

Latest Changes to the Expatriate Tax Regime



Shohana Latchminarain
Senior Manager



BDO Spencer Steward
Chartered Accountants
A relationship at work

www.bdo.co.za

→ CONTENT

- Uncover recent tax law changes in following countries:
 - SOUTH AFRICA
 - ASIA PACIFIC (India, PRC, Indonesia, Australia)
 - EUROPE (Belgium, Poland, France, Finland)



BDO

BDO Spencer ²Steward
Chartered Accountants
A relationship at work

Interesting statistics

■ CORRUPTION PERCEPTION

- The Corruption Perceptions Index (CPI) Score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).
- Corruption is viewed as the abuse of public power for private gain.



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

Statistical scores

Country Rank	Country	2008 CPI Score	Confidence Range
5	Finland	9.0	8.4 - 9.4
9	Australia	8.7	8.2 - 9.1
16	United Kingdom	7.7	7.2 - 8.1
18	Belgium	7.3	7.2 - 7.4
23	France	6.9	6.5 - 7.3
54	South Africa	4.9	4.5 - 5.1
58	Poland	4.6	4.0 - 5.2
72	China	3.6	3.1 - 4.3
85	India	3.4	3.2 - 3.6
126	Indonesia	2.6	2.3 - 2.9



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

Local and International Compliance Enforcement

- Locally – SARS Strategic Plan resulted in revenue growth of R184b to R625b in over 10 years.
- SARS Corporate Strategic Priorities for 2010 – 2012 is focused Compliance Program for High Net Worth individuals.
- International – OECD Working Group landmark event aimed at reducing international corruption with strong focus on tax havens.
- 16 of the OECD member countries showed strong enforcement as can be seen in the CPI scores – Australia, Belgium, Finland, France etc.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

South Africa: Tax Law update

▪ Employer provided residential accommodation

Taxation Laws Amendment Act No. 3 of 2008

- Paragraph 9(7) amended to allow for 2 year window period = no rental value for tax purposes provided:
 - EE was not physically present for 90 days in previous YOA.
 - Value of the benefit does not exceed R25k multiplied by the number of months during which no rental value provision applies.
 - 7th Schedule prescribes 2 methods for calculating tax value.



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

South Africa: Tax Law update

- **Calculation of rental value for tax purposes:**
 - The greater of an amount determined in accordance with the formula (remuneration factor, size of accommodation, utilities provided etc.) **OR**
 - The total amount of rentals payable by the ER and any other expenditure defrayed by the ER.

IMPLICATION

- Calculate the greater value (formula based or actual consideration paid) to arrive at tax value.
- Tax Directives may be obtained where value to formula is unreasonable.
- Cumulative analysis (see example)



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

South Africa: Tax Law update

2008 Tax Year

Actual Rental Paid			R 22,000.00
Formula based calculation			R 24,500.00
No directive from SARS			
Greater value to be applied			R 24,500.00
		Greater of formula	
Month	Capped Amount	value/Actual Rental	Taxable Value
August 2007	25000	24,500.00	-500.00
September-07	50000	49,000.00	-1,000.00
October-07	75000	73,500.00	-1,500.00
November-07	100000	98,000.00	-2,000.00
December-07	125000	122,500.00	-2,500.00
January-08	150000	147,000.00	-3,000.00
February-08	175000	171,500.00	-3,500.00



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

South Africa: Tax Law update

2009 Tax Year

Actual Rental Paid	R 24,200.00
Formula based calculation	R 26,500.00
No directive from SARS	
Greater value to be applied	R 26,500.00

Month	Capped Amount	Greater of formula value/Actual Rental	Taxable Value
Mar-08	200000	198,000.00	-2,000.00
Apr-08	225000	224,500.00	-500.00
May-08	250000	251,000.00	1,000.00
Jun-08	275000	277,500.00	2,500.00
Jul-08	300000	304,000.00	4,000.00
Aug-08	325000	330,500.00	5,500.00
Sep-08	350000	357,000.00	7,000.00
Oct-08	375000	383,500.00	8,500.00
Nov-08	400000	410,000.00	10,000.00
Dec-08	425000	436,500.00	11,500.00
Jan-09	450000	463,000.00	13,000.00
Feb-09	475000	489,500.00	14,500.00

Taxable value



BDO Spencer Steward
Chartered Accountants
A relationship at work

South Africa: Tax Law update

2010 Tax Year

Actual Rental Paid	R 26,620.00
Formula based calculation	R 28,700.00
No directive from SARS	
Greater value to be applied	R 28,700.00

