

Table of Contents

- 1) Proposed payroll legislative tax changes in the pipeline
- 2) HRTorque now an accredited Sage and Payspace partner
- 3) Claims for workers affected by the KZN unrest (WABU)
- 4) HRTorque celebrates 50th weekly webinar
- 5) Department of Labour Health and Safety Inspections
- 6) Amendment of PAIA regulations (POPI)
- 7) The fraud wave – employers beware of increased payroll fraud
- 8) SARS Relief Measures
- 9) ETI Relief Tax Changes – HRTorque Client Action
- 10) SARS penalties for individuals for not filing their income tax returns
- 11) SARS – e-filing online application for deferral of tax payments
- 12) SARS – portal challenges

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

1) Proposed payroll legislative tax changes in the pipeline

Author: Dave Beattie

Details of the proposed changes to the Tax Law Amendment Bill and the Tax Administration Law Amendment Bill have recently been released for comment. We have taken the liberty of listing the matters that have an impact on the payroll environment.

Taxation of a long service award

The total non-taxable value of R 5 000 and all other qualifying criteria must continue to be met. It is however proposed that in future the award can be provided in cash, as opposed to a non-cash asset, as is required by the current legislation. This is a welcome change as the current requirements make the practicalities of achieving compliance difficult.

Clarifying the calculation of the fringe benefit in relation to employer contributions to a retirement fund

Where the employer contributes to a defined benefit fund the actual taxable benefit accruing to the employee is derived by using a specific formula. The self-insured risk-benefit which is included in the contribution is often "lost" when calculating the amount that the employee can use towards the calculation of the allowable deduction, thus allowing the employee a greater deduction than permitted. The proposal is to split the two amounts to ensure the value of the benefit for both the retirement fund and the self-insured risk-benefit can be determined and taxed accordingly.

Definition of an employee for ETI purposes.

It is proposed that the definition of an "employee" and a "qualifying employee" be changed to clearly specify that "work" must be performed in terms of an employment contract and that the employee must be documented in the employer's records. This is to ensure that employers don't claim for employees who don't actually work for them. There has been a significant amount of fraud perpetuated in this area since the introduction of ETI and this proposed change has been a long time coming.

Transfer between retirement funds by members reaching 55 (or older)

There are certain instances where a tax liability arises when a fund member reaches retirement age and transfers their funds into a preservation fund. The intention is that any transfer to a similar fund should not be taxed. It is proposed that an amendment be made to address this and allow for the tax-free transfer of funds from a preservation fund into a similar fund by a member who has already reached normal retirement age. This is a welcomed proposal as it enables individuals to maximize their return by moving from one fund to another, without any unintended tax consequences.

The tax implications on a retirement fund when an individual ceases to be a tax resident

There are some proposed changes which will assist an individual in delaying the payment of the tax liability that arises when there has been a deemed "withdrawal" by the individual from the fund. It is proposed that the taxable benefit will only accrue to the individual when they receive the payment from the fund.

Penalties for non-submission of bi-annual PAYE reconciliations

There is a proposed new method for calculating the penalty due for this type of non-compliance. If the proposal is adopted, we will see higher penalties being issued. Employers will be forced to pay more attention to meeting deadlines and ensuring that they comply with the technical specifications of these returns.

At this point these are just proposals so we will keep a close eye on developments over the coming months. We anticipate being able to give specifics during the tax year-end seminars in March 2022.

2) HRTorQue now an accredited Sage and Payspace partner

Author: Jonty Aitken

HRTorQue is proud to announce we are now an accredited partner for Sage payroll systems and Payspace. Following this development we are able to provide payroll processing and payroll support to clients on all of the below systems:

- Psiber
- Payspace
- Sage 300 People
- Sage Business Cloud Payroll Professional
- Sage Premier / VIP
- Xero

By combining our practical tax and payroll processing knowledge with this system knowledge we are able to offer clients a best in class support service. Not only can we identify the system best suited to your business, but we can also talk you through the practical challenges our clients face on a daily basis when dealing with SARS, the Department of Labour and the Compensation Fund.

If you need assistance with any payroll setup challenges, know you would benefit from a regular payroll audit to check your setup or even need help with your EMP501 filings, feel free to give us a call.



3) Claims for workers affected by the KZN unrest (WABU)

Author: Denelle Gopal

The eagerly awaited application portal for Workers Affected by the Unrest (WABU) has been opened.

This scheme was created to provide financial relief for those vulnerable employees that faced a loss of income because of the recent unrest faced in KwaZulu Natal and Gauteng due to their employer's closing down. Only businesses in KwaZulu Natal and Gauteng are eligible to apply.

