HRTorQue Outsourcing (Pty) Ltd

HRTorQue Reporter

July 2022

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

1) SARS tax directive enhancements - PAYE on pensions

Author: David Beattie

In early November 2021, SARS published a document entitled 'Implementation of tax directive enhancements'. This explained the enhancements made to the directive system that would deal with pensioners with more than one source of income.

SARS states that where a pensioner has one source of pension income, the PAYE system ensures that sufficient tax is deducted to cover the annual tax liability. Where the pensioner has two sources of income, a tax debt may arise at tax year-end when all sources of income are combined to determine the annual tax liability. SARS states that the PAYE system allows for a pensioner to request that a higher rate of tax be deducted from their pension, but that very few pensioners are requesting this. At tax year-end they would end up having a tax liability that not many of them would have budgeted for. SARS's concern is that this results in an increase to the value of the outstanding book debt.

In response to this, the recently introduced legislation makes provision for SARS to determine the effective rate of tax in respect of the combined employment and / or pension income of the taxpayer (with reference to the latest data available to SARS), and to provide the retirement fund administrators with that rate for the purposes of withholding PAYE. SARS has introduced this service with effect from the 1st March 2022.

In practice, this new process works as follows:

1. SARS will, where necessary, provide retirement fund administrators with the withholding percentage for the qualifying pensioners on the payroll.
2. Retirement fund administrators will need to apply these percentages in the payroll as of the 1st March 2022.
3. SARS will provide the PAYE withholding rates via e@syFile by way of an electronic file in CSV format.
4. Should SARS not supply a PAYE withholding rate for a particular pensioner, retirement fund administrators must apply the normal PAYE withholding rates.
5. Where SARS provides a PAYE withholding rate, it will be by way of an annual directive. Where a pensioner's circumstances change (death or loss of income source), the retirement fund administrator must apply the normal PAYE withholding rates, as opposed to the rate supplied by SARS, from the month in which they become aware of the changes.
6. Pensioners have the option of requesting the retirement fund administrator to withhold a rate higher than the rate provided by SARS. The excess PAYE must be reflected under code 3915 and the voluntary over-deduction code indicator must be set to 'Y'.

7. Pensioners may request that retirement fund administrators apply the normal PAYE, even if SARS has indicated a higher rate be deducted. In these cases, retirement fund administrators are obliged to inform the pensioner that the PAYE withheld may be insufficient to cover the tax liability on assessment.
8. The rates of PAYE withholding provided by SARS apply to the following source codes only:
   a. 3603 – Pension
   b. 3610 – Annuity from a Retirement Annuity Fund
   c. 3611 – Purchased Annuity
   d. 3618 – Annuity from a Provident Fund or a Provident Preservation Fund

The implementation of this SARS process change has caused widespread confusion and unhappiness among pensioners. We have been inundated with queries from pensioners who either were not informed of the change or were shocked when they received a lower pension for the month. It's clear that communication between SARS and the retirement funds have been poor, and this should not have been the case. Afterall, there was a period of nearly 4 months for all parties to communicate the process and the decisions that needed to be made – before the first pay run. What is certain is that SARS will continue to implement processes that improve revenue collection and limit the possibility of their debt book increasing.

If you've been affected by the new tax directive enhancements and have any questions, please contact info@hrtorque.co.za.

2) Beware of higher inflation

Author: Jonathan Aitken

The Ukraine conflict has already had an impact on South Africa when we can least afford it, by increasing the price of fuel at the pumps. Together with the expected food price inflation stemming from a shortage of raw materials for fertilizer, we are in for a tough year. Consumers are already stretched in South Africa with many living from paycheck to paycheck.

The Reserve Bank has already acted by increasing the repo rate to fight inflation, but more is expected. For a household earning R25,000 per calendar month, a 1% increase in interest rates equates to an extra R833 on interest per month.

But it's not only an issue for those with debt. Increasing interest rates are bad for equity and bond valuations, and pensions tend to take a knock as well.

For employers, this is difficult for several reasons:

- Staff are under increased emotional stress caused by their financial situation
- There is a higher likelihood of fraud
- Employers will face pressure to increase salaries/wages in response to the rising cost of living

Unfortunately, there is no magic wand to make this go away. However, we do recommend giving some thought to the impact of inflation on your business. Plan now to address these challenges – including how you will implement price increases of your own – rather than waiting for the proverbial sword to hit when you are least prepared.

