

(1 March 2014 – to date)

[This is the **current version** and applies as from **1 March 2014**, i.e. the date of commencement of the Tax Administration Laws Amendment Act 39 of 2013 - **to date**]

UNEMPLOYMENT INSURANCE CONTRIBUTIONS ACT 4 OF 2002

Government Notice 406 in Government Gazette 23289, dated 28 March 2002.

Commencement date: 1 April 2002. [Proc. R28, Gazette No. 23284, dated 28 March 2002]

(English text signed by the President.)

(Assented to 27 March 2002.)

as amended by:

Taxation Laws Amendment Act 30 of 2002 – Government Notice 1047 in Government Gazette 23709, dated 5 August 2002. Commencement date: 5 August 2002, unless otherwise indicated

Revenue Laws Amendment Act 45 of 2003 – Government Notice 1844 in Government Gazette 25864, dated 22 December 2003. Commencement date: 22 December 2003, unless otherwise indicated

Taxation Laws Second Amendment Act 18 of 2009 – Government Notice 945 in Government Gazette 32611, dated 30 September 2009. Commencement date: 30 September 2009

*Voluntary Disclosure Programme and Taxation Laws Second Amendment Act 8 of 2010 – Government Notice 1025 in Government Gazette 33727, dated 2 November 2010.
Commencement date of section 32: 30 September 2009*

Taxation Laws Amendment Act 24 of 2011 – Government Notice 16 in Government Gazette 34927, dated 10 January 2012. Commencement date of section 144: Deemed to be 1 April 2002

Tax Administration Act 28 of 2011 – Government Notice 591 in Government Gazette 35491, dated 4 July 2012. Commencement date: 1 October 2012 [Proc. No.51, Gazette No. 35687, dated 14 September 2012]

Tax Administration Laws Amendment Act 21 of 2012 – Government Notice 1107 in Government Gazette 36036, dated 20 December 2012. Commencement date: 20 December 2012

Taxation Laws Amendment Act 22 of 2012 – Government Notice 71 in Government Gazette 36122, dated 1 February 2013. Commencement date: Deemed to be 1 April 2002

Tax Administration Laws Amendment Act 39 of 2013 – Government Notice 14 in Government Gazette 37236, dated 16 January 2014. Commencement date: 1 March 2014.

ACT

To provide for the imposition and collection of contributions for the benefit of the Unemployment Insurance Fund; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

TABLE OF CONTENTS

CHAPTER 1 INTRODUCTORY PROVISIONS

1. Definitions
2. Purpose of Act
3. Administration of Act
4. Application of Act

CHAPTER 2 DUTY TO CONTRIBUTE, AND RECOVERY OF CONTRIBUTIONS

5. Duty to contribute to Fund
6. Determination of contribution
7. Employer must deduct employee's contribution
8. Payment of contribution to Commissioner and refund
9. Payment of contribution to Unemployment Insurance Commissioner and refund
- 9A. Estimated assessments
10. Duty to register as employer and duty to provide particulars
11. Payment of amounts collected by Commissioner into National Revenue Fund
12. Interest on late payments
13. Penalties on default
14.
15. Labour inspectors

CHAPTER 3 GENERAL

16. Collection costs
17.
18. Regulations
19. Short title and commencement

CHAPTER 1 INTRODUCTORY PROVISIONS

1. Definitions

(1) In this Act, unless the context indicates otherwise -

“Board” means the Unemployment Insurance Board established in terms of section 47 of the Unemployment Insurance Act;

“Commissioner” means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;

(Definition of “Commissioner” substituted by section 271 of Act 28 of 2011)

“contribution” means the contribution determined in terms of section 6;

“Director-General” means the Director-General as defined in the Unemployment Insurance Act;

“domestic worker” means an employee who performs domestic work in the home of his or her employer, and includes a -

- (a) gardener;
- (b) person employed by a household as a driver of a motor vehicle; and
- (c) person who takes care of any person in that home,

but does not include a farm worker;

“employee” means any natural person who receives any remuneration or to whom any remuneration accrues in respect of services rendered or to be rendered by that person, but excludes an independent contractor;

“employer” means “employer” as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, and includes a “representative employer” as defined in that Schedule;

