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SCHOOL OF ACCOUNTANCY

University of the Witwatersrand, Johannesburg

A research report submitted to the Faculty of Commerce, Law and Management in partial fulfilment of the requirements for the degree of Master of Commerce specialising in the field of taxation

A case study on the impact of section 10(1)(*o*)(ii) of the South African Income Tax Act on South African Expatriates

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Degree: Masters of Commerce (specialising in Taxation)

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ABSTRACT

Globalisation has triggered the onset of the migrant work force, which in turn, has created complexities with regards to striking a fine balance between preventing tax spill overs in relation to potential double taxation and remaining tax competitive in order to retain and attract South African tax residents (De Koker & Brincker, 2010; Fuest, Huber, & Mintz, 2005; Spengel & Fischer, 2022). South Africa taxes residents on their worldwide income, and on 1 March 2020, section 10(1)(*o*)(ii) of the Income Tax Act 1962 (hereafter referred to as "the Act") was amended with the objective of addressing tax disparities in respect of taxes being levied on remuneration earned from a local source versus internationally, through limiting tax relief to R1, 250,000 for foreign-derived remuneration (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Hutchon & Kim, 2020; Naidoo, 2019; SARS, 2021a, 2021c; Sebashe, Erasmus, & Erasmus, 2021).

This discussion-based research report evaluates the impact of the amendment to section 10(1)(*o*)(ii) in relation to foreign remuneration earned by South African expatriates. Similar to prior research, conducted by Govender (2019), Naidoo (2019) and Sebashe et al. (2021), this research report draws comparisons amongst South African expatriates earning employment income from (i) the United Arab Emirates (UAE), where no personal income tax is currently levied (PwC, 2022c); (ii) the United Kingdom (UK), where non-residents are entitled to a personal allowance, i.e. tax relieve of GBP 12,500 for the 2020/2021 tax year if their UK sourced taxable income is less than GBP 100,000 (Gov.UK, 2022) and (iii) the United States of America (USA), where non-residents or alternatively termed 'non-resident aliens', are not entitled to a standard personal tax deduction (PwC, 2022g).

The comparative case studies aim to assess whether or not the revised and promulgated section 10(1)(*o*)(ii) has aided in restoring fairness in the levying of tax, through contrasting i) pre 1 March 2020 tax treatment of section 10(1)(o)(ii), i.e. one hundred percent exemption of foreign remuneration and ii) 1 March 2020 tax treatment of section 10(1)(o)(ii), the introduction of "expat taxation" (Africa,

2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; SARS, 2021c; Sebashe et al., 2021). In addition, this report evaluates the impact of through (i) double tax agreements (DTAs); (ii) section 6*quat* of the Act; (iii) personal allowances/reductions and (iv) change in tax residency on a South African expatriate's overall local personal tax position (the impact discussed, but not specifically evaluated in the case study computations) (De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Hutchon & Kim, 2020; Sebashe et al., 2021).

Furthermore, the report assesses the impact of the revised and promulgated section 10(1)(*o*)(ii) on the low, moderate and high remuneration earners, in accordance with prior research conducted by Sebashe et al. (2021), the aim is to assess whether or not the amended to expat tax exemption, namely, the introduction of the R1,250,000 exemption threshold, had an adverse effect of the local tax positions of *low* and *moderate* foreign remuneration earners.

Key words: section 10(1)(*o*)(ii); section 6*quat*; double tax agreements; tax law United States of America, tax law United Arab Emirates and tax law United Kingdom; residency; remuneration.

DECLARATION

I, **Nicole Forbes**, declare that this research report is my own work except as indicated in the references and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

_____

Signed at ……

On the …….. day of …… 20…..

DEDICATION

This report is dedicated to the Almighty in that He awarded me with the strength to see this through.

To my lovely parents, Lesly and Lyneeta Forbes for your constant support and encouragement. Leander Joseph for believing in me and for your constant motivation.

ACRONYMS

AED	United Arab Emirates Dirham
CGT	Capital Gains Tax
DTA	Double Tax Agreement
Expat	Expatriate
SARS	South African Revenue Services
UAE	United Arab Emirates
UK	United Kingdom
USA	United States of America
USD	Unites States Dollar
ZAR	South African Rand

TABLE OF CONTENTS

ABSTRACT ..... **i**

DECLARATION ..... **iv**

DEDICATION ..... **v**

ACKNOWLEDGEMENTS ..... Error! Bookmark not defined.

TABLE OF CONTENTS ..... **vi**

LIST OF TABLES **4**

ACRONYMS ..... Error! Bookmark not defined.

CHAPTER 1. INTRODUCTION **5**

1.1 PURPOSE OF THE STUDY 5
1.2 CONTEXT OF THE STUDY 5
1.3 PROBLEM STATEMENT 11
1.3.1 MAIN PROBLEM STATEMENT 11
1.3.2 SUB-PROBLEM QUESTIONS 12
1.4 SIGNIFICANCE OF THE STUDY 13
1.5 DELIMITATIONS OF THE STUDY 14
1.6 DEFINITION OF TERMS 15
1.7 ASSUMPTIONS 17

CHAPTER 2. RESEARCH METHODOLOGY **18**

2.1 RESEARCH PARADIGM AND DESIGN 18
2.2 SCOPE AND LIMITATIONS OF THE STUDY 19

CHAPTER 3. REPORT CHAPTER OUTLINE **21**

CHAPTER 4. BACKGROUND **25**

4.1 INTRODUCTION 25
4.2 SECTION 10(1)(O)(II) QUALIFYING CRITERIA 26
4.2.1 THE TAXPAYER MUST BE A TAX RESIDENT OF SOUTH AFRICA 26
4.2.2 THE TAXPAYER MUST EARN CERTAIN TYPES OF REMUNERATION IN CAPACITY AS AN EMPLOYEE 28

4.2.3 THE TAXPAYER MUST BE EMPLOYED AND MUST EARN REMUNERATION FOR SERVICES RENDERED OUTSIDE THE BORDERS OF SOUTH AFRICA 30

CHAPTER 5. REMEDIES AVAILABLE TO REDUCE THE FINANCIAL BURDEN OF EXPAT TAX 33

5.1 THE DIFFERENCE BETWEEN TAX AVOIDANCE AND TAX EVASION 34

5.2 MEASURES AVAILABLE TO EASE THE POTENTIAL DOUBLE TAX BURDEN .. 35

5.2.1 SECTION 6QUAT REBATE 36

5.2.2 DTAS 37

5.2.3 TERMINATION OF TAX RESIDENCY THROUGH FINANCIAL OR FORMAL EMIGRATION 38

CHAPTER 6. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE UAE ... 40

6.1 CASE OVERVIEW 41

6.2 UAE TAX IMPACT ANALYSIS 42

6.3 SUMMARY OF TAX IMPACT 45

6.4 UAE VS SA TAX COMPUTATION SUMMARY 46

CHAPTER 7. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE UK 47

7.1 CASE OVERVIEW 48

7.2 UK TAX IMPACT ANALYSIS 49

7.3 SUMMARY OF TAX IMPACT 53

7.4 UK VS SA TAX COMPUTATION SUMMARY 54

CHAPTER 8. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE USA ... 55

8.1 CASE OVERVIEW 57

8.2 USA TAX IMPACT ANALYSIS 58

8.3 SUMMARY OF TAX IMPACT 61

8.4 USA VS SA TAX COMPUTATION SUMMARY 62

CHAPTER 9. CONCLUSION 63

9.1 ADDRESSING THE MAIN PROBLEM STATEMENT THROUGH THE CASE STUDY FINDINGS IN RELATION TO CHAPTERS 6 TO 8 63

9.2 ADDRESSING THE SUB-PROBLEM STATEMENTS THROUGH THE CASE STUDY FINDINGS IN RELATION TO CHAPTERS 6 TO 8 65

9.2.1 TAXING SA TAX RESIDENTS EQUITABLY IN TERMS OF LOCAL AND FOREIGN REMUNERATION 65
9.2.2 IMPACT OF THE SECTION 10(1)(O)(II) AMENDMENT WITH REGARDS TO LOW AND MODERATE REMUNERATION EARNERS 66
9.2.3 THE IMPACT OF IN-COUNTRY PERSONAL ALLOWANCES ON THE FOREIGN TAX EXPOSURE 67
9.2.4 THE UAE AND THE IMPACT OF THE SECTION 10(1)(O)(II) AMENDMENT ON HIGH REMUNERATION EARNERS 68
9.2.5 THE UK AND THE IMPACT OF THE SECTION 10(1)(O)(II) AMENDMENT ON HIGH REMUNERATION EARNERS 69
9.2.6 THE USA AND THE IMPACT OF THE SECTION 10(1)(O)(II) AMENDMENT ON HIGH REMUNERATION EARNERS 70
9.2.7 FINDINGS WITH REGARDS TO THE REPEAL OF SECTION 10(1)(O)(II) 71
9.3 FUTURE RESEARCH 75

REFERENCES 76

APPENDIX 83

LIST OF TABLES

Table 1: Location of migrant stock as per UN Department of Economics and Social Affairs 2020 5

Table 2: ZAR remuneration band 16

Table 3: Section 10(1)(o)(ii) repeal and final tax impact 66

Table 4: UAE vs SA Marginal tax rates 67

Table 5: UK vs SA Marginal tax rates 68

Table 6: USA vs SA Marginal tax rates 69

CHAPTER 1. INTRODUCTION

1.1 Purpose of the study

The purpose of this research report is to discuss the impact of the promulgated amendment, which became effective 1 March 2020, to section 10(1)(o)(ii) of the Income Tax Act 58 of 1962, which resulted in expat tax exemption in respect of remuneration earned by South African expatriates.

1.2 Context of the study

South Africa's population was 60.1 million in the 2020/2021 fiscal year (STATSSA, 2021, p. 19) of which the active workforce (which is deemed to be between the ages of 15 to 64 as per Moody's (2022)) equates to 39.4 million (STATSSA, 2021, p. 19) and of which 5.4 million (13.7% of total population) was expected to actively contribute towards the fiscus from a personal income tax perspective, equating to R1.25 trillion rand towards fiscus revenues (National Treasury, 2022a, p. 10). During the 2020/2021 year, 5.2 million out of the 5.4 million taxpayer population had submitted their tax returns (National Treasury, 2022a, p. 20). Personal Income Tax continued to be a key contributor and an area of focus for the fiscus, that is to say that for 2020/2021 fiscal year, personal income taxes contributed a total of 39.1% of total collections, followed by VAT at 26.5% and corporate income tax at 16.5% (National Treasury, 2022a, p. 10). Furthermore salaries, wages and remuneration constituted 76.33% of the total taxable income, and as such, is a high priority for SARS, in that it is a key contributor to our local tax collections (National Treasury, 2022b, Fig 2.9 tab).

South Africa's tax system had changed over the years, i.e. effective 1 March 2001 we moved from a source based to a residence based tax system (De Koker & Brincker, 2010; SARS, 2021a). The amendment led to expanding the definition of *gross income*, in that residents (as defined in the Act) are liable for tax on their world-wide income, irrespective of source (De Koker & Brincker, 2010; Govender, 2019; Naidoo, 2019; National Treasury, 2017; SARS, 2021a). In the alternative, non-residents are liable for local tax in respect of income sourced within South

Africa (De Koker & Brincker, 2010, pp. 21-22; Govender, 2019; Naidoo, 2019; National Treasury, 2017; SARS, 2021a). Pre-1 March 2001, the tax system was sourced based with a very narrow interpretation of the application in respect of the section 10(1)(*o*)(ii) exemption, in that it was only applicable to i) officers and crew members employed aboard any South African ship and ii) if such crew resided outside South Africa for more than 183 full days during a 12 month period (De Koker & Brincker, 2010; National Treasury, 2017, p. 6; PwC, 2022b; SARS, 2021a).

It is important to note that section 10(1)(*o*)(ii) in its present state is applicable to South African tax residents; in respect of remuneration; earned in respect of an employment arrangement; whilst outside the borders of South Africa for a period longer than 183 days during a 12-month period and a continuous period of at least 60 full days, and not subject to the exclusions, as specifically denoted in section10(1)(o)(ii) of the Act (SARS, 2021c).

Per National Treasury, policies should be *progressiv*e and *equitable* (National Treasury, 2017, p. 7), they should adapt as the economic environment changes, which is evident in the amendment to section 10(1)(o)(ii) i.e. broadening the scope to include "South African tax residents who are rendering services outside South Africa on behalf of an employer for longer than 183 days during a 12-month period… and continuous period of at least 60 full days" (National Treasury, 2017, p. 6). It should further be noted that the true intention of section 10(1)(o)(ii) was to "prevent double taxation of an individual's income between South Africa and a host country" and to provide double tax relief (National Treasury, 2017, p. 7, section II).

The pre-1 March 2020, section 10(1)(o)(ii) exemption provided *"*opportunities for non-double taxation" (National Treasury, 2017, p. 7, section II), instances arose where the host country would not levy personal tax in-country, due to non-taxation rules in country and there was no taxation within South Africa, due to full exemption under the pre-1 March 2020 section 10(1)(o)(ii) rules (Africa, 2021; Govender, 2019; National Treasury, 2017; SARS, 2021c).

This created disparities between South African tax residents earning remuneration locally versus internationally. The amendment resulted in the blanket exemption being removed and capped to a maximum of R1,250,000 in order to prevent the exploitation of foreign income exemption and to restore the principle of levying equitable taxes within the South African residency tax system (Africa, 2021; National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021). National Treasury did not provide guidance in respect of how the threshold was derived, however was of the view that the R1,250,000 threshold would not negatively impact low to moderate South African residents earning foreign remuneration (National Treasury, 2017, p. 8; Sebashe et al., 2021, p. 2). This in turn, is aligned with South Africa's progressive tax strategy i.e. applying higher tax rates to high remuneration earners and in so doing spreading the tax burden and preventing top-up or double taxes in instances where remuneration was earned in high personal income tax jurisdictions (Africa, 2021; De Koker & Brincker, 2010; SARS, 2021b; Sebashe et al., 2021).

According to Musgrave 1963 and 1969, a fiscal system is based on one of two principles, i) capital export neutrality or ii) capital import neutrality (De Koker & Brincker, 2010; Knoll, 2010; Naidoo, 2019; Weisbach, 2015). Within the context of pre-1 March 2020 section 10(1)(o)(ii), South Africa initially adopted a capital import neutrality view, in that the stance was that all foreign income was not generated within the borders of South Africa and as such, was entitled to be fully exempt under the old section 10(1)(o)(ii) (Knoll, 2010; Naidoo, 2019; Weisbach, 2015). The 1 March 2020 amendment resulted in the adoption of a central import neutrality principle, in that local and foreign earned remuneration should be taxed similarly in order to achieve a progressive and equitable tax outcome irrespective of source (Naidoo, 2019; National Treasury, 2017; Weisbach, 2015). Per prior research, within the context of the worldwide taxation principle, South Africa is therefore simultaneously in pursuit of the capital import neutrality and central import neutrality principle through actively trying to implement equitable taxes as per National Treasury's key objective (Knoll, 2010; Naidoo, 2019, p. 12; National Treasury, 2017).

The amendment of section 10(1)(o)(ii) has a macro economic impact in that in certain instances, remuneration packages awarded to expatriates are often all inclusive or alternatively local plus tax gross up (McNulty, 2015, p. 505), this in turn, adds an additional burden on an employer to ensure that the financial scale is balanced between the net remuneration received by the employee post taxes and affordability from a corporate budget perspective (Govender, 2019; McNulty, 2015). This is further corroborated by the South African Institute of Taxation (SAIT), in that the tax equalisation policy often results in the ***financial burden*** residing with the employer and not the employee (SAIT, 2019). Furthermore, from an employer's perspective it could serve as a strong motivator for a comparative cost analysis between employment of a South African expat; an in-country skills sourcing i.e. in-country employee which is deemed cheaper or alternatively sourcing cheaper skills from a country other than South Africa (McNulty, 2015).

