SOUTH AFRICAN TAX - FOR THE EXPATRIATE

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February 2014

University of Cape Town

Dissertation submitted in partial fulfilment for the degree of

PGDIP Research Paper (word count 11,857)

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Abstract

I am an attorney and partner in a law firm operating as Eisenberg de Saude in Cape Town and which specializes in the field of South African Immigration (and Lithuanian citizenship) law.

Eisenberg de Saude *inter alia* assists and represents foreigners, corporates, non-resident companies and returning[1] South Africans in their South African immigration affairs. Questions relating tax liability for the in respect of the aforementioned often arise during consultations/meetings/briefings. For this reason, I have decided to dedicate my research proposal to the aforementioned with the hope that it will equip me with sufficient knowledge to properly address and assist the foreign clients of Eisenberg de Saude in their tax uncertainties without getting a worrying feeling in the pit of my stomach.

In addition to the above, I hope that my research proposal could and would be used as a guide by all relevant and interested persons in alleviating the uncertainties surrounding their tax liabilities and perhaps managing their affairs in a tax efficient manner and I hope that the material mentioned below effectively and clearly imparts what I have learned during preparing and drafting this proposal.

[1] South African citizens who have emigrated South Africa and now wish to return to South Africa, either as returning citizens, or if they have lost their citizenship status in terms of the Citizenship Act, as South African permanent residents.

Acknowledgements

I take this opportunity to express my profound gratitude and deep regard to my supervisor, Tracy Gutuza for her guidance, monitoring, patience and constant encouragement despite the fact that I missed my deadlines. Her willingness to help me on such short notice notwithstanding her busy schedule, her help and guidance will remain with me in the journey of my life. I also wish to thank Debbie Collier for and Maurice Jacobs for their support in submitting my proposal and for being so pleasant, helpful and a pleasure to deal with. I will always remember all three of these individuals.

I also take this opportunity to express a deep sense of gratitude to my law partner, Mr Gary Simon Eisenberg, for his cordial support, valuable information, his guidance, for believing in me and for always encouraging me to do better and to become greater. He encouraged me to do this course and has assisted me so much, perhaps without realizing, in completing this diploma through its various stages. I am and will be eternally grateful for and to him.

I am obliged to staff members of the law firm Eisenberg de Saude for their valuable support and cooperation over the last year.

I would also like to thank my parents, my brothers and friends for their constant encouragement without which this assignment would not be possible. I also thank my darling daughter, the joy and pride of my life, my reason for everything. Everything I do, I do so that she may have a better life and become a great person of substance and character. I pray that she will grow to become the woman she is destined to be and I pray that I will always have a positive role on her and in her life.

Lastly and most importantly, I thank the Almighty for without His power and grace I would not be where I am today. He sustains me daily and I am increasingly aware that I do not deserve the blessings He has given me, but I am so, so grateful. I can never

comprehend the depth of His love for me. My credibility lies in my experience and all that He has taught me, all praise and honour to Him.

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1 INTRODUCTION

South Africa taxes people on the basis that they reside in South Africa[2]. Taxpayers who are non-residents will be taxed as an exception if their income is sourced in South Africa. For this reason it is important to determine whether a person is a resident or non-resident for tax purposes.

Tax in South Africa is governed by the provisions of the Income Tax Act[3] ("**the Act**") and in terms of South Africa's income tax system:

- Income received by or accrued to non-residents/foreigners from a source within or deemed to be within South Africa is subject to normal tax; and

- The worldwide income received by or accrued to South African residents is subject to normal tax in South Africa.

Accordingly, the first step in determining the normal tax liability of any natural person in South Africa is to determine whether or not that natural person is a "resident" as defined in section 1 of the Act. To determine this, two tests are applicable, namely:

- The ordinarily resident test; and

- The physical presence test.

The Act also makes provision for a third test, which pertains to Double Taxation Agreements. In terms of this third test, an individual will not be a resident of South

[2] The Republic of South Africa (referred to throughout as "South Africa")

[3] The Income Tax Act 58 of 1962

Africa for tax purposes if he/she is deemed to exclusively be a resident of another country for the purposes of the application of a Double Taxation Agreement.

Expatriates on assignment are classified as 'temporarily resident' which is the equivalent a non-resident from a tax perspective. Foreign nationals[4] entering South Africa are required to declare their foreign assets and undertake that these will not be made available to the residents of South Africa during their stay. There is no requirement on temporary residents to remit earnings from foreign assets to South Africa and they may make reasonable transfers home from monies earned in South Africa.

Once it is determined whether the individuals are non-residents[5] for the purposes of income tax, it is important to understand the tax liabilities of these individuals. This is the basis of my proposal - when and how non-residents or foreigners[6] are taxed in South Africa, the type of tax applicable and any exemptions available to them. These issues will be discussed in greater details below.

1.1 Background

Most foreign persons in South Africa are faced with a challenge that most local employers and tax practitioners (often the South African Revenue Services / SARS (used interchangeably) as well) treat them like resident (for tax purposes) South Africa when this is incorrect and is not in the best interest of the foreigner. Depending on the circumstances, different rules apply to foreigners. As mentioned above, this difference is dependent on whether the foreigner is a resident/non-resident of South Africa for tax purposes.

