

RENDER UNTO CAESAR



The payment of a tithe effectively by means of a salary sacrifice

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A scheme that I have been requested to comment on in the past is one which involves the payment of a tithe effectively by means of a salary sacrifice. Typically, this scheme occurs in the case of someone employed by a ministry and would work as follows:

The individual is employed at a given basic salary but in terms of a private arrangement with his employer (the ministry) he agrees to be paid a basic salary which excludes the amount that he would have paid as a tithe. In other words, the tithe amount is deducted from his basic salary and he is simply paid the net amount. In this way, the tithe is effectively paid as a “salary sacrifice”. Presumably, the prime motivation for this scheme is that monthly “pay-as-you-earn” tax is calculated on the salary net of the tithe and not the larger basic salary, which was the original salary to which the individual agreed when he was employed.

For example, the individual is employed at a basic salary of R 15 000 per month. He would normally tithe R 1 500 per month (10%) on this salary. He and the employer agree that he will be paid a salary of R 13 500 (R 15 000 less R 1 500). As only R 13 500 is processed through the payroll system, tax is calculated on R 13 500 and not R 15 000. At current tax rates, this would represent a saving to the employee of R 450 per month. The employer (ministry) is happy because they would have paid him R 15 000 as a salary and received R 1 500 back as a tithe. The net cash outflow is R 13 500. Therefore, paying a salary of R 13 500 places the ministry in the same net cash outflow position. So, what is wrong with this scheme?

Based on the above facts, this scheme contains elements of flagrant disregard for the provisions of the Income Tax Act. I believe that it is dangerous and ill advised. Firstly, without elaborating on the specifics of the prevailing income

tax legislation, if a basic salary of R 15 000 was agreed, this is the amount subject to monthly tax, particularly if an employment contract was signed at this salary. Variations to a contracted basic salary must be capable of being clearly substantiated. In addition, both the employee and employer may experience considerable embarrassment and difficulty explaining to the South African Revenue Services how it is possible for a salary to decrease!

Secondly, a salary sacrifice such as this is most likely subject to tax as a fringe benefit under the Seventh Schedule to the Income Tax Act. For example, it could be construed as a financial obligation of the employee that has been paid by the employer or the employee could be considered being released from an obligation to the employer. Alternatively, the amount could be subject to tax under the general tax avoidance legislation in the Income Tax Act. Salary structuring requires experienced professional input. The complexities of prevailing tax law have made this a prudent decision.

Thirdly, the act of disclosing R 13 500 on the monthly payslip as opposed to R 15 000 arguably involves a large element of dishonesty. There is potentially an element of fraud in this action.

Fourthly, Unemployment insurance premiums are paid on R 13 500 and not the R 15 000 originally contracted for on employment.

As a matter of principle spiritually, the scheme presents serious concerns. Besides the elements of dishonesty, a tithe is a step of faith and the action of paying the tithe is eliminated in this scheme. If it is suggested by the parties that the actual salary agreed to is R 13 500, then where is the tithe? Tithes, after all, are paid on the gross.

I would advise that anyone involved in such a scheme should obtain independent professional advice as to the merits and the integrity of the structure as well as experienced counsel as to its correctness spiritually.