University of the Witwatersrand, Johannesburg

An analysis of the income tax provisions applied to the tax exemption for Foreign Employment Income

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In partial fulfilment of the criteria for the degree of Master of Commerce, a research report to be presented to the Faculty of Commerce, Law, and Management, University of the Witwatersrand, Johannesburg (specialising in Taxation).

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ABSTRACT

The taxation of foreign employment income has been a major issue in South Africa and the amendment to S10(1)(o)(ii) of the Income Tax Act 58 of 1962 (‘the Act’) has presented more complications. S 10(1)(o)(ii) stated that all income received in respect of services performed outside of South Africa was free from taxation in South Africa if the employee performing such services was based outside of South Africa prior to 01 March 2020:

“…

(aa) for a period or periods exceeding 183 full days in aggregate during any period of 12 months; and

(bb) for a continuous period exceeding 60 full days during that period of 12 months, and those services were rendered during that period or periods…”[1] (*Income tax Act 58 of 1962*)

In the 2017 budget speech the finance minister, Pravin Gordhan, highlighted that in 2016 there had been a R30 billion shortfall in taxes collected. This was primarily due to Personal Income Tax, Value Added Tax (VAT) and Customs Duties. Amongst other proposals to reduce the shortfall, he proposed that the S 10(1)(o)(ii) exemption of the Act be repealed as the exemption on foreign employment income appeared to be “excessively generous”. That meant that foreign employment income would be fully taxed, with the only relief available being a tax credit for foreign taxes paid. Several members of the sector and the general public wrote to the finance minister requesting that the draft change be reconsidered.

The National Treasury responded and took into consideration some of the comments submitted by the public. One of the National Treasury’s response was to extend the date that the amendment to S 10(1)(o)(ii) was set to come into effect to 01 March 2020. Another response was to increase the value ofthe amount to be exempted to R 1.25 million instead of R 1 million for the year of assessment ending February 2021 (National Treasury 2017a).

The purpose of this report is to discuss how the amendments of S 10(1)(o)(ii) of the Act came about, how it will impact South African expatriates and possibly have them consider ceasing residency in South Africa, the benefits and process of ceasing residency. It is also to examine the legislative, administrative and judicial approaches of the taxation of foreign employment income.

This report includes a comparative calculation of a South African tax resident working in another country compared to when that individual hasceased residency and lives in a country that South African expatriates are known to likely emigrate to as they either already work there or a country that has a strong economic structure.

Key words:

foreign employment, foreign employment income, foreign remuneration, resident, tax residency, taxation, threshold, remuneration, salary, tax treatment, exemption, legislation, double taxation, rebates, services rendered, income, emigration, taxpayers, earnings, foreign income, expatriates, South Africa, Income TaxAct 58 of 1962, double tax agreements, emigrate, cease residency, national treasury.

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[1] The previous S 10(1)(o)(ii) was in place before 1 March 2020.

I certify that this research report is my own work. It is being presented for a Master of Commerce degree at the University of Witwatersrand in Johannesburg. It has never been submitted to any other university for any other degree or examination.

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1. INTRODUCTION

The taxation of foreign employment income is an international tax aspect that is a major issue in most countries. South Africa is no exception. The S 10(1)(o)(ii) exemption was first introduced in 2000 to prevent the double taxation of income earned by an individual. When South Africa switched from a source-based to a residence-based tax system for people in March 2001, tax residents were taxed on their worldwide income while non-residents were only taxed on their South African source income. The shift from a source-based system to a residence-based tax system saw the need for relief for South African expatriates who derived foreign employment income from countries that South Africa did not have a double tax agreement (DTA) with, which is how the S 10(1)(o)(ii) exemption came about. Initially the S 10(1)(o)(ii) exemption was only applicable to officers and crew members on board any ship, involved in marine mining activities who were outside the Republic for more than 183 days during the year of assessment and it was applicable to some public sector employees (SARS 2017a). Since then, the exemption had created opportunities for double non-taxation in instances where the foreign country also did not impose any tax on the foreign income earned by South African expatriates.

In 2011 the S 10(1)(o)(ii) exemption was revisited. In terms of the amendments to S 9, the source of services provided to or on behalf of the various tiers of government were deemed to be from a South African source, irrespective of where those services were rendered. S 10(1)(o)(ii) was then amended by inserting a proviso excluding all public sector employees from the exemption (Cliffe Dekker Hofmeyr 2017a).

The S 10(1)(o)(ii) exemption now states that there shall be exempt from taxable income:

"any form of remuneration—

> "to the extent to which that remuneration does not exceed R1,25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (*i*) of the definition of gross incomein section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outsidethe Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—
>
> (*aa*)

(*a*)

"for a period or periods exceeding 183 full days in aggregate during any period of 12 months; or

(*b*)

(*bb*) "for a period or periods exceeding 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021; and

"for a continuous period exceeding 60 full days during that period of 12 months,

and those services were rendered during that period or periods: Provided that—

(A)

"for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as contemplated in section 9 (1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act, shall be deemed to be outside the Republic

(B)

"the provisions of this subparagraph shall not apply in respect of any remuneration—

(AA)

derived in respect of the holding of a public office contemplated in section 9 (2) (g); or

(BB)

received by or accrued to any person in respect of services rendered or work or labour performed as contemplated in section 9 (2) (h); and

(C)

"for the purposes of this subparagraph, where remuneration is received by or accrues to any employee during any year of assessment in respect of services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered" as per the Income Tax Act (Act No 58 of 1962).

Section 10(1)(o)(ii) is applicable to foreign employment income which is defined as income earned by a South African resident for services rendered in a foreign country. It is important to note that not all income qualifies for the exemption. As per SARS' Interpretation Note: No 16 (Issue 3) the remuneration that qualifies for the S 10(1)(o)(ii) exemption is income received by or accrued to an employee 'by way of' a salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, for services rendered'. Amounts that are contemplated in paragraph (i) of the gross income definition in S1(1)as well as in S8, S8B and S8C are also included as remuneration (SARS 2020a:4).

Until the decision to amend the amount that is to be exempt under S 10(1)(o)(ii), the distinction between a resident and non-resident, in relation to this exemption, did not bear as much weight as it does as in years of assessments starting on or after 1 March 2020. The S 10(1)(o)(ii) exemption is only applicable to South African tax residents deriving foreign employment income and is not applicable to non-residents.
This means there is some benefit to not being a South African tax resident as one may seek tax residency in a country that has lower tax rates or provides better tax relief for foreign employment income earned amongst other reasons.

Although the requirements of the S 10(1)(o)(ii) exemption have not changed, the highlight of the amendment to S 10(1)(o)(ii), which came into effect on 01 March 2020, is the amount of foreign employment income that is exempt. With effect from years of assessment beginning on or after 1 March 2020, only the first R1.25 million of foreign employment income generated by a South African tax resident qualifies for an exemption. This is after the exemption had previously been unrestricted for previous years of assessment. In the year of assessment, any amount above R1.25 million will be taxed according to the normal tax tables (SARS 2021:66).

Owing to the travel restrictions imposed by the government, it was necessary to change the criterion for the number of days spent outside of South Africa. Tax residents who spent more than 117 days outside of South Africa providing employment services in the year of assessment ending 28 February 2021 would now only be exempt up to R1.25 million of their employment income received overseas.

The increase in the unemployment rate has seen South Africans seeking job opportunities in other countries. With the foreign employment income earned by a South African tax resident now no longer fully exempt as was previously provided, this has raised concerns with many South African tax expatriates.

Some of the concern around limiting the amount that is exempt is that this is bound to result in double taxation in the case where the South African resident earns more than R1.25 million and there is no tax treaty between the country where the foreign employment income is derived and South Africa, resulting in both countries (South Africa and the foreign country) both taxing the income. Following on this, another of the comments submitted to the National Treasury was that the impact of the amendment will be felt greatly by low-income earners who remit their income to their families residing in South Africa and have to pay more than they would have in South Africa to live in countries where they work.

South African tax expatriates incur significant living costs. Limiting the amount exempt under S 10(1)(o)(ii) will disadvantage South Africans relative to other foreign workers and could jeopardise the growth of South African multinational companies in other tax jurisdictions or bias their hiring in favour of foreign workers as South African expatriates will become expensive to employ as their employers will have to put in more effort into ensuring that taxes are paid timeously and are calculated correctly.

The effect of the amendment to the exemption is projected to be so severe that South African expatriates may consider ceasing to be South African tax residents. The challenge will come with knowing whether to financially emigrate from South Africa or cease to be a South African tax resident as these processes are usually confused. There are several countries that South African expatriates may seek residency at for other reasons discussed in this report. This report will take a closer look at their tax system, specifically how foreign income is treated and the relief available for expatriates in those countries.

2. THE RESEARCH QUESTION

Research question

What are the effects of the amendment to S10(1)(o)(ii) exemption on South African expatriates?

The initial purpose of introducing the exemption was to alleviate the tax burden on expatriates. Now that the exemption is limited to only the first R1.25 million, it may be argued that the exemption no longer fulfils the purpose for which it was first introduced for those earning foreign employment income that is more than the limitation. This report will highlight the purpose for which the S 10(1)(o)(ii) exemption was introduced and any amendments in previous years of assessments and analyse the consequences of the amendment to S 10(1)(o)(ii) of the Income Tax Act that came into effect on 01 March 2020.

This report will evaluate the effects that the limitation of the amount of the S10(1)(o)(ii) exemption will have on South African expatriates by discussing some of the comments on the Draft Response Document on Taxation Laws Amendment Bill, 2017. One of the comments made was that placing a limit on the foreign income that will be exempt under S10(1)(o)(ii) will have a negative impact on the finances of expatriates especially if they are low-income earners. Another point that was raised is that living expenses in foreign countries are considerably higher than in South Africa and expatiates incur fees and charges that cannot be claimed as foreign tax credits.

In addition, this report will analyse the available relief such as the existing double tax agreements which will alleviate the tax burden on South African expatriates where double tax agreements exist between South Africa and foreign countries where South African expatriates work. As well as the relief available to those expatriates in the form of a foreign tax rebate under S 6quat.

The report will include computations of taxable income of a South African expatriate working in a foreign country and an example of how to determine the number of days in and out of the country. The purpose will be to determine the effect of the limitation of the S 10(1)(o)(ii) exemption and determine whether it would be beneficial for the South African expatriate to cease being a South African tax resident and take up tax residency in that foreign country.

The foreign country chosen will be based on which country most South African expatriates derive foreign income from.

The Sub-questions

Will it be beneficial for South African tax residents to emigrate and cease to be tax residents?

Section 10(1)(o)(ii) is not applicable to non-residents. It is therefore important to discuss the possibility of South African tax resident wanting to break tax residency to avoid having to pay tax on the foreign employment income greater than R1.25 million. In discussing breaking tax residency, it is also important to distinguish the difference between financial emigration and ceasing to be a South African tax resident as financial emigration may not necessarily result in the cession of South African tax residency.