The effect of the change of the policy could therefore adversely affect the attractiveness of employing South African expatriates, due to the cost of all-inclusive remuneration packages, and this in turn, could exacerbate the current in-country unemployment rate, reduce the incremental taxes earned from such employment and negatively contributing towards the growth of the South African economy, due to lower spending power (Gale & Samwick, 2014; McNulty, 2015; Sebashe et al., 2021; Weisbach, 2015). In the alternative, a South African expatriate could view the increase in taxes i.e. expat taxes as a strong motivator for considering financial or formal emigration, thereby divorcing themselves financially from the fiscus which would ultimately result in reducing the overall revenue collections of the local fiscus due to such financial emigration (Africa, 2021; Ferreira, 2020; Gale & Samwick, 2014; McNulty, 2015; Naidoo, 2019; Sebashe et al., 2021; Weisbach, 2015).

Tax avoidance is permissible, taxpayers may actively plan their tax affairs within the ambit of the Act's legal parameters in an attempt to reduce or ease their burden in respect of local taxes (Africa, 2021; Dare, Du Plessis, & Jansen, 2019; De Koker & Brincker, 2010; Ferreira, 2020).

Therefore, within the context of seeking legitimate opportunities to lessen or ease the double tax burden, expatriates may seek tax credit relief under section *6quat* of the Act from a domestic perspective; apply the respective articles denoted in the relevant Double Tax Agreement (DTA) and elect to emigrate, which will trigger a deemed disposal under schedule eight of the Act and the individual will cease to be a South African tax resident (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019).

Currently, the Department of Home Affairs does not retain data concerning migrant workers, however the United Nations Department of Economic and Social Affairs does (BusinessTech, 2022). Per the United Nations Department of Economic and Social Affairs 2020 report, South Africans largely migrate to the following top listed countries (refer to table 1) (BusinessTech, 2022). Per Table 1, the United Kingdom (UK) ranked number one in terms of South African migrants, followed by the United States of America (USA) as number three. Due to South Africans having a strong affinity to migrate to the UK and the USA, as per the United Nations Department of Economic and Social Affairs 2020 report (BusinessTech, 2022), these two country were specifically included in this research report.

Country of destination	Number of emigarts (end-2022)	Ranking
United Kingdom	247 300	Ranked #1
Australia	199 700	Ranked #2
United States	117 300	Ranked #3
New Zealand	73 800	Ranked #4
Canada	48 100	Ranked #5
Germany	20 400	Ranked #6
Mozambique	20 200	Ranked #7
Zimbabwe	19 700	Ranked #8
Netherlands	17 500	Ranked #9
Eswatini	12 700	Ranked #10

Table 1: Location of migrant stock as per UN Department of Economics and Social Affairs 2020

This research report focuses on a comparative analysis in respect of expatriates receiving remuneration from the UAE; the USA; the UK and the ultimate impact on a South African resident's tax position within country.

i. UK

It should be noted that similar to South Africa, the UK applies a progressive tax system and has a similar maximum marginal tax rate of 45% (PwC, 2022b, 2022d; Sebashe et al., 2021). Furthermore, the UK allows a personal allowance against taxable income to the value of GBP 12,500 in 2020/21, if such taxable earnings are below GBP 100,000 even if a taxpayer is not a UK resident (Gov.UK, 2022; PwC, 2022d).

ii. USA

The USA also applies a progressive tax system, however its highest marginal rate is at 37% versus South Africa's 45% (PwC, 2022h; SARS, 2021b). The USA distinguishes amongst three key type of taxpayers, namely i) residents – USA born citizens; ii) alien-resident, those who were awarded USA residency and iii) non-resident aliens (PwC, 2022g).

Citizens and alien-residents are taxed on their world-wide income, however non-resident aliens are taxed on their income sourced within the USA (PwC, 2022g). South African expats would fall into the definition of a non-resident alien and would be taxed on their "Compensation earned for work performed in the United States" (PwC, 2022e).

iii. UAE

The UAE does not impose personal income tax, as such, the remuneration earned by South African expat in the country is tax free within the UAE (PwC, 2022c). The lack of the personal income tax structure therefore serves as an enabler of creating tax disparities and inequalities between South African residents earning remuneration locally versus the UAE, which was the basis of the amendment to section 10(1)(o)(ii) of the Act (Naidoo, 2019; National Treasury, 2017; Weisbach, 2015).

This report makes use of illustrative examples to assess if National Treasury's key objective was indeed achieved (Naidoo, 2019; National Treasury, 2017; Weisbach, 2015). The key objective being defined as restoring tax equitability irrespective of source of remuneration by taxing foreign remuneration which exceeds the R1,250,000 exemption, as per the amendment of section 10(1)(o)(ii) of the Act.

1.3 Problem statement

1.3.1 *Main problem statement*

Whether or not tax equitability is restored through the amendment of the foreign remuneration earned section 10(1)(o)(ii) of the Act.

Similar to prior research, this report is based on comparable case study analysis in respect of how South African expatriates are affected by the amendment to the foreign expatriates remuneration exemption (section 10(1)(o)(ii) of the Act), in terms of promoting equitable tax being levied between residents earning remuneration locally versus abroad (Africa, 2021; Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). Furthermore, this study includes the UAE; the UK and the USA. The UK and the USA being ranked as number 1 and 3 as preferential emigration locations for South Africans, as per the 2020 report by United Nations Department of Economic and Social Affairs (BusinessTech, 2022). The objective of this study is to assess the financial tax burden in respect of South African expats of the pre- and amendment of section 10(1)(o)(ii) of the Act and the remedies available to reduce the local tax burden.

1.3.2 *Sub-problem questions*

The main problem statement may further be sub-divided per below, whilst considering the impact on low-; moderate- and high-income earners.

i) The *first sub-problem question*: Did National Treasury's amendment to section 10(1)(o)(ii) of the Act achieve balancing the fiscus scale between taxing residents equitably, in terms of local and foreign remuneration earned? This sub-problem aims to explain the rationale for limiting the exemption and whether such amendment aided in imposing and levying more equitable tax in respect of South African tax residents earning remuneration locally versus abroad.

ii) The *second sub-problem question*: What impact does the amended section 10(1)(o)(ii) of the Act have on South African expatriates who earn remuneration from the UAE? The UAE does not impose personal income tax, as such the analysis reflects the impact of the amended section 10(1)(o)(ii) of the Act (introduction of the R1,250,000 exemption) and whether it addresses tax inequalities.

iii) The *third sub-problem question*: What impact will the amendment of section 10(1)(o)(ii) of the Act have on a South African expatriate who earns remuneration from the UK? This sub-problem question assists in analysing the impact of a South African expatriates' overall tax position post consideration of being taxed at a similar marginal rate as South Africa and entitled to an in-country allowance as a measure to reduce taxes paid abroad.

iv) The *fourth sub-problem question*: What impact will the amendment of section 10(1)(o)(ii) of the Act have on a South African expatriate who earns remuneration from the USA? This sub-problem question analyses the impact of a South African expatriates' overall tax position post consideration of being taxed at a slightly lower marginal rate than

South Africa and not entitled to a foreign in-country allowance (which reduces taxes paid in-country).

v) The *fifth sub-problem question*: What recourse is available for South African expatriates to achieve tax equitableness post the amendment of section 10(1)(o)(ii) of the Act? Assessment of this sub-problem question assists in identifying the tax avoidance measures available in local legislation which will aid in the achievement of equitable tax being levied. The analysis looks at where no in-country taxes are paid, especially with reference to the UAE – using the available Double Tax agreement or termination of tax residency and where in-country personal income taxes are paid, with reference to the UK and the USA – the applicability of the section *6quat* rebate of the Act and consideration of financial or formal emigration. It includes an assessment of permissible tax measures to aid in restoring the equitable tax position from a tax resident's perspective.

1.4 Significance of the study

The levying of progressive, fair and equitable taxes, is the ultimate objective of National Treasury in terms of proposing tax law and amendments to parliament (National Treasury, 2017). The aim of the amendment to section 10(1)(o)(ii) of the Act was to promote equitable tax treatment in terms of South African tax residents earning remuneration locally or internationally; to limit top-up taxes where remuneration is earned in high-tax jurisdictions and ensure that foreign remuneration earned in high remuneration brackets is taxed more fairly (Africa, 2021; Sebashe et al., 2021). Sebashe et al. (2021, p. 3) and Ferreira (2020, p. 55), stated that there has been limited research in respect of the impact of the exemption limit in accordance with National Treasury's objective to achieve tax equality and to assess the impact of expatriate taxation within a South African tax context.

Prior research predominantly focused on comparative analysis between i) South Africa, the UAE and Australia (Africa, 2021; Govender, 2019); ii) South Africa and the UAE (Ferreira, 2020; Naidoo, 2019) and iii) South Africa, the UAE and the UK (Sebashe et al., 2021). This research report includes a comparative analysis of South Africa, the UK, the UAE and the USA. In addition, similar to prior research, this report assesses the impact of the amendment of section 10(1)(o)(ii) (exemption being limited to R1,250,000) in respect of various income brackets i.e. low; moderate and high for the respective selected countries (Sebashe et al., 2021).

It should also be noted that as per Ferreira (2020) and Sebashe et al. (2021), research in respect of South African expatriates is limited; as such, this research report adds to the existing knowledge, in that it determines if the amendment to section 10(1)(o)(ii) of the Act has affirmed National Treasury's intention to limit or have a no tax impact on lower- and middle-income earning tax residents and whether or not such amendment had succeeded in imposing equitable tax practices (Africa, 2021; SARS, 2021c; Sebashe et al., 2021).

1.5 Delimitations of the study

This research report was limited to South African expats who are tax residents of South Africa. Furthermore, the report is limited to personal income tax; for the 2020/2021 tax period; inclusive of personal income tax allowances locally as well as internationally, and with regards to the respective juristic personal income tax tables (Naidoo, 2019; Sebashe et al., 2021). Similar to prior research, the gross income is assumed to be equivalent from a ZAR perspective and is translated into the currencies pertaining to respective jurisdictions using the annual average rate as per oanda.com or SARS (Govender, 2019; Sebashe et al., 2021). The study is further limited to a comparative analysis limited to personal income tax analysis of South Africa, the UAE, the UK and the USA only. Financial or formal emigration is discussed, but is not specifically included in the case study analysis. In line with prior research, measures in respect of tax avoidance is included in this report however detailed discussion in respect of Part IIA of Chapter III of the

Act and reported judgements, are not specifically included in the scope of this report.

1.6 Glossary of Terms and Abbreviations

The following definitions are representative abbreviations and terms used in this report.

1.6.1 Employee - Any person employed in respect of an employment relationship, other than an independent contractor or self-employed person (Ferreira, 2020; Naidoo, 2019; SARS, 2021c). In addition, per section 10(1)(o)(ii) of the Act, the following employees are specifically excluded i) an individual appointed or deemed to be through the Act of Parliament as a public officer and/or ii) appointment as employee through "national, provincial or local sphere of government, certain constitutional institutions, national and provincial public entities listed in Schedules 2 and 3 of the Public Finance Management Act and municipal entities" (SARS, 2021c, p. 8).

1.6.2 Expatriate – Alternatively, an expat is defined as an individual residing in a foreign country other than their own country temporarily or for work (Collins, 2022; Ferreira, 2020).

1.6.3 Remuneration – SARS interpretation note 16, issue 4 defines remuneration, as income…"received by or accrued to an employee by way of the following amounts, namely: salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, for services rendered. Amounts contemplated in paragraph (i) of the definition of gross income in section 1(1) are also included, as too, are amounts referred to in sections 8, 8B or 8C" (SARS, 2021c, p. 2).

1.6.5 Tax Resident – The term is defined as either,

i) Ordinarily a resident, in that an individual lives in a place with some degree of continuity or permanency – with reference to *Levene v Inland Revenue Commissioner* (1928); he/she attaches permanency through having an abode or home to return to within South Africa - with reference to *H v COT 24 SATC 738* (SARS, 2002) and such a place has an element of permanency within country - with reference to *Soldier v COT* 1943 SR and *CIR v Kuttel* case law (SARS, 2002, p. 3) and in the alternative

ii) Physical presence, in respect of natural person deemed to be a South African tax resident if physically present in South Africa for a period or periods exceeding:

- 91 days in total during the year of assessment under consideration (SARS, 2018, p. 2, section 4.1);
- 91 days in total during each of the five years of assessment preceding the year of assessment under consideration (SARS, 2018, p. 2, section 4.1); and
- 915 days in total during those five preceding years of assessment (SARS, 2018, p. 2, section 4.1).

All three criteria, as listed above, must be met for a person to be deemed to be a South African tax resident per the physical presence test (SARS, 2018, p. 2, section 4.1).

However If such person, is outside South Africa for a consecutive period of 330 days, that person is deemed no longer to be a tax resident from the date physically outside the country (SARS, 2018, p. 6, section 4.4).

1.7 Assumptions

The following key assumptions were applied in this research report.

i. The case study is ring-fenced to South African expatriates rendering their services abroad in either the UAE, the UK or the USA and in turn, earning remuneration through an employee –employer arrangement.
ii. Furthermore, the respective South African expatriate received remuneration as defined per SARS (2021c, p. 2) – *refer to section 1.6 above*.
iii. Remuneration earned is grouped into three respective grouping, i.e., low-, moderate- or high-remuneration, similar to research performed by Sebashe et al. (2021), in order to assess the impact of the exemption threshold of R1,250,000 on respective income earner brackets, in that low to moderate earners were not to be affected adversely by the amendment to section 10(1)(o)(ii) and that high remuneration earners will be taxed higher and would result in top-up taxes being paid in SA.
iv. As per prior research, it is assumed that the remuneration earned is equivalent in the UAE, the UK and the USA at effective average foreign conversion rates (Govender, 2019; Sebashe et al., 2021).
v. It is assumed that the respective South African expatriate is unmarried and is younger than 65 years.
vi. The effect of primary rebates or personal allowances was considered in the comparative tax position analysis, both from a local and foreign juristic perspective.

CHAPTER 2. RESEARCH METHODOLOGY

Similar to prior research, this research report focuses on the amendment of section 10(1)(o)(ii), effective 1 March 2020 i.e. the prior full exemption being reduced to R1,250,000, on South African expatriate taxable foreign remuneration in respect of low; moderate and high remuneration earners (Africa, 2021; Ferreira, 2020; Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). This report is further ring-fenced to remuneration earned by South African expatriates from the following jurisdictions, namely the UK, the UAE and the USA. The report adds to the existing knowledge, in relation to the assessment of the section 10(1)(o)(ii) amendment to South African expatriate remuneration earners' overall tax exposure.

2.1 Research paradigm and design

A qualitative case study approach has proven to provide rich context and insights in respect of underlying problem statements (Zach, 2006). Furthermore, a case study is a focused and systematic approach that aims to gather in-depth insights through investigation of variables affecting either a group, collective, programmes or some other form of unit (Baxter & Jack, 2008; Heale & Twycross, 2018; Tricia S Moore, Lapan, & Quartaroli, 2012). Per Tricia S Moore et al. (2012), a case study's results provide rich insights into a subject matter to key stakeholder or affected parties. Tricia Susan Moore (2009), stated that a case study approach is most appropriate when researching a real-life context e.g. the financial impact of the amendment to section 10(1)(o)(ii) on the tax position of South African expatriates.

