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UIF RELIEF FOR TAXPAYERS

On 25 February 2015, the Minister of Finance, Nhlanhla Nene, delivered the 2015 Budget Speech (Budget Speech) which contained a number of tax proposals. One such proposal relates to the temporary reduction in contributions to the Unemployment Insurance Fund (UIF) for the 2015/16 financial year.

By way of background, the UIF gives short-term relief to workers when they become unemployed or are unable to work due to maternity, adoption leave or illness. The unemployment insurance system in South Africa is governed by the Unemployment Insurance Act, No 63 of 2001 (UI Act) and the Unemployment Insurance Contributions Act, No 4 of 2002 (UIC Act). These Acts came into operation on 1 April 2002 and provide for the benefits, to which contributors are allowed, and the imposition and collection of the contributions to the UIF, respectively.

It should be noted that the employer and employee are required to contribute 1% of the employee's remuneration to the UIF. The employer is liable for the payment of both contributions to the UIF, but may recover the employee's contribution from the employee. The employer must therefore pay a total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period. Section 6(2) of the UIC Act enables the Minister of Finance to adjust the remuneration threshold by notice in the Government Gazette, after consultation with the Minister of Labour and the UIF Commissioner.

As of 1 October 2012, the maximum monthly remuneration subject to UIF was capped at R14,872 per month (R178,464 annually) and any remuneration paid to an employee in excess of this limit was not subject to any contributions. The National Treasury has, in the Budget Speech, proposed a once-off relief on the UIF contributions for the 2015/16 financial year. The relief is in the form of a reduction in the remuneration threshold, against which the contributions are calculated, from R14,872 to R1,000 per month. The effect thereof is that employees and employers will pay only R10 in monthly UIF contributions, resulting in a collective figure of approximately R15 billion back to employees and employers. In addition, the proposed reduction in contributions will not reduce any unemployment insurance benefits payable to beneficiaries, as a reduction of those benefits may only take place by amending the current amounts set by the Minister of Labour in terms of the UI Act.

This proposal comes after the UIF accumulated a surplus of R72.3 billion during the 2013/14 financial year and a net asset position of R90.4 billion in 2013/14. Despite the more generous benefits mandated by a legislative amendment in 2012, the "UIF estimates that earmarked contributions will add R51,8 billion to its accumulated surplus over the next three years".

The reduction is proposed to take effect on 1 April 2015, and will be reconsidered for the next fiscal year, shortly before 1 April 2016. On 4 March 2015, National Treasury published an invitation for public comment on the proposed reduction of UIF contributions, which states that this proposed relief "aims to provide temporary support to households and employers, in a fiscally sustainable manner" and "by reducing unemployment insurance contributions for a limited period, government will partially off-set the impact of higher taxes and slow growth on employees and employers."

Comments on the proposed relief were due on 20 March 2015. The comments will be considered before a decision is made on whether to reduce the remuneration threshold in accordance with s6(2) of the UIC Act.

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WHAT'S GOOD FOR THE GOOSE...

In the recent judgement by a full bench of the Western Cape High Court, in the matter of *ABC (Pty) Ltd v the Commissioner for the South African Revenue Service (6 February 2015)*, the South African Revenue Service (SARS) was reminded that, what's good for the goose, is good for the gander.

The taxpayer, being a vendor for purposes of value-added tax (VAT), staged annual international jazz festivals in Cape Town. In the course of that enterprise it concluded sponsorship agreements with South African Airways, the City of Cape Town, the SABC and Telkom (Sponsors). In terms of the agreements the Sponsors paid money and provided goods and/or services for the festivals, and in return the taxpayer provided branding, marketing goods and/or services to the Sponsors. The transactions in terms of the sponsorship agreements constituted barter transactions.

During an audit of the taxpayer, SARS identified that the taxpayer had failed to declare output VAT on the goods and/or services provided to the Sponsors in terms of the sponsorship agreement, which resulted in assessments being raised. The taxpayer did not dispute that it was liable for the output VAT. However, the taxpayer contended that it should be entitled to offset the output VAT liability with a deduction in respect of the input VAT on the supplies made to it by the Sponsors.

The crux of the matter was that, despite requests from the taxpayer to the Sponsors, the taxpayer was not in possession of tax invoices containing the particulars prescribed in s16(2) of the Value-Added Tax Act, No 89 of 1991 (VAT Act). It was SARS's contention in the appeal, and the finding of the Tax Court in ITC 1871 75 SATC 109, that the taxpayer could not make the input VAT deduction without the tax invoices contemplated in s16(2) of the VAT Act.

The High Court, sitting as a court of appeal, had to decide whether either the provisions of s20(7)(b) or s16(2)(f) of the VAT Act should have applied to allow the taxpayer an input VAT deduction.

Section 20(7)(b) of the VAT Act provides for exceptions with regard to the particulars which must appear on a tax invoice. This provision empowers SARS to direct that a tax invoice is not required to be issued if:

- there are sufficient records available to establish the particulars of any supply; and
- it would be impractical to require that a full tax invoice be issued.

While the High Court accepted that the sponsorship agreements contained sufficient records to establish the particulars of the supplies, it found that, it would not have been impractical to require the full tax invoice to be issued.

It was therefore left to the taxpayer to argue that s16(2)(f) of the VAT Act applied, which states the following:

No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless – the vendor, in any other case, is in possession of documentary proof, as is acceptable to the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished.

The Court thus had to decide whether the contents of the sponsorship agreement should be regarded as a reliable source of documentary proof. Binns-Ward J held at para 15 that:

it is evident that the Commissioner predicated his calculation of the output tax on the information provided in the contracts. The appellant's contention is that the contracts also serve as proof of its entitlement to a deduction for input tax. In my judgment the contention is well-made. If the documents were good enough for the Commissioner to assess the appellant's output tax liability, it is impossible to conceive, having regard to the character of the particular transactions, why they should not also have been sufficient for the purpose of computing the input tax which should have been deemed to have been levied by the sponsors. The appellant had invoked the provisions of s16(2)(f) in its representations to the Commissioner. In the circumstances he was bound to take them into account in making the assessment. I do not think that the Commissioner could reasonably have decided that the information in the contracts did not in the circumstances provide sufficient proof substantiating the appellant's entitlement to the deductions claimed.

Thus, having assessed the taxpayer for output VAT in terms of the sponsorship agreements, the High Court held that the agreements were also sufficient documentary proof of the taxpayer's entitlement to input VAT, which should have been levied by the Sponsors.

It should however be appreciated that the findings in this case are particular to the barter transactions concluded between the taxpayer and the Sponsors. Section 16(2)f) of the VAT Act does not as such provide a fall-back position for all vendors that are not in possession of a valid tax invoice.

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