Thinking Beyond Borders: Management of Extended Business Travelers - South Africa

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Key message

The South African tax system is residence-based. In terms of the residence basis of taxation, any person who is considered to be a South African tax resident will be subject to tax on worldwide income and capital gains. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions and exempt amounts from gross income. Non-residents are taxable only on South African-sourced income and capital gains resulting from the disposal of immovable property in South Africa or any interest or right to immovable property in South Africa.

1 Key message

Extended business travelers with no intention to remain permanently in South Africa and who are present in South Africa for less than 6 tax years (in whole or in part) are taxable on their South African sourced income only. Advice should be sought regarding returning South African nationals, where presence is 5 years or more, where a Permanent Resident Permit is obtained, or localization takes place.

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Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability for South African tax is determined with reference to their residence status. A person can be a resident or a non-resident for South African tax purposes.

A tax resident of South Africa is either an 'ordinary resident' in South Africa (i.e. South Africa is the person's true home), or a 'physically present resident' who spends more than 91 days in total in each of the current and previous 5 tax years, and more than 915 days in total during the previous 5 tax years (the days need not be consecutive). In the latter case, the individual becomes tax resident on 1 March of the sixth year.

A non-resident of South Africa is generally someone who spends less than 91 days in total in each of the current and previous 5 tax years in South Africa or spends less than 5 tax years in South Africa and has no intention to remain permanently in South Africa. Note however that a dual tax resident individual will be deemed exclusively resident of the country/territory determined in accordance with the tie-breaker tests of any double taxation agreement concluded between South Africa and their other country/territory of residence.

The general rule is that a person who is a resident of South Africa is taxable on their worldwide income. Non-residents are generally taxable on income derived directly or indirectly from sources in South Africa. Extended business travelers are likely to be considered non-resident in South Africa for tax purposes unless they remain in South Africa for more than 5 years or make South Africa their true home.

2.2 Definition of source

Employment income is generally treated as South African sourced compensation where the individual performs the services to earn that income while physically located in South Africa. There is no statutory definition of the source of employment income, however, the courts have held that the source of income from services rendered is the place (the location) where the services are rendered, irrespective of where or by whom an individual is paid, or where the contract for such services is concluded.

2.3 Tax trigger points for employment income

In South Africa, there is a threshold that exempts the employee from the requirement to file returns and pay tax. The tax-free threshold is currently (tax year 1 March 2023 to 28 February 2024) 95 750 South African rand (ZAR) for those below the age of 65; ZAR 148 217 for those aged 65 to 74; and ZAR165 689 for those 75 and older. These amounts are subject to change from year to year.

2.4 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income, South African bank interest, and taxable gains from the sale or deemed sale of South African immovable property. Dividends are subject to a withholding tax of 20 percent and interest paid to non-residents is subject to a withholding tax of 15 percent.

2.5 Tax rates

South Africa imposes progressive tax rates on a yearly personal income and on income derived by self-employed Taxable income above the threshold is subject to tax at marginal rates ranging from 18 to 45 percent. Non-residents are subject to the same tax rates as residents.

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Social Security

3 Social Security

3.1 Liability for social security

South Africa does not have a social security system. Similar levies, however, do apply, such as the following:

Unemployment Insurance Fund (UIF) contributions

- UIF contributions equal to 1 percent of the employee's remuneration for the employer and 1 percent of the employee's remuneration for the employee, subject to a capped limit. With effect from 1 June 2021, the UIF threshold increased to ZAR 212 544 per annum (ZAR 17 712 per month). The monthly UIF payable by the employer and employee will be ZAR 177.12 per month (i.e., ZAR 17 712 x 1%).

Skills Development Levies (SDL)

- SDL is payable by the employer only and is a monthly levy calculated at a rate of 1% of the total amount of remuneration paid or payable by the employer.

Compensation for Occupational Injuries and Diseases (COID) also known as workmen's compensation

- Workers' compensation levies rate varies by industry. South Africa has not entered into any totalization agreements.

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Compliance obligations

4 Compliance obligations

4.1 Employees` compliance obligations

Taxpayers must submit their annual tax returns by a specific date each year. This date is set by the Minister of Finance in the Government Gazette each year and is generally between October and December for non- provisional taxpayers. Provisional taxpayers generally file tax their returns at the end of January following the end of the tax year. Tax returns must be filed by non-residents who derive South African–sourced gross income that is above the tax threshold. Individuals claiming relief from tax in terms of a double taxation agreement are required to submit tax returns to claim such relief if such earnings exceed the gross income threshold. Without submission and assessment of a tax return, a short-term business traveller is not guaranteed such relief.