This report, similar to prior research, follows a case study-based approach which is qualitative and interpretive in nature (Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). Furthermore, it focuses on the assessment of a South African expatriate's holistic tax position in respect of remuneration earned abroad from the UK; the UAE or the USA and ultimately, within South Africa, which is termed a multiple comparative case study analysis (Tricia S Moore et al., 2012, p. 247; SARS, 2021c, section 4.1).

This multiple comparative case study analysis is appropriate in that the methodology allows for exploration of the impact of a South African expatriates' overall tax position in respect of i) primary levying of personal income tax within the respective country where the remuneration is earned and ii) the potential of South Africa levying a secondary personal income tax top-up against the backdrop of available double taxation relief mechanisms.

With reference to the work of Baxter and Jack (2008, p. 3), a case study approach is appropriate if the objective of the main problem identified requires answers to "how" and "why" the current state occurs. This research report focuses on "Why was section 10(1)(o)(ii) of the Act amended?", the main problem of this report explores whether National Treasury achieved its key objective in terms of restoring tax equality through the amendment of section 10(1)(o)(ii) of the Act.

Furthermore, the advantage of a case study approach is that it allows for multiple comparative case study analysis which allows for comprehensive insights and a "researcher to take a complex and broad topic…narrow it down into a manageable research question", through narrowing the scope of a research report (Baxter & Jack, 2008; Heale & Twycross, 2018, p. 7). The disadvantage of this methodology is that a focused approach is required to ensure that data analysis and findings are well constructed and encapsulates the crux of the complex issues being discussed (Heale & Twycross, 2018).

2.2 Scope and limitations of the study

The scope of this research report is limited to South Africa, the UK, the USA and the UAE in respect of South African expatriates working abroad and earning remuneration, as defined in Interpretation note 16 (SARS, 2021c, p. 2). In addition, South African domestic tax law and other respective tax laws are considered in respect of personal income tax brackets, individual personal allowances and respective DTAs, as a result of the amendment to section 10(1)(o)(ii) (effective 1 March 2020) of the Act in relation to the 2020/2021 tax year.

The scope is further limited to the impact of section *6quat* in respect of remuneration earned by a South African expatriate from a foreign source (Ferreira, 2020; Govender, 2019; Naidoo, 2019). Similar to prior research, an evaluation of the termination of tax residency through financial or formal emigration is considered and that Capital Gains Tax (CGT) is triggered, however the financial impact and analysis of CGT through such emigration will not be explored in detail in this report (Ferreira, 2020; Naidoo, 2019; Sebashe et al., 2021).

The Global Wealth Report for 2021 denoted that South Africa's wealth is spread as follow i) lower band which is less than ten thousand dollars (<$10,000); ii) moderate band which spans between ten thousand and one hundred thousand dollars ($10,000 to $100,000) and iii) upper band which spans between one hundred thousand and one million dollars ($100,000 to $1,000,000) (Credit Suisse, 2021, p. 51).Table 2 denotes the dollar remuneration brackets converted into ZAR using the Average Exchange rates from USD to ZAR, as per SARS (2022b).

Average Exchange Rate as per SARS for the year ended 28 Feb 2021 **16.50**

	Bands	Converted into ZAR	ZAR mid point	ZAR representation per band
Upper level	$ 1 000 000.00	R 16 497 900.00		
	$ 100 000.00	R 1 649 790.00	R 9 073 845.00	R 3 000 000.00
Middle level	$ 100 000.00	R 1 649 790.00		
	$ 10 000.00	R 164 979.00	R 907 384.50	R 900 000.00
Lower level	$ 10 000.00	R 164 979.00		
	$ 5 000.00	R 82 489.50	R 123 734.25	R 120 000.00

Table 2: ZAR remuneration band

Per the above computation, the upper level is denoted by three million rand (R3,000,000) as per prior work by Sebashe et al. (2021); the middle level by nine hundred thousand rand (R900,000) and the lower level as one hundred and twenty thousand rand (R120,000), which is used for comparative analysis in this report. Similar to prior research, the report further excludes tax residents employed as public officers, national, provincial or within the local organs of government (Sebashe et al., 2021).

CHAPTER 3. REPORT CHAPTER OUTLINE

The outline of this research report is as follow.

Chapter 4: Background

This chapter primarily focuses on the following key areas i.e.

- The evolution and rationale of South African Tax law moving from a source based, to a worldwide income tax-based approach;
- Evaluation of National Treasury's objective to restore tax equality amongst tax residence, through the amendment of section 10(1)(o)(ii) of the Act.
    - Delving into the definitions and criteria to qualify as a tax resident of South Africa.
    - Understanding the criteria required for the section 10(1)(o)(ii) – foreign tax exemption to apply.

Chapter 5: Remedies available to reduce the financial burden of expat tax

The following represents the options available to ease South African expatriates' financial tax burden and these are examined in detail in this chapter, per the following key focal aspects.

- The difference between tax avoidance and tax evasion.
- Measures available to ease the potential double tax burden, namely,
    - Section *6quat* rebate,
    - DTA, and
    - Termination of tax residency through financial or formal emigration.

Similar to prior research, this chapter assesses the impact of the respective DTAs between South Africa, the UAE, the UK and the USA in achieving double taxation relief (Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). Furthermore, the impact of Capital Gains Tax, the termination of tax residency through financial or formal emigration through the Eighth Schedule and section 9H of the Act, is

discussed but does not actively form part of the illustrative examples (Ferreira, 2020; Naidoo, 2019; Sebashe et al., 2021).

Chapter 6: The financial impact of the amendment to section 10(1)(*o*)(ii) in respect of South African expatriates earning remuneration from the UAE (United Arab Emirates)

Through the use of an illustrative example, the following is assessed in this research report and the ultimate assessment of the financial tax burden is quantified.

The purpose of this chapter is three-fold, i.e.

- Firstly, to assess the impact of the amendment of section 10(1)(o)(ii) on the tax position of South African expatriates, pre-1 March 2020 (no expat tax, foreign earned remuneration fully exempted) and effective-1 March 2020 – introduction of the R1,250,000 exemption, for low, moderate and high remuneration earners.
- Secondly, to establish if National Treasury had succeeded in restoring the principle of levying equitable taxes within the South African residency tax system (National Treasury, 2017; SARS, 2021c).
- Thirdly, to assess if low to moderate income earning tax residents remained in the same total tax position, irrespective of application of the expat tax (Sebashe et al., 2021).

Chapter 7: The financial impact of the amendment to section 10(1)(o)(ii) in respect of South African expatriates earning remuneration from the UK (United Kingdom)

Through the use of an illustrative example, the following is assessed in this research report and the ultimate assessment of the financial tax burden is quantified.

The purpose of this chapter is three-fold i.e.

- Firstly, to assess the impact of amendment of section 10(1)(o)(ii) on South African expatriate's tax position, pre-1 March 2020 (no expat tax, foreign earned remuneration fully exempted) and effective-1 March 2020 – introduction of the R1,250,000 exemption, for low, moderate and high remuneration earners.
- Secondly, to establish if National Treasury had succeeded in restoring the principle of levying equitable taxes within the South African residency tax system (National Treasury, 2017; SARS, 2021c).
- Thirdly, to assess if low to moderate income earning tax residents remained in the same total tax position, irrespective of application of the expat tax (Sebashe et al., 2021).

Chapter 8: The financial impact of the amendment to section 10(1)(o)(ii) in respect of South African expatriates earning remuneration from the USA (United States of America)

Through the use of an illustrative example, the following is assessed in this research report and the ultimate assessment of the financial tax burden is quantified.

The purpose of this chapter is three-fold i.e.

- Firstly, to assess the impact of amendment of section 10(1)(o)(ii) on South African expatriates' tax position, pre-1 March 2020 (no expat tax, foreign earned remuneration fully exempted) and effective-1 March 2020 – introduction of the R1,250,000 exemption, for low, moderate and high remuneration earners.
- Secondly, to establish if National Treasury had succeeded in restoring the principle of levying equitable taxes within the South African residency tax system (National Treasury, 2017; SARS, 2021c).
- Thirdly, to assess if low to moderate income earning tax residents remained in the same total tax position, irrespective of application of the expat tax (Sebashe et al., 2021).

Chapter 9: Conclusion

This chapter summarises the findings from chapters 6 to 8, and concludes on the key problem statement i.e. whether tax equitability is restored through the amendment of the foreign remuneration earned section 10(1)(o)(ii) of the Act. Furthermore, recommendations are provided for further research topics.

CHAPTER 4. BACKGROUND

4.1 Introduction

We operate within a global sphere, accompanied by various trade complexities and nuances; the Organisation for Economic Co-operation and Development (OECD) is an international organisation, with a key purpose of providing guidance and support in respect of shaping global policies with an aim of preventing Base erosion and Profit shifting (BEPS) and striving towards fairness in terms of levying equitable taxes for all affected jurisdictions (Africa, 2021; De Koker & Brincker, 2010; OECD, 2022).

Effective 1 March 2001, South Africa moved from a source-based to a residence-based tax system (SARS, 2021a). This change meant that tax residents are now taxed on their worldwide income – irrespective of source (however, still subject to certain exclusions and/or exemptions), whereas non-residents are only taxed on income sourced within the borders of South Africa (SARS, 2021a). However, such change could potentially trigger a double taxation, which is contrary to the spirit of the OECD's intention, in that the same income could be taxed by the jurisdiction of origin and South Africa (Africa, 2021). Within the ambit of domestic law, we had the initial section 10(1)(o)(ii) – pre-1 March 2022, which fully exempt all foreign earned remuneration, as such addressing the double taxation concern (Africa, 2021; SARS, 2021c).

National Treasury has identified that the pre-1 March 2020 section 10(1)(o)(ii), "created opportunities for double non-taxation in instances where the host country imposed little or no tax on employment income" (SARS, 2021c, p. 1), for example, where South African expatriates had earned remuneration from the UAE, the UAE does not levy personal tax (PwC, 2022c), such remuneration was not subject to taxation within the country of source (UAE) due to local laws and South Africa, due to full foreign remuneration exemption under pre-1 March 2020 section 10(1)(o)(ii) (Govender, 2019; PwC, 2022c; Sebashe et al., 2021).

The true intention of the amendment to section 10(1)(o)(ii) of the Act, was to ensure that foreign remuneration earned by South African expatriates in excess of R1,250,000 would be subject to local personal income tax and in turn, restoring tax equitableness in respect of resident taxes (National Treasury, 2017, p. 7,Section III; SARS, 2021c).

4.2 Section 10(1)(o)(ii) qualifying criteria

Within the ambit of South African Tax Law, South African tax residents are taxed on their worldwide income (De Koker & Brincker, 2010; Govender, 2019; Naidoo, 2019; National Treasury, 2017; SARS, 2002, 2021a). Furthermore, Section 10(1)(o)(ii), is purely focused on foreign remuneration earned by South African expatriates. The qualifying criteria for a section (10)(1)(o)(ii) expat exemption may be summarised into the following key sub-components, namely,

4.2.1 *The taxpayer must be a tax resident of South Africa*

With reference to Chapter 1, this report is limited to South African expats (refer to section 1.5) who are tax residents of South Africa (as defined in section 1.6) and who earn remuneration (as defined in section 1.6) from a foreign source. Furthermore, within a SA context, tax residency may be achieved through:

4.2.1.1 Ordinarily a resident test

Where an individual, living within South Africa with some degree of continuity or permanency (*Levene v Inland Revenue Commissioner (1928)*); attachment of permanency, through having a home to return to post wanderings (*H v COT 24 SATC 738*) and such a place has an element of permanency within country – (*Soldier v COT 1943 SR and CIR v Kuttel*) (SARS, 2002, p. 3).

In the instance, where an individual's true intention is to return to South Africa post his/her wanderings from the UK, the UAE and the USA, their true ties are deeply rooted in South Africa, such individual in accordance with the ordinarily resident test, is therefore a South African tax resident. This is corroborated by prior research, in that where an individual who earns remuneration from a source outside the borders of South Africa, has an intention to return home (where all their belongings remained) post completion of a project or termination of employment and their absence is deemed temporary, such individual is ordinarily a resident of South Africa (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019).

With reference to an individual earning remuneration from the UAE, if such person elects the UAE as their primary abode and is only temporarily absent from the country, he/she will be a non-resident for SA tax purposes within the ambit of the ordinarily resident test and will only be taxed on income sourced within South Africa (De Koker & Brincker, 2010; Naidoo, 2019). Furthermore the individual will not be eligible for the section 10(1)(o)(ii), due to not meeting the SA resident qualifying criteria (Naidoo, 2019).

4.2.1.2 Physical presence test

In the alternative, where an individual does not qualify as a tax resident under the ordinarily resident test, the physical presence test is used to determine as to whether or not an individual is deemed to be a tax resident of SA, through assessing whether or not an individual was physically present in South Africa for a period or periods exceeding

- 91 days in total during the year of assessment under consideration (SARS, 2018, p. 2, section 4.1);
- 91 days in total during each of the five years of assessment preceding the year of assessment under consideration (SARS, 2018, p. 2, section 4.1); and

- 915 days in total during those five preceding years of assessment (SARS, 2018, p. 2, section 4.1).

All three criteria as listed above must be met for a person to be deemed a South African resident as per the physical presence test (SARS, 2018, p. 2, section 4.1). In the instance where an individual is not ordinarily a resident of South Africa and meets the above criteria within a year of assessment, whilst returning from the UK, the UAE and the USA, such individual will be deemed to be a South African resident for tax purposes and will be subject to be taxed on his/her world-wide income in accordance with local law (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019).

The deemed tax-resident classification, under the physical presence tax creates potential double taxation issues between source and resident state, the aim of a signed DTAs is to provide guidance in terms of dealing with such instances, namely, the tie-breaker rules will be consulted (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Sebashe et al., 2021). If an individual, is outside South Africa for a consecutive period of 330 days, that individual is deemed to be a non-resident from the date he/she being physically outside the country (SARS, 2018, p. 6, section 4.4).

4.2.2 *The taxpayer must earn certain types of remuneration in capacity as an employee*

Per the guidance provided in Interpretation note 16, the section 10(1)(o)(ii) expat exemption relates to remuneration which is received or accrued in respect of services rendered outside the boarders of South Africa in respect of the qualifying period, as defined in the below section 4.2.2.2 (Africa, 2021; Ferreira, 2020; Govender, 2019; Naidoo, 2019; SARS, 2022a). Furthermore, where the South African taxpayer was outside the Republic and no foreign remuneration was earned, such period would be excluded from the ambit of section 10(1)(o)(ii) exemption, in that no foreign remuneration was earned (Ferreira, 2020; Govender, 2019).

An apportionment is applied in respect of instances where an individual earned remuneration abroad and meets the section 10(1)(o)(ii) exemption and for the period no remuneration was earned, however this is not discussed in this research report (Ferreira, 2020; Govender, 2019)

With reference to this specific qualifying criteria, it is imperative to define the following key aspects:

4.2.2.1 Remuneration

With reference to Interpretation note 16, remuneration has a narrow definition, in that it is inclusive of “salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, for services rendered” (SARS, 2021c). A broader definition, includes amounts contemplated in paragraph (i) of the definition of “gross income” in section 1(1) and amounts referred to in sections 8, 8B or 8C”, per SARS interpretation note 16, issue 4 (SARS, 2021c, p. 2). However, for this research report, focused on the narrower definition of remuneration.

