

What foreign employers need to know about required Sars registration

 By [Joon Chong](#)

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The global trend of remote working, which has surged since the Covid-19 lockdowns, allows employers at one end of the world to employ South Africans (SA) whom they may never have met face-to-face.

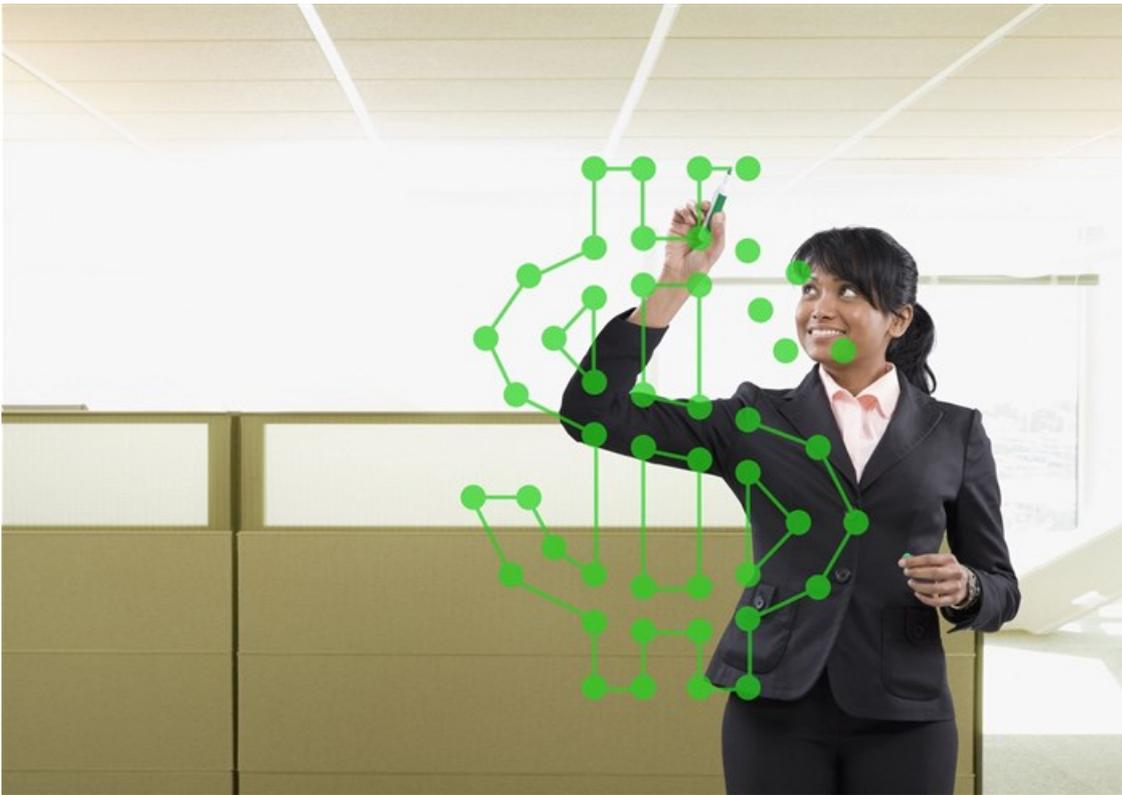


Image source: Getty Images

These arrangements benefit both employers (because they may be able to employ highly skilled workers more cheaply than in their own countries) and employees (who may broaden their opportunities to earn income).

Foreign employers to be required to register as "employers" with Sars

There are currently some inconsistencies in the legislation covering the obligations of foreign employers. Annexure C of the Budget Review 2023 (Budget) proposes to align the employer registration requirements for foreign employers to ensure these rules are consistent for both resident and foreign employers.

At present, a foreign employer that does not have a "representative employer" in South Africa with the authority to pay remuneration need not deduct PAYE from the amounts it pays to South African (SA) employees as these individuals will pay the income tax due as provisional taxpayers.

The Budget observed that as the foreign employer pays remuneration (even though not required to deduct PAYE), it still needs to pay the 1% skills development levy (SDL) and the Unemployment Insurance Fund (UIF) contributions, and many do.



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A SA employer, however, is required to register as an employer, deduct PAYE from remuneration paid or payable to employees, and pay the SDL and UIF contributions to Sars.

The Budget proposes to align the Fourth Schedule provisions on foreign employers to ensure consistency between resident and foreign employers. It remains to be seen around July 2023 when the draft Taxation Laws Amendment Bill for 2023 is usually circulated for comments how the proposed amendment will be worded. In our view, the proposed amendment will likely result in foreign employers being required to register as "employers" with Sars, and be accountable for all PAYE, SDL and UIF due on remuneration paid or payable to "employees" and their related payroll compliance obligations.

Practical issues for foreign employers to register with Sars

Currently, in order to register as an "employer" with Sars, a foreign employer will require, among others,

- a CIPC registration number;
- its Sars income tax registration number; and
- a SA bank account.

A foreign employer that is a foreign company may not have registered as an "external company" with the CIPC, although required to do so within 20 business days of being a party to an employment agreement. It will then not have a CIPC registration number.

The CIPC will automatically issue a Sars income tax registration number on completion of the external company registration of a foreign company. Unless the foreign employer registers for income tax separately, the foreign employer will then also not have a Sars income tax registration number if it does not register as an external company.

A foreign employer may also not have a CIPC number as it is not a company but a foreign trust, partnership, or foundation. We anticipate that the foreign employer should then not be required to provide a CIPC number by Sars in this situation as it is not an external company.

The foreign employer may not have a SA bank account. Sars accepts foreign bank accounts when foreign suppliers and intermediaries of "electronic services" register for VAT. Perhaps a similar concession will be available for foreign employers in the proposed alignment and Sars will accept foreign bank accounts for a foreign entity to register as an "employer".

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Another situation could arise where the foreign entity does not have employees but SA resident individuals that provide services to it as independent contractors. The foreign entity is then not usually required to register as an external company with the CIPC as it has not entered into any employment agreements. In our view, the foreign entity should then also not be required to register with Sars as an "employer".

Notably, once the proposed alignment takes effect, a foreign entity registered as an "employer" with Sars will be required to meet all payroll compliance obligations, including submission of all returns and tax certificates by the relevant deadlines.

Possible solution

A possible solution for the foreign employer around the SA payroll compliance obligations is to engage a payroll company to be its employer of record (EOR) in South Africa. The payroll company usually has an international network of existing EOR companies in various jurisdictions, including in South Africa. Ideally, the network of existing EOR companies (including the EOR entity in South Africa) would be wholly owned by the EOR parent entity.

The SA employee will be co-employed by the foreign employer and the SA EOR company. The SA EOR company is the legal in-country employer responsible for complying with all SA employment legislation. The employee will be on the SA EOR company's payroll and this company will account for all payroll taxes due to Sars. The foreign employer, however, remains responsible for the day-to-day supervision and control of the employee. Any employment and work-related decisions will still be made by the foreign employer.

The EOR arrangement is useful for multinationals to contract and deploy individuals wherever necessary in a matter of days without needing to go through the process of registering a subsidiary or branch in the country of deployment and any related registrations with revenue authorities in those countries. This arrangement may provide an efficient solution in light of the proposed amendments affecting foreign employers in the Budget.

ABOUT JOON CHONG

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