TAX BREAKS

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THIS MONTH

COMMENT

The NHI wrecking ball entrenches SA's terminal illness

Taxes will certainly rise—but will access to healthcare improve?

There are simply not enough taxpayers in South Africa with deep-enough pockets to shoulder the burden of funding a National Health Insurance scheme.
Picture credit: Pixabay.com (https://pixabay.com/photos/wrecking-ball-construction-3597678/)

By: **THE FREE MARKET FOUNDATION**

THE LATEST iteration of the NHI Bill has confirmed what South Africans have known for more than a decade: that taxes will need to rise to fund the government's unworkable and unfeasible NHI scheme. During these dire economic times, the NHI tax will be the final nail in the coffin for cash-strapped consumers struggling to make ends meet.

Since funding for the centrally controlled and administered NHI Fund will necessarily come from a surcharge on taxable income and a payroll tax, the NHI is nothing but a tax on labour. A payroll tax will always, ultimately, be borne by workers, either through reduced earnings or compensation, or job losses—precisely the opposite of what the poor in South Africa need.

While it is supposed to help people access medical care, the NHI scheme will undermine any chance of economic success by either cutting wages or eliminating jobs altogether and will entrench South Africa's terminal economic conditions.

South Africa has a very narrow tax base, and it would be extremely unwise for government to consider imposing another tax on already overburdened taxpayers to fund the NHI, rather than trying to get more people actively involved in the workforce and adopting policies that will significantly increase the country's economic growth rate.

The government's centrally-controlled NHI scheme will concentrate power in the hands of the state, which then acts as both player and referee, leaving no room for the private sector to operate. Under the NHI, whether directly or indirectly, the government will control the availability, financing and delivery of healthcare from the cradle to the grave, and South Africans will no longer have any choice.

The consequences of this politically motivated scheme are entirely predictable: the quality of South African health-care provision will fall, more health-care professionals will leave the country, the bureaucracy will be incapable of handling the huge volume of claims, an unnecessary and intolerable burden will be imposed on taxpayers, it will fail to improve the health outcomes of the poorest and most vulnerable members of society, and it will result in further job losses.

Another foreign service exemption shocker

This time, the target is retirement fund members and pensioners who had contributed to local funds whilst seconded overseas

Life will have become more difficult for pensioners who receive pensions based on funds contributed while foreign services were rendered, thanks to yet another removal of a tax exemption. For future retirees in this situation, planning has now become somewhat more complicated.
Picture credit: Pixabay (https://pixabay.com/photos/senior-elderly-people-couple-3336451/)

By: **STEVEN JONES**

THE MASSIVE stink over the removal of the tax exemption on foreign-service earnings (except for the first R1 million annually) that comes into effect from 1 March 2020 seems to have completely ignored the stealthy, almost hidden removal of a different tax exemption on pensions funded by contributions to South African retirement funds whilst seconded overseas.

What makes the latter removal worse is that this change had not only already come into force on 1 March 2017 (i.e. 18 months ago)—it had also been applied retrospectively.

Section 10(1)(o) of the Income Tax Act—the one that got all of the (mostly-incorrect) coverage in the financial press—deals with South African employees who are seconded by their employers to work on their behalf at locations outside of South Africa. In its current form, their earnings are tax-free whilst they are working outside of South Africa (provided that certain conditions are met), and it is the curtailment of this exemption to R1 million per annum that has dominated the business headlines.

Contrary to what many commentators have written, the Section 10(1)(o) exemption has nothing to do with earnings from foreign sources. These are salary earnings from a South African source, paid to South African employees in South African rands via their employer's South African payroll into their South African bank account.

The only thing that triggers this tax exemption is the fact that the services are being rendered outside of South Africa. I trust that I have made this fact abundantly clear, as the natural consequences of this fact are what leads to the second tax exemption—the one that quietly left the statute books on 1 March last year.

Foreign secondments giving rise to exempt pension benefits

As already stated, the seconded employee to whom the Section 10(1)(o) exemption applies remains an employee of their South African employer. Accordingly, the employee usually remains on their employer's South African medical scheme, and continues to contribute to their South African employer's retirement fund.

Enter Section 10(1)(gC)(ii)—the Section that provides for tax exemption on pension benefits arising from contributions to a South African retirement fund whilst rendering services outside South Africa.