“financial year” means the period commencing on the first day of March in any year and ending on the last day of February in the following year;

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“labour inspector” means a labour inspector as defined in the Unemployment Insurance Act;

“Minister” means the Minister of Finance;

“regulation” means a regulation made under section 18;

“remuneration” means “remuneration” as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, but does not include any amount paid or payable to an employee -

(a) by way of any pension, superannuation allowance or retiring allowance;

(b) which constitutes an amount contemplated in paragraphs (a), (cA), (d), (e) or (eA) of the definition of “gross income” in section 1 of the Income Tax Act; or

(c) by way of commission;

“seasonal worker”

(Definition of “seasonal worker” deleted by section 207 of Act 45 of 2003 with effect from 14 November 2003)

“Tax Administration Act” means the Tax Administration Act, 2011;

(Definition of “Tax Administration Act” inserted by section 271 of Act 28 of 2011)

“this Act” includes the regulations;

“Unemployment Insurance Act” means the Unemployment Insurance Act, 2001;

“Unemployment Insurance Commissioner” means the Commissioner designated by the Minister of Labour in terms of section 43 of the Unemployment Insurance Act;

“Unemployment Insurance Fund” means the Fund established by section 4 of the Unemployment Insurance Act.

(Section 1 renumbered to 1(1) by section 271 of Act 28 of 2011)

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.

(Section 1(2) inserted by section 271 of Act 28 of 2011)

2. Purpose of Act

The purpose of this Act is to provide for -

(a) the payment of contributions for the benefit of the Unemployment Insurance Fund; and

- (b) procedures for the collection of such contributions.

3. Administration of Act

- (1) This Act must be administered by the Commissioner, in accordance with the provisions of the Tax Administration Act.

(Section 3(1) substituted by section 271 of Act 28 of 2011)

- (1A) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.

(Section 3(1A) inserted by section 271 of Act 28 of 2011)

- (2) In addition to section 9 of the Tax Administration Act, and in accordance with section 10 of that Act, the Commissioner may delegate any power or assign any duty which relates to the collection of -

- (a) contributions payable to the Unemployment Insurance Commissioner in terms of section 9; and
- (b) any information to be submitted by employers in terms of this Act,

to the Unemployment Insurance Commissioner.

(Section 3(2) substituted by section 271 of Act 28 of 2011)

4. Application of Act

- (1) This Act applies to all employers and employees, other than -

- (a) an employee and his or her employer, where such employee is employed by that employer for less than 24 hours a month;
- (b) employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers;

(Section 4(1)(b) substituted by section 208(1)(a) of Act 45 of 2003 with effect from 14 November 2003)

- (c) employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers;

(Section 4(1)(c) substituted by section 208(1)(a) of Act 45 of 2003 with effect from 14 November 2003)

(Section 4(1)(c) amended by section 144(1)(a) of Act 24 of 2011, which amendment is deemed to have come into operation on 1 April 2002)

- (d) an employee and his or her employer, where that employee has entered 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 by law or by the contract of service, apprenticeship or learnership, as the case may be, or by any other agreement or undertaking, to repatriate that person, or if that person is so required to leave the Republic;

(Section 4(1)(d) amended by section 144(1)(b) of Act 24 of 2011, which amendment is deemed to have come into operation on 1 April 2002)

- (e) the President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature; and

(Section 4(1)(e) added by section 144(1)(c) of Act 24 of 2011, which amendment is deemed to have come into operation on 1 April 2002)

- (f) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders.

(Section 4(1)(f) added by section 144(1)(c) of Act 24 of 2011, which amendment is deemed to have come into operation on 1 April 2002)

Editor's note:

It is assumed that the subsection (4) referred to in section 144 of Act 24 of 2011 should refer to subsection (1) and the amendment is made accordingly.)

*(Section 4(1) amended by section 152 of Act 22 of 2012. **Editor's note:** Error from Act 24 of 2011 corrected. Deemed to have come into operation on 1 April 2002.)*

- (2)

(Section 4(2) deleted by section 208(1)(b) of Act 45 of 2003 with effect from 14 November 2003)

CHAPTER 2

DUTY TO CONTRIBUTE AND RECOVERY OF CONTRIBUTIONS

5. Duty to contribute to Fund

- (1) Every employer and every employee to whom this Act applies must, on a monthly basis, contribute to the Unemployment Insurance Fund.
- (2) The contributions must be paid by the employer either to the Commissioner in terms of section 8 or to the Unemployment Insurance Commissioner in terms of section 9, whichever is applicable to the particular employer.

