

Expatriate tax exemptions: No double taxation

By  Graeme Palmer

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On 1 March 2020, an amendment to the foreign employment income exemption comes into operation. There have been misperceptions about those expatriates that will be affected by this change to the tax law.



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Currently the exemption applies to South African tax residents who provide services outside South Africa on behalf of an employer for longer than 183 days during a 12 month period. In addition to this, the exemption only applies if, during the same 12 month period, a person rendered services outside South Africa for a continuous period of at least 60 days. If this criterion is met the resident is exempt from income tax on such foreign income in South Africa. The amendment now provides that a person who meets these requirements will only be exempt from income tax in South Africa up to the first R1-million of their employment income earned abroad.

It is important for expatriates to understand that the exemption only applies to South African tax residents working abroad. These are persons who are still ordinarily resident in South Africa or have been physically present in South Africa for a statutory specified number of days each year over a five year period. Expatriates who have been living abroad for many years or who have emigrated are unlikely to be affected by this law. They will only pay tax in the country where they now live and are employed.

No double taxation

South African tax residents who are affected by the new law will not now become liable for double taxation. If there is a tax treaty between the respective countries, it will eliminate double taxation. If there is no tax treaty, there are provisions in the Income Tax Act, 1962 that will allow the person to apply for a credit for the tax paid in the foreign country.

Sars will only have the right to tax income to the extent that it was not taxed in the country where the employment services were performed. For example, if a South African resident employed in Botswana earns more than R1 million per annum, that person will be taxed in Botswana at 25% on such income. If that person falls within the highest tax bracket in South Africa (i.e. 45%), to the extent that such income exceeds R1-million, that person will be taxed in South Africa on such amount at 20%. (i.e., $45\% - 25\% = 20\%$).

ABOUT GRAEME PALMER

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