This Section provides that where an employee renders service to their South African employer outside of South Africa and continues to contribute to their South African retirement fund, when they retire from such fund, the lump sum and any annuity or pension paid from such fund is exempt from tax in proportion to the foreign service period as a percentage of their total period of fund membership.

This mouthful can best be illustrated by the following example:

- Joe Soap was employed by a South African diamond mining company in 1970, and worked for them continuously for 35 years until he retired. In 1985 he was seconded to their operations in Botswana, where he spent 12 years before returning to the South African office.
- When he retired in 2005 at the age of 65, he received a lump sum plus a monthly pension from the company's retirement fund. Based on the provisions of Section 10(1)(gC)(ii), 34.2857% (i.e. the proportion of his 12 years of secondment to his 35 years of total service) would be exempt from tax.
- Joe had every reason to believe that this tax exemption would apply from the date of his retirement for the rest of his life, and constructed his overall retirement plan accordingly.

Kicking pensioners in the teeth

However, Joe was in for a rude shock when his monthly net pension payment suddenly dropped dramatically, courtesy of an amendment to Section 10(1)(gC)(ii) that snuck its way into the Taxation Laws Amendment Act that was published in the *Government Gazette* on 19 January 2017. The amendment came into effect from 1 March 2017, and is helpfully summarised in SARS Binding General Ruling 25 dated 16 March 2017 as follows:

Background

Section 10(1)(gC)(ii) exempts from normal tax any pension received by or accrued to a resident from a source outside the Republic as consideration for past employment outside the Republic.

The term "source outside the Republic" can be interpreted to mean either the originating cause (as established in CIR v Lever Bros and Unilever Ltd 1946 AD 441, 14 SATC 1) which gave rise to that pension (foreign services rendered), or the location from which the pension is received (namely, where the fund is situated).

The term "past employment outside the Republic" refers to services rendered outside the Republic. Only the portion of a pension that relates to services rendered outside the Republic is exempt from income tax.

Ruling

The term "source outside the Republic", for purposes of Section 10(1)(gC)(ii), refers to the originating cause

SARS

KEY UPCOMING TAX SUBMISSION DATES

Personal income tax returns, 2019 tax year

1 Aug 2019	Tax Season opens
31 Oct 2019	Personal income tax returns (filed at a SARS branch)
4 Dec 2019	Personal income tax returns (e-filing, non-provisional taxpayers)
31 Jan 2020	Personal income tax returns (e-filing, provisional taxpayers)

Provisional tax returns

30 Aug 2019	First period, 2020 tax year (deadline has passed)
30 Sep 2019	Voluntary top-up payment, 2019 tax year

TAXING ISSUES

by Steven Jones—Editor

As I put the finishing touches on this month's issue of **Tax Breaks**, Filing Season 2019 is in full swing—not to mention the first provisional tax returns for 2020 that were due on 30 August 2019. The good news is that the SARS e-filing teething problems that came with the upgraded site appear to have been resolved, and I've managed to get my client's returns submitted without too many issues.

Like all tax practitioners, I am required by my professional body to keep updated with the latest tax developments. Being the editor of this publication helps, of course—doing research and sourcing copy for each month's issue provides valuable exposure to the new developments and latest happenings in the world of tax. That said, there's no substitute for real-world experience, and this year one client's return exposed a gap in my current tax knowledge.

While just about everyone has spent the last two years chewing the fat over the reduction of the tax exemption on foreign services income from 1 March 2020, National Treasury had snuck through the removal of another exemption back in March 2017. Had my client not been receiving a pension that was partially exempt due to foreign services rendered by her late husband back in the late 1970s, I would have probably never been aware of this retroactive action by Treasury. Accordingly, having eaten a huge chunk of humble pie, I share my latest payment of school fees with you (starting on Page 2) in the hope that readers will be brought fully up to date on developments in this area.

That said, if you are feeling robbed by National Treasury over the removal of the exempt pension clause, spare a thought for those victims who continue to be scammed by con artists purporting to be SARS. Don't let this be you. Being forewarned is forearmed, and Page 5 contains some helpful tips on how to avoid being scammed.

This issue also includes some useful tax compliance tips for new businesses starting out. Take heed of the advice given—I've had clients in the past who have tried to use SARS as a source of short-term finance—trust me, the outcome was not pretty...

