

TAX CONSIDERATIONS FOR EXPATRIATES

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Introduction

- Global movement of human capital resources is a trend that will continue into the foreseeable future
- International assignments are a reality - a costly one!
- Companies should be aware of finding ways of minimizing costs associated with assignments, such as:
 - Defining relocation and tax policies and minimizing exceptions to them
 - Managing costs for major assignment expense categories:
 - Taxes
 - Housing
 - Cost of Living Adjustments (“COLA”)



Tax Residence Rules - SA

SA operates hybrid taxation system i.e. **residence and source basis.**

Residents: Liable for tax on worldwide basis in SA.
Non-Residents: Liable for tax on SA sourced income only

Ordinarily resident or resident
ito physical presence test

Ito Physical Presence test –
earliest at which trigger residence
is year 6

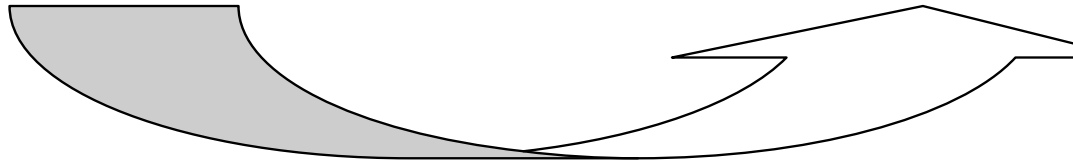
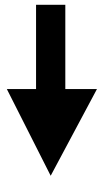
Tax treatment of INBOUND IA's

Intra-company transfers => 2
years – liable for tax on SA
sourced income only



Physical Presence Test

2009	2008	2007	2006	2005	2004
> 91 days	> 91 days	> 91 days	> 91 days	> 91 days	> 91 days



