



Tax Alert - Public Notice on Implementation of the Social Health Insurance Act, No. 16 of 2023



Now, for tomorrow

Implementation of the Social Health Insurance Act, No. 16 of 2023

Background

The Social Health Insurance Act, No. 16 of 2023 ("SHIA", "the Act") was assented to on the 19th of October 2023. The Act established the Social Health Authority ("SHA"); the Primary Healthcare Fund ("PHF"); the Social Health Insurance Fund ("SHIF") and the Emergency, Chronic and Critical Illness Fund ("ECCIF"). Subsequently the cabinet secretary (CS) for Health published the gazette for the Social Health Insurance Regulations on 8 March 2024. The regulations required all residents in Kenya except for non-Kenyans staying for less than 12 months in Kenya to register before 30 June 2024. Remittance of contributions was expected to commence on 1 July 2024, however, this was halted following a court order.

Petition at the High Court

On 12 July 2024, the High Court declared the Primary Health Care Act No.13 of 2023, the Digital Health Act No.15 of 2023 and the Social Health Insurance Act No. 16 of 2023 unconstitutional due to lack of public participation in their enactment. However, the High court gave parliament 120 days to redeem itself by allowing Parliament to undertake sensitization, public participation, and amendment of the unconstitutional provisions.

Court of Appeal Stay Ruling and Judgment

The CS for Health lodged an appeal before the Court of Appeal (CoA). On 20th September 2024, the CoA granted a stay of Judgement of the High Court and allowed the Government to continue implementing the three Acts pending the hearing and determination of the appeal.

Registration and effective date

The amendment to the social health insurance regulations declared 1st October 2024 as the effective date of transition to SHIF from the repealed National Health Insurance Fund ("NHIF"). Further, through a public notice the Ministry of Health emphasized that the last admission date under NHIF would be 30th September 2024. The notice also clarified that payments received on or before 9 October 2024 would be credited to NHIF while the subsequent payments would be remitted to SHA.

As per the public notice, the employer shall register with the Authority on the SHA portal. Consequently, under the Employer's Portal, the employer shall register the employees and their dependants, make contributions, generate reports and update employee information. This seems to shift the registration responsibility for employees to employers.

Contributions to SHIF

Salaried households will contribute 2.75% of their gross salary with a minimum contribution of 300 per month and the deduction shall be paid to the SHIF by the ninth day of each month.

Households whose income is not derived from salaried employment shall pay an annual contribution at the rate of 2.75% of their household income as determined by the means testing instrument. This amount shall not be less than 300 per month. The ministry is yet to issue guidelines on how to compute the amount for the non-salaried persons.

Tax Implications

Contributions will qualify for an insurance relief of 15% of the amounts deducted with a maximum limit of Kes 5,000 per month

Offenses and penalties

Failure to pay any contribution in respect of any period on or before the date on which payment is due (i.e. 9th for employers) shall attract a penalty of 2% of the amount due for contribution for the period in which the contribution remains unpaid.

Failure by the employer to pay contributions to the fund as a contributing employer or the employer makes unauthorized deductions from employees shall be liable to fine not exceeding Kes 2 million or to imprisonment for a term not exceeding 3 years, or both.

Next steps

Pending the hearing and determination of the appeal before the Court of appeal, the three Acts shall be implemented effective 1 October 2024. All Kenyan citizens, foreigners who are resident in Kenya and employers are required to register with SHA.

Conclusion

We will keep monitoring the situation and keep you updated on any development on this issue and any other tax changes that would have an impact on your business operations.

Get in touch.

Should you require more information or wish to discuss this further, please do not hesitate to reach out to any of our contacts at Bakertilly or kindly contact the team below:

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