According to the Department of Labour, "The relief will be paid at a flat rate of R3,500.00 to ensure that the UIF envelope is stretched to cover all affected workers. The benefit is de-linked from the UIF's normal benefits, therefore the normal rule that for every 4 (four) days worked, the employee accumulates a one-day credit, and the maximum credit days' payable is 365 for every 4 (four) years, does not apply. This will enable workers who have no credits to receive financial support whilst their workplaces are in the process of rebuilding or reopening." These funds will be paid directly into the employee's bank accounts.

According to the recently published Directive employers are required to apply on behalf of their affected workers, and they will have to meet the following conditions:

- Employer will have to register or be registered with the Unemployment Insurance Fund.
- Employer's closure must be directly linked to the destruction, damage or looting of its workplace.
- Employer must provide details of the destruction, closure, or damage to, or looting of, its workplace and submit documentary proof of a report to the South African Police Services, with proof that a case has been opened by providing a case number, and, if insured, proof of submission and acknowledgement of receipt of the insurance claim.
- Employer must confirm in writing or electronically that – he/she accepts the terms of the Scheme and any procedure document issued by Unemployment Insurance Fund, and
- The Employer must submit any other information that the Minister or UIF Commissioner may require to assess the eligibility of the claim.

This scheme will be reviewed every 2 weeks by the Minister and on the advice of the UIF Commissioner and terminated on notice in the Gazette.

If you need help with any claims please contact us on info@hrtorque.co.za.

4) HRTorQue celebrates 50th weekly webinar

Author: Jonty Aitken

At HRTorQue we recognise the importance of staying up to date with trends in the Payroll and HR industry and being aware of the practical challenges faced by employers in implementing HR and Payroll on a day-to-day basis.

To this end, in April 2020 we started a weekly webinar (mainly free for users) to look at topical issues. We are really pleased to say that we have now held 50 webinars with strong attendance weekly. Thank you very much to our contributors and to those of our clients who have attended these sessions. We hope they have helped you in your businesses in the way they were intended.

For an idea of some of the great topics we cover weekly please look at some of the recordings on our [website](#).

5) Department of Labour Health and Safety Inspections

Author: Davina Pillay

We are aware of a number of clients who have been selected for the Department of Labour Health & Safety and Covid-19 audits and who are falling short due to non-compliance with the COVID-19 related risk assessments.

These requirements were put in place in 2020 after the hard lockdown was eased and are a mandatory requirement.

The Risk Assessment must contain the following information –

- Hazard
- Who may be at risk
- Task or activity
- Route of exposure
- Health effects
- Risk level
- Existing and additional control measures

In addition to the Risk Assessment the following is also required –

- 1) Company registration document
- 2) Company letterhead
- 3) Proof of registration & last payment for COIDA (Compensation for occupational injuries)
- 4) Proof of registration & payment for UIF (Unemployment insurance)
- 5) Appointment letters & proof of training for the health & safety representative, first aider and General machinery supervisor (if applicable)

HRTorQue has developed a Risk Assessment Tool Kit and other documentation to assist with compliance in this regard. Should you need assistance or further guidance please contact info@hrtorque.co.za.

6) Amendment of PAIA regulations (POPI)

Author: Jonty Ailken

The PAIA regulations have been amended to bring them in line with similar provisions in the Protection of Personal Information Act (POPIA).

The new PAIA regulations include amongst other things, extra obligations and offences for the information officer and forms required to use for access to information.

Access to information

- Public bodies must make certain records automatically available.
- Private bodies must voluntarily dispose of certain records and make them automatically available.
- Political parties must make certain records available.

Complaints to information regulator

- A complainant may use the form provided to lodge an internal appeal against a decision of the information officer of a public body.
- A complainant may lodge a complaint with the regulator, who must follow a procedure to deal with the complaint.
- The regulator may try to settle the matter between the parties, failing which the regulator may conduct conciliation proceedings and act as conciliator in the matter.
- An information officer can request the regulator to make an assessment on whether or not to grant access.
- An information officer who (wilfully or in a grossly negligent manner) charges a fee for inspection of the PAIA guide (or any record) other than the fee prescribed, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

To view the Government Gazette, follow the [link](#).

7) The fraud wave – employers beware of increased payroll fraud

Author: Karen van den Bergh

Global stats show an increased level of fraud. Virgin Active, Transnet and the Department of Justice have been hit with expensive ransomware attacks.

