Double-tax for wealthy foreigners in South Africa

South Africa remains an attractive destination for high-net-worth foreign nationals due to its strong lifestyle, but there is a significant taxation risk.

Despite being a developing country, South Africa is a high-tax jurisdiction, with a top marginal personal income tax rate of 45%.

Tax Consulting SA said that many high-net-worth foreign nationals do not understand that relocating, investing, or simply spending time in South Africa can place them in a high-income tax regime.

It said that the real risk is not simply paying South African tax, but paying more South African tax than the law requires, due to opportunities under international tax treaties.

“If you are paying high South African personal income tax without properly considering the application of South Africa’s Double Taxation Agreements, you may simply be paying more tax than the law requires.”

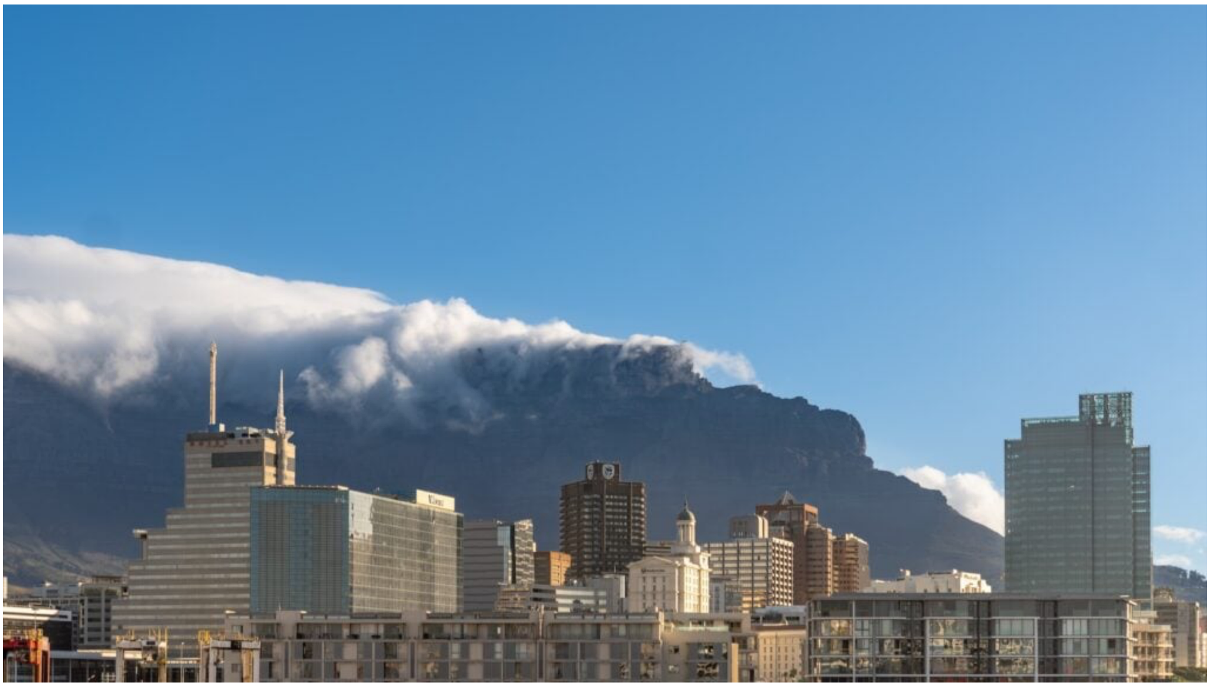
As per South African law, international tax obligations override conflicting domestic tax legislation, and neither the South African Revenue Service nor Parliament can change international tax law.

Tax Consulting SA said that being smart about tax-efficient opportunities available to foreign nationals is the only answer. This is especially relevant to:

- An international executive or foreign entrepreneur relocating to South Africa;
- A retiree purchasing a home and spending increasing amounts of time in South Africa;
- An investor with substantial offshore assets considering South Africa as a second base;
- A South African returning after years abroad with significant international wealth, and
- A business owner managing overseas companies while living in South Africa.

It said that the following groups should be careful not to pay more tax than necessary.

Swallows at risk



Tax Consulting SA used an example of a European couple who have spent many years living and building wealth abroad before deciding to make South Africa their alternative retirement home.

After buying a property and splitting their time between South Africa and another country, one spouse passed away.

The surviving partner then spent more time in South Africa, unknowingly triggering South African tax residency, exposing their income and potentially their worldwide assets to the South African tax net.

Selling their assets in their country of birth also led to capital gains and an exit tax.

“This is not uncommon for many Europeans or people from the Northern Hemisphere who spend the northern winter months in South Africa. They are known as swallows,” said the tax consultancy.

Moreover, expats who continue working for an employer abroad after returning home may be at risk of Permanent Establishment (PE) or Place of Effective Management (POEM) implications.

This is the case if they are managing offshore companies from South Africa, with South African tax obligations arising.

In cases such as these, Controlled Foreign Company (CFC) rules could apply, resulting in tax exposure.

“Protecting an international fortune requires transitioning from a defensive mindset to a proactive, multi-jurisdictional strategy. And this should be done timeously,” said Tax Consulting SA.

“The complexity is created by the interaction between multiple jurisdictions, multiple tax systems and a taxpayer profile that has not been correctly established from the outset.”

These issues become considerably more significant where foreign nationals have substantial wealth or international business interests.

The richer a taxpayer, the greater the risk of getting the first step wrong. The cost of this increases exponentially as the taxpayer’s international footprint becomes more complex.

“Each additional jurisdiction introduces another layer of complexity and requires an objective evaluation of the taxpayer’s entire factual matrix.”

“For internationally mobile investors and entrepreneurs, one of the greatest threats to long-term wealth creation is often the silent erosion of capital through inefficient cross-border tax planning.”