

QUICK REFERENCE GUIDE ON UNEMPLOYMENT INSURANCE FUND

1 PURPOSE

- The purpose of this document is to assist employers in understanding their obligations relating to Unemployment Insurance Fund contributions.

2 SCOPE

- This basic guide explains the legislative requirements applicable to employers for the deduction and the payment of Unemployment Insurance Fund contributions.
- The Unemployment Insurance Contributions Act provides for the imposition and collection of the contributions to the Unemployment Insurance Fund and is administered by the Commissioner for the South African Revenue Service. This guide does not deal with the Unemployment Insurance Act which prescribes the benefits payable by the fund, administered by the **Director General of the Department of Labour and the Unemployment Insurance Commissioner**.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Income Tax Act, No. 58 of 1962: Sections 1, 8B, 8C, 75, 89sex, Fourth Schedule paragraphs 1, 13(3), 15(3), 12, 14 and 30(1)(i), 7th Schedule, Unemployment Insurance Contributions Act, No. 4 of 2002: Sections 1, 3, 4, 6, 7(4A), 7(5), 8, 8(2), 9, 10, 12, 13(1), 14, and 17
Other Legislation:	Skills Development Act, No. 97 of 1998: Section 18(2) Children's Act, No. 33 of 1960: Section 89 Public Service Act 1994: Section 1(1) Social Assistance Act, No. 13 of 2004; Sections 4, 5, 6, 9 and 10
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
QMS-01	Quality Management System Manual	ISO 9001:2000
UIF notice 1 of 2008	Unemployment Insurance Fund (UIF) – Remuneration Threshold	All

4 DEFINITIONS AND ACRONYMS

4th Schedule	Fourth Schedule to the Income Tax Act
Commissioner	Commissioner for the South African Revenue Service
EFT	Electronic Funds Transfer
Employee	Section 1 of the UIC Act defines an employee for UI contribution purposes as any natural person who receives any remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person but excluding an independent contractor.
Employer	Section 1 of the UIC Act and paragraph 1 of the 4 th Schedule defines an employer as any person who pays or is liable to pay a person an amount by way of remuneration. It includes a person responsible for the payment of an amount by way of remuneration to a person under the provisions of a law or out of public funds or out of funds voted by Parliament or Provincial Council.
IT Act	Income Tax Act, No 58 of 1962
PAYE	Pay As You Earn, also known as employee's tax
Representative employer	The definition of "employer" in Section 1 of the UIC Act, includes a "representative employer" as defined in the 4 th Schedule. Paragraph 1 of the 4 th Schedule defines a representative employer as any public officer, liquidator, judicial manager, manager, secretary, officer, guardian, curator, administrator or other person having authority to pay remuneration on behalf of an

	employer. The representative employer is not relieved from any liability, responsibility or duty of the employer and is therefore, subject to the same duties, responsibilities and liabilities as the employer.
SARS	South African Revenue Service
UI	Unemployment Insurance
UI Act	Unemployment Insurance Act, no 63 of 2001
UI Commissioner	Unemployment Insurance Commissioner
UIC Act	Unemployment Insurance Contributions Act, No 4 of 2002

5 BACKGROUND

- Two Acts, namely the **Unemployment Insurance Act, No. 63 of 2001** and the **Unemployment Insurance Contributions Act, No. 4 of 2002**, came into operation on 1 April 2002, which in effect replaced the previous Unemployment Insurance legislation of 1966. These two Acts provide the framework for the new unemployment insurance system in South Africa.
- The UIC Act deals with the collection of the contributions to fund the UI Fund while the UI Act deals with benefits to which contributors (employees who contribute or dependants of contributors) are entitled. This legislation did not introduce the payment of UIF contributions for the first time in South Africa, as UI was introduced back in 1946, but only extended the coverage of workers within the labour market.

6 GOVERNING LEGISLATION

- The paragraphs of the 4th Schedule referred to in this publication are governed by the IT Act and the Sections are governed by the Unemployment Contributions Act. References to Sections governed by the IT Act are specifically indicated.
- In terms of Section 14 of the UIC Act, certain provisions of the IT Act have been made applicable for the purposes of UI contributions. The provisions of the IT Act apply, **with the changes required by the context**, to any contribution **due and** payable in respect of -
 - the administration thereof;
 - returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - assessments, objections and appeals;
 - the payment, recovery or refund of any contribution, interest and penalty; and
 - representative taxpayers and representative employers; etc.