6. Determination of contribution

- (1) Subject to subsection (2), the amount of the contribution payable in terms of section 5 -
 - (a) by an employee, must be one per cent of the remuneration paid or payable to that employee by his or her employer during any month; and
 - (b) by an employer in respect of any one of its employees, must be equal to one per cent of the remuneration paid or payable by that employer to that employee during any month.
- (2) Subsection (1) does not apply to so much of the remuneration paid or payable by an employer to an employee during any month as exceeds an amount determined from time to time by the Minister of Finance by notice in the *Gazette*, after consultation with the Minister of Labour and the Unemployment Insurance Commissioner.

7. Employer must deduct employee's contribution

- (1) Subject to subsection (2), an employer must, on a monthly basis, deduct or withhold the amount of the employee's contribution contemplated in section 6(1)(a) from the remuneration paid or payable to that employee during that month.
- (2) Where the remuneration of the employee is paid at intervals other than on a monthly basis, the employer must deduct the amount of the employee's contributions on such other basis as coincides with the intervals of payment of remuneration by the employer to the employee.
- (3) When making a deduction in terms of subsection (1) or (2), an employer may not -
 - (a) deduct amounts that are in excess of the amount of the contribution due by the employee;
 - (b) seek or receive a fee from the employee for complying with this Act; or
 - (c) deduct arrear contributions from the employee after the end of the financial year during which it was payable.
- (4) Subject to subsection (3)(c), where the employer fails to deduct the contribution as contemplated in subsection (1) or (2), the employer is liable for such contributions.
- (4A) Where an amount of an employee's contribution which has been deducted or withheld by an employer which is a company (other than a listed company) in terms of this section has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, as the case may be, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance

Commissioner and for any penalty contemplated in section 13(2) which may be imposed in respect of that payment.

(Section 7(4A) inserted by section 209(1) of Act 45 of 2003)

- (5) If any payment made by the employer to the Commissioner or the Unemployment Insurance Commissioner in terms of section 8 or 9, as the case may be, includes an amount which was deducted or withheld in terms of subsection (1) or (2), and it subsequently becomes known to the employer that the payment made by the employer was not due or payable in terms of this Act, or was in excess of the amount due or payable, the employer must refund to the employee such amount or excess amount, as the case may be, as has been deducted or withheld and overpaid by the employer, despite the amount not having been refunded to the employer by the Commissioner or the Unemployment Insurance Commissioner, as the case may be.

8. Payment of contribution to Commissioner and refund

- (1) Every employer, other than an employer contemplated in section 9(1), must on a monthly basis pay the amount of all employees' contributions and the employer's contributions in respect of every employee in the employment of that employer to the Commissioner not later than seven days, or such longer period as the Commissioner may determine, after the end of the month in respect of which the contributions are payable.

- (1A) Notwithstanding the provisions of subsection (1), if an employer is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the amount as described in subsection (1) to the Commissioner within the periods prescribed in paragraph 11(4A) of the Sixth Schedule to that Act.

(Section 8(1A) inserted by section 24(1)(a) of Act 39 of 2013 with effect from 1 March 2014 and applies in respect of tax periods commencing on or after that date.)

- (2) An employer must, together with the payment referred to in subsection (1) or (1A), submit a return to the Commissioner.

(Section 8(2) substituted by section 271 of Act 28 of 2011)

(Section 8(2) substituted by section 24(1)(b) of Act 39 of 2013 with effect from 1 March 2014 and applies in respect of tax periods commencing on or after that date.)

- (2A) Every employer shall –

- (a) by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and
- (b) if during any such period the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on

which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve,

render to the Commissioner such return as the Commissioner may prescribe.