And you can always chat to us should you need some advice! Our team is ready and waiting – contact us on info@hrtorque.co.za.

3) No more masks for South Africa, but what about the workplace?

Author: Delene Sheasby

There have been numerous changes recently relating to the management and exposure to SARS-COV-2 in the workplace, particularly with regards to the Covid protocols with which we have had to comply during the past 2 years. Most notably, masks were in, now they're out – but how does this affect the workplace? Here's what you need to know when it comes to the legislative requirements for employers in the office.

On the 22nd June 2022, the Minister of Health issued a gazette repealing the regulations of Notifiable Medical Conditions, with immediate effect. Essentially, this meant that the wearing of masks in public indoor places, restrictions on gatherings at events, as well as restrictions on people entering the borders in South Africa, were removed.

It's important to understand that the repealing of this regulation under the Department of Health does not change the labour laws which are still applicable to employers under the provisions of the Occupational Health and Safety Act No 85 of 1993 (OHSA). What this means is that although there is no requirement to wear masks in public, employers must still comply with the Code of Good Practice to manage Covid in the workplace, and ensure the health and safety of their employees as required by the OHSA.

In addition, the repeal does not impact the continued operation of the Hazardous Biological Agents Regulations ("the HBA Regulations") published on the 16th March 2022. These regulations classify Covid as a Group 3 Hazardous Biological Agent (HBA), and place several legal obligations on employers. These include conducting a risk assessment and developing an action plan for the implementation of the recommendations arising from the risk assessment. Because Covid is still with us, employers are legally required to conduct risk assessments and implement measures to prevent infection and transmission of the virus, or mitigate the risk of serious illness or death in their workplaces.

On the 24th June, a Code of Good Practice to managing the exposure to SARS-COV-2 in the workplace was released by Mr T W Nxesi, MP Minister of Employment and Labour and Government Notice No. R 2191. It outlines the following:

- Updated risk assessments and action plan
- Administrative measures, including isolation, ventilation, vaccination, monitoring and symptom reporting

For more information download the Code of Good Practice here:
http://www.gpwonline.co.za/Documents/Government/46596%2024-6%20EmploymentLabour.pdf

And if you have any questions or require more clarity, please email delene@worksafetysa.co.za.

4) Suspension of the UIF e-Compliance Certificate system

Author: (Source: PAGSA)

The electronic UIF Compliance Certificate (eCC) system was introduced without warning in late January 2021, with no third-party consultation with stakeholders such as the Payroll Author's Group of South Africa (PAGSA). While it was developed to replace the manual system that had been in operation beforehand, problems were experienced almost immediately, escalating steadily until now.

After many, many emails to the Fund highlighting the problems, and after countless requests to meet with the senior management of the Fund to discuss how to resolve these challenges, a meeting was finally scheduled for the 12th April 2022. To inform the meeting, the Fund requested the PAGSA to submit a report on the difficulties that the PAGSA, its members and their clients, had experienced since its inception.

Halfway through the points in the PAGSA report, a legal representative of the Fund announced the decision to suspend the eCC system to allow the Fund and third parties time to discuss the way forward. It appears that this decision had been made prior to the meeting, and later that day the e-Compliance Certificate website was closed until further notice. From the website, you can now download a circular letter with more details of the suspension and print it.

Keep in mind that according to legislation:

1. The completely re-written Unemployment Insurance Act (administered by the Fund) and the Unemployment Insurance Contributions Act (administered by SARS) came into operation during 2002.
2. Simplifying the requirements, the Unemployment Insurance Act (UI Act) puts a duty on employers to pay their contributions to SARS (or to the Fund), and to declare their employees to the Fund.
3. The UI Act does not provide for a prescription period, nor does it provide for an amnesty in any way to absolve declarations that were not made or were incomplete (with hindsight, this is perhaps a weakness in the UI Act).
4. The Fund, as the administrator of the UI Act, has a duty to ensure that employers comply with the provisions of the Act, including the monthly declaration of employee data.
5. The Fund is therefore within its legal rights to enforce the re-submission of missing declaration data. Only the timing and the method used by the Fund (i.e. withholding compliance certificates) to coerce employers to fill their 'declaration gaps' can be questioned.

