South African nationals working abroad: imminent changes to the "foreign earned income" exemption

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In brief

There has been, and still is, considerable concern among South African nationals working abroad relating to the impact of legislated changes to the exemption available to them in respect of remuneration earned by them while working abroad.

Essentially, the current exemption is uncapped (i.e. all remuneration earned from services rendered abroad is exempt). With effect from years of assessment commencing on 1 March 2020, only the first R1 million of such remuneration will be exempt.

In detail

During the 2017 legislative cycle, National Treasury indicated its intention to withdraw the exemption available to South African resident individuals who earn remuneration for services while working abroad. Following this announcement, there was extensive consultation with the public on the issue, and PwC (together with a large number of taxpayers and representative bodies) made detailed representations to the National Treasury as part of this process.

The outcome of the consultation process was a revised proposal that the exemption, contained in section 10(1)*(o)*(ii) of the Income Tax Act, 1962 (Act No. 58 of 1962), not be withdrawn, but instead be retained in a "watered down" form.

Currently (as well as under the revised proposal), in order to qualify for the exemption (which applies only to the remuneration itself, and not to other forms of income such as interest or rentals), the individual must be working outside South Africa for more than a total of 183 days in a 12-month period, and more than 60 of those days must be consecutive. The amount of foreign earnings that qualifies for exemption is currently not capped.

Under the new rules, only the first R1 million of foreign earnings will be exempt. Obviously, this will result in many South African resident individuals becoming taxable on remuneration that was previously exempt.

Furthermore, the changes will result in additional compliance and documentation requirements. Under the existing rules, the usual disclosure obligations in relation to exempt remuneration apply, and taxpayers entitled to the exemption are often required to provide proof to the South African Revenue Services ("SARS") that they have met the requirements of the exemption. Once the new rules come into effect, affected taxpayers will certainly be required to provide additional documentation to SARS to support claims for tax credits in respect of remuneration that is now taxable both in South Africa and in the relevant foreign country.

The new rules have, not surprisingly, given rise to concern among South African-resident individuals working abroad. Many are assessing their options regarding their tax residence

status, and are seeking to break any tax link they may have with South Africa. Thus, for example, there has been a large increase in individuals seeking financial emigration from South Africa (i.e. emigration for purposes of South African exchange control), despite the fact that whether or not one has financially emigrated is not, of itself, determinative of one's status as a South African tax resident.

It must be noted that the change only impacts individuals who are, in fact, South African tax residents. Many South African nationals working abroad are already (whether they are aware of this or not) non-resident from a tax perspective (based on their particular personal circumstances).

The take-away

The net tax impact of the changes to section 10(1)*(o)*(ii) for a particular individual is dependent on earnings and foreign taxes paid, and would need to be examined on a case-by-case basis based on the particular circumstances of the individual.

South African nationals working abroad would be well-advised to obtain professional advice on the determination of their South African tax residence status. This will enable appropriate planning, the quantification of any impact that the new rules may have on tax liability, as well as a review of previous disclosures made to SARS so that the implications of any incorrect disclosures may be addressed.

Proactive steps in this regard can also assist individuals in avoiding unnecessary (and often costly) steps they might be contemplating in order to break their South African tax residence when they might, in fact, already have ceased to be South African tax resident.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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