It is likely that South Africa will end up losing high earning taxpayers. Most residents that earn over and above R1.25 million can afford to break tax residency, as they have the means to do so. For example, being in a position to afford to pay for the service of an emigration specialist, relocation costs to mention afew. SARS will then be at a loss instead of collecting more tax money which is contrary to what was intended when the finance minister first looked at making changes to the system.

This report will also discuss the process and benefits of ceasing to be a South African tax resident and explain the difference between financial emigration status and tax residency status. It will also discuss how those that qualified as residents by way of physical presence test may cease to be South African tax residents.

Will the existing DTAs alleviate the double taxation that may arise in the event that the R1.25 million exemption is not enough?

The purpose of a double tax agreement is to determine the country that has taxing rights and protect the taxpayer's rights. As double taxation is an issue that expatriates will come across when no treaty exists between the country where the foreign income was derived and South Africa, it will be difficult to establish which country has taxing rights, then both countries will have to tax.

A Double Tax Agreement may be seen as a solution but only when South Africa has entered into a tax treaty with the country where the expatriate derives foreign employment income. This report will look at howexisting DTAs between South Africa and other countries will alleviate the risk of double taxation where an individual earns more than R1.25 million.

This report will analyse two of the tax treaties that South Africa is party to and determine the country thathas taxing rights in each double tax agreement. This analysis is to determine whether South African expatriates will be shielded from double taxation by the DTAs.

It is often noted by industry experts that the South African tax system and its laws do not compete with those of other countries. This report will draw an analysis of the countries that do not tax foreign employment income such as the United Arab Emirates (UAE) which is a tax haven that South Africans seeking residency may consider emigrating to.

How has the amendment affected employers? Do employers know how to calculate and withhold PAYE? What arethe additional costs that employers have incurred to comply with SARS?

The unemployment rate in South Africa is a major contributor for South Africans seeking work opportunities in foreign countries. This plays a vital role in the decisions that South African expatriates take when looking for higher salaries or different streams of income. Foreign employers have raised the concern that they are not sure how to calculate and pay over taxes withheld from the salaries of South Africans. Coupled with the other living expenses that they incur; South African expatriates may become the most expensive peopleto employ because of the costs that some of their employers will have to cover to comply and submit taxes to SARS.

This report will discuss how limiting the amount exempt under S 10(1)(o)(ii) will disadvantage South Africans relative to other foreign workers.

What are the advantages and disadvantages of the limitation?

Advantages

More taxes collected will ideally go into the development of infrastructure and the betterment of the country as a whole.

Disadvantages

Money invested into the administration of compliance by South African expatriates and the companies that employ South African expatriates could have been invested in infrastructure and the creation of jobs.

This may be placing a burden of compliance on the employers and in some cases the South African expatriates themselves.

3. RESEARCH METHODOLOGY

The research approach used was qualitative and interpretive in nature, and it was based on a thorough interpretation and analysis of the following:

- Case Law
- Statutes
- Double tax agreements. Tax treaties
- The OECD model
- Electronic resources – articles and blog posts on the internet.

Legislation of other countries will also be used in the analysis and comparisons.

4. CHAPTER OUTLINE

Chapter 1: Introduction

The introductory chapter will highlight the purpose of this report, research questions and sub-questions, the research methodology, the chapter outline, the scope and limitations.

This chapter will also discuss the comments that the public and industry made to the National Treasury as set out in the 2017 Draft Response Document on the 2017 Draft Tax Bill and the 2020 Draft Response Document on the 2020 Draft Tax Bill and the National Treasury's responses on both documents.

Chapter 2: The History of the South African Tax System relative to S 10(1)(o)(ii)

This chapter will discuss the background of the South African Income Tax System and the history of Section (10)(1)(o)(ii) from when it was first introduced, the reasons therefor and the amendment and whathas changed since its introduction. It will also outline who the exemption will be applicable to.

Chapter 3: Defining a South African Tax Resident

In this chapter, we will define a South African resident using case law.

Chapter 4: Foreign employment income

This chapter will outline what constitutes foreign employment income as per S10(1)(o)(ii) and Interpretation Note: NO.6 (Issue 3)[2] which sets out what constitutes remuneration.

[2] The Interpretation Note: NO. 16 (Issue 3) is from the SARS website, an update of issue 2 of Interpretation note 16

Chapter 5: Double taxation

In this chapter we will discuss how double taxation arises. In addition, this chapter will provide a brief overview of tax treaty rules of double tax agreements that South Africa is party to, in respect of income earned from performing professional services and income earned from employment. The analysis will focus on the provisions of double tax treaties, as well as explain some of the articles and their implications for South African tax residents earning foreign employment income of more than R1.25 million from countries in the BLNS and BRICs groups. Chapter 6: Calculation of the S 10(1)(o)(ii) exemption.

In this chapter we will outline the steps for calculating the exemption then go through an example to explain how to calculate the S 10(1)(o)(ii)

Chapter 7: Comparison of the tax treatment with Australia, United Arab Emirates and the United Kingdom

Despite the fact that South Africa is not a member of the OECD, it generally prescribes to the interpretation set out inthe commentary to the Model Convention. As other countries that are members of the OECD have similartax treatments for foreign employment income. The approach of this chapter will be to compare the tax treatment in South Africa and in the United Kingdom (a member of the OECD) which already has a threshold on foreign income that is exempt from tax.

Many taxpayers that earn foreign employment income are concerned about the new provisions of S 10(1)(o)(ii) that came into effect 01 March 2020 and have opted to break South African tax residence. A process that is done by permanently emigrating from South Africa.

As will be discussed in other chapters, S10(1)(o)(ii) is not applicable to non-residents therefore it would be beneficial for South African tax residents to break tax residency to avoid the implications of the amended S10(1)(o)(ii). A South African tax resident that earns more than R1.25 million foreign employment income will be impacted by this new threshold. This means that the high earners may take the necessary measuresto avoid being taxed on the amount over and above R1.25 million.

The process of breaking tax residence as well as the consequences of breaking tax residency will be discussed in this chapter. The difference between financial emigration and ceasing to be a tax resident is briefly explained. We will look at how someone who becomes a resident through the physical presence test can lose their tax residence if they leave the country for a continuous period of 330 days [3].

This chapter will go through how to apply to SARS to validate one's tax compliance status for emigration purposes.

The administration of calculating the number of days in and out of The Republic.

Then, from an exchange control standpoint, talk about submitting an application to the South African Reserve Bank to emigrate.

Taxpayers who emigrate will be liable to an exit tax under section 9H of the Income Tax Act 58 of 1962. The provisions of S9H will be briefly discussed in this chapter.

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[3] This discussion on a resident that ceases to be a resident is taken from FOREIGN EMPLOYMENT INCOME EXEMPTION (SARS website 07 October 2019)

Chapter 9: Relief from double taxation

In this chapter we will discuss the relief available to taxpayers who earn foreign employment income above than R1.25 million. The requirements under S6quat will also be discussed.

Paragraph 10 of the Fourth Schedule of the Income Tax Act[4] will also be discussed, where an employer can apply to SARS to calculate an employee's tax liability on a different basis.

[4] Directive to allow an employer to apply for a different basis to calculate the amount of employees' tax to be withheld from the employee's remuneration on a monthly basis

Chapter 10: Conclusion

This chapter will use the information gathered for this report to form a conclusion.

Scope and limitations

The comparative analysis will be based on the taxable income of South African expatriates living and working in the jurisdictions listed above. The comparative study will not take into consideration any otherindirect taxes.

Where a section is applicable to natural persons and companies, only the natural person's aspect will be discussed in detail as S 10(1)(o)(ii) is only applicable to South African tax residents who are natural persons.

Analysis of foreign countries tax legislation may be based on outdated sources.

5. The Report

Chapter 2: The History of the South African Tax System relative to S 10(1)(o)(ii)

The laws that the Commissioner is responsible for enforcing determine South Africa's tax system. The Minister of Finance presents a National Budget every year. The national budget lays out the overall government spending for the coming fiscal year, as well as how that spending will be paid for.

The S 10(1)(o)(ii) exemption was introduced in 2000 to prevent double taxation of an individual's income between South Africa and another nation. Previously, the S 10(1)(o)(ii) exemption only applied to officers and crew members on board any ship engaged in marine mining activities who spent more than 183 days outside the Republic during the assessment year, as well as select public sector personnel. Officers and crew members on board any ship involved in marine mining activities who spent more than 183 days outside the Republic during the assessment year, as well as select public sector officials, were previously exempt from the S 10(1)(o)(ii) exemption.

In March 2001, South Africa had moved from a source-based tax system to a residence-based tax system for individuals. The shift resulted in South African tax residents being taxed on their worldwide income and non-residents being taxed on South African source income. In essence, South African tax residents are now taxed on all their income and non-residents are taxed only on income that is derived from a South African source. Therefore, the S 10(1)(o)(ii) exemption is only applicable to South African tax residents andis not applicable to non-residents. Such South African residents should be employed and not be independent contractors or self-employed persons.

In cases where the host country imposed little or no tax on employment income, the exemption presented potential for double non-taxation. The impact of the exemption would need to be monitored first, with a particular focus on whether the exemption is being overly exploited, resulting in no foreign tax on foreign employment income. In 2017 the finance minister at the time, Pravin Gordhan, then proposed that the exemption be repealed as there was evidence that some South African expatriates were left in a doublenon-tax position. Members of the public and the tax industry made submissions to the National Treasury detailing their concerns with regards to the repealation of the exemption. The National Treasury took note of these submissions. It was then decided that the exemption will not be repealed but rather limited to an amount of R1.25 million.

The table below outlines the requirements of the S 10(1)(o)(ii) exemption before and after the amendment.

	Before amendment	**After amendment**
Who does it apply to	South African tax resident.	South African tax resident.
Remuneration	Salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any share vestings.	Salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any share vestings.
Employee	Any employee, excluding an independent contractor or self-employed person.	Any employee, excluding an independent contractor or self-employed person.
Employer	Resident or non-resident employers.	Resident or non-resident employers.
Qualifying period	During any 12-month period	During any 12-month period
Outside South Africa	Beyond the territorial waters (that is 12 nautical miles) for any person rendering employment services; which may include— • any officer or crew member employed on a ship engaged in prospecting, exploration, mining or production of or for minerals but not employed for the navigation of the ship or for the exploration or exploitation of natural resources; or • any officer or crew member employed on a South African ship mainly engaged in fishing but not employed for the exploitation of natural resources.	Beyond the territorial waters (that is 12 nautical miles) for any person rendering employment services; which may include— • any officer or crew member employed on a ship engaged in prospecting, exploration, mining or production of or for minerals but not employed for the navigation of the ship or for the exploration or exploitation of natural resources; or • any officer or crew member employed on a South African ship mainly engaged in fishing but not employed for the exploitation of natural resources.
Days required	For – • a period or periods exceeding 183 full days in aggregate during any period of 12 months; and • for a continuous period exceeding 60 full days during that period of 12 months.	For – • a period or periods exceeding 183 full days in aggregate during any period of 12 months; and • for a continuous period exceeding 60 full days during that period of 12 months.

