

https://dspace.org/

An analysis of the implications of the amendment of the section 10 (1)(0)(ii) foreign remuneration exemption from the perspective of the South African economy, global employer and expatriate

Swart, Johannes Petrus

2019

https://hdl.handle.net/10539/29682

Swart, Johannes Petrus. (2019). An analysis of the implications of the amendment of the section 10 (1)(0)(ii) foreign remuneration exemption from the perspective of the South African economy, global employer and expatriate. University of the Witwatersrand, https://hdl.handle.net/10539/29682

Downloaded from a DSpace repository. https://dspace.org/



University of the Witwatersrand, Johannesburg

An analysis of the implications of the amendment of the Section 10(1)(*o*)(ii) Foreign Remuneration Exemption from the perspective of the South African economy, global employer and expatriate

Johannes Petrus Swart

A research report submitted to the Faculty of Commerce, Law and Management, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation)

Johannesburg, 2019

DECLARATION

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Commerce (Taxation) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other university.

_____

Johannes Petrus Swart

2019

1. ABSTRACT

The purpose of this report is to evaluate the amendment of the Foreign Remuneration Exemption contained in s 10(1)(*o*)(ii) of the South African Income Tax Act 58 of 1962 (the Act). This report firstly examines the history, definitions and concepts applicable to the relevant exemptions.

South Africa has long been regarded as the starting point for investors to expand into Africa (la Grange, da Silva, Madden, Gouws, Duffy, van Wyk & de Villiers 2017:6). Therefore this report will examine the implications, resulting from the above mentioned amendment, on the South African economy, its taxpayers (employees) and employers. In addition, this report will be from a global mobility perspective therefore making reference to expatriates and global employers.

As the Foreign Remuneration Exemption is not the only tax relief mechanism available to taxpayers, the report will also examine the other available tax relief mechanisms (for example double taxation treaties and foreign tax credits) and their implications.

The ultimate purpose of this report will be to conclude, from a global mobility perspective, on whether the amendment to s 10(1)(*o*)(ii) will have a negative impact on global employers, expatriates and the South African Economy.

Key Words: Foreign Remuneration Exemption, foreign tax credits, double taxation treaties, South Africa, tax resident, expatriates, economy, tax relief, remuneration, source.

TABLE OF CONTENTS

Page

DECLARATION **2**

ABSTRACT **3**

TABLE OF CONTENTS **4**

CHAPTER 1: INTRODUCTION **6**

Introduction and Background 6
Research Question and Sub-Questions 9
Research Methodology 13
Chapter Outline 14

CHAPTER 2: IMPORTANT DEFINITIONS AND CONCEPTS **18**
CHAPTER 3: HISTORY OF EXEMPTIONS **22**

Types of Taxes 22
Evolution of Tax Systems 22
Current Tax Legislation Compared to Historic Tax Principles 23
Determining the Amount Subject to Income Tax 24
Necessities of Life in comparison with South African Tax Legislation 24

CHAPTER 4: CURRENT TAX LEGISLATION COMPARED TO THE AMENDED TAX LEGISLATION **26**

CHAPTER 5: THE IMPORTANCE OF THE INDIVIDUAL TAX BASE **31**

CHAPTER 6: WHO WILL BE AFFECTED? **33**

Resulting Cost, Compliance and Administrative Burdens on Taxpayers 33
Additional Administration and Costs 33
Employees Tax Cash Flow Implications 35
Exit Charge Implications 36
Exchange Control Implications 38
Resulting Cost, Compliance and Administrative Burden on Employers 41
Increased Labour Cost 41
Employees Tax Considerations and Increased Risk 42
Impact on the South African Economy 43

CHAPTER 7: OTHER SOURCES OF TAX RELIEF AVAILABLE TO TAXPAYERS **46**

Double Taxation Treaties (DTT) 46
Foreign Tax Credits 51

CHAPTER 8: COMPARISON TO SIMILAR TAX LEGISLATION IN OTHER COUNTRIES **59**

Australia 59
Botswana 60

Canada....60
China....61
Germany....61
Guinea....62
Hong Kong....62
India....63
Kenya....64
United Arab Emirates....64
United Kingdom....64
United States....65
Summary....66

CHAPTER 9: CONCLUSION....67

ANNEXURES....69

Annexure A – Source of South African Individual Tax Revenue in relation to the 2016 South African Tax Year....69

REFERENCE LIST....70

CHAPTER 1: INTRODUCTION

Introduction and Background

As part of the introduction of the residence basis of taxation in South Africa an exemption known as the Foreign Remuneration Exemption ('the Exemption') was introduced in 2001 into the South African Income Tax Act 58 of 1962 (the Act). It was introduced as the part of the internationally accepted practice of exempting employment income of a resident received in relation to services rendered outside of the country of residence (PWC 2017:1).

Per the article, eighteen years later, since 2001, it is constantly mentioned through various media sources such as television, radio, online articles, etcetera that the South African economy is struggling. South Africa is struggling to acquire enough funds in order to meet the countries' needs and expectations (Trading Economics 2018:1).

South Africa had a budget deficit of R177 billion for the third quarter of 2018. This had increased significantly from the second quarter of 2018 where the deficit was R167 billion. Value-Added Tax (VAT), Estate duty, Income Tax, Dividends Tax, etcetera are all examples of taxes which have recently already been increased. To further emphasise, VAT which was levied at a rate of 14% for 25 years (since 1993) increased to its highest ever rate of 15% (on 1 April 2018) and the highest Personal Income Tax rate has also increased from 41% (since the 2016 South African tax year, 40% since the 2003 South African tax year) to 45% (since the 2018 South African tax year). Therefore, it is important to compare the effects of an amendment, to the affects resulting from the amendment of the various other forms of taxes. It is also important that one views the increase in tax revenue in relation to the current and expected state of the South African economy. A balance is required and therefore alternatives are required to be examined and pursued (Trading Economics 2018:1).

The National Budget Speech was presented by the Minister of Finance on 22 February 2017. It included certain amendments to the Act. The 2017 Budget Review referred to an amendment of the Foreign Remuneration Exemption ('Exemption') contained in s 10(1)(*o*)(ii) of the Act (SARS & National Treasury 2017b:7)(Visser 2017:1).

The initial purpose of the above-mentioned Exemption, when it was initially introduced, was to prevent a taxpayer from being placed in position where he/she is subject to taxes on the same income in more than one tax jurisdiction. This is in line with internationally accepted practice around the allocation of taxing rights between countries. It is however important to note that when the Exemption was introduced in 2001 it was also the international accepted practise that

instances where a taxpayer, regarded as a South African tax resident, went abroad for a period of more than 183 days and rendered services outside of South African boarders, that his/her foreign sourced remuneration was exempt from tax in South Africa. In addition, at that point in time South Africa found itself in a position where it did not have an extensive treaty network available which could have been used as a source of tax relief (Stiglingh, Koekemoer, van Heerden, Wilcocks, de Swardt & van der Zwan 2018:92-93)(PWC 2017:1)(Mohan 2017:2-6)(Manyi 2018:1).

The National Treasury has indicated that the Exemption as it was before the applicable amendment, appeared to be excessively generous in relation to the South African tax net. It was a pre-emptive legislated exemption which limited taxing rights in the South African tax jurisdiction. National Treasury's argument was heightened also by certain instances where individuals worked outside of South African boarders in either a low or zero personal income tax jurisdiction. National Treasury also indicated that the Exemption as it stood before its amendment created an opportunity for double non-taxation (escaping the South African and foreign tax net) as well as unequal tax treatment of South African tax residents who are not in a position to be entitled to the applicable exemption (KPMG 2018:1).

In addition to individual taxpayers benefiting from the Exemption, the global employers also benefited in that they were able to claim the pre-emptive exemption through their payroll as opposed to their employees only claiming the Exemption when submitting their annual South African tax returns. The benefit which global employers received was in the form of a substantial increase in cash flow as they were not required to pay any Employee's tax on behalf of employees. Along with the cash flow benefit, employers benefited in various other ways. Another example of where employers benefited were that they were able to claim tax credits through the payroll without the requirement to provide the South African Revenue Service (SARS) with any proof of foreign taxes incurred by the employees on the remuneration (la Grange *et al* 2017:7)(Manyi 2018:1).

The purpose of this amendment therefore was in order to prevent the loss of tax revenue resulting from South African tax residents who work in various other tax jurisdiction and meet the necessary requirements to qualify for the Exemption. (Manyi 2018:1)(la Grange *et al* 2017:7).

In addition, there were arguments in the past regarding how fair the Exemption was before its amendment, for example the benefit which is received by an expatriate who pays 15% of tax

on his foreign sourced remuneration in a foreign tax jurisdiction and in turn receives a 45% tax exemption in South Africa as opposed to other South African taxpayers who's South African remuneration is subject to a tax rate of 45% (Visser 2017:1).

As stated above, there are a lot of South African tax residents who take up secondments to countries outside South Africa, but are still subject to Personal Income Tax in South Africa. What enhances the importance of the amendment is that the tax revenue collected through Personal Income Tax is regarded as the main source of South Africa's tax revenue as announced by SARS in their preliminary revenue outcome on 3 April 2018. The closest other source of tax revenue in South Africa is VAT, where the tax revenue collection is significantly smaller (SARS 2018b:1).

The research report that follows will determine and examine how the amendment of the Foreign Remuneration Exemption will impact the South African economy as well as expatriates and global employers?

The Exemption and amendment which is the focal point of the research report is a specific provision contained in the Act and provides South African tax residents a pre-emptive exemption. This Exemption, before the amendment, statutorily limits the taxing rights of South Africa and is based on a fixed set of criteria. Once a taxpayer working aboard has met the requirements of the fixed set of criteria, all of the taxpayers' foreign sourced remuneration will be exempt (KPMG 2018:1).

The amendment will limit the Exemption to the first R1 million of foreign remuneration and will be effective from 1 March 2020. The fixed set of criteria which will be mentioned later on will still remain the same (KPMG 2018:1). Before a taxpayer will be in a position to be able to utilise the Exemption it is important for one to understand certain specific concepts and definitions which will be discussed in chapter 2 of the research report (Stiglingh *et al* 2018:92-93).

The research report will also focus on the implications of global employers who second their most important assets (employees) abroad to work and transfer skills. As the global employer's employees will generally be faced with certain additional tax burdens in the foreign tax jurisdictions, employers will often ensure that the remuneration provided is sufficient and that taxation aspects relating to the assignment, are managed accordingly (normally by making use of an external service provider). As a result of the taxation aspects global employers often

engage in pre-assignment planning and implement certain assignment policies which addresses the taxation aspects (Grant Thornton 2014).

Before one can be placed in a position which allows for an informative answer to the research problem, it will be beneficial to also analyse and examine how other tax jurisdictions treat their tax resident expatriates who are seconded to foreign tax jurisdictions.

By reviewing foreign tax relief mechanisms in foreign tax jurisdictions, South Africa will be able to learn from other countries, thereby avoiding potential pitfalls and also be able to determine the viability of tax relief mechanisms. Rather learn out of another countries' mistakes and avoid making them as well.

Research Question and Sub-Questions

The Statement of the Problem

How will the amendment of the Foreign Remuneration Exemption contained in s 10(1)(*o*)(ii) of the South African Income Tax Act 58 of 1962 impact the South African economy, expatriates as well as global employers?

The research report will analyse how the amendment to the Foreign Remuneration Exemption will impact South Africa as a whole, by observing three main components (South African economy, expatriates and global employers.). In addition, a comparative analysis between the amended Foreign Remuneration Exemption and other tax relief mechanisms (double taxation treaties and foreign tax credits), the current South Africa tax legislation and tax relief mechanisms in place in foreign tax jurisdiction will be done. The limitations, monetary implications, differences and similarities etcetera?

The Sub-Questions

In answering the main research question above, the following sub-questions will be addressed:

- What does the Foreign Remuneration Exemption entitle the taxpayer too and who is entitled to the Exemption?

Section 10(1)(*o*)(ii) of the Act is a provision which provides tax relief to individual taxpayers (Stiglingh *et al* 2018:92-93). It is however important to note that in order for an individual to qualify for the Exemption he/she will firstly be required to determine whether the Exemption is applicable to their circumstances. Only after confirming that the Exemption may be applicable, one can determine whether a taxpayer is entitled to the Exemption (Stiglingh *et al*

2018:92-93). In order to do this, one will be required to examine the definition of a South African 'resident' contained in s 1 of the Act, 'remuneration' as set out in paragraph 1 of the Fourth Schedule to the Act as well as other concepts such as 'source', 'tax equalisation' and 'tax protection'.

Once it has been established that the Exemption may apply to a taxpayer's circumstances, it is then necessary to determine whether a taxpayer will qualify for the Exemption. Although the Exemption may be applied to a scenario, there are certain requirements which taxpayers are required to meet in order to qualify for the Exemption (Haupt 2018:95-96). This is a complex piece of tax legislation, which cannot be set out in one paragraph. Therefore, this research report will set out all the necessary requirements, etcetera in order for one to understand the Exemption before moving onto the implications of the amendment.

- How does South African tax residents, the s 10(1)(*o*)(ii) Foreign Remuneration Exemption and exit charges contained in s 9H(2) of the Act impact one another?

In order to understand how tax residency, the Exemption along with the exit charge impact one another, it is firstly important to explain and examine each concept separately.

To summarise these concepts:

According to South African tax legislation a taxpayer is required to be regarded as a South African tax resident, which can be established either by being regarded as an ordinary resident of South Africa or by satisfying the requirements of the Physical Presence Test (Stiglingh *et al* 2018:29-31). It is important to note that should s 10(1)(*o*)(ii) of the Act be amended, it may result in taxpayers deciding to break their South African tax residency statues (Cliffe Dekker Hofmeyr 2017a:5). In turn, this will then result in an exit charge as contained in s 9H of the Act. According to s 9H, when a taxpayer makes the necessary decision to break his/her South African tax residency status, the taxpayer will be deemed to have disposed of his/her worldwide assets at their respective market values on the day before breaking South Africa tax residency (Stiglingh *et al* 2018:550). It is important to also note that s 9H also contains additional technical aspects which is required to be taken into account, such as asset which are not subject to the deemed disposal rules (LexisNexis 2018:101).

- What other sources of tax relief are available to taxpayers and how will it impact taxpayers?

In addition to the Exemption, taxpayers also may be able to utilise other tax relief mechanisms in order to avoid double taxation of income. The alternative tax relief mechanisms include

foreign tax credits in terms of s 6*quat* of the Act and also double taxation treaties which have been entered into between South Africa and other foreign tax jurisdictions (Stiglingh *et al* 2018:790-791).

It is important to note that although these alternative tax relief mechanisms are in place, they hold various implications for the taxpayer who utilises them. Some implications are positive and others negative, however all implications will be required to be considered.

- What are the resulting costs, compliance and administrative burdens of the amendment to the Exemption on expatriate and their global employers?

As previously indicated, there are alternative tax relief mechanisms in place in addition to the Exemption in the form of foreign tax credits (contained in s 6*quat* of the Act) and double taxation treaties (Stiglingh *et al* 2018: 790-791). Unfortunately, these tax relief mechanisms are complex and difficult to implement. Taxpayers will therefore be required to incur additional costs in order to acquire assistance/advice to implement these alternatives (SARS & National Treasury 2017b:6-9).

As this research report will be from a global mobility perspective, it should be noted that instances exist where global employers either provide their expatriates with tax advice or are responsible for their expatriate's tax liability. Therefore, these global employers will also find themselves in a position where they will be required to incur additional costs in order to utilise the above-mentioned tax relief mechanisms (SARS & National Treasury 2017a:6-9). Therefore, labour costs will increase and affect global employers' incentive of conducting business in South Africa and utilising South Africa as a base of operation for regional expansion into Africa. (SARS & National Treasury 2017a:6-9).

- What is the impact of the amendment on the South African economy in the long term?

Per s 9H(2)(*a*)(i) of the Act, once a taxpayer breaks his/her South African tax residency status there is an applicable exit charge which will be required to be taken into account. Should the amendment of the Exemption result in an increased number of taxpayers breaking their South African tax residency status (due to increased tax liability and the administrative burden), the fiscus will benefit in the short term through the additional exit charges. Unfortunately, the fiscus may however then lose out on potential future tax revenue from the lost taxpayers (SARS & National Treasury 2017b:6-9).

Should one observe this situation from a global mobility perspective, it is important to note that the increase in labour costs will discourage current or potential future employers to conduct business through South Africa. This will then decrease the amount of foreign investment in South Africa which in turn will have additional implications. It will therefore be important and beneficial to examine these additional implications (SARS & National Treasury 2017b:6-9).

- How are other countries impacted by similar tax legislation?

In order for one to acquire a proper understanding of the amendment to the Exemption and its implications it will be useful to analyse and examine the tax relief mechanisms which have been made available to expatriates in foreign tax jurisdictions such as Australia, China, Germany, Hong Kong, India, etcetera. See chapter 8 for a list of all the countries analysed.

4. RESEARCH METHODOLOGY

The research will be of a qualitative nature. The sources that will be analysed will include the South African Income Tax Act, journal articles, case law, publications as well as the 2017 and 2018 Budget Review. By making use of these sources, one will be in a position to address the research questions and sub-questions of the report.

There are also other sources available to assist. These additional sources include foreign countries' tax legislation as well as double taxation treaties which have been entered into between South Africa and foreign tax jurisdictions. By making use of these alternative sources one will be in a position to analyse how foreign tax authorities provide tax relief to taxpayers which fall within their tax jurisdictions.

The following will fall outside of the scope of this report and will therefore not be analysed: deductions, other exemptions, possible future amendments and developments.

5. CHAPTER OUTLINE

Chapter 1: Introduction

This introductory chapter will provide the reader with the necessary background for this research report. The research problem along with the applicable sub-problems in relation to the research report will be stated and will form the foundation for the purpose of the research report. Thereafter a general explanation of the amendment to the tax legislation will be stated.

The expatriates working abroad, to which the amendment is directed at, will be examined along with the amended tax legislation. In addition, the chapter will also indicate the important definitions and concepts which will be required to be examined and understood. This includes definitions and concepts such as South African tax residency, 'remuneration' as contained in the Act. This chapter will include a discussion of the current Foreign Remuneration Exemption, before its amendment, contained in s 10(1)(*o*)(ii) of the Act.

Chapter 2: Important Definitions and Concepts

Before one can properly understand the Exemption before and after its amendment as well as the requirements that are required to be met before one can qualify for the Exemption, one will be required to understand certain definitions and concepts. This chapter will provide the important definitions and concepts along with explanations.

Chapter 3: History of Tax Exemptions

When decisions about taxes are made, one should not solely focus on the present and the future. One is also required to revisit the past. By revisiting the past one is often provided with a solution and will understand the path being taken.

Thereafter this chapter will explain the different types of taxes which existed followed by the evolution of the tax systems. Once the background of the historic tax legislation has been provided it will be possible to do a comparison and draw a connection between South Africa's current tax legislation and historic tax legislation. Once the reader understands the history and evolution of tax systems, he/she will be placed in a position to better understand the path being taken by foreign and South African tax legislation. In addition, this will also form a foundation for the chapters which will follow.

Chapter 4: Current Tax Legislation Compared to the Amended Tax Legislation

This chapter will commence by explaining the initial purpose of the implementation of the s 10(1)(*o*)(ii) Foreign Remuneration Exemption.

Thereafter the relief which the Exemption provides a taxpayer will be examined along with the requirements to qualify for the applicable tax relief. An explanation will follow on why National Treasury has an amended the Exemption and what the amendment states. Thereafter an examination will follow on how the amendment will be interpreted and made applicable. In order to better understand the Exemption before and after its amendment, a practical example will also be provided. The example will also demonstrate how to qualify for the Exemption.

Chapter 5: The Importance of the Individual Tax Base

This chapter will provide statistics published by the South African Revenue Service (SARS) and National Treasury in order to highlight the importance of protecting South Africa's individual tax base. In addition, this chapter will also consider positive aspects of the Exemption before its amendment.

Chapter 6: Who will be Affected?

Resulting Cost and Administrative Burden on Taxpayers

The individual tax base is very important to South Africa's fiscal income. This chapter will consider the costs, compliance and administrative burdens on individual taxpayers, which will result from the amendment of the Exemption. There are other alternative tax relief mechanisms in place which can assist taxpayers to avoid double taxation, for example, double taxation treaties and foreign tax credits. This chapter will address the implications which result from utilising these alternative tax relief mechanisms.

Resulting Cost and Administrative Burden on Employers

This chapter will firstly explain why global employers will be implicated by the amendment to the Exemption. Thereafter there will be an examination will take place of the impact of the amendment to the Exemption on labour costs.

Impact on the South African Economy

This chapter will compare the impact on the South African economy resulting from taxpayers that remain tax resident as opposed to breaking their South African tax residency. The chapter

will also compare the advantages and disadvantages the fiscus may face from taxpayers breaking tax residency.

Chapter 6 will also examine the connection of the implications referred to in this chapter to the implications on the South African economy.

Chapter 7: Other Sources of Tax Relief Available to Taxpayers

In South Africa there are also other tax relief mechanisms in place which individual taxpayers can use in order to avoid the double taxation of their income, as is the view of National Treasury. These tax relief mechanisms include foreign tax credits and double taxation treaties, each with its own set of implications. This chapter will therefore provide an explanation of the alternative tax relief mechanisms as well as the implications which will result from utilising them.

Chapter 8: Examples of Similar Tax Legislation in Other Countries

Before one can be placed in a position which will allow for an informative answer to the research problem, it will be beneficial to analyse and examine how other foreign tax jurisdictions treat their tax resident expatriates who are seconded to foreign tax jurisdictions. By reviewing the foreign tax relief mechanisms and how they are implemented in foreign tax jurisdictions, will allow for a better understanding of potential reasoning behind the amended to the Exemption. South Africa will be able to learn from other countries, avoid potentials pitfalls, and be able to determine what mechanisms work and does not work. Rather learn out of another countries' mistake and avoid not making them as well. This chapter will make reverence to countries such as Australia, Botswana, Canada, China, Germany, Guinea, Hong Kong, India, Kenya, the United Arab Emirates, the United Kingdom and the United States.

This chapter will examine how the abovementioned foreign tax jurisdictions tax their taxpayers as well as when taxpayers will trigger tax residency in the foreign tax jurisdictions. The chapter will then also indicate the tax relief mechanisms available to expatriates in the various tax jurisdictions. This will include tax relief mechanisms such as foreign tax credits and double taxation treaties. The reader will then be able to compare the tax relief mechanisms available in the foreign tax jurisdictions to South Africa's tax relief mechanisms.

Chapter 9: Conclusion

This last chapter will be used to summarise all the preceding chapters and come to a conclusion that will be used to answer the research question regarding the various implications on South Africa's economy, global employers and expatriates. In addition to providing a conclusion to the research question, this chapter will also indicate different areas of further research that can be taken which was not address in the research report. As the amended Foreign Remuneration Exemption will only come into effect in the future (1 March 2020, beginning of the 2021 South African tax year) it will be useful to do further research, after the 2021 South African tax year has ended, on how the amendment of the Foreign Remuneration Exemption has impacted the South African economy, along with expatriates and global employers. Were the implications mentioned in this report, as state by various individuals and organisations, correct?

An alternative potential future research area may be to determine other forms of tax relief which may be used or drafted which will counter act any potential negatives of resulting from the amendment of the Foreign Remuneration Exemption.

Chapter 2: Important Definitions and Concepts

As the Exemption before and after the amendment is only applicable to certain taxpayers and certain income, as defined, it is important to acquire clarity and understand the following definitions and concepts:

Tax Residency

South African tax residents are, subject to certain exclusions, taxed in South Africa on their worldwide income. Their income is taxable in South Africa regardless of where the income was earned (SARS 2018c:1). It is important to note that a taxpayer's residency status is not linked to his/her migrations status. As such, tax residency is established regardless of a person's nationality or the passport he/she owns (SAIPA n.d.). In order for an individual to be regarded as a South African tax resident, a taxpayer is required to meet one of the following tests:

Ordinary Residence Test

A taxpayer will be regarded as an ordinary resident in South Africa in the event that it is his/her intention to return to South African and regard South Africa as his/her principal, usual residence, or true home (SARS 2018c:1)(Haupt 2018:25-30).

Physical Presence Test ("PPT")

The requirements which taxpayers are required to meet in order to be regarded as a South African tax resident by way of the Physically Presence Test include:

A taxpayer will be required to be physically present in South Africa (therefore within South African borders) for a period or periods:

• Exceeding 91 days during the current tax year, and

• Exceeding 91 days during each of the previous five tax years, preceding the current tax year, and

• Exceeding a total of 915 days during the six tax year period (current and previous five tax years) (SARS 2018c:1).

Should a taxpayer not trigger South African tax residency by way of the above-mentioned tests he/she will be regarded as a non-South African tax resident and only taxed on his/her South African sourced income (SARS 2018c:1).

Remuneration

The concept of remuneration which is applicable to the Exemption is defined in para one of the Fourth Schedule to the Act and is defined as:

> 'means 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…' (LexisNexis 2017:116),

Therefore, various forms of compensation which a taxpayer receives for services rendered outside of South African borders may be subject to the Exemption (LexisNexis 2017:116).

Source

The concept of source has not been specifically defined in the Act. This has led to a considerable analysis of case law. South African courts have made various judgments, indicated tests and factors which should be utilised to determine the source of income. Despite these tests and factors the formulation of a universal test for determining the source of income will most likely be an impossible task as stated by Watermeyer CJ in *CIR v Lever Bros and Another* (Verwey 2007:19-20). Stratfort CJ quoted the following in the *In Liquidator, Rhodesia Metals Ltd v Commissioner of Taxes, Southern Rhodesia* court case:

> 'Source, means, not a legal concept, but something which a practical man would regard as a real source of income', 'the ascertainment of the actual source is a practical hard matter of fact.'

There are court cases which lay down principles which will be able to assist in the interpretation of the concept of source for example the *CSIR v Lever Bros and Another* where Watermeyer CJ stated on page 8 that:

> *'I think, which should be drawn from those decisions is that the source of receipts, received as income, is not the quarter whence they come, but the originating cause of their being received as income, and that this originating cause is the work which the taxpayer does to earn them, the quid pro quo which he gives in return for which he receives them.'*

The principle which has been laid down by this court case can be summarised as follows:

A two-system test should be applied. One should first determine the originating cause of the income. The activities, decisions, etcetera which led to the production of the income. Thereafter one should determine where the originating cause is located, where the activities, decisions, etcetera were performed (Verwey 2007:19-20).

Other court cases to examine which also lays down principles in relation to source includes *Commissioner For Inland Revenue v Black* court case and the *Commissioner For Inland Revenue v Epstein* court case.

Other facts and circumstances applicable to each scenario should also be taken into account (SARS 2015a:13).

Once the above definitions, concepts and principles are understood and it has been confirmed that the Exemption may be applicable, the specific requirements to the Exemption can be examined.

Global mobility

Human Resource function relating to a company's ability to transfer its employees to offices situated in various countries (Alchemy Recruitment 2018:1).

Expatriate

Individuals who take up assignments and work outside the borders of their home country (the area outside of the borders of the individuals' home county is referred to as the host country). After the assignment has been completed, they will return to their home country (Waggoner 2018:1).

Double Taxation Treaty

It is an agreement entered into between to sovereign states, therefore distinct and separate political systems, in order to either prevent, avoid or alleviate the territorial double taxation of income by the two tax jurisdictions. These countries are commonly referred to as contracting states (ACCA 2012:1) (SARS n.d.).

It is important to note that instances do exist were a taxpayer can also be regarded as a tax resident of both contracting states when applying the Double Taxation Treaty (DTT) which exists between South African and foreign countries. This determination of tax residency by way of the DTT is commonly referred to as the tie-breaker clause (la Grange *et al* 2017:6).

Taxation Policies

As indicated above there are various individuals who take up assignments to locations outside his/her home county. Often companies, especially those who have a large expatriate population, have taxation policies which will govern the assistance employers provide their expatriates. These policies include:

- Laissez Faire – This is a taxation policy where an expatriate will be liable for his/her taxes in both the home and host country (Mohan 2017:7);

- Tax Equalisation – This is a taxation policy where an employee receives the same net salary and he/she is liable for the same amount of tax as if he/she had remained in his/her home country and continued to work in the home country (Mohan 2017:7); and
- Tax Protection – It is a taxation policy where an employer pays the portion of any tax liability, liable in a foreign tax jurisdiction (host country), which is greater than the tax liability of the home country (Mohan 2017:7).

Financial Emigration

Is a formal process which is followed in order to change a person's exchange control residency status in South Africa. This formal process is followed through SARS and the South African Reserve Bank. Financial emigration will however not alter an individual's South African citizenship or passport. An important requirement for an individual to be able to financially emigrate is if his/her permanent intention is not return to South Africa on a permanent basis. As individuals' intentions often change, the above-mentioned requirement is only required when the decision of financial emigration is taken. (Financial Emigration 2018:1)(FinGlobal 2018:1).

Once the definitions, concepts and principles as stated above are understood one will be placed in a position to better understand the research report, its purpose and contents.

Chapter 3: History of Exemptions

When decisions about taxes are made, one should not solely focus on the present and the future. One should revisit the past. By revisiting the past one often is provided with a solution and will understand the path being taken (Vivian 2015:1).

When South Africa's personal income tax system was in the process of being reformed, equality was deeply relied on by the Katz Commission. Classical economists historically have thoroughly debated the concept of equality which influenced the drafting of the South African tax legislation (Vivian 2016).

The Act includes various sections which allow taxpayers exemptions on certain income received (Vivian 2016).

The exemptions exist as a matter of law in terms of the Act. As a result, no additional justification is required, however justification in terms of economic and historical theory may be required.

Types of Taxes

Taxpayers have historically been taxed by way of two types of taxes. These taxes include direct taxes (income tax) and indirect taxes (VAT, etcetera)(Mill 1848:V.III.1)). David Ricardo (1817:105), who is commonly referred to as a classical economist, regarded Direct taxes as the more important type of tax. Direct taxes are paid out of income or capital. The tax burden is therefore placed on individuals. Purchases, etcetera in turn are subject to Indirect Tax (Stiglingh *et al* 2018:14-16).

The Evolution of Tax Systems

In 1776 Adam Smith, also referred to as a classical economist, presented his famous book referred to as the Wealth of Nations. This book contained what is referred to as the Four Canons of Taxation (other names include Main Canons of Taxation or Adam Smith's Canons). These canons defines the principles and rules which forms the foundation upon which a proper taxation system is established (Owlcation 2013). They included the Canon of Equality, Certainty, Convenience and Economy and were impounded by various other classical economists (Vivian 2016:83)(Owlcation 2013).

In 1848 John Stuart Mill drafted a book called the Principles of Political Economy wherein he restated Adam Smith's topics, etc. with greater detail. In Chapter 5 of the book the author

indicated that three of the Four Cannons of Taxation are widely regarded as being self-evident, however the first Conon of Equality will still require discussion (Vivian 2016:83). Mill (1848:V.II.1) indicated that the first cannon was generally misunderstood and simply provided greater detail to the cannon.

The first canon of Smith as cited by Vivian (2016:83) states:

> 'The subjects of every state ought to contribute to the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to revenue which they respectively enjoy under the protection of the state. In the observation or neglect of this maxim consists, what is called the equality or inequality of taxation.' .

The main purpose of a government or state is to provide protection to life and property. In order for a government or state to do this, it requires funding which is collected through taxation (Vivian 2016:84).

Current Tax Legislation Compared to Historic Tax Principles

Historically only two types of taxpayers exist: individuals and profit generating entities each of which are treated similarly and differently for tax purposes (Owlcation 2013)(Vivian 2016:83).

When referring to individuals and equality, not all taxpayers are required to pay an equal amount of tax. They should only pay taxes "in proportion to their respective abilities" (Owlcation 2013)(Vivian 2016:83). Therefore, historically, taxpayers' ability to pay taxes were based on the portion of their revenue which they enjoyed (Vivian 2016:81).

The ability of taxpayers to pay taxes was influenced by the English government that feared a revolution similar to that of the Revolutionary War (1775-1783) and French Revolution (1789 – 1799), both of which resulted from oppressive taxes. England introduced repressive measures being the imposition of a direct tax on individuals' income after it had exempted amounts which were required to support their families (Vivian 2016:81). One can see that war and political realities led to the creation of income tax (Trotter 1969:316).

Jeremy Bentham as cited by Vivian (2016:81) emphasised the above with his famous quote:

> 'The mode of adjusting these inequalities of pressure, which seems to be the most equitable, is that recommended by Jeremey Bentham, of leaving a certain minimum of income, sufficient to provide for the necessities of life untaxed. Suppose 50l [i.e. £50] a year to be sufficient to provide the number of persons ordinarily supported from a single [household] income, with the requisites of life and health and with protection against habitual bodily suffering, but not with indulgence. This then should be made the minimum, and incomes exceeding it should be made to pay taxes not upon the whole amount but upon the surplus' (Vivian 2016:81).

Determining the Amount Subject to Income Tax

Firstly, Adam Smith indicated that taxes are levied on income and not capital. If capital, which is used to produce income, is reintroduced to excessive taxation, a state will collapse (Vivian 2016:83)(Ricardo 1817:106).

John Stuart Mill stated that taxes should only be levied on the revenue which an individual enjoys under the protection of the state (Vivian 2016:84) and Montesquieu (1748:XIII.1) contributed to this, by indicating that revenue should only be taxed by one authority. If not, it will ruin a taxpayer or force the taxpayer to depart from a state (Vivian 2016:84).

After removing the revenue mentioned in the previous paragraph, a taxpayer is left with taxable income (Vivian 2016:87). This amount, taxable income, should then be subject to tax at a flat rate as argued by Mill (1848:V.II.3). Mill (1848:V.II.3) as reiterated by Thomas Paine, rejected a graduated or progressive tax rate system (Vivian 2016:88).

Necessities of Life in comparison with South African Tax Legislation

When analysing South Africa's tax legislation, taxpayers are not able to receive a tax deduction on all of their expenses incurred on their necessities of life. The average cost of the necessities for an individual in 2006 was about R120 000. Fourteen years later this amount has increased substantially through inflation and comparing this to the 2019 South African tax year tax threshold which is R78 150 (rebate of R14 067) one can see that the tax threshold/rebates are not adequate to cover the necessities-of-life of individuals. (Vivian 2016:91-92)

It is important to note that the South African tax rebates and exemptions such as dividends exemptions, etcetera have not been revised to take inflation into account (Stiglingh *et al* 2018:148).

The South African tax system therefore also lacks structural and conceptual coherence. The government currently finds itself in a position to surreptitiously increase the tax burden on the poor class taxpayers by placing them in a position where they in fact pay for services which have already been paid for via the tax systems. The poor are efficiently being double taxed on their necessities of life (Vivian 2016:91-92).

Based on the above the South African tax legislation was influenced by the views of the historical economists (Vivian 2016:80).

By observing the above-mentioned cannon of Equality, one derives at the General Tax Equation which is still found in today's tax legislation. The equation involves adding all of a taxpayer's income and reducing it by amounts which are of a capital. One is then left with Gross Income. Thereafter the Gross Income will be reduced by the costs of the necessities of life (Stiglingh *et al* 2018:115-117)(Smith 1776:V.II.II)(Vivian 2016:83).

The Exemption was introduced into South Africa's tax legislation in 2001. This was the same period when South Africa changed from a source-based tax system to a residence-based tax system (Wiese 2017:1). The residence basis of taxation is based on the 'residence minus' system where taxpayers are taxed on their worldwide income (SARS 2003:1). In order to place South African tax legislation in line with international best practise the Exemption was included in the Act under s 10(1)(*o*)(ii) (SARS 2003:1).

The Explanatory Memorandum on the Revenue Laws Amendment Bill 2000 (EM-2000) states:

> '*Bearing in mind that all other residents will now be taxed on their worldwide income regardless of whether they were physically present in the Republic or not, the provisions of section 10(1)(o) need to be revised. Internationally it is accepted practice to exempt foreign employment income of a resident if the resident was outside his or her country of residence for a period exceeding 183 days (in some countries even as little as 91 days if the income was taxed elsewhere).*
> *It is, therefore, proposed that the principle contained in section 10(1)(o) should be retained. It is also proposed that the principle should be extended to include residents who are outside the Republic, for purposes of rendering services outside the Republic for or on behalf of their employer, for a period which in aggregate exceeds 183 full days in a 12-month period commencing or ending during a year of assessment and for a continuous period exceeding 60 full days during such 183 day period. The effect of this relief measure will be monitored to determine whether certain categories of employees abuse it to earn foreign employment income without foreign taxation'.*

The evolution of tax systems; the history and purpose of the Exemption is important to place one in a better position to understand the amendment of the Exemption along with the implications, etcetera.

Chapter 4: Current Tax Legislation Compared to the Amended Tax Legislation

A previously indicated, the Foreign Remuneration Exemption contained in s 10(1)(*o*)(ii) was implemented primarily to avoid double taxation in respect of employment income which is in line with internationally accepted practice around the allocation of taxing rights (PWC 2017:1) (Mohan 2017:2-6).

In order to understand how the Exemption achieves the goal of preventing and avoiding double taxation of employment income, it is important to understand the Exemption and how to determine when it is applicable.

The Exemption contained in s 10(1)(*o*)(ii) of the Act stated (before the amendment)

> '10. Exemptions. – (1) There shall be exempt from normal tax-…
>
> (o) any form of remuneration-
>
> (i) …
>
> (ii) received by or accrued to any person during any year of assessment in respect of services rendered outside the Republic by that person for or on behalf of any employer, if that person was outside the Republic-
>
> (aa) for a period or periods exceeding 183 full days in aggregate during any 12 months period commencing or ending during that year of assessment; 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…'

Before an expatriate is in position to utilise the Exemption, he/she is required to meet the following requirements to qualify for the Exemption:

- The expatriate is required to earn remuneration. Please note that only certain types of remuneration are applicable. The remuneration, as defined in para one of the Fourth Schedule to the Act, must either be received by or accrue to an expatriate for services rendered outside of South Africa. Therefore, any remuneration relating to the days worked in South Africa will remain taxable in South Africa. It is important to note that should an expatriate receive remuneration after the applicable qualifying period, as referred to below, the Exemption may still apply provided that the remuneration relates to the relevant period in question;
- The services which the expatriate provides are required to be by way of his/her employment. In the past there was a common misconception in relation to the income on which one was entitled to claim the Exemption. Expatriates were of the idea that they could claim the Exemption on any income from any source. Only remuneration received or accrued to an expatriate which related to his/her employment will fall within

the application of the Exemption. It is also very important to note that the remuneration applicable here relates to services rendered outside of South African borders (Visser 2017:1)(SARS 2017b:2)(LexisNexis 2017:116).

- The services are required to be rendered by a South African tax resident as set out in chapter 2;
- The expatriate is required to render services outside South African borders (the 'Republic' as defined in s 1(1) of the Act). Certain instances may exist where the Republic may extend further than geographical limits (landmass and territorial waters);
- In addition to the services required to be rendered outside of South African borders, it is required that the services be rendered outside South African borders during the following qualifying period:
    - Services should be rendered during any 12 month period, for more than 183 days;
    - The taxpayer is also required to render services outside South African borders, during the 12 month period mentioned above, for a continuous period of more than 60 days;
    - The period of 12 months is a rolling 12 month period and as such a sliding ruler test is applied. This test is required to be applied for each year of assessment. One is required to count forwards and backwards. It is important to note that the period of more than 60 continuous days of absence mentioned above may be applicable to a 12 month period in the future or in the past which is required to fall within relevant tax year (Visser 2017:1)(SARS 2017b:2)(LexisNexis 2017:116); and
    - Any remuneration received or accrued by an expatriate which relates to services rendered in and outside of South Africa will be apportioned.
- The taxpayer must not be subject to any exclusion (SARS 2017b:2)(LexisNexis 2017:116).
- It is important to take note that there is no legislative requirement that an expatriate has to incur foreign taxes on the remuneration which is subject to the Exemption (Manyi 2018:1). As a result a lot of expatriates utilised the double non-taxation of income benefit as referred to above (SARS & National Treasury 2017b:7)(Visser 2017:1)(SARS 2017b:2)(LexisNexis 2017:116).

Before applying the Exemption, it is also important to note that there are two types/categories of employees who are specifically excluded from the Exemption and are therefore not allowed to claim the Exemption. The two types/categories of employees include those employees who earn remuneration by way of holding a public office or are employed by an employer contained under s 9(2)(*h*) of the Act such as constitutional institutions, employer in the national, provincial and local public sphere of government (SARS 2017b:8).

Apportionment of Remuneration - As indicated above, only foreign sourced remuneration is subject to the Exemption. Therefore it is important to note that should an expatriate receive remuneration in respect of services rendered in and outside of South Africa, only the foreign sourced portion of the remuneration is subject to the Exemption (SAIT 2017:1).

In order to determine the portion of an expatriate's remuneration for which the expatriate is entitled to the Exemption the following apportionment calculation is used, as applied by SARS:

Working days inside South Africa during the 12 month rolling period divided by the total work days during the same 12 month rolling period multiply the remuneration received in relation to the 12 month period (SAIT 2017:1).

In the event that the remuneration received for services rendered in South Africa is regard as incidental in relation to the foreign services rendered no apportionment is required and the total remuneration is subject to the Exemption (SARS 2017b:8).

In order for a better understanding of the application of the Exemption before its amendment please see the example below as part of SARS' Interpretation Note 16 (Issue 2):

> 'Z is employed by the South African subsidiary of a multi-national company. Due to specialised knowledge, Z was requested to assist a New Zealand subsidiary and left the Republic on 1 May 2014 to commence work on 2 May 2014. Z was contracted to work in New Zealand until 19 December 2014. The subsidiary company in New Zealand remunerated Z during this period. Z departed New Zealand on 20 December 2014 to return to the Republic.
>
> Z returned to the Republic to fulfil local employment obligations during the following periods, which include travel days:
>
> • 22 June 2014 to 6 July 2014;
>
> • 30 August 2014 to 7 September 2014; and
>
> • 11 November 2014 to 20 November 2014.
>
> The total remuneration that Z received for services rendered during the period 2 May 2014 to 19 December 2014 is R500 000…' (SARS 2017b:8-10).

Application of the Exemption

The requirements to qualify for the Exemption are as follows:

- The taxpayer is a South African tax resident – we assume that Z is a South Africa tax resident;
- The taxpayer received remuneration – Z received remuneration of R500 000;
- The remuneration was in respect of services rendered inside and outside of South Africa – Z rendered services in New Zealand (SARS 2017b:8-10).

Met the qualifying period requirements – the taxpayer was outside the Republic for 198 days during the 2015 South African tax year (1 March 2014 – 28 February 2015) of which more than 60 days were continuous (8 September 2014 – 10 November 2014)(SARS 2017b:8-10).

As a result of Z fulfilling all of the necessary requirements, Z is entitled to the Exemption, however not in respect of his total remuneration as a portion relates to South African services rendered. His remuneration is therefore required to be apportioned as follows:

143 days (Days worked outside the Republic) Divided by 166 days (Total days worked) multiply R500 000 (remuneration) and is equal to R430 722. Therefore Z is entitled to an Exemption of R430 722 as it is in relation to the foreign services rendered (SARS 2017b:8-10).

As previously stated an amendment has been made to the Exemption (SARS & National Treasury 2017b:7). The amendment will limit the Exemption and it will only allow a taxpayer to claim an exemption for the first R1 million of foreign remuneration. The requirements to qualify for the Exemption will still be applicable and have not been amended (KPMG 2018:1). In addition, the National Treasury has indicated that the amended Exemption will be effective from 1 March 2020 (2021 South African tax year). This will allow expatriates and the employers to adjust, amend, finalise or formalise their secondment contracts (KPMG 2018:1).

It is important to take note that as there was no requirement to incur foreign taxes in order to claim the Exemption before its amendment, there is also no requirement after the Exemption's amendment to incur foreign taxes (Manyi 2018:1).

In order for a better understanding of the application of the Exemption after its amendment please referred to the previous example provided.

Z received remuneration of which R430 722 related to services rendered in New Zealand. As Z met the requirements of the Exemption he is entitled to claim an exemption of R430 722. In the event that Z were to receive remuneration of which R1 100 000 related to foreign services rendered. The first R1 million will be exempt and the remaining R100 000 will be taxable in South Africa (SARS 2017b:8-10)(LexisNexis 2018:116).

Chapter 5: The Importance of the Individual Tax Base

As previously indicated, Personal Income Tax is an important source of tax revenue for South Africa. According to the 2017/2018 preliminary revenue outcome tax statistics announced on 3 April 2018 jointly by the South Africa Revenue Service (SARS) and National Treasury, the largest portion of South Africa's revenue is collected through personal income tax (SARS 2018b:1).

Personal Income Tax in South Africa contributes 38% (R462.50 billion) to South Africa's total tax revenue collection. Personal Income Tax is the main source of South African tax revenue. The closest other source of tax revenue in South Africa was VAT which contributed R297.8 billion which is 24.5% of South African's total preliminary tax revenue collection. Please see Annexure A which will indicate the source of tax revenue in South Africa along with the applicable monetary values (SARS 2018b:1).

As a result of Personal Income Tax representing a large portion of South Africa's fiscal income, it is important, in order for South Africa to be a 'going concern', to protect the individual tax base (SARS & National Treasury 2017a:1). When protecting the individual tax base it is also important take into account the impact on global employers and the South African economy in addition to the individual taxpayers. Therefore the resulting cost and administrative burdens which is placed on individual taxpayer as well as employers will be examined below in addition to the impact on the South African economy (la Grange *et al* 2017:5).

To further highlight the importance of protecting the South African individual tax base, it is also important to note that as a result of apartheid inequality was created between South Africans. Therefore significant amounts of personal income tax is reliant on a relative small base of taxpayers. Please see Annexure A for further information (la Grange *et al* 2017:4).

Before examining the costs etcetera, it is important to also take note of certain benefits which the Exemption provided from a global mobility perspective before its amendment. These benefits include:

- It is possible to apply the Exemption upfront in an employer's payroll which in turn will provide them with a cash flow benefit. Employers will not be required to withhold PAYE from the individual taxpayers;
- As stated in chapter 7 there are alternative tax relief mechanisms (double taxation treaties, etcetera) available should an expatriate not qualify for the Exemption.

Unfortunately these tax relief mechanisms are difficult to interpret and to apply. Therefore the Exemption before its amendment avoided the expensive and complex interpretation and application of alternative tax relief mechanisms;

- Foreign tax credits are also an alternative tax relief mechanism. Unfortunately it involves a large amount of administration as expatriates are required to acquire and submit proof of income taxes paid in foreign tax jurisdictions a long with their secondment contract, passport, etcetera;
- Global employers are able to second their expatriate to comparatively low personal income tax jurisdictions (with great import or consumer taxes), without the consideration of any potential mismatched tax burden on the expatriates and themselves (KPMG 2018:1)(SARS 2015a:1).

Chapter 6: Who will be Affected

As indicated in the title, the purpose of the research report is to determine the implication resulting from the amendment of the Exemption. In order to determine the implications it is important to firstly identify the persons (natural and juristic) who will be implicated. These natural and juristic persons can be combined into three categories which include:

- Individual taxpayers:
    - South African tax residents (expatriates) who are currently rendering services outside of South African boarders. This also includes self-sponsored individuals taking up job opportunities which exist in a foreign tax jurisdictions, tax equalised expatriates and also expatriates who are not tax equalised or tax protected; and
    - Foreign tax residents who are seconded by their employers to South Africa on long-term assignments (also have employment obligations abroad) and trigger tax residency in South Africa.
- Foreign and South African global employers who seconds their expatriates (which are tax equalised, tax protected or not) to render services outside of South African borders.
- When expatriates, which fall within the South African tax net, as well as global employers operating within South Africa's tax jurisdiction, are implicated by a change in tax legislation it will have an impact on the South African economy (KPMG 2018:3).

What will follow below is to determine the resulting implications on the above mentioned three categories.

Resulting Cost, Compliance and Administrative Burden on Taxpayers

Additional Administration and Costs

On 12 February 2019 South Africa had an unemployment rate of 27.5%. From this statistic it can be established that there is not a sufficient amount of job opportunities available in South Africa. This in turn, along with various other pressures South Africa is currently experiencing, has contributed to the fact that majority of South Africans currently find themselves in a position of poverty. As a result, instance exist where South Africans are incentivised by their circumstance to take up direct employment opportunities outside of South Africa. By utilising these foreign job opportunities, these employees will be able to improve their work experience and to acquire skills which will make them more attractive to employers in the future. It is

mostly the case that these South Africans do not have the intention to cease their South African tax residency. Their intention is to return to South Africa once they have accumulated enough work experience and skills. This will then allow these South Africans to escape their poor circumstances. These types of expatriates normally are not connected to a specific business. Therefore these expatriates will then find themselves in a position where the will be responsible for their own tax affairs, etcetera (Trade Economics 2019:1) (la Grange *et al* 2017:5-10).

As a result of the Exemption being amended, these types of expatriates who are not connected to a specific business will be directly affected. The expatriates will then be required to incur additional expenses in hiring expensive tax consultants, etcetera in order to provide them with advice in applying alternative the tax relief mechanisms such as DTTs and foreign tax credits. In addition to the alternatives being complex and expatriates requiring advise, expatriates will also be faced with an increased administrative burden along with potential cash flow shortages. As these individual are often poor, etcetera they may not be able to incur additional costs in utilising the alternative tax relief mechanisms, leaving them in a position where they may be double taxed (la Grange *et al* 2017:5-10).

As a result of the position the above mentioned expatriates find themselves, they may ultimately decide to break their South Africa tax residency status and not return to South Africa at all. Such instances will result in South Africa losing scarce skilled South Africans which could have transferred these scares skills to other South Africans which in turn could have assisted them in escaping their circumstances such as poverty, etcetera (la Grange 2017:7).

South Africa, over the years has often been used as a base of operations for global employers which allowed them to connect the regional economy to the global economy. This in turn then allows for an inflow of ideas, wealth and skills. The South African economy will then benefit as growth is stimulated. As a result of global employers setting up a base of operations in South Africa, the South African labour force is provided with various opportunities such assignments in Africa. These assignments in relation to the Africa region may vary in size (6 months to 10 years) and can relate to industries such as energy, construction, telecommunication, etcetera. Ultimately it will lead to an inflow of funds as a lot of expatriates will transfer money back to South Africa to provide for their families. The South African fiscus will then benefit from this (la Grange 2017:7-8).

Even though South Africa is an attractive region to setup a base of operations, when operating in the global market South Africa labour cost will be regarded as expensive when comparing

it to countries such as India and the Philippines. Individuals' skills and accompanied remuneration varies between projects, but ultimately the goal of global employers are to acquire the best skilled employees at a cost effective price. Therefore global employers who provide tax services to their employees and even some times pay the tax liability on their employees' behalf as an incentive (tax equalisation and tax protection) will take the amendment of the Exemption, which will increase the cost of labour, into account when deciding to source labour from specific regions. As the cost of labour may substantially increase as a result of the amended to the Exemption, global employers may be discouraged from sourcing labour from South Africa. This will then contribute to the increased unemployment rate along with the poor circumstances which South Africans are facing (Trade Economics 2019:1)(la Grange *et al* 2017:5-10).

Employees Tax Cash Flow Implications

Besides the above mentioned additional considerations which expatriates will be faced with, it is also important to take note of the concept of employees tax (PAYE) which will be required to withhold from employees' remuneration each month and paid over to the revenue authorities. As previously indicated, in past before the amendment of the Exemption (where expatriates who would have definitely met the requirements of the Exemption), employees were not impacted by having employees tax withheld from their monthly remuneration. This was as a result of their remuneration being exempt from tax in instances where expatriates are entitled to the Exemption (Cliffe Dekker Hofmeyr 2017:4).

Expatriates as result received a cash flow advantage. Unfortunately with the amendment of the Exemption, instances may exist where employees earn foreign sourced remuneration in excess of R1 million and will not be entitled to the Exemption on the excess remuneration. In turn this will result in South African employers being obligated to withhold employees' tax from the employees' monthly remuneration. This will negatively impact the cash flow position of these expatriates (Cliffe Dekker Hofmeyr 2017:4).

Should instances arise where too much employees tax was withheld, employees may find themselves in a refund position. Unfortunately, the process of acquiring the refund may be a time consuming and highly administrative task as SARS may place the refund under a verification process, the employee may be require to verify his banking details at a SARS branch, etcetera (Cliffe Dekker Hofmeyr 2017:4).

In contradiction to the above, instance where expatriates work outside of South Africa in foreign tax jurisdictions with high income tax rates and who also earn an annual remuneration which is less than the R1 million limit, should not find themselves in a position of being negatively affected by the amendment of the Exemption. These expatriates will be able to avoid the additional administrative, cost and cash flow burden mentioned above. Only instances where South African tax resident expatriates' remuneration in respect of foreign services rendered exceed the R1 million limit will they find themselves facing the additional implications (Manyi 2017:1)(Cliffe Dekker Hofmeyr 2017:4).

Exit Charge Implications

When calculating capital gains and capital losses certain principles as set out in para 3 and 4 of the Eighth Schedule to the Act are utilised. To summarise, a capital gain/loss is equal to the difference between the proceeds and the base cost of the asset which has been disposed of (LexisNexis 2018:431).

The Exemption before its amendment allowed expatriates to take up contracts, where they were assigned to work outside of South African borders, generally without being placed in circumstances where they had to consider breaking their South African tax residency status. Therefore it was possible to avoid the exit charge contained in s 9H(2) of the Act (LexisNexis 2018:431).

s 9H(2) of the Act indicates that in the event than an expatriate decides to break his/her South African tax residency he/she will be deemed to have disposed of his/her worldwide assets at their respective market values on the day before ceasing tax residency (Stiglingh *et.al.* 2018:549-551)(la Grange. 2017:6-10).

Section 9H(2) of the Act reads as follows:

> '(2) Subject to subsection (4), where a person (other than a company) that is a resident ceases during any year of assessment of that person to be a resident—
>
> (a) that person must be treated as having—
> (i) disposed of each of that person's assets to a person that is a resident on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and ' (LexisNexis 2018:101)

Para 53 to 56 of the Eight Schedule to the Act does however set out certain specific assets which are not subject to capital gains tax when a taxpayer decides to break his/her South African tax residency.

These exclusions include assets such as personal use assets (furniture, personal vehicles. etcetera), retirement funds, fixed immovable property situated within South African borders and bank accounts. There will be no impact on these assets when the expatriate break their South African tax residency status (Stiglingh *et.al.* 2018:549-551)(la Grange 2017:6-10).

Unfortunately, as a result of the amendment of the Exemption, instances exist where expatriates compare the tax liability resulting from the decision to remain a South African tax resident to the tax liability resulting from the decision to cease South African tax residency. Should the case arise where the tax liability is less when breaking one's tax residency as opposed to remaining a tax resident in South Africa, a lot of expatriates will decide to break their South African tax residency status and leave South Africa. Therefore, it can be said that the amendment of the Exemption has placed expatriates under an increased tax liability (Stiglingh *et.al.* 2018:549-551)(la Grange 2017:6-10).

Please see the example in the paragraph below of how a person may be caught between the above-mentioned additional tax implications when remaining a tax resident (amounts over the R1 million threshold taxable) and when breaking tax residence (exit charge).

If an expatriate working abroad decides to cease his/her tax residency as a result of the amendment of the Exemption, he/she will have to remember the exit tax charge. When he/she ceases tax residency he/she will be subject to an exit tax charge on his/her worldwide assets (even those which he/she acquired while working abroad). The exit charge may then sway the person to not cease tax residency and to claim the limited Exemption and incur additional costs in claiming foreign tax credits (BusinessDay 2018:1)(Cliffe Dekker Hofmeyr 2017:4)(Stiglingh *et.al.* 2018:549-551)(la Grange 2017:6-10).

From the fiscus point of the exit charge, as described above, it protects the individual tax base as individual taxpayers are 'incentivised' to keep their South African tax residency as opposed to paying the exit charge. Individuals will rather keep their tax residency and avoid the expensive deemed disposal which can occur.

Instance where family members work abroad in order to remit funds to their families in South Africa may see a reduction in the amount of funds being transferred to South African due to the additional tax. This may result in people finding themselves in poverty.

It is very expensive to live abroad and with the additional tax burden, taxpayers may find themselves or their family living in poverty, etcetera (SARS & National Treasury 2017b:6-9)(Mohan 2017:9-10).

Exchange Control Implications

An additional concept that often goes hand-in-hand with employees who are seconded abroad and must be considered is the concept of exchange control. In recent years exchange control has also become more relevant for organisations, those foreign organisations investing in South Africa in order to expand into Africa as well as South African organisations attempting to expand outside of South African borders (Norton Rose Fulbright n.d.).

Exchange control regulations in South Africa, was promulgate by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.9 in Government Gazette No. 33926 of 14 January 2011, manages/controls the flow of funds in and out of South Africa. This is not unique to South Africa, however there are currently only a few countries which still make use of exchange control regulations (Incompass Forex n.d.)(South African Reserve Bank n.d.).

The South African Reserve Bank (SARB) by way of their Financial Surveillance department known as FinSurv, regulates, administers and oversees capital/funds which are transferred in and out of South Africa. SARB in turn designates the necessary power to authorised dealers (such as banks, certain trading companies, etcetera) who are then responsible to regulate and oversee the above. South Africa's exchange control regulations have been eased over the past years, however the legal and regulatory regime responsible for governing the transfer of funds in and out of South Africa is complex (Norton Rose Fulbright n.d.)(Incompass Forex n.d.)(South African Reserve Bank n.d.).

In order to regulate and oversee the capital/funds in South Africa certain regulations have been promulgate. Regulations currently in place, places restrictions on the transferring of funds offshore. An individual who is regarded as an exchange control resident (by way of taking up permanent residency, he/she is domiciled or registered in South Africa) is entitled to allowances in relation to the transferring of funds per calendar year (Bidvest Bank n.d.)(South African Reserve Bank 2018:7).

These allowances include:

- Discretionary Allowance, which allows for the transfer of R1 million abroad which can be used for any purpose; and
- Foreign Investment Allowance, which allows for the transfer of R10 million which can be used for investment purposes. A SARS tax clearance certificate will however be required to be obtained prior to transferring funds by way of the Foreign Investment Allowance. This tax clearance certificate must be obtained from SARS (Bidvest Bank n.d.)(South African Reserve Bank 2018:8-14).

Individuals are allowed to keep income earned in relation to foreign services rendered abroad, however individuals are not allowed keep income abroad in the event that the income was earned abroad in relation to services rendered in South Africa. Should an individual receive income abroad in relation to services rendered in South Africa, he/she will be required to transfer the funds to South Africa within a period of 30 days for the date of receipt (Bidvest Bank n.d.)(South African Reserve Bank 2018:8-14).

Therefore, in addition to breaking one's tax residency, it is also important to consider one's exchange control residency. Should expatriates as a result of the amendment of the Exemption decide to break their South African tax residency, it may be important to also cease their South African exchange control residency by financially emigrating. Breaking one's exchange control residency is however often complex, administration intensive and also involves an additional cost when submitting an application to an authorised dealer such as a bank. Expatriates will then also generally be required to incur additional costs in obtaining consultation and assistance to break his/her exchange control residency.

Please see below regarding certain advantages and disadvantages which will be faced by expatriates when breaking exchange control residency.

Advantages

- Financial emigration will often be regarded as the simplest, easiest and most compliant path a taxpayer can utilise to cease his/her South Africa tax residency (Financial Emigration 2018:1);
- By financially emigrating an individual will be ensured that he/she will be compliant from a tax perspective. When SARS has made a decision on a taxpayer's tax residency status it cannot be reversed later on based on the same factors SARS used to make their

initial decision. A taxpayer will be able to return to South Africa without any attempt from SARS to tax them on income which was earned during the tax years while he/she was regarded to have financially emigrated, making the taxpayer tax compliant (Financial Emigration 2018:1);

- Individuals are able to backdate his/her financial emigration to the date he/she initially left South Africa (Financial Emigration 2018:1);
- When financially emigrating, a taxpayer will be allowed to transfer his/her retirement annuity abroad into a foreign retirement policy without any tax effects or early withdrawal penalties. Alternatively, a taxpayer may choose to keep their retirement annuity/funds in South Africa (Financial Emigration 2018:1);
- When financially emigrating, an individual will no longer be subject to exchange control restrictions (discretionary allowance and foreign investment allowance) as mentioned above. Therefore he/she will be able to freely transfer funds outside of South Africa, regardless of the amount (FinGlobal 2018:1).
- From an administrative view point, financial emigration will be beneficial as one will not have multiple bank accounts, etcetera to manage (FinGlobal 2018:1).
- Financial emigration is cost effective compared to any future potential tax savings resulting from the application of DTTs (Financial Emigration 2018:1).

Disadvantages

- An individual's bank account will change from a resident bank account to a non-resident bank account (blocked asset or capital account). This account will then not allow internet banking transactions to take place, which creates a problem for those individuals who are located outside of South African borders (Financial Emigration 2018:1);
- An individual will no longer be allowed to have a South African credit card or any personal loans, such as finance on a vehicle or a house, etcetera. Therefore, an individual will be required to settle these debts before financially emigrating (Financial Emigration 2018:1).

Therefore, as a result of the amendment to the Exemption expatriates are left with a further consideration in the form of financial emigration (Financial Emigration 2018:1).

Resulting Cost, Compliance and Administrative Burden on Employers

As previously indicated, South Africa has long been regarded as the starting point for international investors to expand their business operations into Africa (la Grange *et al* 2017:8). Companies establish their base of operations in South Africa either through headquarter companies or as a subsidiary to an international group. In turn, this then results in significant investment in South Africa which creates employment opportunities etcetera (la Grange *et al* 2017:8). Newly establish workforces are then seconded to other countries throughout Africa (PWC 2017:2).

Before considering the implications resulting from the amendment of the Exemption it is important to know that over the years, the cost of South African labour has been regarded as expensive when being compared to the labour costs of countries like India and the Philippines. Taxes will also form part of labour costs in instance when the concepts of tax equalisation and tax protection, previously referred to, are applicable (PWC 2017:2).

When considering the above, one will be placed in a position to better understand and examine the impact of the amendment to the Exemption on the labour costs as well as investment into South Africa (Mohan 2017:1-10).

Increased Labour Costs

Often global employers second their employees abroad with contracts which makes reference to the fact that the employees basis of employment are tax equalised or tax protected. As such, global employers will be liable for the additional taxes which arise from their employees working abroad. Before the amendment to the Exemption, employees' foreign remuneration was exempt by way of the Foreign Remuneration Exemption. As such employers did not have to consider the additional labour cost resulting from paying increased taxes on their employee's behalf. Unfortunately, as a result of the amendment to the Exemption, global employers will be required to closely monitor the potential increased labour costs in the form of additional taxes incurred on the foreign remuneration (exceeding R1 million) earned by their employees (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

In addition, instances may also arise where expatriates are upset about the exit charges (as previously mentioned) they are facing and will request their employers to pay the exit charge on their behalf. A similar situation in the future may occur in instances where global employers second their employees to South Africa and these employees may trigger South African tax

residency (with a foreign services obligation) (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

It is also common for global employers to provide their expatriates with tax services in the foreign tax jurisdiction where the expatriates are seconded to. Employers may then be negatively impacted by the fact that they will be required to incur additional expenses on tax services in situations where their expatriates are entitled/required to make use of the more complex and administrative intense tax relief mechanisms (foreign tax credits and DTTs). Should expatriates be negatively implicated by the amendment to the Exemption, global employers may find themselves in a position where employees do not want to take up secondments which will affect their ability to be competitive and serve the global market (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

Employees Tax Consideration and Increased Risk

An additional consideration which employers will be faced with is the amount of employee's tax (PAYE) which they will be required to withhold in South Africa from their employee's remuneration. As previously indicated, in past before the amendment, employers were entitled to not withhold and pay over any PAYE to the revenue authorities in the event that their expatriates met the requirements of the Exemption. The reasoning behind this was that even though the employee received remuneration as defined, he/she would not be subject to tax on the foreign remuneration had he/she met the requirements to qualify for the Exemption. Employers therefore benefited from less administration costs along with their employees receiving a cash flow advantage (no requirement to pay taxes) (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

Unfortunately, with the amendment to the Exemption, employers may find themselves in a position where they will be required to incur additional costs in the form of constructing policies, amending payroll systems, etcetera in order to facilitate the amendment. This will often be the case in instances where employees earn foreign sourced remuneration greater that R1 million and are not entitled to the Exemption on the excess remuneration as a result of the amendment to the Exemption (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

In addition to amending the payroll systems and policies, employers will be required to withhold employees' tax as stated in para 2(1) of the Fourth Schedule to the Act. This results in employers being faced with a greater administration burden as well as additional compliance

requirements to consider (for example the deadline to pay over the Employees tax to the revenue authorities, etcetera) (Cliffe Dekker Hofmeyr 2017:4) (Stiglingh *et.al.* 2018:243-266).

Further issues will arise in the form of the amount of employee's tax that will be required to be withheld from employees and paid over to the revenue authorities. This will involve additional complex calculations or even employers incurring additional costs on obtaining tax consulting services (Cliffe Dekker Hofmeyr 2017:4).

It is important to note that in the event that global employers do not adhere to the compliance requirements, etcetera and do not pay over the correct amount of employees tax on behalf of the expatriate or on time, the employer will be liable for the outstanding employees tax which was not deducted and paid over. In addition to the employee's tax, the employer will also be liable for any resulting interest and/or penalties. From the above it can be seen that the amendment to the Exemption has placed employers in a position of increased risk (Cliffe Dekker Hofmeyr 2017:4).

When taking all of the above-mentioned implications into account, global employers may want to amend the global mobility strategy as it will be less attractive for them to employ South Africa tax residents to render services outside of South African borders (Manyi 2017:1).

In instances where global employers have South African tax resident expatriates who will be working outside South Africa in tax jurisdictions with high income tax rates and who also earn an annual remuneration which is less than the R1 million limit, should not find themselves in a position of being adversely affected by the amendment of the Exemption. Only instances where global employers have South African tax resident expatriates who earn remuneration, in respect of foreign services rendered, exceeding the R1 million limit will they find themselves facing the additional implications (Manyi 2017:1).

Impact on the South African Economy

South Africa currently has a lot of attractive assets such as an advanced, diversified and productive economy, an important demography, rich in natural resources, an active stock exchange, etcetera (Santander n.d.).

In contrast to the above, there are also unattractive aspects relating to South Africa, for example there are legal uncertainties, significant corruption, political uncertainties, lack of a high-skilled labour force, high unemployment, etcetera. As a result, foreign investors are faced with a difficult decision to either invest in South Africa or abroad (Santander n.d.).

Foreign Direct Investment (FDI) is very important for economic growth in South Africa. A decline in FDI in South Africa will firstly negatively impact the operational activity of South African companies leading to a reduction of trading activity, cash flow and the companies' financial position and in turn a loss in jobs and a decline in the economic growth (Asafo-Adjei 2007:114-115).

As previously indicated, South Africa has long been regarded as the starting point for international investors to expand their business operations into Africa (la Grange *et al* 2017:8). Unfortunately, as a result of the negative implications on global employers and their expatriates, resulting from the amendment to the Exemption, South Africa may find itself in a position where global employers do not regard South Africa as a suitable market to invest in. This in turn will result in job losses as well as the loss of potential future employment opportunities (Asafo-Adjei 2007:114-115).

Expatriates may find them in a position where they decide to leave South Africa completely and break their South African tax residency status as well as exchange control status. This exit charge as indicated earlier will incentivise expatriates to remain South African tax residents, however the negative implications resulting from the amended Exemption may sway expatriates to break their South African tax residency.

The South Africa economy may initially benefit from the amended Exempt in instances where expatriates decide to break their South African tax residency. This is as a result of the additional income resulting from the exit charges levied.

Unfortunately, over the long run the economy may be severely impacted as a result of the loss of the future tax revenue which could have been collected from those expatriates had they not decided to cease their South African tax residency status. In addition to losing additional income, there will also be a loss of skilled employees who could have transferred their skills to fellow South Africans making them more desirable for employment.

Global employers will also find themselves in a difficult position when competing in a highly competitive global market. Global employers who agree to be liable for any additional taxes resulting from their expatriates' assignments will find themselves in a position of decreased profits and cash flow. In turn global employers will be forced to amend their global mobility strategy as it will be less attractive for global employers to employ South Africa tax residents to render services outside of South African borders. Global employers may also then retrench employed South African tax residents. Then the South African economy will be negatively

implicated from the additional unemployed residents as well as the loss of potential future employed residents (Manyi 2017:1).

It is interesting to note that countries such as the United Kingdom (UK) currently do not entitle their taxpayers an exemption similar to the Exemption provided in South Africa. Therefore, their expatriates generally cease their tax residency in the UK and are then not taxed on foreign sourced remuneration. In addition, the UK does not levy an exit tax charge upon their taxpayers who cease their tax residency (la Grange *et al* 2017:6).

On 1 July 2016 Australia eliminated their foreign remuneration exemption. This seems to be similar to South Africa as Australia also has an exit tax charge. The difference comes in that the Australian exit tax charge is based on an emigrant's decision to either break his/her Australian tax residency or allow their assets to be subject to the full capital gains tax after he/she has left has the country.

Based on the above there are various implications which will be required to be taken into account by amending the Exemption.

Chapter 7: Other Sources of Tax Relief Available to Taxpayers

In addition to the Exemption there are also other tax relief mechanisms in place which are available to expatriates who are seconded to foreign tax jurisdictions. These sources of tax relief include Double Taxation Treaties (DTT) and foreign tax credits. These mechanisms may have their own benefits (Manyi 2018:1).

Unfortunately, these sources also have certain drawbacks which results in them not being used as an expatriate's first choice when it comes to using tax relief mechanisms. It is important to note that as a result of the R1 million limit contained in the amended Exemption, the alternative tax relief mechanisms will generally only be used in instances where South African tax resident expatriates earn foreign remuneration in excess of R1 million (Manyi 2018:1).

Double Taxation Treaty (DTT)

A general assumption exist that should an expatriate not qualify for the Exemption or should he/she earn more than the R1 million threshold, he/she may rely on the DTT in place between South Africa and a foreign country/tax jurisdiction. Unfortunately, as part of the South African DTT network, the country of source (normally where the services are rendered) will only be provided with taxing rights should requirements, which are equivalent to those of the Exemption before its amendment, be met. South Africa mainly follows the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention (MTC) (KPMG 2018:1)(SARS 2003:4-5).

Para 19 of the 'Introduction to the Commentaries on the OECD Model Tax Convention on Income and on Capital' states the following:

> 'For the purposes of eliminating double taxation, the Convention establishes two categories of rules. First, Articles 6 to 21 determine, with regard to different classes of income, the respective rights to tax of the State of source or situs and of the State of residence […] In the case of a number of items of income and capital, an exclusive right to tax is conferred on one of the Contracting States. The other Contracting State is thereby prevented from taxing those items and double taxation is avoided. As a rule, the exclusive right to tax is conferred on the State of residence. In the case of other items of income and capital, the right to tax is not an exclusive one.' (SARS 2015a:5).

The DTT will therefore not provide the country of source exclusive taxing rights. As such the DTT will not provide an expatriate with tax relief by way of allocating taxing rights, however the DTT may provide tax relief in the form of breaking an expatriate's tax residency status. This can be done by way of the tie-breaker clause which is normally contained in Article 4 'Residency' of the OECD MTC (KPMG 2018:1)(SARS 2003:4-5).

Please note that this tie-breaker clause will only be applicable should a taxpayer, in terms of South African tax legislation and foreign tax legislation, be regarded as a tax resident in South African as well as in the foreign country (KPMG 2018:1)(SARS 2003:4-5).

Article 4 contained in DTTs between South Africa and other foreign countries which provides tax relief by way of the tie-breaker clause, will normally state:

> 'individual's status shall be determined in accordance with the following rules:
>
> (a) the individual shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
>
> (b) if sole residence cannot be determined under the provisions of sub-paragraph (a), the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
>
> (c) if the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
>
> (d) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.' (SARS 2003:4-5)

The wording above can be found in DTTs which have been entered into between South Africa and the United Kingdom and similar to DTT's between South Africa and the following countries Botswana, Denmark, Ghana, India, Kenya, Mauritius, Mozambique, Singapore, the United States of America, etcetera (SARS 1971)(SARS 1995:3-4)(SARS 1997:4)(SARS 1999:4)(SARS 2003:4-5)(SARS 2004:4)(SARS 2007:4)(SARS 2015b:4-5)(SARS 2015c:5) (SARS 2017a:4-5).

In simpler terms, should a taxpayer be regarded as a tax resident in both South Africa and the relevant foreign tax jurisdiction/country, a taxpayer will break his/her South African tax residency status and be regarded as exclusively tax resident in the other tax jurisdiction/country by taking into account the below:

- In which tax jurisdiction/country does the taxpayer have a permanent home which includes a flat, house, etcetera which is permanently available;
- Should the taxpayer have a permanent home available in both tax jurisdictions/countries, one will look at in which tax jurisdiction/country are the taxpayer's personal and economic interests closer. Where is his/her family, where does he/she earn their income, where is his/her other sources of income located, etcetera;

- Should the taxpayer's personal and economic interest be equally allocated between both tax jurisdictions/countries, one will look at in which tax jurisdiction/country is the taxpayer a national;
- Should the taxpayer be regarded as a national in both tax jurisdictions/countries, a mutual agreement between the two tax jurisdictions/countries will be required to be made to determine where a taxpayer will be regarded as exclusively tax resident (SARS 2003).

Unfortunately, not all the DTTs which have been entered into between South Africa and foreign tax jurisdictions/countries include the above-mentioned Article (for example the South African and Zambian DTT, etcetera). Therefore should an expatriate take up a secondment/assignment to a foreign country/tax jurisdiction, he/she may not be able to utilise the above mentioned tax relief (SARS 1956:)(SARS 2018d:1). In addition, there are also countries for which no DTTs exist for example between South African and Mongolia, Argentina, Colombia (SARS 2018d:1).

Should the DTT break an expatriate's South African tax residency status, he/she will only be taxed in South Africa on his/her South African sourced income. Therefore, the income received for services rendered outside of South Africa will not be regarded as taxable in South Africa. Unfortunately, in terms of s 9H of the Act, when a taxpayer breaks his/her South African tax residency status, he/she will be deemed to have disposed of their worldwide assets at their respective market values on the day before breaking tax residency (Stiglingh *et.al.* 2018:549-551)(KPMG 2018:1). This therefore makes the use of a DTT as a tax relief mechanism less favourable. It is important to note that the following assets are however excluded:

- Fixed immovable property located in South Africa;
- Bank accounts;
- Retirement funds;
- Personal use assets (for example: vehicles, furniture, etcetera) (Stiglingh *et.al.* 2018:).

In determining whether the claiming of tax relief by way of DTT is a viable tax relief option, it will be useful to analyse the advantages and disadvantages resulting from utilising DTTs.

Advantages

- DTTs are firstly not permanent solutions. As such, should an expatriate work abroad and his foreign income is regarded as exempt in South African in terms of the DTT, it

will not prevent an expatriate to return to South Africa. There will be no formal process that will be required to be followed in order to return to South Africa (Financial Emigration n.d.). Therefore, an expatriate will have the opportunity to make certain decisions which will ensure that he/she fulfils the necessary requirements (Creamer Media's Engineering News 2018:1).

- In the event that an expatriate has not emigrated from South Africa, from a financial perspective, and SARS provides an expatriate with a tax liability, the DTT can be used to prevent the taxability on foreign income (Financial Emigration n.d.).
- The administration involved in utilising DTTs is less complicated as opposed to the administration resulting from the use of foreign tax credits (Financial Emigration n.d.).

Disadvantages

- The tax residency status in terms of the DTTs will be required to be reviewed annually. Therefore, as part of every tax year a lot of additional administration takes place in order to confirm to SARS that an expatriate has met the necessary requirements, included in the specific articles of the DTTs, to qualify as a non-South African tax resident. This can be a costly task as global employers who provide tax services to their employees generally outsource the tax services to external service providers. As such, global employers will be responsible to incur the necessary external costs relating to each tax year in order to determine their expatriates' tax residency status (Financial Emigration n.d.).
- Often SARS will require tax residency certificates from the foreign tax jurisdictions. Unfortunately, this is an expensive task in certain foreign countries, of which the additional cost will normally be borne by the global employer. In addition, the process of acquiring a tax residency certificate in certain foreign countries are difficult and take time. Specific requirements will be required to be met and in certain foreign countries there is no formal process in place to acquire a tax residency certificate (Financial Emigration n.d.).
- The DTTs have specific requirements in place which will be required to be monitored on a consistent basis. This again is a time consuming and costly exercise. There are situations where it can be argued to either side that an expatriate has or has not met the necessary requirements. This will increase the cost to global employers as they will have to incurred additional costs on external service providers to indicate to SARS that the requirements have been met (Financial Emigration n.d.).

- The utilising of DTTs is not regarded as a permanent solution, which makes it the more costly and risky tax relief mechanism (Financial Emigration n.d.).
- Expatriates are often left with a greater administration burden along with additional compliance requirements (KPMG 2018:1)(SARS 2015a:1).
- SARS is also left with a greater administrative burden as they will have to request and review certain specific supporting documents (KPMG 2018:1).
- In addition to expatriates and SARS, global employers' will also be faced with a greater administrative burden (KPMG 2018:1).
- In cases where expatriates remain on the South African payroll, but also receive remuneration (benefits, etcetera) from the foreign payroll and a PAYE withholding is required in both tax jurisdictions, the double tax withholding may create cash-flow shortages. This is as a result of the tax relief not being able to be taken into account when preparing South African payrolls. In order to mitigate this, employers may apply for a tax directive as previously mentioned. Again this will create a greater administrative burden (Deloitte 2018:1) (KPMG 2018:1).
- Difficulties and problems are often experienced when claiming tax relief by way of DTTs (Deloitte 2018:1).
- The uncertainty of meeting requirements increases the difficulty in estimating provisional tax liabilities (KPMG 2018:1).
- It is difficult to determine the documentation which SARS will regard as sufficient proof for claiming tax relief as there is no consistent approach regarding the required documentation available. This again will result in additional administrative issues (KPMG 2018:1)(Deloitte 2018:1).
- DTTs and their application are complex and therefore expatriates as well as global employers (who provide tax services to their expatriates) will be required to seek advice from tax advisors which can be an expensive exercise (la Grange *et al* 2017:10).
- South Africa does not have DTTs with all the existing foreign countries and therefore DTTs as a tax relief mechanism may not always be available (SARS 2018d:1)(Creamer Media's Engineering News 2018:1).

Foreign Tax Credits

In cases where an expatriate is not able to acquire relief as a result of a DTTs not providing exclusive taxing rights or in the event that no DTT has been entered into between South Africa and the foreign tax jurisdiction, there will be little other tax relief available. Generally, there are three methods which a country can use in order to resolve double taxation under their respective domestic tax legislation (la Grange *et al* 2017:10). These methods include:

- Exemption method – As part of this method an exemption is provided to the expatriates. In terms of South African tax legislation, the Exemption as discussed above is provided to expatriates;
- Credit or rebate method – Please see the discussion below;
- Deduction method (s 6*quin* of the Act) – Not applicable as much in South African tax legislation (SARS 2015a:5).

The General Report of the 65th Congress of the International Fiscal Association made the following comments in relation to the abovementioned methods:

> 'For obvious reasons, the exemption method is widely applied by countries taxing on a territorial basis, whereas the credit method seems better designed for countries taxing on a worldwide basis. But a closer look at the applicable rules leads to a less clear-cut distinction. As a matter of fact, no country operates a pure credit system or a pure exemption system. Almost all countries mix both methods. The credit method finds its way into territorial taxation systems, as does the exemption method into worldwide taxation systems. Therefore, beyond conceptual differences between worldwide taxation and territorial taxation, all applicable systems have a hybrid character' (SARS 2015a:5).

There are situations which exist were income earned in relation to services rendered is subject to similar income taxes in both South Africa and in a foreign tax jurisdiction. This therefore results in international juridical double taxation which is, as stated in Interpretation Note 18 (Issue 3) to the Act, as 'the imposition of similar taxes by two or more sovereign countries on the same item of income (including capital gains) of the same person' (SARS 2015a:1) (KPMG 2018:1) (SARS 2009:3).

Generally, tax relief in relation to juridical double taxation will be granted to the residence country. Therefore, the source country's (the foreign tax jurisdiction where the applicable services where rendered) right to tax income will take priority over the country in which the expatriate is a tax resident. Therefore, expatriates will be entitled to claim relief in the form of foreign tax credits unilaterally by way of the domestic tax legislation (in terms of s 6*quat* of the Act) and bilaterally through various DTTs (SARS 2015a:9) in relation to the income which was subject to juridical double taxation. This will then prevent an expatriate from being

negatively impacted by being subject to tax on the same income in more than one tax jurisdiction (KPMG 2018:1)(SARS 2009:3).

As mentioned, in South Africa expatriates are entitled to make use of tax credits as a form of tax relief in order to avoid double taxation. Currently in South Africa there are a few credit methods which are employed. This includes the s 6*quat*(1) tax credits (used in relation to the double taxation of income, but for purposes of this research report it is in relation to remuneration) and s 64N tax credits (used in relation to the double taxation of foreign dividends).

For the purpose of the research report the focus will be on the tax relief provided by way of s 6*quat* of the Act which provides detailed rules in respect of receipts and accruals which qualify for a credit, the deduction of foreign taxes, etcetera (SARS 2015a:10).

Some of these rules include:

- The type of income received or accrued which qualifies for the Exemption;
- The value of the credit which can be claimed;
- Limitations in respect on the credit;
- The excess foreign taxes which are carried forward to future tax years;
- Etcetera (SARS 2015a:10).

Section 6*quat* reads as follows:

> '6*quat* Rebate or deduction in respect of foreign taxes on income.—(1) 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— …
>
> in determining the normal tax payable in respect of that taxable income there must be deducted a rebate determined in accordance with this section…
>
> which is so included in that resident's taxable income…
>
> (1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable to any sphere of government of any country other than the Republic, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) by…

which is so included in that resident's taxable income…'(LexisNexis 2018:56-57).

When applying for foreign tax credits, the foreign sourced income will be subject to both South African and foreign taxes in the event that the foreign taxes incurred on the income is less than the normal tax in South Africa. Generally, the net normal tax will be equal to the foreign sourced income multiplied by the difference between the South African Income Tax Rate and the similar foreign income tax rate. As a result of the above the total foreign and South African tax will be equal to the South African tax liability had the income only been subject to tax in South Africa (SARS 2015a:10).

It is very important to note that the s 6*quat* foreign tax credit is limited to the taxes paid by the expatriate had he/she earned the income from South Africa. As a result, the total amount of taxes paid in South Africa and abroad is equal to the amount of tax the expatriate would have paid had he/she remain home and rendered services in South Africa (SARS 2015a:10). Therefore, in the case of a South African tax resident, South Africa will have a residual right to tax the income resulting from foreign services rendered (SARS 2015a:10).

It is therefore fundamental that the gross foreign sourced amount be included in a taxpayer's taxable income (SARS 2015a:9). An expatriate will not be entitled to claim a foreign tax credit in the event that the income earned is not subject to income tax (KPMG 2018:1).

It is also important to note that the income, which is taken into account when determining whether an expatriate can claim a foreign tax credit, is required to be subject to a form of taxation similar to South Africa's Normal Income Tax. In case law and regulations today, the principle established by the United States Supreme Court during the *Biddle v Commissioner* court case is taken into account when determining whether foreign taxes levied is form of 'income tax'. As a result, cases may exist where income is subject to South African Income Tax and to a type of tax in a foreign tax jurisdiction which, based on the above, is not regarded as an Income Tax and as a result a taxpayer will not be entitled to claim a foreign tax credit (SARS 2015a:20).

In addition, should a situation arise where the expatriate's income not be taxable in the foreign tax jurisdiction for example income earned for services rendered in the United Arab Emirates (UAE) is not taxable in the UAE and therefore an expatriate will not be entitled to a foreign tax credit (KPMG 2018:1).

In the event that an expatriate is entitled to claim a foreign tax credit he/she will be able to claim the credit through the submission of his/her South African tax return. An alternative, is

that employers can apply for a tax directive , which is an instrument used where SARS instructs and employer, etcetera on the amount of employee's tax which is required to be withheld on certain income (SARS 2018a:1), from SARS. This will allow for the tax credit to be claimed in advance through the payroll. This may then assist in reducing the negative cash flow impact placed on the expatriates and their employers (KPMG 2018:1).

In addition to the above limitations, etcetera, it is important to note that the amount of foreign taxes paid on income by an expatriate which qualifies for the foreign tax credit will be limited to the lessor of the sum of foreign taxes paid or the amount as calculated by way of the limitation formula (SARS 2015a:37).

The formula for calculating the foreign tax credit which can be claim is located on page 36 of SARS' Interpretation Note 18 (Issue number 3) and is as follows:

The portion of the expatriate's taxable foreign sourced income relative to his/her total taxable worldwide income multiply the normal taxes incurred by the expatriate on his/her worldwide income. This will then result in an expatriate being entitled to a foreign tax credit in relation to foreign taxes paid on foreign sourced income only (SARS 2015a:37).

In order to better understand s 6*quat* and how it is applied, please see the example below as stated by SARS in Interpretation Note 18 (Issue number 3).

> 'Company Z, a resident, earns income from independent professional services rendered in Country A. The presence of Company Z in Country A does not create a permanent establishment for Company Z in that country.
>
> In year 1 Company Z earned gross income of R100 000 and incurred operating expenses of R80 000 for services rendered in Country A. Country A levies tax on independent professional services at a rate of 10% on gross receipts. The tax payable in Country A is R10 000 (R100 000 × 10%) for year 1.
>
> Company Z has other taxable income of R50 000 sourced in South Africa. Normal South African tax totals R19 600 [(R50 000 + R20 000) × 28%].'
>
> Result:
>
> From a South African tax perspective as Country A has a tax rate of 10% which is substantially lower than South Africa's 28% tax rate, one can immeidiatly the spot that Company Z should be entitled to a foreign tax credit equal to the full amount of the foreign taxes paid (R10 000). Before the full foreign tax credit can be claimed the relevant limitation rule (Section 6quat(1B)(a) of the Act), as indicated above, is required to be applied. The limitation will be calculated as follows:
>
> The taxable income derived from all foreign sources (R20 000) is devided by the total taxable income derived from all sourced (R70 000) and then multiplied by the total normal tax payable (R19 600). For a better prespective please see the calculation below:
>
> = R20 000 / R70 000 × R19 600
>
> = R5 600
>
> Based on the above limitation rule, although Company paid foreign taxes of R10 000 in year 1, he will only be entitled to claim a foreign tax credit of R5 600 during the give tax year. The excess of R4 400

> remaining, after deducting the foreign tax credit claimed from the total foreign taxes incurred, may be carried forward to future tax years as indicate in paragraph (ii) of the proviso to Section 6quat(1B)(*a*) of the Act in order to claimed as a foreign tax credit' (SARS 2015a:21-22).

In determining whether the claiming of foreign tax credits is a viable tax relief option, one will be required to analyse the advantages and disadvantages resulting from claiming foreign tax credits.

Advantages

- Section 6*quat*(1B)(ii) provides for events where the foreign taxes paid/payable are greater than the foreign tax credit allowed to be claimed in a give tax year. This section allows expatriate to carry forward the excess foreign taxes incurred (not allowed as a foreign tax credit) to the following tax years to be utilised. It is important to note that one will not be able to carry forward the excess foreign taxes for more than seven years (LexisNexis 2018:56-57). In addition, it is also SARS' current practise to allow for the foreign taxes to be carried forward in the event of an assessed loss (HG.org 2018:1).

Disadvantages

- When dealing with juridical double taxation and foreign tax credits the imposition is granted to by the country which the expatriates are tax resident. Therefore, as this research report only focuses on South African tax residents the foreign tax credits will be required to be claimed in South Africa. As a result expatriates are left with a greater administration burden along with additional compliance requirements (KPMG 2018:1)(SARS 2015a:1).
- There are situations which exist where expatriates are subject to tax on their income in both South Africa and in a foreign tax jurisdiction, however there are taxes which are levied in the foreign tax jurisdictions which do not qualify as income taxes (for example social security, etcetera). As a result, even though taxes where paid in both South Africa and a foreign tax jurisdiction, an expatriate will not be able to claim a tax credit. Thus the expatriate will find him/herself being placed in a position where he/she is double taxed on the same income (la Grange *et al* 2017:10).
- SARS is also left with a greater administrative burden (KPMG 2018:1) as they will be required to verify that an expatriate is entitled to the foreign tax credit.
- There will also be a low rate of recovery when using foreign tax credits when of low or no tax jurisdictions are involved (KPMG 2018:1).

- Foreign tax credits and their application are complex and expatriates global employers (who provide tax services to their expatriates) will be required to seek advice from tax advisors which can be expensive (la Grange *et al* 2017:10).
- Global employers' cost of seconding its employees increase. Global employers' are also faced with greater administrative burden (KPMG 2018:1).
- As a result of the difference in the tax years between the tax jurisdictions involved, a decrease in cash-flow is created (Deloitte 2018:1).
- In cases where expatriates remain on the South African payroll, but also receive remuneration (benefits, etcetera) from the foreign payroll and a PAYE withholding is required in both tax jurisdictions the double tax withholding may create cash-flow shortages as the foreign tax credits cannot be taken into account when preparing South African payrolls. It is important to note the order to mitigate this one may apply for a tax directive as previously mentioned. This will again place a substantial administrative burden on SARS, expatriates and their global employers as a result of additional compliance requirements (Deloitte 2018:1)(KPMG 2018:1)(la Grange *et al* 2017:10).
- The difficulty of calculating foreign tax credits are increased in situations where the tax years of the two tax jurisdictions involved are different (la Grange *et al* 2017:10).
- Difficulties and problems are often experienced when attempting to claim foreign tax credits (Deloitte 2018:1).
- The difference in tax years will also increase the difficulty of estimating an expatriate's provisional tax liabilities (KPMG 2018:1).
- It is difficult to determine the documentation which SARS will regard as sufficient proof when claim foreign tax credits. This will especially be the case when tax jurisdictions are involved where self-assessment taxes do not require assessments from the applicable revenue authorities (for example the United Kingdom) (KPMG 2018:1). There is also no consistent approach regarding the required documentation available. This again will result in additional administrative issues (Deloitte 2018:1).
- The tax cost for expatriates who earn more than R1 million per annum will increase (Deloitte 2018:1).
    - For example, should an expatriate take up an assignment to the UAE (no individual taxes levied on remuneration), his/her total foreign remuneration will be subject to tax in South Africa and no foreign tax credit will be available. On the other hand, when expatriates earn foreign remuneration of R2 million or less

per annum and the effective tax rate in the foreign tax jurisdiction is greater than 16% there will be no tax liability in South Africa. When expatriates earn R3 million per annum no South African tax liability will exist only when the effective tax rate in the foreign tax jurisdiction is a least 25% (Deloitte 2018:1).

    - Certain benefits which relates to an expatriates' assignment (specifically when the expatriate is subjection to his/her employer's tax equalisation policy) will artificially inflate his/her remuneration without them receiving any economic benefit. This again will result in an increased tax liability which in turn is borne by the global employers. This will therefore increase the cost to the employer when seconding employees (Deloitte 2018:1).

- By merely providing expatriates with foreign tax credits as a tax relief mechanism, South African tax resident expatriates will be forced to break their South African tax residency. Global employers may then find themselves in a position where they will be required to incur additional costs in relocating its expatriates. They may also be required to absorb the exit charge as previously mentioned. In order to avoid this, global employers may be required to absorb the additional administration which will prevent expatriates from breaking their South African tax residency (la Grange *et al* 2017:10).

In summary, from the perspective of expatriates and their global employers, they will be left with a greater tax liability, resulting from the difference in South Africa's and the foreign tax rates. South African tax residents' expatriates' incentive to remain part of South Africa's tax net will be jeopardised. South Africa's individual tax base may then decrease and even though South Africa may benefit from the resulting exit charge, South Africa will lose significant future income tax. The costs incurred by global employers responsible for tax services to their expatriates will be greater. South African companies who invest abroad will observe a decrease in profits as a result of the increased cost of employment (la Grange *et al* 2017:10).

In addition, other countries such as Mauritius will then be preferred above South Africa as a preferred basis for expansion. This will then lure foreign investment away from South Africa. Ultimately this will negatively impact the South African economy as there will be a loss in tax revenue as well as a sustained loss of skilled individuals (la Grange *et al* 2017:10).

When examining and comparing the various tax relief mechanisms in place one will not be able state that one is better than the other. Each expatriate's circumstances are different and are required to be considered when utilising a tax relief mechanism. One will firstly have to

consider if the specific requirements, in order to be entitled to the Exemption, credit, etcetera, have been met and thereafter compare the advantages and disadvantages. Please note that from the above it is noticeable that a lot of disadvantages may arise when utilising DTTs and foreign tax credits (Financial Emigration n.d.).

Chapter 8: Comparison of Similar Tax Legislation in Other Countries

Before one can be placed in a position which will allow for an informative answer to the research problem, it will be beneficial to analyse and examine how other tax jurisdictions treat their tax resident expatriates who are seconded to foreign tax jurisdictions (Visser 2017:1).

By reviewing foreign tax relief mechanisms and how they are implemented in foreign tax jurisdictions, will allow South African legislators to properly draft and implement future tax legislation. South Africa will be able to learn from other countries, avoid potential pitfalls, and be able to determine what mechanisms work and does not work. Rather learn out of another countries' mistakes and avoid not making as well (Visser 2017:1).

According to Hugo van Zyl, who is a member of the South African Institute of Tax Professionals (SAIT), currently the international standard is for foreign tax authorities to exempt foreign sourced income, however there are examples of where foreign tax authorities places a limit on the exemption claimed, for example the United States of America (Visser 2017:1).

Please see the paragraphs below indicating the how tax residency is determined in foreign tax jurisdictions, tax relief mechanisms available and how the relief is applied.

Australia

As part of Australia's tax system, Australian tax residents are taxed on their worldwide income and non-Australian tax residents who are only taxed on their Australian sourced income. Each Australian tax year various criteria as set out in the Australian tax legislation, case law, etcetera are taken in to account and used in conjunction with the facts and circumstances to determine an individual's tax residency. A non-Australian tax resident will be an individual who does not reside in Australia and also has a permanent abode outside Australian borders which is available to the taxpayer at all times. This is called the "Permanent place of abode" test (la Grange 2017:14).

Australian employers (depending on the employer), who have Australian tax resident expatriates taking up assignments in foreign tax jurisdictions, are required to withhold Pay As You Go (PAYG) from an individual employee's remuneration. The required PAYG withholding may be reduced in instances where a similar withholding has been done in a foreign tax jurisdiction. Foreign employers are not obligated to withhold PAYG from

Australian resident expatriates, unless the foreign employers in question has a physical business presence in Australia (la Grange 2017:14).

Australia does not allow its tax residents to claim foreign tax credits in instances where a tax resident finds him/herself in a position where he/she is taxed double of the same income. As previously indicated, Australia did have a tax relief mechanism in place similar to South Africa's Exemption, however this mechanism has been taken away (la Grange 2017:14).

Australia is also an example of a country where the income tax filing system is based on self-assessment (la Grange 2017:14).

Botswana

In Botswana taxpayers are treated the same for tax purposes regardless of their residency and are all taxed on their worldwide income (Grand Thornton 2014:28-29).

The Botswana tax legislation does not provide expatriates with any tax relief, however DTTs which are in place between Botswana and other countries may be utilised as a source of tax relief (Grand Thornton 2014:28-29).

Canada

In Canada the taxation of individual taxpayers' income is based on his/her tax residency status. Therefore, a Canadian tax resident is taxed on his/her worldwide income, whereas a non-tax resident is only taxed on his/her Canadian sourced income (Grand Thornton 2014:33).

From a Canadian tax perspective, when global employers second their employees from Canada to a foreign country, the Canadian tax legislation provides its' tax residents with tax relief in the form of allowing expatriates to claim a foreign tax credit. This foreign tax credit can be claimed in relation to foreign taxes paid on the income (Grand Thornton 2014:33)(Turbotax 2018:1).

Previously the Canadian tax authorities provided expatriates with a foreign tax credit known as the Overseas Employment Tax Credit (OETC), which was similar to the Exemption. In order for expatriates to claim the OETC certain requirements had to be met. Expatriates were required to work in a specific industry (for example construction, installation, engineering, etcetera) and these expatriates were required to work outside of Canada for six consecutive months. The OETC however has been phased out which is similar to South Africa's amendment of the Exemption (Grand Thornton 2014:33)(Turbotax 2018:1).

China

In China there are key factors used to determine whether an individual taxpayer is required to pay Individual Income Tax. These key factors include where the taxpayer is domiciled, does he/she stay in China and the source of income in question. In China an individual taxpayer's tax residency is considered in conjunction with the above-mentioned factors (Grand Thornton 2014:52-53).

Individual taxpayers' will therefore be regarded as tax residents of China and subject to Individual Income Tax on their worldwide income in the event that they are domiciled in China and have lived in China continuously for a period longer than five years (Grand Thornton 2014:52-53).

Expatriates from China will be provided with a monthly concession in addition to their fixed monthly concession. Expatriates are also entitled to tax relief in the form of a foreign tax credit (Grand Thornton 2014:52-53).

Germany

When taxpayers are seconded from Germany into a foreign tax jurisdiction, there are certain tax relief mechanisms in place. These tax relief mechanisms include what is called the 183 day rule. In terms of the 183 day rule the following regulations and guidelines apply:

- Salary and any other similar form of remuneration received by an expatriate in relation to his/her employment abroad will be taxable in the tax jurisdiction of the county to which he/she is seconded, but only if the services are render in that foreign tax jurisdiction.
- Various DTTs indicate that remuneration received by an expatriate in relation to foreign services rendered (foreign employment) will be taxable in the home state in the event that the following requirements have been met:
    - The expatriate was present in the foreign country on secondment for a period/periods not exceeding 183 days in aggregate during the applicable fiscal year;
    - The remuneration was received by the expatriate who is regarded as a non-tax resident of the foreign country;
    - The remuneration which was earned by the expatriate was not borne by any permanent establishment in that country;

- It is important to note that the DTTs may differ when defining the concepts and specifics of the 183 day rule. In addition, there are also special rules which are applicable during the first and last year of an expatriate's assignment.
- Should a taxpayer not qualify for tax relief under the 183 days rule as a result of not fulfilling the applicable requirements, his/her remuneration will be taxed in all tax jurisdiction where he/she rendered services (Lexology 2011:1).

Guinea

In Guinea taxation is based on a taxpayer's tax residency status. Similar to South Africa, Guinean tax residents are only taxed on their worldwide income and non-Guinean tax residents are only taxed on Guinean source income. In Guinea an individual taxpayer will be regarded as tax resident of Guinea in the event that:

- he/she has a home located in Guinea for a period of at least 183 days per year;
- he/she provides a professional activity (not incidentally) in Guinea; and
- his/her centre of economic interests are located in Guinea (Grand Thornton 2014:83-85).

Concessions available to expatriates will be dependent on any the specific DTTs in place. Only expatriates which are seconded to France will be provided with tax relief, as Guinea only has one DTT which is with France. Unfortunately, there are no other tax relief mechanisms available. (Grand Thornton 2014:83-85).

Hong Kong

As part of Hong Kong's tax system, residency basis and source basis of taxation is not relevant, instead Hong Kong's tax system is based on a territorial and scheduler basis (only Hong Kong sourced income is taxable). Hong Kong will therefore only levy three different territorial taxes on income earn. There territorial tax which is important for expatriates, is the Salaries Tax which is levied on an expatriate's remuneration (Grand Thornton 2014:89-90).

As a result of Hong Kong's territorial tax system, expatriates will be entitled to claim an exemption in relation to remuneration earned while rendering services outside of Hong Kong. Expatriates will only be entitled to claim the exemption in the event that they did not earn any Hong Kong sourced remuneration. In the event that Hong Kong sourced remuneration was earned, all of the expatriate's remuneration will be taxable in Hong Kong (Grand Thornton 2014:89-90).

DTTs which Hong Kong has entered into with other countries may also be used as a tax relief mechanism as it will exempt remuneration in certain cases (Grand Thornton 2014:89-90).

India

The Authority of Advance Rulings (AAR), a quasi-judicial body, has previously indicated that the remuneration earned by non-Indian tax residents in relation to services rendered outside of India's tax jurisdiction will not be taxable in India. This will be the case regardless of the fact that remuneration is often paid directly into an expatriate's Indian bank account (The Times of India 2018:1).

In India for the purpose of determining the tax residency status of an expatriate, the number of days he/she was present in India will be the determining factor. In India, the same as South Africa, non-tax residents are only taxed on Indian sourced income only, were as India tax residents are taxed on their worldwide income (The Times of India 2018:1).

Therefore, should an expatriate fulfil the following requirements he/she will be regarded as a non-Indian tax resident and will receive tax relief in the form of a foreign sourced remuneration received not being taxed in India (employer may stop tax withholdings on remuneration paid in India):

- The expatriate is required to be present in India for a period or periods less than 182 days during a financial year which is the period 1 April to 31 March of the following year (The Times of India 2018:1) (PWC India 2013:1); or
- The expatriate is required to be present in India for a period or periods less than 182 days during a financial year and the expatriate has not lived in India for a period of at least 365 days during the preceding four years (The Times of India 2018:1) (PWC India 2013:1).

Should situations come exist where an expatriate's remuneration is taxable in both India and a foreign tax jurisdiction, expatriates will be able to claim tax relief by way of claiming foreign tax credits (PWC India 2013:1).

Alternatively, expatriates seconded from India are able to claim tax relief by way of the DTTs established between India and foreign tax jurisdictions (The Times of India 2018:1).

Kenya

As part of Kenya's tax system, taxpayers are taxed on all of their income which are sourced from Kenya. This will be regardless of whether a taxpayer is regarded as a tax resident or non-tax resident of Kenya (Grand Thornton 2014:126-127).

Expatriates from Kenya may be entitled to a concession where one third of their employment income may be deducted from their taxable income, provide that the following requirements are met:

- The expatriate was absent from Kenya for a period of 120 days in aggregate during the tax year in which the income was received;
- The expatriate was employed to render services at a branch of a foreign global employer;
- The global employer did not claim tax relief for the deduction the concession provided the expatriate; and
- The expatriate was not taxed on passage to and from Kenya provided that he/she was employed outside of Kenyan borders (Grand Thornton 2014:126-127).

In the event that an expatriate does not fulfil the above-mentioned requirements, he/she may be entitled to tax relief in the form of foreign tax credits or by way of DTTs. Using the DTTs as a tax relief mechanism may not always be available, as Kenya does not have DTTs with a lot of foreign tax jurisdictions (Grand Thornton 2014:126-127).

United Arab Emirates (UAE)

In the UAE, expatriates are not subject to any taxes, as it is a tax-free jurisdiction. As a result, an expatriate will not be placed in a position where he/she is subject to double taxation on the same income and therefore no tax relief will be required (Grand Thornton 2014:261).

United Kingdom

In the United Kingdom (UK) taxation of individual taxpayers are based on their residency and domicile. Non-tax residents only pay taxes in the UK on UK sourced income. Residents, who are not domiciled in the UK, will be subject to tax on either their UK sourced income including any remitted worldwide (known as Remittance Basis) or their worldwide income (known as Arising Basis) (Grand Thornton 2014:263-265).

Tax residency in the UK will be determined by way of the UK statutory residence test which is divided into three parts (Automatic Overseas Test, Automatic UK Tests, Sufficient UK Ties Test) (Grand Thornton 2014:263-265).

In the event of double taxation, UK expatriates will be provided with tax relief and certain concessions which include:

- Overseas Workday Relief – expatriates who receive remuneration, which has not been remitted to the UK, may exclude their remuneration earned for foreign services rendered. There are additional rules in place in relation to claim this relief.
- Detached Duty Relief – expatriates (regarded as rendering services at a temporary workplace) may be entitled to relief on assignment related expenses such as accommodation, travel, etcetera in the event that an expatriate has not been working outside of the UK for a period longer than 24 months and have met the strict recordkeeping requirements;
- DTTs which have been entered into between the UK and foreign tax jurisdictions may also be used as a form of tax relief (Grand Thornton 2014:263-265).

United States

In the United States (US), residents are taxed similar to US citizens in which both are subject to tax on their worldwide income. Non-residents however are only taxed on their US sourced income. In the US there are two tests in relation to residency which are applied. These tests include:

- The Green Card Test – All individual taxpayers who have Green Cards in the US will immediately be treated as tax residents.
- The Substantial Presence Test – An individual taxpayer will only be regarded as a tax resident in the US in the event that he/she is present in the US for:
    - a period of at least 31 days in the current year, and
    - the sum of the following is either more or equal to 183 days:
        - days present in the US in the current tax year;
        - one third of the days the taxpayer has been present in the preceding tax year; and
        - one sixth of the days the taxpayer has been present in the second preceding tax year (Grand Thornton 2014:269-271).

In the US expatriates are provided with tax relief mechanisms and certain concessions. These concessions and tax relief mechanisms include:

- DTTs which have been entered into between the US and foreign tax jurisdictions; and
- US tax resident expatriates may either receive a deduction or a tax credit in relation to any taxes paid on income in more than one tax jurisdiction (Grand Thornton 2014:269-271).

Summary

From the above it can be established that various foreign tax jurisdictions do have a form of tax relief in place which are available to their expatriates in order to prevent double taxation of their foreign sourced remuneration. Most foreign tax jurisdictions allow their expatriates to claim tax relief by way of foreign tax credits or DTTs. On the other side of the spectrum there are also certain tax jurisdictions who also have tax relief mechanisms in place similar to the Exemption.

An interesting observation is that more of the developed tax jurisdictions such as those of Canada, the US, China, etcetera have started to take action and limit their tax relief mechanisms. There are also instances which exist where certain developed countries decided to part ways with exemption completely.

From the above it can be seen that a trend is being followed by foreign tax jurisdictions, (especially in the developed countries). Unfortunately, as South Africa has its own complex tax environment and economy along with a volatile political system, following the trend may not necessarily be the correct course of action to take. Certain decisions may either lead to various opportunities or consequences.

Chapter 9: Conclusion

As previously indicated in the main research question along with the sub-questions, the purpose of this research report is to determine the implications resulting from the amendment of the Exemption along with including a comparison to similar tax relief mechanisms provided in foreign tax jurisdiction and the implications which will result from utilising other tax relief mechanisms (for example foreign tax credits and DTTs).

To summarise, the implementation of the amended Exemption will increase the tax liability of expatriates working outside of South African borders. This will even be the case when claiming foreign tax credits in situations where South African expatriates are seconded into Africa. Employers may be impacted more severely as the cost of employment relating to the secondment of employees will increase (employers will be required to incur additional costs and administration to assist expatriates with claiming tax relief in the form of DTTs and foreign tax credits). Instances where global employers tax equalise their expatriates, the global employers will be liable for the increased tax liability.

Along with the increased administration and costs, tax relief mechanisms such as foreign tax credits and DTTs do have other disadvantages (for example: it is difficult to implement when one is dealing with counties where they make use of self-assessment systems or where all taxes are taken into account in the payroll process). South African tax residents' incentive to remain within the South African tax net will be offset by the increased cost for the expatriate and his/her employer.

It is anticipated that South Africa's individual tax base should take a dent as many expatriates may decide to permanently relocate and even though the South African economy will benefit from the increased exit tax charge, it will be offset by the loss of future tax revenue. In addition, there will also be a significant loss of skilled individuals who could have potentially contributed to the South African work force by sharing skills, etcetera (la Grange 2017:6-11).

As previously indicated, the amendment of the Exemption will create a significant increase in the labour cost. Global employers will find it more expensive to second the employees into other regions. This can be concerning as this may result in South Africa not being preferred above other counties like Mauritius to be used as a platform for direct investment and to expand into Africa.

There are arguments which exist for and against the amendment of the Exemption from individual taxpayers, employers and the economy's perspective. As this research mostly high

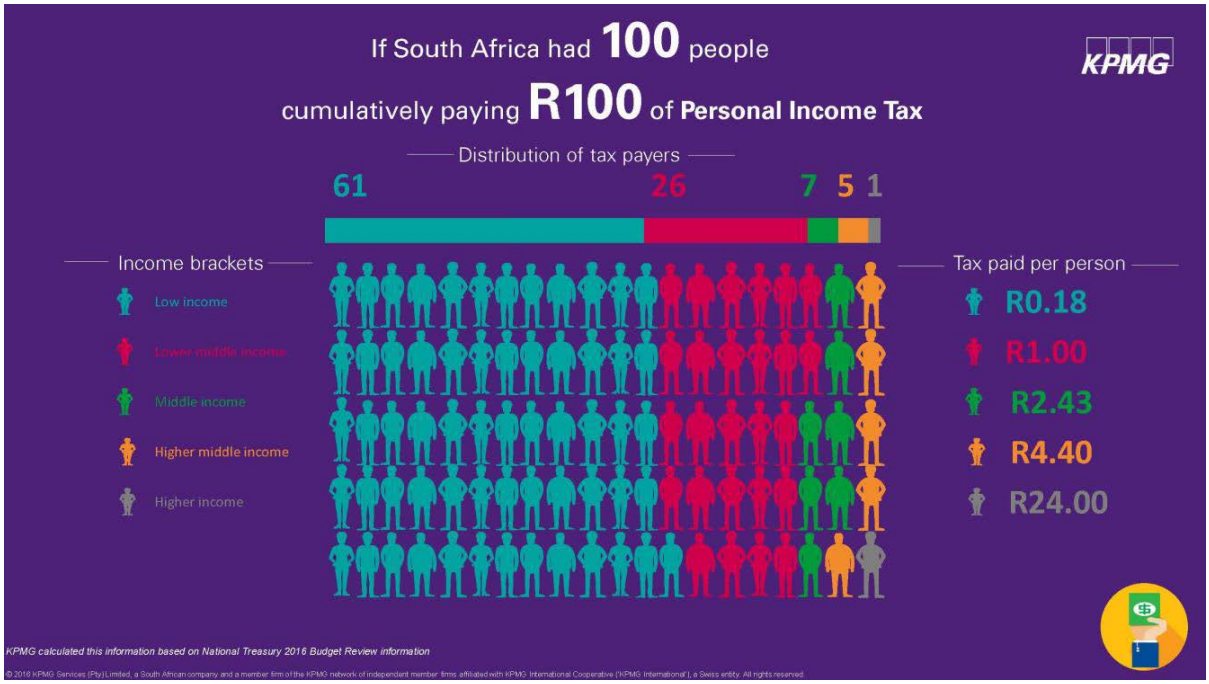
lights the negative implications to the South African economy, its employers and individuals, it will be beneficial to also do more in-depth future research on the reasoning behind the amendment of the Exemption. As the amended Exemption comes into effect on 1 March 2020 which falls within the 2021 South African tax year (1 March 2020 – 28 February 2021) it will be useful to do further research, after the 2021 South African tax year has ended, on whether the amendment of the Exemption benefited the South African economy, its individuals and employers. One will be in a position to determine whether the implications mentioned in this report, as stated by various trusted individuals and organisations, come forth.

Another potential area which may be worth doing further research on, is determining alternative forms of tax relief which may be used or created in the future which will incentivise expatriates to take up secondments without them ceasing their South African tax residency status, result in more cost effect labour for global employers which in turn will be able to stimulate and grow South Africa's economy.

Unfortunately, it is impossible to predict the future, however discussions which have taken place around the Exemption and its amendment has indicated that the end of the unlimited Exemption has created uncertainty as well as tension regarding South Africa's global mobility landscape. Only time will tell whether the amendment was the correct course of action to take and where an alternative will be required.

Annexures

Annexure A – Source of South African individual tax revenue in relation to the 2016 South African tax year (la Grange *et al* 2017:4)**.**



Reference list

ACCA. (2012). *Double tax agreements*. Available from: https://www.accaglobal.com/content/dam/acca/global/PDF-students/2012s/sa_apr12_p6_dta.pdf [Accessed: 24 December 2018].

Alchemy Recruitment. (2018). *Global mobility & international assignment services jobs*. Available from: https://www.alchemyrecruitment.com/hr-and-global-mobility/hr-and-global-mobility/assignment-services-global-mobility [Accessed: 22 October 2018].

Asafo-Adjei. A. (2007). *Foreign direct investment and its importance to the economy of South Africa*. Available from http://uir.unisa.ac.za/bitstream/handle/10500/1332/dissertation.pdf [Accessed: 13 January 2019].

Bidvest Bank. (n.d.). *Exchange control*. Available from https://www.bidvestbank.co.za/personal-banking/forex-services/exchange-control-services/exchange-control-for-south-african-residents.aspx [Accessed: 2 January 2019].

BusinessDay. (2018). *Why you need to sort out your tax-residency status*. Available from https://www.businesslive.co.za/bd/opinion/2018-05-28-why-you-need-to-sort-out-your-tax-residency-status/ [Accessed: 13 January 2018].

Chambers. C. & Ardense. L. (2017). *Proposed amendment to foreign services exemption.* Johannesburg: KPMG.

Cliffe Dekker Hofmeyr. (2017a). *Foreign employment income exemption – is this the end?* Available form https://www.cliffedekkerhofmeyr.com/en/news/publications/2017/Tax/tax-alert-20-july-foreign-employment-income-exemption-is-this-the-end.html [Accessed: 21 May 2018].

Cliffe Dekker Hofmeyr. (2017b). Amendment in respect of foreign employment income exemption. *Tax & exchange control alert*. Available form https://www.cliffedekkerhofmeyr.com/en/news/publications/2017/Tax/tax-alert-3-november-amendment-in-respect-of-foreign-employment-income-exemption.html [Accessed: 21 May 2018].

Commissioner for Inland Revenue v Black [1957] 3 All SA 388 (A).

Commissioner for Inland Revenue v Epstein [1954] 4 All SA 7 (A).

Commissioner for Inland Revenue v Lever Bros and Another, 1946 AD 441.

Creamer Media's Engineering News. (2018). *What is best? – financial emigration or double taxation agreement*. Available from http://www.engineeringnews.co.za/article/what-is-best-financial-emigration-or-double-taxation-agreement-2018-06-06 [Accessed: 28 December 2018].

Deloitte. (2018). *Some thoughts on the proposed repeal of foreign employment 2018/19 South African national budget expectations*. Available from: https://www2.deloitte.com/za/en/pages/tax/articles/some-thoughts-on-the-proposed-repeal-of-foreign-employment.html# [Accessed: 28 December 2018].

Essential Sterolin Products (Pty) Ltd v Commissioner for Inland Revenue [1993] 2 All SA 644 (A).

Fin24. (2018). *Think twice before becoming non-sa tax resident to avoid double tax – expert*. Available from https://www.fin24.com/Economy/think-twice-before-becoming-non-sa-tax-resident-to-avoid-double-tax-expert-20170807-2 [Accessed: 13 January 2019].

Financial Emigration. (n.d.). *What's best? Financial emigration vs double taxation agreement*. Available from http://www.financialemigration.co.za/whats-best-financial-emigration-vs-double-taxation-agreement/ [Accessed: 28 December 2018].

FinGlobal. (2018). *What are the benefits of financial emigration?* Available from https://www.finglobal.com/2018/04/16/financial-emigration-from-south-africa-benefits/ [Accessed: 2 January 2019].
First National Bank Of Southern Africa Ltd v Commissioner For South African Revenue Service [2002] 64 SATC 245.
Grant Thornton. (2014). *Global expatriate tax guide*. Available from https://www.grantthornton.global/globalassets/1.-member-firms/global/insights/article-pdfs/2015/expat-tax-ebook-2014_final_july15.pdf [Accessed: 31 December 2018].
Haupt. P. (2017). *Notes on South African Income Tax 2017*. Roggebaai: H & H Publications.
Hayek. F. A. (1960). *The constitution of liberty*. 1993 reprint. London: Routledge & Kegan Paul Ltd.
Hg.org. (2018). *The application of section 6quat of the Income Tax Act - South Africa*. Available from https://www.hg.org/legal-articles/the-application-of-section-6quat-of-the-income-tax-act-south-africa-5929 [Accessed: 28 December 2018].
Income Tax Act 58 of 1962.
Incompass Forex. (n.d.). *South Africa exchange control regulations*. Available from https://www.money-transfers.co.za/south-africa-exchange-control.php [Accessed: 2 January 2019].
KPMG. (2018). *South Africa – foreign services exemption amended*. Available from https://home.kpmg.com/za/en/home/insights/2018/01/flash-alert-2018-020.html#01 [Accessed: 19 December 2018].
la Grange. J., da Silva. E., Madden. C., Gouws. B., Duffy. G., van Wyk. C. & de Villiers. E. (2017). *Submission to national treasury foreign remuneration exemption.* Available from https://cdn.ymaws.com/www.thesait.org.za/resource/resmgr/2017_Submissions/Submissions_final/15_5_2017_-_SAIT_Collaborati.pdf [Accessed on 1 February 2019].
LexisNexis. (2017). *Professional tax handbook 2017/2018 Volume 1*. Durban: LexisNexis.
Lexology. (2011). *German tax aspects of secondments*. Available from https://www.lexology.com/library/detail.aspx?g=45b6c265-9cc4-41fc-81e0-615b3326513b [Accessed: 28 December 2018].
Manyi. A. (2018). *Expat aftershock: surviving without the exemption*. Available from https://www.thesait.org.za/news/news.asp?id=416496&hhSearchTerms=%22foreign+and+employment+and+income+and+exemption%22 [Accessed: 17 January 2019].
Mill. J. S. (1848). *Principles of political economy books IV and V*. 1985 reprint. Penguin Classics.
Mohan. S. (2017). *Latest tax proposals and its impact on expatriate employee.* Available from http://www.sara.co.za/sara/Expatriate%20tax%20changes%20and%20Impact%20%20Shohana%20Mohan.pdf [Accessed: 28 May 2018].
Montesquieu (Baron). (1748). *The spirit of the laws.* 1975 reprint. The Hafner Library of Classics.
National Treasury. (2017). *Budget review 2017*. Available from http://www.treasury.gov.za/documents/national%20budget/2017/review/FullBR.pdf [Accessed: 21 May 2018].
Norton Rose Fulbright. (n.d.). *Exchange control*. Available from http://www.nortonrosefulbright.com/za/our-services/exchange-control/ [Accessed: 13 January 2019].

Owlcation. (2013). *Canons of Taxation in economics*. Available from: https://owlcation.com/social-sciences/Canons-of-Taxation-in-Economics [Accessed: 18 August 2018].
PWC India. (2013). *Outbound assignments from India*. Available from https://www.pwc.in/assets/pdfs/services/outbound-assignments-from-india.pdf [Accessed: 28 December 2018].
PWC. (2017). *Foreign employment income: proposed repeal of exemption in section 10(1)(o)(ii)*. Available from https://www.pwc.co.za/en/assets/pdf/tax-alert-section-repeal.pdf [Accessed: 28 May 2018].
Ricardo. D. (1817). *Principles of political economy and taxation*. London: John Murray.
SAIPA. (n.d.). *Tax residence for individuals*. Available from https://www.saipa.co.za/tax-residence-individuals/ [Accessed: 20 December 2018].
SAIT. (2017). *foreign tax affairs*. Available from https://www.thesait.org.za/news/355897/Foreign-Tax-Affairs.htm [Accessed: 10 January 2018].
Santrander. (n.d.). *South Africa: foreign investment*. Available from https://en.portal.santandertrade.com/establish-overseas/south-africa/foreign-investment [Accessed: 13 January 2019].
SARS & National Treasury. (2017a). *National treasury And the South African Revenue Service release the 10th annual edition of tax statistics*. Available from http://www.sars.gov.za/Media/MediaReleases/Pages/12-December-2017---Tax-statistics%20for%202017.aspx [Accessed: 28 May 2018].
SARS & National Treasury. (2017b). *Final response document on taxation laws amendment bill, 2017 and tax administration laws amendment bill*. Available from http://www.treasury.gov.za/publications/RevenueLaws/2017%20Final%20Response%20Document%20-2017%20TLAB%20and%20TALAB-15%20December%202017.pdf [Accessed: 21 May 2018].
SARS. (1971). *Convention between the government of the Republic of South Africa and the government of the Republic of Malawi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-08%20-%20DTA%20Malawi%20GG%201479.pdf [Accessed: 28 December 2018].
SARS. (1995). *Convention between the government of the Republic of South Africa and the government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-36%20-%20DTA%20Denmark%20GG%2016891.pdf [Accessed: 28 December 2018].
SARS. (1997). *Agreement between the government of the Republic of South Africa and the government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-43%20-%20DTA%20India%20GG%2018545.pdf [Accessed: 28 December 2018].
SARS. (1997). *Convention between the Republic of South Africa and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-82%20-

%20DTA%20United%20States%20of%20America%20GG%2018553.pdf [Accessed: 28 December 2018].
SARS. (2003a). *Convention between the government of the Republic of South Africa and the government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-80%20-%20DTA%20%20United%20Kingdom%20GG%2024335.pdf [Accessed: 28 December 2018].
SARS. (2003b). *Income tax interpretation note no. 16 exemption from income tax (issue 1): foreign employment income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2017-01-Arc-02%20-%20IN%2016%20Issue%201%20Archived%202%20February%202017.pdf [Accessed: 17 December 2018].
SARS. (2004). *Convention between the government of the Republic of South Africa and the government of the Republic of Botswana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-02%20-%20DTA%20Botswana%20GG%2026342.pdf [Accessed: 28 December 2018].
SARS. (2007). *Convention between the government of the Republic of South Africa and the government of the Republic of Ghana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2012-06%20-%20DTA%20Ghana%20GG%2029856.pdf [Accessed: 28 December 2018].
SARS. (2009). *Interpretation note: no. 18 (issue 2)*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2012-18-Arc-83%20-%20IN18%20Issue%202%20Archived%20on%2026%20June%202015.pdf [Accessed: 12 January 2019].
SARS. (2015a). *Interpretation note: no. 18 (issue 3)*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2012-18%20-%20Rebate%20Deduction%20Foreign%20Taxes%20Income.pdf [Accessed: 28 December 2018].
SARS. (2015b). *Agreement between the government of the Republic of South Africa and the government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2015-02%20-%20DTA%20Mauritius%20GG%2038862.pdf [Accessed: 28 December 2019].
SARS. (2015c). *Agreement between the government of the Republic of South Africa and the government of the Republic of Kenya for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2015-05%20-%20DTA%20Kenya%20GG%2039422.pdf [Accessed: 28 December 2018].
SARS. (2017a). *Agreement between the government of the Republic of South Africa and the government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*. Available from

http://www.sars.gov.za/AllDocs/LegalDoclib/Agreements/LAPD-IntA-DTA-2017-02%20-%20DTA%20Singapore%20GG%2040577.pdf [Accessed: 28 December 2018].
SARS. (2017b). *Interpretation note: no. 16 (issue 2)*. Available from http://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2012-16%20-%20Exemption%20Foreign%20Employment%20Income.pdf [Accessed: 12 January 2019].
SARS. (2018a). *I want to get a tax directive*. Available from http://www.sars.gov.za/ClientSegments/Individuals/Need-Help/Tax-Questions-Answered/Pages/I-want-to-get-a-tax-directive.aspx [Accessed: 24 December 2018].
SARS. (2018b). *SARS announces R1 216.6 billion preliminary revenue outcome*. Available from http://www.sars.gov.za/Media/MediaReleases/Pages/3-April-2018---SARS-announces-preliminary-revenue-outcome-.aspx [Accessed: 19 December 2018].
SARS. (2018c). *Non-residents*. Available from http://www.sars.gov.za/ClientSegments/Individuals/Tax-Stages/Tax-and-Non-Residents/Pages/default.aspx [Accessed: 20 December 2018].
SARS. (2018d). *Rest of the world - DTAs and protocols*. Available from http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/DTAs-and-Protocols-(Rest-of-the-World).aspx [Accessed: 28 December 2018].
SARS. (n.d.). *Double Taxation Agreements (DTAs) & protocols*. Available from http://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx [Accessed: 20 January 2019].
Smith. A. (1776). *An inquiry into the nature and causes of the wealth of nations*. Scotland: William Strahan and Thomas Cadell.
South African Reserve Bank. (2018). *Currency and exchanges guidelines for individuals*. Available from https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Currency%20and%20Exchanges%20Guidelines%20for%20Individuals.pdf [Accessed: 2 January 2019].
South African Reserve Bank. (n.d.). *Exchange control legislation*. Available from https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Legislation/Pages/default.aspx [Accessed: 2 January 2019].
Stiglingh. M., Koekemoer. AD., van Heerden. L., Wilcocks. JS., de Swardt. RD. & van der Zwan. P. (2018). *SILKE: South African income tax 2018.* Durban: LexisNexis
Times of India. (2018). *Indian tax relief for non-resident expats*. Available from https://timesofindia.indiatimes.com/city/mumbai/indian-tax-relief-for-non-resident-expats-expats-on-nri-expats-salary-in-india/articleshow/62923860.cms [Accessed: 28 December 2018].
Trading Economics. (2018). *South Africa current account*. Available from https://tradingeconomics.com/south-africa/current-account [Accessed: 19 December 2018].
Trading Economics. (2019). *South Africa unemployment rate*. Available from https://tradingeconomics.com/south-africa/unemployment-rate [Accessed: 12 May 2019].
Trotter. G. J. (1969). *Personal income tax South African journal of economics* 37(4) 306-344.
Turbotax. (2018). *Who qualifies for the overseas employment tax credit?* Available from https://turbotax.intuit.ca/tips/who-qualifies-for-the-overseas-employment-tax-credit-5489 [Accessed: 31 December 2018].

Verwey. PM. (2007). *The principles of source and residence taxation of electronic commerce transactions in South Africa.* Available from http://dspace.nwu.ac.za/bitstream/handle/10394/2125/verwey_phillipmartin;jsessionid=90DE815938FD84084E1FB699DD6EBD99?sequence=1 [Accessed: 20 December 2018].
Visser. A. (2017). *Working overseas? You could soon face a less generous tax exemption.* Available from https://www.thesait.org.za/news/news.asp?id=333890&hhSearchTerms=%22foreign+and+employment+and+income+and+exemption%22 [Accessed: 17 January 2018].
Vivian. R. (2006). *Equality and Personal Income Tax – the classical economists and the Katz Commission SAJE* 74 (1) 79-109 Part A only 8th August 2018. Available from: https://www.academia.edu/people/search?utf8=%E2%9C%93&q=Equality+and+personal+income+tax+%E2%80%93+the+Classical+economists+and+the+Katz+Commission [Accessed: 18 August 2018].
Vivian. R. (2015). *South Africa needs to raise taxes: Why a VAT increase would be a bad idea.* Available from http://theconversation.com/south-africa-needs-to-raise-taxes-why-a-vat-increase-would-be-a-bad-idea-44871 [Accessed: 17 December 2018].
Waggoner. D. (2018). *Expatriates*. Available from https://www.referenceforbusiness.com/management/Em-Exp/Expatriates.html [Accessed: 20 December 2018].
Wiese. P. (2017). *National Treasury softens stance on tax exemption for foreign employment income.* Available from https://southafrica.moorestephens.com/news/october-2017/national-treasury-softens-stance-on-tax-exemption [Accessed: 17 December 2018].