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INDEPENDENT CONTRACTORS AND UNEMPLOYMENT INSURANCE LEGISLATION

Policy Number: 013A/06/04

Scope: The policy includes the rules and regulations of the Receiver of Revenue concerning independent contractors and legislation concerning unemployment insurance.

Policy:

INDEPENDENT CONTRACTORS

The Receiver strongly discourages the utilisation of corporate entities (for instance close corporations and companies) for reducing or even avoiding employees' tax. A tendency has developed among employers of bodies to create a corporate entity and to view themselves as independent contractors. The corporate entities invoice the employer and no employees' tax is recovered. The Receiver has made it obligatory for the employer to recover normal employees' tax at a rate of 34% from these corporate entities from 1 August 2000. Such a corporate entity will in future be referred to as an employment company.

The definition of an employment company includes:

- Any corporate entity for which a person who renders a service to a client on behalf of the corporate entity will be dealt with as an employee of the client if the service is not rendered by the employment company; or
- Any corporate entity for which a person who renders a service to a client on behalf of the corporate entity will be subject to control or supervision by the client with regard to the manner in which duties are to be executed and the hours of work; or
- Any corporate entity where more than 80% of its income earned for services rendered during the year of assessment comprises income received from a single client; or
- Any corporate entity where the amounts paid or payable for services rendered to a client occur regularly, i.e. daily, weekly or monthly or at regular intervals.

The definition, however, excludes the corporate entity that has employed three or more fulltime employees (excluding shareholders/members) for the year assessed and where not one of them is an associate.

The permissible deductions for tax purposes for an employment company will be limited to the amount of the remuneration paid to shareholders, members or other employees of the corporate entity for services rendered. The employment company will therefore not be able to deduct its normal expenses such as telephone, rent, etc. These entities lose their tax benefit due to the additional 5% (close corporations and private companies are currently taxed at 29%) and the fact that no deductions besides remuneration are allowed.

But there will still be honest independent contractors. The Receiver, however, has established more specific guidelines to judge whether an entity really is an independent contractor.

The most important measure is the percentage income that the corporative entity receives, for instance, from Stellenbosch University. If the percentage income that a corporate entity receives from Stellenbosch University amounts to more than 80% of such an entity's total income, the entity will not be able to be regarded as an independent contractor. The normal cheque requisition of Stellenbosch University will be adapted in future. The head of department/executive head/discipline head (or the person requesting the cheque) will have to ensure that the person for whom a cheque is requested actually is an independent contractor.

When such an employment company is to be paid, payment will have to be made via the Human Resources system. Such an employment company will have its remuneration directly deposited in the bank. It must be noted that an employment company's requests for payment have to be submitted to Human Resources in good time for processing at the end of the month. This is subject to the same cut-off dates as all other remuneration requisitions.

Individuals who receive a monthly salary from Stellenbosch University and submit invoices for additional work will henceforth have this income added to their monthly salary. It will be loaded on a separate fringe benefit code and be taxed as for an annual payment.

UNEMPLOYMENT INSURANCE LEGISLATION

- *As from 1 April 2002, the following legislation with regard to unemployment insurance (henceforth UIF) will be in force:*

Who pays UIF?

- All persons (including students and pensioners) who work for more than 24 hours a month

Who is excluded from paying UIF?

- Employees who work for less than 40 hours a month for a specific employer
- Persons from outside the Republic who are in South Africa for a contract, e.g. foreigners
- All persons who, according to PAYE legislation, are independent contractors, i.e. persons or firms paid by Financial Services

On which basis is UIF calculated?

All remuneration, including the following:

- Salaries include all sundry payments to people working for more than 24 hours a month
- Fifty per cent of a travel allowance is counted towards UIF
- Leave payouts
- Overtime
- All allowances, e.g. for entertainment, inconvenience, chairperson, associate dean, non-pension bearing, cellular phone, i.e. any additional allowance that is received
- Wages, irrespective of how regularly wages are paid to specific persons, e.g. weekly, in other words, the regularity of the wages paid
- Bonuses

Which remuneration is excluded?

- Commission received
- Fifty per cent of travel allowance

How is UIF calculated?

- One per cent of the total remuneration, as set out in point 3 (excluding point 4)
- UIF is calculated to a maximum remuneration of R106 032.00 a year, i.e. R88.36 a month.
- A further 1% is contributed by the employer.

Which information is required when data is recorded for UIF purposes?

- Correct identity numbers, as the person will not be able to claim from the UIF if his/her ID number does not correspond to the monthly information that is submitted electronically to the UIF
- The number of hours of work that the person has clocked in the relevant month is extremely important in determining whether the person has to pay a UIF contribution.

Contact Division:
Remuneration