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[4] Foreigner means (in terms of the Immigration Act No 13 of 2002, as amended, "an individual who is not a citizen of South Africa)

[5] Because my proposal is based on the tax liability of foreigners (and where applicable, returning South Africans), I am only referring to non-residents and will therefore only briefly touch on South African residents or tax based on residency where and when necessary

[6] The words "non-residents" and "foreigners" will be used interchangeably throughout this proposal. The meaning ascribed to these words however is the same meaning as applied in the Act

It is important to plan properly when recruiting expatriate employees or when foreigners wish to pursue employment activities (or to reside permanently) in South Africa.

Foreigners may not want to be a resident of South Africa for tax purposes and may not know whether or not he or she has a choice in this regard. Even if the foreigner has no choice but wishes to become tax resident, it will still ideal for him or her to know in advance when he or she will become tax resident so that he or she is able to effectively strategy plan as necessary before he or she become a resident of South Africa for tax purposes.

The type of residency permit the foreigner may wish to apply for and obtain (such as work permits and/or South African permanent residence permits) should also be carefully considered as this may have an impact on the foreigners tax status or, even more concerning for most foreigners, impact on his or her exchange control residency.

What most foreigners do not know (and what will be discussed in great detail below), is that as a non-resident her or she will pay tax on his or her South African sourced income. This means income earned or made by doing or investing in something in South Africa. The rules can become quite complex but the following is a good starting point:

- Income from workdays in South Africa. The days worked outside South Africa are not taxable in South Africa. Income that the foreigner earns when working outside South Africa will therefore be tax free and should his or her employer have incorrectly withheld PAYE thereon, they should correct their

mistake (by applying for a refund, which refund must be made within a prescribed period[7].

- The foreigner will not pay any tax on investments outside South Africa. These investments would include interest, shares speculation gains, dividends, income from property etc. Many foreigners wish to understand whether they pay tax on such income when their money is brought to South Africa. The basis for this question is known as the remittance basis of taxation. South Africa does not operate on a remittance basis. When income is exempt under the source principle, there is no income tax implication. Remitting any income to South Africa has no tax consequence.

All the above are the questions and concerns of foreigners working/residing in South Africa and forms the basis of this proposal, the aim of which is to address, alleviate and lower the burden of tax related issues as applied and relevant to foreigners in South Africa.

1.2 Scope and Objectives

This proposal applies specifically to the non-residents of South Africa. It explains the meaning of non-resident, how non-residents are taxed, what sources of income are taxed, whether they qualify for any exemptions, and if so, which exemptions and what tax liabilities they have should the wish to emigrate from South Africa at some later stage.

The purpose of my research is to bring awareness to and to educate non-residents in relation to their South African tax commitments regarding income received by or accrued o them from a source within or deemed to be within South Africa.

[7] Withholding tax is discussed in detail on page 37

1.3 Achievements

I wish to gain a deep and meticulous understanding of all rules and precedents so that I am not only able to effectively and appropriately advise my clients, but so that I am able to harness the mercurial nature of tax law as it applies to foreigners and returning South Africans by using opportunities to ease the burden of taxation for these group individuals. I hope that I am able to achieve this.

1.4 Overview of Dissertation

- Does he or she qualify as a resident or non-resident;

- What will his or her tax liabilities be;

- Where the expatriate will be working;

- Who will the employer of the expatriate be (applicable where we are dealing with secondments and inter-company transfers);

- Who will be responsible for the tax levied, if any, on the employee during his and or her secondment;

- What taxable benefits are available to the employee;

- Will the perks in terms of the employment contract be taxed, if so, who is responsible for this amount;

- Relocation allowances;

- Residential accommodation provided by the employer is exempt should the accommodation not be the expatriate's "usual place of residence";

- When will he or she become a resident;

- What tax liabilities, if any, will the employee/foreigner have should he or she wish to emigrate from South Africa at some later stage.

2 THE AUTHORITY TO TAX

2.1 Introduction

South African has a well-developed and regulated taxation regime. The principle source of direct taxation revenue in South Africa is income tax.

When deciding whether income is taxable, the fundamental question is whether there is a connection or nexus between the income and the country. The connecting factor is either on the basis of residence or source.

South Africa has a residence based tax system. This means that residents are, subject to certain exclusions, taxed on their worldwide income, irrespective of their income earned. Non-residents are taxed on their income from a South African source.

2.2 Bases for taxation

- **Residence (also known as world-wide basis of taxation)**: the reason for taxation is that the resident enjoys the protection of the country and therefore he or she should contribute towards the cost of the government of the country in which he or she resides even if the income is earned outside the country.

- Residents can return to their country of residence whenever they would like and they will still have the protection of their government whenever they are abroad.

- **Source**: in this regard, South Africa has the right to tax non-residents on the basis of the source of their income.

- Taxation on this basis is dependent on the activities of the non-resident that generated the income which took place within its borders. The taxpayer's place of residence is not taken into consideration.

Accordingly, it is important to determine the tax status of a foreigner in South Africa in order to understand his or tax liabilities, if any.