In a nutshell, this means that to be able to change the eCC system, the UI Act will probably have to be amended – and changing the law is a lengthy process.

The closing of the eCC website means that employers (including those that are compliant), can no longer be issued with a UIF Compliance Certificate. The circular letter on the eCC website is therefore not addressed directly to employers, but to all government departments, state agencies, organs of state, business (public and private) and non-profit making organisations, to make them aware that the UIF Compliance Certificate will no longer be created, and that they must adjust their tender application rules to no longer expect such a document. It could take some time before the tender application rules are changed, so companies that tender must be prepared for this, and armed with the circular letter, inform tender adjudicators that the absence of a UIF Compliance Certificate does not disqualify them from the tender application process.

What next?

- The Fund has a duty to encourage and enforce compliance, so in the short-term, possibly other methods of enforcement will be put into operation.
- If the Fund intends to continue with the e-Compliance Certificate process, it appears that the UI Act will have to be amended (for example, as is the case in the Employment Equity Act).
- The R60-plus billion paid out in Covid-19 TERS and the July 2021 Civil Unrest benefits has weakened the Fund financially, so one can expect the Fund to also focus on contribution compliance.
- New administration methods can assist in making the Fund more efficient and improving compliance. As indicated in the PAGSA report – and as a short-term project – there are changes that could be made to the E03 specification to provide the Fund with start and end dates for maternity leave, illness leave, etc.

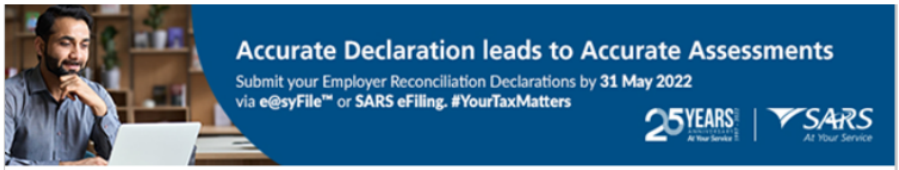
Interesting times certainly lie ahead! For any of your compliance questions please email us on info@hrtorque.co.za.

5) Deceased employee's tax certificate issue periods

Author: (Source: PAGSA)

SARS has requested that employers take note of their message published on their website, relating to the issuing of tax certificates in respect of deceased employees. Because a deceased employee's tax period ends on the deceased date, a tax certificate MUST be issued within 14 days after the date of death. The reason for this is to enable the executor of the estate to finalise the estate. One of the duties of an executor is to complete the tax returns of the deceased up to the date of death.

Message by SARS follows below:



Did you know that the employer of a deceased employee also has a tax obligation in respect of the deceased employee?

When **an employee dies**, the employer is required to deliver an employees' tax certificate **within 14 days** of the date on which employment ceased to the former deceased employee's representative (Executor). This is according to Paragraph 13(2)(*b*) of the Fourth Schedule to the Income Tax Act.

An employer must not wait for the employers' reconciliation period to issue the deceased employee's tax certificate to the executor (representative taxpayer of the deceased employee) regardless of whether the Employer Reconciliation (EMP501) has not yet been submitted to SARS.

This will enable the executor, as the representative taxpayer, to finalise the financials and manage the tax affairs of the deceased employee efficiently and without any delays.

6) South Africa: COIDA Schedule 4 - Manner of calculating compensation

Source: www.crs.co.za

Government Gazette 46244 Notice 982 of 2022 was published on the 14th April 2022 by the Department of Employment and Labour, to inform all interested parties of the intention to amend Schedule 4 of the COID Act for accidents that occur and occupational diseases that are diagnosed from the 1st April 2022.

Interested parties are invited to submit comments in writing to the Compensation Commissioner, PO Box 955, Pretoria 0001 or by email to Melinda.Visagie@labour.gov.za within 60 days of the publishing of this notice.

