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# TAX & EXCHANGE CONTROL ALERT

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### Payments to foreign entertainers and sportspersons: Some SA tax and exchange control considerations

Although COVID-19, and the concomitant lockdown, has had an adverse impact on the South African entertainment and sports industry, South Africa has always been host to a number of international artists and sports events, which were attended by South Africans all and sundry. Where a South African person or entity operating in the entertainment industry arranges an event involving the performance of foreign entertainers or sportspersons in South Africa, the South African person or entity that is liable to pay for such person's services, must appreciate that there are specific tax and exchange control rules that need to be complied with. In this article, we provide a brief overview of these considerations.

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## Payments to foreign entertainers and sportspersons: Some SA tax and exchange control considerations

The tax on foreign entertainers and sportspersons must be paid in respect of any amount received by or accrued to any person who is not a South African tax resident, in respect of any specified activity exercised or to be exercised by that person.

Although COVID-19, and the concomitant lockdown, has had an adverse impact on the South African entertainment and sports industry, South Africa has always been host to a number of international artists and sports events, which were attended by South Africans all and sundry. Where a South African person or entity operating in the entertainment industry arranges an event involving the performance of foreign entertainers or sportspersons in South Africa, the South African person or entity that is liable to pay for such person's services, must appreciate that there are specific tax and exchange control rules that need to be complied with. In this article, we provide a brief overview of these considerations.

### Tax considerations

#### General principles

In terms of section 47B(1) of the Income Tax Act 58 of 1962 (Act), the tax on foreign entertainers and sportspersons must be paid in respect of any amount received by or accrued to any person who is not a South African tax resident in respect of any specified activity exercised or to be exercised by that person or any other person who is not a resident.

Section 47B(2) states that this tax is a final tax and is levied at a rate of 15% on all amounts received by or accrued to foreign entertainers and sportspersons, as defined. The rate of tax may also increase, if the Minister of Finance announces such an increase in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, which increase will be effective from the date mentioned in that announcement.

The phrase "entertainer or sportsperson" to whom the tax applies is defined to include any person who for reward –

- Performs any activity as a theatre, motion picture, radio or television artiste or a musician;
- Takes part in any type of sport; or
- Takes part in any other activity which is usually regarded as of an entertainment character.

The phrase "specified activity" in section 47B of the Act is defined to mean any personal activity exercised in South Africa or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons.

#### Exceptions

One should note that this tax on foreign entertainers and sportspersons will not apply to any person who is not a South African tax resident if that person –

- is an employee of an employer who is a South African tax resident; and
- is physically present in South Africa for a period or periods exceeding 183 full days in aggregate during any 12-month period commencing or ending during the year of assessment in which the specified activity is exercised.

#### Administrative considerations

A resident who is liable to pay to a taxpayer any amount contemplated in section 47B(1) must deduct or withhold from that payment the amount of tax for which the taxpayer is liable under that section in respect of that amount. Where an amount has been withheld in this manner by the resident, such resident must pay the amount withheld to SARS before the end of the month following the month during which that amount was so deducted or withheld.

## Payments to foreign entertainers and sportspersons: Some SA tax and exchange control considerations

*...continued*

The applicable exchange control rules are contained in section B.14 of the Currency and Exchanges Manual for Authorised Dealers (AD Manual).

### Exchange control

The applicable exchange control rules are contained in section B.14 of the Currency and Exchanges Manual for Authorised Dealers (AD Manual). In short, the section states that net earnings of foreign artistes, entertainers, sportsmen and similar professionals engaged by residents, may on departure be effected by authorised dealers (certain South African banks). This is provided that the authorised dealers view documentary evidence from SARS confirming that all tax commitments have been met.

Section B.14 of the AD Manual further states that where a contract requires that an upfront or advance payment be transferred prior to completion of the non-resident's contractual obligations, such payment may only be credited to an escrow account and may only be released proportionately after the completion of each performance.

Where one seeks to make payment to a foreign artist, entertainer or sportsperson for services not yet rendered, in other words, payment in excess of the proportion of services rendered, the South African resident making payment will likely have to obtain prior approval from the South African Reserve Bank to do so.

*Louis Botha*

### 2021 RESULTS

CHAMBERS GLOBAL 2018 - 2021 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2021 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2009 - 2021 in Band 1: Tax: Indirect Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017 - 2021 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2021 in Band 3: Tax.

Stephan Spamer ranked by CHAMBERS GLOBAL 2019-2021 in Band 3: Tax.



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### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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