In addition to the above, provisional taxpayers are required to file provisional tax returns at the end of August following the start of the tax year and at the end of the tax year. Provisional taxpayers include employees that receive remuneration from an employer which is not registered in South Africa (for example from a home country/territory payroll), individuals that receive passive income in excess of certain thresholds, individuals that receive income from the carrying on of any trade as well as any person which the Commissioner directs.

4.2 Employers reporting and withholding requirements

Withholdings from employment income are made under the Pay-As-You-Earn (PAYE) system. If a South African resident employer or representative employer pays or is liable to pay taxable remuneration to an individual, PAYE withholding is required monthly. Certain social levies as noted above are also payable monthly.

A 10% penalty is levied for late payment of employment taxes and a penalty of 1% of the total annual PAYE is levied for late filing of employer bi-annual reconciliations for each month that the declaration is late (limited to a total penalty of 10% / 10 months).

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Business travelers from visa-exempt countries/territory (including Australian, Canadian, European Economic Area (EEA), Swiss, UK, and US nationals) do not require a visa to travel to South Africa for holiday purposes. They are however required to apply for a Section 11(2) visa for any work-related activities at the South African Missions prior to their arrival in South Africa. Travelers from non-visa exempt countries/territory (e.g. Nigeria, India), require visas and should apply at the South African Missions before travelling to South Africa. The type of visa required depends on the type of activity to be undertaken in the Republic. Foreign nationals who are required to work in South Africa must apply for the appropriate work visas at the South African Missions either at their country/territory of origin or where they have residence status.

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Other issues

6 Other issues

6.1 Double taxation treaties

South Africa has a broad network of double taxation treaties. Subject to certain conditions, relief from South African tax will generally apply where the individual is a tax resident for treaty purposes in the other country/territory and is in South Africa for less than 183 days in a 12-month reference period, as defined in the relevant double taxation agreement. If the employee is paid by a resident South African entity (or provided with local benefits) or their remuneration costs are recharged to a South African entity, or attributable to a South African permanent establishment (PE), treaty relief will typically not apply to that remuneration.

6.2 Permanent establishment implications

There is the potential that a PE could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has, as well as the overall period of the project itself, the type of work being conducted, and whether a fixed base as defined in the relevant treaty exists in South Africa.

6.3 Indirect taxes

The principal source of indirect taxation revenue in South Africa is value-added tax (VAT). If a subsidiary or branch of a foreign-owned company sells goods or provides services, it must register as a vendor with the South African Revenue Service and charge and pay VAT. The standard rate of VAT is 15 percent.). Exports, certain foodstuffs, and other supplies are zero-rated, and certain supplies are exempt (primarily certain financial services, residential accommodations, and public transport).

6.4 Transfer pricing

South Africa has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

6.5 Local data privacy requirements

South African law currently provides for data protection relating to personal information that is obtained through electronic transactions via the Electronic Communications and Transactions Act (the Act). This Act establishes a number of principles for electronically collecting personal information. The Act also provides that it is a crime for anyone to unlawfully access, intercept or interfere with data, or to produce, sell or possess any device which is primarily designed to overcome security measures that protect data.

In addition, a Protection of Personal Information Act, which provides for the protection of a person's right to privacy and use of their personal information, was promulgated during 2014 and came into full effect in 2018.

6.6 Exchange control

Exchange control (ExCon) regulations restrict the inflow and outflow of capital in South Africa. All foreign exchange transactions are subject to the exchange control regulations.

In terms of the ExCon regulations, there are generally no limitations on the amount of capital brought into South Africa (however the terms of cross-border loans are regulated). There are limitations on the amount of money that can be transferred out of South Africa by residents. South African exchange control resident individuals are currently, for example, able to transfer up to ZAR10 million annually out of the country/territory and invest it overseas. An additional allowance of ZAR1 million per annum is available for traveling and other defined activities (including additional foreign investment).

As from 1 March 2021, the term emigration as recognized by the South African Reserve Bank has been phased out. All new emigration applications from 1 March 2021 onwards will be processed by the South African Revenue Service based on a new dispensation of confirming that the taxpayer has ceased to be a resident for tax purposes.

In addition, individuals who cease to be ordinarily tax resident will need to complete a Tax Compliance Status (TCS) application form referred to as an Approval International Transfer (AIT) on the South African Revenue Services electronic filing system in order to obtain a tax clearance certificate should they wish to externalize funds from South Africa.

6.7 Non-deductible costs for assignees

Non-deductible costs for assignees include contributions to non-South African pension funds and non-South African medical aid funds.

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