Current Year 5 Preceding Years

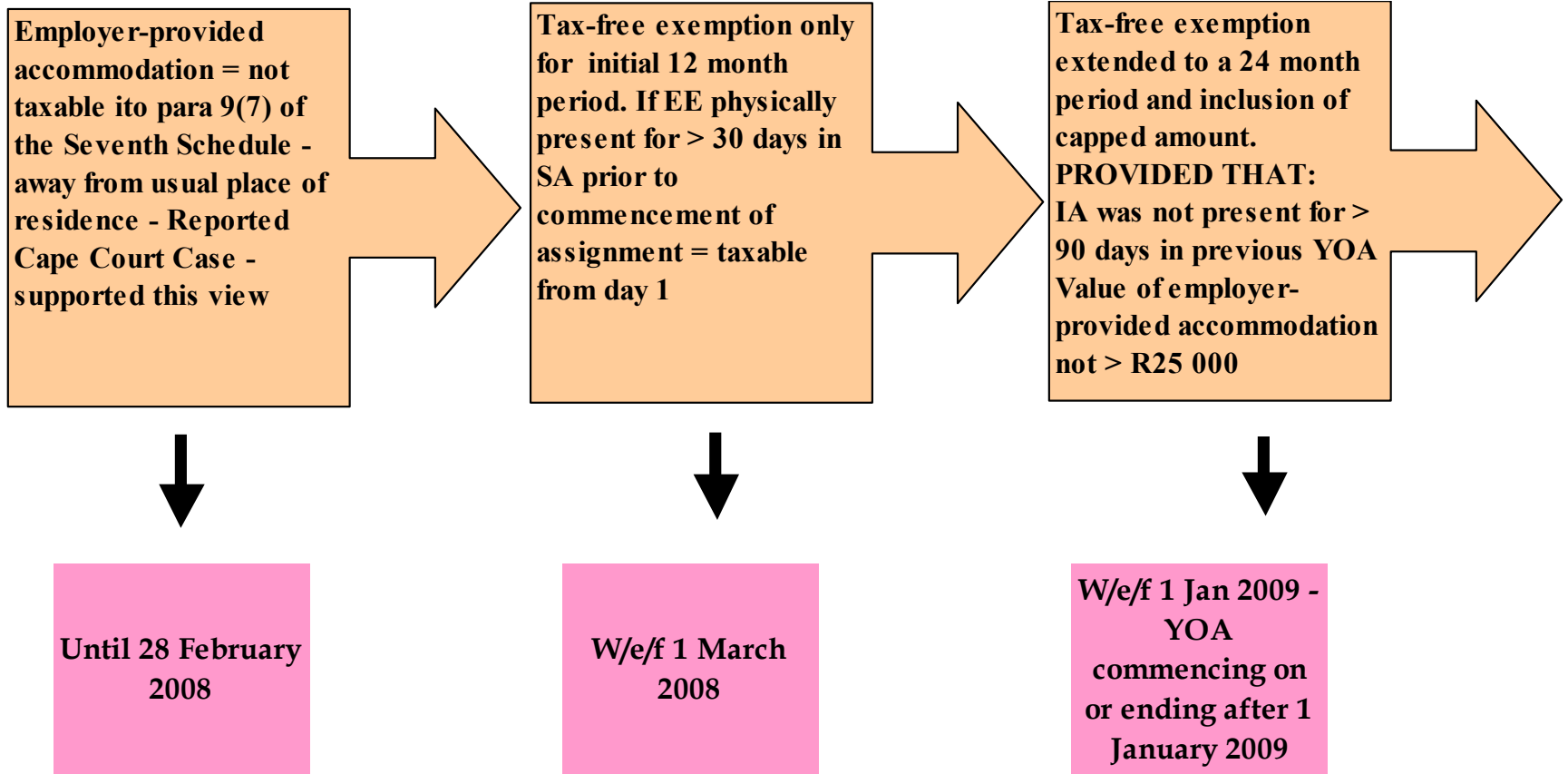
AND

> 915 days in aggregate during 5 preceding years
183 days in each of the five preceding years



What are some of the recent tax updates?

Employer-provided residential accommodation



Tax Considerations

- Basic tax planning
 - Information about host and home country
- Length of Assignment
 - impact on residency status in home / host locations
 - Start and end dates impact on tax cost, eg, countries have graduated rates and lower taxes



Tax Considerations (continued)

- Method of delivering Compensation Benefits
 - Eg, direct reimbursement of housing vs allowance
- Tracking System
 - Short and long term assignment
 - Immigration
 - Residency status

Tax Considerations (continued)

- Double Tax Treaties (DTAs)
 - < 183 days
 - Host country not bear cost
 - Employed by foreign employer
- Corporate tax implications
 - Permanent establishment, transfer pricing and VAT
- Tax policies



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Host Country Information

- Residency rules
- Special rulings
 - Netherlands - 30%
 - UK - no social security for first 52 weeks
- Method of taxing relocation allowance
 - SA - up to one month salary tax free
 - UK - £8 000 tax free
- Deductions allowed
 - Canada/SA - pension fund in terms of DTA
- Housing benefits
 - Allowance vs direct cost for company



Host Country Information

- Compliance requirements
- Treatment of “Tax on Tax”
 - UK, Germany and SA
 - included in current income
 - Canada, USA and Japan
 - One year “rollover” method, ie, tax paid, recorded as advance, eg, Japan – 20% rate instead of 50%
- Taxation of share incentive schemes
- Exchange Control



Tax Policies

- What do we mean by this?
 - Internal guidelines how remuneration – allowance will be taxed
- Why the need for this?
 - Ensure consistency
 - Encourage globalisation
 - Budget assignment cost
 - Ensure compliance
- Types of Policies
 - Laissey Faire
 - Tax Protection
 - Tax equalisation

Types of Policies

- **Laissez Faire**
 - Expatriate is responsible for his/her own taxes
- **Tax Protection**
 - The employer will pay any tax liability which is higher than that of the home country
- **Tax equalisation**
 - Employee receives the same net salary and pays the same amount of tax as if he had continued to work in home country - 'Hypothetical tax' and the Employer pays all the tax liabilities in the host and home countries - 'Grossed up tax'



What do we see in practice today?

- Overall increase in short-term secondments (STA's)
- Need for an implementation of and variation of a tax policy
- Overall increase in the type and level of allowances being provided to employees
- More of an adaptable approach to the tax policy being implemented



People's Republic of China (“PRC”) Individual Income Tax (“IIT”) for Expatriate Employee



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Expatriate Employee

Generally refers to:-

- Non-PRC national
- Without a domicile in the PRC, where “domicile” in the PRC refers to:
 - Habitually resides in the PRC due to reasons of household registration, family or economic interests.
 - A place that the individual must to return to upon termination of such involvements in the other country.



