



DAVEY'S Locker



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September 2010

Change of residence-status

The interest exemption

by Tony Davey

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My colleagues and I at Tax 5 were recently consulted by advisers to a taxpayer in the process of permanently departing our sunny shores on the s 10(1)(h) interest exemption in the Income Tax Act.

At first blush, given that it is trite tax law that normal income tax is levied time-wise on a year-of-assessment basis, if a taxpayer becomes non-resident during such a year, the s 10(1)(h) exemption applies to SA-sourced interest income. What is exempted is

interest as defined in section 24J(l) or deemed interest as contemplated in section 8E(1), *which is received or accrued during any year of assessment by or to any person who is not a resident...*; (my emphasis).

My interpretation is that s 10(1)(h) applies to a non-resident and therefore that the exemption is operative from the first day a resident becomes a nonresident. For example, if a person departs from SA on 30 June, he becomes nonresident from 1 July, and interest accrued or received on or after that date and for the balance of the tax year will be exempt.

(I can find no SARS practice

notes pertinent to this matter, and no interpretation notes, except that Interpretation Notes 3 and 4 refer to the concept of 'ordinarily resident' in relation to a natural person. Otherwise, the so-called authorities are silent on the matter, merely repeating the wording of the act.)

Caveats to my view:

- The emigrant must have the intention of no longer ordinarily residing in SA (see the definition of a 'resident' in s 1 and Interpretation Note 3).
- He must not be physically present in SA for a period exceeding 183 days in aggregate during a year of assessment (s 10(1)(h)(i)).
- He cannot carry on business or have a permanent establishment in SA during a year of assessment (s 10(1)(h)(ii)).

In conclusion, given that interest accrues on a day by day basis (s 24J) and subject to the caveats, in most instances a *pro rata* formula to determine the annual interest income exemption would apply.