4.2.2.2 Received or accrued

Per the definition of gross income, Section 1(1) of the Act, tax residents are taxed on the total amount in cash or otherwise, which is received or accrued to or in favour of such tax resident (Africa, 2021; SARS, 2021d, 2022a).

The *Geldenhuys v CIR* case*,* interpreted “received by” as due to or on behalf of a specific tax resident for that specific tax resident’s own or personal benefit, which is a key criteria for section 10(1)(o)(ii) in that it relates to an employer – employee agreement and that such benefit, namely remuneration, is for the employee or tax resident’s personal benefit (Africa, 2021; Ferreira, 2020; Govender, 2019; Naidoo, 2019; SARS, 2021d, 2022a).

4.2.2.2 Qualifying period

SARS Interpretation note 16 denotes that for an individual to qualify for section 10(1)(o)(ii) exemption, one must be outside the borders of the country for at least 183 full days during any 12 month period, furthermore, of such days, an excess of 60 days needs to be consecutive and the remainder need not be, however the total number of days must incrementally exceed 183 full days in a 12 month period (SARS, 2021c, p. 4 & 5, section 4.1.5). It should also be noted that "weekends, public holidays, annual leave days, sick leave days and rest periods (as required under the specific terms of a contract of employment or respective basic conditions of employment in respective countries) that are spent outside the Republic are taken into account for purposes of calculating the period or periods outside the Republic" (SARS, 2021c, p. 5, section 4.1.5).

Furthermore, per Interpretation note 16, the qualifying day test in relation to section 10(1)(o)(ii) exemption states an employee–employer relationship must be in existence, for which services must be rendered in lieu of earning remuneration for such duration of the employment under an agreement, in order for such exemption to apply (SARS, 2021c, p. 5, section 4.1.5).

4.2.3 *The taxpayer must be employed and must earn remuneration for services rendered outside the borders of South Africa*

A valid employee-employer relationship must be in existence and a trade of services must take place by the employee in favour of the employer in return for remuneration received (Ferreira, 2020; Govender, 2019; Naidoo, 2019). The term valid employee-employer relationship, was defined in prior research as a contractual relationship between an employee and employer, in respect of services being rendered abroad, in other words not within the borders of South Africa, in return for compensation in the form of remuneration as defined in section 1.6 in this report, which is key in

legitimising the qualification for section 10(1)(o)(ii) expat exemption (Ferreira, 2020; Naidoo, 2019).

Furthermore, Interpretation note 16 refers to specific exclusions in terms of employment arrangements, namely,

- Independent contractors and self-employed individuals, in that these individuals are seen as owners, as such do not meet the definition of being an employee, as defined, since they are technically self-employed (Africa, 2021; Ferreira, 2020; Govender, 2019; Naidoo, 2019; SARS, 2021c) or
- A person appointed through an Act of Parliament, specifically section 9(2)(g) – Public Officer or section 9(2)(h) – employees employed in respect of local, provincial, or national government (Ferreira, 2020; Naidoo, 2019; SARS, 2021c).

Interpretation note 16, states that remuneration earned by the expat must relate to services rendered, however, specifically excludes

> *Payments for the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right to be appointed) to an office or employment are received by virtue of such termination, loss, repudiation, cancellation or variation, not in respect of services rendered, and are accordingly not exempt under section 10(1)(o)(ii)* (SARS, 2021c, p. 3, section 4.1.3).

Therefore any remuneration which stems from an employer-employee agreement outside the normal course of business and results in termination of employment or securing a scare resource, does not meet the definition of remuneration as per 10(1)(o)(ii) expat exemption, as such, is fully taxable and will not qualify for the section 10(1)(o)(ii) expat exemption (Ferreira, 2020).

An additional requirement is that such remuneration must be earned outside the borders of South Africa (SARS, 2021c). Furthermore, Interpretation note 16 states that boarders of the Republic includes the

landmass of South Africa as well as its territorial waters as per section 1(1) (Ferreira, 2020; SARS, 2021c).

However, per prior research, even though Lesotho and Eswatini, forms part of South Africa's landmass, they do not form part of the Republic's borders i.e. a separate tax jurisdiction (Ferreira, 2020, p. 30, section 2.1.2.3.4).

In the event, an expat meets **all** the above listed criteria (with reference to section 4.2.1 to 4.2.3), he/she may qualify for the expat exemption under section 10(1)(o)(ii), which allows a full foreign income remuneration tax exemption under the pre-1 March 2020, section 10(1)(o)(ii) and a maximum of R1,250,000 per the amended expat exemption, which came into effect-1 March 2020, in respect of foreign remuneration earned or accrued (Ferreira, 2020; SARS, 2021c). It should be noted that in the event ancillary services are deemed incidental or casual in relation to the true contractual relationship, such services will be deemed to be rendered abroad and will be subject to the section 10(1)(o)(ii) expat exemption (Africa, 2021; Ferreira, 2020, p. 9, section 4.3; Naidoo, 2019; SARS, 2021c).

CHAPTER 5. REMEDIES AVAILABLE TO REDUCE THE FINANCIAL BURDEN OF EXPAT TAX

South Africa operates on a residence tax based approach and taxes tax residents in respect of their world-wide income (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019; National Treasury, 2017, p. 6, section 1.2). Pre-1 March 2020, section 10(1)(o)(ii) allowed full exemption of foreign remuneration, the intention was to avoid double taxation between South Africa (where the individual is a tax resident) and the country in which the services are being rendered (National Treasury, 2017; SARS, 2021c).

However, National Treasury identified that such blanket exemption led to tax disparities and inequalities, in that where certain jurisdictions charged no tax or minimal taxes, it created inequality in terms of tax treatment amongst tax residents earning remuneration within the borders of South Africa and those earning remuneration abroad (Africa, 2021; Ferreira, 2020; Govender, 2019; National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021).

In order to address such tax disparities, section 10(1)(o)(ii) was amended and effective 1 March 2020, foreign remuneration earned abroad by South African tax residents became entitled to an exemption limited to an amount R1,250,000 (Africa, 2021; Ferreira, 2020; Govender, 2019; National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021). As per National Treasury and noted in prior research reports, the true intention of the amendment of section 10(1)(o)(ii), was to capture the high-net worth earners who had managed to avoid local taxation due to the initial full foreign remuneration tax emption under the pre-1 March 2020, section 10(1)(o)(ii) expat exemption (Africa, 2021; Ferreira, 2020; National Treasury, 2017, p. 8; Sebashe et al., 2021).

However, the amendment of section 10(1)(o)(ii) expat exemption triggers a potential double taxation situation between South Africa and the country in which services are rendered (Ferreira, 2020; Govender, 2019; Naidoo, 2019; National Treasury, 2017). Various measures exist within the ambit of the law, thereby allowing reduction of such double tax burdens, this is dealt with in more detail in section 5.2 of this chapter.

5.1 The difference between tax avoidance and tax evasion

Prior research defines taxation as the levying of taxes within the private sector and therefore a necessary evil required to generate revenue for the fiscus, in order to provide public goods and/or services to the general public (Du Preez, 2015; Ferreira, 2020; Grubel, 2003; Soyode & Oyedokun, 2019). There are two types of tax systems, the progressive and proportional tax system (Soyode & Oyedokun, 2019, p. 18).

A proportional tax system, applies a standard tax rate to a tax resident's world-wide earnings irrespective of remuneration bracket, namely, no differentiation across tax payers, everyone is treated alike and is charged the same tax rate/s (Soyode & Oyedokun, 2019). To note, per John Stuart Mill, such taxes impact the low and middle class harder, it reduces their spending power and inadvertently reduces their social ranking, such tax is seen to be taxes on the poor and is in contrast to National Treasury's view of promoting a tax system that is fair and equitable, namely in that one should pay in accordance with your taxable earnings (Mill, 1848, p. 159; National Treasury, 2017).

South Africa adopted a progressive tax system, defined as a system where income is taxed in accordance with a sliding scale, in other words the more you earn the more taxes one would pay, which directly promotes the element of fairness and equitability in respect of taxes being levied (De Koker & Brincker, 2010; National Treasury, 2017; Soyode & Oyedokun, 2019; Stamp, 1921).

Per Fuest and Riedel (2009), there is no definitive universal definition with regards to tax avoidance and evasion (Fuest & Riedel, 2009, p. 11). Prior research defines tax avoidance as an activity whereby a tax resident's tax burden is reduced in a way that is contra to the true intention or spirit of the law, however without being strictly illegal and tax evasion is defined as illegal measures undertaken in order to reduce one's tax burden (Fuest & Riedel, 2009, p. 11; "IRC v Duke of Westminister," 1936). Put differently,

tax avoidance is still seen as a legitimate tax planning measure used to reduce a tax resident's overall tax exposure.

A tax resident of South Africa will be taxed on his/her world-wide income in accordance with the Act, however this principle creates a potential double taxation in that the same remuneration from abroad, will be taxed in the country of source, for example, the UK, the UAE and the USA (where services are rendered) as well as South Africa, where he or she is a tax resident (Africa, 2021; Ferreira, 2020; Govender, 2019; Naidoo, 2019; PwC, 2022b; SARS, 2021c, 2022a). Such potential double taxation is therefore contra to the spirit of the law and hampers the levying of fair and equitable taxes.

It should be noted that domestic rules, laws and principles, form the foundation for minimising tax avoidance (De Koker & Brincker, 2010, p. 893). The ultimate aim is to ensure that domestic and international jurisdictions share equitably in respect of tax revenues (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019; PwC, 2022b; SARS, 2021c, 2022a).

Avoidance falls within the ambit of this paper, the view taken in this paper was from a legitimate tax planning perspective and through electing the various measures available (refer to section 5.2) in order to lessen the overall tax exposure of an expat earning remuneration from the UK, the UAE and the USA, respectively.

5.2 Measures available to ease the potential double tax burden

In an attempt to legitimately alleviate an expat's tax burden in respect of foreign taxes paid, effective tax planning measures aid in reducing an expat's overall tax burden (De Koker & Brincker, 2010; Ferreira, 2020). The ultimate aim of tax planning in respect of expat remunerative earnings is to avoid double taxation, to balance the tax scale between sourced and residence-based taxes by ensuring equitable taxes are imposed and

levied holistically (De Koker & Brincker, 2010; Ferreira, 2020; SARS, 2021c, 2022a). Furthermore, as noted in SARS Interpretation note 18, the burden of paying tax within the sourced jurisdiction trumps a residence approach, as such, triggers double taxation since South Africa's tax residents are taxed on their world-wide income (SARS, 2022a). However, international measures such as double tax treaties and unilateral domestic tax relief measures aid in reducing such double tax exposures and restoring fairness (De Koker & Brincker, 2010; Naidoo, 2019; SARS, 2022a). It should be noted that anti-avoidance operates within the ambit of domestic law, common law rules as well as general statutory anti-avoidance rules (Section 103 of the Income Tax Act, 1962) or GAAR (General Anti-Avoidance Rule) of the Act (De Koker & Brincker, 2010; Ferreira, 2020). Furthermore such transactions are monitored through the GAAR, providing guidelines in respect of identifying impermissible tax avoidance transactions/structures and promote an overall healthy tax fiscus (De Koker & Brincker, 2010; SARS, 2006). The assessment of permissibility of a tax avoidance transaction, measure or deal, does not form part of the scope of this research report.

The following measures are available to legitimately reduce an expat's tax burden in country.

5.2.1 *Section 6quat rebate*

From a South African stance, our domestic law provides for measures to reduce local tax exposure through rebates (Sections *6quat(1) and 64N(1)*) and deductions (Section *6quat(1C)*) (SARS, 2022a). This report focuses on foreign remuneration earned by a South African tax resident and who had paid sourced based taxes within the country where services were rendered, as such, it will only focuses on Section *6quat(1)* of the Act. Section *6quat* (1) allows for a tax credit relief or rebate in terms of foreign taxes paid within sourced jurisdictions against SA taxable income (Africa, 2021; Ferreira, 2020; Hutchon & Kim, 2020; Naidoo, 2019; SARS, 2022a).

The key requirements for section *6quat(1)* to apply, as per SARS interpretation note 18 are as follow (SARS, 2022a)

i) Income must be derived from a foreign source,
ii) Income must be included in a tax resident's taxable income,
iii) Foreign taxes were paid on such derived income; and
iv) Did not carry on a trade and as such, does not qualify for section *6quat* (1C) deduction.

Within the ambit of this research report, section *6quat(1)* credit relief will apply, in that within the UK and the USA foreign taxes would have been paid and such taxes may be off set against the SA preliminary taxable income – defined as the foreign earned remuneration post the expat allowance i.e. R1,250,000 as per the 1 March 2020 amended section 10(1)(o)(ii), in accordance with section *6quat(1)* rebate (Africa, 2021; Naidoo, 2019; SARS, 2022a). In relation to the UAE, no foreign taxes are paid in the country, as such section *6quat* is not available, due to no taxes levied within the UAE (Ferreira, 2020; Naidoo, 2019; PwC, 2022c).

5.2.2 *DTAs*

The key objective of a DTA is to combat uncertainties in respect of tax treatments and restore the equilibrium in respect of tax fairness between jurisdictions and in turn, combats double taxation (SARS, 2022a). Furthermore, per In *CSARS v Tradehold Ltd Boruchowitz AJA* case, in the event of disagreement in the levying of taxes form a local and international perspective, the DTA treatment will prevail (SARS, 2022a).

In respect of the UAE, no source based taxes are charged in the country and therefore, taxpayers are not entitled to a section *6quat* rebate as per the Act. Furthermore, per the DTA (between South Africa and the UAE), the general rule under Article 14(1) states that both jurisdictions have the right to tax remuneration earned (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; SARS, 2016; Sebashe et al., 2021). Therefore, even though remuneration is not taxed within the UAE, it is still subject to local tax under general rule 14(1)

of the DTA (SARS, 2016). As noted by Ferreira (2020, p. 58), even though an individual identifies as a non-resident, if the criterion of the Physical presence test is met (refer to section 4.2.1.2 above), such individual is deemed to be a South African Tax resident and will be subject to be taxed on his/her world-wide income in accordance with SA domestic tax law (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019).

5.2.3 *Termination of tax residency through financial or formal emigration*

The Cambridge dictionary defines emigration as follow, “to leave a country permanently and go to live in another one” (Cambridge University, 2022). Prior research states there is a difference between formal and financial emigration (Africa, 2021; Ferreira, 2020; Hutchon & Kim, 2020).

Formal emigration, being defined as registering as a non-resident for exchange control purposes, however still being defined as a resident for local tax purposes, here it is important to note that an individual’s true home is still defined as being within South Africa and that their displacement is just temporarily, as such, the taxpayer will remain a tax resident for local tax purposes - with reference to *H v COT 24 SATC 738* (SARS, 2002), and as such, meets the definition of an SA tax resident under the ordinarily resident of SA test (Ferreira, 2020; Hutchon & Kim, 2020; SARS, 2002, p. 3).

In the alternative, financial emigration will result in an individual being defined as a non-resident for both exchange control and local tax purposes, such change in tax status will trigger CGT (exit taxes) under section 9H of the Act in terms of being deemed to have disposed of all assets for local tax purposes (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Hutchon & Kim, 2020; Naidoo, 2019; Sebashe et al., 2021). However, financial emigration does not preclude a non-resident from not paying taxes on income, if such income is earned from a source within South Africa, such non-resident will be subject to local taxes in accordance with the source based aspect of domestic tax law (De Koker & Brincker, 2010; Ferreira, 2020; SARS, 2021a). It should also be noted that a non-resident could still potentially qualify as a tax resident under

the Physical Presence test (refer to section 4.2.1.2 Physical presence test in this research report), this in turn, creates a potential double taxation issue between the source and residence state, the signed DTA should be consulted for guidance in terms of dealing with such instances through the tie-breaker rule (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019).