General IIT Rules

Expatriate's IIT position shall be determined by:-

- Tax Treaty (if exist between the PRC and the relevant country); and
- PRC IIT Law and regulations

General IIT Rules

PRC – South Africa Tax Treaty (Applicable to South Africa Tax Resident)

Exempt from PRC IIT if:

- The expatriate will not be present in the PRC for more than 183 days in any 12-month period commencing or ending in the fiscal year concerned; and
- The remuneration is paid by, or on behalf of, a non-PRC resident employer; and
- The remuneration is not borne by a permanent establishment or fixed base that the employer has in the PRC.



General IIT Rules

Five-Year Rule:-

- Taxed as a PRC national on worldwide income if the expatriate resides in the PRC for 5 consecutive “full years”.
- Where “full year” refers to physically outside of the PRC for not more than 30 consecutive days or not more than 90 cumulative days during a calendar year.
- Applicable tax rate 5% - 45%.



IIT Filing Obligations

Employer's Withholding obligation – Monthly IIT Filing

- IIT Registration with local tax authority.
- File monthly IIT return.
- Make tax payment to local tax authority.
- Deadline: 7th after the end of each month (subject to local variation).



IIT Filing Obligations

Expatriate's Obligation - Annual IIT Filing

- File annual IIT return on ALL PRC-sourced income and/or worldwide income (depending on PRC residency status).
- Filing exemption rules available.
- Deadline: 31 March following the end of the concerned year.



IIT Filing Obligations

Penalties and Surcharges

- Late tax filing: RMB2,000 per tax return.
- Late payment surcharges: 0.05% per day on tax amount in default.
- Failure to comply with withholding obligation: 50%
- 3 times of tax amount that should have been withheld.
- Subject to local variation.



Challenges in sending Expats to PRC

- Residency rules – less flexible - International Assignment Policy should be robust and focus on taxation issues in PRC – e.g. tax residency
- If Expat is in senior management role/director etc. ensure careful planning regarding taxation = double taxation + overlap in tax years
- Tracking of Expat presence in PRC should be closely monitored to ensure compliance
- Services of expatriate tax advisors in PRC to ensure compliance in all aspects – corporate/employees' tax etc.



India

Tax Considerations for Expatriate Employee



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Residency Rules

- Resident
 - An individual is said to be resident in India in any previous year if he is in India for at least 182 days in that year or during that year he is in India for a period of at least 60 days and has been in India for at least 365 days during the 4 years preceding that year.
- Non-Resident
 - A person who is not a resident in terms of the above provision is a non-resident.

Residency Rules

- Resident but Not Ordinarily Resident (“RNOR”)
 - A person who is otherwise resident as defined above would be RNOR, if he satisfies any of the following two conditions:
 - He has been Non-resident in India in 9 out of 10 preceding previous years; or
 - He has been in India for a period of 729 days or less in the preceding 7 previous.



Taxable Income

- Resident
 - Worldwide income.
- Non-Resident
 - Income accrued or deemed to accrue in India.
- Expat
 - Tax liability regardless of place salary is received.



Taxable Income (continued)

- Expat < 90 days
 - Income is exempt.
- DTA
 - < 183 days
 - Remuneration paid by foreign employer.
 - Remuneration not deductible in PE.

Taxable Liability

- Sliding scale
 - 0% - 30% > Rs5 500 000.
- Gross Income > Rs1 million
 - Surcharge at 10%
 - Education 3%
- Maximum rate = 33.99%



Employers Responsibility

- Monthly withholding.
- Payable by 7th of next month.
- Furnish quarterly returns.
- Failure to comply = penalties.
- Fringe benefit Tax.
 - Additional to Income Tax;
 - Payable by Employer;
 - File return – 30 September;
 - Late filing – penalty of R5 100 per day plus interest.
- New pension/provident returns.



Latest Developments

- New Provident/Pension contributions.
- Announced 1 October 2008.
- Applicable – In and Outbound expats.
 - Employees - 12% of base salary;
 - Employer - 12%.
- Exemption – home country have Social Security System.



Tax Challenges

- Communication between management, HR and service provider
- Obtaining information of host country to take informed decisions
- Compliance obstacles
 - Tax, labour, immigration
- Tracking of assignees
- Tax cost of assignments



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