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Should you require more information on any of these topics, please contact us on info@hrtorque.co.za.

1) Garnishees and what to do when employees leave

Author: Karen van den Bergh

With interest rates rising and life becoming hard for many South Africans, we have had many queries around garnishees and maintenance orders - more specifically what the employer's responsibilities are when an employee leaves their employment and an order is in place.

A garnishee order is a legal process where a court requires an individual or an organisation (the garnishee) to pay a portion of a person's debt directly to the creditor, instead of the debt being paid by the person who owes the debt (the debtor). The garnishee may be an employer, a bank, or any other third party that holds the debtor's funds. The court order directs the garnishee to hold a specific amount of the debtor's funds, until the debt is fully paid up. This process is usually used as a last resort when the debtor has failed to make payments to the creditor, and other methods of debt collection have also been unsuccessful.

There are three main objectives and types of garnishee orders that serve different purposes:

1. Maintenance order

This is usually obtained by a parent of a child through a Magistrates Court. An employer must give priority to the payments specified in the notice over any other order of court requiring payments to be made from the employee's salary or wages.

2. Tax collection

In terms of the Income Tax Act No. 58 of 1962, SARS is entitled to initiate any collection proceedings (including agent appointments) for outstanding penalties or taxes due by an employee. The form used for the purposes of agent appointments is referred to as an agent appointment notice (IT88), and in essence means that an employer becomes a SARS appointed agent.

3. Emolument attachment orders

A credit provider can collect a debt owed by the employee on a monthly or weekly basis.

What is the employer's responsibility upon receiving a garnishee order?

An emoluments attachment order or maintenance order will be delivered by the Sheriff of the Court. Before accepting these garnishee orders, the employer must:

1. Ask the Sherriff to produce identification.

2. Ensure that the garnishee order:

- Was correctly stamped by the Clerk of the Court. Their dated stamp must be clearly displayed on the document and the stamp must reflect the court out of which the order was issued.
- Was issued within the jurisdiction of the employer's business.
- Clearly displays the case number.
- Properly identifies the employee on the document.
- States the outstanding debt amount.
- Specifies the amounts to be deducted from the employee's salary until such time as the debt and costs have been settled in full.
- Displays what day of the month or week the deductions must be affected and paid to the maintenance court, or the credit provider's debt collector.
- The debt collector's contact details, contact person and banking details appear on the document.

Should any of these items not be present on the order, the employer should seek urgent legal advice prior to accepting the order.

A SARS issued IT88 will be posted on an employer's e@syFile software package. It is recommended that an employer's payroll administrator regularly logs in to e@syFile and downloads any new IT88 instructions issued on current employees.

Consultation with your employee

Before you implement a garnishee order for an employee, you should inform them that it has been issued and the effect, including the amount that will be deducted from their salary.

To assist the employee and ensure that they do not become victims of unscrupulous debt collectors, in the case of emoluments attachment orders and maintenance orders, the employer may ask the debt collector or Maintenance Court to furnish them with a copy of the employee's statement of account. This will enable the employer to verify whether interest, costs and fees have been calculated in accordance with the National Credit Act of 2005.

Adding the garnishee order to the employee's payslip

It is imperative that the first garnishee order deduction takes place in the month following the serving of the order, to avoid further interest and costs to the employee.

With a SARS IT88 order, the employer is legally bound to transfer the amount of the tax debt to SARS within the due date specified on the IT88, using the reference number furnished.

Remember that with all garnishee orders, the employer will be held liable for the debt and may be criminally prosecuted for failure to comply with regulations.

Terminating garnishee order deductions and payments

Employers should bear in mind that while deductions are made from the employee's salary, further interest and costs are accrued, making it difficult to reach a finite amount to be paid by the employee. It is therefore advisable for employers to request a statement of account from the debt collectors towards the end of the payment term, to determine exactly when deductions should stop.

