HRTorQue Outsourcing (Pty) Ltd

HRTorQue Reporter

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Table of Contents

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

1) Over reliance on systems

Author: Jonathan Aitken

In the past ten days users of Sage's online accounting platform in South Africa have had a nightmare. The system has been down and they have had to scramble to issue invoices and get in SARS returns.

There is an important learning here for businesses and we see the same risk for many users of payroll software. Users have become accustomed to depending on their software both in terms of availability (uptime) and performance (accuracy).

Particularly in the payroll world we are facing increased complexity – legislation is added, but seldom simplified. Legislative authorities are also seldom considerate of the difficulties in changing systems, processes and user knowledge to deal with the legislation they enact.

This risk is increased in the payroll space because employers are often blissfully unaware of the hidden risks in payroll and, with the exception of payroll teams, seldom access their own payroll system.

We are increasingly seeing payroll software providers distancing themselves from the liability associated with incorrect payroll calculations.

This combination of increased complexity, low focus area and software developer risk aversion means it is critical employers put in place safeguards to protect themselves. We would recommend some of these alternatives:

- Regular payroll reviews/audits;
- Engaging practical partners to advise on key payroll aspects (including the tax aspects);
- Entrenching good payroll practices and particularly good checking processes particularly with system changes
    - Legislative updates
    - New package items requiring system changes
    - Material changes to the workforce
    - Unusual transactions
    - Significant, material items e.g. bonus runs, provident fund/medical aid changes, retrenchments, engagements

For help with any of the above please feel free to contact us at info@hrtorque.co.za

2) Careful, just because you aren't aware of payroll issues, doesn't mean they aren't there

Author: Gratitude Zondi (www.bumbana.co.za)

In our experience CEOs, CFOs and HRDs are largely oblivious of the payroll details within their organisations. It is not a key operational area; it is perceived as an admin process; and they largely assume that if they don't hear anything then it must be fine. When they do get involved in payroll issues they are often confronted with the "Don't worry, we've always done it this way". The problem is that, particularly in South Africa, payroll is becoming increasingly important for several reasons:

- If you get it wrong it can result in "downed tools" and work stoppages;
- Employees predominantly work to be paid. If you don't get this right then they don't feel valued and productivity drops. It is also the primary cause for dissent within the organisation;
- Payroll in South Africa is complex;
    - Payroll is the central hub for thirteen different pieces of legislation (often ones which tend to disagree with one another);
    - Payroll is where the money is and is the target for audits from SARS, the Department of Labour, Compensation Fund and disgruntled employees;
- Very few payroll departments can keep up to date with all the legislative changes;
    - Payroll departments tend to lurch from one payroll deadline to another with little time in between to keep up to date with legislation and best practice;
    - Payroll departments are over reliant on payroll systems. They seldom understand how packages are put together and what the impact of changes are;
- Payroll systems are creaking. Given the complexity and the multiple "grey" areas in legislation, payroll software developers are increasingly pushing the onus on clients to make sure they are compliant without clients realizing this is happening;

One of the biggest issues we see is inherited problems where a process worked once, but was never reviewed as systems change. Over the years 10 years of being a payroll consultant, I have encountered several instances where these inherited problems have resulted in huge penalties from SARS, significant costs to fix, and a lot of dissatisfaction from employees.

A scenario that springs to mind: An employer was processing medical insurance as a proper medical aid allowing employees to incorrectly claim for tax credits. This went on for at least two years. A seemingly small thing, but ultimately it cost the employer significant amounts of money:

- The cost to fix:
    - Correction and resubmission of all employee tax certificates
    - Resubmission of all EMP201s and EMP501s
    - Consultation with employees to recover the tax credit benefit they received in error – not to mention the employee unhappiness and lack of trust that resulted
- Having to foot the bill for employees who were no longer employed
- Penalties and interest from SARS for 'late' declaration and payment

Whether your payroll is processed in-house or outsourced it is advisable to have regular independent reviews of your payroll and the processes to mitigate against costly scenarios like the above.

We recommend a review at the following times:

- Annually when tax legislation and tables change;
- When you change key payroll personnel; and
- When you change payroll supplier or software

These reviews highlight legislative and internal processes shortfalls. We also offer review and support during the transitioning periods of new payroll personnel and when migrating to new payroll software.

3) New tax changes enacted – January 2021

Author: Jonathan Aitken

The government in January published the Taxation Laws Amendment Act (TLA) and Tax Administration Laws Amendment Act (TALA). Parliament also passed into law the Rates and Monetary Amounts and Amendment of Revenue Laws Act 22 of 2020.

