

## Variable remuneration – important principles

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In terms of section 7B of the Income Tax Act No. 58 of 1962 (“the Act”), “variable remuneration” should be deducted by an employer, and should accrue to the employee, on the date upon which such amount is paid by the employer to the employee.

“Variable remuneration” is widely defined to include, *inter alia*, overtime pay, bonus or commission as contemplated in the definition of “remuneration” of the Fourth Schedule of the Act and leave pay.

In the case of *XYZ (Pty) Ltd v Commissioner for the South African Revenue Service* (IT 24790), one of the matters the Tax Court was required to consider was whether a deduction of the leave and bonus pay liabilities of the taxpayer was precluded by section 7B of the Act. In terms of the facts of the case, the taxpayer had a high staff turnover rate and the taxpayer’s charge-out rate to its clients included a component for accrued leave and bonus liabilities towards its employees. Bonuses were paid annually at the beginning of December and leave was required to be taken during the December holiday period, but paid out to employees if employment terminated without leave being taken. As at the year-end of the taxpayer (February), the unpaid bonus determination (relating to the months of December, January and February) and accrued leave balances were reflected for accounting purposes as a liability.

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The Tax Court held that, even in the event that the unpaid bonus determination and accrued leave could be regarded as being “actually incurred” by the Taxpayer, section 7B specifically provides for the manner in which such amounts are to be subjected to tax. Accordingly, in dismissing the Taxpayer’s appeal, the Tax Court held that the accrued bonus and leave pay amounts would only be deductible once such amounts are actually paid by the Taxpayer.

It is noted that the Budget Speech of 23 February 2022 proposed that amendments be made the provisions relating to the taxation of variable remuneration to ensure the wider application of these rules – particularly to the informal sector. Such proposals are welcomed to ensure certainty in relation to the timing of tax implications – not only for the employer, but also for millions of employees who receive variable remuneration in South Africa.

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