5.1 INDEPENDENT CONTRACTORS AND UNEMPLOYMENT INSURANCE LEGISLATION

Policy Number: 013A Finance Committee 19/11/08

Scope: The policy includes the rules and regulations of the Receiver of Revenue concerning independent contractors and legislation concerning unemployment insurance.

INDEPENDENT CONTRACTORS

In order to determine the status of a person or entity that is contracted to work as an independent contractor, it is important to distinguish between corporate entities, labour brokers and individuals. The status will determine whether employees’ tax must be deducted. This also determines whether the payment is made by the department: Financial Services or Human Resources.

Corporate Entities

The Receiver strongly discourages the utilisation of corporate entities (for instance close corporations and companies) for reducing or even avoiding employees’ tax. A tendency has developed among employers of bodies to create a corporate entity and to view themselves as independent contractors. The corporate entities invoice the employer and no employees’ tax is recovered. The Receiver has made it obligatory for the employer to recover normal employees’ tax at a rate of 33% and 40% in the case of trusts, or where applicable, according to a directive by the South African Revenue Service. Such an entity will in future, be known as a personal service provider.

The definition of a personal service provider includes:

a) any corporate entity where a connected person in relation to that entity, renders a service to the client on behalf of the corporate entity; and
b) (i) that person would be regarded as an employee of the client if the service was directly delivered by the person to the client; or
b) (ii) the services are mainly conducted on the premises of the client and the person who renders the service on behalf of the entity, is under control or supervision of the client with regard to the manner in which the duties must be conducted and the working hours that must be adhered to; or
b) (iii) where more than 80% of the entity’s income in the year during which services are rendered are or will be earned from any one client.

It is important to note that if a service is rendered to the University by a connected person in relation to an entity and the entity receives more than 80% from a client other than the University, the entity would also be treated like a non-independent contractor. When determining whether or not an entity is independent, an oath declaration must be obtained wherein the entity confirms that it does not receive more than 80% from a single client.

The definition however, excludes entities that have employed three or more fulltime employees for the year under assessment. These employees must not be connected persons to the entity.

The allowable deductions of a personal service entity are limited to certain expenses for taxation purposes. The entity does therefore not only get taxed at a higher rate, but the taxable income also increases, as certain expenses are not deductible for taxation purposes.

In an attempt to limit the University’s risk, written contracts should be in place with all independent contractors, where there is envisaged to regularly, that is daily, weekly, monthly or with other regular periods, make use of the contractor’s services.

Stellenbosch University’s normal cheque requisition is adjusted so that the department/discipline/executive head (or person that requests the cheque) ensures that the beneficiary is an independent contractor.

When such an employment company is to be paid, payment will have to be made via the Human Resources system. Where one or more members/shareholders/beneficiaries of the entity are in the service of Stellenbosch University, that entity is automatically regarded as non-independent. Such a service company will receive its remuneration at the end of the month directly in its bank. It should be
noted that personal service entities’ payment requests must be handed in at Human Resources in good time to be processed at the end of the month. This is subject to the same cut-off dates as all other remuneration requisitions.

Refer to decision-making guidelines [ADDENDUM PART II], the questionnaire to be completed in order to determine if a contractor is independent and the format of the oath declaration that the contractor has to supply in respect of the 80% rule, which is available from the Department: Financial Services.

**Labour Brokers**

If an individual or corporate entity, in terms of the contract (written or orally) provides the University with persons to conduct certain services, for remuneration and the person is remunerated by that individual or corporate entity, that individual or corporate entity will be classified as a labour broker. If the labour broker possesses an IRP30, payments to the labour broker will not be subject to employees’ tax. If the labour broker does not possess an IRP30, employees’ tax will be deducted against rates provided by SARS that is 33% for companies and close corporations, 40% for trusts and in accordance with the normal statutory tables for individuals.

