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# GMS Flash Alert

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# South Africa - Foreign Remuneration Exemption: Tax Directive for Employers

The South African Revenue Service (SARS) has issued an updated Interpretation Note (IN 16) addressing how the changes to the foreign remuneration exemption will be implemented, which includes guidance in the form of a tax directive on how the foreign tax credits (FTC) may be claimed via payroll.[1]

## WHY THIS MATTERS

With the change in legislation, more South African tax resident employees working abroad will find themselves in a situation where they are subject to tax in both South Africa and the foreign country in which they are working, on the same income. This may place employees in a difficult cash-flow position, as tax is potentially first payable in both countries and claimable as a refund in one of them. Interpretation Note 16 discusses methods that may be applied to alleviate these hardships.

## Not Qualifying for Exemption or Qualifying But Exceeding the New Exemption Limit

A double tax situation arises when the employee does not qualify for the exemption or qualifies for the exemption, but earns taxable remuneration that exceeds the new ZAR 1.25 million exemption. This can cause hardship for employees on a South African payroll, who are required to pay tax in the foreign country, and have employee tax withheld in South Africa on a monthly basis. [ZAR 1 = USD 0.05325 | ZAR 1 = EUR 0.04896 | ZAR 1 = GBP 0.0426 | ZAR 1 = INR 4.077]

In these circumstances, employees are entitled to claim an FTC for the taxes paid in the foreign country on foreign-sourced income. The FTC claimable is limited to the income actually taxed in South Africa and in the foreign country. In other words, if the employee earns taxable income in excess of the ZAR 1.25 million exemption, only the portion of the

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foreign taxes paid in respect of any amount in excess of that ZAR 1.25 million, will be available to offset against South African tax due, as an FTC.

## KPMG NOTE

Employers may (and arguably should) assist employees who are remunerated through a South African payroll, in both situations, to reduce the immediate hardship caused by the double tax where both countries require a monthly withholding. This is not automatically allowed, but a tax directive from SARS can be applied for, which may vary the basis on which employees' tax is withheld, enabling employees to claim the FTC on a monthly basis rather than only on assessment of their annual tax returns. The final FTC will then be confirmed on assessment of the annual return.

Employees who are not remunerated through a South African payroll will be considered provisional taxpayers and will be required to claim the FTC when filing their provisional and annual tax returns. This process will not require the application for a directive.

## Tax Directive

The purpose of the tax directive is to alleviate the financial hardship suffered by employees (who are remunerated on a South African payroll) due to the double tax situation. The directive can be applied for where tax is paid in more than one country on the same remuneration, whether the employee qualifies for the exemption, or not.

SARS has recently released the specific tax directive application form and guidance for completing the form to assist employers through the directive process.[2]

## Who Can Apply for the Directive?

Under the 4th Schedule of the Income Tax Act, employers are required to withhold employees' tax from any amount that is payable to an employee, unless SARS has granted authority to do otherwise.

An employer may submit a tax directive application requesting SARS to vary the basis to deduct or withhold employees' tax. This is done by taking into account the potential FTC on a monthly basis when calculating the employee's tax liability.

## KPMG NOTE

The directive can include multiple employees, however the current version of the application form only allows for the details of a single employee to be completed. We understand that once the form is rolled out in an electronic version, employers will be able to add multiple employees. The current process is to complete the employee details on page 1 multiple times and submit as one application.

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### Validity of Directive and When New Applications Are Required

Once granted, the directive is valid for an undefined period; however, if the facts and circumstances of any individual employee change, a new application will be required. For example, a new application would be called for if the tax rate in the foreign country changes, if the employee's package changes, or if the employee changes employers. A new application will need to be made each time new employees incur foreign tax liabilities and require FTCs to be claimed.

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### KPMG NOTE

It is important to note that the onus lies on the employer to inform SARS if the circumstances have changed as this may influence the validity of the directive. Circumstances will also change whenever the foreign tax legislation or tax rates are amended, and so constant attention needs to be paid to this aspect.

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## Information Needed to Complete the Form

The list below shows some of the information that is needed to complete the form:

*Particulars of employer*:

- PAYE number
- Name of employer
- Business address and postal code,
- Contact details of the person to be contacted where additional information is required.

*Particulars of employee*:

- Name
- Surnames
- ID number
- Tax reference number
- Date of birth
- Employee's tax residency status
- Assignment details (foreign country and assignment period).

It will also be necessary to determine whether the respective employees are likely to meet the "days requirements" of the exemption and whether the ZAR 1.25 million exemption limit is likely to be exceeded, or not.

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It is important to note that the application must be accompanied by a detailed letter which sets out the basis and reasons for the request. It is also important that all the required information is completed on the form to prevent the application from being rejected.

## KPMG NOTE

All employers with South African resident employees working in foreign countries, should urgently assess each employee's circumstances to determine if a directive application is warranted.

Some relevant determinations to be made are:

- Are the employees South African tax residents?
- Do they qualify for the exemption, but earn taxable income in excess of the ZAR 1.25 million threshold?
- Do they have a foreign tax liability and if so, can an FTC be claimed to alleviate potential double taxation on a monthly basis, rather than waiting for the annual tax return assessment?

It is important that all employers in these circumstances are prepared and able to implement these measures, which became effective from 1 March 2020, making this a matter of some urgency.

Advice should be sought to help ensure calculations and information required are correctly supplied to SARS, so as not to disadvantage employees on foreign assignments.

## FOOTNOTES:

1 See Interpretation Note 16. For prior coverage of the foreign remuneration exemption (Section 10(1)(o)(ii)), Income Tax Act No.58 of 1962 (as amended), see GMS *Flash Alert* 2019-83 (26 April 2019), KPMG's *Tax News Flash*, "South Africa: Foreign earnings exemption changes for certain individuals" (21 May 2019) and *Tax News Flash*, "South Africa: Changes to foreign remuneration exemption, when working abroad" (10 April 2019). *Tax News Flash* is a publication of the KPMG International member firm in the United States.

2 See the SARS website for the directive application form and guidance.

## RELATED ARTICLE

Adapted from *Tax & Legal Flash*, Foreign Remuneration Exemption – Tax directives and the way forward (April 2020). *Tax & Legal Flash* is a publication of the KPMG International member firm in South Africa.

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**Contact us**

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

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