

NOTICE TO EMPLOYERS



Keeping employers informed

Notice No 1/2005 - February 2005

NEW INCOME AND DEDUCTION CODES FOR EMPLOYEES' TAX CERTIFICATE PURPOSES

The **description** of the following existing income codes will change with effect **from 1 March 2005 (i.r.o. the 2006 year of assessment)**:

- Code **3704** Subsistence allowance (only for local travel) where the allowance exceeds the **deemed expended amounts** (code 3754 is used for foreign service income - nature of person M);
- Code **3705** Subsistence allowance (only for local travel) where the allowance does NOT exceed the **deemed expended amounts** (code 3755 is used for foreign service income - nature of person M).

The current daily **deemed expended amounts** applicable for the 2005 year of assessment are:

- **R 60** i.r.o. incidental costs only for local travel (in RSA),
- **R 196** i.r.o. meals and incidental costs for local travel (in RSA), and
- **US\$ 190** i.r.o. meals and incidental costs for foreign travel (outside RSA).

Employers will be advised of any amendment to the deemed expended amounts.

The following **new** income and deduction codes for purposes of issuing employees' tax certificates are effective from **1 March 2005 (i.r.o. the 2006 year of assessment)**, except where otherwise indicated:

- Code **3715** - Subsistence allowance (only for foreign travel) where the allowance exceeds the **deemed expended amounts** (code 3765 is used for foreign service income - nature of person M);
- Code **3716** - Subsistence allowance (only for foreign travel) where the allowance does NOT exceed the **deemed expended amounts** (code 3766 is used for foreign service income - nature of person M);
- Code **3717** - Broad-based employee share plan (code 3767 is used for foreign service income - nature M) - valid from the 2005 year of assessment;
- Code **3718** - Director/Employee equity instruments (code 3768 is used for foreign service income - nature of person M) - valid from the 2005 year of assessment;
- Code **4018** - Premiums **paid by an employee** i.r.o. an income insurance policy;
- Code **4472** - Pension fund contributions **paid by an employer** i.r.o. an employee;
- Code **4473** - Provident fund contributions **paid by an employer** i.r.o. an employee;
- Code **4474** - Medical scheme contributions **paid by an employer** i.r.o. an employee.

Contributions **paid by an employer** i.r.o. an employee (codes 4472, 4473 and 4474) exclude contributions paid by that employee which is reported under codes 4001 to 4005 on the IRP5/IT3(a) certificates.

The employer's contributions (codes 4472, 4473 and 4474) must be reflected **after** the "Employees' Tax Deductions" section on electronic certificates and **included under** "Deductions" on manual certificates.

Premiums paid i.r.o. income insurance policies by employees (new code 4018) must be included under "Deductions" on both electronic and manual certificates.

PAR 2(4) PREMIUMS i.r.o. INCOME INSURANCE POLICY

Paragraph 2(4) of the Fourth Schedule to the Income Tax Act was amended to allow the deduction of premiums paid by an employee in respect of an income insurance policy for purposes of calculating employees' tax with effect from 1 March 2005. This deduction may be taken into account at the option of the employer, **provided that proof of payment of such premiums was supplied by the employee to the employer.**

It should be noted that only premiums paid in terms of an insurance policy

- to the extent that it covers the employee against loss of income as a result of illness, injury, disability or unemployment; and
 - in respect of which all amounts payable in terms of such a policy constitute income as defined,
- but limited to the deduction to which the employee is entitled under section 11(a), qualify for this deduction.

SECTION 8B BROAD-BASED EMPLOYEE SHARE PLAN

General rules for the tax-free treatment of shares acquired by employees in terms of a "broad-based employee share plan" approved on or after 26 October 2004 by the directors of the company, were introduced. These rules allow for the tax-free treatment of "qualifying equity shares" acquired by employees, even though the shares may be acquired without cost or at a discount.

In order for the shares to be "qualifying equity shares", the shares must satisfy two requirements. Firstly, the employee must receive the shares in terms of a "broad-based employee share plan" and secondly, the total shares received under the plan by the employee may not exceed R9 000 in value during any 36-month period.

A "broad-based employee share plan" of an employer means a plan in terms of which

- employees who participate in any other equity scheme of that employer or of a company in the same group of companies as that employer are not entitled to participate,
- at least 90% of all other employees who are employed by that employer on a permanent basis on the date of the grant and who have been continuously been employed on a full-time basis for at least 1 year, are entitled to participate,
- the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to the shares, and
- no restrictions have been imposed in respect of the disposal of the share, other than
 - a restriction imposed by legislation,
 - a right of any person to acquire the shares from the employee at market value, or
 - a restriction in terms of which the employee may not dispose of the shares for a period which may not extend beyond 5 years from date of grant.

