
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

**UNEMPLOYMENT INSURANCE
CONTRIBUTIONS BILL, 2001**

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Currently, the unemployment insurance system is regulated by the Unemployment Insurance Act, 1966 (Act No. 30 of 1966). This Act makes provision for the payment of contributions by certain employees and their employers and the payment of benefits to certain persons or dependants of deceased persons.

Following an analysis of the administration of the unemployment insurance system and the report by the Minister of Labour in 1998, Cabinet approved in principle the reforms proposed for the restructuring of the Unemployment Insurance Fund. The Unemployment Insurance Bill, 2001, was subsequently tabled earlier this year. The Unemployment Insurance Bill deals with the administrative side of the unemployment insurance system, i.e. the establishment of the Unemployment Insurance Fund and the determination and payment of benefits.

The Unemployment Insurance Contributions Bill (the Bill), on the other hand, deals with the collection of the unemployment insurance contributions from employers. In terms of this Bill, SARS will be responsible for the administration of the provisions thereof and the collection of the bulk of the contributions.

This Bill, in essence, provides for the following:

Definitions

The Bill defines various terms including “employer”, “employee” and “remuneration”. These definitions are based on the definitions contained in the Fourth Schedule to the Income Tax Act, 1962, which relates to employees’ tax.

An employee means any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person, but excluding an independent contractor. As the basis for the calculation of the contributions is, to a large extent, based on the PAYE system, the remuneration on which the contribution will be calculated is, therefore, determined with reference to the definition of ‘remuneration’ for PAYE purposes. There are, however, certain amounts that will be excluded, such as pensions, amounts paid on termination of service, annuities, etc. The reason for these exclusions is that these amounts do not reflect amounts payable in the normal course of employment and should also not be taken into account for purposes of determination of any benefit payable by the fund in the case of termination of employment.

Administration

The Bill, will be administered by the Commissioner for SARS. There are, however, certain powers that may be delegated and duties which may be assigned by the Commissioner to the Unemployment Insurance Commissioner. This includes the

collection of contributions from employers who are not registered as employers with SARS. It is, furthermore, the intention that the function of collection of employee information will also be assigned to the Unemployment Insurance Commissioner.

Application

The Bill applies in respect of all employers and employees, excluding—

- an employee and his or her employer, where such employee is employed for less than 24 hours a month with that employer;
- an employee and his or her employer, where that employee receives remuneration under a learnership agreement registered in terms of the Skills Development Act, 1998 (Act No. 97 of 1998);
- an employee and his or her employer, where that employee enters the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon the termination thereof the employer is required to repatriate the employee or the employee is required to leave the Republic;
- employers and employees in the national and provincial spheres of government; and
- domestic workers and seasonal workers in respect of the first 12 months of the Act's operation.

Calculation of contribution

As mentioned above, the basis for the calculation of the contributions is, to a large extent, based on the PAYE system. The reason for this is to minimise the compliance burden on both business and SARS. There are, however, certain amounts that must be excluded from the amount of remuneration (such as pensions, annuities and lump sum payments) which is used to calculate the contribution, which are otherwise included for the determination of PAYE and skills development levy.

Payment of contribution

Every employer and every employee to whom the Act applies must, on a monthly basis, contribute to the Unemployment Insurance Fund. The amount is equal to—

- in the case of the employee, one per cent of the remuneration paid or payable by an employer to that employee during any month. Under these circumstances, the employer must on a monthly basis deduct or withhold the contribution from the remuneration payable to the employee for that particular month; and
- in the case of the employer, one per cent of the remuneration paid or payable by that employer to that employee during any month.

The amount of the remuneration, for purposes of the determination of the contribution is, however, limited to an amount to be determined by the Minister of Finance from time to time by notice in the *Gazette*. It is currently proposed that this amount be fixed at R8 099 per month (which is equivalent to an annual cap of R97 188).

Employers that are registered with SARS as employers for purposes of PAYE or for purposes of the payment of the skills development levy, must pay the contributions to SARS. Employers not so on register for PAYE or skills development levy purposes must pay the contributions directly to the Unemployment Insurance Commissioner.

Employee information

When an employer pays the monthly contributions, the employer must also provide certain information in respect of that payment. As the benefits payable to an employee in terms of the Unemployment Insurance Bill, 2001, are linked to contributions made by that employee, the Unemployment Insurance Commissioner requires information relating to every employee, including his or her remuneration, in order to effectively administer the system.

Payment of contributions collected in National Revenue Fund

SARS must pay all the contributions, interest and penalties collected from employers into the National Revenue Fund and must provide information regarding those amounts, as well as refunds made to employers, to the Director-General of Labour on a monthly basis. The amounts so paid into the National Revenue Fund will be a direct charge against the National Revenue Fund for the credit of the Unemployment Insurance Fund and the Director-General of Labour will authorise the transfer of these amounts to the Unemployment Insurance Fund based on the information supplied by SARS.

Interest and penalties

An employer who fails to pay the full amount payable in terms of the Act on the last day for payment, is liable for interest on the outstanding amount at the rate contemplated in paragraph (b) of the definition of "prescribed rate" in section 1 of the Income Tax Act, (currently fixed at 13 per cent). The amount of interest is calculated from the day following the last day for payment to the day that payment is received by the Commissioner or Unemployment Insurance Commissioner. In addition to the interest, a penalty of 10 per cent of the unpaid amount is also payable.

Where an employer fails to perform any duty imposed upon him by the Act or does or omits to do anything, with intent—

- to evade the payment of any amount of contribution payable by that employer in respect of any employee; or
- to cause a refund to that employer by the Commissioner of any amount of contribution, interest or penalty which is not refundable or is in excess of the amount properly refundable to him,

that employer will be chargeable with an additional penalty not exceeding an amount equal to double the amount of that contribution or amount which is not properly refundable.

Collection costs

The Bill provides that the operational costs will be defrayed from the Unemployment Insurance Fund and will be equal to 1,5 per cent of the amounts collected. Where, however, the actual costs exceed such percentage, SARS will be entitled to the amount of those actual costs. A provision is, however, also included to provide that the start-up capital costs must be defrayed from the budget vote of the Department of Labour.

Application of provisions of Income Tax, 1962

Certain provisions of the Income Tax Act, 1962, relating to the collection of taxes have also been made applicable for the purposes of the Bill. The Act will in all respects be administered by the Commissioner for SARS, although certain duties which may be performed in terms of the Act relating to the collection of the contributions payable to the Unemployment Insurance Commissioner, may be assigned to that Commissioner. These duties include the collection of the contributions from all employers who are not registered for PAYE and skills development levy purposes, and the collection of information from employers in respect of its employees.

Commencement of the Bill

It is proposed that the Bill must take effect on a date to be determined by the President by proclamation in the *Gazette*.