The intention is to amend the minimum and maximum compensation amounts, effective 1 April 2022, as follows:

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)
Item	**Section**	**Nature & degree of disablement**	**Nature of benefits**	**Manner of calculating compensation**	**Maximum compensation**	**Minimum compensation**
1	47(1)(a)	Temporary total disablement	Periodical payments	75% x monthly earnings at the time of the accident x number of days off / total days in month	R32 763	R4 589
2	49(1)	Permanent disablement of 1-30%	Lump sum	15 x monthly earnings at the time of the accident x permanent disablement % / 30	R366 959	R91 752
3	49(1)	Permanent disablement of 31-100%	Monthly pension	75% x monthly earnings at the time of the accident x permanent disablement %	R32 763	R4 589
4	54(1)(a)	Fatal	Lump sum	Twice employee's monthly pension that would have been payable under item 4 had he/she been totally permanently disabled (100%)	R65 526	R9 178
5	54(1)(b)	Fatal	Monthly pension	40% of the monthly pension that would have been payable to the employee under item 4 had he/she been permanently disabled	R13 105	R1 836
6	54(1)(c)	Fatal	Monthly pension	A maximum of 20% of the monthly pension that would have been payable to the employee under item 4 had he/she been totally permanently disabled, is payable to a child. In case of more than three children, the children will share 60% in equal proportions	R6 553	R918
7	54(1)(d)(ii)	Fatal	Lump sum	Per cent dependence as proportion of R188 767	R188 767	N/A
8	54(2)	Fatal	Funeral costs	R18 251 per valid claim	R18 251	N/A
9	63(1)(a)	Minimum for free food and quarters	To be included in earnings	Minimum for free food R323 per month; and minimum for free quarters R145 per month	N/A	R323 R145
10	28	Constant attendance allowance	Monthly allowance	Minimum amount of R2 397 per month	N/A	R2 397

To view the Government Gazette, follow this link.

7) Malawi: 2022 - 2023 Tax Changes

Source: www.crs.co.za

Following the Budget Speech delivered on the 18th February 2022 by the Minister of Finance and Economic Affairs, the Taxation (Amendment) Act, 2022 was published on the 31st March 2022. The amended Act serves as confirmation of the tax changes proposed during the Budget Speech.

The PAYE rates, **effective 1 April 2022**, have been revised as follows:

Annual Income	Rate	Monthly Income
First MK 1,200,000	0%	First MK 100,000
MK 1,200,00.01 to MK 3,960,000	25%	MK100,000.01 to MK330,000
MK 3,960,000.01 to MK 36,000,000	30%	MK330,000.01 to MK 3,000,000
MK 36,000,000.01 to MK 72,000,000	35%	MK3,000,000.01 to MK 6,000,000
MK 72,000,000.01 and above	40%	MK 6,000,000.01 and above

In addition, please note that the Malawi Government has changed its tax year from one commencing 1 July and ending 30 June, to one commencing 1 April and ending on the 31st March.

The Government has distributed a memo to the heads of all ministries. The change was also confirmed in the 2022/2023 Budget Speech.

According to the memo, the 2021/2022 fiscal year will be shortened to nine months, commencing on the 1st July 2021 and ending on the 31st March 2022. The 2022/2023 tax year and all subsequent tax years will commence on 1 April and end on the 31st March of the following year.

View the Taxation (Amendment) Act, 2022 here.

8) Kenya: Finance Bill, 2022

Author: Source: www.crs.co.za

Following the 2022/2023 Budget Speech delivered on the 7th April 2022, the Finance Bill, 2022 was published on the 8th April 2022 in Kenya Gazette Supplement No. 67.

Amendments of importance to employers are:

- Section 2 of the Income Tax Act – Definitions/Interpretations

A new definition, **effective 1 July 2022**, has been added: ""permanent home" means a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner, the individual's personal or economic interests are closest".
Explanation: This amendment clarifies the uncertainty on the definition of what a permanent home means in determination of a tax residency.

- Section 5 (5) (a) of the Income Tax Act - Income from employment, etc.

Before 1 July 2022	As from 1 July 2022
(a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer;	(a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price, per share, at the date the option is granted by the employer, and the market value, per share, on the date when the employee exercises the option;
Explanation: Previously, the difference between the offer price and market price was computed as at the date the option was granted by the employer. The amendment is largely to take into account the change in value of shares over time and as such tax the benefit on the actual cost to the employer as at the date the benefit crystalises.	

- Section 5 (6) (a) of the Income Tax Act - Income from employment, etc.