(Section 8(2A) inserted by section 48 of Act 18 of 2009)

(Section 8(2A) substituted by section 32(1) of Act 8 of 2010 with effect from 30 September 2009)

(3)

(Section 8(3) substituted by section 81 of Act 30 of 2002)

(Section 8(3) deleted by section 271 of Act 28 of 2011)

(4) The Commissioner must notify the Director-General, within such period as may be agreed upon between the Commissioner and the Director-General, of the amount of the contributions, interest and penalties collected from, and refunds made to, employers during the previous month and provide such further particulars as may be agreed upon by the Commissioner and the Director-General.

9. Payment of contribution to Unemployment Insurance Commissioner and refund

(1) (a) For the purpose of this section, “employer” means an employer who -

- (i) is not required to register as an employer in terms of paragraph 15 of the Fourth Schedule to the Income Tax Act;
- (ii) has not registered voluntarily as an employer in terms of the Fourth Schedule to the Income Tax Act; or
- (iii) is not liable for the payment of the skills development levy in terms of the Skills Development Levies Act, 1999 (Act No. 9 of 1999).

(b) Subject to subsection (5), an employer must, on a monthly basis and in respect of every employee in the employment of that employer, pay to the Unemployment Insurance Commissioner not later than seven days, or such longer period as the Unemployment Insurance Commissioner may determine, after the end of the month in respect of which contributions are payable the amount of -

- (i) the employee's contribution which must be withheld from the remuneration of the employee during that month, as contemplated in section 7(1) or (2); and
- (ii) the employer's contribution as contemplated in section 6(1)(b).

- (2) An employer must, together with the payment contemplated in subsection (1), submit a statement in such form as the Unemployment Insurance Commissioner may require and reflecting the amount of the payment and such other particulars as the Minister may prescribe by regulation.
- (3) The Unemployment Insurance Commissioner must pay all contributions, interest and penalties collected into the Unemployment Insurance Fund.
- (4) If the amount of any contribution, interest or penalty paid by an employer to the Unemployment Insurance Commissioner was not due or payable, or was in excess of the amount due or payable in terms of this Act, that amount or such excess amount must be refunded to that employer by the Unemployment Insurance Commissioner from the Unemployment Insurance Fund.
- (5)
 - (a) Where an employer on reasonable grounds believes that the total amount payable in terms of section 6(1)(a) and (b) in respect of all its employees during any financial year will not exceed such amount as the Unemployment Insurance Commissioner may from time to time determine by notice in the *Gazette*, the employer may elect to make payment of the full amount of the total contributions in respect of that financial year in a single payment within 7 days after the beginning of that financial year.
 - (b) If an employer discovers that the amount of the payment contemplated in paragraph (a) is less than the amount payable in respect of all its employees in terms of section 6(1)(a) or (b), that employer must as soon as possible but before the end of the financial year in question pay the outstanding amount to the Unemployment Insurance Commissioner.

9A. Estimated assessments

- (1) Where any employer who is required to pay the amount of all employees' contributions and the employer's contributions in respect of every employee in the employment of that employer to the Unemployment Insurance Commissioner in terms of section 9 -
 - (a) has failed to submit a statement as required in terms of section 9(2);
 - (b) has furnished a return as required in terms of section 9(2) but the Commissioner is not satisfied with the return;
 - (c) has failed to deduct or withhold employees' contributions; or
 - (d) has failed to pay over any contributions deducted or withheld,

and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the Unemployment Insurance Commissioner may make a reasonable estimate of the amount of

any contributions due in terms of section 6 and issue to the employer a notice of assessment for the unpaid amount.

(Section 9A(1) substituted by section 271 of Act 28 of 2011)

- (2) An employer shall be liable to the Commissioner for the payment of the amount of any employees' contribution so estimated as if such amount was deducted or withheld as contemplated in section 7.
- (3) Any estimate of the contribution payable by an employer in terms of subsection (1), shall be subject to objection or appeal.

(Section 9A inserted by section 49 of Act 18 of 2009)

10. Duty to register as employer and duty to provide particulars

- (1) An employer to whom this Act applies must apply for registration to the Commissioner, in accordance with Chapter 3 of the Tax Administration Act, or the Unemployment Insurance Commissioner, in such manner and within such period as may be prescribed by the Unemployment Insurance Commissioner.