Apportionment required?	Yes, to the extent that services are rendered outside the Republic.	Yes, to the extent that services are rendered outside the Republic.
Income exempt	**All remuneration earned while working outside the Republic**	**First R1 000 000 remuneration earned while working outside the Republic**
Will emigration stop the section applying to you?	No	No
How do you stop the section from applying to you?	Tax emigration	Tax emigration

Source: Income Tax Act 58 of 1962, Investec Tax & Fiduciary (Investec 2019:67)

There are two noticeable changes that came after the amendment came into effect on 01 March 2021. The income to be exempt is now R 1 250 000. The days required have been adjusted due to the travel restrictions implemented during lockdown. Section 10(1)(o)(ii) (b) now states:

"…for a period or periods exceeding **117 full days** in aggregate during any period of 12 months in respect of any year of assessment ending on or after **29 February 2020 but on or before 28 February 2021**".

The highlight of the amendment to S 10(1)(o)(ii) that came into effect, was the amount of foreign employment income that was to be exempt. With effect from years of assessment beginning on or after 1 March 2020, only the first R1.25 million of foreign employment income generated by a South African tax resident qualifies for an exemption. In the year of assessment, any amount above R1.25 million will be taxed according to the standard tax tables. This is the point at which the problem arises. South African tax expatriates earning foreign employment income that is more than the limit are the ones that will be impacted.

The increase in the unemployment rate has seen South Africans seeking employment in other countries, some knowing that they would have the S 10(1)(o)(ii) exemption, other rebates and deductions. Throughout the years, this has enabled many South African residents to earn income abroad while maintaining their South African tax residency.

Where no tax had been previously imposed on the foreign employment income earned by the expatriate, there would been a double non-taxation situation. With the amendment now limiting the amount that is to be exempt, expatriates have to pay taxes after previously being in a double non-tax situation. While it is not ideal, it is a better position to be in when compared to those who were already paying taxes for income earned from their host countries. In the latter, this has resulted in double taxation, where no tax treaty exists, which would set out the country that has taxing rights, that being between the country where the foreign employment income was derived and South Africa. This results in both countries (South Africa and the foreign country) taxing the income.

Without relief in the form of double tax agreements, or the S 6 quat rebate, these expatriates may be in a worse off situation. South African tax residents that work abroad may consider ceasing to be South African tax residents by permanently emigrating. In the long run this may result in the country collecting less taxes which is contrary to the intended effect.

To determine who the S 10(1)(o)(ii) exemption is applicable to, the tax residency of a natural person needsto be determined. A South African tax resident for a natural person is defined below:

Section 1 of the Income Tax Act defines a **"resident"** as any—

(*a*)

"natural person who is—

"ordinarily resident in the Republic; or

(i)

(ii)

"not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic—

(*aa*)

"for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding such year of assessment; and

"for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment,

"in which case that person will be a resident with effect from the first day of that relevant year of assessment: Provided that—

(A)

"a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a "port of entry" as contemplated in section 9 (1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act; and

(B)

"where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic" Income Tax Act (Act no. 58 of 162)

In South Africa tax residency can be achieved in two ways. One can be ordinarily resident which means South Africa is where they are bound to return after their wanderings and where they consider home (*Cohen v CIR*). A person may then be deemed resident in the Republic by way of a physical presence test.

The term *Ordinarily resident* is not defined in the South African tax law therefore we rely on the interpretation of Case Law to determine when a natural person will be considered ordinarily resident in the Republic. The two court cases that are used to determine whether a natural person is ordinarily resident in the Republic are the *Cohen v CIR* [1946] 13 SATC 362 court and the *CIR v Kuttel* [1992] 54 SATC 298 cases.

In the *Cohen v CIR* (13 SATC 362) court case three principles were established:

1. “A person’s ordinarily residence would be the country to which he would naturally and as a matter of course return from his wanderings. When compared to other countries in which a person may live, a person’s ordinary residence is the persons usual or principle residence, or the person’s real home.

2. “One should not only consider the person’s action during the year of assessment to determine whether he is ordinarily resident in a particular country. The person’s mode of life outside theyear of assessment under consideration should also be considered.

3. “Physical absence during the full year of assessment is not decisive. A person could be absent from the country for the entire year and still qualify as ordinarily resident in that country.” (Stiglingh *et al*.,)

Goldstone JA ruled that “a person is ‘ordinarily resident' where he has his usual or primary residence, that is, what may be regarded as his real home” in CIR v Kuttel 54 SATC 298. (SAIT 2012)

Therefore, South African citizens are ordinarily tax residents of the Republic unless they cease residency, while non-citizens have to meet the requirements of the physical presence test to be considered resident in the Republic for tax purposes.

These conditions include the person's actual presence in the Republic for a duration or periods exceeding –

(i) 91 days in aggregate during the year of assessment under consideration;

(ii) 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and

(iii) 915 days in aggregate during the five preceding years of assessment.

A natural person who complies with all the requirements referred to above is considered a resident of the Republic, for tax purposes, for the year under consideration (SARS 2020b:6).

The above is a "and" test, anyone who fails to meet any of the three conditions will fail the physical presence test. Furthermore, any person who satisfies the physical presence criteria but remains outside of South Africa for a continuous period of at least 330 days shall not be considered a resident from the day they stopped being physically present.

Where an individual is not ordinarily resident in the Republic and does not meet the physical presence test, they will be taxed as non-residents. Non-residents are only taxed on a source basis unless the double tax agreement entered between South Africa and the foreign country states otherwise. This provides an incentive to cease to be a resident of the Republic and seek residency in a country that offers more relief. Ifa taxpayer foresees continuing to earn South African source income, they should choose to emigrate to a country that has a double tax agreement with South Africa so as to prevent double taxation from arising.

Similarly, in the United Kingdom (“UK”), the residence-based tax system and domicile is used to tax individuals. Where a UK resident is domiciled determines whether they will be taxed on the arising basis or the remittance basis. Being taxed on the arising basis means the taxpayer is taxed on worldwide income in the year that the income arises. On the remittance basis of taxation, the resident pays UK tax on UK income and gains for the tax year in which they arise, but the resident only pays UK tax on foreign income and foreign gains if and when they are brought or remitted to the UK (Low Income Tax Reform Group 2020:20).

It is also important to note that there are individual South African tax residents who are excluded from the application of section 10(1)(o)(ii), namely:

• “A public office holder appointed or deemed to be appointed under an Act of Parliament

• “Employees who are employed in the national, provincial or local sphere of government, certain constitutional institutions, national and provincial public entities and municipal entities

• “Independent contractors and individuals who are self-employed also do not qualify for the exemption as such persons are not in an employment relationship” (SARS 2020a:4).

After determining if a person is a South African tax resident, the next step is to define foreign employment income as the S 10(1)(o)(ii) exemption relates to income from a foreign source.

Foreign employment income is income received or accrued by a South African tax resident for services rendered outside South Africa during a period defined in S 10(1)(o)(ii). It is also important to distinguish which income qualifies as foreign employment income as not all income qualifies for the S 10(1)(o)(ii) exemption.

To determine which income qualifies for the S 10(1)(o)(ii) exemption we often refer to the definition of remuneration as set out in the Fourth Schedule of the Act for income received or accrued from a source outside South Africa, which states that remuneration is:

"any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered".

In addition to the above, Interpretation Note 16 (Issue 3) further outlines that the amounts contemplated under par(i) of the gross income definition and those under S 8, 8B or 8C can also qualify for the exemption (SARS 2020a:4).

Once the amount of foreign employment income earned by a South African expatriate has been determined there shall be exempt from taxable income:

> "any form of remuneration—
>
> > "to the extent to which that remuneration does not exceed R1,25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (*i*) of the definition of gross incomein section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outsidethe Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—

(*aa*)

(*a*)

"for a period or periods exceeding 183 full days in aggregate during any period of 12 months; or

(*b*)

"for a period or periods exceeding 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021; and

(*bb*)

"for a continuous period exceeding 60 full days during that period of 12 months,
and those services were rendered during that period or periods: Provided that—

(A)

"for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as contemplated in section 9 (1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act, shall be deemed to be outside the Republic;

(B)

"the provisions of this subparagraph shall not apply in respect of any remuneration—

(AA)

"derived in respect of the holding of a public office contemplated in section 9 (2) (*g*); or

(BB)

"received by or accrued to any person in respect of services rendered or work or labour performed as contemplated in section 9 (2) (*h*); and

(C)

"for the purposes of this subparagraph, where remuneration is received by or accrues to any employee during any year of assessment in respect of services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered" as per the Income Tax Act (Act No 58 of 1962).

In light of the Covid-19 lock downs and travel restrictions, the National Treasury has amended the period that South African expatriates needed to be outside the Republic in order to qualify for the S 10(1)(o)(ii) exemption against foreign employment income. Stating that "travel bans would have affected this group of taxpayers more directly than most others – as they potentially face a steep and unforeseen tax liability as a result of their inability to travel" (Treasury 2021:68).

It was said that the National Treasury would explore further tax suggestions that would have a lower impact on the budgetary framework, such as the tax- residence test, according to the Response Document to the COVID-19 Tax Bills Individuals who spent more than 183 days working outside of South Africa would have qualified for the foreign income exemption under the requirements of section 10(1)(o)(ii) of the Income Tax Act. However, because of the COVID-19 pandemic travel limitations, these persons may be unable to travel, therefore could not qualify for the section 10(1)(o)(ii) exemption.

In order to take into account, the lockdown period during the COVID-19 pandemic, it was proposed that changes be made so that the 66 days that commenced on 27 March 2020 and ended on 31 May 2020, when the country operated under COVID-19 alert level 5 and 4, should be subtracted from the 183-day threshold rule used to determine the eligibility for exemption of foreign employment income. In order to qualify for the exemption, the number of days that a person spent working outside South Africa will be reduced to more than 117 days in any 12-month period, for years of assessment ending from 29 February 2020 to 28 February 2021.

The current requirement in section 10(1)(o)(ii) that 60 of the days abroad should be a continuous period remains. In view of the fact that these individuals would have qualified for section 10(1)(o)(ii) exemption if there was no lockdown due to the COVID-19 pandemic, the proposed relief to reduce the number of days from 183 to 117 in order to take into account the lockdown period during the COVID-19 pandemic is likely to be revenue neutral and will have minimal impact on the fiscal framework (SARS 2020g:69).

Chapter 5: Double taxation

According to Investopedia, double taxation refers to a tax principle where income tax is paid twice on the same source of income (Kagan 2020). For purposes of this report, we will only cover double taxation in the case of income taxed twice in two countries.

As discussed in the introductory chapter, South African tax residents are taxed on their worldwide income. Therefore, it is possible for residents to be taxed twice on the foreign income that they earn, in this case foreign employment income. In instances where tax relief is available, the risk of double taxation is alleviated for South African tax residents. While for non-residents this will depend on the country in which they are ordinarily resident and the double tax agreement between South Africa and the other ContractingState.