With a SARS issued IT88, the employer's agent appointment responsibilities are terminated once SARS receives payment in full.

Should the employee resign, the employer should inform the debt collector or SARS immediately. The law states: "in the event that the person against whom the order is granted leaves the employment of the employer who received service of the order, the employer must notify the maintenance officer in writing within seven days".

Should the employee have insufficient funds available to comply with any of the garnishee orders issued, the employer should notify the debt collector or SARS with immediate effect to avoid possible legal action due to non-compliance.

In certain circumstances, emoluments attachment orders can be withdrawn or overturned if the amounts instructed to be deducted exceed the available funds due to the employee. If this is the case, the employee should seek legal advice or contact:

- The Association of Debt Recovery Agents: www.adraonline.co.za
- The Debt Collectors Council: www.debtcol-council.co.za
- The National Credit Regulator: www.ncr.org

How we can help

If you are an outsourced payroll client of HRTorQue, you will probably already know that we pay several garnishees and maintenance orders for our clients. We also inform our clients when they are legally appointed to transfer the amount of the tax debt to SARS, and manage the process for them. We are available for ad hoc advice and assistance when requested, and can also inform the debt collector or SARS on your behalf when an employee resigns.

Please contact admin@hrtorque.co.za if you wish to find out more about our services.

2) Home office expenses - Tax deduction for working from home

Author: Dave Beattie

While the concept of a home office is certainly not new, the unprecedented challenges of the pandemic has brought the concept and its terms and conditions firmly into focus. With many companies not able to return to full or partial employment until at least level 2, employers had to quickly formulate plans to get employees up and running in their homes, to get to a productive capacity as quickly as possible.

Now, with hybrid ways of working becoming ever more popular, the punitive cost of office space and increased traffic congestion, productivity conscious employers - and employees for that matter – have embraced the home office model.

The onset of COVID-19 pushed the need for employees to maintain a home office into a necessity. Overnight employees were thrust into a new working culture. Employees hurriedly set up a workspace to enable them to be productive and client-facing as soon as possible. In many of these cases, the practicalities of such changes would have only been agreed after the fact, with the most important of these being the costs associated with a home office.

Depending on the agreement reached with the employer in terms of who is required to pay such costs, it is a good idea for work-from-home employees to familiarise themselves with the tax legislation in this regard. SARS allows such employees to deduct their home office expenses within the 'Other Deductions' section of their annual Income Tax return. It is important to note that this is only allowed under certain specific conditions. Before explaining the legislation though, it is important to understand that the situation is different for sole proprietors or independent contractors who also work from home. They can automatically deduct their home office expenses and do not need to work through the same stringent set of conditions applied to employees to see whether they qualify for a deduction. The relevant portion of home office expenses can simply be reflected within the 'Local Business, Trade and Professional Income' section of their annual Income Tax return.

So, what are the requirements to deduct home office expenditure for a salaried employee?

- The employer must allow the employee to work from home. SARS requires that this fact be put in writing in the form of a letter or an addendum to the employment contract.
- The employee must spend more than half of their total working hours working from their home office.

- The employee must have an area of their home which is used exclusively for this purpose. For example, employees who meet clients in their dining room at home would not qualify. A separate office, which is used specifically for the employee's work, must be maintained to qualify for the deduction. This is often a sticking point with SARS and could potentially be problematic, particularly with the flexible arrangements made to deal with the COVID-19 pandemic.
- The office must be specifically equipped for the employee's trade, so it must be specially fitted with the furniture, tools and equipment required for the employee to perform their work. A room utilised for multiple activities would not qualify.

What expenses can be deducted?

Firstly, one must look at the employee's remuneration structure to confirm whether they:

- Earn more than 50% of total remuneration either from commission or some other variable income based on work performance; or
- Are a normal salaried employee with variable payments or commission making up less than 50% of their total remuneration.