This report does however not consider the financial impact of emigration in the financial computations in chapters 6 to 8, refer to section 2.2, scope, and limitations of the study.

CHAPTER 6. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE UAE

Similar to prior research, the impact of section 10(1)(o)(ii) pre- and effective-1 March 2020 is considered, in respect of the overall tax position of a tax resident and non-tax resident in terms of low, moderate and high remuneration income earned from the UAE (Govender, 2019; Sebashe et al., 2021).

The UAE does not levy personal income tax on income earned within country, irrespective of being a resident or a non-resident (PwC, 2022c; Sebashe et al., 2021). An issue therefore arose, in that where a South African tax resident earned remuneration from the UAE, such income would not be taxed in the UAE and would be fully exempt in accordance with the pre-1 March 2020 tax exemption, resulting in a double non-taxation situation, since zero tax is being paid both within the UAE and SA (PwC, 2022c; SARS, 2021c; Sebashe et al., 2021). Furthermore this created inequality in terms of tax being levied amongst tax residents, in that those residents who earned remuneration locally were being taxed locally up to 45% (as per SARS individual Income Tax bracket 2020/2021 – refer to Appendix: Table 1) whereas those tax residents who earned remuneration abroad, were receiving hundred percent exemption from a local tax position in terms of the pre-1 March 2020 section 10(1)(o)(ii) (SARS, 2021c).

This was contrary to the spirit of domestic law and the intention of National Treasury in promoting and implementing tax equality, which ultimately led to the amendment of section 10(1)(o)(ii) on the 1st of March of 2020 in order to restore the balance of equality by introducing a limit for such foreign remuneration i.e. R1,250,000 and targeting high remuneration earners (De Koker & Brincker, 2010; National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021).

6.1 Case overview

Mr A is a South African tax resident (returns to South Africa post wanderings in accordance *H v COT 24 SATC 738* (SARS, 2002)), who is unmarried, below the age of 65 and earned remuneration through an employer – employee agreement from the UAE. Mr A renders services in return for remuneration, such remuneration meets the narrow definition (refer to section 4.2.2.1 Remuneration) of SARS Interpretation note 16 (SARS, 2021c). Furthermore, Mr A was outside the borders of South Africa for 183 full days during a period of 12 months, of such days, an excess of 60 days were consecutive.

Similar to prior research conducted by Sebashe et al. (2021), an assessment was conducted in respect to low (R120,000); moderate (R900,000) and high (R3,000,000) remuneration earners in order to assess the impact of i) pre-1 March 2020 expat exemption; ii) effective-1 March 2020 expat exemption and iii) if no exemption was applied in respect of 2020/2021 tax period. Measures of easing double taxation was considered, specifically i) section *6quat* and ii) the signed DTA.

The ZAR amount was translated into AED, using the average rate as per Oanda.com as at 1 March 2020 and 28 February 2021, due to not being specifically included in the SARS - Average exchange rates for a year of assessment (SARS, 2022b).

6.2 UAE tax impact analysis

Per the following section 6.4 – UAE vs SA Tax computation summary, Mr A is a tax resident of South Africa and would be subject to local taxes, since South African tax residents are taxed on their worldwide income (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019; National Treasury, 2017). However, the UAE does not levy personal income taxes, as such, zero taxes will be payable in country irrespective of remuneration bracket earnings (Africa, 2021; Govender, 2019; Naidoo, 2019; PwC, 2022c; Sebashe et al., 2021).

As stated in the case overview, Mr A i) identifies as ordinarily a resident of South Africa – in that he will return to South Africa post wandering (*H v COT 24 SATC 738* (SARS, 2002)); ii) earned foreign remuneration (in accordance with the SARS Interpretation note 16 definition) from an employee-employer arrangement and iii), was outside the borders of South Africa for 183 full days during a 12 month period, of which 60 days were consecutive. Therefore, Mr A met all the criteria in relation to section 10(1)(o)(ii). In terms of low, moderate and high remuneration, Mr A would therefore qualify for the expat exemption.

Per the pre-1 March 2020 expat exemption, the remuneration earned by low; moderate and high remuneration earners were fully exempt, as such, no SA taxes were levied (Govender, 2019; Sebashe et al., 2021). However, with the introduction of the R1,250,000 threshold, effective-1 March 2020, the low and moderate earnings fell below the maximum exemption of R1,250,000 and as such, was still fully exempt from local taxes, expressed differently, the implementation of the threshold and the pre-1 March 2020 expat exemption results in the exact same zero tax position. As per prior research, namely Sebashe et al. (2021, p. 5), this results in the continuation of the double non-taxation in respect of low and moderate income earners being exempt from contributing to the local tax coffers. Furthermore, Sebashe et al. (2021, p. 5), is of the view that such allowance by National Treasury financially aids low and moderate income earners and retains a favourable overall tax base.

In contrast, for the high remuneration bracket earning R3,000,000, the non-taxable expat exemption is capped at R 1,250,000 (effective 1 March 2020) which results in a residual taxable balance, namely R1,750,000 as per the case study denoted in section 6.4 computation overview. South Africa applies a progressive tax system (National Treasury, 2017) and this resulted in an overall tax liability of R637,179 becoming payable by Mr A under the high remuneration bracket, prior to local rebates. Furthermore, since no taxes were levied nor paid within the UAE (PwC, 2022c), Mr A would not qualify for a section *6quat* rebate against his local tax liability position of R637,179 (Sebashe et al., 2021). However, since Mr A is a South African tax resident, he will be entitled to his primary tax rebate of R14,958 since he's under the age of 65 (per the case overview) which will aid in reducing his overall tax position for the high remuneration bracket down to R622,221 (R637,179 less R14,958).

UAE and SA have entered into a DTA (SARS, 2016). Article 14(1) and 14(2) of the DTA, stipulates the taxation rights of UAE and SA in respect of salaries, wages and other similar remuneration defaults in favour of the UAE (PwC, 2022a; SARS, 2016; Sebashe et al., 2021). Per the case overview, Mr A was outside the borders of South Africa and rendering services within the UAE for 183 full days during a 12 month period, as such, not meeting the requirement of Article 14(2) of the DTA and as such, the UAE does not have sole rights to taxing the remuneration earned by Mr A (De Koker & Brincker, 2010; SARS, 2016; Sebashe et al., 2021). In the alternative, if Mr A was rendering services within the UAE for a period of less than 183 full days during a 12 month period, the UAE would have sole taxing rights, under Article 14(2) of the DTA and as such, SA would not be entitled to levying taxes within SA (SARS, 2016). This tax position of the high remuneration earners in accordance with Article 14(2) of the DTA, may be likened to the pre-1 March 2020 expat position, namely all remuneration earned will be exempt in full and no local SA taxes are allowed to be levied.

Per the results of the case study, the current threshold of R 1,250,000 still promotes double non-taxation in respect of the low and moderate remuneration earners, as reflected in section 6.4 – UAE vs SA Tax computation summary, which is still signalling tax inequalities in respect of low and moderate income earners in relation to comparative local remunerative tax residents, which in turn, is fuelling tax disparities amongst SA tax residents (Sebashe et al., 2021). This is therefore in contrast to Adam Smith's cannon of equitability, in that all sources of income (whether from within the borders of SA or from abroad, namely the UAE), irrespective of its nature i.e. income or capital, should be taxed equitably (De Koker & Brincker, 2010; Du Preez, 2015; Grubel, 2003; Sebashe et al., 2021).

Furthermore, to promote equitable taxes, a viable option would be to repeal the section 10(1)(o)(ii) exemption, which would promote a fair and progressive tax system in its entirety, evident in terms of low; moderate and high remuneration brackets paying taxes in accordance with the respective tax scale and therefore satisfying the true definition and intention of a progressive tax system, in that it will promote tax equality (Asquer, 2022; Du Preez, 2015; Fayissa & Nsiah, 2010; Sebashe et al., 2021).

If section 10(1)(o)(ii) had to be repealed, it would align with National Treasury's true intention of promoting fair and equitable taxes irrespective of where remuneration is sourced (National Treasury, 2017, p. 7). From a low remuneration bracket, the taxable income of R120, 000, would translate into a local tax liability of R21,600 reduced by the local primary rebate of R14,958, resulting in a final local tax outflow in favour of SARS to the value of R6,642. The moderate and high remuneration bracket, will result in foreign income being imputed into the local tax computation resulting in

- Moderate – Tax liability of R281, 771, which would still be eligible for the primary rebate of R14, 958, however no section *6quat* rebate since no taxes are paid within the UAE (PwC, 2022c). In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R266,813 on a R900,000 foreign remuneration, consisting of UAE taxes of zero and local top-up taxes of R266,813.

- High – Tax liability of R1,199,679 which would still be eligible for the primary rebate of R14, 958, however no section *6quat* rebate since no taxes are paid within the UAE (PwC, 2022c). In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R1,184,721 on a R3,000,000 foreign remuneration, consisting of UAE taxes of zero and local top-up taxes of R1,184,721.

6.3 Summary of tax impact

National Treasury's key objective was to restore tax equality through the amendment of section 10(1)(o)(ii) and the introduction of the R1,250,000 exemption threshold, thereby preventing the exploitation of the foreign income exemption and to restore the principle of levying equitable taxes within the South African residency tax system, specifically in relation to taxing high remuneration earners (Africa, 2021; National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021). Per this case study, National Treasury, through the introduction of the R1, 250,000 threshold, had managed to retain the spotlight on high remuneration earners which was in accordance with their key objective, evident from the net tax liability of R622,221, becoming due and payable under the high remuneration bracket (R3,000,000 or AED 658,739) and zero tax liability for the low (R120,000 or AED 26,350) and moderate (R900,000 or AED 197,622) remuneration bracket in this case study.

The current threshold of R1,250,000, promotes double non-taxation in respect of the low and moderate remuneration earners, as reflected in section 6.4 – UAE vs SA Tax computation summary, which results in a zero tax position even post the expat exemption being amended 1 March 2020 (Sebashe et al., 2021). The repeal of section 10(1)(o)(ii) would aid in addressing the double non-taxation in that all levels of remuneration earners would be taxed in accordance with the progressive tax brackets and would align with National Treasury's true policy intention, namely to "ensure that the tax system espouses the principle of fairness and progressivity" (National Treasury, 2017, p. 7).

6.4 UAE vs SA Tax computation summary

MR A's TAX POSITION : UAE vs SA

	Low Income			Moderate Income			High Income			
	Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(ii)	Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(ii)	Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(ii)	
Gross Income - Salaries abroad	26 349.56	26 349.56	26 349.56	197 621.73	197 621.73	197 621.73	658 739.11	658 739.11	658 739.11	
Less: Taxes paid in country	-	-	-	-	-	-	-	-	-	
Net Income	26 349.56	26 349.56	26 349.56	197 621.73	197 621.73	197 621.73	658 739.11	658 739.11	658 739.11	
TAXES WITHIN SOUTH AFRICA										
(A+B)/2 Conversion rate from AED to ZAR (Average)	**4.5542**	**4.5542**	**4.5542**	**4.5542**	**4.5542**	**4.5542**	**4.5542**	**4.5542**	**4.5542**	
A - Opening rate 1 March 2020	4.2541	4.2541	4.2541	4.2541	4.2541	4.2541	4.2541	4.2541	4.2541	
B - Closing rate 28 February 2021	4.8542	4.8542	4.8542	4.8542	4.8542	4.8542	4.8542	4.8542	4.8542	
Note: Annual rate not available on SARS exchange rates as such used the opening and closing rates as ***per oanda.com*** and calculated the average rate										
Gross Income - Salaries abroad	120 000.00	120 000.00	120 000.00	900 000.00	900 000.00	900 000.00	3 000 000.00	3 000 000.00	3 000 000.00	
Less: Section 10(1)(o)(ii) exemption	-120 000.00	-120 000.00	-	-900 000.00	-900 000.00	-	-3 000 000.00	-1 250 000.00	-	
Taxable Income	-	-	120 000.00	-	-	900 000.00	-	1 750 000.00	3 000 000.00	
Tax liability per Appendix tables	-	-	21 600.00			281 770.59		637 179.00	1 199 678.55	**C**
Less: Primary rebate (Individual less that 65 years old)	-	-	-14 958.00	-	-	-14 958.00	-	-14 958.00	-14 958.00	
Less: 6quat rebate	-	-	**N/A**	-	-	**N/A**	-	**N/A**	**N/A**	
Total Tax Liability	-	-	6 642.00	-	-	266 812.59	-	622 221.00	1 184 720.55	
TOTAL FOREIGN AND LOCAL TAXES PAID	-	-	6 642.00	-	-	266 812.59	-	622 221.00	1 184 720.55	

Tax computation using Appendix Table 1 : C = (R559,464 +(R4, 750,00 - R1,577,300) * 45%))

Tax computation using Appendix Table 1 : C = (R559,464 +(R3, 000,00 - R1,577,300) * 45%))

CHAPTER 7. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE UK

Similar to South Africa, the UK levies taxes based on a respective tax resident's world-wide income and capital gains (PwC, 2022d). In the instance that a South African tax resident renders services within the borders of the UK and receives remuneration in return for such services, per UK tax law, such non-tax resident will liable for taxes in-country based on any income sourced within the borders of the UK (PwC, 2022d; Sebashe et al., 2021). This research is purely focused on the remuneration element earned within the borders of the UK. Furthermore, per the UK tax law, it should be noted that a tax non-resident will generally only be liable in respect of capital gains derived from UK property/property-rich companies or carried interest (PwC, 2022d).

The UK also follows a progressive tax system and has a maximum tax rate of 45% - which is the same as South Africa's maximum tax rate for the 2020/2021 tax period (PwC, 2022d). In addition, the UK allows both residents and non-tax residents, a personal allowance of up to GBP 12,500 for the 2020/2021 tax year if their UK sourced taxable income is less than GBP 100,000 (Gov.UK, 2022). In instances where remuneration is generated within the UK and does not exceed the personal allowance of up to GBP 12,500, such taxpayer does not pay taxes within country (Gov.UK, 2022; Sebashe et al., 2021). Within SA, our primary rebate may be likened to the personal allowance of the UK, however the key difference is that the UK does not exercise an element of equality in terms of awarding such rebates, in that the UK's personal allowance is ring-fenced for the benefit of low to moderate earners and explicitly excluded high net-worth by setting a threshold of GBP 100,000 (Gov.UK, 2022).

7.1 Case overview

Similar to section 6.1 – Case overview, Mr A is a South African tax resident (returns to South Africa post wanderings in accordance with the ordinarily resident's test), he is unmarried, below the age of 65 and earned remuneration through an employer – employee agreement from the UK. He renders services in relation to an employer-employee agreement and in return received remuneration (remuneration as defined in SARS Interpretation note 16) (SARS, 2021c). Mr A was delivering services within the borders of the UK for 183 full days during a 12 month period, furthermore of such days, an excess of 60 days were consecutive.

Similar to the research conducted by Sebashe et al. (2021), an assessment was conducted in respect to low (R120,000); moderate (R900,000) and high (R3,000,000) remuneration earners in order to assess the impact of i) pre-1 March 2020 expat exemption; ii) effective-1 March 2020 expat exemption and iii) if the exemption was repealed.

The i) section *6quat* and ii) the signed DTA was also considered to assess the impact of easing double taxation between SA and the UK (SARS, 2003). The ZAR amount was translated into GBP, using the published SARS - Average exchange rates for a year of assessment rates as per the SARS website (SARS, 2022c).

