform and to comply is high.

Many employers partially comply either because they don't fully understand the requirements OR they don't have time to get it all done.

The consequence for not complying are serious with hefty fines of R1,5 million and above. Even more worrying is that in the case of non-compliance for the Employment Equity Plan the Director-General can apply directly to Labour Court for the fine to be issued to the employer without having to first issue written undertakings or compliance orders.

For more information on the requirements of a designated employer please join our free webinar on 30th September 2020 at 09h00. To register please click on the link Employment Equity Webinar Registration

In the meantime please feel free to complete our EE Compliance Questionnaire. This questionnaire takes less than 5 minutes and will give you an immediate snapshot of possible areas of concern.

4) Draft code of good practice – violence and sexual harassment

Author: Meagan Cesare

A draft code of good practice on the prevention and elimination of violence and harassment in the workplace was published in the Government Gazette on the 20th of August and all interested and affected parties such as employers, employees, employee organisations and trade unions are invited to comment within 60 days.

The draft policy falls within the ambit of the Employment Equity Act and covers a wide range of undesirable behaviour falling within the scope of Violence and Harassment in the workplace. This includes sexual harassment, bullying including cyber bullying and threats of on-line violence, intimidation, threats of violence and harassment in a number of areas focusing on racial, ethnic or social issues or threats to whistle blowers or gender or LGBT violence or harassment.

The code applies to all sectors, public and private, formal and informal and any place that could be defined as an area of work. Any areas outside of a workplace that are governed by the process of work would be included, i.e. travel, rest areas, outside training, even commuting to and from work or accommodation provided by an employer.

The employer would also be responsible for a safe on-line and communications environment and would need to control harmful behaviour or practices conducted in these spaces.

From the Draft Act;

> **Sexual Violence and Harassment**: defined as directly or indirectly engaging in conduct that the perpetrator knows or ought to know is not welcome, is offensive to the complainant and makes the complainant feel uncomfortable, interferes with work, causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person.
>
> **Racial Violence and Harassment**: is defined as unwanted persistent conduct, or a single incident which is seriously degrading, humiliates or creates a hostile or intimidating environment, or is calculated to influence submission by actual or threatened disadvantageous consequences, and which is related to a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.
>
> All conduct either verbal or non-verbal of a racist nature whether through remarks, abusive language, name-calling, offensive behaviour, gestures or cartoons, memes or insinuations are considered undesirable.

Most of the practices listed and defined by the Draft Act fall within the generally accepted scope of "Good Practice" in a work place and are not new to most employers as the principles should be dealt with in their existing Code of Conduct policies. The draft has sought to define and label definite practices which are abhorrent and unacceptable in a modern work setting if compared to what a reasonable person would accept as normal and appropriate behaviour.

How does this affect the employer?

Employment Equity Committee and Policies

The Draft Act is being proposed as an amendment to the Employment Equity Act and as such employers must look to their employment equity managers and committees to ensure that these items are addressed on their agenda at meetings and incorporated into their employment equity plans and policies. Conclusions, minutes and resolutions relating to employment equity policies should be made available to all employees to view.

Every effort should be made by employers to ensure measures are put in place to actively prevent an environment developing where violence or harassment is tolerated. Establishing a workplace culture of respect, dignity and inclusion for all individuals is required and expected.

Company Policies

The principles defined in the Act will reach across many Company Policies and Procedures that may already have been created and accepted in an Organisation. We suggest that these are scrutinised and revised so that once the Act is accepted into law there is no scramble to become compliant.

Policies that may need revision would be the Company Code of Conduct, Dress and Ethics Policies, Language Policy, Racial Harassment Policy, Occupational Health Policies and On-line Systems User Policies.

Contracts of Employment should be reviewed to ensure there is no racial or gender bias in the documents.

Prevention and Awareness Programmes should be introduced:

The Draft Act encourages Organisations to develop a culture of dignity and respectful engagement between employees as well as between employer and staff. This may take effort and it could be helpful to engage outside specialists to offer training and programmes that increase awareness of Violence and Harassment issues whether they are sexual or racial as well as establish guidelines of acceptable behaviour and practices in the workplace.

It is the employer's duty to provide relevant information, instructions and training where necessary to ensure there is a safe working environment, free of risk to health whether physical or psychological, in a manner which is dignified, protected and respected.

