

Unfair dismissal compensation taxable

Unfair dismissal is one of the most common employee phenomena in the employment industry. However, it usually so happens that some of the unfairly dismissed employees tend to be compensated in one way or the other. More often than not, some employees or employers tend to think that such compensation is free from tax. On the contrary, unfair dismissal compensation or benefits actually triggers PAYE.

Generally, unfair dismissal is where an employer terminates an employee's contract without a fair reason to do so. In such scenarios, some employees tend to engage legal experts or employee representatives such as trade unions in an endeavour to retain some form of security or compensation from the dismissal. Accordingly, such effort may result or compel the employer to compensate the affected employee or employees. It is therefore key to note that the Income Tax law regards the dismissed person as an employee. Accordingly, any payments made by the former employer to the affected employee are regarded as payment for employment services, regardless of the legal tussles giving rise to the payments. Consequently, such compensation is subject to PAYE as like any salary paid during the course of actual employment.

As an addition, the tax laws require that a lumpsum payment received by an employee who is restated after being unfairly dismissed should be spread over the period the employee was supposed to be at work, and tax should be determined thereafter.

If the courts state that the employee must be paid say P200 000 without stating whether PAYE must be determined, the employer must deduct PAYE from such amount. If the courts rule that the P200 000 is without any deductions, then the employer bears the PAYE through grossing-up. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax Articles' tab.

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