2.3 Tests for determining residency

Two separate tests exist in order to determine whether a foreigner is a resident or non-resident of South Africa for tax purposes. These tests are:

- The "ordinarily resident" test, where the foreigner is ordinarily resident in South Africa; and

- The "physical presence" test where the foreigner is not at any time during the relevant year of assessment[8] ordinarily resident in South Africa, but he or she was physically present in South Africa for specific period or periods.

It is however very important to bear in mind that that a person cannot be treated as a South African resident for tax purposes if he or she is considered to be a resident of another country under the rules of a double taxation treaty (discussed in detail below) applicable to the relevant income item.

2.3.1 Ordinarily Resident

If an individual is ordinarily resident in South Africa, he or she is automatically a South African tax resident. Because the Act does not define the term "ordinarily resident", the interpretation given by the courts must be followed.

[8] The relevant tax year

In the leading Canadian case of *Thompson v Minister of National Revenue*[9] it was held that a person is ordinarily resident in the place '*where he in mind and fact settles into or maintains or centralises his ordinary mode of living with its accessories in social relations, interest and conveniences*'. In the English case *Shah v Barnet London Borough Council and Other Appeals*[10] it was held that to be ordinarily resident in a specific country, '*a person must be habitually and normally resident there, apart from temporary or occasional absences of long or short duration*'.

In one of our local cases, *Cohen v CIR*[11], the court held that 'ordinarily resident' refers to '*the country to which he would naturally as a matter of fact return from his wanderings, as contrasted with other lands it might be called his usual or principal residence and would be described more aptly than other countries as his real home.*' This approach was confirmed in *CIR v Kuttel*[12]. An Interpretation Note[13], attached hereto as appendix "**1**", issued by SARS[14] in early 2002 also confirms this approach.

From the Interpretation Note, it is clear that no hard-and-fast rules are laid down in determining "ordinary residence" and that each case must be decided on its own merits. The Interpretation Note however makes it clear that one does not have to be physically present in South Africa to be regarded as ordinarily resident in South Africa.

An English case with persuasive authority in South Africa, namely *Shepherd v Revenue and Customs Commissions*[15] held *inter alia* that:

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[9] 2 DTC 812 (SCC)

[10] 1983 1 All ER 226 (HL) 234*b-c*

[11] 13 SATC 362 at 371

[12] 1992 (3) SA 242 (A), 54 SATC 298,

[13] 3 of 2002

[14] The South African Revenue Services

[15] [2006] STC 1821

- The concepts of residence and ordinarily residence are not defined in legislation and accordingly the natural meaning of these words should apply;

- 'Residence' or 'to reside' mean 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place';

- 'Ordinary residence' requires more than mere physical residence. There must be some degree of continuity. 'Ordinary' means normal and part of everyday life or a regular, habitual mode of life in a particular place which has persisted despite temporary absences and which is voluntary and has a degree of settled purpose;

- No duration of residence is prescribed by legislation and all facts must be taken into account in each case;

- The fact that the individual may have a home elsewhere is of no consequence, a person may reside in two places;

- If there is evidence that a move abroad is a distinct break, this could be a relevant factor in treating an individual as non-resident; and

- A person could become non-resident even if his intention was to mitigate tax.

Accordingly, a person may be ordinarily resident in South Africa even if he or she was not physically present in South Africa during the relevant year of assessment or a number of years of assessment as long as it is his or her intention to return permanently to South Africa, as his or her real home.

Because a non-resident only becomes ordinarily resident from a specific date, income earned outside of South Africa prior to this date will generally not be taxable in

South Africa. What this means is that an individual who immigrates to South Africa from another country will only be liable to tax on a residence basis from the date that he or she becomes ordinarily resident in South Africa, which may not necessarily be the same date as the date of immigration.

2.3.2 Physical presence test

If an individual is not ordinarily resident in South Africa, a physical presence test (in other words, presence in South Africa for a specified number of days) is applied to determine whether he or she is resident in South Africa. The use of a specific number of days in order to establish residence is in accordance with international norms.

In South Africa, a natural person who was not at any stage ordinarily resident in South Africa in a year of assessment will be tax resident in South Africa if he or she was physically present in South Africa for a period exceeding:

- 91 days during the current year of assessment and the five preceding years of assessment; and

- For a period of more than 915 days during the five preceding years of assessment.

The 91 – 915 day periods are in aggregate. Continuous daily presence is not required and presence for part of a day will count as a full day.

The effect of this physical presence test is that a person not ordinarily resident in South Africa can, under the physical presence test, become a South Africa resident only in the sixth year of assessment after first being present in South Africa. The reason the period of exclusion is for 5 (five) years is to attract foreign skilled employees to take up temporary employment in South Africa.

It is not necessary to determine the purpose of the presence when determining whether a person is a South African resident under the physical presence test. An individual becomes a South African resident from the first day of the tax year during which either of the two tests laid down in the Act for physical presence in South Africa are complied with. This approach is confirmed by SARS in an Interpretation Note (4 of 2002) attached hereto as appendix "**2**".

Sometimes it is very difficult to establish whether a person has been physically present in South Africa for the required number of days.

In an attempt to bring South African domestic tax principles in line with international tax principles, the definition of 'resident' in section 1 of the Act was amended in 2003 to exclude persons who are tax treaty purposes deemed to be residents of the other contracting state exclusively.

