Global InSight
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13 December 2019

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South Africa:
Tax compliance services to expatriate employees

The South African Supreme Court of Appeal has recently ruled that the provision of tax compliance and consulting services to expatriate employees at the expense of their employer constitutes a taxable (fringe) benefit.

The taxable value of said benefit should, therefore, be included as remuneration that is taxable in the hands of the employees.

South African resident employers, or the South African resident agents of non-resident employers, who paid or were liable to settle the associated costs, have an employees' tax (PAYE) withholding obligation regarding the above-mentioned taxable amounts.

The impact of the court decision

The South African Supreme Court of Appeal's decision relates to a prior tax year and is based on legislation in force at that time and which is unchanged. Accordingly, the decision effectively confirms the manner in which the law should have been applied.

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This means that, if employers incurred expenditure for tax compliance or advisory services rendered to their expatriate employees and the expenditure was not previously included as a taxable (fringe) benefit when employers were determining an employee's South African remuneration, the South African Revenue Service (SARS) may seek to recover any unpaid taxes.

SARS will determine whether it will raise assessments on the employer or the employees. Practically speaking, it is more likely to be the employer (if the employer had a PAYE obligation) – if so, the process will stop there without the need to submit revised income tax returns for the associated employees.

Penalties and interest may also be imposed. If SARS considers that any of the "behaviours" listed in section 223 of the Tax Administration Act are applicable, it may also seek to impose understatement penalties.

SARS' existing practice is to review the current and preceding five tax years when auditing taxpayers. Therefore, this would be the probable period of exposure for employers or employees.

Deloitte's view

Following this decision, Deloitte considers that the services listed below, which are typically provided to expatriate employees, would be considered as a taxable benefit – and the related expenditure previously incurred by an employer would be deemed taxable in the hands of its expatriate employees:

- Registration and deregistration as a taxpayer
- Entry/exit tax briefing meetings
- Preparation and submission of provisional and annual income tax returns
- Dispute resolution services (objection, appeal, etc.)

Where an expatriate employee is tax-equalised, the final tax liability would need to be grossed up.

Deloitte anticipates intensive activity by SARS as a result of this decision, and Deloitte proposes that employers urgently quantify their or their employees' possible exposure and to consider the appropriate route to settling any taxes due. This may include the lodging of a voluntary disclosure (VDP) application to mitigate potential penalties that can be imposed by SARS (a VDP application should ideally be made before you receive notification of an audit from SARS, and certain other requirements must be met in order for the VDP to be valid).

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Taiwan:
Tax benefits for foreign professionals expanded

Taiwan's Ministry of Finance issued a tax ruling on 28 October 2019 that expands the pool of foreign professionals who may qualify for benefits under the Act for the Recruitment of Foreign Professionals (the "act"). The new rules are effective immediately.

The act, which applies as of 1 January 2018, aims to create an attractive environment for foreign professionals to come work in Taiwan. Under the act, if a qualifying foreign professional earns a salary that exceeds NTD 3 million, NTD 3 million and 50 percent of the salary exceeding that amount in a tax year will be included in gross income for the first three tax years in which the individual is present in Taiwan for 183 days or more (these three years do not have to be consecutive). Foreign professionals, for these purposes, refer to individuals who have specific expertise and knowledge

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in certain fields and who obtain a special work permit or Employment Gold Card from Taiwan authorities. Qualified foreign professionals may apply for tax benefits under the act retroactively as of 1 January 2018, once they obtain their first approval to work in Taiwan.

New Ruling

Because of growing concerns about the scope and application of the tax benefits under the act due to a lack of clear guidance, the tax ruling was released to clarify the eligibility of the tax benefits. The new ruling opens up opportunities for a greater number of foreign professionals to avail themselves of the tax benefits under the act. The ruling allows qualified foreign professionals who were first approved to work in Taiwan for employment periods that included tax year 2018, but who started their employment in an earlier year to apply for benefits for 2018 (but not for years before 2018). Because 2018 income tax returns have already been filed, qualified persons must file an amended tax return for this purpose.

The following diagram illustrates the difference between the rules under the act and those based on the new tax ruling:

Deloitte view

Employers are encouraged to review their current employees' work permits to identify if the above-mentioned new ruling applies to any foreign professionals. For those professionals who qualify, tax return amendments can be filed to obtain the tax benefits.

Please contact us if further assistance is required for special work permits, Employment Gold Card applications, and/or tax return amendments.

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