
South Africa drafts legislation for proposed withholding tax on service fees

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In brief

South Africa published draft legislation on July 4 that includes provisions relating to the proposed withholding tax on service fees.

Because the tax appears to apply broadly, US multinationals earning any fees from South Africa should understand how it would work if enacted.

In detail

The South African national treasury published on July 4 the 2013 draft Taxation Laws Amendment Bill and the Tax Administration Laws Amendment Bill (draft legislation) for public comment. If enacted, the draft legislation would implement most of the tax proposals announced in the 2013 budget speech.

One proposal addressed in the draft legislation is the introduction of a withholding tax on cross-border service fees.

Under the proposal, sections of the draft legislation dealing with the withholding tax on service fees would be inserted into the income tax act. These sections provide that South Africa would levy a 15% withholding tax on service fees paid by any person to or for the benefit of any

foreign person, to the extent the fees are regarded as having been derived from a South African source.

For these purposes, a 'service fee' means any amount that is received or accrued with respect to technical services, managerial services and consultancy services.

Generally, service fees would be considered to be from a South African source if the activity that gave rise to the fees (the work that was required to earn the fees) was physically performed in South Africa.

The withholding tax would not apply when the service fees are effectively connected to a recipient's South African permanent establishment. The tax, therefore, would be a final tax for non-residents who ordinarily would not be subject

to the normal South African income tax on service fees.

The proposed effective date of the withholding tax on service fees is January 1, 2015, not March 1, 2014, as originally announced.

The takeaway

Taxpayers earning fees from South Africa should consider whether such fees:

- fall within the definition of 'service fees'; and
- would be regarded as being derived from a South African source.

Taxpayers earning fees that meet both prongs of this test who do not qualify for any exemption from the withholding tax or for any applicable tax treaty relief should begin planning for the new tax.

If the service-provider (recipient) and the South African payer are in a “controlling relationship”, the deductibility in South Africa (in the hands of the payer) may also require further attention.

Let’s talk

For a deeper discussion, please contact:

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