To determine a country's taxing rights, ensure a taxpayers' rights and prevent tax evasion, a country enters into a Double Tax Agreement. Double tax agreements (DTAs) are international agreements that exist between countries. Their primary aim is to deal with potential competing taxing rights against the income of the same taxpayer thus alleviating double taxation (SARS 2020b). DTAs work in a way that one of the countries agrees to surrender their taxing rights under certain requirements. For example, if a Double tax agreement exists between Bangladesh and South Africa, and there is a Bangladeshi tax resident earning income from a South African source. Where South Africa has agreed to surrender its' taxing rights to Bangladesh, the resident will only be taxed in Bangladesh, subject to provisions in the DTA.

Apart from the double tax agreements, there are exemptions, rebates and deductions that aim to alleviate the tax burden carried by the taxpayer. The S (10)(1)(o)(ii) is an exemption that, before 01 March 2020, would have been seen as a relief measure for expatriates. With the recent amendments to S (10)(1)(o)(ii) that came into effect 01 March 2020, which state that only the first R1.25 million will be exempt from taxation, it can be argued that the exemption no longer fulfils the purpose for which it was created, even if itprovides some relief, the relief is limited to only R1.25 million.

Below is a brief overview of DTAs that South Africa is party to with countries in the BRICs and BLNS group. The discussion will focus on the income earned from employment and in some instances, income earned from the performance of professional services by the South African resident.

China

Article 14- Independent Personal Services of the Government Notice No.117 of the Income Tax Act 1962 states:

1. "Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

a) "if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;

b) "if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

*2. "The term 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants" (*SARS 2012d:12*).*

South Africa will have taxing rights only if the South African resident does not have a fixed base in China regularly available for the purpose of performing professional services or they have not been present in China for a period or periods in aggregate exceeding 183 days in a twelve-month period ending in the year concerned. In the event that the South African resident has a fixed base, then the income may be taxed in China in proportion to what is attributable to the fixed base (SARS 2012d:12).

Article 15- Dependent Personal Services of the Government Notice No.117 South African Revenue Services of the Income Tax Act 1962 states:

"…

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State".

"2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State".

According to Article 15 of the DTA between South Africa and China, if a South African resident performs services in China, China has taxation rights. If the South African resident has not been residing in China for a period or periods totalling 183 days in any twelve-month period beginning or ending in the fiscal year concerned, and the remuneration is not paid by or on behalf of an employer who is based in China and is not borne by a permanent establishment or a fixed base that the employer has in China, South Africa will have taxing rights (SARS 2012d).

If the taxpayer had earned foreign employment income exceeding R1.25 million, the taxpayer will be taxed using SARS' normal tax rates on the amount exceeding the S10(1)(o)(ii) exemption (SARS 2012d).

United Arab Emirates (UAE)

Article 14- Independent Personal Services of the Government Notice No.1565 of the Income Tax Act 1962 states:

1. “Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. “Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

   (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. “Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

4. “An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which consists of the operation of aircraft in international traffic and who derives remuneration in respect of duties performed in the other Contracting State shall be exempt from tax in that other State on remuneration derived from the employee’s employment with that enterprise for a period of four years beginning with the date on which the employee first performs duties in that other State” (SARS 2016:70).

Double taxation shall be eliminated as follows:

(a) "in South Africa, subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa, United Arab Emirates tax paid by residents of South Africa in respect of income taxable in the United Arab Emirates, in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income concerned bears to the total income;

(b) "in the United Arab Emirates, where a resident of the United Arab Emirates derives income which, in accordance with the provisions of this Agreement, may be taxed in South Africa, the United Arab Emirates shall exempt such income from tax (SARS 2016:70).

Amending the foreign employment income-tax exemption, does not mean it will only apply if the income is subject to tax in the foreign jurisdiction. The exemption would therefore still apply to individuals working in non-taxing or low taxing jurisdictions such as the Middle East. This means South African expatriates working in the United Arab Emirates, will qualify for the exemption against their foreign employment income earned. However, no section 6quat credit may be claimed at the end of the assessment year because no taxes would have been imposed on income, resulting in no double taxation.

Example:

T, a 39-year-old tax accountant from South Africa, works for a multinational corporation's South African division. T was asked to assist a subsidiary in the United Arab Emirates during the 2020/21 year of assessment because of her specialized knowledge. T's total remuneration for the year of assessment ending on 28 February, amounted to R2 500 000. Her total remuneration consisted of a salaryfrom the subsidiary in the Unites Arab Emirate of R 1 750 000.

Calculation of T's taxable income for the year of assessment ending 28 February 2021:

Income	
Remuneration	
South African source	R 750 000
UAE source (worldwide income included as gross income as per S1 definition)	R 1 750 000
Gross income	R 2 500 000
Exemptions:	
S10(1)(o)(ii) exemption- assuming all requirements are met. This will be against foreign employment income derived from the UAE	(R1 250 000)
Taxable income	R 1 250 000
Normal tax as per tax tables	R425 271
[218 139+ 41%*(1 250 000-744 800)]	

S 6quat rebate not applicable as no foreign taxes were paid.	0
Primary rebate S6(2)(a) T's age is under 65 years	(R14 958)
Normal Tax Payable	**R410 313**

T must include her worldwide income of R2 500 000 as per the gross income definition. Section 10(1)(o)(ii) exempts remuneration received by a person for services performed for or on behalf of any employer outside the Republic if the person concerned was outside the Republic:

“for a period or periods exceeding 183 full days in aggregate during any period of 12 months; or

“for a period or periods exceeding 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021; and

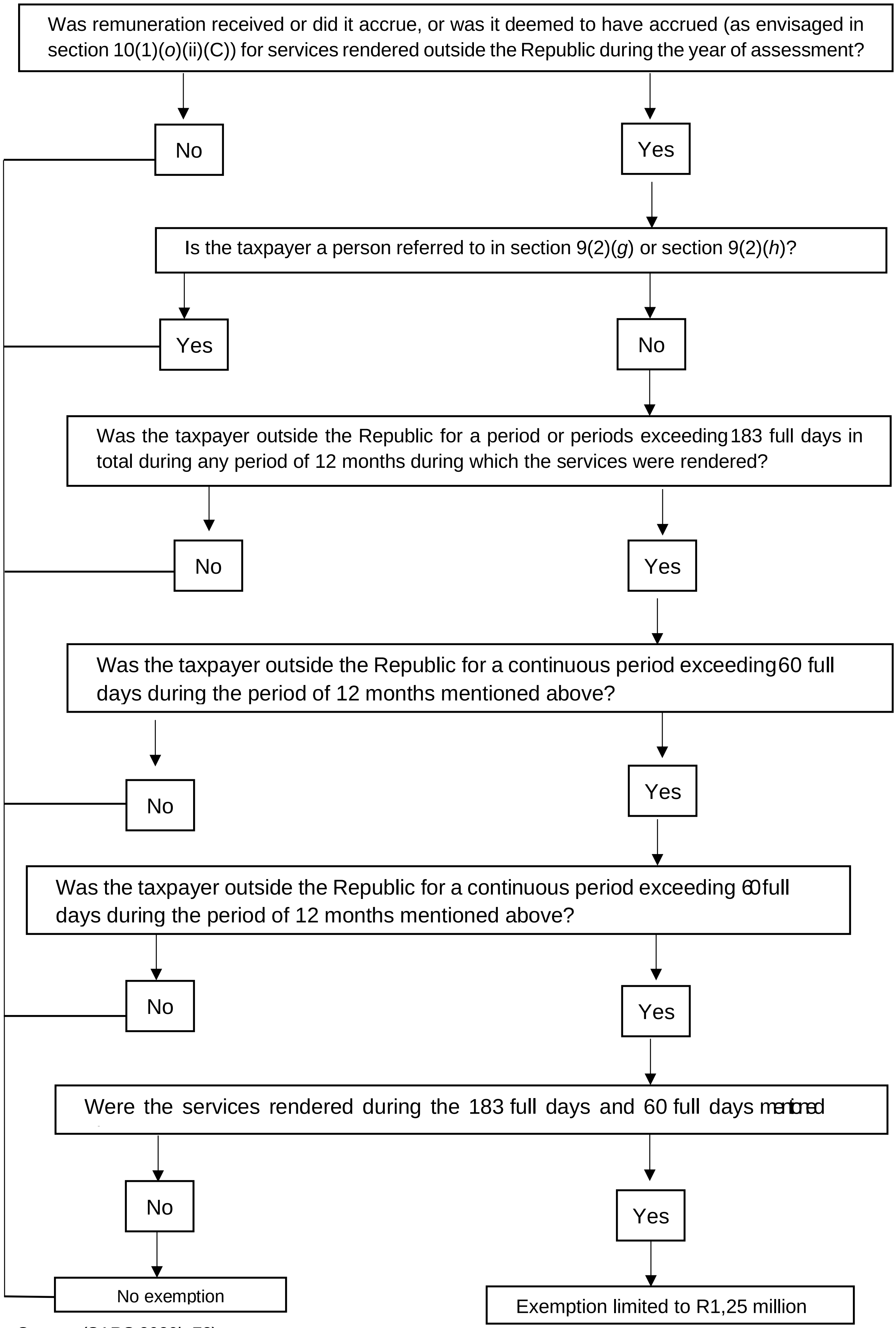
(bb) “for a continuous period exceeding 60 full days during that period of 12 months,

“and those services were rendered during that period or periods for or on behalf of an employer, who can be situated in or outside South Africa” as per Income Tax Act (Act no. 58 of 1962).

Section 10(1)(o)(ii) of the Income Tax Act will apply to foreign employment income of up to R1.25 million. In South Africa, income over R1.25 million will be subject to regular taxation. T will not be eligible for the S 6quat refund since the foreign employment income in excess of R1.25 million was obtained from a non-taxing nation, the United Arab Emirates, and no foreign tax was levied and paid.

Chapter 6: Calculation of the S 10(1)(o)(ii) exemption.

Steps to take while deciding whether or not you are eligible for an exemption



Source: (SARS 2020h:78)

Example:

“Z is employed by a South African subsidiary of a multi-national company. Due to her specialised knowledge, Z was requested to assist a New Zealand subsidiary and left the Republic on 1 May 2020 to commence work on 2 May 2020. Z was contracted to work in New Zealand until 19 December 2020. The subsidiary company in New Zealand will be remunerating Z during this period. Z will be departing New Zealand on 20 December 2020 to return to the Republic.

“For purposes of the example, it is assumed that Z will be returning to the Republic to fulfil local employment obligations during the following periods, which will include travel days:

- 22 June 2020 to 6 July 2020;
- 30 August 2020 to 7 September 2020; and
- 11 November 2020 to 20 November 2020.