The first group (commission / variable income earners) can claim pro-rated deductions based on rent, interest on bond, repairs to the premises, rates, cleaning, wear and tear, and all other expenses relating to their home. In addition, they can also take other commission-related business expenses, such as telephone, cell phone, gifts, stationery and repairs to the printer, into account.

The second group (salaried employees with variable payments or commission making up less than 50% of their total remuneration), can only claim pro-rated deductions based on rent, interest on bond, repairs to the premises, rates, cleaning, wear and tear, and all other expenses relating to their home.

How to calculate the home office deduction

First calculate the total square meterage of the home office in relation to the total square meterage of the home and then convert this to a percentage. Then, apply this percentage to the home office expenditure to calculate the portion that is deductible.

This calculation is best explained with an example.

James is a design engineer who works for Smart Engineering. His remuneration only consists of a salary. His company is happy for him to work from home due to limited office space and flexibility in terms of working hours. He has a separate office at home which is fitted with a desk, cupboard, computer and printer which he uses exclusively for his job. The computer and printer were purchased one year ago for R21 000. His office is 10m² and the floor space of his entire home, including the office, is 100m².

During the 2020 tax year he incurs the following expenditure:

- R100 000 interest on mortgage bond
- R42 000 rates and electricity
- R36 000 cleaning costs (including domestic worker wages)
- R8 000 security and monitoring costs
- R23 000 cell phone expenses (business portion)

Based on the above information, James qualifies for a home office deduction. The square meterage of his home office (10m²) is 10% in relation to his entire home (100m²).

James's home office deduction for the tax year can be calculated as follows:

$$10\% \times (R100\,000 + R42\,000 + R36\,000 + R8\,000) = R18\,600$$

James would also be entitled to a R 7 000 wear and tear deduction on his laptop / printer (assuming a three-year SARS write-off).

As a 'salaried employee' James would reflect his home office expense / other claimable expenses claim within the 'Other Deductions' section of the annual Income Tax return (ITR12).

It is important to note that any deduction reflected in the 'Other Deductions' field will elicit a query from SARS. They will request details of the claim. The first thing to do is to clearly show the calculation of how the percentage of home office expenses was arrived at. It is advisable to have a detailed schedule reflecting the totals per expense item and then have the schedules of the expenses specific to the claim. It is not always practical to send every invoice to SARS so a schedule will allow them to choose specific expenses if necessary. With any home office submission to SARS, you must include a copy of the letter / employment contract from your employer confirming the requirement to maintain a home office.

There is another tax issue that also needs to be understood. While many people are eager to claim the home office tax deduction in order to reduce their taxable income (and ultimately their tax liability), few people understand the negative tax impact a home office will have on the calculation of Capital Gains Tax when they sell their homes one day.

When taxpayers sell their primary residence, there is a primary residence exclusion of R2 million. This means the first R2 million of the capital gain (or loss) is excluded for the purposes of working out Capital Gains Tax. All individual taxpayers receive an additional R40 000 capital gains exclusion per year.

However, if the taxpayer worked from home and used part of the house as an office, the Income Tax Act requires the capital gain to be apportioned between primary residence use and business use. This apportionment must take into account the length of time that the home office was used as a portion of the entire period of ownership, as well as the size of the home office compared to the size of the entire property.

Before happily agreeing to the use of a home office there is some homework that the employee should do. The employee should compare the potential Capital Gains Tax implications with the annual tax saving from the home office deduction to decide which is more advantageous from a tax perspective. While the Capital Gains Tax implications are unlikely to be material if only a small part of the home is used as a home office, it is still important to factor this consideration into the decision.

With the tax position now clear, focus now needs to be put on the implementation process. While we can all agree that we are working and living in unprecedented times, what we as humans often have problems with is communication. Disagreements abound because people battle with communication. There is no better place to see communication challenges than in the workplace. Factor in a money issue and there is sure to be unhappiness. When discussing a change in working conditions with an employee ensure that there is adequate consultation on the matter and that the applicable terms and conditions are put in writing. The employee must understand what the expectations of them will be and what equipment and facilities will be required in this home office. After explaining the tax position and successfully negotiating the specifics of the new working conditions, employer and employee should be in a good position to take advantage of this remote working relationship.