Treatment, Care and Support of Victims:

The employer should establish a protocol or guideline for the treatment and care of a possible victim within an Organisation. Should there be an incident of sexual, racist or violent harassment within the workplace it is important that everyone has guidelines that are clear on the interventions required in terms of their Workplace Occupational Health and Safety strategy. Employers and employees are jointly responsible for creating a healthy workplace. Appropriate referrals for counselling and other interventions must be communicated.

Privacy, Consent and Record-Keeping of Personal Information:

Employers and workers must ensure that complaints procedures and disciplinary issues are kept private and the rights of the affected parties are protected. Records must be kept in a safe and secure place and consent must be acquired before sharing personal information. A privacy policy should already be in place for the Organisation.

Procedures in Managing Violence and Harassment:

Employers must develop clear procedures to deal with Violence and Harassment. These can form part of the Company's normal disciplinary code. Steps must be taken to clearly communicate to employees that they can report incidents to managers or human resource departments and these complaints will be dealt with swiftly and thoroughly and should the incident be of a serious nature there will be attention given to the well-being of the employee through counselling interventions, appropriate privacy provided and disciplinary procedures for the perpetrators.

A culture that encourages freedom to report or discuss sexual, racial or other types of bullying and harassment must be maintained and an employee should be aware that if an incident occurs it would not be trivialised or ignored.

Monitoring and Evaluating Practices:

Employers need to design and implement strategies, policies and programmes to eliminate Violence and Harassment, by identifying key elements to create a monitoring and evaluation system. The system or mechanism created is intended to be a collaboration between employer and employees to track implementation and ensure there is an informed response. These mechanisms and evaluation strategies must consider national efforts to eliminate Violence and Harassment in broader society.

Challenges for Employers:

The Draft Act speaks to cultural development within Organisations and this is in line with fresh impetus by Government to promote a more equal and dignified society where behaviour that could be labelled as demeaning or threatening is stamped out and recognised as having no place either in the work place or society in general.

Very often an employer may find themselves in a position of addressing particular behaviour patterns from employees that would fly in the face of what would be considered appropriate. It is often difficult to identify this, but it is up to the employer to recognise and take heed of warning signs that there may be something amiss and act timeously to prevent an incident from developing.

A culture of decency develops where appropriate behaviour is encouraged and learnt by an employee who is observing it continuously from employers and management. Ignoring Violence and Harassment can have major negative consequences for an Organisation that they may be ill-equipped to deal with both financially and from a marketing or PR perspective.

5) Leave Pay, Notice Pay and Severance Pay – common calculation mistakes

Author: Karen van den Bergh

Pay for leave, notice and severance is an area many employers don't always get it right.

The calculation of these payments is covered by s35(5) of the Basic Conditions of Employment (BCOE).

The following payments are <u>included</u> in an employee's remuneration for the purposes of calculating pay for annual leave in terms of section 21, payment instead of notice in terms of section 38 and severance pay in terms of section 41 –

a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
b) Car allowance of provision of a car, except to the extent that the car is provided to enable the employee to work;
c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
e) Employer's contributions to medical aid, pension, provident fund or similar schemes;
f) Employer's contributions to funeral or death benefit schemes.

The following items <u>do not form part</u> of remuneration for the purpose of these calculations –

a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
b) A relocation allowance;
c) Gratuities (for example, tips received from customers) and gifts from the employer;
d) Share incentive schemes;
e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
f) An entertainment allowance;
g) An education or schooling allowance.

The <u>value of payments in kind</u> must be determined as follows –

a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
b) the cost to the employer of providing the payment in kind.

An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if –

a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.

This schedule only applies to pay for annual leave accrued from the date of operation of this Schedule.

If a payment fluctuates, it must be calculated over a period of 13 weeks or, if the employee has been in employment for a shorter period, that period.

A payment received in a particular period in respect of a longer period (e.g. a thirteenth cheque) must be pro-rated.

This Schedule only applies to the minimum payments that an employer is required to make in terms of the Basic Conditions of Employment Act, 1997."

When the legislation was initially introduced in 2004 we held seminars and sent many emails about the changes in the BCEA legislation and Section 35(5), but we have noticed that a number of organizations still have not worked through these changes and we believe that a number of companies do not calculate Notice pay, Severance Pay, Leave Pay paid out on termination or Leave Pay (while on Annual leave) correctly.