7 WHAT IS THE UI FUND

- The UI fund has been established in order to provide short term relief to workers when they become unemployed or are unable to work because of illness, maternity or adoption leave and also to provide relief to the dependants of a deceased contributor in terms of the UI Act.
- The UI Fund provides five types of benefits -
 - Unemployment benefits;
 - Illness benefits;
 - Maternity benefits;
 - Adoption benefits; and
 - Dependants' benefits.

8 WHAT ARE UI CONTRIBUTIONS

- Contributions to the UI fund are the compulsory contributions payable in terms of the UIC Act to fund the benefits available to workers in terms of the UI Act. With effect from 1 April 2002, contributions collected by SARS are transferred to the UI Fund which is administered by the UI Commissioner.

9 WHO MUST CONTRIBUTE TO THE FUND?

- Every employer who pays or is liable to pay remuneration to an employee must contribute on a monthly basis to the UIF Fund.
- In terms of Section 4, the Act does not apply to the following employers and their employees -
 - where an employee is employed by the employer for less than 24 hours a month;
 - where the employee receives remuneration under a contract of employment contemplated Section 18(2) of the Skills Development Act;
 - employees in the national and provincial spheres of Government who are officers and employees as defined in Section 1(1) of the Public Service Act 1994;
 - where an employee has entered the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon 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.

10 REGISTRATION

- In terms of Section 10 of the UIC Act where an employer is liable to pay contributions, the employer must register with SARS **or** the UIF office (whichever is applicable to such employer) for the payment of the contributions.
- **Register at UI Commissioner's office (not SARS):** The following employers must register at the UI Commissioner for purposes of paying UIF contributions -
 - an employer who is not required to register for employees' tax purposes at SARS;
 - an employer who has not registered voluntarily as an employer for employees' tax purposes at SARS; and
 - an employer who is not liable for the payment of skills development levy.
- **Registration at SARS:** Any employer who is liable to register with SARS for the payment of employees' tax and / or SDL or has voluntarily registered with SARS for employees' tax purposes is also required to register **with SARS** for purposes of paying UIF contributions. **Application for registration for UIF purposes is made on an EMP 101 application form.**
- It should be noted that an employer does not have any discretion as to whether to register with either the UI Commissioner or SARS. The liability of the employer to register and pay employees' tax and / or SDL will determine with whom an employer must be registered for UIF purposes.
- Change of registered details: In terms of paragraph 15(3) of the 4th Schedule an employer must inform SARS in writing within 14 days of any change in registered particulars (e.g. change of name, address or when he / she no longer operates as an employer).

11 REMUNERATION

- Paragraph 1 of the 4th Schedule defines remuneration as any amount of income which is paid or is payable to any person whether in cash or otherwise and whether or not in respect of services rendered.
- Section 1 of the UIC Act defines remuneration as "remuneration" defined in the 4th Schedule, but **does not include** any amount paid or payable to an employee -
 - by way of pension, superannuation allowance or retiring allowance;
 - that constitutes an amount contemplated in paragraphs (a), (cA), (d), (e) or (eA) of the definition of gross income in Section 1 of the IT Act -
 - by way of annuity [par (a)];
 - as compensation for any restraint of trade [par (cA)];

