

## South African Supreme Court of Appeal rules on taxation of tax services provided by employers for international assignees

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### Executive summary

The South African Supreme Court of Appeal delivered a judgment on 6 September 2019 on the tax treatment of tax services provided by employers for the benefit of international assignees. The judgment brings clarity regarding the tax treatment of the tax services.

It is common practice for employers to pay professional consultants to render tax assistance for employees on global assignments and The South African Revenue Service (SARS) has taken the position that these services are for the personal benefit of the assignees and therefore, should be treated as a taxable fringe benefit. The decision of the High Court supports the position of SARS that tax services provided by employers for international assignees should be treated as a taxable fringe benefit.

### Detailed discussion

The taxpayer, a South African employer, who is part of a Global motor manufacturing group, made use of professional tax service providers to assist international assignees with their South African tax obligations. The taxpayer had received an assessment from SARS, subsequent to an employees' tax audit, for the failure to apply the fringe benefit tax on the payments made to the

professional tax service providers. In question was the fact that the payment for the tax services were regarded as a taxable benefit in the hands of the assignees' and further were to be included in their gross income, and subject to an employees' tax withholding by the taxpayer.

The taxpayer's group mobility policy provided for the sharing of resources/assignees across the globe. These assignees remained connected to their home country and were therefore remunerated under a "tax equalization" policy. Under the "tax equalization" policy, the group ensures that the assignees are not worse off than had they remained in their home country, by guaranteeing a fixed net salary.

To ensure that the tax complexities were correctly determined, and the individual assignee's minimum tax requirements were maintained for the overall protection of the group brand, tax services were provided to the assignees. While on assignment it was compulsory for the assignees to be assisted with tax registrations, tax return preparation, tax assessment verification and other similar services. The taxpayer was of the view that these services did not constitute a personal benefit as the employee retained a neutral position. The cost was regarded as a cost to the taxpayer for the overall assignment and deployment of the assignee.

The matter was referred to the South African tax court, on appeal by the taxpayer, who concluded that the fees for the services were for the personal benefit of the assignees, as the service ensured that the individual assignees complied

with their tax obligations, and further the service had been provided by an employer to the employee/assignee, in respect of services rendered. The court further concluded that although the taxpayer had an obligation to settle any additional tax liability under the "tax equalization" policy, this was under a personal contractual arrangement with the assignee and did not alter the fact that the assignee received a personal benefit. The taxpayer's appeal case was dismissed.

The taxpayer further appealed the judgment to the High Court. The High Court, on 6 September 2019, also concluded that the fee for the services provided to the assignees was regarded as a taxable fringe benefit, and the assignees had received a benefit or advantage. The appeal was dismissed with costs.

## Implications

International taxpayers must consider the facts of this case and ensure that they implement the correct tax treatment related to these tax services.

Specifically, employers need to evaluate each element of the service provided by tax professionals and determine whether the service provided is for the benefit of their assignees or whether they relate to the correct tax treatment of the policies being applied and ultimately for the benefit of the business. Further, a retrospective tax benefit may be applicable.

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