For more information contact me on dave@hrtorque.co.za. Visit our [website](#) to view the tax consulting and tax compliance services we offer.

3) System spotlight:

Author: Jonathan Aitken

PaySpace is a software provider specialising in HCM and payroll cloud-based solutions throughout Africa. The solution has been designed for companies who want highly secure, flexible and easy-to-use platforms within their business requirements for all things payroll and HR.



HRTorQue is a certified platinum strategic PaySpace business partner. Our deep understanding of the PaySpace system combined with our effective HR and payroll skills make us the perfect partner to help you with your PaySpace implementation and support. Give us a call or [email us](#) today to see how we can help you save money and de-risk your PaySpace experience.

We are also certified business partners for Sage 300 People Payroll, Sage Business Cloud Payroll Professional (SBCPP), PaySpace and Xero. In addition, we can assist in the setting up and working with Sage Premier / Sage VIP, Quickbooks, Pastel Payroll, Pastel Accounting, SARS e@syfile and SARS eFiling.co.za, and the Department of Labour uFiling.co.za

[Contact](#) HRTorQue today to find out how we can help you with your HR, payroll or accounting system implementation, training and support.

4) Things to take note of this March

Author: Candice Zulu

1. Upcoming tax year-end for our payroll clients in the following African tax authorities:
 - a. Lesotho – March
2. South Africa's 2023 tax year-end submission is fast approaching, so make sure all your HR, payroll and tax departments are in order and meeting the requirements for this frantic period. We are always available to assist with any compliancy queries. View the complete list [here](#) that we send out to our payroll clients, which includes statutory requirement reminders.
3. Skills development levy (SDL) is drawing closer - a reminder that submissions are to be done by April. We have a great [article](#) written by our head of HR, Nicky Hardwick, which takes you through frequently asked SDL questions. Alternatively, view our SDL services [here](#) or [contact](#) our HR department for more information.
4. Return of Earnings (ROE) submission to the Department of Labour is due on or before the 31st March 2023. This is legislated under the: COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT (NO. 30 OF 1993). View our COIDA fact sheet together with pricing [here](#).
5. Compensation Fund earnings threshold increase: The Department of Labour has published [Gazette 48065](#) on the 17th February 2023, which states the maximum amount on which an assessment of an employee shall be calculated.
With effect from:
 - i. 1st March 2022 to 28 February 2023 the threshold is R529 264 per annum.
 - ii. 1st March 2023 to 28 February 2024 the increased threshold is R563 520 per annum
6. On the 20th February 2023, the Minister of Employment and Labour issued a notice via [Gazette No. 48092](#) that increases the BCEA (Basic Conditions of Employment Act) earnings threshold from R224 080.48 to R241 110.59 per annum, with effect from the 1st March 2023.
7. On the 21st of February 2023, the labour minister stated that the national minimum wage is now R25.42 for each ordinary hour worked. This change will take effect from the 1st of March 2023.
8. HRTorQue hosts a variety of weekly, online HR-focused mini workshops, covering various topics to assist and guide your managers to perform more optimally in their positions. View our [list of trainings available](#) or [email us](#) for more information.

5) The two-pot system

Author: Dave Beattie

The National Treasury, alongside the South African Revenue Service (SARS), is set to make some changes and clarifications to the original proposals on introducing the 'two-pot' retirement system. In essence, this system seeks to strike a balance between two problems; maximising retirement savings by minimising early withdrawals, and allowing for early access to retirement savings to address unforeseen financial challenges.

