

TIPS ARE TAXABLE! By Jonathan Hore

We all love to eat out from time to time. In fact, that's healthy for friendships and marital relationships. And of course, some of us want to get a hair-cut or hairdo on a monthly basis. Why not; we all wanna look smart. And hold on, how could I forget the pedicures and manicures? Gosh, ladies love these. So, there is a group of people whom we usually tip even though we know they have a salary or allowance. One question that usually crops up on this issue is whether there is any tax on the tips and if so, how is it accounted for and taxed. I want to analyse this issue in today's article. Words importing the masculine shall be deemed to include the feminine.

WHAT IS A TIP?

According to Investowords, a tip is, 'an optional payment given ... usually to express gratitude for excellent service.' Typically, a tip is a voluntary payment that you make to anyone who would have served you and per Investowords, it is in recognition of 'excellent service.' It becomes clear that a tip is not mandatory and it is given at one's discretion. As you may know, tips are given to, among others, waiters, hairdressers and tourist guides. In most cases, the tips are directly handed over to the service provider but at times, the tips are included in the amount that one swipes for, so the employer collects those amounts.

These payments vary depending on the type of circumstances that one finds themselves in. One aspect that is common on tips is that they are usually paid in small amounts but if one adds those small amounts over say a month, they can become significant. Assuming that a tourist guide gets US\$10 twice a day from impressed tourists, that may amount to US\$ 440 in a month, which is equivalent to P 4 400. Also remember that those tips are earned over and above one's salary and allowances.

ARE TIPS TAXED?

Employees are taxable in terms of section 32 and 56 as read with the Fifth Schedule to the Income Tax Act. The Fifth Schedule stipulates that an employee shall be taxed on 'remuneration' earned from employment. The phrase 'remuneration' is defined in that schedule as, 'any amount accrued to an employee by way of — any other cash ... employee benefits.' That definition virtually includes any other cash payments into the ambit of remuneration which is subject to tax. Further, in order for us to determine whether or not an amount is subject to PAYE, we need to establish a direct nexus between the income and the employment.

There is no doubt that an employee who gets a tip is rewarded because they are rendering a service under a contract of employment and as such, there is a direct nexus between the tip and the employment. Inevitably, the tips become, 'any other cash ... employee benefits' as stipulated in the Fifth Schedule which are subject to PAYE. In other words, the employer should ensure that whatever tip his or her employees earn are added to their salary and if the total amounts exceed P 3 000 per month or P 36 000 per annum, they should be subjected to PAYE.

HOW IS THE PAYE COLLECTED?

To be honest, the administration of tips and subjection of PAYE thereon is not as easy as one may think. The following are the challenges that one faces in administering PAYE on the tips:

- Non-disclosure: It is very difficult to rely on employees receiving the tips to disclose to their employer that they received so much in tips. If the tips were all payable to

the employer, then it would be easy for the payroll administrator to ensure that PAYE is correctly deducted. However, the employer can have a policy which makes it mandatory for employees to declare the total amounts of tips given, which may aid compliance with tax laws.

- Distance: Some employees work very far away from their administrative offices and this makes it difficult for them to communicate with the payroll administrators. This applies to, among others, tourist guides who may be based some hundreds of kilometers away from their administrative offices and this complicates the employer's drive to enforce compliance with the tax laws. However, the risks of non-compliance may be tackled through inclusion of tips disclosure in a policy or employment contracts.

I must state that whilst it is the employees who usually receive the tips, it is the employer's responsibility to ensure that the tips are taxed. Any non-compliance with PAYE deductions hurt the employer and not the employee, in case of a taxman audit. Therefore, it is upon employers in the affected industries to ensure that the correct PAYE is deducted, including that applicable on tips.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.