Many still pay Notice pay, Severance pay, Leave pay paid out on termination or Leave pay (while on Annual leave) using only the basic wage or salary, perhaps correctly, but without any consideration of the change in legislation. This could lead to their actions being found to be irregular by the Department of Labour.

HRTorQue Outsourcing has recently dealt with labour cases where disputes as to the value of leave pay has not only cost the client a significant amount of money in terms of legal and consulting costs but also led to the employer settling on a value that exceeds that legislatively prescribed.

What should you as an employer do?

By taking a few easy steps you can mitigate most risk in this regard.

- Utilise the services of an external consultant – this shows the company has endeavoured to interpret and apply the legislation taking into account the specifics of its own organisation. This significantly reduces the risk of non-compliance.
- Follow a process and document your decision making

This legislation is however quite complicated and can result in an increase in payroll bills if a proper documented process is not followed. The basis of this action will include a decision to include or exclude certain allowances and an explanation as to why that decision was made. We advise that you make an appointment with David Beattie of HRTorQue Outsourcing by contacting him via email at Dave@hrtorque.co.za. Dave will send you a quotation covering the process that will be taken to get you through this process, with the output being a recommendation on whether or not to change your payroll calculations.

What process do we follow?

The process that will be followed during this consultative exercise is as follows:

- Consultation to introduce Section 35(5) of the Basic Conditions of Employment Act
- Identification of various cash payments, allowances, company contributions and fringe benefits
- Separation of income categories into income payments for 'work done' and 'to enable work to be done'. This is an important step in the process.
- Identification of payments that are specifically excluded in terms of this legislation
- A report consolidating the process, findings and decisions made.

The outcome of this consultative process (the decision table) will be implemented into the payroll if you are an HRTorQue Payroll client

Where the employer would like a remuneration policy detailing the company's treatment of leave payments, one will be drafted by a representative of HRTorQue Outsourcing's HR Department. The cost of this policy will be quoted on separately.

6) How to deal with the abuse of sick leave

Author: Aqeela Yunus

We have recently discovered a significant increase in cases of leave abuse within companies, more specifically, sick leave. The employee may frequently be absent for short periods, for the same or a variety of reasons; or a pattern of absence develops, e.g. absences before and after weekends or public holidays, or after pay days. This proves to be problematic in terms of operations within the company and may result in loss of revenue. Employers sometimes find it difficult to address this abuse as it is seen to be a "difficult" conversation to have.

In order to combat abuse of sick leave, we suggest organizations implement a sick leave policy to set guidelines on how to manage sick leave. The process of dealing with cases of excessive sick leave should be stipulated in this document. Measures to deal with abuse of leave include:

- Begin the formal counselling process with any employee who takes excessive intermittent sick leave.
- Conduct an internal audit of the sick leave taken by individual employees in order to establish patterns and the costs.

We also urge employers to adhere to the below criteria when accepting proof of illness as cases of fraudulent medical certificates is on the rise.
Where a medical certificate is required, the certificate must contain the following information before it should be accepted:

- name, address, qualifications of medical practitioner (the practitioner, who may be a clinic sister, must be registered with the Health Professions Council of SA)
- practice number
- name of the employee
- date and time of examination
- whether the certificate was issued after the medical practitioner has personally examined the patient, or is it based merely on what the patient told the practitioner
- it must state that the employee was too sick or injured to work
- the exact period of recommended sick leave
- the date the certificate was issued

HRTorQue can assist with a number of elements of managing sick leave:

- Policies and Procedures customized per your requirements;
- An internal audit of sick leave using tools and software to analyze leave;
- Hands on oversight; handling the conversations with the staff and helping managers deal with this issue;
- BI tools to monitor and analyse patterns to identify underperforming employees

If you would like some more information on any of our solutions please feel free to call us or email us at info@hrtorque.co.za

7) The ETI challenge – EMP501 reporting

Author: Jonathan Aitken

In May we reported on the fact that most payroll systems had mis-calculated the Employment Tax Incentive (ETI) because the disaster management legislation retrospectively changed rules making it exceptionally difficult.