Employees' tax will have to be withheld by the employer from any consideration paid or payable to an employee when "qualifying

equity shares" are disposed of by that employee within 5 years from the date the shares were granted. The sale within this period effectively amounts to a salary-substitute for tax purposes. The market value of such shares sold, determined on the date of sale, is therefore included in remuneration - new code 3717 (3767 for foreign service income). To calculate the amount of employees' tax to be withheld by the employer, the market value of the "qualifying equity shares" sold, should be deemed to be an annual payment.

If an employee sells these "qualifying equity shares" after 5 years, the gain will generally be of a capital nature and will not be deemed to be remuneration.

More detail can be obtained from the Explanatory Memorandum on the Revenue Laws Amendment Act, No 32 of 2004 which is available on SARS website: www.sars.gov.za under "Legislation".

SECTION 8C DIRECTOR/EMPLOYEE EQUITY INSTRUMENTS

Equity instruments provided by an employer to employees on or after 26 October 2004 which do not fall under section 8B or which were acquired otherwise than by way of the exercise of any right granted before this date, in respect of which section 8A applies, should be dealt with in terms of the new section 8C of the Income Tax Act.

In terms of section 8C, a taxpayer must bring into account in determining his/her income, any gain or loss in respect of the vesting of any equity instrument if that equity instrument was acquired by that employee by virtue of his/her employment or office of director of any company.

Any gain determined in terms of section 8C is included in remuneration and is therefore subject to employees' tax. Employers must apply to SARS on an IRP 3(a) form for a tax directive to ascertain the amount of employees' tax to be withheld i.r.o. such gain. The new income code to be used on the relevant IRP 5/IT 3(a) certificates for section 8C gains is 3718 (3768 for foreign service income).

More detail regarding the calculation of the gain upon the vesting of restricted and unrestricted equity instruments can be obtained from the above-mentioned Explanatory Memorandum.

CASUAL EMPLOYEES

It must be noted that new rules have been prescribed in terms of paragraph 9 of the Fourth Schedule to the Income Tax Act. Casual employees (e.g. domestic workers, farm workers, etc.) are not subject to the deduction of employees' tax if such an employee works **at least 5 hours** on a specific day and **earns less** than R123 for that specific day.

DIRECTOR'S REMUNERATION

As previous advised, a relief measure to exclude directors under certain circumstances from the formula calculating deemed remuneration, was introduced with effect from 1 March 2004. Paragraph 11C(6) of the Fourth Schedule to the Income Tax Act prescribes that employees' tax must be determined on actual remuneration earned where the fixed monthly payments during the previous year of assessment exceeded 75% of the director's total remuneration for that year of assessment.

Note: Where the remuneration for the previous year of assessment has not been finalised, this relief measure will not be applicable.

CONTACTING SARS: Where employers have queries relating to PAYE,SDL and UIF, they should contact their local SARS branch office. Additional information can be obtained on the SARS website at: www.sars.gov.za

It must be noted that bonuses, quantified in a later year of assessment which accrued in a previous year of assessment, are not subject to the deduction of employees' tax irrespective of whether employees' tax is determined on actual or deemed remuneration.

GENERAL

UIF CONTRIBUTIONS PAYABLE TO SARS OR UIF

Employers must please ensure that UIF contributions are paid to the correct institution.

- Employers who are liable to register with SARS for PAYE and/or SDL must pay the contributions to **SARS**.
- Employers who are not liable to register with SARS for PAYE and/or SDL must register with and pay the contributions to the **UI Commissioner**.

The payment of contributions to the incorrect institution may delay the payment of benefits by the UI Commissioner and will result in penalties and interest being charged on payments received late by the correct institution.

EMP 201 RETURN - NUMBER OF PAYE EMPLOYEES

Employers are again requested to complete the two additional fields which have been added to the monthly EMP 201 return i.r.o. the **number of employees permanently employed and non-permanently employed**.

Detail in this regard is available on the reverse side of the monthly EMP 201 return under notes for completing the return.

SUBMISSION OF CORRECT EMP 201 RETURNS

SARS issues monthly returns to employers on which, among other, the **month** for which the return is issued, is printed. To prevent returns and payments being processed for incorrect months, **employers are requested to ensure that a return issued for a specific month is completed and submitted for that month only**.

IRP 204/208 SPECIAL REQUESTS

Special requests have been issued during November 2004 to employers as reminders of outstanding returns and payments.

Employers are requested to submit the completed outstanding returns and payments without delay. However, where such returns and payments have already been submitted, employers should provide detail of such submissions to their local SARS branch offices.

INTEREST CHARGED ON OUTSTANDING DEBT

With effect from 1 November 2004 the rate of interest applicable to outstanding PAYE, SDL and/or UIF contributions payable has been reduced from 11.5% to 10.5% per annum.

INTEREST FOR FRINGE BENEFIT PURPOSES

With effect from 1 September 2004 the official rate of interest has decreased from 9% to 8.5% per annum.

E-FILING

Did you know that you can submit returns and payments, free of charge, electronically via the internet? For more information visit www.sarsefiling.gov.za or call **0860709709** or e-mail info@sarsefiling.co.za.