“Result: The number of calendar days for which remuneration will be derived for services rendered in New Zealand in the 2021 year of assessment will be as follows:

	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2 May 20 to 21 June 20	30	21							51
7 July 20 to 29 Aug 20			25	29					54
8 Sept 20 to 10 Nov 20					23	31	10		64
21 Nov 20 to 19 Dec 20							10	19	29
									198

“The total remuneration that Z will be receiving for services rendered during the period 2 May 2020 to 19 December 2020 will be R1 750 000. As the table above indicates, the taxpayer will satisfy the requirements of the 183-day and 60-continuous-day tests within a period of 12 months.

The taxpayer will have two easily identifiable qualifying periods:

• 2 May 2020 to 1 May 2021; and

• 20 December 2019 to 19 December 2020.

"The following table sets out the workdays in the Republic and outside the Republic for the period 2 May 2020 to 19 December 2020:

Workdays during period	**Total workdays during period**	**Actual workdays outside the Republic**	**Actual workdays in the Republic**
2 May 20 to 21 Jun 20	34	34	
22 Jun 20 to 6 Jul 20	11		11
7 Jul 20 to 29 Aug 20	38	38	
30 Aug 20 to 7 Sep 20	6		6
8 Sep 20 to 10 Nov 20	45	45	
11 Nov 20 to 20 Nov 20	8		8
21 Nov 20 to 19 Dec 20	19	19	
Total	**161**	**136**	**25**

"Z was not required to work over weekends, and weekends have thus been excluded from the total workdays and actual workdays calculations. Possible public holidays in New Zealand have not been taken into account in this example.

“The portion of Z’s remuneration that will be exempt from normal tax in South Africa under section 10(1)(o)(ii) is calculated as follows:

Workdays outside the Republic for the period / Total workdays for the period during the period × Remuneration received = Remuneration that may qualify for the exemption under section 10(1)(o)(ii) = 136 / 161 × R1 750 000 = R1 478 261, however the exemption is limited to R1 250 000. Thus, R500 000 will be subject to normal tax in South Africa.

“Of the R1 750 000 remuneration Z will be earning during the New Zealand assignment, R1 267 081 relates to services rendered in New Zealand during the 2021 year of assessment, and of that amount R1 250 000 will be exempt from normal tax in South Africa. Z will be remunerated during this period by the New Zealand subsidiary. R500 000 over and above the R1 250 000, which is made of the following two parts, will be subject to normal tax in South Africa:

• “R228260,9 that relates to services rendered outside South Africa will be subject to tax in South Africa and may qualify for relief under section 6quat (1), provided foreign taxes are proved to be payable on that amount and the requirements under that section are met.

• “R 271739,1 that will be earned during that period will relate to services rendered in the Republic and will also be subject to normal tax in South Africa. No relief in the form of a tax credit will be applicable against this portion of the income. Remuneration earned in the Republic during the 2021 year of assessment before the assignment in New Zealand commences (that is, for the period 1 March 2020 to 1 May 2020)

• “and after the assignment terminates (for the period 20 December 2020 to 28 February 2021) will be unaffected by the section 10(1)(o)(ii) exemption and will be fully taxable in South Africa.

“If you rendered services inside and outside of South Africa, the income received should be apportioned and only the income received in respect of workdays outside South Africa during which services were rendered, will be exempt. From 1 March 2020, the exemption is limited to R1,25 million” (Saica 2018:72).

Chapter 7: Comparison of the tax treatment with Australia, United Arab Emirates and the United Kingdom

The table below compares the tax treatment across three countries namely Australia, the United Arab Emirates and the United Kingdom where South Africans may consider emigrating to for reasons discussed below.

	Australia	United Arab Emirates (UAE)	United Kingdom
Reason	Australia has a low population and a relatively strong economy with well-paying jobs. This could be an attraction to any South African seeking residency elsewhere.	According to an article on the John Mason International Movers blog, one of the reasons expatriates move to the UAE is Tax free living. VAT is at a rate of 5% and a salary is tax free (John Mason International Movers 2016).	The United Kingdom is one of the top countries that South Africans consider seeking residency in when planning to cease to be South African residents.
Tax basis for residents	Worldwide basis (BDO)	No federal income tax.	Residence and domicile basis. Residents that are not domiciled in the UK are subject to either the Remittance or Arising basis (Low Income Tax Reform Group 2020).
Exemption	A tax offset is available to both Australian residents and non-residents. The tax offset is equal to the lower of foreigntax paid or the Australian tax payable. Any access may not be carried forward (Experts for Expats 2019).	Not applicable	Foreign workers exemption (Low Income Tax Reform Group 2020).
Other relief measures		Not applicable	▪ Overseas Workday Relief ▪ Temporary workplace relief (Low Income Tax Reform Group 2020).
Double Tax Agreement with South Africa	Yes	Yes	▪ Yes

The United Kingdom has long limited the exemption against foreign employment income. If an individual that works in the UK earns foreign earnings, they may qualify for the foreign workers exemption if they meetthe following requirements:

"…

- Be resident in the UK;
- Not domiciled in the UK;
- Be employed in the UK;
- Foreign employment income should not exceed £10 000 and should have been taxed in the country it arose;
- Foreign investment income should not exceed £100 and should have been taxed in the country in which it arose;
- Have no other foreign gains and or income;
- Be a basic rate taxpayer i.e worldwide income and capital gains is less than £37 500 in the 2020/21 tax year; and
- Not be required to complete a self-assessment tax return for any reason" (Low Income Tax Reform Group 2020:20).

In the event that all the above requirements are met, foreign employment income will be exempt. Any UK income will still be subject to taxation in the UK. Though not similar to the S 10(1)(o)(ii), this provides the same type of relief to UK resident earning foreign income as does S 10(1)(o)(ii) to South African expatriates (Low Income Tax Reform Group 2020:20).

The BRICs countries are key partners of the OECD who participate in the OECD's daily work, bringing useful perspectives and increasing the relevance of policy debates. The Joint Programmes of Work have been developed in Brazil, Russia and are currently underway in South Africa and India. According to the OECD, these programmes facilitate co-operation and progressively bring the Key Partners closer to OECD standards (OECD Organization 2020:26).

The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. The shortfall on taxes collected may well be one of the common issues that members seek to find solutions to. South Africa is on its way to becoming a member of the OECD and that could be the reason why it may want to follow on the same path as some of the members of the OECD such as the UK and the United States of America (USA).

In the USA expatriates may qualify to exclude their foreign earnings from their taxable income up to an amount of $107 600 for the 2020 year of assessment. This amount is adjusted annually for inflation. If you convert $107 600 into Rands the exemption comes to approximately R1 661 950 which is fairly close to the R1.25 million exemption (IRS 2020).

It is not clear if the S 10(1)(o)(ii) is to be adjust annually for inflation in South Africa.

Chapter 8: SARS and the Exchange Control

As discussed in the previous chapters, many South African expatriates will have considered ceasing being tax resident in the Republic in order to avoid the implications of the amendment to S 10(1)(o)(ii). This chapter will outline the process to be followed as well as the documents required for an individual to emigrate to another country.

It is important to distinguish the difference between financial emigration and ceasing tax residency. The term “financial emigration” has been used in the general public in relation to the procedure of obtaining permission from the South African Reserve Bank to emigrate from South Africa for exchange control purposes. Emigration has nothing to do with a person's tax residency. It is just one factor to examine when deciding whether or not someone has violated their tax residency. When a person emigrates for exchange control purposes, the individual's tax residency is not automatically broken. The deciding factor is whether or not an individual ceased to be ordinarily resident in the Republic.

The effect of the modification to S 10(1)(o)(ii) on persons earning more than R1.25 million may only be reduced by ceasing to be a resident of South Africa, not by official financial emigration, i.e. emigration for exchange control reasons.

Tax residency is based on the concepts of being either ‘ordinarily resident’ or ‘physically present’ in South Africa unless a tax treaty determines otherwise. Exchange control residency is based on the concepts of ‘domicile’, ‘citizenship’ or ‘permanent residence’ status in South Africa. When a person financially emigrates from South Africa for exchange control purposes and obtains the right to reside in another jurisdiction, it does not necessarily mean that tax residency has ceased as well.

Financial emigration has its benefits and may work for some people, but it will not alleviate their tax burden when it comes to foreign earned income. A person who is uncertain about residing permanently outside South Africa should think hard about whether to financially emigrate, as any emigrant returning to South Africa within a five-year period is regarded as a ‘failed emigrant’, which could result in repatriation of assets back to South Africa. Therefore, the permanency of the individual’s exist from SA is therefore crucial when it comes to tax and exchange control (Investec 2019:67).

Although financial emigration involves an element of tax compliance in terms of obtaining a relevant clearance certificate, it is not a determining factor that would alleviate the impending tax burden on foreign earned income, post 1 March 2020 (Investec 2019:67).

Process followed when ceasing South African tax residency.

The first step to ceasing to be a tax resident is to confirm one's tax compliance status. SARS has made the process of confirming one's tax compliance status fairly easy as residents can now request a Tax Compliance Status (TCS) online via eFiling. In the event that an individual is ordinarily resident in the Republic, the below are the documents required by SARS from an applicant who wishes to cease being a South African tax resident as listed on the SARS website:

South African resident ceases to be resident

"For a new Tax Compliance Status (TCS) application:

- "Where the TCS application is for a South African resident emigrating for the first time:
  - Statement of assets and liabilities for the previous three tax years.
  - The MP336(b) - 'Emigration: Application for foreign capital allowance' that is authenticated by the stamp of the Authorised Dealer (e.g., bank) concerned and the signature of one of its Authorised Officers; or
  - Where the authorised dealer (e.g., bank) informed you not to complete the MP336(b), the authorised dealer must provide a letter stating the reason(s) why the MP336(b) should not be completed.
  - In cases where an individual emigrated without formalising their emigration with South African Reserve Bank (SARB) or have emigrated a very long time ago and as such have no assets and liabilities in South Africa (Nil assets and liabilities declared on the MP336(b)), a Nil Statement of assets and liabilities for the previous three tax years must be submitted.
  - Applicable Power of Attorney where the TCS application is submitted by a person other than the taxpayer.
  - Capital Gains Tax calculation on the deemed disposal of assets on the day before the taxpayer ceases to be a resident.
    - This is applicable where amounts are included under listed and unlisted investments as well as other assets (e.g., Kruger Coins).

- “Where the applicant is a member of a pension, provident or retirement annuity fund, the following particulars in respect of each fund must be submitted on a separate sheet:
    - Name of fund;
    - Expected lump sum amount to be paid out; and
    - Date of expected payment.

- “Where the applicant has a South African insurance policy, the following particulars in respect of each South African insurance policy the taxpayer own must be submitted on a separate sheet:
    - Name of insurance company;
    - Address of insurance company;
    - Policy number;
    - Date on which any benefits from the policy are expected; and
    - Particulars of expected future benefits from such policy.

- “Where the applicant, wife or minor children are beneficiaries of a trust, the following particulars must be submitted on a separate sheet:
    - Name of the trust;
    - Income tax reference number of the trust;
    - Name(s) of the trustee(s);
    - Postal address of the trust;
    - Business address of the trust;
    - Nature of income received from the trust and the annual amount thereof;
    - Date on which you first received income from the trust;

    - Monthly or yearly amount received from the trust.

