



In this issue:

South Africa: Proposed repeal of foreign employment income tax exemption.....	1
South Africa: Closure of the Zimbabwean Special Permit and the Opening of the New Zimbabwean Exemption Permit.....	3

South Africa: Proposed repeal of foreign employment income tax exemption

Overview

In terms of the Draft Taxation Laws Amendment Bill, dated July 19, 2017, National Treasury proposed that section 10(1)(o)(ii) of the Income Tax Act, No. 58 of 1962 be repealed effective March 1, 2019.

The main reason given for this proposal is to curb situations of double non-taxation – being situations in which an individual's employment income is not subject to tax in either South Africa (SA) or in the foreign country where the services are rendered.

Subsequently, extensive representations have been made to National Treasury by interested parties outlining their concerns regarding the impact of a repeal of section 10(1)(o)(ii).

During a meeting of Parliament's Standing Committee for Finance held on September 15, 2017, National Treasury suggested certain changes to their original proposal, namely:

- Section 10(1)(o)(ii) will no longer be repealed in totality;
- But, the first ZAR1 million of foreign remuneration will remain exempt from tax in SA if the individual meets the requirements of section 10(1)(o)(ii) in relation to that remuneration; and
- The effective date of this change will be extended to March 1, 2020.

Current position – section 10(1)(o)(ii)

SA tax residents are taxable on their worldwide income. However, remuneration earned for services rendered outside SA is exempt from SA tax if an employee spent more than 183 full days (including a continuous period of more than 60 full days) outside SA in any 12-month period during which those services were rendered outside SA.

In the event that a resident employee does not meet the requirements of the exemption, they remain taxable in SA on their worldwide remuneration, but, in terms of section 6quat of the Income Tax Act, a rebate (foreign tax credit) in respect of foreign taxes paid on income may be offset against the tax payable in SA (with certain restrictions).

The impact of the proposal

If the proposed changes are implemented, where a SA resident individual earns remuneration of more than ZAR1 million as a result of services performed outside SA, the portion of the foreign remuneration above ZAR1 million will be included in the person's SA taxable income and taxed at the applicable personal income tax rate even if they comply with the requirements of section 10(1)(o)(ii).

This may lead to an increased SA tax liability for that individual, to the extent that they have not paid tax on that remuneration in that foreign jurisdiction.

In addition, where the employee is subject to employees' tax (PAYE) withholding on their remuneration both in SA (due to the impact of the amendment) and in the country where the services are rendered, there may be excessive withholding leading to cash-flow constraints. If so, a hardship directive would need to be obtained from SARS to request relief from SA PAYE to the extent that a rebate in respect of the foreign taxes paid on that remuneration is available.

From an employer perspective, the proposed change may increase costs where the employees are tax-equalized, (*i.e.* where tax is borne by the employer) as many employers relied on the exemption to cushion the equalization costs.

In addition, the Skills Development Levy and Unemployment Insurance Fund contributions will be due on the remuneration, which may have previously been exempt from taxation in SA.

Deloitte's view

The proposed changes may increase the cost of assignments and may impact the profitability of certain projects. Additional analysis would be required to ensure that the investment return on assignments remain within business imperatives.

Currently, delays are experienced for SARS to process and allow foreign tax credits. It is hoped that National Treasury's view that the tax credit system as administered by SARS will not be overwhelmed by the increased number of persons, who may need to claim foreign tax credits, will be proven correct in practice.

— Bernadette Abbott (Johannesburg)
Director
Deloitte South Africa
babbott@deloitte.co.za

Angelique Worms (Johannesburg)
Director
Deloitte South Africa
aworms@deloitte.co.za

Delia Ndlovu (Johannesburg)
Director
Deloitte South Africa
delndlovu@deloitte.co.za

Jaco La Grange (Johannesburg)
Associate Director
Deloitte South Africa
jlagrange@deloitte.co.za

South Africa: Closure of the Zimbabwean Special Permit and the Opening of the New Zimbabwean Exemption Permit

Overview

The Zimbabwean Special Permit (ZSP) process started in 2014 and the permit was issued for a period of three years. The total number of ZSP permits issued was 197 941.

On September 8, 2017 the Department of Home Affairs “the Department” announced the closure of the Zimbabwean Special Permit and the opening of the new Zimbabwean Exemption Permit (ZEP).

Context of the New ZEP Dispensation

It's believed that migrants play an important role in respect of economic development and enriching social and cultural life in South Africa and these dispensations have assisted in enhancing national security and the orderly management of migration.

