

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER 55

1. Legal Quotes

"There are times, too, when the law doesn't give a damn who gets caught beneath its wheels." [Susanne Alleyne, *Game of Patience*]

"One of the advantages of having laws is the pleasure one may take in breaking them." [Iain M Banks, *The Player of Games*]

"Fools and obstinate men make lawyers rich." [Proverb]

2. Legal short

Staring down from the bench to announce the terms of the divorce, the judge turned to the husband and said:

"I'm going to award her maintenance in the amount of R12 500 a month."

The woman's about-to-be ex replied: "That's very kind of you, your worship. I'll try to help her all I can, too."

3. Inspiring quote

"Three simple rules in life:

1. If you don't go after what you want, you'll never have it.
2. If you don't ask, the answer will always be no.
3. If you don't step forward, you will always be in the same place." [Nora Roberts]

4. Withholding taxes in South african law

Various withholding taxes have been introduced to the South African tax system in the last few years, including

1. Withholding tax on foreign entertainers and sportspersons

This tax is levied on foreign entertainers and sportspersons in terms of section 47B of the Income Tax Act 58 of 1962 ("the Act"), at the rate of 15% on amounts received by or accrued to a non-resident in respect of any personal activity exercised in South Africa;

2. Withholding tax on royalties

Levied in terms of section 49B of the Act at the rate of 12% of the amount of any royalty paid by any person to a non-resident to the extent that it is sourced in South Africa;

3. Dividends tax

Section 64E of the Act levies a dividends tax at the rate of 15% of the amount of any dividend paid by any company (other than a headquarter company). Dividends tax is only a withholding tax where cash dividends are paid;

4. Withholding tax on interest

Levied at the rate of 15% in terms of section 50B of the Act on any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is sourced in South Africa;

5. Withholding tax on service fees

This tax will only be effective from 1 January 2016 and will be levied in terms of Section 51B of the Act on services fees calculated at the rate of 15% of the amount of any service fee paid by any person to any foreign person, where the amount has been received by or accrued to that person from a South African source.

I will concentrate, however, on **withholding tax on the disposal of immovable property by a non-resident (section 35A of the Act)**.

This withholding tax was introduced on 1 September 2007 and is levied on the disposal of any immovable property by a non-resident.

The amount to be withheld is

- 5% of the purchase price where the Seller is a natural person

- 7.5% where the Seller is a company, and
- 10% where the Seller is a trust.

The Purchaser must withhold the tax and submit a return to SARS within

- 14 days after the date on which the tax was withheld if the Purchaser is a resident, or
- within 28 days if the Purchaser is a non-resident.

Should the purchase price be less than R2 million, no withholding tax is levied.

Failure to withhold or pay these taxes to SARS may result in the person required to withhold the tax being personally liable for the tax. Penalties may also be levied in certain instances for failure to withhold and/or pay the withholding tax.

Who is a "resident" in terms of the Act?

A person will be considered to be ordinarily resident in South Africa, if South Africa is that person's usual or principal residence, or his/her real home.

Any natural person *who is not ordinarily resident* in South Africa during the year of assessment, but who meets with all three requirements of **the physical presence test**, will be treated as being a resident.

To meet the requirements of the physical presence test that person must be physically present in South Africa for a period or periods exceeding –

- 91 (ninety one) days in total during the year of assessment under consideration, as well as
- 91 (ninety one) days in total during each of the 5 (five) years of assessment preceding the year of assessment; and
- 915 (nine hundred and fifteen) days in total during those 5 (five) preceding years of assessment.

An individual who fails to meet any one of these three requirements will not satisfy the physical presence test.

All newsletters can be obtained on our website www.sonnenberg.co.za.



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