Greater of formula			
Month	Capped Amount	value/Actual Rental	Taxable Value
Mar-09	500000	518,200.00	18,200.00
Apr-09	525000	546,900.00	21,900.00
May-09	550000	575,600.00	25,600.00
Jun-09	575000	604,300.00	29,300.00
Jul-09	600000	633,000.00	33,000.00 Taxable Value
Aug-09	0.00	28,700.00	28,700.00
Sep-09	0.00	53,200.00	53,200.00
Oct-09	0.00	77,700.00	77,700.00
Nov-09	0.00	102,200.00	102,200.00
Dec-09	0.00	126,700.00	126,700.00
Jan-10	0.00	151,200.00	151,200.00
Feb-10	0.00	175,700.00	175,700.00 Taxable value
Taxable Value for 2010 Tax Year			208,700.00



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

South Africa: Tax Law update

Draft Taxation Laws Amendment Bill 2009 – 04/06/09

- **Deduction of repayment** (bonus, maternity benefits) - section 11(nA), 11(nB) and 23(m)
- **Repeal of deemed kilometer method**
- 'Remuneration' definition – 4th Schedule amended to include 80% of travel allowance for purpose of calculating PAYE
- **Provisional Tax Estimations** – Paragraph 19A inserted – empowers Commissioner to prescribe basis on which estimates are to be determined



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

South Africa: Tax Law update

Draft Taxation Laws Amendment Bill 2009 – 04/06/09

- **Primary Residence Exclusion** *proceeds* up to R2m may be disregarded for CGT purposes – avoid complex CGT calculations.
- **Insertion of Para 51A to 8th Schedule** – Companies Act impose annual fee on companies to reduce number of dormant/inactive companies. Companies that hold residential/domestic property held by natural persons may be deregistered with no STC, Transfer Duty, CGT implications during a 2 year “window period” set to commence 1 Jan 2010 and end 31 Dec 2011.
- Significant saving opportunity – property valued at say, R5m with a base cost of say, R1,5m:
 - Estimated CGT saving - R490k
 - Estimated Transfer Duty saving – R345k
 - Estimated STC saving – R300k



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

South Africa: Tax Law update

Draft Taxation Laws Amendment Bill 2009 – 04/06/09

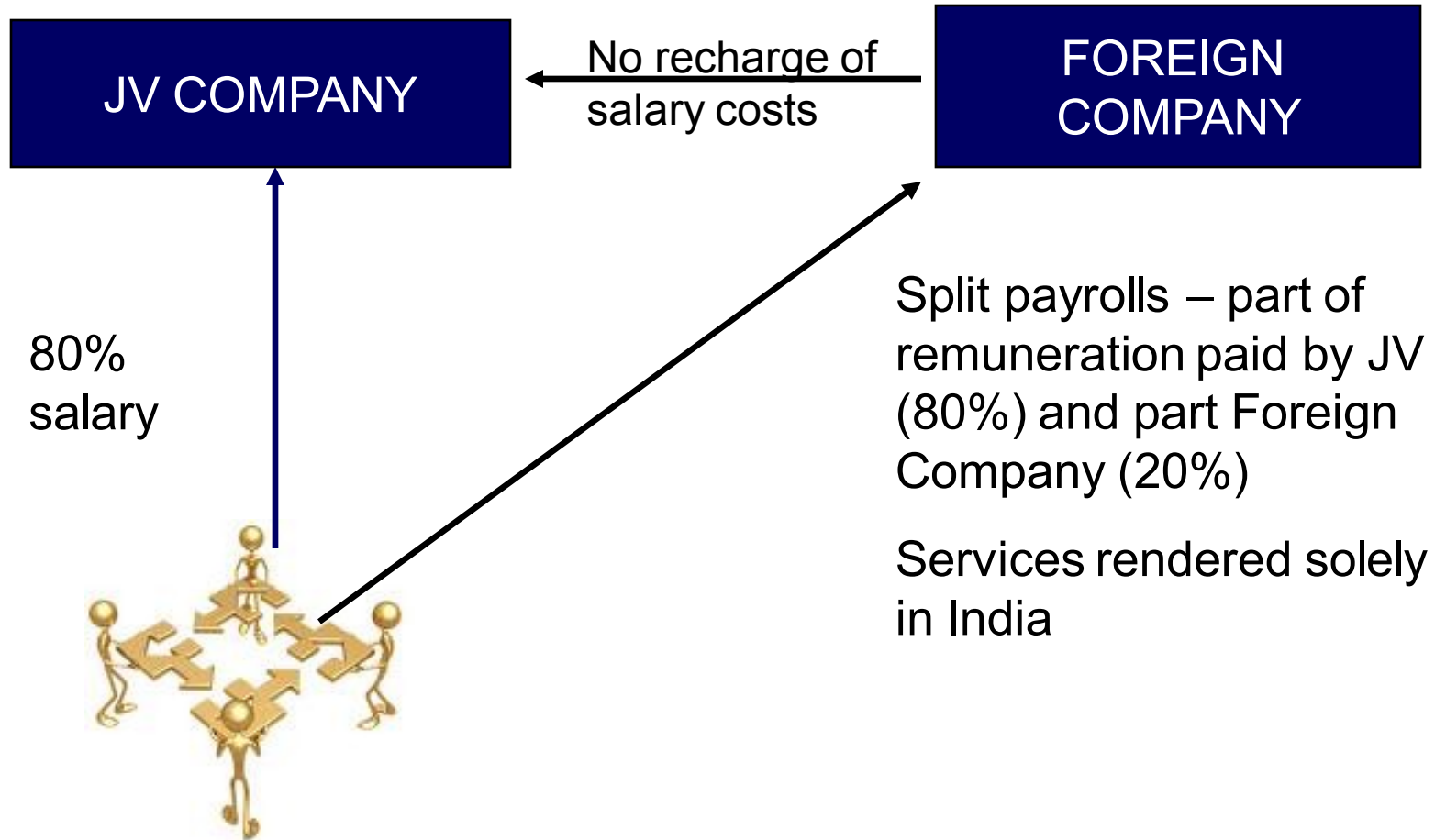
- **Seventh Schedule** - Proposed Medical Scheme Reform:
 - Remove fringe benefit deductions – EEs to claim capped deductions ito s18 of the ITA on annual basis.
 - Contributions to Schemes registered in other countries but similar to Schemes registered ito similar provisions of the Medical Schemes Act, 1998 may be deductible – favorable treatment for foreign nationals contributing to foreign Schemes.