- o any amount, including a voluntary award received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment [par (d)];
 - o lump sum benefits from any pension fund, provident fund or retirement annuity fund [par (e)]; or
 - o lump sum benefits from a pension fund (where the rules provide that on retirement a portion of the benefit has to be taken in the form of an annuity, etc.) [par (eA)]; or
- by way of commission.
- Examples of remuneration in terms of the 4th Schedule
 - Remuneration will include salary, fee, bonus, wage, gratuity, pension, leave encashment, emolument, voluntary award, commission, annuity, stipend, remuneration for overtime, superannuation allowance, retirement allowance, lump sum payment, director's remuneration, etc.
 - The following are **specifically included** as remuneration:
 - o restraint of trade payments;
 - o an amount including a voluntary award received or accrued in commutation (substitution) of amounts due in terms of a contract of employment or service;
 - o an amount received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of an office or employment or of an appointment;
 - o 50% of an allowance paid to a holder of a public office;
 - o 60% of an allowance or advance in respect of the expense of travelling for business purposes (excluding an allowance paid for actual distance travelled for business purposes, at a rate not exceeding the rate per kilometre fixed by the Minister of Finance in the Government Gazette);
 - o An allowance or advance paid to an employee in respect of accommodation, meals or other incidental costs while the employee is by reason of the duties of his / her office obliged to spend at least one night away from his / her usual place of residence in the Republic **is deemed to become payable to the employee in the following month in respect of services rendered** - this deeming provision applies where such an allowance or advance was paid to an employee during any month in respect of a night away from his / her usual place of residence and that employee has not by the last day of the following month either spent the night away from his / her usual place of residence or refunded that allowance or advance to the employer;
 - o fringe benefits received in terms of the 7th Schedule to the Income Tax Act;
 - o a gratuity received by or accrued to a person from his / her employer because such person obtained a university degree or diploma or has been successful in an examination;
 - o any gain determined in terms of Section 8B, which must be included in that person's income under that section (broad-based equity share plan); and
 - o any gain determined in terms of Section 8C which is required to be included in the income of that person.
 - The following are **specifically excluded** from remuneration in terms of the 4th Schedule:
 - o Amounts paid to common law independent contractors, but excluding amounts paid to independent contractors who are subject to the control or supervision of any person as to the manner in which their duties are performed or as to the hours of work or if the amounts paid or payable to them are payable at regular daily, weekly, monthly or other intervals. This exclusion does not apply to -
 - any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
 - any labour broker;
 - any personal service company;
 - any personal service trust; or
 - a person who is not ordinarily resident in South Africa.
 - o Any pension or additional pension under the Social Assistance Act.
 - o Any disability grant or additional or supplementary allowance under the Social Assistance Act.

- o Any grant or contribution under the provisions of Section 89 of the Children's Act.
- o Amounts paid to an employee, wholly in reimbursement of expenditures actually incurred by such employee (i.e. expenses incurred on behalf of the employer on an agency basis), in the course of employment.
- o Any allowance or advance in terms of an order of divorce or decree of judicial separation or agreement of separation.

12 DETERMINATION OF THE CONTRIBUTION

- In terms of Section 6 of the UIC Act, the amount of the contribution payable -
 - by an employee, must be 1% of the remuneration paid to him / her by his / her employer; and
 - by an employer in respect of any one of its employees, must be equal to 1% of the remuneration paid to that employee.
- The employer must pay the total contribution of 2% (1% contributed by the employee and 1% contributed by the employer) within the prescribed period.
- **Threshold for determining the UI contribution** - A contribution shall not apply to so much of the remuneration paid or payable by an employer to an employee, as exceeds -
 - with effect from 1 April 2002 - R8 099 per month (R97 188 annually);
 - with effect from 1 April 2003 - R8 836 per month (R106 032 annually);
 - with effect from 1 October 2005 - R10 966 per month (R131 592 annually);
 - with effect from 1 July 2006 - R11 662 per month (R139 944 annually); and
 - with effect from 1 February 2008 - R12 478 per month (R149 736 annually).
- The remuneration in excess of the above maximum amounts (earned by the employee per month) should therefore not be included as Remuneration / Leviable Amount on the EMP 201 monthly return issued by SARS for payment purposes.
- **How to determine the UI Contribution**

Action and status		Authority
1. Total remuneration		Par. 1 of the 4 th Schedule: "Remuneration"
2. LESS: specific exclusions	<ul style="list-style-type: none"> • amount paid to an independent contractor; • reimbursive amounts paid to employees; • pensions and allowances payable in terms of - <ul style="list-style-type: none"> ▫ Children's Act, No. 33 of 1960: Section 89 ▫ Social Assistance Act, No. 13 of 2004; Sections 4, 5, 6, 9 and 10 • allowances or advances in terms of an order of divorce or decree of judicial agreement of separation. 	Par. 1 of the 4 th Schedule: "Remuneration"
3. LESS: UI exclusions	<ul style="list-style-type: none"> • amounts payable by way of any pension, superannuating allowance or retiring allowance; • annuities; • compensation for any restraint of trade; • lump sum payments from employers (gratuities); • lump sum payments from any fund; and • amounts payable by way of commission. 	Sect. 1 of the UIC Act: "Remuneration"
4. EQUALS: UIF remuneration		
5. UIF remuneration (limited to R12 478 pm) x prescribed percentage		Sect. 5 & 6 of UIC Act

13 DEDUCTION OF EMPLOYEE'S CONTRIBUTION

- In terms of Section 7 of the UIC Act, an employer must on a monthly basis deduct or withhold the amount of the employee's contribution from the remuneration paid to that employee during that month.

