

BUDGET REVIEW 2023 – ANNEXURE C PROPOSALS TO AMEND PAYROLL-RELATED LEGISLATION

The Budget Review was presented on 22 February 2023 and proposed changes to the legislation that impact on payroll suppliers and the payroll offices of employers.

The annual legislation amendment cycle for 2023 will follow the usual steps:

1. The Budget proposals (22 February 2023)
2. The issue of draft Bills (usually towards the end of July)
3. Comments on the draft Bills (by the PAGSA and other organisations)
4. Workshop to discuss the comments (with National Treasury and SARS, usually held in August)
5. The 'draft Bills' are updated to 'Bills'
6. SCOF (Standing Committee on Finance) reviews the Bills and creates final Bills (October)
7. The Final Bills go to the National Assembly and the National Council of Provinces for approval (November)
8. The approved final Bills go to the State President for his signature indicating proclamation as Amendment Acts.

As can be seen from this yearly cycle, the budget proposals are a reasonably firm early indication of what could be in the law for the next year. It is therefore important for employers and payroll suppliers to take note of them.

Refer to PAGSA Newsflash 2023-08 for details of the changes to the tax tables, rates, limits, and thresholds, that are important for payrolls and that are already effective from 1 March 2023.

Budget Proposals in Annexure C

The Annexure C proposals for changes to payroll-related legislation are included *verbatim* below in case you have not seen them, and because the actual wording can help one to understand the intention of the proposed change.

There are changes proposed in the budget that affect members of retirement funds, but they do not impact directly on payroll administration and are therefore outside of the scope of this Newsflash.

The budget proposals (there are not many of them) that impact on payroll suppliers and employers follow.

Budget 2023 Proposal: Clarifying the amount of employer contribution to a retirement fund to be deductible

Section 11F(4) of the act deems an employer contribution to a retirement fund as a contribution made by the employee, and it is calculated as the amount equal to the cash equivalent of the value of the taxable benefit.

However, there is no requirement that the calculated cash equivalent be included in the employee's income, as is the case in sections 6A and 6B of the act. [Rob: Medical Tax credit (s6A) and the Additional Medical Tax Credit (s6B)]

This is against the policy rationale of the act's provisions. To address this, it is proposed that the act be amended to require that the cash equivalent of the taxable benefit for employer retirement fund contributions be included in an employee's income before a tax deduction is allowed.

PAGSA Comment: Interesting that despite the oversight process, this drafting error still slipped through.

Budget 2023 Proposal: Aligning tax registration requirements for non-resident employers

It has been noted that non-resident employers may not have representative employers in South Africa for purposes of employees' tax. They are, as a result, not liable to deduct or withhold tax from the remuneration that is paid to their employees who render services in South Africa. Nevertheless, given that they pay remuneration, they are required to register with SARS as employers.

They are liable for skills development levies and unemployment insurance contributions, which many pay. It is proposed that the various provisions be aligned to ensure consistency.

Budget 2023 Proposal: Varying employees' tax withholding in respect of remuneration

The Fourth Schedule to the Income Tax Act allows employers to request a variation in employees' tax withholding to take into account foreign taxes paid. However, such a variation does not apply to remuneration arising from share options and similar schemes. This could result in cash flow implications for the affected employees, as they will only be entitled to claim a foreign tax credit when they complete their annual tax returns.

It is proposed that SARS be empowered to vary the basis for withholding under these circumstances.

PAGSA Comment:

Section 10(1)(o)(ii) defines remuneration for the purposes of this section only, as follows:

“to the extent to which that remuneration does not exceed R1,25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic —

Draft Amendment Bills – July 2023

As indicated above, the budget proposals are turned into 'legal speak' by the drafters of legislation and are usually issued as draft Amendment Bills towards the end of July.

The 2023 Budget also includes 'statements of intention' in Chapter 4 that are important for payroll suppliers and employers and that are discussed in a Newsflash that follows this one.

Regards,

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