Tax for Saffers working overseas

Tony de Wijn, Softbyte Computers

Many skilled South Africans have accepted employment opportunities in foreign countries for lengthy periods such as for most of the year or even for several years continuously, and so legally avoided paying tax in South Africa. SARS has, in the past, treated these people as "non SA residents <u>for taxpaying purposes</u>". In other words these people were still SA citizens but not liable for income tax in SA.

SA adopted a "residency-based" income-tax system on 1st March 2001 and this basically means that persons pay income tax in the country where they live and work for most of the year. If a SA citizen lives and works in a foreign country with a DTA (Dual Taxation Agreement), such as the UK for example, for most of the year, then they should be treated as a UK taxpayer and pay income tax in the UK. This also means that if they spend most of the year living and working in a country where there is no income tax, such as Saudi Arabia for example, then they pay no income tax in Saudi Arabia and no tax in SA, so they pay no income tax at all.

SARS has now changed the tax laws in SA (Taxation Laws Amendment Bill Dec 2017) and SA citizens working overseas will now pay income tax on a portion of their offshore earnings to SARS. <u>This is now law</u> and the law will come into effect on 1st March 2020 which gives those affected time to arrange their working schedules.

If there is a DTA in place, the first R1m of salary/income earned offshore will be exempt from tax and SARS's normal tax rates will apply to the balance of income earned. This means that, if a person earns R1.1 million in foreign salary/income then the first R1m will be exempt from tax in SA and SARS will tax them at 18% on the R100 000 balance.

There is no distinction between salary/income earned in foreign countries where tax is deducted and foreign countries where no tax is deducted. This means that if R1.1m salary was earned offshore and R300K tax was deducted offshore then SARS would say that R300K in tax was deducted offshore on what SARS sees as R100K income (because R1m is exempt). In terms of s6quat* and using current tax rates, SARS would say that, only R18K should have been deducted offshore so you can only claim R18K of the R300K taxes deducted offshore on your tax return as allowable taxes already paid. Many people working in foreign countries enjoy fringe benefits such as accommodation, the occasional free flights home etcetera, as part of their contracts, and SARS sees all these benefits as part of taxable foreign earnings. If a SA citizen works in Saudi Arabia for a year and earns R2m then no income tax is deducted in Saudi Arabia. SARS will exempt R1m of the income and SARS will levy over R300 000 in income-tax on the R1m balance of the foreign income earned (using the current 2019 tax tables).

The only way to avoid this situation is for the taxpayer to emigrate financially. Merely re-locating to a foreign country for a time and keeping your SA passport is not good enough. We all live in the same "global village" where everything is interconnected. SARS assured us many times that financial institutions all over the world are linked to tax regimes in all countries and SARS will find you unless you have officially emigrated. If you have a bank account opened in a foreign country using your SA passport then SARS will have access to that bank account's transaction records. Tax regimes around the world work

together. SA banks have to provide Revenue Canada, for example, with transaction records of accounts in SA held by Canadian passport holders.

Because this new law only comes into effect on 1st March 2020, there is still a small chance that minor amendments could be made before then but tax practitioners and financial consultants should advise their clients accordingly if this new law applies to any of their clients.

*** *S6quat limit***

*Where SA citizens work offshore for less than the period-limits mentioned then they have to declare the foreign income, and any taxes deducted in the foreign country, on their local IRP5 tax return. They will be taxed on the foreign income earned but a special formula will dictate how much of any tax deducted by the foreign country may be claimed, on their local assessment, as taxes already paid. This limit of taxes deducted offshore that they may claim as a tax credit is called your **"s6quat"** limit.*

What this means is that, if a taxpayer earned R100,000 working in SA, then SARS's tax tables show a tax due of R18 000 (before the primary rebate). If a SA citizen worked in a foreign country earning R100 000 and R20 000 PAYE was deducted in the foreign country, then SARS would only allow them to claim R18,000 on their assessment as taxes already paid. SARS will not credit you with the R2 000 "excess tax" deducted in the foreign country. SARS only allows you to claim the amount of tax that would have been deducted here in SA had the income been earned here in SA.