	TAX OPINION	Unique Identifier	240-84706341
		Revision	V.1
		Revision Date	July 2019
		Group Tax Department	

ISSUED BY: Group Tax Department

ATTENTION: Procurement Practitioners

APPLICABLE: Eskom Holdings SOC Ltd and Eskom subsidiaries (“Eskom”)

SUBJECT: Employees Tax (“PAYE”) implications for service providers

DATE: 10 September 2018

1. Introduction

The Fourth Schedule to the Income Tax Act No. 58 of 1962 (“the Act”) places the onus on Eskom to determine whether a payment to a service or labour provider is subjected to PAYE.


It is, therefore, mandatory that all contractors that supplies Eskom with a service or labour must complete and submit the Supplier Evaluation Pack (“the Pack”) attached on Appendix A.

Companies, Close Corporations and Trusts:

- A company, CC or trust classified as a Personal Service Provider is an employee for the purposes of the Act. PAYE must, therefore, be withheld or deducted from any fees paid to the company, CC or Trust.
- PAYE to be withheld on:
 - A Company or CC - 28%
 - Trust - 45%

Individuals:

- An individual classified as a Dependent contractor or a Labour Broker is an employee for purposes of the Act. PAYE must therefore be withheld or deducted from any fees paid to the individual.

	TAX OPINION	Unique Identifier	240-84706341
		Revision	V.1
		Revision Date	July 2019
		Group Tax Department	

- PAYE to be withheld on labour brokers is subject to employees' tax at the rate applicable to individuals.

All completed questionnaires and supporting documents i.e. declarations, affidavits, IRP30 tax certificates are to be filed systematically and must be readily available for at least 5 years.

2. Possible risks


The risk of failure to comply with legislation includes the following:

- Eskom may be responsible for the PAYE under deducted from payments made to the service provider.
- SARS may levy additional taxes, penalties and interest on underpayment and / or late payment of PAYE;
- Possible PFMA implications;
- Reputation risk to Eskom.

3. Roles and responsibilities

3.1 Procurement Practitioners

- Procurement Practitioners must ensure the Evaluation Pack for Service Providers (see Appendix A) is issued with all enquiries for the procurement of services and/or labour and is submitted by the tenderer as a returnable before a contract is awarded. This is to ensure the service provider's tax status is determined for PAYE purposes.
- If the returned copies of the Pack by the tenderer are incomplete, a contract may not be awarded to that tenderer until the Pack is properly completed, e.g. affidavits are not signed and stamped by the Commissioner of Oath.
- If the evaluation results conclude that a tenderer is a Personal Service Provider, Vendor Management must be informed to activate the tax indicator on the SAPFI system. Completed copies of the Pack (as received from the tenderer) i.e. signed

	TAX OPINION	Unique Identifier	240-84706341
		Revision	V.1
		Revision Date	July 2019
		Group Tax Department	

summary sheets and signed affidavits must be attached on communication to Vendor Management (email address: vendormdm@eskom.co.za).


- If the tenderer is an individual and the evaluation results conclude that the tenderer is a Labour Broker and does not have a valid IRP30 certificate, or a tenderer is a Dependent Contractor, Shared Services Unit must be informed to upload the tenderer on the SAPHR payroll system. Completed copies of the Pack (as received from the tenderer) i.e. signed summary sheets and signed affidavits must be attached on communication to Shared Services Unit.
- Group Tax (email address: GroupTaxation@eskom.co.za) must be copied on all communication to Vendor Management or Shared Services Unit.

3.2 Group Tax Department

- Group Tax is responsible for ensuring the Pack is tax compliant and is readily available to all.
- Provide assistance to Procurement Practitioners should they have doubts about the tax status of the tenderer as and when requested.
- Conduct reviews to determine compliance or delegate this to another functionary (e.g. Assurance and Forensic department).

4. Conclusion


Paragraph 30(1)(a) of the Fourth Schedule to the Act provides that “any person who wilfully and without just cause makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees’ tax or to pay such amount to the Commissioner as and when required by paragraph 2 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.”

	TAX OPINION	Unique Identifier	240-84706341
		Revision	V.1
		Revision Date	July 2019
		Group Tax Department	

It is a criminal offence to be non-compliant to the Income Tax Act and one can be convicted to a fine or sentenced to jail if one does not withhold PAYE on the payment made to Personal Service Providers or Labour brokers. It is therefore imperative to ensure tax compliance to the Income Tax Act.

Should the Procurement Practitioner have any questions pertaining to the returned Pack by the tenderer; the Procurement Practitioner may contact the following persons for assistance:

- Bulelwa Mabuya on 011 800 5499 or MabuyaB@eskom.co.za
- Ansie Smit on 011 800 6861 or SmitAn@eskom.co.za

	TAX OPINION	Unique Identifier	240-84706341
		Revision	V.1
		Revision Date	July 2019
		Group Tax Department	

APPENDIX A

1. WHO MUST COMPLETE THE SUPPLIER EVALUATION PACK

The pack must be completed by all tenderers who render services and labour to the Eskom Group of Companies.

2. WHAT DOES THE TENDERER DO WHEN HE RECEIVES THE PACK

Electronic completion of the Pack (preferred way to complete the Pack):

- Click on “Enable content”;
- Click on “Continue” to allow the tool to guide the tenderer through the questions;
- Click “Print’ to allow the tool to print documentation to be returned to Eskom as a returnable, i.e.:
 - The summary sheet and
 - Applicable declarations and affidavits.

NB: The tenderer must not copy and paste information into any of the fields.



Supplier Evaluation
Pack 2018_2019-Sep

The End