We have been surprised to see relatively little communication about this from payroll software providers. We suspect then that most employers would have miscalculated their ETI for the six months ended 31 August 2020.

So, why is this important:

- We have no idea what validation checks SARS will use for this recon period (in the past few days the validation checks have not allowed the disaster management ETI changes, but we assume this will be rectified). Without understanding your ETI calculations you will struggle to submit your EMP501 for this recon period;

- Assuming SARS applies the validations correctly, if you haven't manually adjusted your calculations for April and May in particular, then they will be wrong and your entire ETI claim will be rejected – leading to penalties and interest;
- If you assumed your system would calculate ETI correctly during the disaster management period, you may have left lots of money on the table as unclaimed;
- SARS is short of cash. There is a high likelihood of subsequent audits in this space given the complexity. Don't be caught out having to pay penalties and interest post an audit because you assumed your system would do things correctly

We encourage all employers to do a manual calculation of their ETI to get comfortable with their claims and to support their EMP501 filing. Don't be caught out.

8) The practicalities of SARS Auto Assessments

Author: Chloe Naicker

In the 2020 tax year, SARS introduced auto-assessments for the first time for non-provisional taxpayers. These are assessments generated based on data received from third parties (employer, bank, medical scheme, retirement annuity fund etc.).

It is the responsibility of the taxpayer to validate their auto-prepared tax return with the information they have received from these third parties, before accepting the assessment.

The main things to check, would be the information stated on your IRP5/IT3(a)s and other tax certificates like your medical certificate, retirement annuity fund certificate and other third-party data against the information provided in the return.

If you don't have the certificates yet, you would need to contact your employer, medical scheme, retirement annuity fund and relevant third parties to obtain them.

Please don't accept the return without comparing the documents as errors can arise.

In the case of taxpayers with complex returns, hoping to claim any deductions which are not already reflected on their tax certificates (such as donations to a Section 18A organisation, interest expenses, certain additional medical expenses, travel allowance claims etc.) it will be important to reject the auto-assessment in order to correct the assessment and add the deductions.

If you are unsure about whether to accept or reject the auto-assessment, please feel free to contact us at tax@hrtorque.co.za.

9) SARS PAYE Deferral – reminder to start paying back

Author: Jonathan Aitken

The 35% PAYE deferral for employers under the disaster management relief legislation was extended by another month to cover the August month instead of ending as the end of July. Don't forget the deferrals now need to be paid back in 6 equal instalments starting on the 7 October until the 7 March 2021, with the timetable as follows:

- September 2020 - payment due by 7 October 2020;
- October 2020 - payment is due by 6 November 2020 (last business day before the 7th);
- November 2020 - payment is due by 7 December 2020;
- December 2020 - payment is due by 7 January 2021;
- January 2021 - payment is due by 5 February 2021;
- February 2021 – payment is due by 5 March 2021.

Further information is available on the SARS website.

10) Watch out – new potential rights and powers for SARS

Author: Jonathan Aitken

The government in August published the Draft Taxation Laws Amendment Bill (TLAB) and Draft Tax Administration Laws Amendment Bill (TALAB) for comment.

There is a lot of information in these Bills including (source gov.za):

Key tax proposals contained in the 2020 Draft Rates Bill include the following:

- Changes in rates and monetary thresholds to the personal income tax tables
- Adjustment of transfer duty rates to support the property market
- Increases of the excise duties on alcohol and tobacco

Key tax proposals contained in the 2020 Draft TLAB include the following:

- Proposed introduction of export taxes on scrap metals
- Tax measures required as a result of the modernisation of the foreign exchange control system
- Aligning the carbon fuel levy adjustment with the Carbon Tax Act
- Allowing a carbon tax "pass through" for the regulated liquid fuels sector
- Addressing an anomaly in the tax exemption of employer provided bursaries
- Clarifying rollover relief for unbundling transactions
- Consequential amendments as a result of 2019 changes to section 72 of the VAT Act

Key tax proposals contained in the 2020 Draft TALAB include the following:

- Amendments enabling the proposed introduction of an export tax on scrap metals
- Removal of the requirement to prove intent with regard to certain offences listed in the Fourth Schedule to the Income Tax Act, the Value-Added Tax Act and the Tax Administration Act
- Refusal to authorise a refund where returns are outstanding under the Skills Development Levies Act and the Unemployment Insurance Contributions Act
- Withholding of a refund pending a criminal investigation
- Estimated assessments where relevant material requested by SARS has not been supplied

We note with particular concern two of the proposed amendments:

1) the proposed amendment to the TALAB to "Remove the requirement to prove intent with regard to certain offences listed in the Fourth Schedule to the Income Tax Act, the Value-Added Tax Act and the Tax Administration Act".
2) The proposals around limiting refunds being paid where returns are outstanding (UIF, SDL, Income Tax).

