

NON-DEDUCTION OF PAYE IS A CRIME: By Jonathan Hore

We are fortunate in Africa in that tax offenses do not conjure the backlash that taxpayers in the developed world face such as serving time in jail. The simple fact that we do not have as many people being jailed does not remove the fact that non-compliance with tax laws is a crime. I want to elaborate on how non-deduction of PAYE by employers is a punishable criminal offense. In this article, words importing the masculine shall be deemed to include the feminine.

PAYE brief

Every employer who pays an employee more than P 3 000 per month or P 36 000 per annum is required to register with BURS for PAYE and then deduct tax from such amounts. The tax is deducted before the employees get their salaries, hence it basically is an employee's cost. One thing you need to be aware of is the fact that the P36 000 per annum stated above includes, among other non-cash benefits, private motoring, housing, school fees, electricity, gas and water. In other words, an employee who gets school fees borne by an employer (as an example) must have the amount paid by the employer added to his salary, before PAYE is determined.

Directors are employees

Directors of companies are regarded by the Income Tax Act as employees, meaning that whatever income they earn from the companies must be subjected to PAYE. For your information, the term 'company' as per the said Act includes public trusts such as churches, parastatals, NGOs and associations. This means that all cash and non-cash benefits enjoyed by those directors are also subject to PAYE, whether the directors work full-time or just earn board fees.

Non-deduction is a crime

We have established that every employer must deduct PAYE from employees, including directors and remit it to BURS. The PAYE must be paid monthly by the 15th day of the month following that of deduction. If PAYE is deducted in January 2021, it must be paid to BURS by 15 February 2021. But the big issue is that there are some daring employers who simply do not deduct PAYE. The Income Tax Act provides that those employers become 'personally liable' to the PAYE for such delinquency. The same Act allows BURS to levy them with non-compliance penalties of 200% of the PAYE. Further, BURS can charge compound annual interest of around 20%. Let's stop a bit and count how much penalties one can find themselves with. If an employer was supposed to deduct PAYE of P1 000 000 and does not do so, that may grow exponentially to P 3 000 000 including the penalties. A further 20% is then charged as interest, which may financially cripple the concerned employers.

2 years in jail

The fact that the non-complying employer is lashed with tax penalties and interest does not take away the fact that they may also be slapped with criminal charges. The Act stipulates that, 'any person who, wilfully and with intent to evade liability to tax ... fails to deduct any amount of tax from remuneration paid to an employee shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.'

So, there we go, over and above penalties and interest significant enough to consign one into bankruptcy, the taxman can get the employer jailed for 2 years. If you are an employer who has not been deducting taxes, you need to do so now, whilst you still have the chance. Non-deduction of PAYE is simply a crime.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group or to know more about our 9 Tax ebooks, send me a text on the cell number below.