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JULY 2013

HARD LABOUR NEEDED AT THE DEPARTMENT OF LABOUR

labour
Department: Labour
REPUBLIC OF SOUTH AFRICA

The Return of Earnings (ROE) for the Compensation for Occupational Injuries and Diseases Act (COIDA) has been causing problems for accounting firms and their clients. COIDA falls under the Department of Labour (DOL).

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These problems are critical - for many firms, being in good standing is critical to them as without a letter from the DOL to this effect, people are turned away from mines or construction sites and thus cannot do their work. In addition, they may not be able to secure tenders.

Where did it begin? The discounts and the amnesty

Last year the DOL introduced an online facility for companies to complete their ROE. This was done as the department was struggling to assess all ROE returns. Despite the online version being introduced, the DOL still did not assess all 2012 returns. In designing the new online version, all businesses were assigned new reference numbers.

This year the DOL decided to incentivise businesses to use the online facility and offered -

- A 10% discount if your return was submitted by 30 April and payment was made within 30 days after the assessment,
- A 5% discount if your return was in by 30 April and you paid within 60 days after the assessment,
- A 2% discount if your return was in by 30 April and you paid within 90 days after the assessment.

These incentives have been granted for the 2012/13 financial year.

In addition, the DOL announced an amnesty for all businesses **registered with the department** but who had not completed ROEs in the past four years – these also had to be completed by 30 April.

Bear in mind that the returns had to be in by 30 April or businesses faced penalties, interest and no letters of good standing if you have not submitted your ROE form and paid the invoice.

What happened? An "offer you can't refuse"

All in all, it was a classic "offer you can't refuse" and particularly because of the amnesty and discount incentive, there was a surge in online ROEs. This put strain on the system and there was frequent downtime on the website, resulting in businesses not being able to submit their ROEs on time. Some examples of the issues faced are -

- As noted above, reference numbers were changed with the introduction of the new online system and many clients were not aware of this,
- Employers' 2012 manual submissions were not always recognised by the online system. When they submitted the 2013 ROE they were charged and assessed twice (once for the 2012 year), and are now battling to claim the additional assessment back from the DOL,
- Other clients who had manually submitted in 2012 were never assessed and when the system forced them to update the 2012 information they were charged penalties for filing late, although they did file last year in time,
- For those who stayed on the manual system, April was the time of the postal strike and thus many manual returns missed the 30 April deadline as the clients received the forms late,
- Throw into this widespread confusion about the discounts as a result of which many companies deducted the applicable discount when making their payment. However, the process for the deduction or repayment of the discount has not been finalised by the DOL and the DOL system is showing these companies as short paid.

Despite all of the above, the DOL did not give businesses more time to complete their ROEs and thus in the above cases, **these entities face penalties and interest costs, and cannot obtain a letter of good standing**. SAICA (the South African Institute of Chartered Accountants) has also requested extensions for the filing period and has submitted documents to the DOL setting out problems that members are experiencing.

This is not the only Compensation Fund department that is experiencing systems and organisation performance issues. We must just hope that the ongoing efforts of SAICA and other role-players bring about a speedy resolution.

EMPLOYERS: THE POLYGRAPH – HOW MUCH RELIANCE CAN YOU PLACE ON IT?

Labour is highly regulated in South Africa and making mistakes can be a costly exercise. Thus, it is important we get our hiring, promoting and firing correct. Employers have resorted to a variety of techniques to assist them in their decision-making. One of these techniques is the lie detector test using a polygraph.

Our courts have pronounced on the use of lie detector tests and a recent Labour Court case highlights the importance of not relying exclusively on the lie detector. The polygraph has its place but it needs to be one part of a battery of assessment tools to confirm an opinion or to prove wrongdoing.

The risks of getting this wrong are high!

Apart from the time wasted in preparing for and appearing at hearings, the cost to employers can be high, especially for small businesses. In the case in question, not only were there legal costs incurred but the Court directed the employer to retrospectively pay the two employees the higher managerial salaries they would have earned had they been promoted.

In the case in question, two employees argued that they were denied promotion as a result of failing lie detector tests (to which they had – as is necessary - consented). They were working for a municipality and when a managerial and a supervisory post respectively became available, they applied for these positions. Whilst other criteria were used in compiling a short list of candidates, including qualifications and work experience, these two candidates failed a polygraph test and did not get the positions.

Critically, the Court found that the municipality "committed an unfair labour practice relating to promotion in relying exclusively on the result of a polygraph test to determine the honesty of the candidates" (author's underlining).