Speaking of SARS providing finance, are you living overseas and have been battling to get your tax refund out of SARS? Well, there's good news—turn to Page 8 for practical steps on how to do this.

Finally, the tax treatment of donations is a subject that is fiercely debated yet often misunderstood. Fortunately, SARS has provided a helpful Clarification Note on this subject, which we have reproduced (with some slight adaptations) on Page 7. Enjoy!

Table 4.4 Personal income tax rates and bracket adjustments

2018/19 Taxable income (R)	2018/19 Rates of tax	2019/20 Taxable income (R)	2019/20 Rates of tax
R0 - R195 850	18% of each R1	R0 - R195 850	18% of each R1
R195 851 - R305 850	R35 253 + 26% of the amount above R195 850	R195 851 - R305 850	R35 253 + 26% of the amount above R195 850
R305 851 - R423 300	R63 853 + 31% of the amount above R305 850	R305 851 - R423 300	R63 853 + 31% of the amount above R305 850
R423 301 - R555 600	R100 263 + 36% of the amount above R423 300	R423 301 - R555 600	R100 263 + 36% of the amount above R423 300
R555 601 - R708 310	R147 891 + 39% of the amount above R555 600	R555 601 - R708 310	R147 891 + 39% of the amount above R555 600
R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310	R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310
R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000	R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000
Rebates		**Rebates**	
Primary	R14 067	Primary	R14 220
Secondary	R7 713	Secondary	R7 794
Tertiary	R2 574	Tertiary	R2 601
Tax threshold		**Tax threshold**	
Below age 65	R78 150	Below age 65	R79 000
Age 65 and over	R121 000	Age 65 and over	R122 300
Age 75 and over	R135 300	Age 75 and over	R136 750

Source: National Treasury

which gives rise to the pension income, namely, where the services have been rendered.

This ruling constitutes a BGR issued under Section 89 of the Tax Administration Act 28 of 2011.

Application

The following formula is used to calculate the portion of a pension that will be exempt due to services rendered outside the Republic:

Foreign services rendered
Total services rendered

X

Total pension received or accrued

Exclusion

Section 10(1)(gC)(ii) has been amended and, with effect from 1 March 2017, the exemption will no longer apply to any lump sum, pension or annuity paid or payable by a "pension fund", "provident fund", "pension preservation fund", "provident preservation fund" or "retirement annuity fund" as defined in Section 1(1) (irrespective of where the services were rendered) other than to amounts transferred to such fund from a source outside the Republic.

What this essentially means is that for pensions relating to foreign services, only those pensions where the underlying funds were transferred from foreign sources would continue to enjoy the exemption. In other words, where an employee continued to fund their South African retirement funds whilst rendering foreign services, pensions relating to such periods of foreign service would no longer be exempt.

Beatrie Gouws, a tax specialist from 'Big 4' accounting firm KPMG, wrote an article on this amendment on 27 March 2017, which appeared in KPMG's *Tax Talk* publication and was subsequently published on the website of the South African Institute of Tax Professionals (SAIT).

In her article, she expressed her concern at the lack of a so-called 'grandfather clause', stating that "[u]nlike the introduction of the "retirement reform legislation", the legislation does not include any protection for vested rights, other than with respect to foreign retirement benefits that were transferred to a South African retirement fund. In other words, the rule change is retroactive in that it not only affects future retirees or people saving for retirement, but also those who have already retired."

She then goes on to outline the impact of the amendment on both future and existing retirees.

In the case of a future retiree, one can use my example of Joe above (which was adapted from Gouws' example in her article), but moving the dates forward 13 years. In this case, Joe would have been looking forward to his retirement in 2018, comfortable that the adequacy of his retirement provisions would be underpinned by the tax exemption that he would enjoy on just over a third thereof.

Imagine, then, his shock when finding out that he would now not only have to pay tax on the full lump sum according to the lump sum retirement tables (rather than two-thirds thereof), but also on his full monthly pension at marginal rates. Depending on the amount of the lump sum, Joe could lose up to 12% thereof to tax, while if his marginal income tax rate is at 45%, his monthly pension would reduce by just under 15½% thanks to the removal of the tax exemption.

