

9 SEPTEMBER 2021

TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE >

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.

FOR MORE INSIGHT INTO OUR
EXPERTISE AND SERVICES

CLICK HERE 



INCORPORATING
KIETI LAW LLP, KENYA

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.



OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:



Emil Brincker
Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Sammy Ndolo
Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Mark Linington
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Gerhard Badenhorst
Director
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink
Director
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Heinrich Louw
Director
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



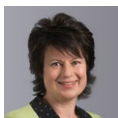
Howmera Parak
Director
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



Stephan Spamer
Director
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com

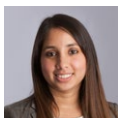
OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:



Tersia van Schalkwyk

Tax Consultant
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



Varusha Moodaley

Senior Associate
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Ursula Diale-Ali

Associate Designate
T +27 (0)11 562 1614
E ursula.diale-ali@cdhlegal.com



Louis Botha

Senior Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Louise Kotze

Associate
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com



Tsanga Mukumba

Associate Designate
T +27 (0)11 562 1136
E tsanga.mukumba@cdhlegal.com



Keshen Govindsamy

Senior Associate
T +27 (0)11 562 1389
E keshen.govindsamy@cdhlegal.com

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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2021 10394/SEP



INCORPORATING
KIETI LAW LLP, KENYA



TAX & EXCHANGE CONTROL | cliffedekkerhofmeyr.com