

# *Global Mobility Update: New taxation implications for South Africans working in the UAE*

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## *In brief*

South African nationals who live and work overseas, will often remain tax resident in South Africa under domestic law. However, under the current legislation, employment income they earn in the foreign country can often be exempt from being subject to tax in South Africa.

In the 2017 National Budget Speech, the Minister of Finance proposed to amend the exemption, such that employment income earned overseas could only be exempt if it is subject to tax in the foreign country.

The proposed change would directly impact South African nationals working in countries that do not levy any income tax, such as the UAE and other countries in the Middle East. Such individuals would now become liable to South African tax on their employment income – even if it is earned overseas.

That being said, South Africa and the UAE have entered into a double tax agreement that contains provision for certain South African nationals, who meet the requirements specified in the agreement, to be able to break their South African tax residence under the treaty. South African tax legislation states that where a person is deemed to be exclusively resident in another country by virtue of a treaty, that person will be considered non-tax resident in South Africa, irrespective of South African domestic law. Where this is the case, such individuals will be non-tax resident in South Africa and would only be subject to income tax in South Africa on income sourced from South Africa.

## *In detail*

South Africans who work overseas should be aware of a proposed change to the exemption on foreign-earned income, as announced in the recent budget.

### *Current position/treatment*

Under the current rules, South Africans who remain tax resident in South Africa under domestic tax law, whilst working overseas, are exempt from South African income tax on employment income earned overseas, providing:

- They are outside of South Africa for a total exceeding 183 full days (which must include a

continuous period of more than 60 full days) during any 12-month period; and

- The services are rendered during the period or periods of absence.

Recent changes also allow earnings from incidental days of presence in South Africa to be included in the exemption.

### *What will change?*

In the 2017 South African National Budget Speech, the Minister of Finance proposed amending the foreign employment income-tax exemption, so that it will only apply if the income is subject to tax in the foreign jurisdiction.

The exemption would therefore

not apply to individuals working in non-taxing jurisdictions across the Middle East.

### *Employer considerations*

South African employers with expats in non-taxing jurisdictions, will need to consider:

- Taking extra due diligence on applying the exemption through payroll, to avoid possible penalties and interest for under deduction of PAYE.
- Extra tax costs for tax equalised individuals.
- How they compensate / incentivise South African nationals required to work in no-tax jurisdictions. Noting that such incentives may also

attract South African tax.

### *Individual considerations*

From an individual perspective, South Africans living in the UAE, would be subject to South African income tax on their UAE employment income – even where this is earned and paid in the UAE.

### *Treaty residence*

It should be noted that where there is a double tax agreement between South Africa and the host country, South African's may be able to break their South African residence by virtue of the double tax agreement.

South Africa has agreements with a number of non-taxing jurisdictions, such as Qatar and Saudi Arabia. An agreement with the UAE also came into force this year.

Where an individual can be considered "treaty resident" in the overseas country, the foreign-earned income exemption would

not need to be considered. In such cases the individual's would break their South African tax residence, and would only be subject to income tax on South African sourced income.

### *What do I need to do?*

Potentially impacted individuals should analyse their specific facts and circumstances, to:

- Understand whether they are still considered South African tax resident;
- If so, whether they can be considered treaty resident in the UAE.
- Calculate any resulting exit taxes (deemed disposal of assets for tax on capital gains) that would result in South Africa.
- Declare their position appropriately to SARS.
- Obtain the required supporting documentation to demonstrate non-tax residence in South Africa

to SARS (e.g. a UAE tax residence certificate).

### *The takeaway*

The primary purpose of the exemption was to alleviate administrative burdens associated with international workers - not to provide a complete exemption from tax.

The proposed change to the exemption will therefore arguably align the exemption more closely with its original purpose.

That being said, it is almost certain that the proposed change, if implemented, would result in South African expatriates living in the UAE, becoming liable to South African tax on their employment income.

Importantly, for these individuals, the new UAE / South Africa tax agreement is now in force, which may provide them with protection – subject to their specific position.

## *Let's talk*

For a deeper discussion on how these changes might affect you, or for help and support to mitigate the impact of the proposed changes on your tax position please contact:

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