For existing pensioners, the shock is potentially greater. This can be illustrated by a real-life situation involving one of my clients. In 1982 her husband died whilst still in-service, leaving her a widow's pension whereby 25% thereof was based on contributions whilst in foreign service, and therefore tax-exempt under Section 10(1)(gC)(ii). She has received her pension taxed on this basis since then.

When I came to do her 2019 income tax return, I was somewhat taken aback to note that the fund administrators had not made the split between the exempt and taxable portions—quite significantly pushing up the amount of PAYE that was deducted when compared to previous years—and did some research. That was when I discovered the amendment that had been promulgated a year previously.

Now it could well be validly argued that as a tax practitioner, it is incumbent upon me to keep up to date with all such amendments. That said, this client is the only one I have who receives part of her pension exempt from tax as a consequence of foreign services rendered (in this case, by her late husband), and over the years various fund administrators have calculated the split incorrectly, requiring corrections. My first assumption was that this was yet another year where someone at her fund had pushed the wrong button.

Furthermore, there was no mention of this particular amendment in the previous year's Budget speech. Now while it is not unusual for new proposals to find their way into legislation between the Finance Minister's address and the final promulgation, usually the professional bodies, various tax experts, and the financial media jump all over these changes. In this case, with all the noise around the forthcoming Section 10(1)(o) changes, the amendment to Section 10(1)(gC)(ii) slipped under the radar.

As the editor of Tax Breaks, I must sheepishly raise my hand and say *mea culpa* as well. However, even if I had been aware of the changes in advance, it would not have been of any assistance to my now 85-year-old client. The amendment was promulgated in January 2017 with effect from 1 March 2017, while the amendment to SARS BGR 25 was dated 16 March 2017. I had no indication from my client's 2018 IRP5 from her fund that anything had changed, so presumably the bombshell was only dropped on her during the 2019 tax year.

Going forward

The lack of any 'grandfather clause' in this amendment is cause for concern, as it is somewhat unusual (not to mention contrary to sound tax policy) for National Treasury to enact retroactive legislation.

Usually, any such changes involve a lengthy consultation process and an effective date that gives taxpayers time to plan (as in the case with the amendments to Section 10(1)(o), which were first mooted two years ago but only come into effect on 1 March 2020). Alternatively, vesting provisions are embedded in such amendments (for example, pension lump sums from the funds of most state entities that were tax-free prior to 1995 remain tax-free in respect of funds that accrued up to that date) whereby existing tax treatments are preserved with the amendments only applying prospectively.

In the case of Section 10(1)(gC)(ii), existing and future retirees were afforded no such opportunity. Existing retirees have suddenly experienced a drop in their monthly pensions, while future retirees now potentially have a future shortfall to make up. When you have already retired or are about to retire, these sudden holes in your retirement income are unlikely to be plugged.

Finally, it's interesting to note that the SARS BGR only applies from date of issue (16 March 2017) to 4 October 2018. The latter date has long passed, but I could not find any further information whatsoever—either on SARS' website or in any publications by professional bodies, accounting firms, or legal firms—as to what is meant to happen after this date. Does this mean that the SARS BGR is no longer applicable? What was SARS' intention in setting this specific date?

Most importantly, can retirement fund members and retirees hope for this amendment to be rescinded? Unfortunately, I'm not holding my breath...

Steven Jones, Hons B Compt M Com B Th, is a registered SARS tax practitioner, a practicing member of the South African Institute of Professional Accountants, and the editor of **Tax Breaks** and **Personal Finance**.

FILING SEASON 2019

Be aware of phishing scams

It's not only SARS that wants your money—a criminal element pretending to be the tax office or your bank is seeking to illegitimately get their hands on it first

By: BRIAN PINNOCK / SOUTH AFRICAN REVENUE SERVICE

TAX SEASON is phishing season, and cybercriminals are preying on unsuspecting taxpayers through a range of sophisticated phishing techniques that could put their personal and financial information at risk.

According to Mimecast, 53% of South African respondents in its latest research saw an increase in phishing attacks using malicious links or attachments over the past year. E-mail remains a highly attractive method of attack for cybercriminals, especially during periods such as our current tax season where consumers are likely to send and receive sensitive personal and financial information via e-mail correspondence with their bank, financial advisors and institutions, tax practitioners, and SARS.