The significant amendments are as follows:

- Withdrawal of retirement funds upon emigration. Taxpayers will only be able to withdraw their post retirement benefits once they have been non-resident for three tax years.
- Anti-avoidance rules bolstered for trusts particularly for preference share funding at a low or no rate of return in a company owned by a trust connected to an individual.
- Reimbursing employees for business travel expenses. This has been extended to include expenses incurred on meals and other incidental costs while the employee is away on a day trip. Note: this will only apply if the employer's policies expressly make provision for and allows such reimbursement.
- Relief for expats confirmed. Due to the travel restrictions under the Covid-19 pandemic, the days requirement for the foreign employment exemption has been reduced from 183 days in aggregate to 117 days. The relaxation only applies to the aggregate number of days and the requirement that more than 60 of the days spent outside South Africa must have been consecutive remains applicable. This amendment is not a permanent fixture.
- Employer provided bursaries. Bona fide bursaries or scholarships granted by employers to employees or their relatives are exempt. However, this cannot be part of a salary sacrifice arrangement.
- Tax treatment of doubtful debts. The doubtful debt allowance provision has been amended to bring parity between taxpayers that apply IFRS 9 and those who do not.
- Roll-over amounts claimable under the ETI. The Employment Tax Incentive Act has been amended to encourage tax compliance. The amendment determines that excess ETI claims of employers that are non-compliant from a tax perspective will no longer be rolled over to the end of the PAYE reconciliation period.
- Estimated assessments. SARS may now issue an estimated assessment where the taxpayer fails to respond to a request from SARS for relevant material.
- SARS can withhold your refund if you are under criminal investigation including one under the Tax Administration Act. As a side note we are worried that in the wrong hands this can be used to defer refunds indefinitely (or at least for a long time) particularly where the circumstance where a criminal case can be raised have been broadened.

Criminal sanctions for minor tax offences. With the new amendments, non-compliance of certain obligations will constitute a criminal offence where it is as a result of the taxpayer's negligence. Wilfull intent on its own is no longer required; where you are non-compliant due to ignorance of your obligations, you may be found guilty of a criminal offence. These offences are subject to a fine or imprisonment of up to two years. This is a very onerous change as the vast majority of the taxpayers we deal with have very little understanding of their responsibilities.

4) Circumstances where negligence can lead to a criminal offence for a taxpayer

Author: Jonathan Aitken

The Tax Administration Laws Amendment Act (TALA) now provides in s234(2) for the following circumstances where a taxpayer could face criminal charges if they are negligent.

(2) Any person who wilfully or negligently fails to—

(a) register or notify SARS of a change in registered particulars as required in Chapter 3;
(b) appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 249;
(c) register as a tax practitioner as required under section 240;
(d) submit a return or document to SARS or issue a document to a person as required under a tax Act;
(e) retain records as required under a tax Act;
(f) furnish, produce or make available any information, document or thing, excluding information requested under section 46(8), as and when required under this Act;
(g) attend and give evidence, as and when required under this Act;
(h) comply with a directive or instruction issued by SARS to the person under a tax Act;
(i) disclose to SARS any material facts which should have been disclosed under a tax Act or to notify SARS of anything which the person is required to so notify SARS of under a tax Act;
(j) comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections; or
(k) in the event where that person becomes liable to make a payment for withholding any tax, deduct or withhold or pay to SARS the amount of tax, as and when required under a tax Act, is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.'.

Some examples hypothetically speaking of when a taxpayer could face criminal charges:

- For failing to inform SARS of any change of postal, physical or electronic addresses, representative taxpayer and banking particulars;

- Failing to submit a tax return when required to do so or failing to submit documents when requested to do so by SARS;
- Failing to keep records for the required period of time;

This is a very powerful section of the Act giving SARS significant powers. Our concern is most taxpayers have very little knowledge of the income tax act and are very reliant in many cases on tax practitioners. However, we know many individuals cannot afford tax practitioners creating significant risk for themselves.

5) Effective Virtual communication for continued productivity: Employer to Employee

Author: Nosisa Sibanda

The COVID-19 outbreak is one that has forced business owners and employers to think outside the normal communication channels they have always used. More and more companies find that they need to virtually run their business with a lot of communicating having to be done virtually as well. A clear communication strategy has become critical during these times to ensure that employees remain as engaged as possible.

There are 3 basic principles employers should usually adhere to:

- Transparency,
- Compassion and
- Ownership

The question then arises, what more/ what else can businesses do to effectively manage Employer-Employee communication in a virtual world?

1) Check in often

As an employer check in with your team as often as possible. This may be formal or informal as you show employees that they matter outside of work.

