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IN PRACTICE

What does the change to expatriate tax mean?

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Following the announcement by the Treasury that with effect from March 1 2020 the foreign earnings tax exemption will be amended, SA expats all over the world are concerned that they may have to pay tax in SA and are putting in calls to anybody they know who has some tax expertise to test whether this is the case.

RESIDENT TAXPAYERS

The first important point to note is that the amendment only affects SA resident taxpayers. For anyone who no longer qualifies as a resident of SA for tax purposes, there will be no change in their tax status. These individuals will continue only paying tax on their SA-sourced income.

The tax resident test is essentially a two-pronged test that looks first at the concept of ordinary residence, ie in the rather quaint language of our tax courts, the place to where a person returns after their wanderings.

If a person considers SA to be their home and the place to which they will return, then they will qualify as a resident of SA. Many individuals are concerned that if they have not emigrated formally for exchange control purposes, this affects their tax residence status. But formal emigration is only one of many relevant factors to be considered.

Second, there is a time-based test. This essentially tests how much time a person has spent in SA over a six-year period.

Provided a person does not fall into either the time-based test or the ordinary residence test, they will not qualify as a resident of SA for tax purposes and the expatriate tax amendment will not apply to them.

In terms of current law, provided a person receives amounts as an employee in respect of services rendered outside SA and is outside SA for more than 183 days (including a continuous period exceeding 60 days) during any 12-month period, this person qualifies for exemption from SA tax on their foreign earnings.

WITHHOLD PAYE

However, in terms of the amendment, the exempt amount will now be limited to R1m in respect of each year of assessment. SA employers will then become liable to withhold PAYE.

The tax incentive for SA resident employees to render services outside of SA for the periods set out above has been significantly reduced. It is now up to employer companies to decide whether they will gross up their employees for tax to continue this incentive.

Employees also need to consider their foreign tax obligations. If the foreign country in which they provide the relevant services imposes tax on this remuneration, then they will obtain a tax credit for such tax against their SA tax liability. Practical issues may arise in claiming the foreign tax credit.

A TIME-BASED TEST ESSENTIALLY TESTS HOW MUCH TIME A PERSON HAS SPENT IN SA OVER A SIX-YEAR PERIOD

SHORT PERIODS

However, foreign jurisdictions generally do not impose significant levels of tax on individuals who render services in their jurisdiction for relatively short periods of time.

So, with effect from March 1, the foreign earnings exemption will be severely curtailed. However, this only affects SA tax residents who earn foreign-sourced income as outlined above.

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