How SA's legislative changes impact foreign employers

By Ania Strydom

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Using foreign employees has become a big business trend in the modern connected era. A combination of labour skills shortages and global connectivity encourages organisations to look abroad when filling roles, often because it can be more affordable due to differences in exchange rates and living costs.

Image source: Tima Mroshnichenko from Pexels

Overall, this is a net positive for people, companies and countries, which is why some expressed surprise when South Africa's National Treasury revealed proposals in early 2023 that will change how foreign companies can employ South Africans as remote workers. Specifically, the new changes could require such employers to register as employers in the country, requiring a CIPC (Companies and Intellectual Property Commission) number, Sars tax number, and local bank account.

Is this move the right step, what would it require from foreign employers, and what options do they have to manage the potential legislative change?

Protecting employees

The reasons for the change are pretty straightforward: according to South African legislation, a resident taxpayers' worldwide income is taxed in South Africa. This includes UIF, PAYE and SDL contributions. Currently, many local people employed by foreign companies are provisional taxpayers, which means their employers don't make these contributions. That ultimately is negative for the employee. For example, if they lose their jobs, they won't be able to claim UIF benefits.

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Portions of regular employee salaries contribute to UIF (Unemployment Insurance Fund) and PAYE (pay as you earn) taxes. In contrast, provisional taxpayers are typically self-employed and don't have those obligations. While defined thresholds and characteristics separate these two types of taxpayers, South Africans employed by foreign companies can end up designated as the latter.

If the employer is not registered as an employer or does not assign a representative employer in SA, they will not pay taxes such as PAYE, UIF and SDL. That's where the inconsistencies lie. It means possible unfairness in the treatment of employees in South Africa and an impact on the fiscus.

Options for foreign employers

The proposed changes want to correct this inconsistency, which is why it's very likely to become part of the draft Taxation Laws Amendment Bill for 2023. If the changes come to pass, foreign employers may have two choices: register locally for a CIPC number and Sars income tax registration number, and open a South African bank account; alternatively, they can assign a local representative employer.

Chances are good that major foreign companies already have such arrangements in place.

Large enterprises are very serious about compliance, and they likely have had to do similar things in other jurisdictions as well. So it is doubtful whether it will have a big impact on them. But smaller employers who only hire a few local people could find this to be a complicated issue and an extra cost.

Companies are attracted to foreign employees because they can offer lower salaries than in their domestic markets. They likely will continue foreign hiring if they can absorb the new legislative complexities.

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A local payroll opportunity

If registering locally isn't feasible, their best choice is to use a local representative employer — this is an opportunity for local companies that operate in payroll and accounting.

The good news is that modern cloud-native payroll platforms make administration on behalf of other businesses easier, accessible and more affordable. The local company understands South African requirements, while the platform can connect those processes with the foreign employer. It can also calculate currency differences, track certain legal obligations, and provide self-service portals to the local employee and foreign employer for everything from payslips to leave applications.

Local payroll and accounting businesses can become those proxies without expanding their businesses or incurring high costs, since the platforms are service-based, the payroll company has consistent low acquisition and management costs. They can administer their foreign customers' needs without adding legions of extra people or building expensive digital systems. This means they can also offer their foreign companies a lower cost.

The changes will likely become law in some form, as it's an international trend catching up with a fast-globalising workforce. The goal is to protect employees, and local companies can use modern cloud-native and multi-geographic payroll platforms such as PaySpace to help foreign employers adjust to the changes.

It will create opportunities for local companies in South Africa to take over these responsibilities and be the representative employers for foreign firms that want access to South African talent.

ABOUT THE AUTHOR

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