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In this Issue

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Expat Tax: How Will The Changes Affect You?

"A fine is a tax for doing wrong. A tax is a fine for doing well." (Ecard humour)

(Note: If you aren't yourself an expatriate, please think of passing this on to someone who is – forward planning is important here!)

Legislation has been passed that will partially remove the current tax exemption available to South Africans employed abroad. Despite intensive lobbying, there can be no doubt that the tax authorities intend to push ahead with this tax.

The tax change comes into effect from 1 March 2020.

How it works, and the "183/60 tax exemption"

Prior to the latest amendment, tax residents living and working abroad for more than 183 days in any 12 month period (at least 60 days being continuous) were not taxed in South Africa on their foreign earnings.

From 1 March next year, foreign income of over R1 million per annum will be taxed in South Africa.

As this income includes fringe benefits and the Rand is weak compared to first world currencies, many employees will fall into this threshold.

Are you liable?

If you are resident for taxation purposes, then you are liable for the new tax.

SARS applies two tests to determine if you are a tax resident:

1. Where your home, family and assets are located (the "ordinarily resident" test). If these are in South Africa you pass this test.

2. Where you physically reside (the "physical presence test"). This is based on:

    a. Did you spend 91 or more days in South Africa in the current tax year?

    b. In the past five years have you spent 91 or more days in South Africa in each of those years?

    c. Have you spent 915 days or more in the past five years in South Africa?

    If you answer "yes" to all of these questions, you are a tax resident, but you cease to be one if you are outside South Africa for a continuous period of at least 330 full days.

These two tests, complicated as they (ask your accountant for advice in doubt) are fairly broad and will catch many taxpayers in their net.

Should you emigrate as a tax resident?

It is going to be difficult to come up with a satisfactory strategy to deal with this but at least SARS have given taxpayers time to consider all their options.

One option being touted by tax practitioners is for the taxpayer to emigrate as a tax resident. **This is a very complex process and we will cover it in future articles.**

Whilst this will solve the offshore tax liability, it is an onerous process with many implications for taxpayers and it depends on each taxpayer's circumstances. Specific advice from your accountant is essential here.

Good or bad for employers and South Africa?

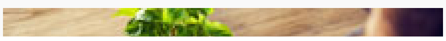
This new tax could be detrimental to the country. There are two main categories of people who work offshore – those whose employers have overseas offices and professionals who are looking to accumulate hard currency assets.

In terms of the first category, it will clearly cost employers more to send their staff on overseas assignments and for the second category, it is likely that many if not most of them will move their tax residency to a more friendly tax environment.

This would result in South Africa losing crucial skills it cannot afford to lose and it also puts into question how much revenue SARS will get from the amended legislation.

Companies: Don't Inadvertently Encourage Unethical Behaviour

"So much of what we call



management consists in making it difficult for people to work" (Peter Drucker)

In a recent interview of a prosecutor, he expressed surprise that most of the people charged with commercial crime were normal and honest. Yet in a recent survey of a company, 41% of the staff had observed unethical behaviour over a twelve month period.

What causes this dichotomy?

Leadership giving a bad example

It is human nature for staff to hold management to a higher standard. This places an obligation on management to assess the effect of their actions on employees. For example, take a manager who is vying for a promotion and is aware that one of the selling activities he is responsible for is potentially resulting in product returns from customers. One of his staff has to write a monthly report on selling strategies and the report received by the manager indicates the need to investigate the selling strategy to establish if it is causing product returns. The sales manger faces two choices:

1. Forward the report up the line knowing it may weaken his/her chances of promotion, or

2. Say to the employee that as the reason for the product returns isn't clear, let's do our own investigation to verify if the strategy is the cause of product returns. Only then should we inform senior management.

If the manager chooses the second option, it tells the employee the manager is prepared to compromise on transparency and ethical behaviour. If the employee or other members of the manager's staff then act dishonestly, it will be impossible for the manager to act since the manager is now effectively compromised.

Discouraging whistle-blowers and employees who speak up

If staff are aware of a culture where speaking out on unethical behaviour is either ignored by management or, worse, the staff member speaking up is victimised, then accountability essentially goes out of the window.

Speak to your staff often about the importance of ethical behaviour – not just when staff or management are caught out. It is important that staff are made aware that ethics is not a relative matter but often involves painful choices.

Setting unrealistic goals

If staff are measured on goals that are virtually impossible to achieve, then there is the likelihood they will cut corners or "fudge" the results. No one wants to be seen as a failure or underachiever, so set realistic goals.