This dispensation will assist greatly in advancing the objectives of the Department's National Development Plan, Vision 2030 particularly in respect of the focus on the economy, attracting critical skills into the country and ensuring transfer of skills to South African citizens for better employment prospects.

This approach is in line with the new White Paper on International Migration Policy to facilitate the movement of persons on the continent for the promotion of trade, development, transfer of skills and social cohesion through cultural integration.

Conditions of the New ZEP Dispensation

- Entitle the holder to work/study and/or conduct business in South Africa.
- Does not entitle the holder to a right to apply for permanent residence irrespective of the period of stay in the Republic of South Africa.
- Will not be renewable/extendable.
- Does not allow the holder to change conditions of his/her permit while in South Africa.
- ZSP permit holders who wish to convert their status to any other mainstream visa should apply timeously for such visa from within SA provided they meet all the requirements for that visa.
- A ZSP applicant will be allowed to travel using the ZEP receipt and the expired ZSP permit until such time as the ZEP permit is issued, without being declared undesirable.

Implementation of the ZEP

- The new Zimbabwean Exemption Permit (ZEP) project will start on September 15, 2017.
- The ZEP is open for valid ZSP permit holders only.
- It's advisable that prospective applicants submit their applications online, from September 15, 2017, through the Visa Facilitation Services website.
- The cut-off date for submission of the applications is November 30, 2017.
- An administrative fee of R1090.00 will be charged per application.
- ZEP permits will be issued for a maximum period of Four (4) years, effective from January 1, 2018 and expiring on December 31, 2021, notwithstanding the date of application.

- Thereafter applicants will be allocated appointments for the required submission of fingerprints and supporting documents to VFS Centre, from October 1, 2017. The relevant VFS Centre offices are listed at the end of this alert.
- An applicant will be required to submit the following:
 - A valid Zimbabwean passport.
 - Evidence of employment – in the case of an application for work rights.
 - Evidence of business – in the case of an application for business rights.
 - Evidence of an admission letter from a recognized learning institution – in the case of an application for study rights.

List of VFS Centre Offices where ZSP Holders may apply for their ZEP's

Locations/Offices Where ZSP Holders May Apply For Their Zimbabwean Exemption Pemit (ZEP)	
Location	Address
Durban	Musgrave towers, Musgrave Shopping mall, 5th Floor Musgrave, Durban
Cape Town	2 Long street, 7th Floor, Cape Town
Port Elizabeth	Office 7C, 1st floor Moffet and Main, Corner 17th Ave & Main Road, Walmer, Port Elizabeth
Johannesburg	The Link, Old Pretoria Road, Half Way House, Midrand
Rustenburg	Cnr of Boom and Fatima Bayet street, Rustenberg
Kimberly	Unit 3 Building 2, Agri Office Park, N12 Kimberly
Polokwane	Thornhill Shopping Centre, Veldspaat and Munnik Avenue Bendor Park, Polokwane
Nelspruit	Office 5 F, Nedbank Building, 30 Brown Street, Nelspruit
Bloemfontein	Suite 4, The Park, 14 Reid Street Westdene, Bloemfontein
George	Unit 5 Eagle View , Progress Street, George

Deloitte's view

We are in agreement with the Department of Home Affairs that the ZEP process will greatly assist Zimbabweans living in South Africa to rebuild their lives as they prepare for their return back to their home country of Zimbabwe in the future.

The ZEP, once issued will once again allow the holder to legally continue to conduct business, work or study in South Africa and to contribute to the South African economy whilst enhancing cultural and social unity.

The ZEP, furthermore falls within the objectives of the Department's National Development Plan to ensure that the identity of each and every individual in South Africa is correctly recorded as well as the movement of immigrants in and out of South Africa. This will ensure that the country's security levels are of the highest standard and to ensure that the integrity of the identities of everyone in South Africa remain uncompromised.

— Lino De Ponte (Johannesburg)
 Director
 Deloitte South Africa
 ldeponte@deloitte.co.za

Shivana Sewchuran (Johannesburg)
 Associate Director
 Deloitte South Africa
 ssewchuran@deloitte.co.za

Vishal Nundlall (Johannesburg)
 Senior Manager
 Deloitte South Africa
 vnundlall@deloitte.co.za

Lesley Coetzee (Pretoria)
 Senior Manager
 Deloitte South Africa
 lcoetzee@deloitte.co.za

Tanja Kesner-Reddy (Johannesburg)
 Senior Manager
 Deloitte South Africa
 tkesnerreddy@deloitte.co.za

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.