The reason we are concerned is because we have already seen how difficult it can be for taxpayers to get a refund. Now we are once again seeing legislation that will potentially make refunds harder. Further, it is of major concern that it is proposed the words "wilfully and" be removed from the Income Tax Administration Act. Previously it was up to SARS to show that the taxpayer had shown a wilfull intent before a criminal indictment could be followed. Now the onus falls on the taxpayer to show they had just cause for any error. It is conceivable that SARS could use this as a draconian tool to target individuals. One might even see a scenario where SARS institutes a criminal case in order to defer a large refund knowing the burden and cost will fall on the taxpayer to prove otherwise.

Rocky shoals ahead…

11) Is it just SARS sharpening its teeth, or is this an assault on taxpayer rights?

Author: Dave Beattie

Proposed new legislation seeks to put additional pressure on taxpayers to ensure the accuracy of their tax submissions. Section 34 of the Draft Tax Administration Laws Amendment Bill, 2020, proposes to amend Section 234 of the Tax Administration Act, which will remove the concept of willfulness ("intention") from the range of acts that constitute an offence under the Tax Administration Act.

It would mean that you could be guilty of an offence if you neglect to, for example, notify SARS of a change in registered details (addresses, contact numbers, bank accounts, email addresses and public officer), respond to a request for documents or information from SARS late or not pay taxes when due.

Other common problems that could result in punishment include:

- Supporting documents being misplaced, or clerical errors, which result in adjustments to VAT or PAYE returns by SARS.
- Late payments of VAT or PAYE by taxpayers due to banking cut-off challenges or pay late due to an error in interpretation of a payment cut-off date.

- Taxpayers being unaware of a potential tax liability due to ever changing and complex legislation, and such liability being paid to SARS late.

SARS is currently able to impose penalties on taxpayers for such contraventions, so the question that needs to be asked is why these additional measures are necessary. The answer to this is the explanation provided in the Draft Bill. The 'requiring proof of intention' in terms of a taxpayer's action appears to be a sticking point to SARS. This makes prosecution for non-compliance difficult. Remove this hurdle and SARS can prosecute at will. The proposed change, if passed, will provide SARS with an additional weapon with which to force taxpayers to comply with their filing and payment obligations. So, will 'intent' be a mitigating factor of any sort? The concern to tax practitioners and taxpayers alike is that SARS will use a heavy-handed approach to dealing with inadvertent errors in an attempt to improve tax collection. Whilst honest taxpayers have no problem with SARS using legislation to tackle serial tax offenders, it would not be fair and equitable if honest taxpayers who had genuinely made a mistake became collateral damage on this battlefield. It is hoped that sanity will prevail here and that a more measured approach is followed.

12) Domestic workers included in new COID Bill

Author: Jonathan Aitken

On 10 September 2020 the Minister of Employment and Labour introduced the Compensation for Occupational Injuries and Diseases Amendment Bill to Parliament. Most noticeable of the amendments is the change to the existing definition of an "employee" to include (as opposed to exclude) domestic workers. Currently, domestic workers and gardeners are not included in the definition of an employee in the COID Act and can only claim against the Unemployment Insurance Fund.

While it is nice to see this from an equity perspective, we are concerned with the practical implementation of this change. It is unlikely domestic employers will be able to manage the challenges dealing with the compensation fund nor will the Compensation fund be able to manage the additional 5 million new employers that would need to be included. Most likely this is going to result in further tension between employers and employees…

To view the Bill, follow the link.

13) UIF TERS Audit

Author: Jonathan Aitken (Source: PAGSA)

As you have all no doubt read in the media releases of 5 September, the Auditor General has recently conducted audits on the UIF TERS benefits that were approved and paid during April and May, a time when the Fund was under severe pressure to develop systems to control the rollout of the benefit.