- "Where the applicant, spouse or minor children are the shareholder(s) of a private company or member(s) of a close corporation, the following particulars must be submitted on a separate sheet:
    - Name the private company/close corporation;
    - Income tax reference number of private company/close corporation;
    - Number of shares/percentages of interest;
    - Postal address of private company/close corporation; and
    - Business address of private company/close corporation.

- "In case of a family unit, if the spouse wishes to be issued with a separate TCS in order to formalise his/her emigration, then the spouse must do the following:
    - Complete a separate TCR01 - Tax Compliance Request form;
    - Submit a certified copy of the final MP336(b) submitted to the authorised dealer (NOT a copy of the MP336(b) submitted by the husband/life partner); and
    - Submit the supporting documents in support of her application" (SARS 2020d:29).

"Note that the foregoing does not apply if the entire family is emigrating together and the spouse's information is recorded in the TCR01. In this case, the applicant's TCS PIN letter will include the spouse's information (that is, names, tax reference number and ID number or passport number) (SARS 2020d:29)**.**

The Specific Documents Required For Emigration Applications To Demonstrate The Source OfCapital

- **“Loan:**
    - “Where the parent lends money to the child to invest offshore:
        - Loan agreement; and
        - Bank statement of parent, not older than three (3) months.
    - “The trust lends money to the trustee or beneficiary to invest offshore:
        - Loan agreement; and
        - Bank statement of trustee or beneficiary, not older than three (3) months;
        - Latest Trust Financials;
        - Bank statement of trust, not older than three (3) months; or
        - Trust’s latest share portfolio statement (not older than three (3) months). This statement will also include the number of shares and current market value.
    - “The company lends money to a director of the company to invest offshore:
        - Loan agreement between the company and the director;
        - Bank statement of the director, not older than three (3) months; and
        - Company’s latest annual financial statements” (SARS 2020d:29).

- **“Donation:**
    - “If the donation is between spouses:
        - A declaration (IT144); and
        - Bank statement of donee, not older than three (3) months

- “If the donation is not between spouses:
    - A declaration (IT144);
    - Proof (Copy of the receipt) of donations tax paid; and
    - Bank statement of donor and donee, not older than three (3) months” (SARS 2020d:29).

- **“Inheritance:**
    - Letter from the executor of the estate;
    - A copy of the Liquidation & Distribution account; and
    - Bank statement, not older than three (3) months.

- **“Savings / Cash / Bank Account / Fixed Deposits:**
    - Bank statement, not older than three (3) months; and
    - Proof of source (i.e., where and how the money was obtained).

- **“Shares:**
    - Portfolio statement not older than three (3) months. This statement will also include the number of shares and current market value.

- **“Sale of property:**
    - Original letter of the Conveyancer to confirm the transfer of the property and that the money will be transferred from his/her trust account; or
    - Proof of receipt of the proceeds together with applicant’s bank statement not older than three (3) months.

- **“Royalty Income:**
    - Source of royalty income; and
    - Proof of royalty payment.
- **“Earnings:**
    - Where a recurring foreign investment does not exceed R30 000 per annum a copy of a salary slip is needed once a year;
    - The policy number; and
    - It must be noted that the institution (e.g., Sanlam / Old Mutual) will apply on your behalf.
- **“Distributions from a trust:**
    - Resolutions from the Trust making the distributions;
    - Details of the source from the Trust making the distribution;
    - Bank statement of trust, not older than three (3) months; or
    - Trust’s latest share portfolio statement (not older than three (3) months) this statement will also include the amount of shares and current market value;
    - Copy of trust deed; and
    - Trust’s Annual Financial Statements” (SARS 2020d:29).
- **“Other:**

Documentary proof and explanation.

- **“Where the TCS application is for Emigrant’s remaining Assets (formerly known as “Blocked Funds”):**

    - A copy of the Tax Clearance Certificate (TCC) or TCS PIN letter - Emigrant that was previously issued by SARS;

    - A copy of the MP336(b) application previously submitted;

    - Addendum stating the intended amount to be transferred; and

    - A Duly completed Power of Attorney by the taxpayer (only if the application is submitted by the taxpayer’s representative).

    - Taxpayers who already emigrated and who want to transfer '*Emigrant’s Remaining Assets’* need to request a TCS for FIA via eFiling or at a SARS Branch. When applying forthe TCS in respect of FIA, you need to set the *'Source of capital to be invested*' to '*Emigrant’s Remaining Assets’*. For more information, see the process for transferring Emigrant's Remaining Assets (Blocked Funds)” (SARS 2020d:29).

Individuals may apply to an Authorised Dealer before leaving after receiving their tax compliance status from SARS in order to be granted the following benefits:

If the applicants are a family unit, they will be accorded a foreign capital allowance of up to R20 million, while single person will be accorded a foreign capital allowance of up to R10 million per calendar year afterall liabilities including the cost of the relative passenger ticket and the applicable travel allowance, have been provided for (SARS 2020d:29).

Applications must be accompanied by a duly completed MP336(b) form signed by the applicant, together with a printed tax compliance status verification result obtained via the SARS Tax Compliance Status (TCS) system reflecting the compliance status of the applicant(s) including a breakdown of the remaining capital assets held in South Africa (SARS 2020d:29).

Resident by way of a physical presence test ceasing to be resident.

A natural person, who is resident by virtue of the physical presence test, ceases to be a resident when that person is physically outside the Republic for a continuous period of at least 330 full days. Residence will cease from the day that the person leaves the Republic (SARS 2020b:6).

The administration of calculating the number of days in and out of The Republic.

As S10(1)(o)(ii) provides for the calculation of the number of days outside of the Republic, it is therefore important to understand what constitutes a day outside the Republic.

Proviso A of the definition of a resident in S 1 of the Income Tax Act states that a day includes part of a day. The day of arrival and the day of departure are included in the calculation as they reflect on the person's passport. A day can be defined as a period of twenty-four-hours from 00:00 to 24:00. A minute forms part of a day therefore if a person is to arrive in South Africa at 23:59 that person will be considered to have been in the country for that day.

Section 9 of the Immigration Act provides that a person may not enter or leave the Republic at a place other than a port of entry. The term 'port of entry' is defined in section 1 of the Immigration Act, and means (Immigration Act 13 of 2002).

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"a place prescribed from time to time where a foreigner has to report before he or she may move, sojourn or remain within, or remain in the Republic;"
(Immigration Act 13 of 2002).

"Where entry or departure is not carried out through a port of entry, it may occur at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act" (Immigration Act 13 of 2002).

Any day during which a person is in transit through the Republic between two places outsidethe

Republic, and where that person does not formally enter the Republic through a “port of entry’ that person will not be considered to have entered the Republic.

Once the taxpayer meets the day’s test under S 10(1)*(o)*, the portion of the remuneration that qualifies for the exemption must be calculated. If it is clear that the portion of a taxpayer’s income relates to services rendered both inside and outside the Republic, the income must be apportioned.

SARS accepts the following as a correct method to calculate the exempt portion of remuneration:

$$\frac{\text{Workdays outside the Republic for the period}}{\text{Total workdays for the period during the period}} \times \text{Remuneration received}$$

= Exempt portion of remuneration limited to R1.25 million

Example:

“J departs 21 December 2019 to commence a 24-month project. The project commences on 1 January 2019 in Dubai with a monthly income of 20 000 UAE Dirhams and J is set to return to South Africa on 28February 2021.

“Assuming the exchange rate at 1 UAE Dirhams = R4.

“The identified 12-month period is identified would be 1 January 2019 – December 2019 and a new 12-month period would commence 1 January 2020 and end 31 January 2020. The next 12-month period is January 2021 to 31 December 2021” (FMJ Financials:73).

Analysis:

Period outside South Africa

183 days: 183 days outside South Africa in in the years of assessment 2020 and 2021

Continuous 60 days: J was outside South Africa for a continuous 60 days in the years of assessment 2019, 2020 and 2021.

Amount to be exempt as per S 10(1)(o)(ii): For the 2020 year of assessment all of J’s income will be exemption as the amendment to the section was only effective 01 March 2020.

For the 2021 year of assessment, Income declared in South Africa was R960 000 (20 000 UAE Dirhams X R4 X 12 months)

Income tax calculation for the 2021 year of assessment with the exemption of R1.25 million.

Applying exemption: R-960 000
Taxable income: 0

“J’s first and second 12-month period would qualify for the exemption however; January and February 2021 would not form part of the exemption as during the 12-month period starting 1 January 2021 to 31 December 2021, the required number of days outside South Africa working with an employer in a foreign country would not have been met.

“If in this example J was unemployed for 2 or 3 months and then works with another foreign employer, in Dubai or otherwise, the exemption may still apply since the requirement is to work with ‘any employer’ andto be out of the country for the required period of time rendering service to a foreign employer” (FMJ Financials:73).

Exit Tax

Should South African expatriates choose to cease residency as a way to avoid the implications of the limitation placed on the S10(1)(o)(ii), there are taxes which would be applicable.

The provisions of S9H apply when a South African resident ceases to be a resident of the Republic. On the day before they cease to be a resident, the individual must be judged to have sold their assets to a resident. The sale is assumed to be for an amount equal to the asset's market value on that day. On that same day, the assets are deemed to be reacquired for use. The assets shall be deemed to be reacquired on that same day for expenditure equal to the market value.

The previous assessment year must be deemed to have ended on the day before a person ceases to be a residence, and the next assessment year must be deemed to have begun on the day the person ceases to be a resident.

The Capital Gains Tax effect of ceasing to be a tax resident

“A natural person who emigrates from the Republic to another country will cease to be a resident on the date preceding the date that they emigrate (section 9H(2)(a)(i) of the Act). The physical presence test does not apply during the year of emigration because the person was ordinarily resident during the relevant year of assessment (Interpretation Note 4 of the Act).

“When an individual ceases to be a resident, that person is deemed to have disposed of all their assets at market value on the day preceding the date that person ceases to be a resident and reacquired all those assets at an expenditure equal to the market value on the date that person ceases to be a resident. This may trigger either a capital or a revenue gain. Where capital gain is there will be Capital Gains Tax implications” (UNISA:74).

Subsection 9H (4) states that the individual will be deemed to have disposed of his or her worldwide assets, excluding immovable property situated in South Africa (SARS 2019b:75).

“Subsection 9H (7) stipulates that the market value of such assets reacquired will be in the same currency in which the assets were originally acquired” (UNISA:74).