2) Keep messaging clear and consistent

When communicating as an employer, do not give mixed messages or content. Always remain honest and consistent in the message to employees. Apart from good communication practices, this ensures employees are clear on what an organization is doing and how they hope to survive during these perilous times.

3) Communication must flow both ways

Allow employees to communicate their fears, challenges, ideas, and accomplishments during one-on-one virtual meetings or team meetings. Have safe online channels of communication that address the different issues surrounding the pandemic and how it affects different individuals' productivity.

4) Eliminate micromanagement

In an office environment, management often manage hours logged, emails sent, and meetings scheduled. In a virtual team things are different. Management should nurture communication between team members to focus on managing results as opposed to managing tasks. Communicate benchmarks and deadlines to gauge effectiveness and productivity of individuals.

5) Communicate a greater sense of purpose

Purpose is one of the most significant guiding principles of a leader. In "The Heart of Resilient Leadership", Deloitte Global CEO Punit Renjen noted the vital role that purpose plays in fostering an engaged workforce and that employees feel a greater connection to the work they are doing each day when their companies are focused on an authentic purpose.

6) Digital transformation

To further empower the workforce and maximize productivity, leaders should consider new technologies as well as digital ways of working and collaborating to improve productivity and engagement while preserving security and flexibility.

6) Tax challenges for ex-pats as a result of Covid restrictions

Author: Dave Beattie

The lack of employment opportunities in South Africa has resulted in a large contingent of 'expatriate' taxpayers plying their trades around the world. Considerable attention has been paid to this taxpayer category over recent years, with SARS looking to bring some of the revenue back into the tax net. The first step in this process was the introduction of the R 1.25 million per year income exemption. This exemption replaced the previous exemption which exempted all income earned should the taxpayer meet the following criteria:

- The taxpayer was outside South Africa for a period of 183 full days in aggregate during any period of 12 months, and
- For a continuous period of at least 60 full days during that period of 12 months.

When this legislation was promulgated the legislators could not have envisaged the consequences of the COVID-19 lockdown and restrictions. We have seen an unprecedented shutdown of not only the economy but also borders. The airline industry shutdown overnight and the repatriation of residents became a challenge for any country that had taxpayers either working or holidaying abroad.

Whilst spending the lockdown with family was achieved in most cases, what may have been overlooked is the adherence to the above-mentioned 'days' criteria. National Treasury has identified this as a potential problem and proposed that the expatriate exemption be amended for years of assessment ending during the period 29 February 2020 to 28 February 2021, to reduce the 183-day requirement by the 66 days during which South Africa operated under Levels 4 and 5 of the National Lockdown. For the 2021 year of assessment the ex-pat exemption will be available to any individual outside South Africa:

- for a period of 117 full days during any period of 12 months; and
- for a continuous period of at least 60 full days during that period of 12 months

It is interesting to note that the 60 full day requirement has been retained.

It is important to note that this proposal only caters for those South African tax residents working abroad. It does not cater for non-South African tax residents who were physically present for an extended period in South Africa during the 2021 year of assessment due to the National Lockdown. Due to the length of the lockdown, physical presence in South Africa may lead to a non-tax resident becoming South African tax resident and therefore subject to South African Income Tax on their worldwide income. It is therefore advisable that any taxpayers who may potentially fall into this category talk to an experienced tax practitioner so that the necessary planning may be done. Taking an incorrect step at this point could prove extremely costly to the taxpayer.

7) Zimbabwe – Finance Bill

(Source: crs.co.za)

Finance (No. 2) Bill 2020 enacted:

Zimbabwe's Minister of Finance and Economic Development approved the Finance Bill ahead of other amendments.

These amendments will give effect to various fiscal measures mentioned by the Minister of Finance in the National Budget Statement delivered on the 26th November 2020 and make certain modifications to improve revenue collection and administration.

The final Finance (No. 2) Bill 2020 Memorandum was published on 14 December. This gives effect to the amendments of the Finance Act [Chapter 23:04], the Income Tax Act [Chapter 23:06], the Value Added Tax Act [Chapter 23:12], the Customs and Excise Act [Chapter 23:02] and other Acts.

Clause 4 and 5 of the Bill alter the income tax bands on the basis of which rates of income tax are calculated in terms of section 14 of the Finance Act.

The PAYE tax free threshold will be increased from ZWL 5,000 to ZWL 10,000 per month, effective 1 January 2021.

Clause 17 amends the Third Schedule to the Income Tax Act by increasing the bonus tax-free threshold from ZWL5 000 to ZWL25 000 per annum, with effect from 1 November 2020.

View the Finance Bill (No. 2) 2020 at this link.