7.2 UK tax impact analysis

With reference to the computation in section 7.4 – UK vs SA Tax computation summary, the following key findings were noted.

i) From a UK Tax perspective

If Mr A (a tax resident of South Africa) earns low remuneration from within the borders of the UK and his earnings for a tax period is i) below the GBP 100,000 annual earnings cap and ii) his total earnings does not exceed the personal allowance threshold of GBP 12,500, he will have a zero UK tax liability.

The moderate remuneration still triggered UK taxes in respect of the remuneration earned within country, namely a taxable income of GBP 42,201 would qualify for a personal income tax allowance of GBP 12,500, since the annual remuneration is below the GBP 100,000 threshold, therefore reducing the taxable UK based earnings to GBP 29,701 (GBP 42,201 less GBP 12,500). The GBP 29,701 taxable earnings results in an overall UK tax bill of GBP 7,910 (R168,695).

In the alternative, a high remuneration earner would not qualify for the personal allowance of GBP 12,500, since the annual remuneration is above the GBP 100,000 threshold. Therefore, in the event Mr A earns GBP 140,671 (R3,000,000), he would not qualify for the personal allowance of GBP 12,500 in that his annual earnings of GBP 140,671, would exceed the GBP 100,000 threshold. Furthermore, the UK would tax his full taxable income of GBP 140,671 which would result in an in-country tax liability of GBP 48,268 (R1,029,376).

ii) From a SA Tax perspective

Since Mr A meets the key criteria to qualify for section 10(1)(o)(ii) expat exemption, namely,

- He is ordinarily a tax resident of SA, in that he will return to SA, his true abode post any travels abroad is *SA - H v COT 24 SATC 738* (SARS, 2002);
- An employee-employer agreement is in place with Mr A and services are rendered as an employee and foreign remuneration is earned in return, and
- He was outside the borders of South Africa for 183 full days during a 12 month period, of which 60 days were consecutive.

Per section 10(1)(o)(ii), pre-1 March 2020 – Mr A's full remuneration would be exempt from local tax irrespective of earning high, moderate or low income. Furthermore, under the amended expat exemption (effective-1 March 2020), i) low and moderate income earners still retained their zero local tax liability position due to the generous R1,250,000 credit exemption (National Treasury, 2017; Sebashe et al., 2021). Mr A had qualified for taxes within the UK under the high remuneration, namely R1, 029,376 (GBP 48,268 using the annual SARS average exchange rate for GBP to ZAR conversion as at 28 February 2021).

Mr A qualifies for a section *6quat* rebate in that i) remuneration was earned from a foreign source, being the UK; ii) he is a tax resident of SA and will be taxed on world-wide income earned, as such, the remuneration earned from the UK will be included in his local tax computation; iii) foreign taxes were paid in the UK, namely R1,029,376 (GBP 48,268), which was computed as per the UK's 2020/2021 individual tax tables, and iv) Mr A was in a capacity as an employee and not as an independent contractor (SARS, 2022a).

Within the context of being a high remuneration earner and the application of effective-1 March 2020 expat credit, Mr A would have to initially include the full R3,000,000 (GBP 140,671) into his local tax computation, however would be allowed to apply i) the R1,250,000 rebate (since all requirements for section 10(1)(o)(ii) were met); ii) the local primary rebate of R14,958 since he is under the age of 65 and iii) the tax credit under section *6quat* rebate in respect of foreign taxes paid, namely R1,029,376 (GBP 48,268), however limited to local tax exposure of R622,221 – as such the local tax liability of R622,221 will be reduced to zero to ensure an overall balance in respect of taxes being paid locally and abroad. Furthermore, it should be noted that Mr A's tax liability in terms of the R3,000,000 (GBP 140,671), earned from the UK results in an overall tax outlay of R1,029,376 (GBP 48,268) which was within the UK and zero in SA - due to the section *6quat* double taxation relief measure.

If section 10(1)(o)(ii) had to be repealed, it would result in the promotion of fairness and the adoption of a progressive tax system, aligned with National Treasury's true intention (National Treasury, 2017, p. 7). Having a look at the tax case study, the repeal of section 10(1)(o)(ii) results in taxes being paid across the remuneration earnings brackets in proportion to their earnings. From a low remuneration bracket the taxable income of R120,000, which translates into a local tax liability of R21,600 which is further reduced by the local primary rebate of R14,958 and as such, a final local tax outflow in favour of SARS to the value of R 6,642 with no section *6quat* rebate since no taxes were paid in the UK. The moderate and high remuneration bracket, will result in foreign income being imputed into the local tax computation resulting in

- Moderate – Tax liability of R281,771, which would still be eligible for the primary rebate of R14,958 and section *6quat* rebate R168,695 limited to local tax liability pre-section *6quat* rebate, namely R266,813. As such, Mr A would be able to

deduct his full foreign tax payment of R168, 695 from his local SA tax computation reducing his overall SA tax liability to R98, 117. In total Mr A's total tax outlay in respect of foreign and local taxes would equate to R266,813 on a R900,000 (GBP 42,201) foreign remuneration, consisting of UK taxes of R168,695 (GBP 7,910) and local taxes limited to R98,117.

- High – Tax liability of R1,199,679 which would still be eligible for the primary rebate of R14,958 and section *6quat* rebate R1,029,376, limited to local tax liability pre-section *6quat* rebate, namely R1,184,721. As such, Mr A would be able to deduct his full foreign tax payment of R1, 029,376 from his local SA tax computation reducing his overall SA tax liability to R155, 345. In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R1,184,721 on a R3,000,000 (GBP 140,671) foreign remuneration, consisting of UK taxes of R1,029,376 (GBP 48,268) and local taxes limited to R155, 345.

iii) DTA perspective

The UK and SA have entered into a DTA (SARS, 2003). The application of Article 14(1) and 14(2) of the DTA is relevant in that it stipulates taxation rights of the UK and SA in respect of "salaries, wages and other similar remuneration" within the UK (SARS, 2003; Sebashe et al., 2021). In accordance with the case overview, Mr A was rendering services within the UK for 183 full days during a 12 month period, therefore Article 14(2) of the DTA is not applicable and the UK does not have sole taxing rights in respect of the remuneration earned by Mr A in-country (De Koker & Brincker, 2010; SARS, 2003; Sebashe et al., 2021). In the alternative, if Mr A was rendering services within the UK for a period of less than 183 full days during a 12 month period, the UK would have sole taxing rights, under Article 14(2) of the DTA and as such, SA would not be entitled to levying taxes within country (SARS, 2003).

7.3 Summary of tax impact

Per this comparative case study between the UK and SA, the R1,250,000 threshold still managed to focus the tax burden on the high remuneration earners in relation to a country where a progressive tax system is applied with a similar maximum tax rate to SA and where the non-tax resident qualifies for a personal allowances against their foreign tax exposure.

The study also reflects that there is still tax disparities in terms of low and moderate earners, in that the amendment section 10(1)(o)(ii) and the introduction of the R1,250,000 threshold, still safeguards expats from local taxes (Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). This section confirms that the repeal of section 10(1)(o)(ii) would aid in addressing the "double non-taxation" and would ensure taxes being levied equitably across tax residents irrespective of where income is being sourced (National Treasury, 2017, p. 7). Furthermore, aligned with findings in prior research, where Mr A formed part of the low earnings bracket, his taxable income within the UK was reduced to zero, due to the personal allowance, as such he would not pay any taxes within the UK as well as within SA due to i) full exemption of foreign remuneration under the pre-1 March 2020 expat exemption; ii) full exemption under the amended expat exemption, effective1 March 2020, due to remuneration not exceeding the R1,250,000 million threshold and iii) zero taxes in the UK, due to the low income threshold not exceeding the GBP 100,000 annual remuneration threshold and the taxable income not exceeding the personal allowance of GBP 12,500.

7.4 UK vs SA Tax computation summary

MR A's TAX POSITION : UK vs SA

	Low Income			Moderate Income			High Income			
	Pre 1 March 2020	Post 1 March 2020*	Repeal of Section 10(1)(o)(ii)	Pre 1 March 2020	Post 1 March 2020*	Repeal of Section 10(1)(o)(ii)	Pre 1 March 2020	Post 1 March 2020*	Repeal of Section 10(1)(o)(ii)	
Gross Income - Salaries abroad	5 626.83	5 626.83	5 626.83	42 201.22	42 201.22	42 201.22	140 670.72	140 670.72	140 670.72	
Less: Personal Allowance	-5 626.83	-5 626.83	-5 626.83	-12 500.00	-12 500.00	-12 500.00	-	-	-	
	-	-	-	29 701.22	29 701.22	29 701.22	140 670.72	140 670.72	140 670.72	
Less: Taxes paid in country	-	-	-	-7 910.16	-7 910.16	-7 910.16	-48 267.69	-48 267.69	-48 267.69	**B**
Net Income	-	-	-	21 791.05	21 791.05	21 791.05	92 403.03	92 403.03	92 403.03	
TAXES WITHIN SOUTH AFRICA										
Conversion rate from GBP to ZAR	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**	**21.3264**
Note: Annual rate was obtained from SARS exchange rates. Source: **https://www.sars.gov.za/wp-content/uploads/Legal/Rates/Legal-Pub-AER-02-Average-Exchange-Rates-Table-A.pdf**										
Gross Income - Salaries abroad	120 000.00	120 000.00	120 000.00	900 000.00	900 000.00	900 000.00	3 000 000.00	3 000 000.00	3 000 000.00	
Less: Section 10(1)(o)(ii) exemption	-120 000.00	-120 000.00	-	-900 000.00	-900 000.00	-	-3 000 000.00	-1 250 000.00	-	
Taxable Income	-	-	120 000.00	-	-	900 000.00	-	1 750 000.00	3 000 000.00	
Tax liability per Appendix tables			21 600.00			281 770.59		637 179.00	1 199 678.55	**C**
Less: Primary rebate (Individual less that 65 years old)	-	-	-14 958.00	-	-	-14 958.00	-	-14 958.00	-14 958.00	
Less: 6quat rebate	-	-	-	-	-	-168 695.33	-	-622 221.00	-1 029 376.00	
Total Tax Liability	-	-	6 642.00	-	-	98 117.26	-	-	155 344.55	
TOTAL FOREIGN AND LOCAL TAXES PAID	-	-	6 642.00	-	-	266 812.59	-	1 029 376.00	1 184 720.55	

Tax computation using Appendix Table 2 : A = (GBP 29,631.22 * 20%)

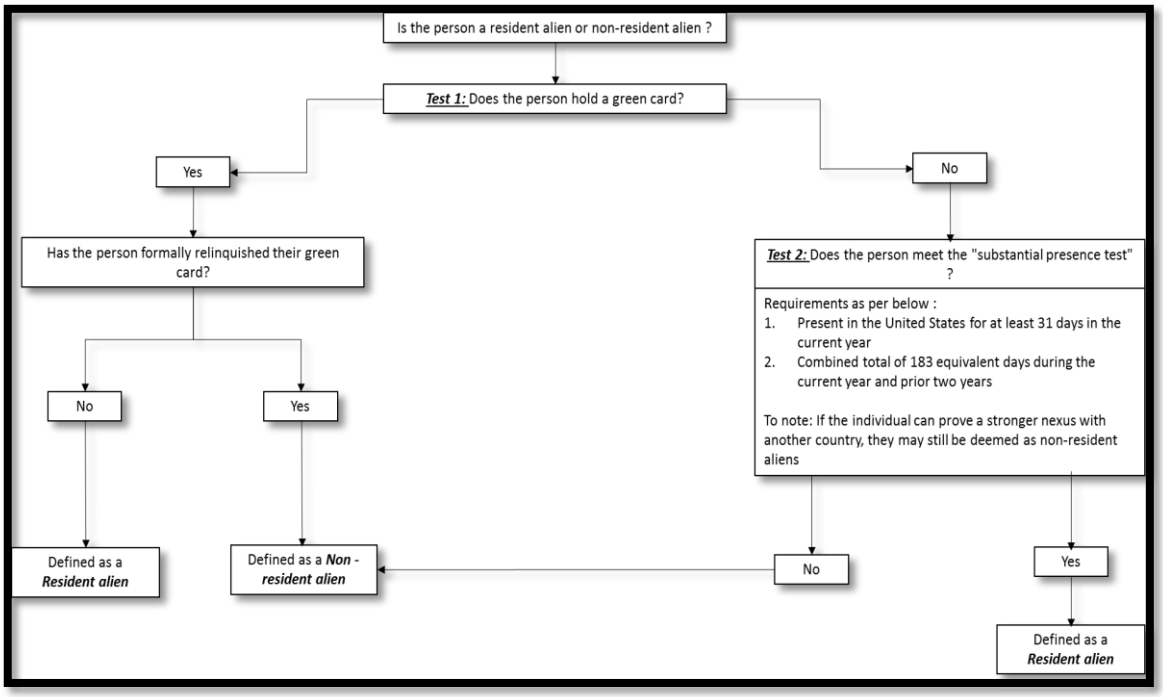
Tax computation using Appendix Table 2 : B = ((GBP 37,500*20%)+(GBP 150,000- GBP 37,501)*40%)

Tax computation using Appendix Table 1: C = (R559,464 +((R1,750,00 - R1,577, 300) * 45%))

Tax computation using Appendix Table 1: C = (R559,464 +((R3,000,00 - R1,577, 300) * 45%))

CHAPTER 8. THE FINANCIAL IMPACT OF THE AMENDMENT TO SECTION 10(1)(o)(ii) IN RESPECT OF SOUTH AFRICAN EXPATRIATES EARNING REMUNERATION FROM THE USA

The USA has a complex tax system, in that it distinguishes amongst three specific tax payers, namely USA citizens, resident aliens and non-resident aliens (PwC, 2022e). The USA defines tax residents as USA citizens and resident aliens; such individuals will be taxed on their world-wide income in accordance with USA tax laws (Freeman Law, 2023; PwC, 2022h). Furthermore, non-resident aliens will be taxed on income sourced within the USA and at a higher tax rate compared to resident aliens, due to not qualifying for allowable deductions (example: qualified residence interest; medical expense; child care expenses etc.) and lower tax rates for certain married resident taxpayers (PwC, 2022f, 2022g, 2022h). The following decision tree aids with classifying an individual as a resident alien or non-resident alien tax payer.



Source: Built with reference to PwC (2022f)

With reference to the decision tree, the following should be noted,

- A green card automatically ties one to the USA for tax purposes, unless you “formally” relinquish such rights with government; if the latter was not actioned, one would still be liable for taxes within the USA based on your world-wide earnings (PwC, 2022f, 2022h). Alternatively, if the tax payer formally relinquished their green card rights and it was approved, such individual will be classified as a non-resident alien and would only be liable for taxes within the borders of the USA in terms of income sourced within country (PwC, 2022f, 2022h).

  The "substantial presence test" is the alternative to the citizen and resident alien classification; it requires that an individual should, as a minimum, be present in country for “31 days in the current year and a combined total of 183 equivalent days during the current year and prior two years*”* (PwC, 2022h). However, per USA law if a strong nexus can be proven between the individual and another country, such individual, even though meeting the minimum requirements of the substantial presence test, would be deemed a non- resident alien for USA tax purposes (PwC, 2022h). Within the context of domestic law, an individual who attaches some sense of permanency to SA, through having a home to return to post wanderings (*H v COT 24 SATC 738* (SARS, 2002)) and such a place has an element of permanency within country – (*Soldier v COT 1943 SR and CIR v Kuttel)* (SARS, 2002, p. 3), will be deemed to be a South African tax resident via the **ordinarily resident** test (De Koker & Brincker, 2010; SARS, 2002).

