The Workers Compensation (Payment of Tariff) Regulations 2015

July 2015

In brief

- From 1 July 2015 employers in mainland Tanzania are subject to the Workers Compensation Fund tariff
- The tariff is payable on a monthly basis and is calculated as a percentage of cash sums paid to employees – 1% for private sector, and 0.5% for public sector
- Employers are also required to file a new monthly return form

In detail

Background

The Workers Compensation Act 2008 ("the Act") provides for the establishment of a Fund to administer compensation for employees on disablement or death.

The Act includes provisions dealing with:

- Governance of the Workers Compensation Fund ("WCF");
- The right to compensation and protection;
- Claims for compensation and the determination of these;
- Medical aid and rehabilitation benefits;
- Obligations of employers;
- Dispute settlement; and
- Financial provisions.

The Act applies to Mainland Tanzania (but not Zanzibar).

In May 2015 new regulations (The Workers Compensation (Payment of Tariff) Regulations 2015) were made under the Act. Following this newspaper notices were published in June 2015 by the Ministry of Labour and Employment to inform employers of the requirement effective 1 July 2015 to pay the WCF tariff and to file related returns.

This newsletter only focuses on these new obligations as well as relevant related provisions in the Act.

Workers Compensation Act 2008

Obligation to register, keep records, furnish returns (sections 71 to 73)

An obligation is imposed on an employer to:

- Register with the Fund in a timeframe, using a form and providing particulars as to be prescribed
- Keep a register or other record of employee earnings and other particulars as prescribed
- File a return, as prescribed, not later than 31 March of each year showing earnings for the year to end of February of the same year

Assessment of an employer (sections 74 to 76)

The Director General ("DG") of the Fund is given the power to assess or provisionally assess an employer, with such assessment calculated as a percentage of the annual earnings of the employer's employees. An amount assessed is payable within thirty working days after the date of the notice of assessment (unless otherwise agreed by the DG).

Where work has been sub-contracted to a contractor, and if the contractor has not settled liabilities due under the Act, then recourse can be made to the person who contracted the contractor.

The Act contemplates that payments will be made on an annual basis – hence the reference to "annual earnings" and a contemplated procedure of the employer filing a return by the end of March for earnings for the year ending in the previous month (February), to be followed by a subsequent assessment by the DG. However, as explained below payment is instead to be on a monthly basis.

Workers Compensation (Payment of Tariff) Regulations 2015

Commencement

The Workers Compensation (Payment of Tariff) Regulations 2015 ("the Regulations"), issued in Government Notice Number 169 published on 1 May 2015, come into operation on 1 July 2015

Scope – Cash Payments

The tariff is calculated by reference to "annual earnings" defined as "*wages, salary, leave pay, sick pay, payment in lieu of leave, fee, commission, bonus and any subsistence travelling entertainment or other allowances paid to employee by the employer*"[1]. This definition mirrors the definition of "gross emoluments" on which Skills and Development Levy ("SDL") is calculated. Like SDL this is a tax on the employer, not a deduction from the employee.

Payment – Monthly Basis

Although the Act contemplates payment on an annual basis, and the Regulations also make reference to "annual earnings", the payment provisions in the regulations make clear that payment is to be made on a monthly basis – with payment being due at the end of the month following the month in which the earnings were paid. One of the newspaper notices issued by the Ministry of Labour and Employment also confirms that the monthly contributions are to be calculated by reference to monthly (not annual) earnings.

Rate – 1% or 0.5%

The tariff rate to be applied to earnings is as follows:

- 1%: Private sector employers
- 0.5%: Public sector employers

These rates will apply for the year to 30 June 2016. The contribution rates applicable after 30 June 2016 will be communicated prior to this date.

Definitions – Private and Public Sector

The definition of "private sector employers" simply refers to employers in the private sector, and there is no definition of "private sector". The definition of "public sector employer" refers to *"employers in the central Government, local Government, parastatals, executive agencies and government-related institutions*". Unless "private sector" is to be interpreted as anything that does not fall within this definition of "public sector", the question does arise as to the treatment of an entity that is not what is ordinarily understood to be a private sector entity but yet does not fall within the above definition of public sector employer – for example, a non-Government organisation.

Employer's contribution form (WCP-1)

A new form (WCP-1) has been published which employers must file on a monthly basis.

Interest on late payment

The regulations provide for interest to be payable on late payment.

[1] Minor typographical errors corrected

Commentary

The World Bank's annual global report on the Ease of Doing Business sheds light on how easy or difficult it is for a local entrepreneur to open and run a small to medium sized business by measuring and tracking changes in regulations affecting 11 areas in the life cycle of a small to medium sized business – including paying taxes. In the 2015 report (published in late 2014), Tanzania's ranking on overall ease of doing business was 131st out of 189 – and even worse on the paying taxes indicator, with a ranking of 148th out of 189.

The introduction of this additional payroll tax cost will cause the paying taxes indicator to deteriorate as a consequence of an adverse impact on all three separate components that make up the paying taxes indicator, namely: (i) the total cost of taxes borne by business (the Total Tax Rate), (ii) the time it takes to comply, and (iii) the number of tax payments made. (Given the timing of the change, the first report to be affected will be the 2017 report (to be published in late 2016).)

In the context of the East African Community ("EAC")'s moves towards a Common Market a key concern in relation to regional competitiveness is that Tanzania's Total Tax Rate is much higher than Rwanda (33.5%), Uganda (36.5%) and Kenya (38.1%). A key differentiator with the other countries is the high level of labour taxes charged.

Our social security contributions at a rate of 20% (of which half is normally recovered from the employee) compare to 15% in Uganda (10% employer, 5% employee), 12% in Kenya (6% employer, 6% employee) and with a cap in terms of maximum contributions, and 6% in Rwanda (3% employer, 3% employee).

Our neighbours also do not have an equivalent of SDL. The 2013 Budget had seen a reduction in SDL from 6% to 5% and it was anticipated that subsequent budgets would see a continuation of this trend with the ultimate aim being a rate no higher than 2% - however the 2014 and 2015 Budgets saw no further reduction. Instead, we now have an increase in employer costs as a consequence of the new WCF tariff. Aside from the cash outflow, businesses will also have the extra administrative cost of making an additional payment each month and filing a monthly contribution form.

Currently, revenues from SDL are split two fifths to fund the Vocational Education Training Authority ("VETA") and three fifths taken into general revenue collections. If revenue is needed to fund the WCF, a better approach would have been to ring-fence part of the SDL revenues for this purpose - in the same way as is done for VETA - and make a corresponding reduction in amounts taken to general revenue collections. However, instead we are now in a worse position than when SDL was at 6% as not only has the payroll tax burden returned back to the same level, but on top of this there is the additional administrative cost.

In summary the change will work against overall competitiveness and aspirations to improve Doing Business rankings. In addition, the increased cost (taken together with the formidable existing panoply of labour taxes) works against encouraging formal employers to take on more labour and informal employers to formalise.

.....

For other publications, do refer to www.pwc.com/tz or follow us at @pwc_tz

Let's talk

Taxes in Tanzania

For further advice on how the Workers Compensation Act might affect your business, or advice on other payroll matters, please contact our specialist team below:

Zukra Ally
Associate Director – Direct Taxes
+255 22 219 2611
zukra.ally@tz.pwc.com

Aloys Byemerwa
Senior Manager – Payroll Taxes
+255 22 219 2615
aloys.byemerwa@tz.pwc.com

Fatuma Ally
Assistant Manager – Payroll Taxes
+255 22 219 2650
fatuma.ally@tz.pwc.com