Retirement fund members could in the future make one taxable withdrawal a year from their 'savings pot', where up to one-third of their contributions could potentially be withdrawn. The remaining two-thirds must be preserved until retirement and used to purchase an annuity.

In practice, retirement funds would be broken into the following:

- The 'vested pot' (amounts accumulated before the implementation date)
- 1/3 accessible 'savings pot'
- 2/3 'retirement pot' which is subject to complete preservation until retirement

The new system is set to come into effect on the 1st of March 2024.

It is important to understand that the system is not retrospective, meaning that the new rules will not affect existing retirement savings and contributions up until the date of implementation. These remaining savings and their subsequent investment return will retain their 'vested rights', which means that the rules that applied when the members made those contributions will continue to apply to them.

Should a member make a withdrawal from their 'savings pot', this amount will be added to their taxable income for the year. They would then not be permitted to make a further withdrawal for a period of at least 12 months. Should the member make such a withdrawal of up to the one third amount pre-retirement, they will reduce or deplete the amount available as a lumpsum when they retire.

The good news is that these amendments address the historical reality that many members in financial distress had previously resigned from their employment to access their retirement funds. Members will now be able to access retirement funds while retaining their employment. Their 'retirement pot' will continue to grow over their years of employment and hopefully allow the member to have some level of financial security at retirement.

Further clarification is however needed on how National Treasury will deal with aspects of defined benefit, public sector and legacy funds. Defined benefit and public sector funds are under consideration, and a consultative process with stakeholders is to be undertaken to consider the options available. The announced protective mechanisms also need to be explored, including increasing future contributions when a member withdraws funds before retirement. Further clarification is also expected around the possibility that members could be allowed to access their savings in the event of retrenchment.

As commendable as National Treasury's attempt to consolidate the position on retirement benefits is, the two-pot system adds additional complexity to the tax treatment of policy withdrawals. For expatriates who have either ceased South African tax residency prior to the enactment of this system, have done so after the enactment, or who still plan to cease their tax residency, it has now become a requirement to acquire both the Notice of Non-Resident Tax Status letter and the Tax Compliance Status (TCS) pin before the amounts may be released and transferred overseas. Due to the complexity of the tax treatment of retirement interests, consultation with experts is suggested to ensure that a tax efficient and compliant approach is taken in each case.

As additional information becomes available from National Treasury, we will put out additional communication in this regard.

In the meantime, if you are needing tax advice from an expert, then look no further. Email us on info@hrtorque.co.za and let's set up a time with one of our experts.

6) What is the employer's responsibility when an employee exits?

Author: Clerice Pillay

When an employee exits an organisation, whether voluntarily or not, it is important for both parties to understand their respective responsibilities. This helps ensure a smooth transition for the employee and protects the employer from any legal issues.

The key responsibilities of the employer include:

1. **Return of company property:** Upon termination, the employer is responsible for ensuring that the employee returns all company property, such as keys, equipment, laptop and confidential documents in their possession. Employers should also keep records of the return of company property to avoid any potential legal issues.
2. **Payment of outstanding wages and benefits:** Upon termination, the employer is responsible for paying the employee all outstanding monies, including any unused annual leave that is not forfeitable. It is important to ensure that all company property is returned before final payment is made.
3. **Final pay slip:** The employer is responsible for providing the employee with their final pay slip which will detail their final payments. This must be done within seven days of their last day of work
4. **Certificate of service:** The employer is required to provide each employee with a certificate in line with the Basic Conditions of Employment. This is not subject to the reason for a person's termination of employment but is a legal requirement.
5. **UI-19 and salary schedule:** Regardless of why an employee is leaving your organization, you are required to provide each employee with a UI-19 and salary schedule.

Although it is not a legal requirement, it is important to consider conducting an exit interview. These have many benefits to an organisation, and contrary to popular belief, are not only beneficial to large corporates.