2.4 PERSONS OTHER THAN INDIVIDUALS

2.4.1 Introduction

A broad test is applied in South Africa to determine the residence of companies and taxpayers other than individuals. These entities are South African residents if incorporated, established or formed in South Africa or if they have their place of effective management in South Africa.

The term 'effective management' is not defined in the Act. In tax treaties the term is used as a so-called "tie-breaker" where a person is deemed for the purposes of a tax treaty to be resident in both contracting states.

The meaning of 'effective management' was however set out in an Interpretation Note (6 of 2002) issued by SARS, a copy of which is attached hereto as appendix "**3**".

According to the aforementioned Note, the place that is decisive in determining the place of effective management is the place where the company is managed on a regular day-to-day basis by the directors or senior managers of the company, irrespective of where the overriding control is exercised or where the board of directs meet. In other words, the place of effective management refers to the place where policy and strategy decisions are implemented (and not where they are taken).

2.4.2 Branch or agency

A non-resident company which has South African-sourced or deemed source income, whether or not it is doing business in South Africa through a branch or agency, is liable for tax in South Africa (the current rate in this regard is 33%). A non-resident oil and gas company doing business through a branch or agency in South Africa is the basis of source or deemed source income (and the rate in this regard is 31%).

Previously, the 33% tax rate applied only to a 'branch' or 'agency' and not to a non-resident company generally. Neither the Act nor any amending Acts have set out a definition for the concepts of 'branch' or 'agency'. Because there is no statutory definition, the words bear its ordinary meaning, which in this case would include a part or division of the whole. This definition is of course not helpful at all. British case law in this regard has been of persuasive authority for the South African courts. British case law primarily concentrates on the meaning of 'agency' as opposed to the meaning of 'branch'.[16]

[16] Cases where non-resident has been held to be trading in the United Kingdom and assessed through an agent include *Wingate & Co v Webber* (1887) 3 TC 569 (CES), *Watson v Sandie & Hull* [1897] 3 TC 611 (QB) and *Macpherson & Co v Moore* [1912] 6 TC 107 (SCS)

For South African company law purposes, a branch is not regarded as a legal entity separate from the foreign head office of the company[17]. South African income tax law does not alter this position. Consequently, transactions between a branch and its head office would generally have no income tax effect for domestic tax purposes, unlike the position for South African value-added tax, which contains a deeming provision to the contrary. However, if the transaction between the branch and the head office relates to another transaction with a connected person, there could be an income tax implication to the extent that an expense is allocated form the head office to the branch or *vice versa*, if the branch is a permanent establishment.

This is not however the case with regard to the thin capitalisation provisions contains the current section 31(3) of the Act and in the South African Revenue Services Practice Note No 2. These provisions require the granting of financial assistance by a non-resident to a resident. As a South African branch of a foreign incorporated company will generally not be a resident (unless the company as a whole is effectively managed at the South African branch), the Practice Note No.2 cannot apply to transactions between a branch and its head office. Further it should be noted that transactions between a branch and its foreign head office would impact on the source of the relevant income.

2.4.3 Miscellaneous issues applicable to non-resident companies

2.4.3.1 Special exemptions

Two special exemptions are available to non-resident companies for South African sourced interest, one of which has the proviso that the non-resident company does not carry on business in South Africa and the other the proviso that the interest is not effective connected to a business carried on by the company in South Africa.

[17] *Sackstein NO v Proudfoot SA (Pty) Ltd* 2003 348 (SCA)

2.4.3.2 Royalties

Non-resident companies which receive or accrue amounts by virtue of the use or right to use specific categories of intellectual property in South Africa are liable for withholding tax on royalties.

The person who incurs the liability to pay the royalty has a withholding obligation in respect of 12% royalty tax. Where the amount has been subject to the 12% withholding tax in terms of section 35 of the Act, the amount is exempt from normal tax.

2.4.3.3 Capital Gains (CGT)

Non-resident companies are subject to CGT on immovable property situated in South Africa as well as on any interest or right of whatever nature to or in immovable property situated in South Africa.

Non-resident companies are also subject to South African CGT on the disposal of any asset of a permanent establishment of the non-resident company through which a trade is carried on in South Africa.

2.5 Termination of residence

Termination of South African resident status has both capital gains tax (and secondary tax on companies) consequences. Exit tax is levied when residency is ceased and this is done so for two reasons:

- Loss of future revenue; and

- As anti-avoidance measure.

The levying of exit tax becomes a penalty provision when it is not relieved in terms of domestic law or a treaty and it leads to double taxation.

Residency status may be lost under the following circumstances:

- If the person obtained tax residence through being ordinarily resident in South Africa, by having the intention to permanently not return to South Africa;

- If the person obtained tax residence through physical presence, if he or she remains physically outside South Africa for 330 full days in aggregation; and

- If a person is regarded as being exclusively resident of another State for the purposes of a tax treaty, irrespective of how such person obtained his or her tax residence.

Persons other than individuals, who obtained their residency by being effectively managed in South Africa, will lose their residency status if their place of effective management is moved to another jurisdiction.