We are also seeing an increase in the number of sophisticated frauds in the payroll space. In the past these were reasonably easy to identify, but recently they have become harder to identify. Employers please be aware. Put in place good processes and train your staff.

A recent example at a client illustrates this point...

For their August payroll they changed an employee's banking details in their payroll system based on an email request from one of their employee's personal email addresses. It even had a very authentic bank letter attached. Post payroll the employee called to say that their salary had not been deposited into their bank account. The employer immediately realised that they had been the victim of identity fraud. They will be lucky to get their money back.

Please contact us at info@hrtorque.co.za if you would like to chat about ways to identify and mitigate various types of payroll fraud including:

- How to identify fictitious employees
- How to validate banking details before payment
- How to reduce the risk of fraudulent requests
- What to watch out for in your payroll

8) SARS Relief Measures

Author: Jonty Aitken (source: SARS)

In response to COVID and the KZN looting, SARS have published a series of notes on relief measures available to businesses. Please also see our comments in italics in relation to the practical issues around each step.

Extension of the expanded Employment Tax Incentive (ETI) age eligibility criteria and amount claimable

In 2020, Parliament passed the Disaster Management Tax Relief Act, 2020 and the Disaster Management Tax Relief Administration Act, 2020, containing exceptional tax measures which formed part of the fiscal package aimed at assisting taxpayers who experienced cashflow constraints as a result of the COVID-19 pandemic and required national lockdown.

One of the exceptional tax measures included in the above-mentioned Acts was an expansion to the Employment Tax Incentive (ETI). This expansion was provided to assist employers retain employees, thus reducing the risk of low-income earners losing their employment as a result of the lockdown.

The expanded ETI was structured as follows:

- A R750 increase to the maximum monthly amount of ETI allowable.
- Allowing the above mentioned monthly ETI claim to apply to employees not classified as qualifying employees
- The proposal allowed for the calculation of the ETI claim based on actual remuneration paid in that month where the employee worked less than 160 hours a month (the remuneration paid to the employee did not need to be grossed-up).
- Accelerating the ETI reimbursements from twice a year to monthly.
- The ETI claimable would still need to be grossed down for actual hours worked.
- The inclusion of an anti-avoidance measure aimed at limiting potential abuse where an employer claimed the incentive despite having significantly reduced the employees' wages. This anti-avoidance measure applied to wages below R2 000.
- The expansion applied for a period of four months and was deemed to have come into operation on 1 April 2020 and ended on 31 July 2020. This first period has ended.

Due to the recent issues and continuation of COVID, it has been proposed that the ETI expanded relief above be extended for the four-month period from August 2021 to November 2021.

To qualify for this relief, the employer must be tax compliant and registered with the South African Revenue Service (SARS) as an employer by 25 June 2021.

Please note that it is important that employers not only check the correct way to do this claim on their payroll system, but also check the results carefully. Payroll software vendors have done their best to get this right, but it is short notice and it is up to employers to check they are claiming correctly. SARS won't give you any leeway for honest mistakes.

Extension of the deferral of the payment of employees' tax liabilities for tax compliant small to medium sized businesses Background

One of the exceptional tax measures introduced in 2020 was the deferral by employers of the payment of employees' tax liabilities (PAYE) to SARS for a limited five-month period. This PAYE deferral was structured as follows:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability had to be paid to SARS in equal instalments over the six-month period commencing on 1 September 2020, (i.e. the first payment had to be made on 7 October 2020).
- This applied only to SMEs - small or medium sized businesses conducted by a company, partnership, individual or trust with a gross income not exceeding R100 million for the year of assessment ending on or after 1 April 2020 but before 1 April 2021.
- The inclusion of a limitation stating that gross income should not include more than 20 per cent of income derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer,
- Rental income derived from the letting of fixed property excludes rental income derived by a person whose primary trading activity is the letting of fixed property and substantially the whole of the gross income is rental from fixed property.
- The requirement that the employer is tax compliant in terms of the Tax Administration Act when making a reduced payment.
- The relief measure applied for a limited period of five months beginning 1 April 2020 and ending 31 August 2020.

This relief has been extended for another limited three-month period as follows with the same rules as above:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof.
- The deferred PAYE liability for the three-month period of August to October 2021 must be paid to SARS in equal instalments over a four-month period commencing on 1 November 2021, (i.e. the first payment must be made on 7 December 2021).
- To qualify for this relief measure, the employer will need to have been registered with SARS as an employer by 25 June 2021.