(Section 10(1) substituted by section 271 of Act 28 of 2011)

- (2)

(Section 10(2) deleted by section 271 of Act 28 of 2011)

- (3) Each employer contemplated in sections 8 and 9, must, before the seventh day of each month, submit to the Unemployment Insurance Commissioner such information relating to its employees as the Minister may prescribe by regulation, including details relating to-

(Words preceding section 10(3)(a) substituted by section 32 of Act 21 of 2012)

- (a) the termination of the employment of any employee; and
 - (b) the appointment of any employee by the employer.
- (4) The Commissioner or the Unemployment Insurance Commissioner, as the case may be, may request the employer to provide within 30 days of the request, or such extended period as the Commissioner or Unemployment Insurance Commissioner may allow, such additional particulars as may reasonably be required to give effect to the purpose of this Act.

11. Payment of amounts collected by Commissioner into National Revenue Fund

- (1) The contributions, interest and penalties collected by the Commissioner in terms of this Act must, after deduction of any refunds, be paid into the National Revenue Fund.

- (2) The total amount of contributions, interest and penalties paid into the National Revenue Fund in terms of subsection (1) is a direct charge against the National Revenue Fund for the credit of the Unemployment Insurance Fund.
- (3) The Director-General must, within 14 days after receipt of the notice from the Commissioner in terms of section 8(4), authorise the transfer of the amount of the contributions, interest and penalties paid into the National Revenue Fund to the Unemployment Insurance Fund.

12. Interest on late payments

- (1) An employer who fails to pay the full amount of any contribution within the period for payment prescribed by this Act, must pay 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, calculated from the day following the last day for payment to the day that payment is received by the Commissioner or Unemployment Insurance Commissioner, as the case may be.
- (2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply from such date as the Commissioner may prescribe.

(Section 12 substituted by section 82 of Act 30 of 2002 with effect from 1 April 2002)

(Section 12 substituted by section 50 of Act 18 of 2009)

(Section 12 to be repealed by section 271 of Act 28 of 2011 with effect from a date to be proclaimed)

13. Penalties on default

- (1) If any contribution remains unpaid after the last day for payment thereof as contemplated in section 8(1), 8(1A) or 9(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of the unpaid amount but the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may remit the penalty or any portion thereof in accordance with the provisions of Chapter 15 of the Tax Administration Act.

(Section 13(1) substituted by section 25 of Act 39 of 2013 with effect from 1 March 2014 and applies in respect of tax periods commencing on or after that date.)

- (2)

(Section 13(2) deleted by section 271 of Act 28 of 2011)

- (3)

(Section 13(3) substituted by section 83 of Act 30 of 2002 with effect from 1 April 2002)

(Section 13(3) deleted by section 271 of Act 28 of 2011)

- (4)

(Section 13(4) added by section 51(1)(b) of Act 18 of 2009)

(Section 13(4) deleted by section 271 of Act 28 of 2011)

14.

(Section 14 repealed by section 271 of Act 28 of 2011)

15. Labour inspectors

- (1) The Commissioner or Unemployment Insurance Commissioner may request a labour inspector to assist in the investigation of any employer required to contribute in terms of section 8 or 9, as the case may be.
- (2) An inspector has the same powers afforded to a senior SARS official, a SARS official or SARS under Chapter 5 of the Tax Administration Act.

(Section 15(2) added by section 271 of Act 28 of 2011)

CHAPTER 3

GENERAL

16. Collection costs

- (1) Subject to subsection (2), the Director-General must, on a monthly basis, defray the costs of collection by the Commissioner from the Unemployment Insurance Fund.
- (2) The total amount of the costs contemplated in subsection (1), excluding the start-up capital which must be defrayed from the budget of the Department of Labour, shall be equal to one and a half per cent of the total amount of the payments collected, or where the actual expense exceeds one and a half per cent of that amount, such actual costs.

17.

(Section 17 repealed by section 271 of Act 28 of 2011)

18. Regulations

The Minister may, by notice in the *Gazette* and after consultation with the Minister of Labour and the Unemployment Insurance Commissioner, make regulations about any matter which may be prescribed by regulation in terms of this Act or which is necessary to be prescribed for the effective administration of this Act.

19. Short title and commencement

This Act is called the Unemployment Insurance Contributions Act, 2002, and takes effect on a date to be determined by the President by proclamation in the *Gazette*.