  Furthermore, in the event a dispute arises where a SA tax resident is deemed be a resident of the USA for tax purposes, SA may elect to resolve the dispute via the tie-breaker rule in the DTA between the USA and SA, in which the tie-breaker rule defines the term “resident of a Contracting State” as an individual who is **ordinarily resident in South Africa** and as such, the individual would be a non-resident alien for USA tax purposes (De Koker & Brincker, 2010; Freeman Law, 2023; SARS, 2015).

As per Freeman Law (2023) , the US treaty defines the term “resident of a Contracting State” as an individual being liable for SA taxes by reason of his or her domicile, residence or citizenship, directly linking to SA’s **ordinarily resident test.**

With reference to the DTA between SA and USA, Article 1 of the DTA contains a “saving clause”, allowing the USA to lay unilateral claims to income linked to USA tax residents or its citizens irrespective of the governing principles of the DTA (Freeman Law, 2023; SARS, 2015).

8.1 Case overview

Mr A is a non-green card holder and a South African tax resident for tax purposes. He returns to SA post any wanderings and view his home in SA as a place of permanency, as such, per USA Law, he is deemed to be a non-resident alien for USA tax purposes, due to being ordinarily a resident of SA (Freeman Law, 2023). He is married, below the age of 65 and earned remuneration through an employer – employee agreement from the USA. He entered into an employer-employee agreement and in return, received remuneration (remuneration as defined in SARS Interpretation note 16) (SARS, 2021c). Mr A was delivering services within the borders of the USA for 183 full days during a 12 month period, furthermore, of such days, an excess of 60 days were consecutive.

Similar to prior research conducted by Sebashe et al. (2021), an assessment was conducted in respect to low (R120,000); moderate (R900,000) and high (R3,000,000) remuneration earners in order to assess the impact of i) pre-1 March 2020 expat exemption; ii) effective-1 March 2020 expat exemption and iii) if no exemption was applied.

The i) section *6quat* and ii) the signed DTA was also considered to assess the impact of easing double taxation between SA and the USA. The ZAR amount was translated into USD, using the published SARS - Average exchange rates for a year of assessment rates as per the SARS website (SARS, 2022c).

8.2 USA tax impact analysis

With reference to the computation in section 8.4 – USA vs SA Tax computation summary, the following key findings were noted.

i) From a USA Tax perspective

Mr A is ordinarily a resident of SA, he is married and is deemed to be a non-resident alien for USA tax purposes, as per the case overview. Per USA tax law, a non-resident alien will be taxed on the remuneration sourced within the USA, will not be entitled to marriage allowable deductions and lower tax rates (PwC, 2022f, 2022g, 2022h). Per the USA tax tables for individuals, they apply an aggressive progressive tax system in that all income below USD 9,950, attracts tax at 10% - refer to Appendix: Table 9 in this report. Per section 8.4, where Mr A had earned remuneration in respected earnings brackets and attracted USD taxes as follows, low (USD 727); moderate (USD 7,750) or high (USD 39,015) bracket, taxes were attracted in accordance with the progressive USA individual tax table of 2020/2021 – refer to Appendix Table 9.

ii) From a SA Tax perspective

Mr A is ordinarily a resident of SA, married and as such, will be liable for taxes on his world-wide earnings within SA (National Treasury, 2017; SARS, 2002). Furthermore, section 10(1)(o)(ii) expat exemption is applicable due to the following key criteria being met

- He is ordinarily a resident of SA for tax purposes
- An employee-employer agreement is in place with Mr A and the USA; it is an exchange of services in return for remuneration, and
- He was outside the borders of South Africa for 183 full days during a 12 month period, of which 60 days were consecutive.

Per section 10(1)(o)(ii), pre-1 March 2020 – Mr A's full remuneration would be exempt from local tax irrespective of earning high, moderate or low remuneration. Similar to section 6.2 and 7.2 findings, the amended expat exemption (effective-1 March 2020) results in i) low and moderate remuneration earners retaining a zero local tax liability (National Treasury, 2017). However, within the high remuneration bracket, Mr A had attracted an initial tax liability of R637,179 on R1,750,000 (R3,000,000 less R1,250,000 amended expat exemption). Furthermore, since Mr A was younger than 65 years, he qualified for a primary rebate of R14, 958, reducing his initial local tax exposure to R622, 221.

However, per section *6quat*, in the event i) remuneration was earned from a foreign source; ii) such remuneration will be included in a taxpayer's local tax computation; iii) foreign taxes were paid in the country where such remuneration was sourced and iv) such earnings were earned from services being delivered in respect of an employer-employee agreement, a tax resident would qualify for a section *6quat* rebate (SARS, 2022a). Mr A is ordinarily a tax resident of SA, liable for tax on world-wide income earned, he was employed under an employer-employee agreement, rendered services within the USA in return for remuneration and paid taxes within the USA. As such, Mr A therefore qualifies for a section *6quat* rebate, to the extent that he has a tax liability within SA, namely for the low and moderate brackets in respect of pre- and effective-1 March 2020 amendment, no tax credits were claimed under section *6quat* rebate since no tax liability arose as depicted by the tax computations in section 8.3 below. For the high remuneration bracket under the pre-March 2020, the full USD 181,841 (R3,000,000) was exempt for foreign remuneration earned, taxes were however paid within USA, namely USD 39,015 (R643,671) which is not permissible as a local tax credit claim, namely one cannot create tax receivable in favour of a tax resident form a local tax perspective.

If section 10(1)(o)(ii) had to be repealed, it would result in the promotion of fairness and adherence to the implementation of a progressive tax system, aligned with National Treasury's true intention (National Treasury, 2017, p. 7). The tax case study in respect of the repeal of section 10(1)(o)(ii), results in taxes being paid across the income earnings brackets in proportion to respective remunerative earnings.

Repeal of section 10(1)(o)(ii) impact:

- Low - taxable income of R120,000, which translates into a local tax liability of R21,600 which is further reduced by the local primary rebate of R14,958 and a section *6quat* rebate of R12,000 (USD 742) – since taxes were paid in the USA, however limited to the initial tax exposure of R6,642 (R21,600 less R14,958). As such, the total tax outlay consist out of zero SA taxes and USD 742 (R12,000) in foreign taxes.

- Moderate – Local initial tax liability of R281,771, which would still be eligible for the primary rebate of R14,958 and section *6quat* rebate R168,695 limited to local tax liability pre-section *6quat* rebate, namely R266,813 (R281,771 less R14,958). Mr A would be able to deduct his full foreign tax payment of R127,853, in that his SA tax exposure would be R266,813, as such, the full R127,853 may be set off against this for his local SA tax computation, reducing his overall SA tax liability to R138, 959. In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R266,813 on a R900,000 (USD 54,552) foreign remuneration, consisting of USA taxes of R127,853 (USD 7,750) and local taxes limited to R138,959.

- High – Local initial tax liability of R1,199,679 which would still be eligible for the primary rebate of R14,958 and section *6quat* rebate R643,671 (USD 39,015). Mr A would be able to deduct his full foreign tax payment of R643,671, from his local SA tax

computation, reducing his overall SA tax liability to R541,050. In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R1,184,721 on a R3,000,000 foreign remuneration, consisting of USA taxes of R643,671 (USD 39,015) and local taxes limited to R541,050.

iii) DTA perspective

The USA and SA have entered into a DTA (Freeman Law, 2023; SARS, 2015). In accordance with the case overview, Mr A is ordinarily a resident of SA, this criterion being the deciding factor in terms of determining which jurisdiction has overall tax residency rights, as such, Mr A is a tax resident of SA, deemed to be a non-resident alien for USA tax law and will be taxed within SA on his world-wide earnings and sourced income within the USA (Freeman Law, 2023; SARS, 2002, 2015).

8.3 Summary of tax impact

Per this comparative case study between the USA and SA, the R1,250,000 threshold still managed to focus the tax burden on the high remuneration earners in relation to a country where a progressive tax system is applied. In addition, higher tax credits were claimed locally due to no allowances being awarded in-country for non-resident aliens. It was also noted that the overall tax equation affirmed a balancing act between the source country, namely the USA and the resident tax based country, namely SA, ensuring that the overall tax burden is balanced between the two jurisdictions equitably.

Furthermore, this section also confirms that the repeal of section 10(1)(o)(ii) would aid in addressing the double non-taxation and would ensure taxes being levied equitably across tax residents irrespective from where income is being sourced (National Treasury, 2017, p. 7).

8.4 USA vs SA Tax computation summary

MR A's TAX POSITION : USA vs SA

	Low Income			Moderate Income				High Income			
	Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(iii)	Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(ii)		Pre 1 March 2020	Post 1 March 2020 *	Repeal of Section 10(1)(o)(ii)	
Gross income - Salaries abroad	7 273.65	7 273.65	7 273.65	54 552.40	54 552.40	54 552.40		181 841.33	181 841.33	181 841.33	
Less: Personal Allowance	-	-	-	-	-	-		-	-	-	
	7 273.65	7 273.65	7 273.65	54 552.40	54 552.40	54 552.40		181 841.33	181 841.33	181 841.33	
Less: Taxes paid in country	-727.37	-727.37	-727.37	-7 749.67	-7 749.67	-7 749.67	A	-39 015.33	-39 015.33	-39 015.33	B
Net Income	6 546.29	6 546.29	6 546.29	46 802.73	46 802.73	46 802.73		142 826.00	142 826.00	142 826.00	
TAXES WITHIN SOUTH AFRICA											
Conversion rate from USD to ZAR	16.4979	16.4979	16.4979	16.4979	16.4979	16.4979		16.4979	16.4979	16.4979	
Note: Annual rate was obtained from SARS exchange rates. Source: **https://www.sars.gov.za/wp-content/uploads/Legal/Rates/Legal-Pub-AER-02-Average-Exchange-Rates-Table-A.pdf**											
Gross income - Salaries abroad	120 000.00	120 000.00	120 000.00	900 000.00	900 000.00	900 000.00		3 000 000.00	3 000 000.00	3 000 000.00	
Less: Section 10(1)(o)(iii) exemption	-120 000.00	-120 000.00	-	-900 000.00	-900 000.00	-		-3 000 000.00	-1 250 000.00	-	
Taxable Income	-	-	120 000.00	-	-	900 000.00		-	1 750 000.00	3 000 000.00	
Tax liability per Appendix tables	-	-	21 600.00	-	-	281 770.59		-	637 179.00	1 199 678.55	C
Less: Primary rebate (individual less that 65 years old)	-	-	-14 958.00	-	-	-14 958.00		-	-14 958.00	-14 958.00	
Less: 6quat rebate	-	-	-6 642.00	-	-	-127 853.21		-	-622 221.00	-643 670.94	
Total Tax Liability	-	-	-	-	-	138 959.38		-	-	541 049.61	
TOTAL FOREIGN AND LOCAL TAXES PAID	-	-	12 000.00			266 812.59			643 670.94	1 184 720.55	

Tax computation using Appendix Table 3 : A = (GBP 29,631.22 * 20%)

Tax computation using Appendix Table 3 : B = ((GBP 37,500*20%)+((GBP 150,000- GBP 37,501)*40%)

Tax computation using Appendix Table 1 : C = (R559,464 +((R1,750,00 - R1,577,300) * 45%))

CHAPTER 9. CONCLUSION

National Treasury's intention in respect of the amendment of section 10(1)(o)(ii) of the Act was two-fold, namely i) to promote fairness and progressivity, in that taxpayers should be taxed equally irrespective as to whether or not remuneration was earned locally or abroad and ii) to focus on curbing double non-taxation – in respect of where host country imposes little or no tax on employment income (National Treasury, 2017, pp. 7-8, section 1.2). With reference to the findings denoted in Chapters 6 to 8, the findings of this case study report reflected the following:

9.1 Addressing the main problem statement through the case study findings in relation to Chapters 6 to 8

The main problem as stated under section 1.3, was to assess whether or not tax equitability is restored through the amendment of the foreign remuneration earned section 10(1)(o)(ii) of the Act. South African Tax residents are taxed on their world-wide earnings (Africa, 2021; De Koker & Brincker, 2010; Ferreira, 2020; Govender, 2019; Naidoo, 2019; National Treasury, 2017).

National Treasury's amendment of section 10(1)(o)(ii) was triggered in order to combat "double non-taxation in instances where the host country imposes little or no tax on employment income", for example, the UAE, where zero taxes are levied in respect of remuneration earned within country due to its local tax law (Africa, 2021; National Treasury, 2017, p. 7; PwC, 2022c; Sebashe et al., 2021).

Furthermore, per National Treasury, by limiting the foreign exemption section 10(1)(o)(ii) to R1,250,000 effective-1 March 2020, policy makers were of the view that such amendment would still provide relief for low to moderate remuneration earners which is in line their view of having a fair and progressive tax system (National Treasury, 2017, pp. 7-8, section 1.2). Per the findings in Chapters 6 to 8 in relation to foreign remuneration earned from the UAE, the UK and the USA, the following was noted:

i. Low and moderate remuneration earners

The pre-1 March 2020 (100% foreign income exemption) and effective-1 March 2020 (limitation of exemption to R1,250,000) section 10(1)(o)(ii) resulted in the exact same zero tax position in respect of a SA tax resident being employed abroad, whilst earning low and moderate remuneration levels. This finding is consistent with prior research conducted by Sebashe et al. (2021) and affirms National Treasury's objective in terms of its proposal, in that the amendment of section 10(1)(o)(ii) would still provide tax relief for low and moderate remuneration earners (National Treasury, 2017, p. 7, section 1.2; Sebashe et al., 2021).

ii. High remuneration earners

The UAE does not levy tax on remuneration earned by residents or non-residents within the country (PwC, 2022c). Per National Treasury's Explanatory Memorandum on the Taxation Amendment Bill 2017, the exemption limit of R 1,250,000 was introduced to address the pre-1 March 2020 blanket exemption which resulted in instances of double non-taxation where the host country imposes little or no tax on employment income, for example, the UAE which levies zero tax on remuneration earned within the country (National Treasury, 2017; PwC, 2022c, p. 7). Where Mr A, a SA tax resident earned high remuneration and qualified for the section 10(1)(o)(ii) exemption, the following was noted,

- *Pre-1 March 2020 – in the event that Mr A met all the qualifying criteria for section 10(1)(o)(ii), a full exemption would apply, and he would be exempt from paying any local taxes in respect of his foreign remuneration earned. Within the context of earning remuneration from the UAE (refer to Chapter 6), since no taxes are paid in country (due to their local non-tax policy) and the full exemption under the pre-1 March 2020, Mr A would be in a double non-tax position, namely, no taxes paid within the UAE and such foreign earnings fully exempt from local taxes within SA. This is in line with findings as per prior research (Africa, 2021; Govender, 2019; Naidoo, 2019; Sebashe et al., 2021).*

- Effective-1 March 2020, this led to the introduction of the R1,250,000 threshold. The R1,250,000 exemption captured incremental earnings above the threshold in respect of high remuneration earners. This is similar to the findings of prior research, in that even where prior research did not explicitly identify high remuneration brackets, earnings in the high net worth range, defined as incremental earnings in excess of the R1,250,000 threshold, became taxable within SA (Africa, 2021; Govender, 2019; Sebashe et al., 2021).