South African residents do not retain their residency status until they obtain a new residency.[18]

Before the foreign employee who has worked in South Africa departs South Africa, he or she must shows that he or he has complied with the South African tax laws. The foreign employee must therefore ensure that he or she has been assessed for normal tax purposes on the income that is taxable in South Africa and that any outstanding amounts of normal tax have been paid. The foreign employee will then be issued with a tax clearance certificate which will facilitate his or her departure from South Africa.

[18]Van Weeghel General Report 2010 Cahiers de Droit Fiscal International *Tax Treaties and Tax Avoidance*: *Application of anti-avoidance provisions* (2010) 23

3 TAXATION OF INDIVIDUALS[19]

3.1 Introduction

Non-residents are taxed only on income which is sourced or is deemed to be sourced in South Africa. The justification for soured jurisdiction is that taxpayers are expected to share the cost of the infrastructure of the country which makes possible the production of income.

Source means the originating cause of the income which is located geographically. Because there is no statutory definition of "source", the test is found in case law. If one or more originating cause exists, the court will look for the dominant, main or substantial cause with incidental causes being disregarded. The profits of each cause are then treated independently. The classic case on the test to be applied to determine the actual source of income is *CIR v Lever Brothers & Unilever Ltd*[20].

The courts have held that the originating cause of the source of income for services rendered or income from employment is the services of the work and the location of such source is the place where the services are rendered. This position however changed since the recent case of *BV v The Commissioner: South African Revenue Service*[21] where it was held that the source of remuneration arising from a foreign share scheme was not in South Africa despite the employment services having been rendered in South Africa because he held that the originating cause of the income was not the employment services rendered by rather the foreign shares and the administration overseas of the share scheme. This case has however been criticized for being incorrectly decided.

Source of other kinds of income was determined in the past by the courts as follows:

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[19] Non-resident individuals

[20] 14 STC 1

[21] 12656 SGHC 18 May 2010

- Annuities: the place where the contract was concluded;
- Director's fees: the place of the head office of the company;
- Dividends: the place where the share is registered;
- Interest: the place where the credit is made available;
- Maintenance: various factors, including the place where the agreement was concluded and the place where the marriage relationship existed:
- Pension: the place where the services were rendered;
- Rent of immovable: the place where the immovable property is located;
- Rent of movables: various factors, including the place where the contract is entered into and the place where the movable is located; and
- Royalties: the place where the intellectual property was developed.

In addition to the 'normal source rules' as set out in case law, there are several statutory source rules, referred to as 'deemed source rules', applicable to individuals. In terms of the 'gross income formula', the gross income definition refers to both source and deemed source income.

Deemed source rules which are applicable to individuals in terms of the various sections of the Act, include:

- Section 9(1)(*e*) of the Act: any amount received or accrued to the taxpayer is deemed to be from a South African source if it is received or accrued by virtue of services rendered for any employer in the national or provincial sphere of government, or any municipality of any national or provincial public entity, if not less than 80% of the expenditure of such entity is defrayed from funds voted by Parliament, and if the work is done in accordance with a contract of employment entered into with the government, province, municipality of public entity.

- Section 9(1)(*g*) of the Act: any pension or annuity is deemed to be from a South African source if it is granted by the government, any provincial administration or municipality, or if it is granted ay any person if the services in respect of which the payment is made were performed in South Africa for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due.

- Section 9(1)(*h*) of the Act: any alimony paid by a spouse or as a result of a divorce before 21 March 1962 is deemed to be from a South African source, irrespective of where the amount is paid, if such alimony is allowed as a deduction to the payor's spouse in terms of section 21 of the Act.

- Section 9(6) of the Act: any interest to be received or accrued to the taxpayer is deemed to be from a South African source where such interest is derived for the utilisation or application in South Africa by any person of any funds or credit obtained in terms of an interest-bearing arrangement. Section 9(7) of the Act deems the place of utilisation or application of such funds by a natural person the place where such natural person is ordinarily resident. The latter deeming provisions only apply until the contrary can be proved by the taxpayer.

Foreign workers will only be taxed by the South African Revenue Services on their overseas invoice after a period of five years working in the country.

3.2 Registration of individuals

In terms of section 67 of the Act, every person who becomes liable for tax or becomes liable to submit a tax return, must apply to SARS to be registered as a taxpayer. Persons irrespective of whether or not they are tax residents or not, must use SARS Form IT77 for this purpose.

SARS assesses individuals for their tax due annually and the amount due is reduced by the employees' tax which was withheld or the provisional tax paid during the relevant year.

3.3 Individual tax rebates

Individuals (including non-residents) under the age of 65 are entitled to claim a primary rebate and individuals (including non-residents) over the age of 65 are entitled to claim both primary rebate and a secondary rebate.

3.4 Employees outside of South Africa

Employees' tax need not be deducted from the remuneration of non-residents who render services outside the Republic on behalf of a South African employer, since the income is from a source outside of the Republic. If however the income is from a source within South Africa in terms of section 9(2)(*g*) of the Act (the holding of a public office if the person has been appointed in terms of an Act of Parliament) or section 9(2)(*h*) of the Act (services rendered in the public sector), the employees' tax deduction must continue to made from the remuneration due to the employee. The reason for this is that the place where the services are rendered does not determine the source in these two cases, but the entity to which it is delivered.

