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Will SA's 183-day tax exemption rule be overturned?

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James Bowling, chief executive officer of Monarch&Co

On 18 August, the window period to submit public comment on the South African Revenue Services (SARS) and National Treasury's amended draft tax law proposal to overturn the 183-day tax exemption rule, closed. "Therefore, South African tax resident employees working outside South Africa (SA) in low-tax or tax-free jurisdictions like Mauritius, Singapore, Cayman Islands and the United Arab Emirates (UAE) are now holding their breath to hear whether the South African government will do away with the rule or not," says James Bowling, chief executive officer of Monarch&Co – a facilitator of residency and citizenship programmes in hand-picked territories around the globe.

The government is expected to announce their decision soon. "They said earlier this year that the public can expect the changes in legislation to take effect from as early as March 2019 should the rule fall away," confirms Bowling.

These past few months, many tax consultants speculated that the rule will most probably fall away. Hence, Bowling cautions that those that will be affected by the changing tax legislation, should start to get their affairs in order.

Since 2001, the 183-day tax rule exempted South African residents who spend 183 days or more, of which 60 must be consecutive, in any 12-month period working outside SA from paying tax locally.

Expected impact should the rule fall away

The overturning of the rule could have severe implications, especially for those employees that fall into the maximum 45% tax bracket and pay 25% tax in a foreign country as SARS will be collecting a tax deficit of 20% from them.

"In practice, South Africans looking to avoid the above, have limited and in most cases, extreme options to choose from, namely to return to SA for work (should their employer be able to guarantee them a position in SA) or emigrate," notes Bowling.

"It is not possible to sugar coat the impact of the proposed legislation. It is what it is and the best way to handle the situation is to plan ahead by focusing on the actions that need to be taken now," adds Bowling.

Residency programmes can bring relief

For those wanting to emigrate, Bowling highlights legislated programmes that allow South Africans to apply for second residency or citizenship by making a qualifying investment in real estate as one of the quickest and most effective ways to soften the impact of the proposed legislation.

Programmes like the above are available in a number of countries around the globe, with Portugal and Grenada being among the most popular among South Africans. "Aside from the fact that it only takes three months to obtain Grenadian citizenship, investors find the low qualifying investment thresholds of these countries, minimal visits and physical stay requirements (if any), taxation laws and perks, temperate climates, excellent education and medical facilities and low crime rates attractive," he says. (The Global Peace Index recently rated Portugal the 3rd safest country to live in).

Portugal and Grenada compare favorably with one another:

To obtain Grenadian citizenship, a real estate investment of US$350,000 is required. Property ownership must be maintained for three years.

Grenadian citizens enjoy visa-free or visa-on-arrival travel to 154 countries or territories worldwide. "It is the only Caribbean country that allows citizens visa-free access to China," says Bowling, adding that citizens are furthermore allowed to live and work in the USA by means of the E-2 Investment Visa.

"For residency leading to citizenship in Portugal, a real estate investment of €350,000 for selected real estate situated in areas scheduled for urban regeneration or €500,000 for other properties is required," explains Bowling. Property ownership must be maintained for five years.

"Portuguese citizens enjoy visa-free or visa-on-arrival travel to 198 countries or territories around the globe while residents can travel visa-free within the Schengen member countries of Europe," confirms Bowling.

Portugal's residency by investment programme, known as the Golden Visa Programme, was voted the most popular residency programme in 2015.

Other popular countries that can provide South Africans with citizenship and a passport in as little as four to six months and allow visa-free travel to Schengen countries and the United Kingdom (UK), include Antigua and Barbuda and the Commonwealth of Dominica.

Bowling adds that countries perform health and character checks on all applicants.

"Healthy individuals with honourable characters and no criminal records will have no problem being accepted onto residency and citizenship programmes," he says.