What's highly concerning is that 45% of South African respondents in Mimecast's latest survey reported an increase in targeted spear-phishing attacks containing malicious links or attachments. Spear-phishing relies on social engineering, so it is well researched, highly targeted at the receiver and is difficult for an uneducated end-user to spot.

It is also not only individual taxpayers that are at risk: organisations with insufficient security and a lack of end-user awareness are easy targets for sophisticated attacks that could put their systems—and their data—at risk.

Spotting and avoiding scams

Members of the public are randomly

emailed with false "spoofed" emails made to look as if these emails were sent from SARS, but are in fact fraudulent emails aimed at enticing unsuspecting taxpayers to part with personal information such as bank account details.

Examples include emails that purport to be from addresses indicating that taxpayers are eligible to receive tax refunds (examples of which include returns@sars.co.za or refunds@sars.co.za. These emails contain links to false forms and fake websites made to look like the 'real thing', but with the aim of fooling people into entering personal information such as bank account details which the criminals then extract and use fraudulently.

Please note that these are scams and SARS warns that taxpayers should take note of the following:

- Do not open or respond to emails from unknown sources.
- Beware of emails that ask for personal, tax, banking and eFiling details (login credentials, passwords, pins, credit / debit card information, etc.).
- SARS will never request your banking details in any communication that you receive via post, email, or SMS. (However, for the purpose of telephonic engagement and authentication purposes, SARS will verify your personal details.)
- SARS will not send you any hyperlinks to other websites—even those of banks.
- Beware of false SMSs.
- SARS does not send *.htm or *.html attachments.
- SARS will never ask for your credit card details.

To report any suspicious communications purporting to be from SARS, any emails that you think are scams or phishing, or to get more information on these types of scams, call the Fraud and Anti-Corruption Hotline on 0800 00 2870, or send an email to phishing@sars.gov.za.

Brian Pinnock is a cybersecurity expert at Mimecast. Additional information has been sourced from the SARS website.

SMALL BUSINESS TAX

Tax tips for SMEs

Get the basics right from Day 1, and put n systems to ensure that you are compliant. Tax planning can come later ...

Running your own business is both exciting and challenging. Don't let tax problems spoil the party. Picture credit: Pixabay (https://pixabay.com/photos/action-collaborate-collaboration-2277292/)

By: **DANIEL GOLDBERG**

TAXPAYER EDUCATION and the cost of tax compliance remains a significant challenge for small- to medium-sized enterprises (SMEs), who in their early stages of business often survive month-to-month. With tax season currently underway, small businesses need to ensure that they have sufficient cash flow to make the necessary provisional tax and assessed tax payments.

Not having enough working capital is the biggest concern for small businesses wanting to remain tax compliant. It is tempting to use money owed to SARS to bridge shortfalls between invoicing clients and receiving payments, but this is not advised. Proper financial preparation needs to be put in place to avoid this.

SMEs, like all businesses, need to fully comply with their tax obligations, and using technology can improve their tax compliance. By automating the administrative work needed for tax returns, businesses find it easier to stay on top of the requirements put forward by SARS.

Here is some advice to SME owners to help them stay tax compliant:

- **Register your business**. Failing to register with SARS can have a negative impact on obtaining

Moment of truth

"Death, taxes, and childbirth! There's never any convenient time for any of them."

Margaret Mitchell (1900-1949)

Author of the novel *Gone With the Wind*, which was published in 1936 and won the Pulitzer Prize for Best Literature in 1937. It was later adapted for the screenplay of the 1940 movie of the same name, which went on to win 10 Academy Awards.

financing, overdraft facilities, or business credit. Failing to register your business can also have severe legal implications—it is best to stay on the right side of the law.

- **Know your deadlines**. To avoid penalties, small businesses need to ensure that their tax payments and returns are submitted on time. SARS charges a 10% penalty on late payments—this adds up over time.
- **Know the types of tax**. The size of your company and its annual turnover determines whether you are liable for VAT, income tax, PAYE, SDL, etc. The SARS website has a comprehensive breakdown of what types of taxes SMEs are accountable for.
- **Keep the paperwork in order.** Collate all supporting documents for income earned and expenses claimed. It is recommended that SMEs keep both hard copies and electronic versions of all documentation for a minimum of five years.
- **Know what you can deduct**. Be aware of the rebates available to your business. This is company and industry-specific, and ensures that you don't pay more tax than you legally need to.
- **Account for VAT**. SMEs with an annual turnover of R1-million or more are required to pay VAT over to SARS on a monthly or bi-monthly basis. Companies should consider using short-term financing from digital lenders when cash flow is a concern to settle VAT bills.
- **Introduce on-line (cloud-based) accounting**. There are many apps and tools that simplify and automate tax compliance. Payroll apps manage PAYE for your employees, and receipt management apps are available for tracking expenses and obtaining VAT refunds.

