

## Legal Counsel

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Mr H Strydom  
SA Guild of Actors

By E-mail: [bach@global.co.za](mailto:bach@global.co.za)

Dear Hans

### **EMPLOYEES' TAX: EMPLOYEES' TAX CERTIFICATE CODES**

Your email dated 17 August 2017 refers. At issue are production companies (Producers), who fail to correct codes on the employees' tax certificates (IRP5s) of freelance actors who are independent contractors under the common law (hereinafter Actors, a gender-neutral term) when the incorrect coding is brought to the Producers' attention.

Specifically, it is alleged that Producers utilise code 3601 to disclose the Actor's income, and when it is later brought to the attention of the Producers that the coding is incorrect and that code 3616 is the correct code, they refuse to correct the IRP5s, citing reasons such as –

- the Actor did not request that code 3616 be used before terminating services with that Producer;
- the Actor should have requested the correct code;
- the year-end reconciliation has already been finalised;
- the forms were sent through in bulk and can not be changed; or
- it has always been disclosed under code 3601.

The legal position is set out below. Any reference to an "employer" means an "employer" as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962 (the Fourth Schedule) and in the context of this letter, includes any Producer who deducts or withholds employees' tax (PAYE) from any Actor; and a reference to a paragraph means a paragraph of the Fourth Schedule.

An employer's obligation to issue an IRP5 certificate is set out in paragraph 13(1), in the following terms:

"...every employer who...deducts or withholds any amount by way of employees' tax...shall within the time allowed...deliver to each employee or former employee to whom remuneration has...been paid...an employees' tax certificate in such form as the Commissioner may prescribe or approve..." [emphasis added]

SARS has issued the "Business Requirements Specification: PAYE Employer Reconciliation (August 2017 Release)" (the BRS) which sets out the manner prescribed by the Commissioner for disclosing information on IRP5s. The BRS specifically provides that remuneration paid to an independent contractor, such as an Actor, must be disclosed under code 3616. Previous versions of the BRS, applicable to prior years of assessment, prescribe the same requirement.

A Producer who fails to disclose an Actor's income under code 3616 will therefore have failed in its obligation under paragraph 13(1) to provide an IRP5 to an Actor in the form prescribed by the Commissioner. The IRP5 **must** therefore be corrected once the error is brought to the Producer's attention, in order for the Producer to have satisfied this obligation.

Producers should note the provisions of paragraph 30(1)(f), which provides that it is an offence, punishable on conviction by a fine or imprisonment for up to 12 months, to wilfully or without just cause fail to issue an IRP5 certificate as prescribed by the Commissioner under paragraph 13(1). This includes refusing to correct errors on IRP5s when the error is brought to the Producer's attention.

Producers should further be aware that failure to issue correct IRP5s may also carry a penalty equal to 10% of the total employees' tax bill for the entire year of assessment, under paragraph 14(6).

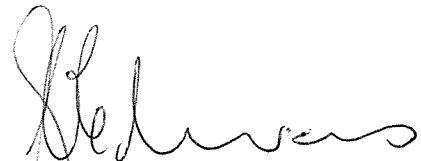
It is crucial for employers, employees, and SARS that amounts paid to employees are disclosed under the correct codes on the IRP5s. Employers are therefore obliged in terms of the provisions set out above to correct incorrect disclosures as soon as they are made aware of the error. The penalties that may be imposed on employers for failing to comply with these requirements, both criminal and civil, may be severe.

Sincerely



**VANESSA VOGT**  
**JUNIOR CONSULTANT**

for **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**



**GARY EDWARDS**  
**MANAGER**