Example:

V, 37, has decided to emigrate from the Republic on 02 April 2020. At the date of emigration V owns

Asset description	**Market Value 01 April 2020**
Factory building in Sandton which she rents out to clients. Building was originally acquired in 2010 at a cost of R3 500 000	**R4 000 000**
Kruger Rands for investment purposes. Acquired at a cost of R250 000 in 2005	**R965 000**
Fixed deposit at a bank	**R350 000**
A Yacht (15 metres). Acquired in 2005 at a cost of R175 000. Yacht is used for trade purposes.	**R130 000**

On the day before V's emigration, 01 April 2020, V is deemed to have disposed of the following:

Asset description		
Factory building-	**Immovable property specifically excluded as perS9H(4)**	
Kruger Rands for investment purposes. Acquired at a cost of R250 000 in 2005	Proceeds at Market value on 01 April 2020	965 000
	Base cost	(250 000)
	Capital gain	715 000
Fixed deposit at a bank	Proceeds at Market value on 01 April 2020	350 000
	Base cost	(350000)
	Capital gain	Nil
A Yacht more than 10 metres therefore not a personaluse asset	Proceeds at Market value on 01 April 2020	130 000
	Base cost	(175000)
	Capital loss par 15 does not apply as used for the purposes of trade	(45 000)

Sum of gains	715 000
Less: Sum of all losses	(45 000)
	670 000
Less: Annual exclusion	(40 000)
Aggregate gains for the year of assessment	630 000
Less: Assessed loss brought forward	nil
Net capital gain for the year of assessment	630 000
Multiplied by inclusion rate	40%
Taxable capital gain (par 10)	252 000

Unilateral relief (credit method), an example of unilateral relief is the section 6quat rebate for foreign taxes paid by residents on income which has been subject to taxation in another country (UNISA:74).

Bilateral relief (exemption method), where a Double Tax Agreement between countries provides relief from double taxation, by either exempting that income or granting a deduction.

Both unilateral and bilateral relief is available to South African expatriates. The bilateral relief will be available only when a double tax agreement exists between South Africa and the country that the foreign employment income is derived from. Annexure A consists of a list of countries that South Africa has entered into a double tax agreement (Handle.Net:76).

“Section 6quat is the mechanism under South Africa’s domestic law to claim relief from double tax where the amount received for services rendered outside South Africa is subject to tax in South Africa and in the foreign country. This credit may be claimed on assessment through an individual’s income tax return, provided certain requirements are met. Alternatively, relief from double tax may also be sought by way of the treaty provisions.

“An employer may at his or her discretion, under paragraph 10 of the Fourth Schedule, apply for a directive from SARS to take into account the potential foreign credit to determine the employees’ tax (PAYE) liability on a monthly basis. The employer will be able to apply for such a directive through a dedicated channel that has been made available to the public by SARS. Even when a directive is issued to the employer that allows the employer to take into account a potential foreign tax credit on the payroll for PAYE purposes, theemployee is still required to submit an income tax return in which the actual foreign tax credit under S 6quathas to be claimed” (SARS 2021:66).

Rebate or deduction in respect of foreign taxes on income

The resident nation usually grants relief from double taxation resulting from the application of tax by a residence country and a source country on the same amount. In instances where there is no DTA between South Africa and the foreign country S 6quat is available to South African expatriates for relief from foreign taxes against normal tax payable. Where it is more favourable to the taxpayer, the taxpayer may also elect S6quat instead of the DTA between the two countries.

S6 quat of the Act states:

"Subject to subsection (2), where the taxable income of any resident during a year of assessment includes —

(a) any income received by or accrued to such resident from any source outside the Republic; or

(b) any proportional amount contemplated in section 9D; or

(c) ……

(d) ……

(e) any taxable capital gain contemplated in section 26A, from a source outside the Republic; or

(f) any amount—

(i) "contemplated in paragraph (a) or (b) which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) "of capital gain of any other person from a source outside the Republic and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) "contemplated in paragraphs (a), (b) or (e) which represents capital of a trust, and which is included in the income of that resident in terms of section 25B (2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80 (3) of the Eighth Schedule,

in determining the normal tax payable in respect of that taxable income there must be deducted a rebate determined in accordance with this section" (Income Tax Act (Act 58 of 1962)).

Section 6*quat*(1B) provides that the rebate of tax proved to be payable to the government of another country may not exceed an amount that bears to the total normal tax payable, the same ratio as the total taxable income attributable to the income derived from the other country bears to the total taxable income. If more than one foreign tax has been paid, the taxable income from all countries must be totalled, as mustthe normal tax payable on the aggregated taxable income (SAICA 2001:42).

The S6 quat rebate is calculated using the formula below:

$$\frac{\text{Taxable income derived from all foreign sources (A)}}{\text{Taxable income derived from all sources (B)}} \times \text{Normal tax payable on (C)}$$

Source: (SARS 2020e:30)

Application by employer to SARS to use a different tax basis to calculate employees' tax liability

When an individual finds themselves in a double tax position or when they earn more than the R1.25 million threshold, the employer needs to apply for a directive that will allow the employer to calculate the tax liability of the individual concerned on a different basis. Once approved by SARS, this will reduce the monthly rate of employees' tax since the foreign credit under S 6quat can only be done on assessment.

"The employer must complete the IRP3(q) - Request for a Directive – Variation in the Deduction / Withholding of Employees' Tax' application form on eFiling. These forms should be accompanied by the following:

- A detailed letter setting out the basis and reasoning to vary the basis on which employees' tax must be withheld in respect of the affected employee;
- A consideration of the relevant tax treaties applicable, if any and the impact thereof to the affected employee;
- The proposed method by the employer and a sample calculation of how the method will be applied on the payroll; and
- Proof that the foreign taxes are proved to be payable in the foreign country.

"An application by an employer will not be considered under paragraph 10 of the Fourth Schedule if one of the following conditions apply:

- The remuneration received by the employee is below the tax threshold;
- The employee's remuneration is exempt under section 10(1)(o)(ii);
- The employee's income is not subject to tax in the foreign country and therefore not subject to double tax; or
- A foreign employer that has no obligation to withhold employees' tax applies for directive" (SARS 2020f:31).

Chapter 10: Conclusion

Having been used to the idea that foreign employment income is completely exempt from taxation in South Africa, it is understandable that the amendment to the S 10(1)(o)(ii) exemption has not been well received by the industry and South African resident expatriates.

The then Minister of finance's decision to amend legislation was in hopes to reduce the tax shortfall and collect more taxes. Though many have argued that this will in turn cause the opposite, countries such as the UK and China have long limited the exemption on foreign employment income and the impact has not been dire. For South Africa it is simply too early to tell what the impact will be as the amendment only came into effect on 01 March 2020, which is the beginning of the 2021 year of assessment.

The 2020/21 year has been a year that has been different to many other years of assessment due to the pandemic that the world faces. Under normal circumstances, the end of the 2020/21 year of assessment, filing for the year of assessment and statistical data showing the number of expatriates emigrating would have provided an indication as to the impact of this amendment. It may be possible that even the 2021 year of assessment will not provide much insight as to the impact of the amendment.

This brings us to the point about whether it will be beneficial for South African tax residents to cease residency. The question now would be is it even possible with the varying COVID-19 rules and regulations for individuals to emigrate to other countries and whether or not those countries will open their borders to South Africans seeking residency.

From the discussions in this report one can see that in most countries, foreign employment income is not completely exempted from taxation. South Africa was one of the few countries that exempted all the foreign employment income earned by expatriates. Now that the income above R1.25 million is taxable, the double tax agreements will come in handy in ensuring that the country with taxing rights is established, the taxpayer's rights are protected and that there is no tax evasion.

While it is not explicitly stated that the S 10(1)(o)(ii) exemption will be adjusted for inflation, R1.25 million is a fairly good number to start with. Though it is anticipated that the amendment will be unfavourable to South African expatriates, legislation does provide adequate tax relief. Where no double tax agreement exists between South Africa and the country in which the foreign employment income was derived, South African expatriates have additional tax relief for foreign taxes as per S6quat of the Act.

For many years, South Africa has had a volatile economy and that means the country depends largely on the taxes collected from its taxpayers to sustain the country. Part of the analysis and comparisons drawn in this report aimed to illustrate whether the action that the finance minister had taken, in relation to this particular exemption, were for the betterment of South Africa as a whole. Seeing how much impact this will have on the taxpayer and administration this will cause for the tax authorities, one can only hope that the minister's effort will not be futile.

Appendix

Appendix A

Jurisdiction	Agreements in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in South Africa	Ratified in the other jurisdiction	Date of Entry into Force	Date of Entry into Effect
South Africa	-	7 June 2017	-	-	-	-
Australia	-	7 June 2017	-	X	-	-
Austria	-	7 June 2017	-	X	-	-
Belgium	-	7 June 2017	-	X	-	-
Canada	-	7 June 2017	-	X	-	-
Chile	-	7 June 2017	-	X	-	-
Cyprus	-	7 June 2017	-	X	-	-
Czech Republic	-	7 June 2017	-	X	-	-
Denmark	-	7 June 2017	-	X	-	-
Egypt	-	7 June 2017	-	X	-	-
Finland	-	7 June 2017	-	X	-	-
France	-	7 June 2017	-	X	-	-
India	-	7 June 2017	-	X	-	-
Ireland	-	7 June 2017	-	X	-	-
Israel	-	7 June 2017	-	X	-	-
Japan	-	7 June 2017	-	X	-	-
Korea (Republic of Korea)	-	7 June 2017	-	X		
Luxembourg	-	7 June 2017	-	X	-	-
Malta	-	7 June 2017	-	X	-	-
Mauritius	-	5 July 2017	-	X	-	-
Netherlands	-	7 June 2017	-	X	-	-
New Zealand	-	7 June 2017	-	X	-	-
Norway	-	7 June 2017	-	X	-	-
Oman	-	26 November 2019	-	X	-	-
Pakistan		7 June 2017	-	X	-	-
Poland	-	7 June 2017	-	X	-	-

Qatar	-	4 December 2018	-	X	-	-

Source: (SARS 2013:77)

Russia	-	7 June 2017	-	X	-	-
Saudi Arabia	-	18 September 2018	-	X		
Singapore	-	7 June 2017	-	X	-	-
Slovak Republic	-	7 June 2017	-	X	-	-
Sweden	-	7 June 2017	-	X	-	-
Switzerland	-	7 June 2017	-	X	-	-
Ukraine	-	23 July 2019	-	X	-	-
United Arab Emirates	-	27 June 2018	-	X	-	-
United Kingdom	-	7 June 2017	-	X	-	-

Source: (SARS 2013:77)

Bilateral Double Taxation Agreements and Protocols amending the Double Taxation Agreements

Jurisdiction	Agreements in process of negotiation or finalized but not yet signed	Signed not Ratified	Ratified in South Africa	Ratified in the other jurisdiction	Published in Government Gazette	Date of Entry into Force
Algeria	-	-	-	-	21303 dd 21/06/2000	12 June 2000
Australia	-	-	-	-	20761 dd 24/12/1999	21 December 1999
Australia (Protocol)	-	-	-	-	31721 dd 23/12/2008	12 November 2008
Austria	-	-	-	-	17965 dd 30/04/1997	6 February 1997
Austria (Protocol)	-	-	-	-	35049 dd 28/02/2012	1 March 2012
Belarus	-	-	-	-	25914 dd 15/01/2004	29 December 2003
Belgium	-	-	-	-	19437 dd 02/11/1998	9 October 1998
Botswana	-	-	-	-	26342 dd 12/05/2004	20 April 2004
Botswana (Protocol)	-	-	-	-	39485 dd 10/12/2015-	19 August 2015
Botswana (Protocol)	X	-	-	-	-	-
Brazil	-	-	-	-	29073 dd 28/07/2006	24 July 2006
Brazil (Protocol)	-	-	-	-	41432 dd 09/02/2018	10 February 2018