Before 1 July 2022	As from 1 July 2022
(6) For the purposes of paragraph (a) of the proviso to subsection (5)— (a) the benefits chargeable shall accrue where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Act (Cap. 485A) and shall be deemed to have accrued to the employee at the end of the vesting period;	(6) For the purposes of paragraph (a) of the proviso to subsection (5)— (a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option.
Explanation: The amendment removes the requirement to have employee's share option plans (ESOPs) registered with the commissioner as a collective investment scheme. Additionally, the benefits from ESOPs shall accrue to the employee at the date the employee exercises the option and not at the vesting date. This brings clarity to the taxation of ESOPs.	

- Section 31 (1) (a) of the Income Tax Act - Insurance relief

2022	As from 1 January 2023
(1) A resident individual who proves that in a year of income— (a) he has paid a premium for an insurance made by him on his life, or on the life of his wife or of his child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya	(1) A resident individual who proves that in a year of income— (a) the individual has paid a premium for an insurance made by the individual on the individual's life of the life of the individual's spouse or child.
Explanation: Previously, the insurance relief only applied to individuals (husbands) who paid a premium on their life, or that of their wife or child. This provision is a rewording to ensure that all taxpayers (including husbands and wives) are entitled to the insurance relief.	

To view the Kenya Gazette Supplement No. 67, follow this link.

9) Zimbabwe: NSSA insurable earnings ceiling

Source: www.crs.co.za

It's important that employers note the following with regards to Pension and Other Benefits Scheme (POBS) contributions:

The National Social Security Authority (NSSA) has published the new maximum amount of monthly insurable earnings for July, August and September 2022.

The new maximum amount of monthly insurable earnings in respect of which contributions are payable shall be 75% of the previous month's total consumption poverty line (TCPL).

As from April 2022, the POBS maximum insurable ceiling will be reviewed on a quarterly basis. Previously, the ceiling changed on a monthly basis.

For April 2022, May 2022 and June 2022, the insurable earnings ceiling was ZWL$ 159,530.00. For both employer and employee, the maximum deduction changed from ZWL$ 1,543.10 (4.5% x 34,291.00) to ZWL$ 7,178.85 (4.5% x 159,530.00).

For July 2022, August 2022 and September 2022 the insurable earnings ceiling is ZWL$ 255,675.00.

For both employer and employee, the maximum deduction changes from ZWL$ 7,178.85 (4.5% x 159,530.00) to ZWL$ 11,505.38 (4.5% x 255,675.00).

View the insurable earnings banner on the NSSA website here.

10) Namibia: Amendment of regulations under the Social Security Act

Source: www.crs.co.za

Government Notice No. 89 of 2022 was published in Government Gazette 7773, dated the 25th March 2022. It has adjusted the amounts payable to people on maternity leave, and extended sick leave and the death benefit.

- Regulation 9 (1):
  - Maternity leave benefits shall be equal to 100% of the basic wage of the female employee concerned, up to a maximum amount of NAD15,000 (previously NAD13,000) per month, payable for a maximum of 12 weeks.
- Regulation 10 (1):
  - Sick leave benefits shall be:
    - Equal to 75% of the basic wage of the employee concerned up to a maximum amount of NAD11,250 (previously NAD9,750) per month for the first period of 12 months of sick leave; and
    - Reduced to 65% of the basic wage up to a maximum amount of NAD9,750 (previously NAD8,450) per month after the abovementioned 12-month period of sick leave.
- Regulation 11 (1):
  - The death benefit is a single lump sum amount of NAD12,000 (previously NAD8,475).

View Government Notice No. 89 here.

11) Lesotho: Income Tax changes 2022 - 2023

Source: www.crs.co.za

Following the 2022/2023 Budget Speech delivered on 2 March 2022, the Lesotho Government published changes to the lower tax brackets and tax credit on the 8th April 2022.

In terms of the Income Tax (Monetary Amounts) (Amendment) Regulations, Legal Notice No. 35, the lower tax bracket has been increased from M64,200.00 to M67,440.00 per annum.

The law also provides for an individual to be granted a non-refundable tax credit. A tax credit is a rebate or relief granted by law to individuals who made taxable income for the year of assessment. The non-refundable tax credit has been increased from M10,080 per annum to M10,560 per annum, effective 1 April 2022.