South African employers may from time to time employ non-residents for short periods. When their services are rendered outside South Africa, their income is from a source outside South Africa and employees' tax need not be deducted. When their services are rendered in South Africa, employees' tax will have to be deducted, since the source of their remuneration is from within South Africa. In such instances, a double taxation agreement between South Africa and the country of residence of the employee may relieve an employee of liability to South African tax, in which event the employees' tax will not be deducted. Section 10(1)(*c*)(*v*) of the Act provides an exemption for salaries paid to any subject of a foreign state who is temporarily employed in South Africa, provided that the exemption is authorised by an agreement entered into by the government of the foreign state and South Africa.

Penalties will arise when a non-resident who renders services in South Africa is paid his remuneration by a person resident in another country, because the Commissioner has no jurisdiction over a non-resident employer and cannot enforce the deduction of employees' tax.

4. TAXABLE INCOME[22]

4.1 Introduction

From the above, we know that a non-resident is subject to normal tax on his or her income that is received by or accrued to him or her from a source within or deemed to be within South Africa. The non-resident will pay normal tax at the same rate as a resident and is generally entitled to the same deductions and rebates as a resident.

Income from employment is taxed in the country where the services are actually rendered, irrespective of the place where the contract is entered into, where the employer is based or where the remuneration is paid. A foreigner therefore working in South Africa is liable for normal tax under domestic law in respect of his or her employment income earned in South Africa.

The tax position of a foreign employee may, however, be affected by an agreement for the avoidance of double taxation between South Africa and the government of the foreign country where the foreign employee is regarded as a resident for tax purposes.

4.2 Employment income

The basis of employee taxation is remuneration, which consists of salary, leave pay, allowances, wages, overtime pay, bonuses, gratuities, pensions, superannuation allowances, retirement allowances and stipends, whether in cash or otherwise. These payments, together with the cash value of any fringe benefits received, form part of the gross income of an employee. Fringe benefits are taxed in accordance with a schedule of valuations.

[22] I have selected to discuss only a few types of taxable income, again, relevant to our clients – the list is however more extensive

Remuneration from employment on extended absences outside South Africa is exempt from tax if the employee is outside South Africa for an aggregate of more than 183 full days in any 12-month period beginning or ending in the tax year, and for at least one continuous period exceeding 60 full days during the same 12-month period.

4.3 Self-employment and business income

Professional fees paid to non-residents are subject to employee withholding tax (if from a South African source), even if the non-resident is an independent contractor.

Business losses of a self-employed person may be carried forward indefinitely if the trade is continued.

4.4 Investment income

Domestic dividends are exempt from normal income tax. Domestic dividends are subject to a withholding tax at 15%, unless the recipient is a South African resident company.

Royalties paid to non-residents are subject to a 12% withholding tax. Non-residents are not subject to normal income tax on their South African-source interest if they are physically absent from South Africa and if they do not carry on business in South Africa (employment is not a business for these purposes).

Since from 1 January 2013, a withholding tax of 15% is imposed on interest paid by banks and other institutions to non-residents (and residents). Effective from that date, the general exemption for non-residents will apply only to bank interest and interest on government securities.

4.5 Taxation of employer-provided stock options and other incentive plans

The difference between the market value of shares and similar rights as of the date of vesting (for tax purposes) and the consideration given by the employee is taxed in

South Africa if, in the case of non-residents, the incentive is related to services rendered in South Africa.

Non-residents are subject to income tax on that part of the gain that relates to the period of South African service. Non-residents are not subjected to capital gains tax on any subsequent gain on actual disposal. However, if a non-resident employee is classified as a share dealer, the gain is subject to income tax.

4.6 Directors' fees

Article 16 of the OECD MTC[23] provides as follows:

> *"Directors' fees*
>
> *Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in the other State."*

In terms of the above, directors' fees and other similar payments derived by a resident of a Contracting State in his or her capacity as a director of a company resident in the other Contracting State, may be taxed in the latter State. The normal tax treaty principle is that the place of rendering of services determines the taxability of income from such service whereas Article 16 above gives the taxing right to the State of the company's residence. The reason for this departure is that the nature of directors' duties makes it difficult to ascertain the place where they were performed.

Because Article 16 only applies to directors' fees and other similar payments, it has a narrow meaning and would include only cash and benefits in kind. It does not include income from non-directors' services as this constitutes employment services.

[23] Organisation for Economic Co-operation and Development Model Tax Convention

4.7 Employees' tax

A special withholding tax, referred to as 'employees' tax' or 'PAYE'[24], is payable on 'remuneration' as defined in the Fourth Schedule to the Income Tax Act. This tax is withheld by the employer at source from remuneration in accordance with tax tables which are issued annually by the legislature.

The term 'employee' is defined as follows:

- A person other than a company who receives any remuneration or to whom any remuneration accrues;

- A person who receives remuneration or to whom remuneration accrues by reason of services rendered by that person to or on behalf of a 'labour broker';

- A labour broker;

- A personal service provider;

- A person or class or category of persons whom the Minister of Finance in the France declares to be an employee for the purposes of the definition by not *Government Gazette* (referred to as 'declared employee');

- A director of a private company.

