

Seek BURS' nod when paying terminal benefits in Botswana

One of the most unknown concepts of our tax laws is the fact that no employer can pay terminal payments commonly referred to as terminal benefits to an employee without obtaining BURS' clearance. This particularly applies to employees who are in the tax-paying bracket (i.e., who earn more than P 4 000 per month) and from whose remuneration PAYE is required to be deducted. As stated above, the clearances are actually legislated for in the Income Tax Act and must be adhered to.

The law

The Income Tax Act states in the Fifth Schedule that "where a payment of remuneration is to be made to an employee by way of (a) bonus, gratuity, compensation or other lump sum on termination of his or her employment (b) lump sum payment by a superannuation fund on his or her retirement, the employer shall, not less than 15 days prior to the date such payment is to be made, apply to the Commissioner General for a direction as to the amount of tax, if any, which shall be deducted therefrom, and the employer shall comply with that direction." Given that this is actually legislated for, any non-compliance potentially puts any offending employer at risk in case BURS finds out that terminal payments were made without the said clearances, especially if the impacted employee owes BURS taxes. If any employer terminates employees without having clearances from BURS, then BURS can use the above quoted law to demand the taxes owed to them by the impacted employees from the respective employer, which is a cost employers must avoid.

The logic

The Income Tax Act requires every employer to clear employees on termination to allow BURS to collect any tax obligations due by employees before they get their terminal payments. In other words, if an employee owes BURS assessed tax or unsubmitted income tax returns, BURS will be able to collect taxes during the clearance process. Practically, an employer is supposed to complete a form called an ITW6A and submit the said form to the taxman. Upon receipt of the ITW 6A, BURS then checks the respective employee' tax accounts whether they owe any unpaid tax or unsubmitted tax returns. Should it happen that the employee owes BURS, then the employer is instructed not to pay their terminal benefits such as gratuity, severance pay, retrenchment package etc until the tax debt is liquidated. This clearance is also required to be made by other persons who are deemed to be employers such as pension funds.

The technicalities

The quandary which most employers face is whether to clear employees who don't earn more than P 4 000 per month. Our recommendation is that clearances be done in such instances as such employees could have other sources of income other than from employment. Further, whilst annually, BURS issues notices stating that certain persons mustn't submit income tax returns, that may prove to be a challenge especially when an employee requires those clearances as their BURS' records will indicate outstanding tax returns. Therefore, it may be advisable for every employee to submit their returns annually whether or not they are required to as that doesn't infringe the law but in fact assists when the BURS' clearances are needed.

Conclusion

If your organisation is paying terminal payments to employees without seeking BURS' clearances, that may be a sign that you need a Tax Health Check review which comprehensively assesses your compliance with tax laws, to avoid the wrath of the taxman, especially when a tax audit is conducted.

Contacts: For paid-for-consulting, contact us on +267 7181 5836 or +267 393 9435 or jhore@aupracontax.co.bw or www.aupracontax.co.bw. This article is of a general nature and tax advice is recommended if decisions are to be made. If you require to join our free Tax WhatsApp groups or to know more about our 9 Tax e-books, please send us a text on the number above.