International tax is all about the company you keep

By Christopher Renwick

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In the wake of the state capture scandal still haunting the South African Revenue Service (Sars), taxpayers are looking for an alternative to paying tax to a government that appears to be mismanaging the funds. Tax morality is on a downward spiral.

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However, the taxpayers undertaking such a task, quite often, are in the dark as to the best practice on how to go about it. Many set up companies or trusts but don't follow the steps to make sure that these companies don't fall within the South African tax jurisdiction.

But if you don't know what you are doing, you may end up paying tax to Sars anyway. To rub salt in the wound, massive penalties and/or interest will most likely be levied by the revenue service.

To branch or not to branch?

The same goes for international companies wanting to set up a footprint in South Africa without placing themselves within the realm of South African tax residency.

Unpacking this a bit further, one of the biggest questions asked is whether or not a branch or subsidiary is the best option for setting up a company in South Africa. A simple question with a multitude of complexities to consider when answering.

How, for example, do you avoid a permanent establishment in South Africa? Moreover, how do you ensure the South African entity is not “effectively managed” within the tax net? Can you ringfence South African risk and how? Is there a financial benefit for a subsidiary or a branch?

These are a select few questions to give you an idea as to what might be looked at when incorporating a foreign company into South Africa. Naturally, the inverse can occur when taking a company to foreign shores. So, what should you do?

In this case, the advice of a tax expert can provide the optimal direction when it comes to setting up a company.

ABOUT THE AUTHOR

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