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

International: Tax Law update - INDIA



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - INDIA

- **ISSUE: - Employees Tax Withholding requirement**
- High Court judgment was appealed
- **Supreme Court held (M/s Eli Lilly Inc.):**
 - Tax Deducted at Source (TDS) is applicable if the services to which the income relate is **rendered solely** in India.
 - Withholding tax provisions (TDS) must be operated by the Indian entity in respect of the remuneration paid by the foreign company.
 - No clarity on whether there is an obligation for foreign employer.
 - **Employers are obliged to ensure full deduction on income chargeable under the head “Salaries” – concomitant penalty and interest applicable.**
 - JV Company liable for withholding tax on 80% + 20% of salary paid to expatriate employees.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - INDIA

- **Mandatory Social Security System for International Workers**
- Indian Social Security System consists of:
 - Employee Provident Fund Scheme (1952)
 - Employee Pension Fund Scheme (1995)

Clarification points:

- ✓ IW includes ALL non Indian passport holders
- ✓ Mandatory date for joining – 01/11/08
- ✓ Certain countries have Social Security Agreements (SSA) with India – potential exemptions may apply
- ✓ More details can be found at:
www.epfindia.com

Contribution and Compliance:

- ✓ The PF rules will apply irrespective of where salary is paid (in India or outside)
- ✓ Split payroll – contribution based on TOTAL salary earned by EE
- ✓ If EE has dual duties in multiple countries – TOTAL salary will be considered for contribution purposes
- ✓ No minimum stay requirement – liable from 1st day of employment



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - PRC

- **Tax Treaty Benefits not guaranteed or automatic anymore!**
 - Change in tax landscape in PRC.
 - Focus on tax anti-avoidance.
 - Stepping up enforcement.
 - Certain domestic law requirements to be met before Treaty provisions/dispensation may apply e.g. Dividend Withholding Tax.
- **Individual Income Tax (IIT) – Transfer of properties**
 - Circular 78 – Clarification of the tax treatment of the **free transfer of real estate properties** will not be subject to IIT under following conditions:
 - Gifting of real estate properties by **property owner** to his/her **dependants**, (spouse, parents, grandparents, children, grandchildren, brothers, sisters).
 - Gifting of real estate properties by **property owner** to individuals who bear the **duty to support the property owner**.
 - **Inheritance** of real estate properties by rules of last wills.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - PRC

- Individual Income Tax (IIT) – Transfer of properties (cont'd)
 - Supporting documentation must be provided to tax authority to qualify for tax-free transfer.
 - All other cases – transfer of property subject to IIT at a rate of 20% on the price of the property as stipulated in the property transfer OR the market value of such property.
 - Circular provides clarity as PRC does not have Inheritance or Gift tax legislation.