Setting conflicting goals

Some goals can encourage staff to act dysfunctionally – if say management wants to see a growth in sales but also needs to cut marketing costs, then sales staff could decide to oversell to customers. In the short term this will mean achieving sales targets but it will also lead to customers returning the excess stock, increasing administration costs and risking the potential for stock write-offs.

Staff see this situation as unfair and thus could think they are entitled to act in a way clearly against the interests of the business.

Think through the objectives you set for your staff and always act in a fair and transparent manner – in the long term it will be worthwhile. **The last thing you want to do is to inadvertently encourage your employees to act in an illegal or unethical manner.**

The CIPC Is Taking On Wrongdoing by Directors – A R4.3bn Example

The Companies and Intellectual Property Commission (CIPC) has often been viewed as just an administrator and recorder of decisions made by companies.

In February however, the CIPC issued a Compliance Notice to the Public Investment Corporation (PIC) instructing it to recover a R4.3 billion investment in AYO Technology Solutions.

What is going on and what is a Compliance Notice?

The CIPC does have widespread powers, including issuing of subpoenas, and if it feels that on "reasonable grounds" the Companies Act (the Act) has been breached or someone has benefited from a contravention of the Act, then it may issue a Compliance Notice instructing relevant person(s) that the action taken by the relevant company:

- Be stopped
- Be reversed
- That the assets of the company be restored to their value prior to the action being taken.

Should the steps required by the Compliance Notice not be taken, the CIPC can apply to the Courts for an administrative penalty to be levied or may refer the matter to the prosecuting authorities.

Someone who has received a Compliance Notice may appeal to the Courts for the Notice to be set aside.

In the PIC case, the CIPC maintained that the R4.3 billion investment was done at a very inflated valuation of AYO (the market price since the investment has been 50% below the valuation). It was alleged in the PIC hearings that the PIC did very little due diligence when making the investment. Accordingly, the directors of the PIC are accused of harming the company (a contravention of the Act).

The High Court has set aside the Compliance Notice, but tellingly the PIC have also instituted a legal process to recover the R4.3 billion investment in AYO.

The implications for all directors

This action by the CIPC has set a precedent and directors need to be aware that they could potentially face a Compliance Notice if they do not take their fiduciary duties as directors seriously. It should be noted that in recent years the CIPC has been diligent in going after delinquent directors.

Sugar Tax: Good for the Taxman, Bad for the Sugar Industry

"If governments tax products like sugary drinks, they can reduce suffering and save lives. They can also cut healthcare costs and increase revenues to invest in health services" (World Health Organisation)

The Sugar Tax was introduced last April and has met with a mixed response.

The Sugar Industry

The sugar industry has been struggling with drought and cheap imports in recent years. The Sugar Tax has worsened this situation with losses in revenue of R1.3 billion since the tax came into effect. The industry warns of 10,000 potential job losses.

The soft drink market was also predicted to suffer losses. Whilst sales are down, companies such as Coca Cola have reduced these losses by increasing production and marketing of sugarless drinks such as Coke Zero and Diet Coke. They have also reformulated their products using less sugar. In the UK where Sugar Tax was also introduced last year, 60% of Coca Cola's products are not subject to Sugar Taxes due to Coca Cola adopting similar measures to South Africa.

SARS

When the tax was introduced, it was expected that the tax would bring in R1.7 billion in tax revenue in its first year. After eleven months, SARS had revenues of R3.4 billion from Sugar Tax.

In fact the Sugar Tax was increased further in the recent Budget from 2.1 cents per gram to 2.21 cents per gram.

The sugar industry is looking for relief as it is clearly suffering. However, SARS has found a winner with the Sugar Tax and is highly unlikely to reduce this tax, especially considering the pressure SARS is under to collect taxes.

What Our New Tax Statistics Tell Us

There are only run-of-the-mill tax deadlines in April, but some interesting information emerged from the recently-released 2018 edition of SARS' Tax Statistics -

- For the first time since the Global Financial Crisis the increase in tax revenue collected lagged behind GDP growth. This reflects that (a)

the days of tax collections rising at
a fast clip are over and (b) tax morality is declining (something SARS is concerned about and it's one of the factors in the setting-up of the Nugent Inquiry into tax affairs).

- Only 24% of companies paid tax, underlining the drop off in corporate tax profitability.

- Over 40% of all individual taxpayers are from Gauteng.
