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Submission File

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Commissioner of the Compensation Fund  
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**SAICA SUBMISSION ON THE INTERPRETATION OF THE MAXIMUM EARNINGS LIMIT  
IN THE CF-2A FORM FOR 2022 ROE**

We represent members of the South African Institute of Chartered Accountants ("SAICA") in making this submission to the Commissioner.

The submission is on the interpretation of the maximum earnings limit in the CF-2A Form for 2022 ROE and Explanation Notes in Notice 1723 of 2023 in Government Gazette Number 48337 ("2022 ROE Annual Notice").

SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the matters outlined in the following paragraphs, please do not hesitate to contact us.

Yours sincerely

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**Chairperson: SAICA Employees Tax Committee**

**Joon Chong**  
**Member: Employees Tax Committee**

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*The South African Institute of Chartered Accountants*



## Introduction

1. SAICA members have raised concerns that employers are currently being audited by the Compensation Fund ("CF") and being issued additional assessments where the maximum earnings limit is being applied retrospectively for the 2022 ROE and years before the 2022 ROE period.
2. In addition, the CF has imposed penalties and interest on these assessments issued to employers.
3. The additional assessments raised do not apply the maximum earnings limit taking into account periods of employment of less than 12 months in that year of assessment. Further, the additional assessments are being applied retrospectively to periods prior to the 2022 ROE.
4. We set out in this letter our submission that there should be a pro-rata cap of the maximum earnings limit when employees are not employed for the full year.
5. Further, we submit that there is an unfair approach in applying the maximum earnings limit retrospectively to prior years of assessment without due consultation with the public. Payroll software providers would require due notice to amend their software to calculate the maximum earnings limit for the 2022 ROE period, and years prior to that.
6. For the 2021 ROE period and years prior to 2021, we submit that there is no legal basis to interpret the maximum earnings limit set out in the Explanation Notice.

### **Proportionate reduction of maximum earnings limit is required where an individual is employed for less than 12 months of the ROE period**

7. Please see below the maximum earnings limit calculation as interpreted by the Notice published by Government.
  - We have used the maximum earnings of R529 264 for the 2022 ROE in the example below.
  - XYZ applies the proportionate maximum earnings to employees according to the months they are employed. If an employee only works for 8 months, XYZ would cap the earnings of the individual for the 8 months as  $R529\,264 \times 8 / 12 = R352\,824.66$ .
8. If the employee's cost to company for the 8 months is R500 000 for the 2022 ROE where the individual was employed for 8 months in that year, XYZ would cap the earnings for the 8 months as R352 824.66. The maximum earnings reported for each month the individual is employed is  $R352\,824.66 / 8 = R44\,103.08$  per month.
9. CF's interpretation and the Explanation Notes in the 2022 ROE Annual Notice provides that the R500 000 for the 8 months is still below the annual maximum of R529 264.

10. Therefore, the full R500 000 should be included in earnings in the ROE form, or R500 000 / 8 per month, or R62 500 reported earnings per month.
11. We submit that the CF's interpretation of the maximum earnings limit and the Explanation Note is incorrect as the annual earnings of the individual with R62 500 earnings per month would be  $R62\,500 \times 12 = R750\,000$ , which is above the "maximum of R529 624" for the full 12 months.
12. We submit that this interpretation of the maximum earnings limit is also inconsistent with the wording of the headings of the ROE forms (see below) and industry practice.
13. The Payroll Authors Group South Africa ("PAGSA") is an industry association for companies that develop, implement and support computerised payroll systems. Members of PAGSA that develop payroll systems apply the proportionate maximum earnings limit to take into account months when an employee has not been or is not employed in the ROE period.
14. PAGSA has in the most recent years of assessment engaged with CF to obtain clarity on how the maximum earnings limit should be applied, when an employee is employed for less than 12 months of the ROE period, however these engagements have been unsuccessful.
15. Sage and other PAGSA members adopted the principle that a proportionate reduction of the maximum earnings limit should apply where an individual is employed for less than 12 months. These institutions support a major portion of the employer representation included in this submission.
16. We submit that there be a proportionate reduction of the maximum earnings limit as per the wording of the ROE notices. The maximum limits in the ROE notices are for earnings received by employees for the full 12 months covered in the ROE periods.
17. We submit that even if there was uncertainty or ambiguity in the interpretation of whether there should be a proportionate reduction, the *contra fiscum* rule would apply in favour of a proportionate reduction.
18. The SCA in *Telkom SA Ltd v CSARS*<sup>1</sup> referred to the minority SCA judgement of *CSARS v Daikin Air Conditioning South Africa (Pty) Limited*<sup>2</sup> with approval on the *contra fiscum* principle:

*"... What is required when seeking to ascertain the meaning of legislation is to subject the words used to an engagement, not with speaker meaning, but with the principles and standards that are appropriate to [the] relevant law-making exercise and the subsequent exercise of legal interpretation. In the case of fiscal legislation, an appropriate standard is the contra fiscum rule which is based upon the idea that no tax*

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<sup>1</sup> [2020] ZASCA 19 (25 March 2020).