Labour brokers in possession of an IRP30 are should renew it annually and provide the University with a certified copy of their latest certificate. This IRP30 certificate must be filed in the Department: Financial Services to ensure that the Stellenbosch University is not accountable for employee’s tax. Taxation will be charged against the prescribed rates until the latest IRP30 is provided to the department: Financial Services. It is thus important that the Department: Financial Services receive the latest IRP30 in time to avoid unnecessary deduction of employees' tax.

Refer to decision-making guidelines [ADDENDUM PART III], the questionnaire to be completed in order to determine if a contractor is independent and the format of the oath declaration that the contractor has to supply in respect of the 80% rule, which is available from the Department: Financial Services.

**Individuals**

Payments to the following individuals for services rendered, may qualify as salaries, with the consequence that employees tax must be recouped:

- any individual where a person that renders a service to a client:
  - is subject to the control or supervision of the client with regard to the manner in which duties must be performed and the working hours that must be adhered to; and
  - where the individual makes use of the client’s property, for example the client’s computer, office or equipment to render the service;
  - any individual that is not a SA resident

In an attempt to limit the University’s risk, written contracts should be in place with all independent contractors, where there is envisaged to regularly, that is daily, weekly, monthly or with other regular periods, make use of the contractor’s services.

The definition, however excludes the sole proprietorship that employs three or more fulltime employees for the year of assessment and where neither of them are connected persons.

If there is uncertainty, the dominant impression test must be conducted. The test is available from the Department: Financial Services.

If the individual is not independent, he/she is subject to the following taxation:

- if the individual renders a standard service the individual is taxed according to the statutory tables; or
- if the individual does not render a standard service (works less than 22 hours per week) the individual is taxed at 25%; or

- If the individual has received a directive from SARS the individual will be taxed according to that directive. The directive is only valid for the taxation year. The individual must provide the client with a new directive in good time to prevent the taxation according to statutory tables.

If such an individual must be paid, payment must be made via the Human Resources system. It should be noted that the individual’s payment request must be handed in at Human Resources in good time to be processed at the end of the month. This is subject to the same cut-off dates as all other remuneration requisitions.

**Individuals** who receive a monthly salary from Stellenbosch University and submit invoices for additional work will henceforth have this income added to their monthly salary. It will be loaded on a separate fringe benefit code and be taxed as for an annual payment.
UNEMPLOYMENT INSURANCE LEGISLATION

- As from 1 April 2002, the following legislation with regard to unemployment insurance (henceforth UIF) will be in force:

Who pays UIF?

- All persons (including students and pensioners) who work for more than 24 hours a month

Who is excluded from paying UIF?

- Employees who work for less that 40 hours a month for a specific employer
- Persons from outside the Republic who are in South Africa to do contract work, services, apprenticeships or learnerships e.g. foreigners
- All persons who, according to PAYE legislation, are independent contractors, i.e. persons or firms paid by Financial Services

On which basis is UIF calculated?

All remuneration, including the following:

- Salaries include all sundry payments to people working for more than 24 hours a month
- Fifty per cent of a travel allowance is counted towards UIF
- Leave payouts
- Overtime
- All allowances, e.g. for entertainment, inconvenience, chairperson, associate dean, non-pension bearing, cellular phone, i.e. any additional allowance that is received
- Wages, irrespective of how regularly wages are paid to specific persons, e.g. weekly, in other words, the regularity of the wages paid
- Bonuses

Which remuneration is excluded?

- Commission received
- Fifty per cent of travel allowance

How is UIF calculated?

- One per cent of the total remuneration, as set out in point 3 (excluding point 4)
- UIF is calculated to a maximum remuneration of R106 032.00 a year, i.e. R88.36 a month.
- A further 1% is contributed by the employer.

Which information is required when data is recorded for UIF purposes?

- Correct identity numbers, as the person will not be able to claim from the UIF if his/her ID number does not correspond to the monthly information that is submitted electronically to the UIF
- The number of hours of work that the person has clocked in the relevant month is extremely important in determining whether the person has to pay a UIF contribution.

Contact Division:
Remuneration

Updated: Rectors Management Team 2013/05/07