

GRATUITY ADVANCES ARE TAXABLE IN BOTSWANA

It is general practice that gratuities are accessed at the end of an employment contract and by nature, they are terminal payments. However, it often happens that some employees access the gratuities through various forms, including getting advances against their gratuities and receiving monthly gratuity payments. These arrangements are put in place by employers but they have possible tax implications, which need to be considered. In this article, words importing the masculine shall be deemed to include the feminine

Gratuity advances

Some employers have arrangements where employees access their gratuities in the form of advances. This then casts doubt on the tax treatment of such gratuities as it is solely supposed to be accessed at the end of the contract. Whilst there is Divisional Guidance Note from BURS on this matter, our view is that any gratuity that is accessed before the contract ends is not eligible for the 33.33% tax exemption as its nature is distorted. This could also be an issue of contention in case of a tax audit by the taxman and external auditors may also query the arrangements. We however are aware that some taxpayers have obtained rulings from BURS on the tax treatment of such amounts. If taxpayers need to continue or introduce such schemes, then a ruling from BURS may give them certainty as to the tax treatment of such advances. However, it must be noted that Divisional Guidance Notes or other BURS rulings are not binding on taxpayers. In other words, if a taxpayer doesn't agree with a ruling from BURS and has support of the law, they are not compelled to implement the recommendations of such rulings. In fact all Divisional Guidance Notes issued by BURS have a clause which states that they are neither binding on the tax authority or taxpayers and they don't take away taxpayers' rights to object to assessments.

Monthly payments

It often happens that some employers choose to pay the gratuities to employees on a monthly basis and still apply the 33.33% tax exemption. Whilst that appears to be an innocent arrangement, it has the effect of distorting the whole gratuity concept. Put simply, a gratuity is paid whenever a contract is terminated or when it is terminated and then renewed. Paying the gratuity on a monthly basis gives the impression that the employer terminates and renews the employees' contract monthly, which is rather unusual. The effect of such an arrangement is that the gratuity loses its nature and therefore becomes taxable in full. The employee also loses on the tax exemption whilst the employer may be exposed to tax penalties and interest due to incorrect tax treatment of the gratuities.

Conclusion

In a nutshell, it is vital for taxpayers to understand that gratuities are technically supposed to be accessed at the end of a contract and any early encashment or advances against such gratuities could trigger PAYE. However, if one obtains a favourable ruling from BURS, then they may proceed to pay the advances against a gratuity tax-free. Secondly, monthly gratuity payments are simply subject to tax in full as the one third exemption only applies on termination of contracts.

Well, folks, we hope that was insightful. As us the two Yours Truly say goodbye, remember to pay 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.