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

International: Tax Law update - INDONESIA

- Tax Holiday – February 2009 – November 2009:
Government to bear Employee Income Tax
 - Global economic crisis and to provide spending power for EEs
 - Minister of Finance issued regulation – government will bear the income tax of certain workers employed in certain sectors, i.e: **Agriculture, Plantations, Animal Husbandry, Hunting and Forestry, Fisheries and Manufacturing.**
 - Eligible workers – Income not exceeding IDR5 million per month – ZAR4000.
 - Workers not registered as taxpayers will only have relief from taxes from February 2009 to June 2009 AND will be liable for 20% tax surcharge for failing to register as taxpayers.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - AUSTRALIA

- Australian residents working abroad (Proposal - May 2009)
 - **Current legislation** – Australian resident rendering services abroad for continuous period of 91 days is exempt from tax in Australia as liable for tax in jurisdiction where employment is exercised.
 - **Budget Proposal** – This exemption is to be limited to certain categories of workers, i.e. charitable, certain government employees working on certain projects.
 - **EFFECT** – Potential double taxation – liable for tax in Australia and host country.
 - Timing issue – different tax years - claiming foreign tax credit in Australia.



BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

International: Tax Law update - BELGIUM

- Domestic 183 day rule in line with Article 15(2) (Dependent Personal Services) OECD (January 2009)
 - **Initial 183 day rule** – referred to an individual having spent 183 days in Belgium in a **calendar year**.
 - Wording not precise – some courts interpreted:
 - that the 183 days presence should be satisfied in the year of **payment of the salary**.
 - that the 183 days presence should be determined with reference to the **period in which the employment for which the salary was paid was exercised**.
 - **Amended wording** – reads that salary and other similar income are taxable in Belgium if an individual was present in Belgium for **more than 183 days in any 12 month period and if the payment relates to such activity. [Effective 1 January 2009]**.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - BELGIUM

- Domestic 183 day rule in line with Article 15(2) (Dependent Personal Services) OECD (Cont'd)
 - **EFFECT** – All payments that relate to an activity performed in Belgium for a period of more than 183 days in any 12 month period will be taxable in Belgium.
 - **HISTORIC – Tax on Tax payments** made after the expatriate had left Belgium was not taxable in Belgium as the expatriate was considered not present in Belgium for 183 days in the year of payment of the tax due.
 - **Bonus and Other Long-Term Incentive Awards** – Previous legislation allowed for exemption from tax on Bonus and LTI if the payments were made when the expatriate was not present in Belgium for more than 183 days in the year of payment. **New rules – bonus and LTI's will become taxable in Belgium if expatriate spent >183 days in Belgium during any 12 month period during the period to which the payment relates.**



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - POLAND

- Tax Saving Opportunities (February 2009)
 - **Joint taxation of Non-resident Spouses** – spouses who have residences in different European Union (EU) member states
 - Significant tax savings in Poland in cases where spouses incomes are low
 - **Deducting Social Security Contributions paid abroad** – Deducting social security contributions paid in EU member countries is now possible in Poland.
 - **Pro-Family Tax Relief** – Reduction of tax owed by PLN 1 173,70 per each child raised by the taxpayer and is extended to children over age 18 who are studying at an educational institution either in Poland or abroad. In 2009 tax calculations – legal custodians and foster parents will also be eligible to claim this relief.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

International: Tax Law update - FINLAND

- Guidance on taxable income calculations for Tax Equalised Persons (2 January 2009)
 - **Historic** – Historically Finnish Authorities allowed for full rollover gross-up of net salary for tax equalised Ees.
 - The result was that residual payments made by foreign employers when the EE left Finland was regarded as the EE's Finnish source salary income in the year the salary was earned but only to the extent residual taxes **exceeded** hypothetical tax.
 - **Guideline** - The taxable gross salary must be arrived at by grossing up the NET salary paid to an EE during the tax year and applying the **current year gross-up method**.
 - **New Rules** – Allows for a mixture of the current year and rollover methods – only where employee taxes are made after the relevant tax year and exceeds the tax amount for the current year gross-up calculation for the year in question.



BDO

BDO Spencer Stewart
Chartered Accountants
A relationship at work

→ CONCLUSION

THANK YOU

QUESTIONS?



BDO

25
23
BDO Spencer Steward
Chartered Accountants

A relationship at work