9.2 Addressing the sub-problem statements through the case study findings in relation to Chapters 6 to 8

9.2.1 Taxing SA tax residents equitably in terms of local and foreign remuneration

The aspect of equitability is not met in the true sense, since low and moderate remuneration earners are still benefiting from the "excessively generous" R1,250,000 expat exemption, the 1 March 2020 amendment (National Treasury, 2017; SARS, 2021c; Sebashe et al., 2021, p. 5). In order to promote the principle of fairness and progressivity, this can only be achieved by ensuring "equal position should be taxed in an equal manner as they have the same ability to bear the tax burden (horizontal equity), and that taxpayers with better circumstances should bear a larger part of the tax burden as a proportion of their income (vertical equity)" (National Treasury, 2017, pp.,7-8,section 1.2).

It is evident from the position put forward by National Treasury, evidence from this report and prior research, the focus per the 1 March 2020 amendment was focused on “vertical equity”, namely, a focus on the high remuneration earners, as such, the overall amendment is not holistic in that low and moderate remuneration earners are not contributing to the local tax base, as such, “horizontal equity” is not achieved (Naidoo, 2019; National Treasury, 2017, pp.,7-8,section 1.2; Sebashe et al., 2021).

9.2.2 Impact of the section 10(1)(o)(ii) amendment with regards to low and moderate remuneration earners

Per the findings of the case studies in Chapters 6 to 8, the 1 March 2020, section 10(1)(o)(ii) expat exemption of R1, 250,000 has reflected the following:

- Similar to prior research by Sebashe et al. (2021), low and moderate remuneration earners still benefited from the amended 10(1)(o)(ii) expat exemption of R1,250,000 in that where low and moderate remuneration earners earned below the threshold of R1,250,000, such individuals were exempt from paying local SA taxes.
- The “excessively generous” R1,250,000 expat exemption is the key contributor for having zero tax exposure locally, specifically with reference to low and moderate remuneration earnings (Sebashe et al., 2021).
- The findings in Chapters 6 to 8, affirm National Treasury’s view, in that where tax residents are earning income abroad, the amended 10(1)(o)(ii) expat exemption of R1,250,000 would still offer tax relief for low and moderate earners (National Treasury, 2017; Sebashe et al., 2021).

- However, it should be noted that the low and moderate remuneration earners still have a double non-taxation benefit and as such, this creates disparities between tax residents being taxed on local versus foreign remuneration in respect of low and moderate remuneration brackets, which is aligned with prior research (Africa, 2021; Govender, 2019; Naidoo, 2019; Sebashe et al., 2021). Put differently, the aspect of "vertical equity" is not achieved, namely that taxpayers should contribute to the tax coffers in accordance with their earnings in relation to the progressive tax system (National Treasury, 2017, pp.,7-8,section 1.2).

9.2.3 The impact of in-country personal allowances on the foreign tax exposure

The UK taxes on world-wide income and allows for a personal allowance to the value of GBP 12,500 where a resident and non-resident's annual earnings do not exceed GBP 100,000 (Gov.UK, 2022). This personal allowance reduces the in-country tax liability and per Chapter 7, low remuneration earners results in a zero tax liability, since their earnings do not exceed the GBP 12,500 personal allowance threshold.

Moderate income earners were still taxed, however, they received the full benefit of the GBP 12,500 personal allowance since i) their annual earnings were below GBP 100,000 and ii) remuneration exceeded GBP 12,500, resulting in a taxable income of GBP 29,701 and a tax liability within the UK of GBP 7,910.16 (ZAR 168,695) (refer to Chapter 7 findings).

9.2.4 The UAE and the impact of the section 10(1)(o)(ii) amendment on high remuneration earners

Where Mr A (a SA tax resident) earned remuneration from the UAE and which fell within the high remuneration bracket (R3, 000,000 or AED 658,739).

- The amended 10(1)(o)(ii) expat exemption of R1,250,000 resulted in a local tax relief up to R1,250,000 and the incremental income of R1,750,000 becoming taxable within SA.
- The taxable income of R1,750,000 resulting in a top-up tax liability of R1,199,679 which would still be eligible for the primary rebate of R14,958 (since Mr A was below the age of 65).
- Furthermore, since zero taxes were levied in the UAE, a SA tax resident will not be eligible for a section *6quat* rebate, as such, no additional benefit is available to reduce the local top up tax liability, which is in line with prior research (Govender, 2019; Naidoo, 2019; Sebashe et al., 2021).
- In total, Mr A's total tax outlay in respect of foreign and local taxes would equate to R1,184,721 on a R3,000,000 foreign remuneration, consisting of UAE taxes of zero and local taxes of R1,184,721. Sebashe et al. (2021, p. 2) attributed the top up taxes from the UAE due to the high income rate within SA, therefore findings in this report aligns with prior research.

9.2.5 The UK and the impact of the section 10(1)(o)(ii) amendment on high remuneration earners

Where Mr A (a SA tax resident) earned remuneration from the UK and fell within the high remuneration bracket (R3, 000,000 or GBP 140,671).

- The amended 10(1)(o)(ii) expat exemption of R1,250,000 resulted in a local tax relief up to R1,250,000 and the incremental income of R1,750,000 becoming taxable within SA.
- The taxable income of R1,750,000 resulting in a top-up tax liability of zero, namely R637,179 initial tax exposure in respect of the R1,750,000 (R3,000,000 less R1,250,000 expat exemption) taxable income net of the i) primary rebate of R14,958 and ii) section *6quat* rebate of R622,221 (R1,029,376 ZAR equivalent UK taxes limited to local tax liability post primary rebate). Net result, a zero top-up tax in SA and R1,029,376 (GBP 48,268) in respect of UK taxes paid.
- Per prior research, the zero top-up tax is attributable to the UK having progressive tax rates aligned with SA's individual tax rate, in other words, where foreign remuneration is earned in high income tax rate jurisdictions, it reduces the SA top-up tax to the extent that such taxes align with local SA tax brackets, this is aligned with National Treasury's intention (Africa, 2021; Sebashe et al., 2021, p. 3).

9.2.6 The USA and the impact of the section 10(1)(o)(ii) amendment on high remuneration earners

Where Mr A (a SA tax resident) earned remuneration from the USA and which fell within the high remuneration bracket (R3,000,000 or USD 181,841).

- The amended 10(1)(o)(ii) expat exemption of R1,250,000 million resulted in a local tax relief up to R1,250,000 and the incremental income of R1,750,000 becoming taxable within SA.
- The taxable income of R1,750,000 resulting in a top-up tax liability of zero, namely R637,179 initial tax exposure in respect of the R1,750,000 (R3,000,000 less R1,250,000 expat exemption) taxable income net of the i) primary rebate of R14, 958 and ii) section *6quat* rebate of R622,221 (R643,671 ZAR equivalent USD taxes limited to local tax liability post primary rebate). Net result, a zero top-up tax in SA and R643,671 (USD 39,015) in respect of USA taxes paid.
- The findings are aligned with prior research in terms of where tax rates are misaligned, namely, where SA has a more aggressive tax rate versus the sourced jurisdiction, taxes will be charged to the maximum of SA overall tax exposure net section *6quat* rebate (Sebashe et al., 2021). Per the case study in Chapter 8, a zero top-up tax is attributable to USA having progressive tax rate of up to 32% versus SA at 41%, in other words, where foreign remuneration is earned in high income tax rate jurisdictions, it reduces the SA top-up tax (Sebashe et al., 2021, p. 3).
- Further, the overall tax outlay in the USA is lower than the UK since the progressive incremental tax rates are comparatively lower versus the UK and SA.

9.2.7 Findings with regards to the repeal of section 10(1)(o)(ii)

Per the case study, tax equitability in terms of local and foreign remuneration earned by SA tax residents in relation to remuneration brackets (low, moderate and high) is only achievable through the repeal of section 10(1)(o)(ii) (National Treasury, 2017). Per the findings in Chapters 6 to 8, the tax impact of section 10(1)(o)(ii) repeal may be summarised as follow

	Low	Moderate	High
UAE	6 642.00	266 812.59	1 184 720.55
UK	6 642.00	266 812.59	1 029 376.00
USA	12 000.00	266 812.59	1 184 720.55

Table 3: Section 10(1)(o)(ii) repeal and final tax impact

i) UAE Impact

Taxes will be levied across the low, moderate and high remuneration brackets, such taxes would be levied in accordance with the prevailing income tax individual tax table, refer to Appendix section – Table 7 in this report. The repeal therefore, would directly combat the non-double taxation in respect of the UAE earned remuneration which i) is not taxed within the UAE (due to local law) and ii) SA due to remuneration within the low and moderate brackets falling below the R1,250,000 expat exemption threshold. The tax contributions across the three remuneration brackets will trigger 100% taxes in favour of SA from a top-up tax perspective. The repeal will ensure that foreign remuneration would become taxable within SA with no initial exemption to reduce the tax liability. In summary, in the absence of being taxed within a jurisdiction, the repeal would result in 100% top-up taxes and restore equitability of taxes across the various earnings brackets in relation to remuneration earned from the UAE. Per the following table, since zero taxes were levied in the UAE across the respective remuneration brackets, the maximum tax rate exposure would be in relation to SA's marginal tax rate (defined as the Taxable income net of primary rebates as a percentage of taxable income) and as such, triggers top-up taxes un favour of SA.

	UAE	SA	
Low	0%	6%	**A**
Moderate	0%	30%	**B**
High	0%	39%	**C**

A = ((21,600-14,958)/120,000)
B = ((281,771-14,958)/900,000)
C = ((1,199,679-14,958)/3,000,000)

Table 4: UAE vs SA Marginal tax rates

ii) The UK Impact

Similar to the UAE impact, such foreign remuneration would become taxable within SA without having the benefit of the section10 (1)(o)(ii) exemption across the remuneration brackets. The overall tax position for low and moderate tax outlays would be the same as for the UAE, however the variance stems from the breakdown attributable to local and foreign taxes.

Within the UK, low remuneration bracket taxes remuneration will stem solely from SA taxes, due to the personal allowance being awarded as a credit in the UK, top-up taxes to the value of R6, 642 in favour of SA. Moderate remuneration tax contribution would be R266,813 in total, of which i) R168,695 (63%) stems from UK taxes post the personal allowance rebate and ii) R98,117 (37%) from within SA due to top-up tax liability post the local primary rebate and the section *6qua*t rebate. High remuneration taxes equate to a total value of R1,184,721 of which i) R1,029,376 (87%) stems from UK taxes and ii) top-up taxes of R155,345 (13%) due to SA. In summary, with reference to the following marginal SA tax rate versus the marginal UK applied tax rate, the UK's marginal tax rates for the various remuneration brackets were lower than the SA marginal rate, as such, this triggers top-up taxes in favour of SA.

	UK		SA	
Low	0%	**A**	6%	**D**
Moderate	19%	**B**	30%	**E**
High	34%	**C**	39%	**F**

A = (0/5,627)
B = (7,910/42,201)
C = (48,268/140,671)
D = ((21,600-14,958)/120,000)
E = ((281,771-14,958)/900,000)
F = ((1,199,679-14,958)/3,000,000)

Table 5: UK vs SA Marginal tax rates

iii) The USA Impact

Within the USA context, foreign remuneration would become taxable within SA without having the benefit of the R1,250,000 exemption across the remuneration brackets. In addition, unlike the UK, no allowances were able to be claimed within country in order to reduce the USA tax liability. The tax position for low remuneration bracket would be R12, 000, due to R12, 000 (100%) being paid within USA and a zero top-up tax being paid within SA. With reference to the following marginal tax rate comparative tables between SA and the USA, the marginal rate of the USA is 10% versus a SA of 6%, therefore no tax top-up in favour of SA. In summary, the overall R12, 000 stems directly from USA taxes with a zero top-up local tax component due to the USA having a marginal tax rate of 10% tax rate versus an SA marginal rate of 6%.

Similar for the moderate income bucket, R266,813 is due to USA government and 100% being paid within USA and a zero top-up tax being paid within SA. High remuneration taxes equate to a total value of R1,184,721 of which i) R643,671 (54%) stems from USA taxes and ii) top-up taxes of R541,050 (46%) due to SA.

In respect of the moderate and high remuneration brackets, since the SA tax rate exceeded the USA marginal tax rates, as per the following table, top-up taxes become due to SA. In summary, where the foreign jurisdiction marginal tax rates are lower than SA's marginal tax rates, top-up taxes will accrue to SA, namely, the difference between the SA initial tax computations less the respective section *6quat* rebate.

	USA		SA	
Low	10%	**A**	6%	**D**
Moderate	14%	**B**	30%	**E**
High	21%	**C**	39%	**F**

A = (727/7,273)
B = (7,750/54,552)
C = (39,015/181,841)
D = ((21,600-14,958)/120,000)
E = ((281,771-14,958)/900,000)
F = ((1,199,679-14,958)/3,000,000)

Table 6: USA vs SA Marginal tax rates

Furthermore, as noted in the findings in this report, the repeal of section 10(1)(o)(ii) would restore the central import neutrality principle, in that local and foreign earned remuneration would be taxed similarly irrespective of source and in turn, achieve a progressive and equitable tax outcome aligned with the true intention of policy makers (Naidoo, 2019; National Treasury, 2017; Weisbach, 2015). To put this differently, in that "taxpayers in an equal position should be taxed in an equal manner", irrespective of where such remuneration is sourced , this will ensure the restoration of horizontal and vertical equity in terms of levying taxes (National Treasury, 2017, pp. 7-8; SARS, 2021c)

9.3 Future research

- Temporary relief in respect of the 2020 and 2021 years of assessment
- Discussion regarding the DTA impact in terms of Article 14(2) and MAP approach
- Impact assessment in respect of Part IIA of Chapter III of the Act and reported judgements.
- The impact of the fourth industrial revolution in terms of section 10(1)(o)(ii) in respect of being outside the borders of SA for 183 days during a 12-month period and a continuous period of at least 60 full days
- A case study regarding tax residency through financial or formal emigration (Baxter & Jack, 2008)

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APPENDIX

South African: *Individual Rates tax rates*
Table 7: 2020/2021 tax year

Taxable income (R)	Rates of Tax (R)
1 – 205 900	18% of taxable income
205 901 – 321 600	37 062 + 26% of taxable income above 205 900
321 601 – 445 100	67 144 + 31% of taxable income above 321 600
445 101 – 584 200	105 429 + 36% of taxable income above 445 100
584 201 – 744 800	155 505 + 39% of taxable income above 584 200
744 801 – 1 577 300	218 139 + 41% of taxable income above 744 800
1 577 301 and above	559 464 + 45% of taxable income above 1 577 300

Source: https://www.sars.gov.za/tax-rates/income-tax/rates-of-tax-for-individuals/

Accessed date: 09 February 2022

United Kingdom: *Individual Rates tax rates*
Table 8: 2020/2021 tax year

Band	Rate	Income after allowances 2020 to 2021
Starting rate for savings	10% (0% from 2015 to 2016)	**Up to £5,000**
Basic rate	20%	**Up to £37,500**
Higher rate	40%	**£37,501 to £150,000**
Additional rate	45%	**Over £150,000**

Source: https://www.gov.uk/government/publications/rates-and-allowances-income-tax/income-tax-rates-and-allowances-current-and-past

Accessed date: 09 February 2022

United States of America: *Individual Rates tax rates (Single and unmarried taxpayer)*
Table 9: 2020/2021 tax year

Taxable income (USD)	Tax rate (%)
0 to 9,950	10
9,951 to 40,525	12
40,526 to 86,375	22
86,376 to 164,925	24
164,926 to 209,425	32
209,426 to 523,600	35
523,601+	37

Source: https://taxsummaries.pwc.com/united-states/individual/taxes-on-personal-income

Accessed date: 09 February 2022