<sup>2</sup> [2018] ZASCA 66 at para 30 to 35.

can be imposed upon a subject of the State without words in legislation clearly evincing an intention to lay a burden on him or her.

...

*In the instance of the contra fiscum rule, absent unambiguous language, the rule will be decisive in favour of the taxpayer in cases of doubt. The words employed in the statute must be the primary enquiry to consider whether they admit of any doubt or ambiguity." (Our emphasis.)*

19. The SCA in the *Telkom* case further referred with approval the discussion of the *contra fiscum* rule in the SCA judgement of *NST Ferrochrome (Pty) Ltd v CIR*<sup>3</sup> as follows:

*"Where there is doubt as to the meaning of a statutory provision which imposes a burden, it is well established that the doubt is to be resolved by construing the provision in a way which is more favourable to the subject, provided of course the provision is reasonably capable of that construction . . . But, where any uncertainty in a statutory provision can be resolved by an examination of the language used in its context, there is no rule of interpretation which requires that effect be given to a construction which is found not to be the correct one merely because that construction would be less onerous on the subject." (Our emphasis.)*

20. XYZ's assessment payable to the CF is the tariff rate relevant to XYZ multiplied by the total earnings declared for the ROE period in the CF-2A form.
21. We submit that if there is uncertainty on how the maximum earnings limit should be interpreted, the interpretation in favour of the subject, being XYZ, should be adopted. The interpretation which favours proportionate reduction of the maximum earnings limit which considers the months an individual is not employed, should be adopted.
22. This interpretation also makes logical sense as the purpose of the CF is to enable employees to be compensated for occupational injuries and /or death occurring in the course of employment. The higher the risk in the employer's business, the higher the tariff rates.
23. The earnings of an employee are calculated up to a maximum amount. Where individuals are not yet or are no longer employed, the maximum earnings limit should thus be reduced as there is no need to compensate the risks of the employer's business before they are employed or after their termination of employment.

## Annual Notices

24. We refer to the annual notices issued in terms of section 6A(b) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA") where the Commissioner (or Acting Commissioner) publishes the CF-2A for the ROE and Explanation Note.

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<sup>3</sup> 2000 (3) SA 1040 (SCA) at para 17.

25. In particular, we refer to:

- Government Notice 379 of 2018, dated 27 March 2018<sup>4</sup> ("2017 ROE Annual Notice");
- Government Notice 514 of 2019, dated 29 March 2019<sup>5</sup> ("2018 ROE Annual Notice");
- Government Notice 476 of 2020, dated 24 April 2020<sup>6</sup> ("2019 ROE Annual Notice");
- General Notice 133 of 2021, dated 25 March 2021<sup>7</sup> ("2020 ROE Annual Notice");
- General Notice 994 of 2022, dated 22 April 2022<sup>8</sup> ("2021 ROE Annual Notice");
- General Notice 1723 of 2023, dated 30 March 2023<sup>9</sup>, defined above as the "2022 ROE Annual Notice".

26. In the 2022 ROE Annual Notice, the Explanation Notes inserted the following clarification on "Maximum Earnings" for the first time.

### **"Maximum Earnings"**

*A Maximum Earnings is applied annually at the end of the assessment period (28 February 2023) to the individual employee's annual total earnings, not per month. Full annual maximum earnings of R529 264.00 will apply irrespective of the number of months the employee was employed in the 2022 ROE Season.*

**Examples:** a) *If an employee has earned total annual earnings of R600 000.00 from the employer during the period as stated above, the amount should be capped at R529 264.00 and be declared as such. b) If an employee has earned total annual earnings of any amount below R529 264.00, the total annual earnings that must be declared is the total annual earnings amount as earned by the employee, regardless of whether the said employee worked for a full year or a part of the year.* (Our emphasis.)

27. We submit that the explanation above on "Maximum Earnings" does not align with the ordinary meaning of the words in the headings.

28. The 2022 ROE Annual Notice publishing the CF-2A contained the same headings as other CF-2A forms in other years.

<sup>4</sup> Notice GoN 379 of 2018 in Government Gazette No. 41529, published on 27 March 2018.

<sup>5</sup> Notice GoN 514 of 2019 in Government Gazette No. 42351, published on 29 March 2019.

<sup>6</sup> Notice GoN 476 of 2020 in Government Gazette No. 43249, published on 24 April 2020.

<sup>7</sup> Notice GeN 133 of 2021 in Government Gazette No. 44330, published on 24 March 2021.

<sup>8</sup> Notice GeN 994 of 2022 in Government Gazette No. 46270, published on 22 April 2022.

<sup>9</sup> Notice GeN 1723 of 2023 in Government Gazette No. 48337, published on 30 March 2023.