[24] Pay-as-you earn

3.3 Donations tax

Non-residents are not subject to donations tax, not even in respect of their South African assets. In terms of section 56(1)(*g*) of the Act a very important exemption is available to immigrants. In terms of this provision, donations tax is not payable in respect of the value of any property which is disposed of under a donation of such property costs is of any right in property situated outside of South Africa and was acquired by the donor before becoming tax resident in South Africa for the first time, or was acquired by inheritance from a period who at the date of his death was not ordinarily resident in South Africa or out of funds derived from the disposal of any of these assets. The immigrants' physical presence is not relevant for the purposes of part of this exemption.

4.9 Students

Article 20 of the OECD MTC[25] provides as follows:

> *"Students*
>
> *Payments which a student or business apprentice who is or was immediate before visiting the Contracting State a resident of the other Contracting State and who is present in the first mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State."*

In terms of the above, students or business apprentice for purposes of his or her maintenance, education or training, will not be taxed in the Contracting State in which he or she is a student, as long as the following requirements are met:

- The payments must come from a source outside of the State in which he or she is a student;

- The reason for the student being in the State must be solely for the purpose of his or her education or training; and

- The student must have been a resident of his or her home state immediately before visitor the other State for study purposes.

Article 20 above is an exception from the general rule that the student must be a resident of one of the Contracting States on order to benefit from the exemption.

While it is possible for the student to take up part-time employment in the State in which he or she is studying, the sole purpose of being present in the State must however be for his or her education and not for any other purposes (even if the funds are used only for the purposes of his or her education or training (*Qing Gang Li v The Queen*[26]).

4.10 Taxation of Foreign Entertainers And Sportspersons

[27]"Entertainers or sportsperson" includes any person who for reward:

- Performs any activity as a theatre, motion picture, radio or television artist or a musician;

- Takes part in any type of sport; or

- Takes part in any other activity which is usually regarded as of an entertainment character.

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[25] Ibid 22

[26] DTC 6059

[27] Section 47A of the Act

Specified activity' means any person activity exercised in South Africa or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons.

Tax levied and paid in respect of entertainers and sportspersons are paid for the benefit of the National revenue Fund. This is levied in respect of any amount received by or accrued to any person who is not a resident in respect of any specified activity exercised or to be exercised by that person or any other non-resident.

The tax levied on foreign entertainers and sportspersons is a final tax and is levied at a rate of 15% on all amounts received or accrued.

The aforementioned does not apply in respect of any person who is not a resident, if that person:

- Is an employee of an employer who is a resident; and

- Is physically present in South Arica for a period or periods exceeding 183 full days in aggregate during any 12 month period commencing or ending during the year of assessment in which the specified activity is exercised.

The taxpayer must within 30 days after an amount contemplated above is received or accrues to the taxpayer, pay to the Commission the amount of tax which is leviable in terms of the above.

5. SPECIAL EXEMPTIONS AND ALLOWANCES

In addition to the special exemptions available in terms of the Act, a further exemption exists in in terms of section 10(1)(*h*) of the Act. In terms of this provision, there is an exemption for interest which accrues to non-residents, and in respect of non-resident individuals. This exemption however is lost if the non-resident individual spends more than 183 days in South Africa.

6. TAXABLE BENEFITS

6.1 INTRODUCTION

A taxable benefit that is not in cash, received by or accrued to an employee, is taxable if it is received by virtue of employment and can be valued in terms of the legislation contained in the Seventh Schedule to the Act.

Examples of taxable benefits include:

- The acquisition of an asset from the employer at a value that is less than market value;
- The use of an asset for private of or domestic purposes either free of charge or for a consideration less than the value of such use;
- Free or cheap services provided by the employer;
- Free or cheap residential accommodation provided by the employer;
- Free or cheap meals or refreshments or vouchers provided by the employer;
- Subsidy paid by the employer in respect of interest or capital repayment;
- Low interest or interest-free loans from the employer;
- The settlement of a debt on an employee's behalf by the employer;

- Medical scheme contributions made by the employer; and

- Medical and dental services incurred by the employer that is provided to the employee, his or her spouse, children, relatives and dependants.

6.2 Specific types of taxable benefits[28]

6.2.1 Residential accommodation

Residential accommodation provided in South Africa to a foreign employee will be taxable in the hands of the foreign employee for the duration of his or her employment in South Africa. However, paragraph 9(7A) of the Seventh Schedule to the Act provides for an exclusion whereby no value is placed on the accommodation provided by the employer to the foreign employee while away from his or her usual place of residence outside of South Africa:

- For a period not exceeding two years from the date of arrival of that foreign employee in South Africa for the purposes of performing the duties of his or her employment; or

- If the accommodation is provided to that foreign employee during the tax year and that employee are physically present in South Africa for a period of less than 90 days in that year.

The market-related value of the accommodation may be taken into account for normal tax purposes where nature of condition of the accommodation or any other factor, the market-related value of the accommodation is lower than the amount ar-

[28] Not all taxable benefits are discussed herein. I will only discuss the benefits which are the concern of most our clients. Further information on taxable benefits may be found in the *Guide for Employers* available on the SARS website

rived at by way of the above formula. In such an instance, the employer must approach the local SARS [29]office to confirm whether the market-related rental value may be used.