Daniel Goldberg is co-founder of Bridgement, a fintech company which offers short-term financing to SMEs.

SARS issues a Clarification Note on donations

SARS' strategic intent is to engender a culture of voluntary compliance amongst taxpayers. As part of meeting this objective, SARS will be issuing clarification notes to provide information to the public on various issues that are topical in the current environment. In this instalment, SARS addresses donations.

Various questions are being raised regarding the nature of donations and their tax implications. The purpose of this clarification note is to briefly set out what would constitute a donation and be taxed, as well as the impact of paying an amount without it being a donation.

The term 'donation' refers to a gratuitous disposal of property. A donation requires an element of sheer liberality on the part of the donor, thus highlighting the requirement that the transaction must be gratuitous in nature. Where there is an element of expectation for something to be given in return, it can therefore not be a donation.

Once it is confirmed that a donation has been made, there are various implications from a tax point of view that must be considered. The key aspects relating to tax are (a) whether donations tax is payable, and (b) whether the donation is tax deductible.

DONATIONS TAX

Firstly, donations tax applies to any individual, company or trust that is a resident as defined in the Income Tax Act. What this means is that non-residents are not liable for donations tax.

Secondly, the law contains a list of exempt donations, which include (amongst others) donations between spouses and to any sphere of government, any registered political party, or any approved public benefit organisation.

Most importantly, a donation will further be exempt if the total value of donations for a tax year does not exceed:

- R100 000 of property donated by a natural person.
- R10 000 of casual gifts in the case of a taxpayer who is not a natural person. In other words, these are casual gifts by, for example, companies and trusts.

Also qualifying for exemption from donations tax is any bona fide contribution made by the donor towards the maintenance of any person. While not limited to a specific amount, this exemption is limited to what the Commissioner considers reasonable. This is intended to cover cases such as supporting a child, etc.

Donations tax must be paid to SARS by the end of the month, following the month during which the donation was made. The person making the donation (donor) is liable for the tax, but if the donor fails to pay the tax within the set period, the donor and donee are jointly and severally liable for the tax.

After making a donation, the donor should fill in a form IT144 (Declaration by donor / donee), which is available on the SARS website under 'forms', and submit it to the nearest SARS branch with proof of payment. Donations tax can also be paid via eFiling. The tax is leviable at a flat rate of 20% on donations up to a cumulative value of R30 million, and at a rate of 25% thereafter.

TAX-DEDUCTIBILITY OF BONA FIDE DONATIONS

The Income Tax Act allows for a deduction, against the taxable income of any taxpayer, of any bona fide donation made to, for example, any approved organisation, agency, institution, or department of government listed in Section 18A(1) of the Act. The deduction is, however, limited to 10% of the taxpayer's taxable income. The amount of donations exceeding 10% of the taxable income is treated as a donation which was made in the following year of assessment.

TRANSACTIONS NOT REGARDED AS DONATIONS

Where a transaction is not gratuitous in nature (for example, a once-off payment to secure a contract), there can be no donation as defined and, therefore, no donations tax. Although transactions of this nature may not be subject to donations tax, income of this nature or the proceeds of unlawful activities and/or receipts (such as bribes) are generally taxable.

In addition, Section 23(o) of the Act prohibits the deductibility of expenditure (including donations) in respect of corrupt or illegal activities such as bribes, fines, and penalties.

SARS Disclaimer

This clarification note only provides general guidelines. It does not carry the same status as a Binding Private Ruling or a Binding General Ruling, and does not delve into the precise technical and legal detail that is often associated with tax. Accordingly, it should not be used as a legal reference, nor does it create a precedent or confirm a practice generally prevailing.

I'm living overseas and have no South African bank accounts. How do I get my tax refund?

