In June 2020, governments around the world were centrally concerned with two issues: (1) what precautions to take to stem the ever-rising tide of COVID-19 cases and (2) how to keep national economies from falling apart due to the economic effects of the pandemic. A primary question for many countries became whether they could effectuate COVID-19 containment protocols without hurting their economies.

A number of governments attempted to find the right policy balance by implementing and funding programs to subsidize struggling employers and employees alike—just enough support to get through whatever rough times were to come (a house on stilts, if you will). Now, a year later, some governments are beginning to ask employers to give an accounting of how they used the government funds.
South Africa provides one such example. As vaccines became available, offering the possibility of relief, the Department of Employment and Labour for the Republic of South Africa began hiring auditors to examine whether employers that received funds under a COVID-19 temporary relief directive had complied with the terms of their agreements. Nearly one million employers may be subject to audit.

The COVID-19 Temporary Employer/Employee Relief Scheme

On March 15, 2020, the South African government declared the COVID-19 pandemic a natural disaster. As part of this declaration, government ministers were empowered to issue directives regarding related issues under their purview. On March 23, 2020, the government announced a national lockdown due to the COVID-19 pandemic. Shortly thereafter, on March 25, 2020, the minister of employment and labour announced the COVID-19 Temporary Employer/Employee Relief Scheme (TERS).

Taken as a whole, the TERS is best seen as an emergency unemployment program. The South African government (struggling with the primary question noted above) recognized that, due to the COVID-19 lockdown, employers would need to shut down physical operations. This, in turn, would cause many employees to go without income. While some employers would be able to temporarily keep paying their employees, not all would be able to do so, and this could drastically hurt the economy.

The TERS benefit was meant to address these concerns. It applied to all employers that were registered with the unemployment system, and

- because of COVID-19, closed their operations for three months or a lesser period; and

- suffered financial distress.

Once these employers completed the TERS application process and received approval from South Africa’s Unemployment Insurance Fund (UIF), they received unemployment benefits (calculated on a sliding scale) for each of their employees. The benefits were supposed to be paid out to the employees.

Under the TERS guidelines, participating employers were required to pay out the remaining percentage up to an employee’s regular salary. The employers were also eligible to obtain reimbursement for any such payments that they made to employees prior to receiving the TERS benefits. The TERS directive also included an illness benefit for employees who had to be quarantined or isolated due to COVID-19.

The South African government amended the TERS in various ways, most notably by making the benefits available only to industries shut down at various times during the pandemic, and ultimately extended the program to cover the period from March 25, 2020, to March 15, 2021.

South Africa’s employers and employees made wide use of the scheme. As of March 31, 2021, approximately 267,000 employers and 5.4 million individual employees had benefited from TERS funds, totaling approximately R59 billion in payouts.
Because of the high level of engagement with the program and the significant sums disbursed as TERS payments, the South African government became increasingly concerned about the potential for waste and fraud in the program.

**UIF Audits**

On November 27, 2020, the UIF announced that it would begin auditing employers through a number of forensic auditing firms. The UIF has not yet set a specific deadline for the completion of auditing. Minister of Employment and Labour T. W. Nxesi, MP, announced that, as of the end of March 2021, 1,052 employers had been audited for their participation in the TERS, with payments to 1.3 million workers verified. Of those audited employers, the UIF auditors traced R228 million in TERS funds that had been fraudulently claimed. The UIF has recommended at least 121 employers for trial in criminal and civil proceedings related to the alleged fraud.

The right of the UIF to perform audits is contained in the “UIF Auditing Powers” clause within the memorandum of agreement that eligible employers had to sign to participate in the TERS. The memorandum also authorizes fines and legal action for fraudulent activity.

The UIF has announced the minimum required documentation that audited employers will need to provide to auditing firms. These include the following:

- The UIF COVID-19 TERS application pack
- All documents and information provided to the UIF at the time of application for each lockdown period
- Bank statements relating to COVID-19 TERS applications
- Each employee’s human resources file
- Payroll reports for the covered time
- Proof of payment to employees
- Proof of any refunds to the UIF

It is important to note that these will be the *minimum* required documents. The UIF reserves the right to request additional documents. Employers may want to retain all documents related to the TERS program, including all documents related to employees participating in the TERS program, to be able to respond to any additional requests.

**Conclusion**

South Africa’s audits of employers’ use of government subsidies during the COVID-19 pandemic may be alarming for many businesses. During the height of the COVID-19 pandemic, there was much upheaval and displacement in the workforce that caused a myriad of problems for employers from a human resources, payroll, and systems management perspective. As South Africa shows, the potential for financial audits is
real as governments begin to rebound from COVID-19, subsidies programs end, and
workers return to the workplace. In anticipation of audits, employers may want to
preserve all subsidy-related documentation and comply with requests from auditors
in a timely manner to demonstrate cooperation and transparency.


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