

# When foreign employers hire South African employees...

By [Graeme Palmer](#)

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Advances in technology have allowed employees to become more mobile, and in many instances, enabled them to work remotely from anywhere in the world. It is therefore no surprise that there are an increasing number of South African residents being employed by foreign companies to fill foreign skills shortages.



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Foreign employment income received by or accrued to an SA resident is subject to income tax in SA, unless a tax treaty with the other country gives that other country a right to tax the income, or if the income is specifically exempt from tax in SA.

Currently, where a foreign employer does not have a “representative employer” that pays remuneration to their SA employee, there is no obligation upon the foreign employer to deduct employees tax (known as PAYE) from the SA employee’s salary. In such circumstances the SA employee would have to pay provisional tax to the revenue authorities on the income.

At present only SA employers must deduct PAYE from their employees remuneration and pay the tax over to the revenue authorities. This is set to change once the Draft Tax Administration Laws Amendment Bill, 2023 is passed. The Bill proposes to remove the distinction between resident and non-resident employers. This will mean that any employer, whether resident or non-resident, will be required to deduct PAYE from its SA employees remuneration and pay the PAYE over to the revenue authorities.



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Foreign employers with top level management working remotely in SA need to be mindful of the risks of shifting the place of effective management (PE) of their company to SA. A foreign company that has its PE in SA will be regarded as a resident and subject to SA tax. One of the factors in determining a company's PE is where the top-level management are located.

Sometimes SA residents are hired to work remotely for foreign companies as independent contractors rather than employees, thus enabling the foreign business to avoid the SA labour and tax law obligations that would ordinarily apply. However, if the SA resident providing the services to a foreign company is under the control or supervision of that foreign company, then the SA resident is in all likelihood not an independent contractor, but an employee.

Navigating the tax consequences of global mobility can be challenging for both employers and employees alike. It is advisable that professional tax advice is sought by foreign employers hiring remote workers in SA and by SA employees entering into employment contracts with foreign companies.

## ABOUT GRAEME PALMER

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