GMS Flash Alert

2017-037 | February 24, 2017

South Africa - Rules on Tax-Free Status of Relocation Allowances Change

Employers have only until the end of the South African fiscal year (28 February 2017) to take corrective steps in respect of payroll where payments of relocation allowances to employees are concerned. This is due to a change in South Africa's legislation which has resulted in the payment of any up-front allowance becoming taxable.

Historically, the South African Revenue Service ("SARS") has allowed employers to pay a tax-free relocation allowance of up to one month's basic salary to cover settling-in costs, without the employee having to prove any actual expenditure. From 1 March 2016, the SARS Commissioner's discretion to allow certain costs to be tax exempt has been removed from the legislation.

WHY THIS MATTERS

From 1 March 2016, relocation allowances *without* proof of corresponding expenditure are no longer tax exempt. In order for an exemption to apply, **employees will need to provide proof of actual relocation expenditure and the employer will need to reimburse the employee for such expenditure**.

Employers should bear the new rules in mind when providing relocation assistance and clearly communicate any changes in policies (i.e., a reminder to employees to keep receipts and properly document relocation-related expenditures) to their mobile work-force. Employers may need to consider corrective steps in respect of payroll prior to the end of the tax year **(28 February 2017)** where they have paid relocation allowances which have not been taxed through the payroll.

Relocation Allowances No Longer Automatically Exempt

The discretion of the SARS Commissioner to allow certain costs related to the relocation of an employee to be exempt from tax was effectively removed by *The Taxation Laws Amendment Act, No. 25 of 2015* provision amending paragraph (ii) of section 10(1)(nB) of the *Income Tax Act, No. 58 of 1962*. Historically, this discretion was exercised to allow employers to pay a tax-free allowance of up to one month's basic salary to cover settling-in costs without the employee having to prove any actual expenditure (as published in the SARS *Guide for Employers in Respect of Employees' Tax*)[1]. The result was that administration and record-keeping related to the payroll tax treatment relocation costs was eased substantially for SARS and the taxpayers.

Background

At the time that the *Taxations Laws Amendment Bill 2015* was published, submissions were made requesting that if the Commissioner's discretion were to be removed, the historic practice of permitting employers to pay a tax-free relocation allowance should be included in the legislation. The draft Response Document from National Treasury and SARS to the Standing Committee on Finance noted the submission and stated that the Commissioner's discretion would be reinstated. However, the final Response Document noted that the submission would "be considered as a matter of interpretative guidance." It is uncertain if the intention was that guidance would be provided on the interpretation of "settling-in costs" or that paragraph (ii) would be subject to interpretation on a case-by-case basis.

KPMG NOTE

As a result of the above, the full impact of the amendment was not foreseen. One of the reasons why the change may have fallen under the radar is that the initial SARS *Guide for Employers in Respect of Employees' Tax* for the 2017 tax year (issued in February 2016)[2], still made reference to the tax-free relocation allowance.

A new version of the guide was issued around August 2016 and it was noted that all reference to the Commissioner's discretion and the tax-free relocation allowance had been removed from this version.[3] In the absence of any notification or indication that the guide had been revised (in fact, both versions of the guide are stated to be "Revision 12") the removal of the tax-free relocation allowance was largely over-looked.

Representatives of the KPMG International member firm in South Africa have sought guidance from SARS's Legal and Policy division and have been informed that in SARS' view, the Commissioner's discretion has been removed and only actual costs incurred will be eligible for the exemption from 1 March 2016. Furthermore, it was confirmed that only a **reimbursement of allowable costs** would qualify and any up-front allowance would be taxable in full.

This means that employees will need to provide proof of the settling-in expenditure(s) incurred by them prior to being reimbursed by their employers.

To the extent that employers have paid relocation allowances which have not been taxed through the payroll, we recommend that this be corrected prior to the end of the tax year to mitigate the risk of penalties and interest on the late payment of employees' tax.

FOOTNOTES:

1 See an electronic version of PAYE-GEN-01-G10.

2 See an electronic version of PAYE-GEN-01-G11. (*Please note this is accessible on a non-governmental, third-party website.*)

3 See an electronic version of PAYE-GEN-01-G03 "External Guide: Guide for Employers in Respect of Allowances (2018 Tax Year)."

* * * *

Wednesday, 8 March 2017 -- The 183-Day Myth When Working in Australian Waters: a Webinar

Time (Perth, Australia): 8:00 am (GMT +8) and 5:00 pm (GMT +8)

KPMG invites you to join us for this live Webinar during which we will discuss the considerable recent Australian Tax Office and media scrutiny on some employer arrangements in connection with services performed in Australian waters. Recent attention has focused on the '183-day rule myth', that is pervasive within expatriate and commercial circles. Under this myth, it is assumed that the Dependent Personal Services (DPS) Articles in Australia's double taxation agreements (DTAs) will provide an exemption from Australian tax in ALL cases where an employee spends less than 183 days in Australia (including Australian waters). Unfortunately, this is rarely the case.

KPMG invites you to join its practice leaders for a Webinar which will highlight:

- Operations that create an Australian permanent establishment (PE);
- The proper application of the DPS Article in Australia's DTAs; and
- Steps necessary to ensure Australian tax compliance.

The live Webinar on 8 March 2017, will consist of audio and slides streamed over the Internet.

Date: Wednesday, 8 March 2017

Time options: 8:00 am (GMT +8) and 5:00 pm (GMT +8)

To register: For the 8:00 am Webinar, click here ; for the 5:00 pm Webinar, click here.

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in South Africa:

Cecelia Madden
Associate Director
Tel. +27 (0) 82 719 5658
cecelia.madden@kpmg.co.za

Sarika Rautenbach
Senior Manager
Tel. +27 (0) 82 719 5685
sarika.rautenbach@kpmg.co.za

The information contained in this newsletter was submitted by the KPMG International member firm in South Africa.

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.