Some of the senior personnel at the Fund, including the Commissioner, have been suspended to allow further investigations to take place unhindered. This has had a big impact on TERS benefit payments which have stopped while proper checks are put in place.

For many who have been involved in this process the news release was not a surprise as it has been an immensely frustrating journey. We have set out below the media feedback on what has happened and then raised a few points for employers to consider.

Interim Audit Results as Reported by the Media:

- The UI Fund has had to process an unprecedented number of claims under the TERS benefit, aimed at assisting employees who were temporarily unemployed or partially unemployed during the Covid-19 lockdown.
- Auditor-General Kimi Makwetu audited TERS claims made in April and May amounting to R28-billion. His findings point to a lack of verification and controls. The interim audit report highlights the following TERS benefit payments.
    - R140 556 822 was paid to 35 043 applicants who had already received benefits from other state institutions:
    - NSFAS students who received stipends, were paid TERS benefit claims of R10 335 344;
    - Beneficiaries of the SANDF received benefit claims of R327 638;
    - Employees paid through PERSAL were paid benefit claims of R41 009 737;
    - Disability grant recipients were paid TERS benefit claims of R69 419; and
    - Old age grant recipients were paid benefit claims of R88 814 684.

- R10 215 765 in overpayments was calculated incorrectly by the early versions of the TERS system
- R169 900 was paid to individuals who were indicated as being in prison
- R685-millionwas paid to foreigners whose employers hadn't paid contributions within the last 12 months
- R441 144 was paid to deceased individuals
- R30 071 248 was paid to 4161 employees with invalid identity numbers
- R200 000 was paid to employees below the legal working age of 15.

"There is also evidence of overpayments (and underpayments) as well as inflated claims. I take these breaches very seriously," (Minister Nxesi)

"The Unemployment Insurance Fund (UIF) is implementing actions to address what we have reported. We further selected payments to employers and bargaining councils to verify that the eligible beneficiaries were paid. The observations in this regard will be included in the next report," (Auditor General Makwetu).

What might this mean to employers?

The first step is for the UIF TERS process to resume and payments to be started again and the subsequent TERS payment periods to be opened and processed.

Thereafter, as we have warned on a number of occasions it is highly likely there will be a ramp up of audits in the UIF space to recover funds where the UIF department considers incorrect claims for TERS may have been made. Please be warned. Audits will arise around the information submitted to the UIF department so make sure your house is in order.

14) Relaxation of the Validation Rules for Code 4587 – s10(1)(o) foreign income exemption

Source: PAGSA; SARS

Background

The Minister of Finance announced in the Budget Review on 26 February 2020 that the foreign employment income exemption would be increased from R1,0 million to R1,25 million with effect from 1 March 2020, and this was given effect in the draft 'Rates Bill' that was issued on the same day.

To provide for the new foreign employment income requirements, the PAYE BRS was changed to include a new code 4587 described as "Section 10(1)(o)(ii) exemption taken into account by the employer for PAYE purposes".

The notes in the PAYE BRS version 19.4 clarify that what must be reported in code 4587 is the remuneration as defined by section 10(1)(o)(ii) that the employer has determined is exempt in terms of the requirements of section10(1)(o)(ii).

The relevant portion of section 10(1)(o)(ii) reads as follows:

"There shall be exempt from normal tax any form of remuneration to the extent to which that remuneration does not exceed 1,25million Rand in respect of a year of assessment is received or accrues to any employee during any year of assessment by way of salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outside the Republic by that employee for or on behalf of any employer if that employee was outside the Republic-" …

In terms of section 10(1)(o)(ii), only the following foreign remuneration types can be exempt:

1. Salary
2. Leave pay
3. Wage
4. Overtime pay
5. Bonus
6. Gratuity
7. Commission
8. Fee
9. Emolument
10. (General) allowances
11. Taxable fringe benefits (section 1: gross income paragraph(i))
12. (Special) allowances (section 8: travel, subsistence, and public office allowances)
13. Amounts derived from broad-based employee share plans (section 8B)

14. Amounts received in respect of a share vesting (section 8C).

Code 4587 Validation Rules

Code 4587 (Section 10(1)(o)(ii) exemption taken into account by the employer for PAYE purposes) was added to the PAYE BRS earlier in 2020 and is included in the current version 19.4 with effect from the 2020/21 tax year onwards.