Deferral of Excise Duties on Alcoholic beverages

In 2020, the rules to the Customs and Excise Act, 1964, were amended to insert rules 105.01 to 105.04 to permit applications to SARS for deferral of payment of excise duties in cases of temporary financial constraint. These rules were applied to assist tax compliant licensees in the alcohol sector when restrictions were imposed on the sale of alcoholic beverages in December 2020.

With the ongoing challenges, SARS will provide deferrals of up to three months for payments by tax compliant licensees in the alcohol sector, on application setting out the circumstances justifying a deferral.

9) ETI Relief Tax Changes – HRTorQue Client Action

Author: Odessa Engelbrecht

On 28 July 2021 National Treasury published the following three tax amendment bills for public comment:

1. Rates and Monetary Amounts and Amendment of Revenue Laws Bill
2. Taxation Laws Amendment Bill
3. Tax Administration Laws Amendment Bill

A Media Statement was issued along with the Bills referring to a tax relief package of R 5 billion. This relief would include:

1. The expansion of the Employment Tax Incentive (ETI) for 4 months
2. Payment deferrals for 3 months on PAYE for qualifying industries

The effective date for both the ETI relief and PAYE deferral is 1 August 2021. This is applicable for calculations in respect of the EMP 201 return and payment due by 7 September 2021.

If you process your payroll with us this action is required by you: Please send an email to your payroll team if you wish to consult around the expansion of the ETI or if you wish to defer the PAYE payments for 2 months.

They will make the necessary parameter changes for the ETI EXPANSION and will inform the Payroll payment / Admin team about the PAYE DEFERRAL. The Payroll payment / Admin team will respond on the process and the additional controls that they need to put in place to make sure this is handled correctly.

If you are not an HRTorQue payroll client and would like to consult with us in this area please send us an email on the address below.

Should you have any questions in this regard please contact info@hrtorque.co.za.

10) SARS penalties for individuals for not filing their income tax returns

Author: Jonty Aitken

In late July 2021 SARS published a draft [notice](#) to warn individual tax payers of their intention to charge penalties for the late filing of income tax returns in the following circumstances:

- 1) Failure by a natural person to submit an income tax return as and when required under a tax Act, for years of assessment commencing on or after 1 March 2006, where that person has, with effect from 1 December 2021—
 - two or more outstanding income tax returns for years of assessment commencing on or after 1 March 2006 but ending on or before 29 February 2020; or
 - one or more outstanding income tax returns for years of assessment commencing on or after 1 March 2020.

- 2) Failure by a natural person to submit an income tax return as and when required under the Income Tax Act, for years of assessment commencing on or after 1 March 2006, where that person has, with effect from 1 December 2022, one or more outstanding income tax returns

There is no doubt SARS is under pressure to collect tax and they do have a legal right to do this. The challenge we have is the unfair environment in which SARS operates and the potentially unintended consequences actions like this will create. For example:

- If SARS systems were world class and errors didn't happen then charging penalties for valid non submission would be understandable. However, SARS systems often make mistakes and we can quite easily see scenarios where individuals are not required to submit a return, but SARS believes erroneously they should and charges a penalty even where no tax is owing;
- We are all aware South Africa sees many people emigrating each year. While we would like to say that everyone knows their Income Tax Act off by heart in the way SARS expects, the practical reality is that they don't. In many instances these individuals are no longer tax resident in South Africa and have no South African source income. However, because they may not have closed off their affairs properly there may arise a situation where they have penalties and interest on their accounts and don't want to visit South Africa in case SARS decides to arrest them to pay their bills. An extreme scenario, but do we really want to face this.

There must be better ways to go about filling the fiscal funding gap.

11) SARS – e-filing online application for deferral of tax payments

Author: Jonty Aitken

SARS issued an announcement in September 2021 that taxpayers can now apply on e-filing for a deferral of tax payments if they cannot afford to make payments when due.

The SARS notice is available at this [link](#).

This is a welcome announcement although we have not yet tested to the process to see if it actually works as intended.

12) SARS – portal challenges

Author: Jonty Aitken

For the last EMP501 employer submission period due 31 May we experienced a number of challenges with the SARS e-filing system where clients wanted to access their profiles. This was due to a change in March 2021 to the way profiles are transferred. As a result of these difficulties some employers missed the deadline and were penalized by SARS.

We had hoped things would be easier for the employer filing season ended 31 August for returns due by the 31 October. Unfortunately, there are still challenges with transferring profiles.

If you need help accessing your e-filing profile with SARS then give us a shout and we will hopefully be able to help you.

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