

# New withholding tax on cross-border services



By [Graeme Palmer](#)

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The Income Tax Act, 1962 was recently amended to provide for a new withholding tax on cross-border service fees. According to the new law, a withholding tax of 15% must be levied on the amount of any service fee that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to the foreign person from a source within South Africa.



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A foreign person is any person who is not a resident. Service fees would be regarded as earned from a South African source if the services in respect of which they are earned are rendered in South Africa. This fee includes any amount that is received or accrued in respect of technical, managerial, and consultancy services. It does not, however, include services which are incidental to the imparting of any scientific, technical, industrial, or commercial knowledge or rendering any service in connection therewith.

## A final tax

The withholding tax is a final tax where the person making payment to the foreign person withholds 15% of the gross service fees. The person withholding the tax must submit a return and pay the tax to SARS by the last day of the month following the month during which the service fee is paid. The service fee is deemed to be paid on the earlier of the date either when it is paid, or becomes due and payable.

### A foreign person will be exempt from the tax if:

- He is a natural person who is physically present in South Africa for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the service fee is paid;
- The service in respect of which the service fee is paid is effectively connected with a permanent establishment of that person in South Africa;
- The service fee constitutes remuneration paid by an employer to an employee.

Persons liable to withhold the tax can be relieved of such obligation only if they receive a declaration that, either the foreign person is exempt from the tax, or is subject to relief as a result of the application of a double taxation agreement.

The withholding tax will come into effect and apply to service fees that are paid or become due and payable on or after 1 January 2016.

## ABOUT GRAEME PALMER

Graeme Palmer is a director in the commercial department of Garlick & Bousfield.

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