- Where the remuneration is paid at intervals other than on a monthly basis, the employer must deduct the employee's contributions on such other basis as coincides with the intervals of remuneration paid by the employer to the employee.
- The employer **may not** –
 - deduct amounts that are in excess of the amount of the contribution due by the employee;
 - seek or receive a fee from the employee for complying with the UIC Act; or
 - deduct arrear contributions from the employee after the end of the financial year during which it was payable.
- Where the employer fails to deduct the contribution from the employee, the employer is liable for such contribution.

14 PAYMENT OF UIF CONTRIBUTIONS

- In terms of Section 8 of the UIC Act, UI contributions deducted must be paid over to SARS within 7 days after the end of the month **in respect of which the contributions are payable**.
- It must be noted that Section 89sex of the IT Act prescribes that where the 7th day falls on a Saturday, Sunday or public holiday, payment must be made not later than the last business day prior to such day.
- In terms of Section 8(2) of the UIC Act, the employer must submit a statement in such form as the Commissioner may prescribe when making any payment. The prescribed statement (EMP 201 form) is automatically supplied to registered employers for payment purposes each month.
- Should the employer not receive the return in time for payment, he / she must attach a note to his / her payment denoting -
 - Name, postal address and contact telephone number of employer;
 - Reference number, commencing with a U;
 - Month to which the payment relates (e.g. November 2005); and
 - Amount **to be paid**.
 - **UIF Remuneration = Gross Remuneration (including remuneration of employees earning below the tax threshold) less Remuneration of "Non-Natural persons" less that portion of Remuneration exceeding the prescribed maximum. NB: The portion of an employee's remuneration that exceeds the prescribed maximum must be excluded.**
- This alternative option is not general practice and may only be used in exceptional cases.
- An EMP 201 not received in time by an employer will not be accepted as an excuse for the late payment of employees' tax.
- In terms of Section 7(4A) of the UIC Act, an employer who fails to deduct or withhold the full amount of UI contributions is personally liable for the payment of that amount.
- **Bank payments:** Electronic payments can be made directly into SARS banking accounts at First National Bank, Standard Bank, ABSA, and Nedbank or via the Internet banking facilities. More information may be obtained from the SARS website, www.sars.gov.za.
- **Payments exceeding bank limits:** Registered banking institutions have set limits on cheques, ATM transactions and electronic payments. These limits are as follows -
 - Cheque payments to SARS may not exceed R5 million. Should a cheque exceeding this amount be issued, it will be returned and penalties and interest as a result of late payment will be incurred.
 - EFT payments in excess of R5 million must be cleared with your banker.
 - E-filing transactions will not be affected by these new rules as no limits are imposed thereon.

Should your existing payment method exceed **any** of these limits, you must approach your bank in a timely manner in order to ensure electronic transfer of funds or a real time transaction if necessary.

- Payment of contribution to the UI Commissioner: In terms of Section 9 of the UIC Act, some employers must pay the UI contributions directly to the UI Commissioner and not to SARS. This only applies to employers who:-
 - is not required to register for employees' tax purposes at SARS;
 - has not registered voluntarily as an employer for employees' tax purposes at SARS; and
 - is not liable for the payment of skills development levy.
- Allocation of payments: Where any payment is not paid in full **and / or** within the prescribed period by an employer in respect of UI contributions, such payment will be allocated in the following order in terms of Section 89ter(1A) of the IT Act -
 - in respect of penalty;
 - in respect of interest, to the extent to which the payment exceeds the amount of penalty; and
 - in respect of UI contributions **and** additional penalty, to the extent to which the payment exceeds the amount of penalty and interest.
- Where there is a shortfall after the allocation of penalties and interest and the outstanding contribution has not been covered in full, interest will continue to accrue on the outstanding amount.

