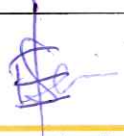
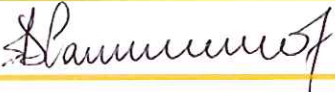




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PRACTICE NOTE NO; DT- IT/012-14

PRACTICE NOTE ON THE ISSUANCE OF TAX DEDUCTION DIRECTIVES BY THE COMMISSIONER GENERAL IN RESPECT OF LUMP SUM PAYMENTS PAYABLE TO EMPLOYEES AND FORMER EMPLOYEES

In exercise of the powers conferred by section 68*bis* of the Income Tax Order 1975(*hereinafter referred to as the order*), as amended, the Commissioner General hereby issues the following Practice Note.

CITATION AND COMMENCEMENT

This notice may be cited as Practice Note No. DT-IT/012-14, on the **Issuance of tax Deduction Directives by the Commissioner General in respect of lump sum payments payable to employees or former employees** and shall commence on the 01 March 2015.

SECTION

The Second Schedule, under section 58 of the Order.

PURPOSE

To provide clarification to employers:

- a. On the importance of issuing tax deduction directives.
- b. On the circumstances under which a tax deduction directive should be applied for.
- c. The timelines in respect of tax deduction directives.
- d. On the tax treatment of such lump sum payments emanating from tax deduction directives.

DEFINITIONS

For purposes of this Practice note, the following terms shall, unless the context otherwise indicates, be defined as follows;

'employer' any authority or person who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any company. It should be noted that the word 'employer', has an extended meaning for the purposes of the Second Schedule as it now includes any person, acting in a fiduciary capacity, such as a trustee of an insolvent estate, an executor of a deceased estate or administrator of a pension, provident, benefit, preservation pension and provident and retirement annuity fund.

'directive' an instruction issued by the Commissioner General indicating that the lump sum payment as reflected in the application should be paid to an employee after taking into account any tax applicable (if any) as per the Commissioner General's computation.

"Lump sum payments" any payment made on termination of a contract between employer and employee from a pension Fund, provident Fund, preservation pension and provident fund, benefit fund, retirement annuity as well as terminal benefits, excluding salary arrears, whether or not such fund was approved by the Commissioner General in terms of section 2 of the Order.

'gross income' shall have the same meaning as derived from section 7 and 11 of the Order, excluding receipts and accruals of a revenue nature which are not payable in respect of an employer / employee relationship in respect to lump sum payments.

THE LAW

Tax deduction directives required before payment of any lump sum payments falling within the definition of gross income are issued by the Commissioner General under paragraph 9 (3) of the Second Schedule under section 58 of the Order.

- a. In accordance with paragraph 2 sub-paragraph (1), it is a requirement that every person who pays or becomes liable to pay any lump sum payment to any employee, to deduct or withhold from such amount, by way of **employees tax**, an amount which shall be determined as provided in paragraph 9 (1) of the Second Schedule.

- b. Paragraph 4 of the second schedule further provides that any amount required to be deducted or withheld in terms of paragraph 2 shall be a **debt due to the government**, and the employer concerned shall, save as otherwise provided, become liable for the due payment thereof to the Commissioner General.
- c. Paragraph 13(1) of the Second Schedule, requires every person to during the year of assessment deducts or withholds any amount by way of employees tax as required by paragraph 2, to deliver to each employee or former employee to whom income from the employer has during the period in question been paid or become due by such person, an **employee's tax certificate (PAYE 5)**, which must show the total remuneration of such employee or former employee and the sum of the amounts of employees tax deducted or withheld by such person from such lump sum payment during the relevant period.

PRACTICE

The following are the requirements that should be adhered to in respect of lump sum payments:

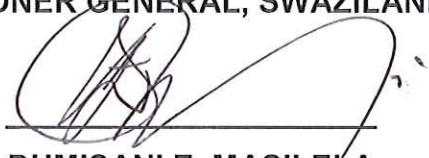
- a. Applications for tax deduction directives should be made within **one month (30days)** before termination of employment, with all supporting documents or information that may be material in dealing with the matter, in particular where an exemption or deduction is sought in respect of such lump sum payments.
- b. In respect of a contract that has already been terminated the employer shall be required to make a determination of the nature and amount of such lump sum to be paid, and thereafter make an application for a tax deduction directive to the Commissioner General, within 30 days from the date of such termination, attaching all supporting documents or information that may be material in dealing with the matter.
- c. The Commissioner General shall thereafter issue a tax deduction directive thereby indicating the amount of tax to be deducted or withheld in respect of the lump sum payment.
- d. Where an employer terminates contracts for two or more employees, the employer is required to submit an application for a tax deduction directive for each employee.

The Commissioner General will then issue a tax deduction directive for each employee.

- e. An employee's tax certificate should be issued to an employee or former employee after payment of the tax has been made to the Commissioner General. It is the duty of the employer to ensure that the employee is issued with the tax certificate as per paragraph 13(1) of the Second Schedule under section 58 of the Order.
- f. For purposes of lump sum payments, a separate employee tax certificate must be issued reflecting any lump sum payments (subject to the tax directive) of the employee or former employee and the sum of the amounts of employee's tax deducted or withheld.
- g. The employee's tax deducted or withheld in terms of the directive issued under paragraph 9(3) of the Second Schedule to the Order must be remitted to the SRA under the name of the employer within (7) seven days, from the date of payment.
- h. Failure to remit the withheld payment results in penalties @20% as per the Second Schedule.
- i. It must also be noted that tax deduction directives issued in terms of paragraph 9(3) of the Second Schedule shall be forwarded directly to employers and not to any other person, and under no circumstances would the directive be issued to the beneficiary or the person to whom the payment is to be made.
- j. Since the definition of employer in the context of the Second Schedule, includes administrators of retirement funds, it is a requirement that such administrators of funds must register for PAYE purposes so as to comply with the requirements of this practice note.
- k. The validity period for every Directive issued by the Commissioner General is 30 days.

NB: Section 49 of the Income tax Order shall be executed to recover any tax outstanding from previous periods.

ISSUED BY THE COMMISSIONER GENERAL, SWAZILAND REVENUE AUTHORITY

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

**DUMISANI E. MASILELA
COMMISSIONER GENERAL**