

REMOTE WORK

Presenters: **Caryn Maitland CA(SA)**
Carmen Westermeyer CA(SA)

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Ask Questions

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Feel free to ask your questions during the webinar in the chat, these will be address in the formal Q & A at the end of the presentation.

Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.



Carmen Westermeyer CA(SA)

Carmen Westermeyer graduated in 2001 from the University of Natal, Durban (now UKZN), with a BCom Honours degree in Accounting and completed her articles with PwC, where she remained until 2006. She has been a member of SAICA since then.

In 2008, she started her academic career at UKZN, where she performed a number of functions, and ultimately taking on the role of Academic Leader for Taxation. On leaving academia in 2013 Carmen has been providing training and consulting services to the profession. She has presented on behalf of various professional bodies, such as SAICA, FASSET, CSSA as well as providing in house training to numerous accounting firms. The topics covered include all aspects of Income Tax, VAT, Estate Duty as well as the Health Levy (Sugar Tax). In addition, she regularly consults on tax matters as well as assisting with SARS disputes.

She is also the chairperson of the SAICA Eastern Region Tax Committee, a member of the SAICA National Tax Operations Committee and is an Accounting Member of the Tax Court.



Remote work and your employees

What do we mean by remote working?

Does it matter where your employees work?



From an ethical point of view

- What are the challenges?

From a Labour law perspective?

- What does your contract say?
- Can you force someone back to work?

From a tax point of view?

- As long as they're in country – not really...
- Other than:
 - Fringe benefits
 - Allowances
 - Home office expenses

Fringe benefit

- 2 categories:
 - Employer provided service/asset
 - Think Employer owned 3G sim card
 - Employer owned phone
 - Base principle: Nil value if used mostly for business purposes
 - Payment of employee's debt
 - Full value of payment = fringe benefit

Allowance

- Two types
 - Reimbursive
 - Must be pre approved
 - Must be based on actual cost
 - Must be specifically accounted for
 - Other
 - Pretty much taxable in full

So what's the law?

- (b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwelling-house or domestic premises except in respect of such part as may be occupied for the purposes of trade: Provided that—
 - (a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and
 - (b) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless—
 - (i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; or
 - (ii) his duties are mainly performed in such part;

In English?

- Sure! Come deduct expenses you incur at home as a result of having a job...



- But ONLY if...

And here's the catch

- It must be SPECIFICALLY and EXCLUSIVELY used for trade purposes
- It can't be for employment income unless:
 - 50% or more of your total remuneration is commission/service/output based; and
 - Most of your work done is outside of an employer provided office; OR
 - Most of your work is done at your home office

Notice the difference?

- If you are a 50% commission earner:
 - Can you prove that you worked mainly outside of your employers office?
- If you are a normal salaried employee:
 - Can you prove that you did most of your work in your home office?

The SARS test?

- If your answer is YES to all the questions below, you are eligible to claim Home Office Expenses.
 - Did you receive remuneration for duties performed mainly (more than 50 %) in part of your private premises occupied for purposes of that remuneration?
 - Do you have a dedicated room in your premises?
 - Is this room specifically equipped for the purpose of that remuneration?
 - Is this room regularly used for purposes of performing the duties in relation to that remuneration?
 - Is this room exclusively used for purposes of performing the duties in relation to that remuneration?
 - Did you incur home office expenditure relating to your domestic premises?
(Please refer to the [guideline](#) on the web-page with regard to what constitute home office expenditure)

But when they go abroad?

Risk to:

	Employer	Employee
Source?	POM/POE	Where work is done
PAYE?	Correct coding, what if things change?	Not responsible for PAYE, but may need to register where you are.
Local law	HR? Registration? VAT?	Are you actually allowed to work while there?

Residency?

	Resident	Non - resident
RSA employer	World wide receipts and accruals, therefore declare as taxable. Could be exempt (s10)	Working outside of RSA: Exempt, no RSA source. Working in RSA – taxable.
Offshore jurisdiction – in country less than 183 days?	Should only be the salary which is taxable based on source rules. DTA may make it exempt.	Irrelevant
Offshore jurisdiction – in country more than 183 days?	Should only be the salary which is taxable based on source rules	Irrelevant

Article 5 – Permanent Establishment

- a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- Specifically includes:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Some considerations

- Mere presence is not enough, but ownership is not required:
 - Co A buys Co B. Co A sends an employee to Co B for two years to ensure the merger goes smoothly.
 - Transport company uses the same loading dock at a customer for years
 - Painter is at the building of his main client 3 days per week for 2 years.
 - Do you have a fixed place of business?
 - Yes, No, Yes

Some considerations

- Must be fixed – transient work not included.
- Economic coherence is however considered:
 - Painter who works in one building over a period of time for different clients
 - Painter who, under one contract, paints multiple offices in one building
- This can become a very complex area especially when the letting of equipment, software, etc is considered

Article 5 – Permanent Establishment

- Building sites, etc only become permanent after 12 month
- Actions done on your behalf by an independent agent do not create a permanent establishment if part of their normal business activities (5.6)
- Control does not automatically create a permanent establishment either way (think subsidiary relationships)

Article 5 – Permanent Establishment

- Specifically does NOT include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Consequences of permanent establishments

- Creation of a permanent establishment means that the profits generated by the activities carried on there are taxed in the country where they are performed.
 - AB LLC and BD Holdings LLC v CSARS, [2015] 77 SATC 349 – end result was that the fees earned by the American company for its two consultants in South Africa was taxed in South Africa.
- May trigger registration requirements (think the concept of an external company in the Companies Act)

Consequences of permanent establishments

- Income Tax Act directly references this definition for general application purposes outside of a DTA context as well
- In addition, a lot of DTA's contain a clause that states:
 - where a person is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise

What about VAT?

- Have you considered the VAT on electronic services?
- Have you looked at your markets and the registration responsibilities?

Q&A

Please use the chat sidebar to the right of the video / presentation on the screen to ask your questions.

If you would like to e-mail a question please use:

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**Thank you for your
participation**

Disclaimer

This seminar is presented for information purposes only and does not constitute tax advice. Please contact your tax practitioner for advice tailored to your specific circumstance.