15 PENALTIES AND INTEREST

- In terms of Section 12 of the UIC Act interest shall be payable at the prescribed rate if any amount of UI contribution is not paid in full within the prescribed period for payment of such amount. In addition thereto, a penalty equal to 10% in terms of Section 13(1) of the UIC Act will be imposed on late payments or outstanding amounts.
- Where the employer fails to pay the relevant amount with intent to evade his / her obligation, the employer may in terms of Section 13(2) of the UIC Act be liable to pay a penalty not exceeding an amount equal to twice the amount of UI contribution which the employer so failed to pay.

16 ESTIMATED ASSESSMENT

- The Commissioner may in terms of Section 14 of the UIC Act estimate the amount of UI contribution due by the employer where the employer fails to deduct or withhold the correct amount of UI contribution or where the employer fails to pay over the UI contribution amount due.
- Any estimate of the amount of UI contribution payable by the employer is in terms of paragraph 13(3) of the 4th Schedule subject to objection and appeal.

17 REFUNDS

- In terms of Section 7(5) of the UIC Act, if it becomes known to the employer that the payment made in respect of the UI contribution was not due and payable or was in excess of the amount due or payable, the employer must refund the employee such amounts, despite the amount not having been refunded to the employer by the Commissioner or the UI Commissioner.
- In terms of Section 8(3) of the UIC Act, an amount becomes refundable by SARS **to the relevant employer**, if the amount of any contribution, interest or penalty paid by **that** employer was not due or payable or is in excess of the amount due or payable.

18 RECORD KEEPING

- In terms of Paragraph 14 of the 4th Schedule every employer must keep a record of remuneration paid and UI contributions deducted in respect of each employee. This register must contain personal particulars as well as financial details of each employee.

- Paragraph 14(4) of the 4th Schedule prescribes that these records must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.
- Records must be kept in terms of paragraph 30(1)(i) of the 4th Schedule for a period of 5 years from the date of the last entry and must be available for inspection purposes by SARS or UIF officials. Employers' declaration information on an electronic medium or electronically, must also be kept for the prescribed period.

19 DECLARATION INFORMATION

- In terms of Section 10(2) and (3) of the UIC Act, an employer must provide information as the Minister of Labour may prescribe by regulation, to the UI Commissioner. This information must be submitted before the 7th of each month.
- The fund has established an employer / worker database in which all employment details of the workers are stored. This database eliminates paper-based operations including the previous "Blue card" system and the potential for fraudulent claims as each claimant can be pre-qualified for benefits even before such claimant reports to the UIF offices.
- The UI fund has various methods available **through which** employers **can** provide such worker's employment details to the fund. This includes sending the information manually to the fund by submitting a UI-19 form. Employers who have electronic payrolls may send their information electronically in the specified format as prescribed by the UI Commissioner.
- The UI-19 form and details regarding the specified format may be obtained from the specification document on the UIF website www.uif.gov.za.
- Irrespective of where the employer is registered for payment (SARS or the UI Commissioner), the UI-19 declaration must **ONLY** be submitted to the UI Commissioner.

20 OFFENCES

- In terms of Section 17 of the UIC Act, any person commits an offence if that person -
 - fails to submit or deliver any statement or other document or thing required to be submitted or delivered by or under this Act;
 - fails to disclose any information required by or under this Act;
 - fails to reply to or answer truly and fully any question put to him / her in terms of this Act;
 - fails to attend and give evidence at any enquiry under this Act where duly required to do so; or
 - hinders or obstructs any person in carrying out his / her functions in terms of this Act.
- A person convicted of such an offence is liable on conviction to a fine or imprisonment for a period not exceeding 12 months or both a fine and such imprisonment.
- In terms of Section 75 of the Income Tax Act, the Commissioner may, notwithstanding the secrecy provisions contained in the above Act, from time to time publish for general information the particulars relating to any offence committed by any person.

21 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	GM Policy and Standards
Policy Owner:	GM Policy and Standards
Author:	M. Vrëy
Detail of change from previous revision:	Complete review
Template number and revision	POL-TM-07 - Rev 3