

TERMINATING EMPLOYEES? GET BURS' CLEARANCE FIRST: By Jonathan Hore

The past few years have been characterised by some of the worst retrenchments in the past decade. The depressed mineral prices have been the main contributor to the closure of most mines. Some employers have retrenched for various reasons including viability challenges. I don't want to get into details of how many people have lost jobs so far but the BCL closure certainly shook the economy. In today's instalment, I want to talk about one of the least known tax compliance matters, more on the administrative aspects. If I was talking to you face to face, I would summarise this by saying, '*You cannot terminate an employee and pay them their terminal payments without obtaining BURS clearance.*' In this article, words importing the masculine shall be deemed to include the feminine.

WHERE IS THIS COMING FROM?

Well, a certain portion of the Income Tax Act prescribes 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 employment; or (b) lump sum payment by a superannuation fund on his retirement, the employer shall, not less than 15 days prior to the date such payment is to be made, apply to the Commissioner for a direction as to the amount of tax, if any, which shall be deducted therefrom, and the employer shall comply with that direction.*'

Ok, let me unpack that for you as it appears loaded. The extract of the Income Tax Act simply requires that any employer who intends to terminate an employee for whatever reason shall not proceed to process the last pay without getting a nod from BURS. Technically, it means that every employer should complete an application within 15 days before the date of payment of the last cheque to the employee. The form to be completed is form ITW 6A, which is titled, '*Confirmation of tax owed.*'

WHAT IS THE INTENTION?

The purpose of the tax form is to enable BURS to collect taxes owed by individuals. So, if an employee owes tax of say, P 60 000 and the employer is set to pay terminal payments of P 300 000, it simply means that the employee will first have to clear the tax debt before the employer releases the payment. In the event that the employee does not have the resources with which to extinguish the tax owed, there is nothing which stops him from instructing the employer to clear his tax debt using part of the P 300 000. Technically, the employee will be paid less than P 240 000, i.e. after deduction of the P 60 000. The P 60 000 paid by the employer to BURS should not affect the determination of tax on the package of P 300 000. In other words, PAYE is determined as if the P 60 000 deduction was not done.

Ok, what if the employee does not want to deal with his tax debt or cooperating with his employer in extinguishing his tax debt? Well, that one is very easy. The employer simply does not process the final terminal payment. Any reasonable employee would make all efforts to clear his tax issues so he gets paid. But as you know, we are all not the same. Some people are just difficult to deal with.

But what if it is not tax that is owed but an income tax return? Well, if you read the extract from the Income Tax Act carefully, you will notice that it only talks of the employer deducting, '*the amount of tax, if any, which shall be deducted therefrom (terminal payment – my addition).*' There is no mention there of tax returns or other tax obligations. However, BURS may use that form to demand outstanding returns but the issue then takes a legal

route. Is it legal to use that form to enforce submission of returns? Well, the law is not crafted to favour such actions.

DOES THIS INCREASES TAX COLLECTIONS?

That is so correct! This arrangement ensures that any individual who owes BURS any unpaid taxes is brought to book. In doing so, BURS will increase tax collections without much of its input. It simply uses the employer as its agent. That's one of the best ways to deal with individual taxpayers as they by nature are H.T.Ts, i.e. Hard-to-Tax.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to complete the form ITW 6A before processing any terminal payment. Again, pay to Caesar what belongs to him.