SECTION B: Declaration of Earnings				CF Registration number:99				
Actual Earnings:01/03/2022 - 28/02/2023				Provisional Earnings:01/03/2023- 28/02/2024				
Month	Number of <i>employees</i> and amount of <i>earnings</i> (staff costs/salaries & wages) per month paid to all employees (excluding directors of a Company or members of a close corporation) up to a <b>maximum</b> of R 529 264 per person for the above period.		Number of <i>directors/members</i> and amount of <i>earnings</i> (staff costs/salaries & wages) per month paid to directors of a Company or members of a Close Corporation up to a <b>maximum</b> of R 529 264 per person for the above period.	Number of <i>employees</i> and amount of <i>earnings</i> (staff costs/salaries & wages) per month expected to be paid to all employees (excluding directors of a Company or members of a close corporation) up to a <b>maximum</b> of R 563 520 per person for the above period.		Number of <i>directors/members</i> and amount of <i>earnings</i> (staff costs/salaries & wages) per month expected to be paid to directors of a Company or members of a Close Corporation up to a <b>maximum</b> of R 563 520 per person for the above period.		
	Number of <i>employees</i>	<i>Earnings</i> - (Rands only)	Number	<i>Earnings</i> - (Rands only)	Number of <i>employees</i>	<i>Earnings</i> - (Rands only)	Number of <i>employees</i>	<i>Earnings</i> - (Rands only)

29. Notably, the "**maximum of R529 264**" is "per person for the above period", in other words, for the period from 1 March 2022 to 28 February 2023.
30. The same for the "**maximum of R563 520**" which is also "per person for the above period", in other words, for the period from 1 March 2023 to 28 February 2024.
31. We submit that the ordinary meaning of the heading provides for a maximum limit which should be reduced proportionately where an employee works less than the full 12-month period in the ROE year.
32. The 2017 ROE Annual Notice refers to W. As. 8 form with the declaration of "*I, the undersigned confirm that the number of employees and their earnings (staff costs/salaries & wages) for the 12 months ending 28/02/2018 are as follows.*" (Our emphasis.)
33. Part 2 of the 2017 ROE Annual Notice actual earnings contains the heading of "maximum of R403 500 per person for the above period", being 1 March 2017 to 28 February 2018.
34. The same with the "Provisional Earnings: 01/03/2018 = 28 / 02 / 2019."
35. There were no other clarifications on "Maximum Earnings" in the 2017 ROE.
36. The 2018 ROE Annual Notice contains the same declaration and headings that was in the 2017 ROE Annual Notice, and the same wording of actual earnings and provisional earnings. The only difference is the maximum amount per person for the relevant year of assessment. There were no other clarifications on "Maximum Earnings".
37. The 2019 ROE Annual Notice contains the same headings in the 2017 Annual Notice, but no declarations. The maximum earnings would be "**maximum of R458 520** per person for the above period", which is 1 March 2020 to February 2023. There were no other clarifications on "Maximum Earnings" in this notice.

38. The 2020 ROE Annual Notice contains the same headings with the maximum earnings limit of R484 200. There were no other clarifications on "Maximum Earnings" in this notice.
39. The 2021 ROE Annual Notice contains the same headings with the maximum earnings limit of R506 473. There were no other clarifications on "Maximum Earnings" in this notice. The notice issued by the Director General of Employment and Labour ("DG") provides for a "Maximum Earnings on Actual Earning" of R506 473 (1 March 2022 to 28 February 2022), and a "Maximum Earnings on Provisional Assessment" of R529 264 (1 March 2022 to 28 February 2023).
40. When read with the heading of "per person for the above period", the logical conclusion is that the maximum earnings limit should be proportionately reduced for the months when an employee is not employed.
41. Section 83 of COIDA further provides that:
- (1) Subject to the provisions of this section, an employer shall be assessed or provisionally assessed by the Director-General according to a tariff of assessment calculated on the basis of such percentage of the annual earnings of his, her or its employees as the Director-General with due regard to the requirements of the compensation fund for the year of assessment may deem necessary.*
- (8) The Minister may, on recommendation of the Director-General and after consultation with the Board, prescribe by notice in the Gazette a maximum amount of earnings on which an assessment of an employer shall be calculated by the Director-General."* (Our emphasis.)
42. We submit that the maximum amount of earnings contemplated in section 83(8) should be read in conjunction with "annual earnings" in section 83(1). The determination of "annual earnings" in section 83(8) can only be with reference to the "annual earnings" in section 83(1). Where an employee does not work for the full 12 months, the maximum earnings limit should be proportionately reduced accordingly.

## Conclusion

43. The 2022 ROE Annual Notice is the first year where an Explanation Note stating that the "Maximum Earnings" should apply regardless of whether an individual worked for a full year or part of the year.
44. None of the 2017, 2018, 2019, 2020 and 2021 ROE Annual Notices contain any Explanation Notes.
45. At best, the Explanation Notes should only apply from the 2022 ROE period onwards to give the opportunity for members of PAGSA to update their payroll systems used by employers with the new method of calculation.



46. Even then, we submit that the interpretation of the "Maximum Earnings" limit in the Explanation Notes does not align with the ordinary meaning of the headings and section 83 of COIDA, and industry practices.
47. The maximum earnings limit should be reduced proportionately to take into account months in the ROE period when an employee is no longer employed or not yet employed.
48. Should the CF intend to adopt a different interpretation, clear wording should be implemented prospectively and communicated to all employers and PAGSA.