Introduction To International Aspects Of Pensions - South Africa

1. Considerations affecting retirement provision

- When do you intend to retire?
- Where are you going to retire to?
- What form and amount of income do you want to have in retirement?
- Are you confident of a regular income throughout your working life or do you anticipate that your earnings will fluctuate considerably?
- Are you going to work in the same country for the remainder of your working life or are you going to be in a number of as yet unspecified countries?

Some of these questions can be impossible to answer. For instance at the age of 30 one country may appear an idyllic potential final place in the sun. However thirty years later your expectations and views may well have changed, and the country in question may be very different. Few people can have any degree of certainty about the path that their working life will take.

2. Pension Portability

Individuals who work or live in a number of countries are faced with a more complex situation and one that is continually changing as legislation and commercial products evolve in response to each other.

Although EU legislation exists covering the transfer of state (statutory) pensions within the EU, this is typically difficult to achieve. Transfer between state pension schemes into or out of the EU or between other countries is generally not possible.

A new EU directive has been drafted recently that provides for the preservation and transfer of pension rights within countries in the EU for occupational pension schemes since these are becoming far more widely used and in some cases replace state schemes. The details of this Directive are of course subject to change during the approval process. It does not deal with tax or indexation of pension issues.

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As a rule, a pension arises directly from the services rendered by the pensioner during his/her years of active employment and is, therefore, continued remuneration in respect of past services. Pensions are subject to the deduction of Employees Tax by the former employer.

The Income Tax Act provides that pensions, irrespective of the source, are deemed to be derived from a source within South Africa and are therefore taxable. However, if the services in respect of which the pension was granted were performed outside South Africa for the last ten years immediately preceding the date from which the pension first became due, the pension will be exempt from Income Tax in South Africa. If at least two years of the pension service were performed in South Africa during the ten year period mentioned above, only a portion of the pension will be taxable in the ratio that the period of South African service bears to the total period of service.

The above-mentioned exemption is not applicable in respect of pensions that are payable by the Government, Provincial Administration or by a Local Authority in South Africa. However, there are certain exceptions to this rule and it is advisable for an individual to contact his or her Receiver of Revenue for comprehensive details.

The following pensions are exempt from tax: war veterans pensions; compensation in respect of diseases contracted by persons employed in the mining industry; disability pensions paid under section 2 of the Social Pensions Act; and compensation paid in terms of the Workmen's Compensation Act No.30 of 1941 and the Compensation for Occupational Injuries and Disease Act, 1993.

A person’s current year contributions are deductible, limited to the greater of R1 750, or R3 500 less the allowable deduction for contributions to a pension fund or, 15% of the taxpayer’s taxable income (before certain deductions such as medical expenses are taken into account), excluding income from retirement-funding employment.

The subject of pensions is one of the most difficult for an expatriate worker; but if residence in South Africa is going to be for a number of years, it may be worthwhile for an expatriate to join a South African scheme. Of course it's necessary to take professional advice on the transportability of such a participation on leaving, and on the tax consequences.

An individual is deemed to be resident for tax purposes if they are 'ordinarily resident' (not set in stone, but usually defined as having some continuity of residence in South Africa, storing your belongings there, and having the intention to return).

Expatriates on assignment are normally classified as 'temporarily resident', which is equivalent to non-resident from a tax perspective, although there might come a point at which this could be challenged if roots start to go down too deeply. For instance, after three years immigrants are brought within South African exchange control laws, although they can leave with their assets intact for another two years after that. Foreigners working in South Africa for short periods are subject to tax in the same manner as any other South African resident, whether or not such a person settles in South Africa. With regard to remuneration received, the normal employees tax rules are also applicable to such persons. The guidelines for persons who are liable for the submission of income tax returns also apply to foreigners.

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