The role of HR in the exit process is to ensure that the employer is meeting their legal obligations and to assist with the smooth transition of the employee. HR can provide support and guidance to both the employee and the employer during the termination process, or help with the calculations of final pay and benefits and ensure that all necessary documentation is completed and filed.

Should you require assistance with the implementation of an exit process and/or are interested in outsourcing your HR please [contact us](#).

7) Mauritius - Workers' Rights Act of 2019 and National Wage Consultative Council Act changes

Source: CRS (www.crs.co.za)

New regulations: The Workers' Rights Act, 2019 and National Wage Consultative Council Act

Workers' Rights (Additional Remuneration) (2023) Regulations 2023

Government Notice No. 3 of 2023 was published on the 14th of January 2023. Effective 1 January 2023, the additional amount every employer is expected to pay to compensate for an increase in cost of living was amended as follows:

The additional remuneration will, in relation to –

- A full-time worker who earns a monthly basic wage or salary, be:

2022		2023	
Income (Rupees)	Rupees per month	Income (Rupees)	Rupees per month
Up to 13,000	500	Irrespective of the amount of basic wage or salary	1,000
Above 13,000	400		

- A part-time worker who earns a monthly basic wage or salary, be:

2022		2023	
Income (Rupees)	Rupees per month	Income (Rupees)	Rupees per month
Up to 13,000	3.85% of the monthly basic wage or salary, rounded up to the next rupee. The amount may not exceed 500 rupees per month	Up to 10,000	10% of the monthly basic wage or salary, rounded up to the next rupee
Above 13,000	400	Above 10,000	1,000

Please note:

An increase in salary specified in writing, or agreed upon by an employee during a year as being an increase in wage or salary designed specifically to compensate the employee for an increase in the cost of living for the said year, which is not the prescribed additional remuneration mentioned above, nor an increment, nor an increase on promotion, will be deemed to be the compensation for increase in cost of living if:

- Such increase is more than the prescribed amount of compensation, or
- The employer pays for the difference between the increase in salary and the prescribed amount of compensation.

For more details and to view the Government Notice, follow this [link](#).

Workers' Rights (Payment of Special Allowance 2023) Regulations 2023

Government Notice No. 4 of 2023 was published on the 14th of January 2023. Effective 1 January 2023, the special allowance payable to a full-time employee for the months of January 2023 to December 2023 is as follows:

- A maximum amount of Rs 500 to an employee of a non-export enterprise to top up his/her monthly guaranteed income to Rs 12,075.
- A maximum of Rs 1,200 and an additional amount of Rs 140, being part of salary compensation for the year 2023 to a Mauritian employee of an export enterprise to top up the monthly guaranteed income to Rs 12,075.
- A maximum of Rs 860 to a migrant employee of an export enterprise who was in employment as of 31 December 2019, bringing his/her monthly guaranteed income to Rs 11,735.
- Rs 140 being part payment of salary compensation 2023 to a Mauritian employed on a full-time basis in an export enterprise and drawing a monthly basic wage or salary above Rs 10,735, but not exceeding Rs 51,635 per month.

Eligible employees are those who are:

- Employed full-time; and
- Earn a monthly basic salary of less than Rs 12,075.

Employees are responsible for providing the following details to the Mauritius Revenue Authority (MRA):

- First name and surname
- NID number

- Bank account number

This can be done by providing the details to the employer for submission to the MRA, by calling the MRA in person, or by sending the details via SMS to 52 52 82 82.

For more details and to view the Government Notice, follow this [link](#).

The National Minimum Wage (Amendment) Regulations 2023

Government Notice No. 6 of 2023 was published on the 14th of January 2023. The national minimum wage payable to full-time employees for the calendar year ending 31 December 2023 has been revised as follows:

- For an employee of a non-export enterprise – Rs 11,575 (previously Rs 10,575).
- For an employee of an export enterprise – Rs 10,875 (previously Rs 9,875).

For more details and to view the Government Notice, follow this [link](#).

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