With effect from the **1st April 2022**, the applicable rates for PAYE are as follows:

Resident Individual Income Tax Rates		
Chargeable Annual Income	**Chargeable Monthly Income**	**Rate of Tax**
First M67,440.00	First M5,620.00	20%
Over M67,440.00	Over M5,620.00	30%
A non-refundable tax credit of M10,560.00 pa	A non-refundable tax credit of M880.00 pm	

Take a look at the Government Gazette here.

12) South Africa: SARS individual filing season

Source: www.crs.co.za

On the 3rd June 2022, the South African Revenue Services (SARS) published Notice 2130 in Government Gazette 46471 to provide the Income Tax return filing dates for individuals.

Individuals who received remuneration from one source only and do not have any other allowances or benefits, do not need to submit an Income Tax return if their total remuneration does not exceed R500 000 and PAYE has been deducted according to the prescribed tax deduction tables.

The individual Income Tax return filing dates are as follows:

- 1 July to 24 October 2022 for taxpayers who file online.
- 1 July to 24 October 2022 if the return is submitted electronically through the assistance of a SARS official at an office of SARS or manually. Please note this can be done by appointment only.
- 1 July to 23 January 2023 for provisional taxpayers who file electronically.

Please note, since the 2020 tax year, SARS has been assessing a significant number of taxpayers automatically. If you are auto assessed, you will be notified per SMS, so there will be no need for you to call SARS or visit a SARS branch.

View the government gazette notice here.

13) Mauritius- 2022/2023 Budget Speech and tax changes

Source: www.crs.co.za

On Tuesday the 7th June 2022, the Minister of Finance, Economic Planning and Development presented the 2022/2023 National Budget.

The Budget aims to set the foundation for a resurgence of the economy to pre-pandemic levels, while continuing to show solidarity to the people of Mauritius to mitigate the effects of rising living costs resulting from the ongoing war between Russia and Ukraine.

Economic highlights:

- GDP growth for the 2022/23 financial year is expected to be 8.5%
- A budget deficit of 4% is expected for 2022/2023
- Public debt is expected to fall below 80% of GDP
- Total expenditure will amount to Rs 172.9 billion while revenue will be Rs 150 billion

Tax administration measures:

- Reintroduction of the Tax Arrears Settlement Scheme (TASS), whereby a full waiver of penalties and interest will be given, provided that all tax has been settled by the 31st March 2023 and the taxpayer registers him/herself under the Scheme by the 31st December 2022.
- Increase of the rate of tax deduction at source (TDS) from 3% to 5% on services provided by professionals, and from 5% to 7.5% on rent paid to a resident.
- Introduction of TDS at 3% on consultancy fees.
- The Income Tax Act will be amended to allow Mauritius to enter into international arrangements for alternative dispute resolution, with a view to resolving cross-border tax disputes and implementing the internationally agreed standards to prevent base erosion and profit shifting.

Income Tax measures:

- Introduction of a domestic minimum top-up tax of 15% on resident companies in Mauritius forming part of multinational enterprise groups having a global annual revenue of at least EUR 750 million.
- As from July 2022, an individual earning up to Rs 700,000 will be taxed at 10%, and those earning between Rs 700,000 to Rs 975,000 will be taxed at 12.5%.

Annual Net Income	Tax Rate
Up to Rs 700,000	10%
From Rs 700,001 to Rs 975,000	12.5%
Above Rs 975,000 (Solidarity Levy may apply where the annual leviable income exceeds Rs 3 million)	15% and Solidarity Levy, if applicable

- The allowable deduction/exemption on the following items has been increased:
  - In respect of a dependent child pursuing tertiary studies from Rs 225,000 to Rs 500,000
  - Medical insurance allowance increases by Rs 5,000
  - Contribution to personal pension schemes increases by Rs 20,000
  - Donations to charitable institutions increases by Rs 20,000
  - Maximum allowance deduction for petrol or traveling allowance increases to Rs 20,000
  - Additional deductions on the amount incurred to purchase manufactured products from a small enterprise by a large manufacturer increase to 25%.

Follow this link to take a closer look at the Mauritius Budget Speech.

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