8) Recent legislation changes – eSwatini (Swaziland), Kenya, Morocco & Zambia

(Source: crs.co.za)

eSwatini (Swaziland)

National Provident Fund (NPF) contribution changes

An increase in the ceiling amount of wages for the purpose of the calculation of NPF contributions was published in Legal Notice No. 140 of 2020. As of 1 January 2021 the ceiling amount on wages has increased from E 2,900 to E3,100 per month.

Effective Date	Maximum Contribution
Employer	E155
Employee	E155
Total Monthly Contribution	E310

Kenya

Tax Bands 2021:

The Tax Laws (Amendment) No. 2 Act of 2020 was published on 24 December 2020, confirming changes to the PAYE bands and the tax rate in respect of payments or withdrawals from pension.

PAYE rates effective 1 January 2021:

Annual Tax Bands (KShs)	Monthly Tax Bands (KShs)	Rate of Tax
On the first 288,000	On the first 24,000	10%
On the next 100,000	On the next 8,333	25%
Above 388,000	Above 32,333	30%

Personal relief remains unchanged.

Pension tax bands:

For withdrawals after the expiry of 15 years from the date of joining the fund:

Pension Bands	Annual Tax Rates
Any amount in excess of tax-free amounts:	
On first KShs 400,000	10%
On next KShs 400,000	15%
On next KShs 400,000	20%
On next KShs 400,000	25%
On any amount in excess of KShs 1,600,000	30%

For pension income withdrawn before expiry of 15 years of pensionable service the new individual tax bands and rates are applicable on any amount withdrawn in excess of tax-free amount.

Morocco

Social Solidarity Contributions

The new Social Solidarity Contribution requirements for the year 2021 were published on 18 December 2020 in Bulletin Officiel 3 joumada I 1442. Other reference documents are the Morocco Draft Finance Law 2021 and the Code Général Des Impôts 2021.

The requirements are as follows:

- 1.5% contribution for individuals with an annual income equal to or exceeding MAD 240,000.
- The income must be from a Moroccan source.
- An employer is obliged to withhold the contribution.

This contribution applies to income for the year 2021 and is not tax deductible.

Zambia

Tax Rates 2021

Proposals made during the Zambia Budget Speech to introduce an increase in the annual tax exemption threshold for PAYE was published on the Zambia Revenue Authority (ZRA) website.

It should be noted that an official publication is not yet available to confirm the change in the tax rates. However, CRS note the ZRA is making use of the new proposed tax rates in its PAYE calculation.

Personal Tax Rates		
Chargeable Income Per Annum	**Chargeable Income Per Month**	**Rate of Tax**
ZMK 0 – ZMK 48,000.00	First ZMK 4,000	0%
ZMK 48,000.01 – ZMK 57,600.00	ZMK 4,001 – ZMK 4,800	25%
ZMK 57,600.01 – ZMK 82,800.00	ZMK 4,801 – ZMK 6,900	30%
Above ZMK 82,800.00	Above ZMK 6,900	37.5%

9) Employment Services Bill – Discussion around regulating the employment of foreign nationals

Author: Jonathan Aitken

The government have published a bill for comment, the Employment Service Bill. The Bill is available at this link.

In the bill the government proposes to regulate the employment of foreign nationals and includes some of the following recommendations:

- an employer must confirm that there are no suitable South African citizens that can be employed in that position, prior to recruiting a foreign national
- requiring that an employer must prepare a skills transfer plan in respect of any position in which a foreign national is employed
- the identification of certain sectors and target setting for South African citizens within these sectors;

While we recognize that unemployment is a crisis in our country, we strongly believe this is not the way to go. It once again emphasizes a belief that government have that central planning works despite international evidence to the contrary (or even the failures evident during through the Covid disaster management process).

Hopefully common sense will prevail.

Head Office (Durban)
Phone: 031 564 1155 • Email: info@hrtorque.co.za • Website: www.hrtorque.co.za Address: 163 Umhlanga Rocks Drive, Durban North, KwaZulu-Natal

Johannesburg Office
Ground Floor, West Wing, 6 Kikuyu Road, Sunninghill, 2191

Cape Town Office
Ground Floor, Liesbeek House, River Park, Gloucester Road, Mowbray, Cape Town, 7700

Bloemfontein Office
62 Kellner Street, Westdene, Bloemfontein

East London
24 Pearce & Tecoma Street, Berea, East London

Port Elizabeth
280 Cape Road, Newton Park, Port Elizabeth

Polokwane
125 Marshall Street, Polokwane

Nelspruit
Promenade Centre, First Floor, Suite 11 A, Nelspruit