Media Release

Tax consequences of foreign employment income

Johannesburg, 26 February 2020 – The exemption of foreign employment income tax earned by South African residents, coming into effect on 1 March 2020, will change. It is not expected that the Minister of Finance, Mr Tito Mboweni, will delay its implementation, writes Piet Nel, SAICA Project Director: Tax.

The purpose of the exemption, which was introduced in 2000, was to provide relief from any possible double tax that may arise where both the Republic of South Africa (RSA) and the foreign country taxed the same income derived from employment. It did so by providing a full exemption for qualifying foreign sourced remuneration.

In the 2017 budget speech the Minister of Finance indicated that this exemption resulted in foreign employment income benefiting from double non-taxation. It was then proposed that this exemption be adjusted so that foreign employment income will only be exempt from tax if it is subject to tax in the foreign country. The actual amendment to the legislation didn't limit the exemption to foreign employment income not subject to tax in the foreign jurisdiction. With effect 1 March 2020, where the individual meets the requirements to qualify for it, the exemption for the year of assessment will be limited to one million Rand.

Who are caught by this?

It is important to remember that this exemption only applies to amounts received in respect of services rendered outside the RSA by that employee for or on behalf of any employer. It is not available in respect of income derived by an individual as an independent contractor.

The next requirement is that the employee must be a resident of the RSA, for tax purposes. Many individuals who may or may not be caught by these provisions, have been advised to formally emigrate from South Africa. If the individual emigrated from South Africa, South Africa will have lost the right to tax the foreign-sourced income of the individual concerned. For these individuals the change in the South African tax law is then irrelevant.

Many individuals actually ceased being residents of the RSA, for tax purposes only, in previous years. A person will have ceased being a resident of the RSA if they were deemed, in terms of any agreement entered into between the governments

of the RSA and another country for the avoidance of double taxation, to be exclusively a resident of that other country. For these individuals the change in the South African tax law is then also irrelevant – South Africa has given away its right to tax the employment and other foreign-sourced income.

Another requirement is that the individual must have been physically absent from the RSA and worked outside the RSA. It is required that employee was outside the RSA:

- for a period or periods exceeding 183 full days in aggregate during any period of 12 months; and
- for a continuous period exceeding 60 full days during that period of 12 months.

The period of 12 months is not a year of assessment, but any period of 12 months starting or ending during the year of assessment.

Now if the person didn't cease being a resident, either by formally emigrating from the RSA, or being deemed to be a tax resident of another country, they will be caught by the amendment to the exemption. For these individuals the implications are the following:

- They will, with effect 1 March 2020, no longer qualify for a full exemption of the remuneration earned as an employee outside South Africa. Only the first R1 million will qualify for the exemption.
- The individual will then, unless the foreign country doesn't impose a tax on remuneration, suffer a double tax to the extent that the remuneration exceeds R1 million.
- If the individual is employed by a South African resident employer, registered as such with SARS, the employer will have to withhold employees' tax from March 2020 onwards.
- If not, the individual will be required to pay provisional tax, the first provisional tax payment is then due on 31 August 2020.

Some of the practical implications:

- Some benefits, which may be exempt from tax in the foreign jurisdiction, may not qualify for an exemption in the RSA. Examples of such benefits include free accommodation provided by the employer, security and travel services.
- It is also not clear how allowances, such as a travel allowances, should be treated. Whilst SARS updated its practice generally prevailing in this respect, these issues are not clarified in that.

- The next one relates to getting credit for the foreign tax to provide relief where a double tax arises. The Income Tax Act allows for foreign tax credits to be granted where the same amount was subject to tax, or partially so, in the RSA and in another country, but only on assessment.

- The law, relevant to employees' tax (PAYE), doesn't allow for it to be taken in account by the employer on a monthly basis. SARS indicated that an employer "may at his or her discretion, under paragraph 10 of the Fourth Schedule, apply for a directive from SARS to vary the basis on which employees' tax is withheld monthly in the Republic." They then state that the "potential foreign tax credit is taken into account to determine the employees' tax that has to be withheld for payroll purposes."

It is in the interest of individuals, and their employers who are affected by this, to take care in implementing this amendment during March 2020.

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