Non-resident taxpayers with South African-source income may still have PAYE deducted, or pay provisional tax. Deductions and/or over-estimations of taxable income may result in a refund.

QUESTION

I relocated to the United States a few years ago, and have subsequently met and married a wonderful man and have recently given birth to our first child. However, although I have a US 'Green Card' and am in the process of applying for citizenship, I still receive a salary from a South African employer. Because I am non-resident, this income is liable to be taxed in South Africa in terms of the Double Tax Agreement between the two countries.

Three years ago, before I had decided to formally make the US my permanent home and sever my South African tax residency, I was still a member of a South African medical scheme. Since the payroll did not take my scheme membership into account, the resultant medical tax credit meant that I was due a refund upon assessment. However, I no longer have a South African bank account (my salary is paid directly into my account in the US), and getting this money out of SARS has proved to be a complete nightmare. Can you offer me any advice?

Answer provided by STEVEN JONES Hons B Compt M Com B Th, editor of Tax Breaks and a tax practitioner

I FACED a similar issue when it came to the refund due to me upon assessment of my 2019 South African income tax return. Being resident in the United Kingdom and having formally emigrated from South Africa just over a year ago, I also have South African income which is taxed at source. Because I did not draw a salary for the full tax year, the net result was an over-deduction of PAYE, which gave rise to a refund of nearly R5 000.

Since my South African bank accounts have been closed as part of the formal emigration as per Reserve Bank requirements, I had to change my banking details to that of my emigrants' blocked account. Unfortunately, the banking details update screen on SARS e-filing do not provide for a reference field, which meant that I could not capture the details of my blocked account. I then attempted to use my business bank account as a 'third party account', but e-filing would have none of it.

SARS then responded with a 2-page letter wanting a whole lot of information—of course, to be verified in person at a SARS branch. Needless to say, the nearest SARS branch to Leeds is just shy of 10 000 km away involving an 11-hour flight each way.

Previous attempts to resolve similar issues faced by clients who had emigrating were responded to by SARS with a dogmatic insistence that the client present themselves and their original documents to a SARS branch in person. Of course, this was not a realistic request to comply with, and many refunds have thus sat abandoned in SARS' bank account for years.

Fearing that I would have to kiss R5 000 goodbye, I gave the SARS Contact Centre a call—and I was gobsmacked at the change in attitude (the Kingon / Kieswetter effect, perhaps?). The SARS representative who answered the phone was incredibly helpful, and clearly knew what she was talking about. When I explained my predicament in getting either my emigrants' blocked account or my business account loaded onto SARS' systems, she responded by saying that SARS can actually pay this refund directly into my UK current account—thereby saving me a huge amount of red tape. To get this set up in your case, these are the steps that you need to follow:

- Log a call with the SARS Contact Centre (+27 11 602 2093 for international callers), and obtain a case reference number.
- You will then be instructed to send an email to a designated contact centre e-mail address. The address given to me was contact.north@sars.gov.za, but make sure that you confirm this as your case may be allocated to a different SARS region.
- Ensure that your e-mail header contains your name, income tax number, and the case reference number.
- You will need to provide the following information and supporting documents (which are to be scanned and attached to the e-mail):
    - Proof of your foreign address (a utility or property tax bill not older than 3 months)
    - A copy of your foreign bank statement (not older than 3 months)
    - A copy of your passport or South African ID book. (The latter is preferable, as SARS can verify you by your ID number)
    - Your income tax reference number
    - Your foreign banking details, which needs to include: Account holder name, bank name, branch name, physical address of bank branch, account number, and IBAN number (in Europe; other countries use the SWIFT code)), and the currency in which the account is held (UK pounds sterling, US dollars, etc.)

SARS should respond to your e-mail with a confirmation that your request has been received. The standard turnaround time is 21 working days, which was more or less the exact time period that elapsed until my refund reflected in my UK bank account. You won't receive any notification of this from SARS, but a quick request for a Statement of Account on SARS e-filing will confirm that the refund has been paid out.

I wish you well with your endeavours, and hope that your refund is processed by SARS as smoothly and efficiently as they did in my case.

Do you have a tax question? Pop us an e-mail to info@bellanmedia.co.za. We will select one answer for publication in Tax Breaks each month. Unfortunately, we will not be able to respond to questions individually.

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