There have been frequent cases involving fraud (normally a dismissible offence) and the use of polygraphs. The courts have held that "polygraph testing has not been scientifically shown to be a reliable, accurate and valid means of detecting deception" and therefore it cannot be used exclusively to determine an employee's innocence or guilt. It can however be used to help substantiate a case and the same principle applies in questions of suitability for promotion.

The bottom line

As the Court put it: "…the exclusive reliance on the polygraph test results to eliminate candidates for appointment on the basis of their deceitful character, in the absence of any other information placing a question mark over their integrity is unfair."

So be careful – only use a polygraph to bolster your case, not to prove it.

FINANCE 101: RETIREMENT PART 2 – DO YOU HAVE ENOUGH TO RETIRE ON?

Last month we looked at our assets and liabilities – this month we will see how we are tracking towards our retirement. We will look at our total monthly income and deduct from that our expenses we don't live on (such as mortgage bond deductions, tax, our savings etc). This will leave us with our current "living standard" or "take-home pay". Then we will calculate a notional pension at today's date, based on our retirement savings and investments, and see how on track we are to a comfortable retirement.

It is important to do this regularly as a) our circumstances will change during the course of our life, b) how we are tracking towards retirement changes as we get older and c) it is good to know where we stand at least on an annual basis.

Only 12% of people who make retirement payments actually achieve their desired lifestyle on retirement.

Let's continue from last month's example and work out our current take-home pay and compare this to what our current pension would be -

HOW MUCH DO I NEED TO RETIRE?		
My Income:		
	Monthly	**Annual**
Salary	42 000	504 000
Interest		800
Dividends *		150 000
Other		
= Total Inflow		**R 654 800**
* Received mainly from the business owned		
My Deductions		
Pension Contribution	2 500	30 000
Share Purchases	750	9 000
HP instalments	4 103	49 240
Bond payments	10 567	126 805
Interest Paid		12 750
Tax		111 386
= Total Deductions		**R 339 181**
Calculation		
Total Income (A)		654 800
Less Total Deductions (B)		339 181
= Annual Living Standard (A-B)		R 315 619
= Monthly Living Standard		**R 26 302**

(If the table above does not display correctly, please see the "online version" – link above the compliments slip)

This tells us our living standard or take-home pay is R26,302 a month. Our monthly living costs such as groceries, petrol etc would come off this.

Then we calculate how much your investments will pay you **today**. Looking at last month's assets and liabilities, we get -

RETIREMENT CALCULATION	
Values now	
Pension portion	800 000
Value of Business	500 000
Unit trusts	
Shares	160 000
Fixed deposits	45 000
Endowment policies	
Retirement annuities	
= Total financial assets	**R 1 505 000**
Realistic annual yield	5%
Multiply total financial assets by yield	
= Before tax annual pension	**R 75 250**
Tax	Nil
= Theoretical pension per month	R 6 271
Divide by Present Monthly Living Standard	R 26 302
Multiply by 100	
= Retirement adequacy ratio	**23.8%**

(If the table above does not display correctly, please see the "online version" – link above the compliments slip)

This shows that with assets of R1,505,000 yielding 5% p.a. income we would earn R6,271 per month which means we are currently tracking at 23.8% of our desired retirement income funding.

The first thing to look at is our age. If we are in our thirties it is fine but as we approach retirement this ratio should get close to 1. As an indication, this is where we should be –

RETIREMENT CALCULATION	
Age	**Ideal Retirement Adequacy Ratio**
25	7%
30	14%
35	21%
40	31%
45	41%
50	53%
55	67%
60	82%
65	100%

(If the table above does not display correctly, please see the "online version" – link above the compliments slip)

In other words if we are 40 today, the adequacy ratio should be 31% but, as above, we are at 23.8% and thus should make an effort to earn more and/ or to reduce our expenses.

This raises many questions such as - are we living well on this R26,302 of monthly income? If not how much more do we need to earn to be comfortable with how we live? This is a fundamental point and worth thinking through. Do we need to reduce our costs, do we need to restructure our investments or do we need to find ways to make more income?

It needs to be stressed, **these are general guidelines only** – ask us for advice on your particular circumstances. You won't make a more important financial decision, so it is worth spending time and energy to get this right.

You need to consider all the factors that influence your life and update them at least annually to see how you are progressing towards retirement.

TAX CORNER

Remember tax season for individuals starts on July 1. Get your returns in if you are due a refund!

Have a Great July!