Employers must report the total remuneration as defined by section 10(1)(o)(ii) that the employer has taken into account in the current tax year for PAYE calculation and withholding purposes.

Due to uncertainty regarding the validation rules, the PAGSA requested that SARS relax the application of the validation rules for code 4587for the August 2020 mid-year tax certificate submissions.

Code 4587 Validation Relaxation

SARS have agreed to relax the code 4587 validation rules, confirmed in the following notice.

NOTICE TO STAKEHOLDER/EMPLOYERS

Information Code 4587 –Section 10(1)(o)(ii) exemption taken into account by the employer for PAYE purposes: Relaxation of validation rules for August 2020 (202008) Employer Interim Reconciliation

SARS acknowledges concerns raised by payrolls that the application of the current validation rules for code 4587 may result in certain employers not being able to submit their interim IRP5/IT3(a) certificate information.

These validation rules as specified in the SARS Business Requirements Specification: PAYE Employer Reconciliation (2020 Release) version 19.4 will be relaxed for the August 2020 Employer Interim Reconciliation submission.

The relaxation of the validation rules will be implemented during the weekend of 19 September 2020 and the affected employers are requested not to submit their Interim Reconciliation documents before Monday, 21 September 2020. These validation rules will be reviewed and clearly defined to provide clarity.

An updated SARS Business Requirements Specification: PAYE Employer Reconciliation (2020 Release) will be issued shortly and the amended validation rules willbe implemented towards the end of 2020.

Note that any February 2021 (202102) submission that is submitted before the implementation of the revised validations will be processed in accordance with the relaxed validation rules for code 4587.

15) Mauritius - August 2020 – Portable retirement gratuity Fund and & NPF/NSF

(Source: crs.co.za)

Changes to Portable Retirement Gratuity Fund and NPF/NSF contributions announced:

1) Portable Retirement Gratuity Fund (PRGF)

The Worker's Rights (Portable Retirement Gratuity Fund) (Amendment) Regulations 2020 were published in Government Notice No. 123 of 2020. The amendment includes the extension of the implementation date of the PRGF to January 2021.

Earlier in the year, the effective date of 1 January 2020 was postponed to 1 April 2020 to give employers the opportunity to prepare for the implementation.

2) National Pensions Fund (NPF) and National Savings Fund (NSF)

On 27 July 2020 the Mauritius Revenue Authority (MRA) published a notice to inform employers that the minimum and maximum basic wage on which contributions to the NPF and NSF are payable had been reviewed. Effective 1 July 2020, the minimum and maximum wages for contributions are as follows:

Pay period	Minimum basic wage (Rs)	Maximum basic wage (Rs)
Daily	118	765
Weekly	705	4,592
Fortnightly	1,410	9,185
Half monthly	1,528	9,950
Monthly	3,055	19,900

16) Zimbabwe - Tax changes announced in the Mid-term Budget Review

(Source: crs.co.za)

Presenting the Mid-Term Budget Review at Parliament on 16 July 2020, the Finance and Economic Development Minister Professor Mthuli Ncube announced various tax changes.

The changes include:

g) Proposed Tax Table;
h) Periods of assessment in 2020;
i) Exemption from PAYE;

Annual tax table effective 1 August 2020

From (ZWL)	To (ZWL)	Rate
0,00	60,000	0%
60,000.01	180,000.00	20%
180,000.01	360,000.00	25%
360,000.01	720,000.01	30%
720,000.01	1,200,000.00	35%
1,200,000.01	and above	40%

Periods of assessment in 2020

For the year beginning 1 January 2020, the year of assessment will be split into two periods:

- First period: 1 January 2020 to 31 July 2020
- Second period: 1 August 2020 to 31 December 2020

Exemptions from PAYE

- For a period of 12 months commencing 1 April 2020, health workers will not pay any taxes on their COVID-19 risk allowances.
- Companies that make COVID-19 donations now receive tax deductions to the equivalent of US$100,000.
- Monetary benefits received, in lieu of a motor vehicle, by a chairperson, vice-chairperson, commissioner and secretary of an independent constitutional commission, chief director and director of the civil service will be exempt from tax

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