KPMG

GMS Flash Alert

2017-035 | February 23, 2017

South Africa - Amendment to 'Provisional Taxpayer' Rules Will Affect Expatriate Employees

In an attempt to collect taxes in advance from individuals who are employed and paid by a foreign nonresident company, the definition of "provisional taxpayer" has been amended to include any person who derives income by way of any remuneration from an employer that is not registered as an employer with the South African Revenue Service (SARS) for purposes of withholding and paying employees' tax to SARS on a monthly basis.

Expatriate employees working in South Africa who only earn employment-related income, are currently not required to register as provisional taxpayers.

The amendment to the legislation[1] impacts both foreign nationals working in South Africa who remain on their home country payroll or who are on a split-payroll arrangement, and South African resident employees who are paid by a nonresident employer while working in South Africa.

WHY THIS MATTERS

With effect from 1 March 2017, where an employee is paid remuneration by an employer that is not registered with SARS for purposes of withholding and paying employees' tax to SARS on a monthly basis, that **employee must register as a provisional taxpayer** and submit provisional returns and payments on a six-monthly basis.

In addition to their annual income tax returns, provisional taxpayers are required to submit six-monthly provisional tax returns together with the corresponding tax payment.

This change will require modifications in the employee's — and in cases where that employee has a tax service provider, theirs as well — compliance responsibilities, and it could impact employees' cash-flow. Employers should be

prepared to adjust their international assignment policies and communicate clearly and on a timely basis this change to affected employees.

Background

The term "remuneration" is defined in the Income Tax Act and includes most forms of employment income (e.g., salary, benefits, allowances, incentives, etc.).

Currently, only a South African resident employer (or a representative employer residing in South Africa) is required to register and withhold employees' tax (also known as Pay-As-You-Earn or PAYE) from the remuneration that it pays or becomes liable to pay to its employees. Nonresident employers are therefore not required to register with SARS.

KPMG NOTE

It appears that even where a "shadow" payroll is operated in South Africa and employees' tax is paid to SARS through a shadow payroll in respect of all the employee's remuneration, an obligation still exists for the individual to register as a provisional taxpayer if the nonresident employer that actually pays the employee's remuneration is not registered with SARS for employees' tax purposes.

Furthermore, even where the nonresident home-country employer only continues to provide certain benefits, for example, employer contributions to the home country pension plan (which are currently not being treated as taxable in South Africa), an obligation may exist for the individual to register as a provisional taxpayer.

This amendment could therefore impact the majority of expatriate employees who have been seconded temporarily to South Africa. These individuals — as well as any expatriate employees commencing employment in South Africa on or after 1 March 2017, who are paid by an offshore employer — will need to be registered as provisional taxpayers.

FOOTNOTE:

1 The *Tax Administration Laws Amendment Act, No 16 of 2016* was gazetted on 19 January 2017. The Amendment Act contains changes to the definition of a provisional taxpayer in paragraph 1 of the Fourth Schedule to the Income Tax Act No 58 of 1962, as amended. These changes are effective from 1 March 2017.

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in South Africa:

Cecelia Madden
Associate Director
Tel. +27 (0) 82 719 5658
Cecelia.madden@kpmg.co.za

Carolyn Chambers
Partner
Tel. +27 (0) 83 440 5564
Carolyn.chambers@kpmg.co.za

The information contained in this newsletter was submitted by the KPMG International member firm in South Africa.

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.