

SECONDED EXPATS PAY BW PAYE

Some companies engage employees from other countries, technically known or referred to as, expatriates to take advantage of the experience and expertise they bring in areas where these companies are constrained. However, as with any employment, questions about taxation frequently arise. Some employees generally face a quandary on whether the expatriate should pay tax in Botswana or they should remit to their home country? The answer to this predicament is not a simple yes or no. Further, expats usually have other income which is paid in their home country whilst they receive the greater part of other employment income in Botswana and tax questions arise as to where the foreign income is taxed. It needs one to carefully and diligently understand employment tax laws prescribed by the Income Tax Act. Keep on reading and allow us to explain why expatriates should pay tax in Botswana. In this article, words importing the masculine shall be deemed to include the feminine.

The expatriate

Expats are also subject to PAYE as they fall under the definition of 'employee,' under the Income Tax Act which defines that term as meaning, 'any person (other than a company) who, in respect of an employment receives remuneration from an employer.' As you can see from the definition, the key factor is the existence of an employer-employee relationship. Hence, an expat is by no means any different from any other employee with the only exception being the citizen status, save that their contractual bonus is exempt to the extent of 50% for PAYE purposes.

Enter tax!

It is imperative to understand that Botswana operates a source-based tax system. To decipher this technical jargon, this simply means that income originating from or deemed to originate from a Botswana source is taxable in Botswana. This might appear to be mouthful at first read but allow us to break it down for you.

We must make it clear that the Act does not provide a legal definition of the word source. However, reliance of its meaning in interpreting taxing statutes is drawn from precedent court cases. In various court cases, the term source was construed to mean the originating cause of income. Therefore, an expatriate conducting employment activities in Botswana is taxed on income earned in Botswana as well as on that which is paid in their home country such as school fees, hardship allowance etc. PAYE is required to be paid in Botswana as the originating cause or activities for the expat to be compensated is occurring in Botswana. As an example, if Tinashe who works for Econet of Zimbabwe gets transferred to Botswana's Mascom and his kids still school in Zimbabwe, he will be taxed in Botswana on any school fees paid for his children in Zimbabwe whether such fees are paid for by Econet or Mascom.

Further, income from employment is deemed to be from a Botswana source where an employee ordinarily renders services in Botswana. This is further buttressed and laid to rest

in one 1958 landmark ruling case between Commissioner of Taxes vs Shein wherein it was held that the source of employment income is the place where the services are rendered. This means that, regardless of where the salary is paid, expatriates conducting their employment activities in Botswana are liable to tax in Botswana on all income paid in their home country summed up with that paid in Botswana.

Conclusion

Foreign nationals working in Botswana are required, by law to pay tax to BURS. Practically, the Botswana employers need to seek tax guidance before firming up on their payroll configuration of remuneration for expats due to its technical nature.

Well, folks, we hope that was insightful. As we say goodbye, remember to pay Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us at jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab.