

COMPENSATION FOR UNFAIR DISMISSALS SUFFERS PAYE in Botswana

At times, some employees find themselves losing their jobs unfairly due to harsh and unreasonable causes. Unfair dismissal of employees is common in the employment industry, and, in some instances, such cases end up in the courts of law. It is also common that some of the unfairly dismissed employees tend to be compensated by their employers in instances where it is proved that the employers acted in an illegal or unprocedural manner. The affected employees, at times, tend to be of the view that the compensation received is tax free as it is meant to cater for emotional and other inconveniences. To be precise, unfair dismissal compensation or benefits actually trigger Pay As You Earn (PAYE). In this article, words importing the masculine shall be deemed to include the feminine.

Enter unfair dismissal

As alluded to above, unfair dismissal occurs where an employer terminates an employee's contract without a fair and just reason to do so. In some cases, it happens that employers tend to terminate an employee's contract without following the legal requirements, possibly because of ignorance. In such cases, it often happens that such matters may spill into the Courts of Law, resulting in the employee being compensated for such injustice. It often happens that the courts determine that the former employee must be paid a specified amount without mentioning whether or not the compensation is inclusive of PAYE. On one hand, this throws employers into a quandary on whether such payments must be subjected to PAYE. On the other hand, some employees may be of the view that the payment should not attract any taxes as it is a compensation for being wronged. On the contrary, the tax laws have no sympathy and are meant to collect taxes; that's all. Let us have a look at what the law says.

Enter tax!

Essentially, it is generally known that employees suffer PAYE on remuneration paid by employers. Remuneration being a term defined by the Income Tax Act, in verbatim, as, 'any amount accrued to an employee by way of wages, salary, leave pay, fee, commission, bonus, gratuity or compensation...'

Another key aspect which needs further scrutiny is whether a person who is dismissed from employment can be regarded as an employee who receives remuneration. Some may be of the opinion that no PAYE is triggered where a court rules that a former employer should compensate a former employee. To clarify this issue, it is imperative to comprehend and appreciate that the said Act defines an 'employee' as including a 'former employee.' Technically, the employee definition, per the Income Tax Act, extends the employer-employee relationship beyond the contract of employment to embrace any other monetary or non-monetary rewards that may be granted to the former employee. Having clarified that a compensation of unfair dismissal is indeed remuneration subject to PAYE, it is now clear that employers are required by law to deduct PAYE on such payments and remit to BURS. If the courts state that payment must be made without any tax deductions, then the employer bears the PAYE by grossing-up the remuneration.

Conclusion

In a nutshell, compensation for unfair dismissal is by no means different from any other remuneration paid to employees. Therefore, such compensation should be subjected to payroll tax.

Well folks, we hope that was insightful. As us the two Yours Truly say goodbye, remember to pay to Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us on jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab.