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THE SCHOOL OF ACCOUNTANCY

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

A research report submitted to the Faculty of Commerce, Law and Management, University of the Witwatersrand, in fulfilment of the requirements for the degree of Master of Commerce in the field of Taxation

The taxation liability of South African citizens seconded to the United Kingdom and the United States of America

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Abstract

The globalisation phenomenon has enabled South African companies to place their employees in employment positions with international affiliates, based on skills demand and supply, improving business relations and the individual's requests for personal growth. Such placements may be on secondment or a permanent basis. The placement of South African individuals in employment in the United Kingdom and the United States of America has raised a question as to which country holds the right to tax the employment income of the said individuals, which can be answered through the Double Taxation Agreements between South Africa and the United Kingdom and the United States of America. This report seeks to understand the taxation legislation of all three of the abovementioned countries and the effect of the Double Taxation Agreement (DTA) between them on the taxability of the individual's employment income. It also compares the individual's tax position as a result of the DTAs for varied secondment time periods in each country.

Key Words: Income Tax Act, employment income, resident, double taxation agreement, DTA, OECD, Model Tax Convention, MTC, tax relief.

Declaration

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



Joshni Chiman

December 2015

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Table of Acronyms and Abbreviations

DTA	Double taxation agreement
HMRC	Her Majesty's Revenue and Customs
IPFW	Indiana University Purdue University Fort Wayne
IRC	Internal Revenue Code
OECD	Organisation for Economic Co-operation and Development
RDR 1	Guidance Note: Residence, Domicile and the Remittance Basis
RDR 3	Guidance note: Statutory Residence Test (SRT)
SA	South Africa
SARS	South African Revenue Services
SRT	Statutory Residence Test
The Act	The Income Tax Act No. 58 of 1962 of South Africa
UK	United Kingdom
UK DTA	Double taxation agreement between South Africa and the United Kingdom
USA	United States of America
USA DTA	Double taxation agreement between South Africa and the United States of America

Chapter 1: Introduction

In recent history, globalisation has grown substantially. According to Kawya *et al* (2014:12), the globalisation phenomenon has affected international business by increasing job opportunities for people as well as benefitting the employer through the procurement and outsourcing of the best employees for the job.

Globalisation is defined in the Oxford Dictionary (2015: website) as:

> The process by which businesses or other organizations develop international influence or start operating on an international scale.

Kawya *et al* (2014:6), has referred to globalisation as,

> An umbrella term for a complex series of economic, social, technological, cultural and political changes seen as increasing interdependence, integration and interaction between people and companies in disparate locations.

As a result of the globalisation phenomenon, many large corporations have expanded their footprint in the world and are now able to transfer employees between their divisions and other entities within the group worldwide. The increasing transfer of employees for 'secondment' or permanent positions around the world has also impacted on South Africa. The term 'secondment' is defined in the Oxford Dictionary (2015: website) as '*The temporary transfer of an official or worker to another position or employment*'.

Domestic companies are increasingly placing employees in employment positions with their international affiliates, based on skills demand and supply, improving business relations and the individual's requests for personal growth.

Whatever the reasons for the international redeployment of employees, there is a significant effect on the employee's tax position based on the taxation laws of South Africa and many other countries. Worldwide secondments have created taxation complications for South African individuals working abroad as their income may be taxable in both South Africa and the foreign country of employment (juridical double taxation).

In order to address the increased complications of juridical double taxation, including possible juridical double taxation of a seconded individual's employment income, the South

African government has entered into double taxation agreements (DTAs) with many countries.

The term 'double taxation agreement' has been defines as:

> Reciprocal arrangement between two countries not to re-tax the repatriated income that a firm or person domiciled in one country earned in (and paid taxes on) the other. (Businessdictionary.com, 2015)

Double taxation agreements are country-specific and are agreed upon by each country involved. Such agreements seek to codify each country's right to the taxation of a person's income.

One such DTA was signed between South Africa and the United Kingdom in July 2002. This agreement is based on the Organisation for Economic Co-operation and Development's (OECD) Model Tax Convention on Income and on Capital. According to the OECD's website (www.OECD.org. About: History), '34 OECD member countries worldwide regularly turn to one another to identify problems, discuss and analyse them, and promote policies to solve them.'

The OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 (2014:7) states that the purpose for the Model Tax Convention is to provide 'a means of settling on a uniform basis the most common problems that arise in the field of international juridical double taxation.'

Although South Africa is not a member of the OECD, the United Kingdom (UK) is. South Africa, nevertheless, has observer status at the OECD. Therefore, the DTA between South Africa and the UK draws inspiration from the OECD's Model Tax Convention with regards to the taxation of the employment income of a South African citizen working in the United Kingdom and vice versa.

The South African Citizenship Act 88 of 1995 (Chapter 2) defines a citizen of South Africa as any person who has obtained citizenship through one of the following:

- Birth – *"any person who is born in South Africa and who had at least one parent who was a South African citizen or SA permanent residency permit holder at the time of birth of the person or who was adopted by a South African citizen or permanent*

resident in terms of the Children's Act, 2005" (Department of Home Affairs, 2015: website)

- Descent – *"Any person who is adopted in terms of the provisions of the Children's Act by a South African citizen and whose birth is registered in accordance with the provisions of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), shall be a South African citizen by descent."* (South African Citizenship Act 88, 1995: Chapter 2,3)
- Naturalisation - *"The Minister may, upon application in the prescribed manner, grant a certificate of naturalisation as a South African citizen to any foreigner who satisfies the Minister that-*
  (a) he or she is not a minor; and
  (b) he or she has been admitted to the Republic for permanent residence therein; and
  (c) he or she is ordinarily resident in the Republic and that he or she has been so resident for a continuous period of not less than five years immediately preceding the date of his or her application; and
  (d) he or she is of good character; and
  (e) he or she intends to continue to reside in the Republic or to enter or continue in the service of the Government of the Republic or of an international organisation of which the Government of the Republic is a member or of a person or association of persons resident or established in the Republic; and
  (f) he or she is able to communicate in any one of the official languages of the Republic to the satisfaction of the Minister; and
  (g) he or she has adequate knowledge of the responsibilities and privileges of South African citizenship; and
  (h) *he or she is a citizen of a country that allows dual citizenship: Provided that in the case where dual citizenship is not allowed by his or her country, such person renounces the citizenship of that country and furnishes the Minister with the prescribed proof of such renunciation."* (South African Citizenship Act 88, 1995: Chapter 2,5(1))

South Africa also has a DTA with the United States of America, which was signed in February 1997. This DTA shares similarities with the UK-South Africa DTA.

Ultimately, South Africa's DTAs with the United Kingdom and United States of America resolve any disputes between these countries over the taxing rights regarding the employment income of the individual.

1.1. Objective of the research

1.1.1. Statement of the problem

This report examines the taxation impact on a South African citizen working in the United Kingdom or United States of America on a secondment basis through a comparative study. It seeks to understand the impact of the taxation laws of each country and the double taxation agreements between these countries on the taxation of the individual's employment income.

This report will provide a comparative study of the ultimate right of each country to tax the individual's employment income. The individual's taxation liability will then be determined through a comparison of varying secondment periods in the United Kingdom (UK) and the United States of America (USA), based on the rules of the DTAs.

This report will ultimately enable a South African citizen to determine which of the abovementioned countries is the best place for secondment and the most appropriate duration of the secondment based on the individual's taxation liability over the secondment employment income.

1.1.2. Sub-problems

A number of sub-problems will assist in attempting to address the main problem as detailed above.

1. The first sub-problem is to obtain an understanding of South African taxation laws in relation to employment income and to determine an individual's taxation liability as a citizen of the country. This tax liability will be used as a basis for comparison to the taxation incurred while on secondment.

2. The second sub-problem is to understand the taxation laws of the United Kingdom, in relation to employment income earned in the country, regarding an individual's residence, source of income and determination of his/her tax liability.

3. The third sub-problem is to understand the taxation laws of the United States of America, in relation to employment income earned in the country, regarding an individual's residence, source of income and determination of his/her tax liability.

4. The fourth sub-problem is to obtain an understanding of each country's taxation rights over an individual's employment income while on secondment to the UK or USA through South Africa's Double Taxation Agreements (DTAs) with each of these countries. The dual-residence clause in each of the DTAs will also be examined to determine when an individual may be in this situation and the tie-breaker rules that apply.

5. The final sub-problem is to complete a comparative example of the taxes payable by an individual on employment income earned on secondment to either the UK or USA. The example will also analyse taxes payable for varying time periods of the secondment.

1.2. Significance of the study

This research focuses on the taxation implications for a South African individual working in the United Kingdom and United States of America on a secondment basis. It highlights the double taxation agreements entered into by the governments of South Africa and the United Kingdom and United States of America to counteract the challenges faced by these countries in determining who holds the ultimate taxing rights over the individual's employment income. It also provides a comparative analysis of an individual's taxation liability for employment income earned while on secondment in the UK or USA over varying time periods. As a result, South African employees may be able to make an informed decision about whether to accept secondments to the United Kingdom or United States of America and the length of time to spend working in either country based on the tax implications thereof.

1.3. Research methodology

The research method adopted is of a qualitative, interpretive nature, based on a detailed interpretation and analysis of amongst other things, double taxation agreements. An extensive literature review and analysis will be undertaken that includes the following sources –

- Cases
- Electronic databases
- Electronic resources - internet
- Publications
- Statutes

This research method will enable supported conclusions on the taxation liability of South African individuals working in the United Kingdom or United States of America on secondment. No new data has been collected, apart from updated taxation laws and publications of each country.

1.4. Delimitations of the research

This research has a few delimitations. Firstly, it focuses only on South African individual citizens employed in the United Kingdom or United States of America on a secondment basis. It excludes South Africans that have emigrated to the UK or USA as 'emigration' refers to the act of a person leaving his/her own country in order to settle permanently in another country (Oxford Dictionary, 2015: website).

Secondly, it does not seek to express an opinion on tax implications of employment income earned in any other country other than the UK and USA.

Thirdly, only the tax implications of employment income will be discussed. No other taxes will be referred to, including capital gains tax, value-added tax, donations tax, etc.

Lastly, for the purpose of this report, the individual's employment income will be simplified to include only a salary. Fringe benefits are excluded from the scope of this research.

1.5. Assumptions

The comparative analysis study will be completed based on the following assumptions:

- the individual's taxable income used in the comparisons is treated as simplistic and earned only from employment income whilst on secondment, excluding any fringe benefits;
- for purposes of comparison, the individual is assumed to earn the exact same monetary value of employment income in South Africa and whilst on secondment to the UK and USA;
- a fixed exchange rate is used as at 1 January 2015 to convert amounts to the same currency, Rands, for comparison purposes. The fluctuations in the exchange rates for the entire 2015 South African tax year are expected to have no effect on converted amounts as this report assumes that the exchange rates are fixed for the entire period under review.

1.6. Chapter Outline

Chapter 2 explains how the South African authorities determine whether an individual is a resident for taxation purposes. The assessment of residency includes legislative and judicial approaches. It also discusses the source of employment income and explains how an individual's taxation liability is calculated.

Chapter 3 explains the determination of an individual's residency in the United Kingdom for taxation purposes, according to The United Kingdom legislation and its judiciary. It also discusses the source of employment income and explains how an individual's taxation liability is calculated.

Chapter 4 explains the determination of an individual's residency in the United States of America for taxation purposes, according to the United States' legislation and its judiciary. It also discusses the source of employment income and explains how an individual's taxation liability is calculated.

Chapter 5 explains whether South Africa, the United Kingdom or the United States of America holds the right to tax an individual's employment income earned in either the UK or USA, based on the current double tax agreements between South Africa and these countries.

Chapter 6 illustrates the South African, United Kingdom and United States taxation effects of the South African citizen's secondment employment income, based on varying time periods of secondment. It will provide a monetary comparison of the individual's tax liability whilst on secondment in either country, as well as the effect of the secondment period on the tax liability.

Chapter 7 provides a conclusion of the research report and makes recommendations.

Chapter 2: South African taxation legislation

South Africa (SA) has a residence basis of taxation. According to Interpretation Note No. 3 – *Resident: Definition in relation to a natural person – ordinarily resident* (2002:1), relating to s 1 of the Income Tax Act No. 58 of 1962 (the Act),

South African residents are subject to income tax on their worldwide income, i.e. income derived within and outside South Africa. Non-residents [will] remain taxable on their South African actual or deemed source income.

2.1 Residence

As a result, it is essential to determine whether an individual is a resident in SA for taxation purposes. With regards to an individual, the term 'resident' is defined in s 1 of the Act as a:

(*a*) natural person who is-

(i) ordinarily resident in the Republic; or

(ii) not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic-

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

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

in which case that person will be a resident with effect from the first day of that relevant year of assessment…

…but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation.

There are three components of the above definition of a resident which will be discussed separately:

- Ordinarily resident
- Physically present resident
- Exclusion from resident

2.1.1 Ordinarily resident

The term 'ordinarily resident' is not defined in the Act. Therefore, the South African Revenue Service has published Interpretation Note No. 3 (2002:2-3), which summarises previous court interpretations of 'ordinarily resident':

- the country to which a person would naturally and as a matter of course return from his/her wanderings (*Cohen v CIR* (13 SATC 362));
- where he/she normally resides, apart from temporary/occasional absences (*CIR v Kuttel* (54 SATTC 298));
- the residence must be settled and certain and not temporary and casual (*Soldier v COT* 1943 SR);
- living in a place with some degree of continuity, apart from accidental or temporary absence (*Levene v Inland Revenue Commissioner* [1928] ALL ER Rep. 746 (HL));
- the place where his/her permanent place of abode was, where his/her belongings were stored, which he/she left for temporary absences and to which he/she regularly returned after such absences (*H v COT* 24 SATC 738).

Another tax law case that provides an interpretation of 'ordinarily resident' is *Robinson v COT* 917 TPD 542 (32 SATC 41), in which 'the court decided that residence may be inferred from the possession of an establishment, namely, a fixed house or flat regularly occupied from time to time by the individual. The status of `ordinarily residence' for income tax purposes in the departing country could be nullified if it can be demonstrated that the person has an intention to become ordinarily resident in the host country' (Kamdar, 2011).

De Koker and Williams (2014:5.2B) elaborate further by explaining the 'concept of 'ordinarily resident' - 'Two requirements need to be present: an intention to become ordinarily resident in the adopted foreign country, and steps indicative of this intention having been or being carried out.'

It can be seen that a South African 'citizen' as defined in chapter 1, would most likely be deemed 'ordinarily resident' in South Africa for income tax purposes. As per s102 of the Tax Administration Act No. 28 of 2011, the burden of proof that an amount is not taxable rests upon the individual taxpayer. Therefore, the onus is upon the individual to prove that he/she is not ordinarily resident in SA.

Interpretation Note No. 3 (2002:6) also explains that a natural person will be taxed on his/her worldwide income from the date on which he/she becomes ordinarily resident.

2.1.2 Physically present resident

The South African Revenue Service's Interpretation Note No. 4- *Resident: Definition in relation to a natural person –physical presence test* (2014:2) explains that only individuals who are not ordinarily resident in SA for the year of assessment for taxation purposes, may qualify as a resident due to his/her physical presence in the country for that year through the 'physical presence test'.

De Koker and Williams (2014:5.2B) summarise the conditions of the physical presence test from the Act as:

A natural person who is not ordinarily resident during a year of assessment (referred to here as the 'current year of assessment') will be regarded as a resident in that year if he is or was physically present in the Republic

- for a period or periods exceeding 91 days in aggregate during the current year of assessment; and
- for a period or periods exceeding 91 days in aggregate during each of the five years of assessment preceding the current year of assessment; and
- for a period or periods exceeding 915 days in aggregate during the five years of assessment preceding the current year of assessment

It is important to note that the Act explicitly states in s1 that, in the case of residence by virtue of physical presence, an individual will be deemed a resident from the first day of the first year of assessment in which he/she meets all requirements of the physical presence test.

The term 'resident' in s1 of the Act also contains two provisos to the physical presence test which are further explained by De Koker and Williams (2014:5.2B) as:

- Proviso A – in determining the number of days during which a person is physically present in South Africa, a day includes part of a day but excludes any day in transit through South Africa between two places outside the country if he/she does not formally enter the country through a 'port of entry'.

- Proviso B - a person who is a resident because of physical presence ceases to be such from the day he/she ceases to be physically present in South Africa, if he/she remains outside the country for a continuous period of at least 330 days.

2.1.3 Exclusion from resident

The Act also excludes certain individuals from the definition of a 'resident'. As explained by Interpretation Note No. 4 (2014:8), a person who is deemed to be exclusively a resident of another country for purposes of the relevant tax treaty is excluded from the definition of resident.

It further states that most tax treaties determine residence based on the domestic laws of each country involved, making it possible for a person to be a resident of both countries. In this case, the tie-breaker rules of the tax treaty would be used to determine a person's residence.

De Koker and Williams (2014:5.2B) explain that the tie-breaker in some tax treaties is the location of the individual's 'centre of vital interests'. Based on the double tax agreement with the United States of America and the commentary to the OECD Model Treaty, the centre of vital interests relates to the following:

- Where the individual's personal and economic relations are closer
- Where the individual has a permanent home in each country, he/she is deemed resident in the country where he/she stays more frequently.
  (De Koker and Williams (2014:5.2B))

The effect of the exclusion is that, although a person may be resident in SA by virtue of ordinarily residence or the physical presence test, he/she may be resident in SA, the United Kingdom or the United States of America based on the double tax agreement between these countries.

Residence determined by the DTAs will override residence by virtue of ordinarily residence or the physical presence test. The individual will then be taxed on his/her employment income based on the DTA. Residence per the DTA will be discussed in detail in Chapter 5.

2.2 Source of income

As explained in the introduction of chapter 2, a resident of SA for taxation purposes is taxed on his/her worldwide income, while a non-resident is taxed on his/her income from a SA source. Therefore, the source of the employment income earned by an individual must be determined.

The term 'source' is not defined in the Act. De Koker and Williams (2014:5.3) explain that this is due to the fact that it is impossible to create a definition that would create a universal test for determining when an amount is received from a source within South Africa. They have cited Watermeyer CJ in the case of *CIR v Lever Bros & Unilever Ltd* (14 SATC 1) in this regard. As a result, the South African courts must decide on a case by case basis whether certain income has been earned from a South African source. De Koker and Williams further stated that the *Lever Brothers* case

> Authoritatively lays down that by the word 'source' is meant 'the originating cause' and that the problem involves an inquiry into two matters, namely What is the originating cause of the income? and Is the originating cause in the Republic?

According to De Koker and Williams, there is a difference between a true source of income and a deemed source (2014:5.3). In order to eliminate ambiguity, the Act contains certain provisions in s 9 (1)–(4) which deem specific income to be from a South African source if the criteria are met. This income includes dividends; interest; royalties; scientific, technical, industrial or commercial knowledge or information; services rendered in the public sector; pensions and annuities; capital gains on immovable and movable property in SA and exchange differences. These statutory deemed source provisions override common law principles and case law regarding the source of income.

As the source of employment income for services rendered other than in public office or in the public sector is excluded from the statutory deeming provisions, case law would apply. Thus, an individual would need to decide what the originating cause of his/her employment income is and whether the originating cause is in SA. De Koker and Williams (2014:5.8) explain that the Tax Court (previously Special Court for Hearing Income Tax Appeals)

> has consistently held that the source (in the sense of the 'originating cause') of income from employment and other services rendered is the services, irrespective of the place where the contract is made or the remuneration is paid. The source of the remuneration would therefore be located at the place where the services are rendered.

Therefore, the source of employment income is the place where the services are physically rendered and not where the employment contract was signed or where the remuneration (employment income) is paid.

As the focus of this report is on a South African citizen working on a secondment basis in the United Kingdom or the United States of America, a presumption exists that the individual is resident of SA by virtue of his/her ordinary residence in the country. Therefore, the individual is not required to meet the physical presence test to be a South African resident.

The individual is also taxed on his/her worldwide income earned in the tax year. As a result, it would not matter whether the individual's employment income earned during his/her UK or USA secondment is from a South African or UK/USA source for SA tax purposes. The income would remain taxable in SA during the relevant tax year, unless otherwise directed by the DTAs between SA and these countries.

2.3 Taxation Payable

The individual's normal tax payable will be calculated by determining his/her taxable income. Taxable income equals the sum of all gross income less exempt income and allowable deductions (SA Tax Guide, 2015: website).

This taxable income is then multiplied by the applicable tax rate as per the individuals' tax table to determine the tax payable. Thereafter, any applicable rebates for natural persons and foreign taxes are deducted to arrive at the individual's normal tax liability for the tax year.

Below is a further discussion on specific exemptions and rebates applicable to an individual's employment income earned whilst on secondment.

2.3.1 Exempt Income

Section 10(1)(*o*)(ii) of the Act exempts the following income from taxation:

any form of remuneration received by or accrued to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or

allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—

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

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

and those services were rendered during that period or periods.

SARS has provided further explanations of this provision in its Interpretation Note No. 16 – *Exemption from Income Tax: Foreign Employment Income* (2003:3) by noting the following:

- "Any employer" means an employer which could either be an employer operating in South Africa, or a non-resident employer.

- The 183 day period mentioned above must fall within a period of 12 consecutive calendar months. The 12-month period should commence or end in the year of assessment in which the remuneration in question may be taxed or exempted.
    - To identify the 12 month period, it is necessary to identify the period during which the services were rendered to the employer and to fit it into the 12-month period.

- There must be an absence of more than 60 continuous days in the same 12 month period mentioned above.

- The services that generated the income to be considered for exemption must have been rendered during the 183 day and 60 day periods mentioned above.

- The 183 day and 60 day periods include weekends, public holidays, vacation and sick days.

The s10(1)(*o*)(ii) exemption may exempt the employment income earned by a South African individual whilst on secondment in the UK or USA from SA taxation.

2.3.2 Rebates

Rebates reduce the normal income tax payable in SA. There are 2 types of rebates that may be available to an individual earning employment income according to the Act:

- Normal tax rebates (s6)
- Foreign taxes rebate (s6*quat*)

The normal tax rebates consist of three rebates applying at different ages of individuals. The primary rebate is the standard rebate, whilst the secondary and tertiary rebates are additional tax relief. These rebates are revised each tax year. The following table shows the rebate values:

Table A: Normal tax rebates – 2015 tax year

Tax Rebate	Tax Year 2015
Primary	R12 726
Secondary (65 and older)	R7 110
Tertiary (75 and older)	R2 367

(SARS, 2015: website)

The foreign taxes rebate per s6*quat* is available for foreign taxes paid by a South African resident on any income received by or accrued to such resident from any source outside SA during the tax year. According to D. Reyneke (2011:2.4), the resident taxpayer will be allowed to deduct the foreign taxes paid from the South African normal tax payable only if the foreign income giving rise to said foreign taxes is included in the taxpayer's South African taxable income calculation. Therefore, the income tax liability will first include South African tax on the foreign income earned; then reduce the tax liability by the foreign taxes already paid to the foreign country where the income was earned.

D. Reyneke further explains that the s6*quat* rebate is determined per a calculation after taking into account the following limitations:

- the rebate will not be allowed against exempt income such as the foreign dividend exemption allowed in terms of section 10(1)(i)(xv) of the Act;
- the rebate may not cause an assessed income tax loss, in which case the rebate can be carried forward to the following tax year;
- according to section 6quat(1B)(a), expenses allowed for deduction to arrive at the taxable income must be allocated between the local and foreign taxable income; and
- the rebate can only be claimed if the individual can prove to SARS that the foreign tax was indeed paid and that it is in no way refundable.

The s6*quat* rebate is calculated as follows:

Taxable income from foreign sources / Taxable income from all sources	x	Normal tax liability calculated
LIMITED to actual foreign taxes paid		

(D. Reyneke, 2011:2.4)

2.3.3 Tax rates

The South African tax year starts on 1 March and ends on 28/29 February (leap year) of the following year. Individuals are taxed on their income by a marginal rate system. Therefore, the larger the value of income earned, the higher the applicable tax rate. Below are the applicable tax rates:

Table B: Individual tax rates – 2015 SA tax year

Taxable income (R)	Rates of tax (R)
0 - 174 550	18% of each R1
174 551 - 272 700	31 419 + 25% of the amount above 174 550
272 701 - 377 450	55 957 +30% of the amount above 272 700
377 451 - 528 000	87 382 + 35% of the amount above 377 450
528 001 - 673 100	140 074 +38% of the amount above 528 000
673 101 and above	195 212 + 40% of the amount above 673 100

(SARS, 2015: website)

For the practical application of the South African income tax calculation on an individual's employment income, refer to chapter 6.

Chapter 3: United Kingdom taxation legislation

The United Kingdom imposes taxation on an arising basis. According to HMRC's *RDR 1 Guidance Note: Residence, Domicile and the Remittance Basis* (2015:1.3), the arising basis means that a UK resident will pay UK tax on:

- income which arises in the UK
- income which arises outside the UK
- gains which accrue on the disposal of your assets wherever they are in the world

To determine an individual's tax obligation to the United Kingdom Government, the residency of that individual must first be determined.

3.1 Residence

The term 'residence' is not defined in the Income Tax Act No. 3 of 2007 and has been determined over a period of time through the United Kingdom's judiciary. Her Majesty's Revenue and Customs has issued *RDR 3 Guidance note: Statutory Residence Test (SRT)* (2013) to enable taxpayers determine their residence status. This guidance has replaced the previous version entitled *HMRC 6: Residence, Domicile and the Remittance Basis.*

RDR 3 is effective for tax periods starting 6 April 2013 and sets out specific rules for the Statutory Residence Test (SRT). This test is relevant in determining a person's residence for income tax, capital gains tax, corporate tax and inheritance tax.

The basic rule of the SRT (2013:1.1) is that a person will be resident in the UK for a tax year if he/she does not meet any of the automatic overseas tests, and he/she meets:

- one of the automatic UK tests, or
- the sufficient ties test

3.1.1 Rules of the SRT

The steps to be taken to determine one's residence status, as per RDR 3 (2013:1.2), are:

Step 1: Consider whether you spent 183 days in the UK in that tax year.

An individual is considered to have spent a day in the UK if he/she is in the country at the end of the day (midnight).

If the individual has spent 183 days in the UK in a particular tax year, he/she has met the *first automatic UK test* and will be resident in the UK for tax purposes. If not, the person goes onto Step 2.

Step 2: Consider the 3 automatic overseas tests.

The *first automatic overseas test* (2013:1.5) states that:

- if the person was resident in the UK for 1 or more of the 3 preceding tax years, and,
- he/she spent fewer than 16 days in the UK in the current tax year,
- the individual is not a UK resident.
- If an individual dies in the tax year this test does not apply.

The *second automatic overseas test* (2013:1.6) states that an individual is not a UK resident for the current tax year if he/she was not resident in the UK for any of the 3 preceding tax years, and, the person spent fewer than 46 days in the UK in the tax year.

The *third automatic overseas test* (2013:1.7) states that if:

- You work full-time overseas over the tax year, without any significant breaks from the overseas work during this tax year, and,
- you spend fewer than 91 days in the UK in the tax year, and,
- if you work for more than 3 hours in a day in the UK in the tax year; it is for less than 31 days within the tax year;
- you are not resident in the UK for that tax year.

RDR 3 (2013:3.20) explains 'significant breaks from overseas work' as periods when at least 31 days go by and not one of those days is a day on which a person:

- works for more than 3 hours overseas, or
- would have worked for more than 3 hours overseas but you do not do so because you are on annual leave, sick leave or parenting leave

The three automatic overseas tests override any further tests. Therefore, the individual simply needs to meet any one of the above tests to not be a UK resident. If the person does not, he/she moves onto Step 3.

Step 3: Consider if you meet the second and third UK tests.

The *second automatic UK test* (2013:1.25) is met if there is at least 1 period of 91 consecutive days, at least 30 days of which fall in the tax year, when:

- you have a home in the UK in which you spend a sufficient amount of time, and either you:
- have no overseas home, or
- have an overseas home or homes in each of which you spend no more than a permitted amount of time

It further explains 'a sufficient amount of time' (2013:1.27) as being present in the UK home on at least 30 days of the tax year and 'a permitted amount of time' as being present in the overseas home on fewer than 30 days of the tax year.

The *third automatic UK test* (2013:1.36) is met if you work full-time in the UK for any period of 365 days, with no significant break from UK work and:

- all or part of that 365-day period falls within the tax year
- more than 75% of the total number of days in the 365-day period when you do more than 3 hours of work, are days when you do more than 3 hours of work in the UK
- at least 1 day, which is both in the 365-day period and in the tax year, is a day on which you do more than 3 hours of work in the UK

RDR 3 explains 'significant breaks from UK work' (2013:3.19) as periods when at least 31 days go by and not one of those days is a day on which you:

- work for more than 3 hours in the UK, or
- would have worked for more than 3 hours in the UK, but you do not do so because you are on annual leave, sick leave or parenting leave

If the individual meets any of the above automatic UK tests, he/she is a UK resident. If the person does not, he/she moves onto Step 4.

Step 4: Consider the sufficient ties test (2013:1.42). If you meet this you are UK resident, if you do not meet this, you are not UK resident.

RDR 3 explains that an individual will need to consider his/her connections to the UK, called ties, and determine whether his/her ties, taken together with the number of days the individual spends in the UK, are sufficient for him/her to be considered UK resident for tax purposes for a particular tax year (2013:1.42).

There are 2 premises applicable to this test:

1. If you were not UK resident for any of the 3 tax years before the tax year under consideration, you will need to consider if you have any of these UK ties (2013:1.43):
   - a family tie
   - an accommodation tie
   - a work tie, and
   - a 90-day tie
2. If you were resident in the UK for 1 or more of the 3 tax years before the tax year under consideration, you will also need to consider if you have a country tie (2013:1.44).

Definitions of ties (2013:2):

a) A family tie includes any of the following people who are UK residents in the tax year- a husband, wife or civil partner; a partner if the individual is living with the said partner; a child if below the age of 18.

b) An accommodation tie exists for a tax year if you have a place to live in the UK and it is available to you for a continuous period of 91 days or more during that year, and
   - you spend 1 or more nights there during that year, or
   - if it is at the home of a close relative (parent, grandparent, brother, sister, child or grandchild aged 18 or over), you spend 16 or more nights there during the year.

c) A work tie exists for a tax year if you do more than 3 hours of work a day in the UK on at least 40 days in that year (whether continuously or intermittently).

d) A 90-day tie exists if you have spent more than 90 days in the UK in either or both of the previous 2 tax years.

e) A country tie exists if the UK is the country in which you were present at midnight for the greatest number of days in that tax year.

The number of days you spend in the UK in a tax year dictates the number of UK ties that are needed for you to be UK resident. Refer below to the summary of ties required according to RDR 3.

Table C: UK Ties needed if you were UK resident for one or more of the 3 tax years before the tax year under consideration

Days spent in the UK in the tax year under consideration	UK ties needed
16 - 45	At least 4
46 - 90	At least 3
91 - 120	At least 2
Over 120	At least 1

(RDR 3, 2013:1.45)

Table D: UK Ties needed if you were not UK resident in any of the 3 tax years before the tax year under consideration

Days spent in the UK in the tax year under consideration	UK ties needed
46 - 90	All 4
91 - 120	At least 3
Over 120	At least 2

(RDR 3, 2013:1.45)

3.1.2 Domicile meaning

RDR 1 explains that if an individual is deemed a resident of the UK per the Statutory Residence Test, he/she would then need to determine whether he/she is also domiciled in the UK (2015:1.5). The term domicile is not defined in the Income Tax Act of 2007. Therefore, RDR 1 states that an individual's domicile status is decided under general law, meaning that it must be interpreted according to previous rulings of the courts.

There are many things which affect your domicile. Some of the main points are (RDR 1 2015:5.6):

- you cannot be without a domicile
- you can only have one domicile at a time
- you are normally regarded as domiciled in the country where you have your permanent home
- your existing domicile will continue until you acquire a new one

RDR 1 further explains the three types of domicile:

- *Domicile of origin* (2015:5.11)*:* You normally acquire a domicile of origin from your father when you are born. Your domicile of origin will often be the country in which you were born unless your father was not domiciled there at the time of your birth; then your domicile of origin may be your father's country of domicile.

- *Domicile of choice* (2015:5.16)*:* You have the legal capacity to acquire a new domicile at the age of 16. To acquire a domicile of choice, you must leave your current country of domicile and settle in another country with the intention to remain there permanently.

- *Domicile of dependence* (2015:5.18)*:* Until you have the legal capacity to change it, your domicile will follow that of the person on whom you are legally dependent, for example your father. If the domicile of that person changes, you will automatically acquire the same domicile as that person.

Whether an individual is domiciled in the UK will affect the taxability of his/her income.

3.1.3 Non-resident meaning

An individual will be a non-resident in the UK if he/she meets the definition of a non-resident under HMRC's *RDR 3 Guidance note: Statutory Residence Test (SRT).* The individual would then pay UK taxes on income earned in the United Kingdom only.

RDR 1 states that a non-resident's domicile has no bearing on that individual's tax liabilities in the UK (2015:1.11).

3.1.4 Dual residence meaning

RDR 1 explains that it is possible for an individual to be a UK resident under UK tax rules and at the same time be resident in another country under that country's tax rules (2015:10.32). This is referred to as having 'dual residence'. If this occurs and the UK has a double tax agreement in place with the other country, the amount of UK tax payable may be affected.

For the purposes of this research report, the double tax agreement between South Africa and the UK and its effect on the taxability of an individual's income will be discussed in chapter 5.

3.2 Source of employment income

The source of an individual's employment income also determines whether said income is liable for UK tax. Section 830 of the Income Tax Act No. 3 of 2007 defines foreign employment as:

(4) An employment is foreign if all its duties are performed outside the United Kingdom.

(5) An employment is also foreign if in the tax year in question –

(a) the duties of the employment are in substance performed outside the United Kingdom, and
(b) the only duties of the employment performed in the United Kingdom are duties which are merely incidental to the duties of the employment performed outside the United Kingdom in the year.

Therefore, if an individual's employment does not meet the above definition, it is deemed UK employment. For UK taxation purposes, a non-resident will be liable for taxes on employment income earned in the UK only. As the UK imposes taxation on an arising basis, a UK resident will pay taxes on income which arises both in and outside the UK.

A UK resident's tax liability will further vary based on whether he/she is domiciled in the UK. Residents who are also domiciled in the UK may only be taxed on the arising basis, which includes taxation on their worldwide income. Those who do not have a UK domicile and earn income from a foreign source are able to choose between being taxed on the arising basis or remittance basis (D. Reyneke, 2011:3.4).

3.2.1 The remittance basis of taxation

RDR 1 explains that the 'remittance basis' (2015:9.7) makes an individual liable for tax on:

- all of his/her UK income and gains as they arise or accrue each year, and,
- his/her foreign income and gains if and when he/she brings (remits) it to the UK, including any property which derives from those income and gains

With regards specifically to employment income, if an individual's employment duties in a tax year are performed for a foreign (non-UK) employer wholly overseas, his/her earnings from the employment for that tax year are only taxable if they are remitted to the UK. (RDR1, 2015:6.11).

An individual using the remittance basis will then not qualify for any personal allowances and reliefs from Income Tax (RDR 1, 2015:9.8).

3.3 Taxation payable

The Income Tax Act No. 3 of 2007's s23 explains how an individual's tax liability is calculated:

- All income earned in the tax year is summed to equal total income
- Deduct reliefs and allowances from components of total income to arrive at net income
- Deduct personal allowances available
- Multiply the remaining income at the applicable tax rates
- Deduct any tax reductions applicable from the tax payable
- Add any additional taxes for which the individual is liable to arrive at the tax liability for the year

3.3.1 Allowances

Personal allowances available to individuals who are UK residents are based on the date that an individual was born as follows:

Table E: Personal allowances for UK residents – 2014 and 2015 tax years

Allowances	2014 to 2015	2013 to 2014
Personal Allowance for people born after 5 April 1948	£10,000	£9,440
Income limit for Personal Allowance	£100,000	£100,000
Personal Allowance for people born between 6 April 1938 and 5 April 1948	£10,500	£10,500
Personal Allowance for people born before 6 April 1938	£10,660	£10,660
Income limit for Personal Allowance	£27,000	£26,100

(Her Majesty's Revenue and Customs, n.d.: website)

Note that the personal allowance for people born after 5 April 1948 reduces by £1 for every £2 of income above the £100,000 limit and may reduce to zero. The personal allowance for people born on or before 5 April 1948 reduces by £1 for every £2 above the income limit. It won't be reduced below the standard Personal Allowance for that year.

3.3.2 Tax rates

The Income Tax Act No. 3 of 2007's s4(3) states that a tax year begins on 6 April each year and ends on 5 April of the following year. Income tax is calculated each year based on the applicable tax rate. There are three categories of tax rates- the starting rate; basic rate and higher rate (Income Tax Act No. 3 of 2007:s6). These rates are used on a progressive basis over increasing income. Below are the applicable tax rates:

Table F: Individual tax rates – 2014 and 2015 tax years

Band	Rate	Income after allowances	Income after allowances
		2015	2014
Starting rate	10%	Up to £2,880	Up to £2,790
Basic rate	20%	Up to £31,865	Up to £32,010
Higher rate	40%	£31,866 to £150,000	£32,011 to £150,000
Additional rate	45%	Over £150,001	Over £150,001

(Her Majesty's Revenue and Customs, n.d.: website)

For the practical application of the UK income tax calculation on an individual's employment income, refer to chapter 6.

Chapter 4: United States of America taxation legislation

The United States of America (USA) also applies a residence-based taxation system at a federal level. A tax year begins on the 1st of January of a year and ends on 3 December of that same year. (Erb, 2014: Forbes website) and an individual's tax liability will depend on whether he/she is a USA resident for taxation purposes.

4.1 Residence

The taxation legislation of USA, Internal Revenue Code (IRC) 26 USC of 1954 s7701(a)(30)(A) defines a 'United States Person' as a citizen or resident of the United States.

4.1.1 Meaning of citizen

Indiana University Purdue University Fort Wayne's (IPFW) website regarding US tax residency (2015) explains that a US citizen is a resident of USA for tax purposes, and, in the absence of tax treaties to the contrary, the citizen's worldwide income is taxed in USA.

4.1.2 Meaning of resident

Publication 519: U.S. Tax Guide for Aliens (Department of the Treasury & Internal Revenue Service, 2015: Introduction), a guidance issued by USA tax authorities to be used by non-resident individuals in preparing their USA tax returns, explains that 'for tax purposes, an alien is an individual who is not a U.S. citizen.'

IRC 26 USC of 1954 s7701(b)(1) distinguishes between a 'resident alien' and 'non-resident alien' as follows:

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence
Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test
Such individual meets the substantial presence test of paragraph (3).

(iii) First year election
Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

The provisions which comprise the definition of a resident alien will be examined separately below.

a.) Lawfully admitted for permanent residence

Publication 519 clarifies that for an individual to be a lawfully admitted permanent resident, that individual must pass the 'green card test' (2015: Chapter 1). It further explains this test as follows:

'You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the U.S. Citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued you an alien registration card, also known as a "green card".'

An individual who holds a US 'green card' is deemed to be a resident of USA for taxation purposes from the first day in the calendar year on which he/she is present in USA as a lawful permanent resident (Publication 519, 2015: Chapter 1) and is taxed in the same manner as a USA citizen- on his/her worldwide income.

b.) Substantial presence test

The substantial presence test is defined in the IRC 26 USC of 1954 s7701(b)(3)(A). An individual will meet this test in the tax year if he/she is physically present in USA on at least:

- 31 days during the current year, and

- 183 days during the 3-year period that includes the current year and last 2 preceding years, counting:
  - All the days he/she was present in the current year, and
  - One third of the days he/she was present in the prior year, and
  - One sixth of the days he/she was present in the year preceding the prior year.

The IRC also provides an exception to the substantial presence test per s7701(b)(3)(B); the individual will be treated as not meeting the substantial presence test in the current year if:

- He/she is present in USA on fewer than 183 days during the current year, and
- it is established that, for the current year, he/she has a tax home in a foreign country and has a closer connection to such foreign country than to USA.

Publication 519 (2015: Chapter 1) states that an individual's 'tax home' is the general area of his/her main place of business, employment, or post of duty, regardless of where he/she maintains his/her family home. An individual's tax home is the place where he/she permanently or indefinitely works as an employee.

It further states that the individual's residency starting date is the first day he/she is present in USA during that calendar year (2015: Chapter 1).

c.) First year election

IRC 26 USC of 1954 s7701(b)(4)(A) states that an alien individual can elect to be a resident if the individual –

(i) is not a resident of USA under provision (i) Lawfully admitted for permanent residence or (ii) Substantial presence test of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the 'election year'),

(ii) was not a resident of USA under paragraph (1)(A) with respect to the prior calendar year,

(iii) is a resident of USA under clause (ii) Substantial presence test with respect to the following calendar year, and

(iv) is both –

(I) present in USA for a period of at least 31 consecutive days in the election year, and

(II) present in USA during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the 'testing period') for a number of days equal to or exceeding 75 percent of the total number of days in the testing period.

Section 7701(b)(4)(C) further states that an individual will be a resident in the election year from the first day of the earliest 31-day period as mentioned in s 7701(b)(4)(A)(iv)(I) above.

4.1.3 Dual residency

According to Publication 519 (2015: Chapter 1), the above residency rules do not override double tax agreement (DTA) definitions of residency. If the individual is a dual-resident taxpayer, he/she can still claim the benefits under the DTA. If he/she is treated as a resident of a foreign country under the DTA, he/she is treated as a nonresident alien for USA income tax purposes.

For the purposes of this research report, the double tax agreement between South Africa and USA and its effect on the taxability of an individual's income will be discussed in chapter 5.

4.2 Source of income

IRC 26 USC of 1954 s61(a)(1) includes income received as compensation for services in the definition of an individual's 'gross income'.

Section 861(a)(3) of the same legislation further states that compensation for labour or personal services performed in USA shall be treated as income from a US source for tax purposes. This section also states that the following income will not be deemed from a source within USA:

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and
(C) the compensation is for labor or services performed as an employee of or under a contract with–
    (i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or
    (ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

Therefore, this exemption will only apply in this report if the compensation for labour is borne by a foreign entity as opposed to a US resident company.

In determining the USA-source portion of compensation earned, an individual will apply a time basis calculation (Publication 519, 2015: Chapter 2). Total USA compensation income, excluding fringe benefits, will equal the total compensation income multiplied by the number of days the individual performed services in USA during the year; divided by the total number of days that services were performed during the year.

The source of the individual's employment income must be determined as citizens and resident aliens of USA for taxation purposes are taxed on their worldwide income; whilst non-resident aliens are taxed on income only from within USA sources.

4.3 Taxation payable

An individual's tax liability is calculated by multiplying his/her taxable income by the applicable tax rate. In arriving at taxable income, the individual's 'adjusted gross income' must first be determined.

'Adjusted gross income' is defined in IRC 26 USC of 1954 s62(a) as gross income less certain deductions available to individuals. The only deduction relevant to individuals in this section for the purpose of this report is the reimbursed expenses of employees if such employees have incurred business expenditure reimbursed by their employers.

The additional applicable deductions in arriving at taxable income are discussed in the deductions section below.

4.3.1 Deductions

IRC 26 USC's s63(b) further explains that an individual's taxable income is calculated as the 'adjusted gross income' less the

- standard deduction, and
- deduction for personal exemption.

a.) Standard deduction

The 'standard deduction' is an alternative to itemised deductions of gross income. Individuals may choose between receiving itemised deductions and a standard deduction for the tax year (IRC 26 USC, 1954:s63(e)).

For the purposes of this report, only the standard deduction will be discussed and used in the practical examples of the calculation of an individual earning employment income in USA. According to IRC 26 USC of 1954 s63(c)(6)(B), non-resident aliens are not entitled to receive the standard deduction.

This deduction also varies, based on the type of tax return filed by the individual. There are several types of returns that may be filed, including: single; married filing jointly; married filing separately; head of household; surviving spouse (Erb, 2014: Forbes website). For this report, an assumption will be made that the individual earning secondment employment income in USA is single and will file a single person's return for tax purposes in USA. Below are the actual standard deductions available to individuals:

Table G: Standard deduction for individual filing single returns – 2014 and 2015 tax years

Filing Status	Standard deduction 2015	Standard deduction 2014
Single	$6,300	$6,200

(Erb, 2014: Forbes website)

b.) Deduction for personal exemption

The deduction for personal exemption is available to US citizens, resident aliens and non-resident alien individuals. It is a single amount that may be deducted from an individual's adjusted gross income.

This deduction has a limitation called a 'phaseout'. According to IRC 26 USC of 1954 s151(d)(3), the personal exemption decreases by 2% for every $2,500 (or part thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. The threshold amount varies each year and is shown with the deduction for personal exemption amounts in the table below:

Table H: Deduction for personal exemption phaseout threshold for individual filing single returns – 2014 and 2015 tax years

Deduction	2015	2014
Personal exemption	$4,000	$3,950
Phaseout threshold begins	$258,250	$254,200
Phaseout complete	$380,750	$376,700

(Erb, 2014: Forbes website); (Erb, 2013: Forbes website)

4.3.2 Tax rates

USA also maintains a marginal tax rate system for individuals. There are different marginal tax tables applicable to each type of individual taxpayer: single; married filing jointly; married filing separately; head of household; surviving spouse (Erb, 2014: Forbes website).

As explained under the standard deductions section, for this report, it is assumed that the individual earning secondment employment income in USA is single and will file a single person's return for tax purposes in USA. Therefore, the tax tables applicable to a single individual have been compiled in the tables below:

Table I: Tax rate table for individual filing single return – 2014 tax year

Taxable Income	Tax Rate
$0 to $9,075	10%
$9,076 to $36,900	$907.50 plus 15% of the amount over $9,075
$36,901 to $89,350	$5,081.25 plus 25% of the amount over $36,900
$89,351 to $186,350	$18,193.75 plus 28% of the amount over $89,350
$186,351 to $405,100	$45,353.75 plus 33% of the amount over $186,350
$405,101 to $406,750	$117,541.25 plus 35% of the amount over $405,100
$406,751 or more	$118,118.75 plus 39.6% of the amount over $406,750

(Erb, 2013: Forbes website)

Table J: Tax rate table for individual filing single return – 2015 tax year

Taxable Income	Tax Rate
$0 to $9,225	10%
$9,226 to $37,450	$922.50 plus 15% of the amount over $9,225
$37,451 to $90,750	$5,156.25 plus 25% of the amount over $37,450
$90,751 to $189,300	$18,481.25 plus 28% of the amount over $90,750
$189,301 to $411,500	$46,075.25 plus 33% of the amount over $189,300
$411,501 to $413,200	$119,401.25 plus 35% of the amount over $411,500
$413,201 or more	$119,996.25 plus 39.6% of the amount over $413,200

(Erb, 2014: Forbes website)

a.) Non-resident aliens tax rate

A non-resident alien individual's applicable tax rate will be determined by which of the following two categories his/her income from a USA source falls within:

- Income that is effectively connected with a trade or business in USA, and
- Income that is not effectively connected with a trade or business in USA

The difference between these two categories is that effectively connected income, after allowable deductions, is taxed at the marginal tax rates; the same rates that apply to US citizens and residents. Income that is not effectively connected is taxed at a flat 30% rate (Publication 519, 2015: Chapter 4).

Publication 519 further explains that a non-resident alien usually is engaged in a USA trade or business when he/she performs personal services in the United States. Personal service income, which the individual receives in a tax year in which he/she is engaged in a USA trade or business, is effectively connected with a USA trade or business.

Therefore, a non-resident alien's income from the performance of personal services/employment income will most likely be treated as income that is effectively connected with a trade or business in USA and the marginal tax rates will apply to the individual.

For the practical application of the USA income tax calculation on an individual's employment income, refer to chapter 6.

Chapter 5: Double taxation agreements

In this chapter, the double taxation agreements (DTA) that the governments of South Africa have signed with the governments of the United Kingdom and the United States of America will be examined to determine which country holds the right to tax a South African individual's employment income whilst on secondment in these countries.

5.1 South Africa - United Kingdom DTA

The 'Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains' of 2002 (UK DTA) is the double taxation agreement between SA and the UK. For the purposes of this report, the agreement determines which of the two countries has the right to tax an individual's employment income earned whilst on secondment in the UK.

5.1.1 Residence per UK DTA

Article 4(1) of the UK DTA (2002:6) discusses of which country an individual is deemed to be a resident for taxation purposes. This article states that a 'resident of a Contracting State' (country) is defined as an individual 'who, under the laws of that State, is liable to tax therein by reason of that person's domicile [or] residence'.

The terms 'domicile' and 'residence' must be examined in the context of SA and the UK's respective tax authorities as each of these countries would apply their own legislation and judiciaries in determining whether an individual is domiciled or resident in their country.

a) South Africa

In SA, the term 'domicile' is not defined in tax legislation or through the judiciary. Residence has been discussed in chapter 2 and indicates that an individual is ordinarily resident in SA if that is the place 'where he/she normally resides, apart from temporary/occasional absences' (CIR v Kuttel (54 SATTC 298)) and 'the residence must be settled and certain and not temporary and casual' (*Soldier v COT* 1943 SR).

Therefore, an individual would be a South African resident for the purposes of the UK DTA if he/she has a permanent home in the country and will be taxed on his/her worldwide income.

b) United Kingdom

In the UK, an individual's residence for tax purposes is determined through the Statutory Residence Test of *RDR 3 Guidance note: Statutory Residence Test (SRT)* (HMRC, 2013), as discussed in chapter 3. According to the SRT (2013:1.1), an individual will be resident in the UK for a tax year if he/she does not meet any of the automatic overseas tests, and he/she meets one of the automatic UK tests or the sufficient ties test. If an individual is then deemed to be a UK resident, his/her domicile will be examined.

According to *RDR 1 Guidance Note: Residence, Domicile and the Remittance Basis* (HMRC, 2015:5.6), an individual is normally regarded as domiciled in the country where he/she has his/her permanent home. If the courts determine that the individual is domiciled in the UK, he/she will be taxed on his/her worldwide income. If not, he/she would be liable for taxation on income from a UK source and only foreign income earned which has been remitted to the UK.

5.1.2 Residence tie-breaker rules

There may be instances where an individual is deemed a resident of both SA and the UK by virtue of their respective tax rules. Article 4 of the UK DTA (2002:7) has a provision which contains 'tie-breaker' rules to ensure that the individual is resident of only one of the countries for the purposes of the DTA. The tie-breaker rules must be followed in the order below (UK DTA, 2002: Article 4(2)):

(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 subparagraph (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.

If a conclusion on the individual's residence is reached after the first step above, the individual would not need to apply the next step. As discussed in chapter 1, the UK DTA is based on the OECD's Model Tax Convention. Therefore, the OECD's commentary on its 2014 Model Tax Convention has been examined below in order to gain a better understanding of the residence tie-breaker rules.

The OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 'Commentary on Article 4 – Concerning the Definition of Resident' (2014:88-90) explains what is meant by the following key terms of the tie-breaker rules:

- *Permanent home* - the individual owns or possesses a home for his/her permanent use which is available to him/her at all times continuously. This is distinct from a place where the individual would stay for a short duration.

- *Personal and economic relations are closer (centre of vital interests)* - in determining where an individual's personal and economic relations are closer, his/her family, social relations, occupation, political, cultural and other activities must all be examined as a whole. If the individual has a home in one State and sets up a home in another State whilst retaining the first home in the environment where he/she has always lived and worked and has family and possessions; it can be shown that the individual has retained his/her centre of vital interests in the first State.

- *Habitual abode* - this would be the State where the individual stays more frequently. All types of stays would need to be taken into account, not just stays in a permanent home.

- *National* – this term has not been elaborated upon in the OECD commentary. Therefore, it is assumed that the literal sense of the word is meant in the DTA, which refers to the individual being a citizen of a State.

An individual's residency according to the UK DTA will affect which country holds the right to tax his/her employment income earned in South Africa and the UK.

5.1.3 Income from employment

Article 14(1) 'Income from Employment' of the UK DTA (2002:16) determines which State holds the right to tax an individual's employment income. This article states that salaries and wages earned by an individual who is a resident of a Contracting State through his/her employment is taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, the remuneration (employment income) earned from such employment may be taxed in that other State.

Article 14(2) of the UK DTA (2002:16) provides further rules to be followed in determining which country may tax the individual's employment income:

Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

The OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 'Commentary on Article 15 – Concerning the Taxation of Income from Employment' (2014:256-263)[1] clarifies any possible ambiguities of the following provisions within the UK DTA:

- *Exercise of employment* – this refers to the State where the individual actually performed the employment services.

- *Any 12-month period commencing or ending in the fiscal year* – all possible periods of 12 months must be considered, including overlapping periods as each State might have a different fiscal (tax) year. The 'fiscal year' refers to the tax year of the State in which the employment was exercised and not the State of which the individual is a resident.
    - **Example of 12-month period**: If an individual, who is a resident of State B, works in State A from August 2014 to February 2015 and State A's fiscal year runs from 1 January to 31 December, the 12-month period that starts in the 2014 fiscal year or ends in the 2015 fiscal year must be tested for the 183-day rule. Therefore, the following two 12-month periods would be tested:

[1] Note that the article for income from employment in the UK DTA refers to Article 14 whilst the same article is referred to in the OECD Model Tax Convention as Article 15. The different numbering is inconsequential to the actual content of these articles.

- 1 August 2014 to 31 July 2015 (starts in 2014). If the individual was present in State A for more than 183 days, employment income for the period 1 August 2014 and 31 December 2014 would be taxed by State A for the 2014 fiscal year..

- 1 March 2014 to 28 February 2015 (ends in 2015). If the individual was present in State A for more than 183 days, employment income for the period 1 January and 28 February 2015 would be taxed by State A for the 2015 fiscal year.

According to Article 4(1) and (3) of the UK DTA (2002:6-7), a person other than an individual is 'resident of a Contracting State' if the person 'is liable to tax therein by reason of that person's... ...place of management [or] place of incorporation'. The article's tie-breaker rule states that if a person other than an individual is a resident of both Contracting States, then it will be deemed to be a resident solely of the State in which its 'place of effective management' is situated.

The OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 'Commentary on Article 4 – Concerning the Definition of Resident' (2014:90-91) explains that the 'place of effective management' is the place where 'key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.'

The term 'permanent establishment' is defined in Article 5(1) 'Permanent Establishment' of the UK DTA (2002:7) as 'a fixed place of business through which the business of an enterprise is wholly or partly carried on.' It includes a place of management; branch; office; factory or workshop.

5.2 South Africa - United States of America DTA

The '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 on capital gains' of 1997 (USA DTA) is the double taxation agreement between SA and USA. For the purposes of this report, the agreement determines which of the two countries has the right to tax an individual's employment income earned whilst on secondment in USA.

5.2.1 Residence per USA DTA

Article 4(1) of the USA DTA (1997:5) discusses of which country an individual is deemed to be a resident for taxation purposes. It explains that a 'resident of a Contracting State' is an individual who:

- In the case of USA - under the laws of USA, is liable to tax therein by reason of his/her domicile, residence, or citizenship. This term does not include any person who is liable to tax in USA in respect only of income from sources therein.
- In the case of SA - is ordinarily resident in SA

The residency rules for taxation purposes of each of the above-mentioned countries will be examined below.

a) South Africa

As discussed under the South Africa – United Kingdom DTA section of this chapter, an individual is ordinarily resident in SA if that is the place 'where he/she normally resides, apart from temporary/occasional absences' (CIR v Kuttel (54 SATTC 298)). Such an individual is taxed by the South African tax authorities on his/her worldwide income.

b) United States of America

As discussed in chapter 4, an individual is taxed by the USA tax authorities on his/her worldwide income if he/she is a US citizen or a resident alien. The IRC 26 USC of 1954 s7701(b)(1) states that an individual is deemed to be a resident alien through one of the following:

- Lawfully admitted for permanent residence by holding a 'green card', or
- Meeting the substantial presence test, or
- First year election

Such an individual will be taxed on his/her worldwide income.

5.2.2 Residence tie-breaker rules

There may be instances where an individual is deemed a resident of both SA and USA by virtue of their respective tax rules. Article 4 of the USA DTA (1997:5) has a provision which

contains 'tie-breaker' rules to ensure that the individual is resident of only one of the countries for the purposes of the DTA. The tie-breaker rules must be followed in the order below (USA DTA, 1997: Article 4(2)):

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

As with the UK DTA, if a conclusion on the individual's residence is reached after the first step above, the individual would not need to apply the next step. Also, as the tie-breaker rules are the same as that of the UK DTA, the OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 'Commentary on Article 4 – Concerning the Definition of Resident' (2014:88-90) can also be applied in the understanding of the USA DTA.

An individual's residency according to the USA DTA will affect which country holds the right to tax his/her employment income earned in SA and USA.

5.2.3 Income from employment

Article 15(1) 'Dependent Personal Services' of the USA DTA (1997:14) determines which State holds the right to tax an individual's income earned from employment. This article states that salaries and wages earned by an individual who is a resident of a Contracting State through his/her employment, is taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, the remuneration (employment income) earned from such employment may be taxed in that other State.

Article 15(2) of the USA DTA (1997:14-15) provides further rules to be followed in determining which country may tax the individual's employment income:

Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and
b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

As the above provision is very similar to that of the UK DTA, The OECD's Model Tax Convention on Income and on Capital: Condensed version of 2014 'Commentary on Article 15 – Concerning the Taxation of Income from Employment' (2014:256-263) can also be used to further understand part a) of Article 15(2) of the USA DTA (1997:15).

With regards to part b) and c) of the above provision, Article 4(1) of the USA DTA (1997:5) explains when a company is a resident of each Contracting State:

- USA - any person who, under the laws of USA, is liable to tax therein by reason of its place of incorporation
- SA - any legal person which is incorporated or has its place of effective management in SA

Article 4(3) of the USA DTA (1997:6) explains that the tie-breaker rule for the residence of a company that is resident of both States is that the company is deemed to be resident of the country in which it is incorporated.

The term 'permanent establishment' is defined in Article 5(1) 'Permanent Establishment' of the USA DTA (1997:6) 'as a fixed place of business through which the business of an enterprise is wholly or partly carried on.' It includes a place of management; branch; office; factory; workshop; store; building site or furnishing of services within a Contracting State. The term 'fixed base' is referred to in the USA DTA's Article 14 'Independent Personal Services' (1997:14) as a place that an individual who performs independent professional services has regularly available to him/her for the purpose of performing his/her services.

Practical examples of the taxability of the employment income earned by a South African citizen whilst on secondment in the UK and USA will be examined in chapter 6.

Chapter 6: Comparative analysis of taxation liability

In this chapter, the rights of SA, the UK and USA to tax the employment income of a South African citizen on secondment in the UK and USA for varying periods of time will be determined and the actual tax liabilities of the individual will be calculated.

As this report is based on a South African citizen working on secondment in the UK and USA, his/her South African tax liability on employment income earned in SA will be used as a basis of comparison.

6.1 South African income tax

For the purposes of the tax calculations in this chapter, the following scenario will be used:

An individual who is a South African citizen earns R50 000.00 per month in employment income from his SA employer in the tax year 1 March 2014 to 28 February 2015. This individual is a 30-year old single male.

The individual's normal tax liability[2] for the 2015 tax year is calculated as follows:

Gross income	(50 000 x 12 months)	600 000
Less: exempt income and deductions		-
Taxable income		600 000
Normal tax payable	(140 074 + ((600 000 - 528 000) x 38%)) [Table B of chapter 2]	**167 434**
Normal tax rebate	[Table A of chapter 2]	-12 726
Normal tax liability		**154 708**

The individual's normal tax liability per month of the 2015 tax year is (R154 708/12) R12 892.

In this report, the taxing rights of SA and the UK/USA will be examined for the employment income earned by the abovementioned South African citizen whilst on secondment to the UK/USA over each of the following secondment periods:

[2] Note: All amounts in the calculations have been rounded to the nearest whole number.

- 3 months from 1 March to 31 May 2014
- 6 months from 1 March to 31 August 2014
- 12 months from 1 March 2014 to 28 February 2015

For the purposes of comparison, the following assumptions have been made:

- The individual is assumed to earn the exact same monetary value of employment income whilst on secondment to the UK/USA as in SA.
- For any UK/USA tax calculations, it is assumed that the foreign exchange rate between SA and the UK/USA has remained constant as at the actual exchange rate on 1 January 2015 for the entire period under review (1 March 2014 to 28 February 2015).
    - The fluctuations in the exchange rates for the entire 2015 South African tax year are expected to have no effect on UK/USA tax amounts converted to Rands so as to compare the true difference between taxes payable in SA and the UK/USA.
    - The foreign exchange rate between Rands and Pounds as at 1 January 2015 is £1:R18.00 (OANDA, 2015: website).
    - The foreign exchange rate between Rands and Dollars as at 1 January 2015 is $1:R11.56 (OANDA, 2015: website).

6.2 Secondment to the UK

6.2.1 3-Month secondment to the UK

Based on the scenario described in section 6.1 above, assume a 30-year old South African citizen has begun a secondment in the UK, working for a fellow subsidiary of the company that he worked for in SA for a period of 3 months from 1 March to 31 May 2014. He earns the UK-equivalent of R50 000.00 per month and is paid by this subsidiary company, which is a UK resident for tax purposes.

a) Would South Africa or the UK hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the UK DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in SA.
- In determining residency in the UK, regard must be had to the UK tax year which begins on 6 April each year and ends on 5 April of the following year.
    - The individual does not meet the *first automatic UK test* as his 3-month secondment in the UK is less than the required 183 days in the country in the tax year (36 days in 2014; 56 days in 2015),
    - He does not meet the *first automatic overseas test* as he was not resident in the UK for 1 or more of the 3 preceding tax years,
    - He meets the *second automatic overseas test* in the 2014 UK tax year as he was not resident in the UK for any of the 3 preceding tax years and he spent fewer than 46 days in the UK in the tax year- making him a non-resident of UK in the 2014 tax year,
    - He does not meet the *third automatic overseas test* in the 2015 tax year as he has worked in the UK whilst on secondment for more than 31 days within the tax year (56 days),
    - He does not meet the *second automatic UK test* as he has an overseas home in South Africa in the 2015 tax year because he is only in the UK for a 3-month secondment,
    - He does not meet the *third automatic UK test* as he has not worked full-time in the UK for any period of 365 days (92 in total),
    - He does not meet the sufficient ties test in the 2015 tax year as he would need at least 4 ties as mentioned in chapter 3 to be a UK resident but only has 1- a work tie as he did more than 3 hours of work a day in the UK on at least 40 days in the 2015 year (40 days excluding weekends).
    - Therefore, he is not a UK resident in both the 2014 and 2015 UK tax years.

Next, the source of the income earned whilst on secondment in the UK must be determined:

- As per Article 14(1) of the UK DTA, it appears that the UK may tax the employment income as it is the place where the employment is actually exercised.
- The provisions of Article 14(2), deeming the income taxable in South Africa, do not apply as the UK employer paying his remuneration is a UK company – a

resident of the UK and has its permanent establishment in the UK (the office in the UK where the individual is employed).

- Therefore, the employment income earned is deemed by the UK DTA to be from a UK source taxable in the UK.
- This is in line with UK tax legislation which taxes the non-resident on his employment income earned from a UK source.

b) The individual's UK normal tax liability for the 2014 and 2015 UK tax years is as follows:

		2014 (£)
Total income	(50 000 x 12 months x 36 days / 365 days) /18.00	3 288
Less: reliefs and allowances		-
Income		3 288
Less: personal allowance	Not available to non-UK residents	-
Taxable income		3 288
Normal tax liability	((2 790 x 10%)+ ((3 288 - 2 790) x 20%)) [Table F of chapter 3]	**379**
Normal tax liability in Rands	(379 x 18.00)	**R 6 815**

		2015 (£)
Total income	(50 000 x 12 months x 56 days / 365 days) /18.00	5 114
Less: reliefs and allowances		-
Income		5 114
Less: personal allowance	Not available to non-UK residents	-
Taxable income		5 114
Normal tax liability	((2 880 x 10%) + ((5 114 - 2 880) x 20%)) [Table F of chapter 3]	**735**
Normal tax liability in Rands	(735 x 18.00)	**R 13 226**

The individual's total tax liability for the secondment income is R20 041 (£1 113). For South African tax purposes, he would be allowed to claim a s6*quat* rebate for the 2015 SA tax year, as discussed in chapter 2. Therefore, he would receive a rebate on UK taxes paid for his secondment income; ensuring that he is not taxed by both South Africa and the UK.

6.2.2 6-Month secondment to the UK

Assume the same details as the scenario for the individual's 3-month secondment to the UK, except that the secondment is now for a 6-month period from 1 March to 31 August 2014.

a) Would South Africa or the UK hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the UK DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in SA.
- Below are the steps of the UK Statutory Residence Test:
  - He does not meet the *first automatic UK test* as his 6-month secondment in the UK is less than the required 183 days in the country in the tax year (36 days in 2014; 148 days in 2015),
  - He does not meet the *first automatic overseas test* as he was not resident in the UK for 1 or more of the 3 preceding tax years,
  - He meets the *second automatic overseas test* in the 2014 UK tax year as he was not resident in the UK for any of the 3 preceding tax years and he spent fewer than 46 days in the UK in the tax year- making him a non-resident of UK in the 2014 tax year,
  - He does not meet the *third automatic overseas test* in the 2015 tax year as he has worked in the UK whilst on secondment for more than 31 days within the tax year (148 days),
  - He does not meet the *second automatic UK test* as he has an overseas home in South Africa in the 2015 tax year because he is only in the UK for a 6-month secondment,
  - He does not meet the *third automatic UK test* as he has not worked full-time in the UK for any period of 365 days (184 in total),
  - He meets the sufficient ties test in the 2015 tax year as he would need at least 2 ties as mentioned in chapter 3 to be a UK resident and has 2- a work tie as he did more than 3 hours of work a day in the UK on at least 40 days in the 2015 year (106 days excluding weekends) and an accommodation tie as he has a place to live in the UK and it is available to

him for a continuous period of 91 days or more during the 2015 tax year (148 days).

- Therefore, he is not a UK resident in the 2014 tax year but he is deemed a UK resident in the 2015 UK tax year.

- As the individual is a South African and UK resident for the 2015 tax year of each country, the tie-breaker rules of Article 4(2) must be applied. The first rule states that he will be a resident in the country in which he has a permanent home. As he is a South African citizen working in the UK only on a 6-month secondment, his permanent home is deemed to be in South Africa, making him a South African resident only for tax purposes.

Next, the source of the income earned whilst on secondment in the UK must be determined:

- As per Article 14(1) of the UK DTA, it appears that the UK may tax the employment income because it is the place where the employment is actually exercised.
- As per the 3-month secondment example, the provisions of Article 14(2), deeming the income taxable in South Africa, do not apply.
- Therefore, the employment income earned is deemed by the UK DTA to be from a UK source taxable in the UK.

b) The individual's UK normal tax liability for the 2014 and 2015 UK tax years is as follows:

		2014 (£)
Total income	(50 000 x 12 months x 36 days / 365 days) /18.00	3 288
Less: reliefs and allowances		-
Income		3 288
Less: personal allowance	Not available to non-UK residents	-
Taxable income		3 288
Normal tax liability	((2 790 x 10%) + ((3 288 - 2 790) x 20%)) [Table F of chapter 3]	**379**
Normal tax liability in Rands	(379 x 18.00)	**R 6 815**

		2015 (£)
Total income	(50 000 x 12 months x 148 days / 365 days) /18.00	13 516
Less: reliefs and allowances		-
Income		13 516
Less: personal allowance	Not available to non-UK residents	-
Taxable income		13 516
Normal tax liability	((2 880 x 10%)+ ((13 516 - 2 880) x 20%)) [Table F of chapter 3]	**2 415**
Normal tax liability in Rands	(2 415 x 18.00)	**R 43 474**

The individual's total tax liability for the secondment income is R50 288 (£2 794). For South African tax purposes, he would be allowed to exempt the secondment income in the 2015 tax year under s10(1)(*o*)(ii) of the Act as he would be out of the country for a period exceeding 183 full days in aggregate (he was in the UK for 184 days in total) during the 12-month period starting 1 March 2014 and for a continuous period exceeding 60 full days during that period of 12 months (he spent 184 days consecutively in the UK) and those services were rendered during that period. As this income is exempt, he would not need to calculate a s6*quat* rebate. He would thus only be taxed on the secondment remuneration in the UK.

6.2.3 12-Month secondment to the UK

Assume the same details as the scenario for the individual's 3-month secondment to the UK, except that the secondment is now for a 12-month period from 1 March 2014 to 28 February 2015.

a) Would South Africa or the UK hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the UK DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in SA.

- Below are the steps of the UK Statutory Residence Test:
    - He meets the *first automatic UK test* in the 2015 tax year as his 12-month secondment in the UK is greater than the required 183 days in the country in the 2015 tax year (36 days in 2014; 329 days in 2015). Therefore he is a UK resident in the 2015 tax year.
    - For the 2014 tax year, he does not meet the *first automatic overseas test* as he was not resident in the UK for 1 or more of the 3 preceding tax years, but,
    - He meets the *second automatic overseas test* in the 2014 UK tax year as he was not resident in the UK for any of the 3 preceding tax years and he spent fewer than 46 days in the UK in the 2014 tax year- making him a non-resident of UK in the 2014 tax year.
    - Therefore, he is not a UK resident in the 2014 tax year but he is deemed a UK resident in the 2015 UK tax year.
- As the individual is a SA and UK resident for the 2015 tax year of each country, the tie-breaker rules of Article 4(2) must be applied. The first rule states that he will be a resident in the country in which he has a permanent home. As he is a South African citizen working in the UK only on a 12-month secondment, his permanent home is deemed to be in South Africa, making him a South African resident only for tax purposes.

Next, the source of the income earned whilst on secondment in the UK must be determined:

- As per Article 14(1) of the UK DTA, it appears that the UK may tax the employment income as it is the place where the employment is actually exercised.
- As per the 3-month secondment example, the provisions of Article 14(2), deeming the income taxable in South Africa, do not apply.
- Therefore, the employment income earned is deemed by the UK DTA to be from a UK source taxable in the UK.

b) The individual's UK normal tax liability for the 2014 and 2015 UK tax years is as follows:

		2014 (£)
Total income	(50 000 x 12 months x 36 days / 365 days) /18.00	3 288
Less: reliefs and allowances		-
Income		3 288
Less: personal allowance	Not available to non-UK residents	-
Taxable income		3 288
Normal tax liability	((2 790 x 10%) + ((3 288 - 2 790) x 20%)) [Table F of chapter 3]	**379**
Normal tax liability in Rands	(379 x 18.00)	**R 6 815**

		2015 (£)
Total income	(50 000 x 12 months x 329 days / 365 days) /18.00	30 046
Less: reliefs and allowances		-
Income		30 046
Less: personal allowance	Not available to non-UK residents	-
Taxable income		30 046
Normal tax liability	((2 880 x 10%)+ ((30 046 - 2 880) x 20%)) [Table F of chapter 3]	**5 721**
Normal tax liability in Rands	(5 721 x 18.00)	**R 102 982**

The individual's total tax liability for the secondment income is R109 796 (£6 100). As with the 6-month secondment, for South African tax purposes, he would be allowed to exempt the secondment income in the 2015 tax year under s10(1)(*o*)(ii) of the Act. As this income is exempt, he would not need to calculate a s6*quat* rebate. He would thus only be taxed on the secondment remuneration in the UK.

6.3 Secondment to USA

6.3.1 3-Month secondment to USA

Based on the scenario described in section 6.1 above, assume a 30-year old South African citizen has begun a secondment in USA, working for a fellow subsidiary of the company that he worked for in SA for a period of 3 months from 1 March to 31 May 2014. He earns the

USA-equivalent of R50 000.00 per month and is paid by this subsidiary company, which is a USA resident for tax purposes.

a) Would South Africa or USA hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the USA DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in SA.
- In determining residency in USA, regard must be had to the USA tax year which begins on 1 January each year and ends on 31 December of that year.
  - The individual is not a citizen of USA but may be a resident alien through the substantial presence test – he is present in USA for at least 31 days in the current USA 2014 tax year (92 days) but he is not present for at least 183 days during the 3-year period that includes the current year and last 2 preceding years (only 92 days in the current year),
  - Therefore, he is a non-resident alien for tax purposes.

Next, the source of the income earned whilst on secondment in USA must be determined:

- As per Article 15(1) of the USA DTA, it appears that USA may tax the employment income as it is the place where the employment is actually exercised.
- The provisions of Article 15(2), deeming the income taxable in South Africa, do not apply as the USA employer paying his remuneration is a USA company – a resident of the USA and has its permanent establishment in USA (the office in USA where the individual is employed).
- Therefore, the employment income earned is deemed by the USA DTA to be from a USA source taxable in USA.
- This is in line with USA tax legislation which taxes the non-resident on his employment income earned from a USA source.

b) The individual's USA normal tax liability for the 2014 USA tax year is as follows:

		2014 ($)
Gross income	(50 000 x 12 months x 92 days /365 days) /11.56	13 082
Less: deductions		-
Adjusted gross income		13 082
Less: standard deduction	Not available to non-USA residents	
Less: personal exemption deduction		-3 950
Taxable income		9 132
Normal tax liability	(907.50+ ((9 132 - 9 075) x 15%)) [Table I of chapter 4]	**916**
Normal tax liability in Rands	(916 x 11.56)	**R 10 590**

The individual's total tax liability for the secondment income is R10 590 ($916). For South African tax purposes, he would be allowed to claim a s6*quat* rebate for the 2015 SA tax year, as discussed in chapter 2. Therefore, he would receive a rebate on USA taxes paid for his secondment income; ensuring that he is not taxed by both SA and USA.

6.3.2 6-Month secondment to USA

Assume the same details as the scenario for the individual's 3-month secondment to USA, except that the secondment is now for a 6-month period from 1 March to 31 August 2014.

a) Would South Africa or USA hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the USA DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in South Africa.
- Below are the steps in determining his USA residency:
  - The individual is not a citizen of USA but may be a resident alien through the substantial presence test – he is present in USA for at least 31 days in the current USA 2014 tax year (184 days) and he is present for at least

183 days during the 3-year period that includes the current year and last 2 preceding years (184 days in the current year),

- Therefore, he is a USA resident alien for tax purposes.

- As the individual is a SA resident for its 2015 tax year and a USA resident for its 2014 tax year, which coincides, the tie-breaker rules of Article 4(2) must be applied. The first rule states that he will be a resident in the country in which he has a permanent home. As he is a South African citizen working in USA only on a 6-month secondment, his permanent home is deemed to be in SA, making him a South African resident only for tax purposes.

Next, the source of the income earned whilst on secondment in USA must be determined:

- As per Article 15(1) of the USA DTA, it appears that USA may tax the employment income as it is the place where the employment is actually exercised.
- As per the 3-month secondment example, the provisions of Article 15(2), deeming the income taxable in SA, do not apply.
- Therefore, the employment income earned is deemed by the USA DTA to be from a USA source taxable in USA.

b) The individual's USA normal tax liability for the 2014 USA tax year is as follows:

		2014 ($)
Gross income	(50 000 x 12 months x 184 days /365 days) /11.56	26 165
Less: deductions		-
Adjusted gross income		26 165
Less: standard deduction	Not available to non-USA residents	
Less: personal exemption deduction		-3 950
Taxable income		22 215
Normal tax liability	(907.50+ ((22 215 - 9 075) x 15%)) [Table I of chapter 4]	**2 879**
Normal tax liability in Rands	(2 879 x 11.56)	**R 33 275**

The individual's total tax liability for the secondment income is R33 275 ($2 789). For South African tax purposes, he would be allowed to exempt the secondment income in the 2015 tax year under s10(1)(*o*)(ii) of the Act as he would be out of the country for a period exceeding 183 full days in aggregate (he was in USA for 184 days in total) during the 12-

month period starting 1 March 2014 and for a continuous period exceeding 60 full days during that period of 12 months (he spent 184 days consecutively in USA) and those services were rendered during that period. As this income is exempt, he would not need to calculate a s6*quat* rebate. He would thus only be taxed on the secondment remuneration in USA.

6.3.3 12-Month secondment to USA

Assume the same details as the scenario for the individual's 3-month secondment to USA, except that the secondment is now for a 12-month period from 1 March 2014 to 28 February 2015.

a) Would South Africa or USA hold the right to tax his secondment income, and
b) What would his actual tax liability amount to?

a) In order to determine which country holds the right to tax the secondment income, the USA DTA must be examined.

As discussed in chapter 5, the individual's residence must be determined:

- The scenario states that the individual is a South African citizen, thereby making him 'ordinarily resident' in SA.
- Below are the steps in determining his USA residency:
  - The individual is not a citizen of USA but may be a resident alien through the substantial presence test:
    1. he is present in USA for at least 31 days in the current USA 2014 tax year (306 days) and he is present for at least 183 days during the 3-year period that includes the current year and last 2 preceding years (306 days in the current year),
    2. he is present in USA for at least 31 days in the current USA 2015 tax year (59 days) and he is present for at least 183 days during the 3-year period that includes the current year and last 2 preceding years (59 days in the current year + (306 days in the prior year x 1/3) = 161 days)
  - Therefore, he is a USA resident alien for both the 2014 and 2015 tax years.
- As the individual is a SA resident for its 2015 tax year and a USA resident for its 2014 and 2015 tax years, which coincide, the tie-breaker rules of Article

4(2) must be applied. The first rule states that he will be a resident in the country in which he has a permanent home. As he is a SA citizen working in USA only on a 12-month secondment, his permanent home is deemed to be in SA, making him a South African resident only for tax purposes.

Next, the source of the income earned whilst on secondment in USA must be determined:

- As per Article 15(1) of the USA DTA, it appears that USA may tax the employment income as it is the place where the employment is actually exercised.
- As per the 3-month secondment example, the provisions of Article 15(2), deeming the income taxable in SA, do not apply.
- Therefore, the employment income earned is deemed by the USA DTA to be from a USA source taxable in USA.

b) The individual's USA normal tax liability for the 2014 and 2015 USA tax years is as follows:

		2014 ($)
Gross income	(50 000 x 12 months x 306 days /365 days) /11.56	43 513
Less: deductions		-
Adjusted gross income		43 513
Less: standard deduction	Not available to non-USA residents	
Less: personal exemption deduction		-3 950
Taxable income		39 563
Normal tax liability	(5 081.25 + ((39 563 – 36 900) x 25%)) [Table I of chapter 4]	**5 747**
Normal tax liability in Rands	(5 747 x 11.56)	**R 66 435**

		2015 ($)
Gross income	(50 000 x 12 months x 59 days /365 days) /11.56	8 390
Less: deductions		-
Adjusted gross income		8 390
Less: standard deduction	Not available to non-USA residents	
Less: personal exemption deduction		-4 000
Taxable income		4 390
Normal tax liability	(4 390 x 10%) [Table J of chapter 4]	**439**
Normal tax liability in Rands	(439 x 11.56)	**R 5 075**

The individual's total tax liability for the secondment income is R71 510 ($6 186). As with the 6-month secondment, for South African tax purposes, he would be allowed to exempt the secondment income in the 2015 tax year under s10(1)(*o*)(ii) of the Act. As this income is exempt, he would not need to calculate a s6*quat* rebate. He would thus only be taxed on the secondment remuneration in USA.

For a comparative analysis of the income taxes payable on the individual's secondment income earned in the UK/USA, refer to chapter 7.

Chapter 7: Conclusion

This chapter will ultimately enable a South African citizen to determine whether the UK or USA is the best place for secondment and what is and the most appropriate duration of the secondment based on the individual's taxation liability over the secondment employment income.

7.1 Analysis of results of tax calculations

The table below has been populated as a summary of the individual's tax liability for a 3, 6 or 12-month secondment in the UK or USA over the period 1 March 2014 to 28 February 2015, as determined chapter 6. Amounts in Pounds and Dollars have been translated to Rands at the rates assumed in chapter 6.

Table K: Summary of taxes payable in Rands for secondments in UK or USA:

Country of Employment	Taxes on 3-Month Employment	Taxes on 6-Month Employment	Taxes on 12-Month Employment
South Africa	38 677	77 354	154 708
United Kingdom	20 041	50 288	109 796
United States of America	10 590	33 275	71 510

The taxes on the individual's employment in SA are used as a reference of comparison. These taxes were calculated using the monthly tax value of R12 892 (as calculated in chapter 6.1) multiplied by the secondment time period. Therefore, the taxes payable on secondment employment income can be compared to the taxes payable in South Africa if the employee did not go on secondment but instead remained in employment in SA.

7.2.1 Best place for secondment

It can be seen that the South African citizen would pay higher taxes working in SA than going on a secondment to either the UK or USA for the same period of time. If he chose to go on a secondment, the best country in which to work would be USA as the US taxes payable would be less than that of the UK in the 3, 6 and 12-month periods.

This is attributable to taxable income earned in the UK attracting UK tax for lower incomes at a higher overall rate than in USA. For example, income earned in the UK in its 2014 tax year up to £2 790 is taxed at 10% and then up to £32 010 is taxed at 20% whereas income earned in USA in its 2014 tax year up to $9 075 is taxed at 10% and then up to $36 900 is taxed at 25%. Personal allowances are also not permitted for non-UK residents in their tax computations whilst USA non-residents are able to claim a deduction for personal exemption each year.

Next, the best period of time to spend on secondment in USA will be discussed below.

7.2.2 Best period of time for secondment

In determining the ideal secondment period between a 3, 6 or 12-month secondment in USA, the total taxes payable in the 2015 South African tax year has been calculated by adding the USA taxes payable for each of the secondment periods to the South African taxes payable for the remaining months each year as it is assumed that the individual would return to his normal employment in South Africa after his secondment. The total amount of taxes has been compared to the total South African taxes the individual would be liable for if he remained employed in South Africa throughout the 2015 tax year in the table below.

Table L: Comparison of taxes payable (in Rands) of South African employment and total tax from secondments in USA and remaining employment in South Africa:

Country of Employment	Taxes on 3-Month Employment	Taxes on 6-Month Employment	Taxes on 12-Month Employment
South Africa - 12 months	**154 708**	**154 708**	**154 708**
USA Secondment (A)	10 590	33 275	71 510
Remaining South African Employment (B)	116 031	77 354	-
Total Taxes in Secondment Year [(A) + (B)]	**126 621**	**110 629**	**71 510**

Based on the above table, the best period of secondment is 12 months from 1 March 2014 to 28 February 2015. For this period, the individual would pay the least taxes as he would only pay US taxes for the full year. For the 3 and 6-month secondment periods, the individual would be employed in SA for the remaining 9 and 6 months respectively, where he would pay higher South African taxes than the USA taxes paid whilst on secondment.

Therefore, in terms of paying the least amount of taxes on employment income earned whilst on secondment, the most ideal country of secondment is USA and the ideal secondment period is 12 months from 1 March 2014 to 28 February 2015.

7.2 Recommendations

7.2.1 Recommendations for South African citizens

This report has shown that from a tax perspective, secondments for a South African citizen in UK and USA are beneficial as the tax liability on such employment income would be lower than that of employment income earned at a permanent job of the same monetary value in SA.

This report is also simplistic in nature. Therefore, if a South African individual is considering a secondment in either of these countries based on this report, he/she should bear in mind the following additional factors:

- The report has assumed that the foreign exchange rate for Rands to Pounds/Dollars was constant for an entire year for comparative purposes. The individual must consider that a weakening Rand would have the effect of an increased converted Rand amount of UK/USA taxes being paid on secondment income.
- This report also assumed that the individual would earn an income of the same monetary value in the secondment countries as in his/her permanent employment in South Africa. The employee must consider that any changes in the amount of employment income to be earned on secondment would have a bearing on the value of the tax liability in the secondment country.
- The report showed that UK/USA taxes are not payable on the secondment employment income if Article 14(2) of the UK DTA or Article 15(2) of the USA DTA applies. Therefore, the individual must ensure that he/she spends at least 183 days in the secondment country or is paid remuneration borne by an employer that is a resident or has a permanent establishment in the secondment country. If this is not the case, the individual would be liable for taxes in South Africa.

- The employee should also be mindful of whether he/she could claim the s10(1)(*o*)(ii) exemption or s6*quat* rebate for South African tax purposes. If SARS denies this relief, he/she may then be liable for South African tax on the secondment income as well.

7.2.2 Recommendations for future reports

Future research reports could expand on this report by evaluating the taxation effects of additional employee benefits received whilst on secondment in the UK/USA. Fringe benefits earned by South African employees on secondment may significantly alter their ultimate tax liability, thus altering their decision about whether to go on secondment, which of the countries to visit and the secondment period.

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