Bulgaria	-	-	-	-	27517 dd 22/04/2005	27 October 2004
Cameroon	-	-	-	-	41082 dd 01/09/2017	13 July 2017
Canada	-	-	-	-	17985 dd 07/05/1997	30 April 1997

Source: (SARS 2013:77)

Chile	-	-	-	-	40262 dd 09/09/2016	11 August 2016
China (People's Republic of China PRC)	-	-	-	-	22041 dd 02/02/2001	7 January 2001
Croatia	-	-	-	-	18460 dd 21/11/1997	7 November 1997
Cyprus	-	-	-	-	19638 dd 22/12/1998	8 December 1998
Cyprus (Protocol)	-	-	-	-	39295 dd 16/10/2015	18 September 2015
Czech Republic	-	-	-	-	18603 dd 07/01/1998	3 December 1997
Democratic Republic of Congo (DRC)	-	-	-	-	35805 dd 24/10/2012	18 July 2012
Denmark	-	-	-	-	16891 dd 22/12/1995	21 December 1995
Egypt	-	-	-	-	19706 dd 22/01/1999	16 December 1998
Ethiopia	-	-	-	-	28494 dd 10/02/2006	4 January 2006
Finland	-	-	-	-	16862 dd 01/12/1995	12 December 1995
France	-	-	-	-	16681 dd 27/09/1995	1 November 1995
Gabon	-	22 March 2005 in Pretoria	X	-	-	-

Germany	-	-	-	-	3898 dd 25/05/1973	28 February 1975
Germany (Renegotiated)	-	9 September 2008 in Berlin	X	-	-	-
Germany (Protocol)	X	-	-	-	-	-
Ghana	-	-	-	-	29856 dd 18/05/2007	23 April 2007
Greece	-	-	-	-	24996 dd 03/03/2003	14 February 2003
Grenada	-	-	-	-	Proclamation 229 of 1946;	5 October 1960

Source: (SARS 2013:77)

					Proclamation 271 of 1954 and Proclamation 32 of 1961	
Hong Kong	-	-	-	-	39444 dd 24/11/2015	20 October 2015
Hungary	-	-	-	-	17438 dd 13/09/1996	5 May 1996
India	-	-	-	-	18545 dd 12/12/1997	28 November 1997
India (Protocol)	-	-	-	-	38440 dd 3/2/2015	26 November 2014
Indonesia	-	-	-	-	19766 dd 16/02/1999	23 November 1998
Hungary	-	-	-	-	17438 dd 13/09/1996	5 May 1996
Iran	-	-	-	-	19637 dd 22/12/1998	23 November 1998
Ireland	-	-	-	-	18552 dd 15/12/1997	5 December 1997

Ireland (Protocol)	-	-	-	-	35134 dd 22/03/2012	10 February 2012
Israel	-	-	-	-	6577 dd 13/07/1979	27 May 1980
Italy	-	-	-	-	19823 dd 08/03/1999	2 March 1999
Japan	-	-	-	-	18391 dd 27/10/1997	5 November 1997
Kenya	-	-	-	-	39422 19/11/2015	19 June 2015
Korea (Republic of Korea)	-	-	-	-	16918 dd 26/01/1996	7 January 1996
Kuwait	-	-	-	-	29815 dd 20/04/2007	25 April 2006
Kuwait (Protocol)	X	-	-	-	-	-
Lesotho	-	-	-	-	17948 dd 22/04/1997	9 January 1997

Source: (SARS 2013:77)

Lesotho (Renegotiated)	-	-	-	-	40088 dd 24/06/2016	27 May 2016
Luxembourg	-	-	-	-	21852 dd 06/12/2000	8 September 2000
Luxembourg (Protocol)	X	-	-	-	-	-
Malawi	-	-	-	-	1479 dd 13/08/1971	2 September 1971
Malawi (Renegotiated)	X	-	-	-	-	-
Malaysia	-	-	-	-	29021 dd 13/07/2006	17 March 2006
Malaysia (Protocol)	-	-	-	-	35190 dd 29/03/2012	6 March 2012
Malta	-	-	-	-	18461 dd 21/11/1997	12 November 1997
Malta (Protocol)	-	-	-	-	37243 dd 24/1/2014	17 December 2013
Mauritius	-	-	-	-	18111 dd 02/07/1997	20 June 1997
Mauritius (Renegotiated)	-	-	-	-	38862 dd 17/06/2015	28 May 2015
Mexico	-	-	-	-	33460 dd 24/08/2010	22 July 2010
Mozambique	-	-	-	-	31983 dd 13/03/2009	19 February 2009
Mozambique (Protocol)	X	-	-	-	-	-
Namibia	-	-	-	-	19780 dd 19/02/1999	11 April 1999
Netherlands	-	-	-	-	3153 dd 18/06/1971	20 January 1972
Netherlands (Renegotiated)	-	-	-	-	31797 dd 23/1/2009	28 December 2008
Netherlands (Protocol)	-	-	-	-	31795 dd 23/1/2009	28 December 2008

Netherlands (Protocol)	X	-	-	-	-	-
New Zealand	-	-	-	-	26798 dd 17/09/2004	23 July 2004

Source: (SARS 2013:77)

Nigeria	-	-	-	-	31241 dd 22/7/2008	5 July 2008
Norway	-	-	-	-	17504 dd 15/10/1996	12 September 1996
Norway (Protocol)	-	-	-	-	39486 dd 11/12/2015-	20 November 2015
Oman	-	-	-	-	25913 dd 15/01/2004	29 December 2003
Oman (Protocol)	-	-	-	-	37244 dd 29/1/2014	5 November 2013
Pakistan	-	-	-	-	19849 dd 17/03/1999	9 March 1999
Poland	-	-	-	-	17201 dd 16/05/1996	5 December 1995
Portugal	-	-	-	-	31720 dd 23/12/2008	22 October 2008
Qatar	-	-	-	-	39674 dd 11/02/2016	2 December 2015
Romania	-	-	-	-	16680 dd 27/09/1995	21 October 1995
Russian Federation	-	-	-	-	21395 dd 20/07/2000	26 June 2000
Rwanda	-	-	-	-	33475 dd 27/08/2010	3 August 2010
Saudi Arabia	-	-	-	-	31796 dd 23/01/2009	1 May 2008
Senegal	X	-	-	-	-	-
Seychelles	-	-	-	-	25646 dd 30/10/2003	29 July 2002

Seychelles (Protocol)	-		-	-	35396 dd 06/06/2012	15 May 2012
Sierra Leone	-	-	-	-	Proclamation 229 of 1946; Proclamation 271 of 1954 and Proclamation 32 of 1961	5 October 1960

Source: (SARS 2013:77)

Singapore	-	-	-	-	18599 dd 02/01/1998	5 December 1997
Singapore (Renegotiated)	-	-	-	-	40577 dd 27/01/2017	16 December 2016
Slovak Republic	-	-	-	-	20409 dd 25/08/1999	30 June 1999
Spain	-	-	-	-	30837 dd 12/03/2008	28 December 2007
Sudan (Republic of Sudan)	-	7 November 2007 in Pretoria	X	-	-	-
Swaziland	-	-	-	-	27637 dd 01/06/2005	8 February 2005
Swaziland (Protocol)	X	-	-	-	-	-
Sweden	-	-	-	-	16890 dd 27/12/1995	25 December 1995
Sweden (Protocol)	-	-	-	-	35268 dd 23/04/2012	18 March 2012
Switzerland	-	-	-	-	850 dd 29/09/1967	11 July 1968
Switzerland (Renegotiated)	-	-	-	-	31967 dd 06/03/2009	27 January 2009
Switzerland (Protocol)	X	-	-	-	-	-

Taiwan (Republic of China ROC)	-	-	-	-	17408 dd 03/09/1996	12 September 1996
Tanzania	-	-	-	-	30039 dd 04/07/2007	15 June 2007
Thailand	-	-	-	-	17409 dd 03/09/1996	27 August 1996
Tunisia	-	-	-	-	20728 dd 15/12/1999	10 December 1999
Turkey	-	-	-	-	29464 dd 11/12/2006	6 December 2006
Turkey (Protocol)	-	-	-	-	41009 dd 28/07/2017-	15 July 2017
Uganda	-	-	-	-	22313 dd 24/05/2001	9 April 2001

Source: (SARS 2013:77)

Ukraine	-	-	-	-	27150 dd 10/01/2005	29 December 2004
United Arab Emirates	-	-	-	-	40496 dd 15/12/2016	23 November 2016
United Kingdom	-	-	-	-	24335 dd 31/01/2003	17 December 2002
United Kingdom (Protocol)	-	-	-	-	34971 dd 02/02/2012	13 October 2011
United States of America	-	-	-	-	18553 dd 15/12/1997	28 December 1997
Zambia	-	-	-	-	Proclamations No 174 of 1956 and 60 of 1960	31 August 1956
Zambia (Renegotiated)	X	-	-	-	-	-
Zimbabwe	-	-	-	-	1234 dd 24/09/1965	3 September 1965
Zimbabwe (Renegotiated)	-	-	-	-	40577 dd 27/01/2017-	1 December 2016

Source: (SARS 2013:77)

Appendix B

RATES OF TAX FOR INDIVIDUALS

2022 tax year (1 March 2021 - 28 February 2022)

Taxable income (R)	Rates of tax (R)
1 – 216 200	18% of taxable income
216 201 – 337 800	38 916 + 26% of taxable income above 216 200
337 801 – 467 500	70 532 + 31% of taxable income above 337 800
467 501 – 613 600	110 739 + 36% of taxable income above 467 500
613 601 – 782 200	163 335 + 39% of taxable income above 613 600
782 201 – 1 656 600	229 089 + 41% of taxable income above 782 200
1 656 601 and above	587 593 + 45% of taxable income above 1 656 600

Source: (SARS 2020d:57)

2021 tax year (1 March 2020 - 28 February 2021)

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: (SARS 2020d:57)

Tax Rebates

Tax Rebate	Tax Year							
	2022	**2021**	**2020**	**2019**	**2018**	**2017**	**2016**	**2015**
Primary	R15 714	R14 958	R14 220	R14 067	R13 635	R13 500	R13 257	R12 726
Secondary (65 and older)	R8 613	R8 199	R7 794	R7 713	R7 479	R7 407	R7 407	R7 110
Tertiary (75 and older)	R2 871	R2 736	R2 601	R2 574	R2 493	R2 466	R2 466	R2 367

Source: (SARS 2020d:57)

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