6.2.2 USE OF A MOTOR VEHICLE

A foreign employee who is granted the use of a motor vehicle by his or her employer is deemed to have received a taxable benefit based on the 'determined value' of the motor vehicle.

Determined value means:

- Where the employer is the owner of the motor vehicle, the original cost to the employer, excluding VAT[30];

- Where the motor vehicle is held under a lease, it is the retail market value thereof the first time the employer obtained the right of use thereof; and

- In any other case, the market value of the vehicle at the time the employer first obtained the motor vehicle or the right of use of the motor vehicle.

The taxable benefit of a second or further motor vehicle that is made available to the foreign employee or to his or her family, and that is not used primarily for business purposes is payable at a certain percentage per month on the value of the vehicle with the highest determined value and on any other vehicle.

[29] Ibid 12

[30] Value Added Tax

6.2.3 Relocation costs

Payments, exempt from tax in the foreign employee's hands, by an employer to cover expenses include:

- The transfer of a foreign employee on taking up employment;

- The transfer from one place of employment to another; or

- The termination of employment.

The following expenses will be exempt in the hands of the foreign employee:

- The expenses of transporting the foreign employee, members of his or her household and personal goods and possessions from the previous place of residence to the new place of residence.

- Any costs as the Commission for SARS[31] may allow which have been incurred by the foreign employee in respect of the sale of his or her previous residence and in settling-in the permanent residential accommodation at his or her new place of residence. For example, bond registration and legal fees, transfer duty, cancellation of bond, agent's commission on sale of previous residence, telephone, and water and treated as tax-free if an amount equal to one month's basic salary is paid to the employee to cover settling-in costs.

- The cost of renting temporary residential accommodation of the foreign employee and members of his or her household during a period of not more than

[31] Ibid 12

183 days after his or her transfer took place or after his or her dte of appointment.

A foreign employee who may be required to sell personal assets upon his or her temporary relocation to South Africa and who is reimbursed by his or her employer for a loss suffered as a result of such sale will be liable for tax in South Africa on the amount so paid by his or her employer.

6.2.4 Employees' tax paid on behalf of an employee

Certain employers contractually agree to settle an employee's tax liability while that employee is still on secondment in a foreign country. The objective is to ensure that the seconded employee remains tax-neutral and is in no worse position that if the secondment had not been accepted.

A taxable benefit arises if an employer pays part of the foreign employee's entire South African tax liability. Should the employer also choose to settle the normal tax on this benefit, a further taxable benefit will arise. This occurs until a final normal tax liability is determined.

6.3 Allowable deductions available to the foreign employee

- Pension fund contributions;
- Retirement annuity fund contributions;
- Medical expenses;
- Repayable benefits;
- Legal expenses under certain circumstances;

- Home office expenses;

- Insurance police premiums;

- Bad and doubtful debts incurred in respect of employment;

- Donations to approved bodies; and

- Wear and tear in respect of certain assets purchased by the employee

6.4 Tax obligations in relation to the employer

6.4.1 Employees' tax obligations of the South African employer or representative employer

South African employers must deduct employees' tax from their employees' income. In the case of a foreign employer, who is a resident of South Africa, employees' tax should be deducted by an agent or representative who has the authority to pay such remuneration.

Employees' tax consists of two components, SITE[32] (annualised net remuneration up to R60,000) and PAYE[33] (which is the balance of tax after determining the SITE portion) and must be paid to SARS[34] on a monthly basis.

[32] Standard Income Tax on Employees

[33] Ibid 19

[34] Ibid 12

Employees' tax is therefore a withholding tax on employment income and will be set-off against the final income tax liability of the employee for the tax year.

The South African employer is obliged to issue an employees' tax certificate (IRP5) to each employee.

6.4.2 Foreign employee working in South Africa but remunerated by a non-resident employer

A foreign employee who is taxable on employment income in South Africa but who is being remunerated by a foreign employer who does not have an agent having the authority to pay remuneration in South Africa must pay provision tax.

Provisional tax Payments are advance payments against a taxpayer's final tax liability for the year. These payments are usually payable if a foreign employee earns taxable income that is not subject to employee's tax.

Attached hereto as appendix "**4**" is a copy of an employer offer letter and contract issued by one of our client's to its foreign employee.[35]

[35] Permission to include these documents in this proposal from the relevant entity and employee have been granted

7. WITHHOLDING TAXES

Despite the fact that a State may have the right to impose tax, it may not be in a position to collect taxed due to it. The collection of taxes may be specifically problematic in an international context. Although, an 'assistance in collect of taxes' article in a tax treaty may be helpful in this regard, it may still be very difficult to collect taxes from non-residents. An effective method of collecting taxes form non-residents is to impose withholding tax on payments to non-residents. Although a withholding tax is an ideal tax from the point of view of the tax collector, from the point of view of the investor, it has the inherent drawback that is always imposed on the gross amount. In other words, no deductions may be claimed in the source State. Depending on the domestic tax rules, however, it may be possible for the non-resident to register for tax in the State in which the taxes were withheld and claim expenditure incurred in production the income on which the tax was withheld under assessment.

The procedure for collecting taxes via a withholding tax is to appoint a resident as the non-resident' agent and impose an obligation on the agent to withhold a certain percentage tax from payments made to the non-resident. Should the resident agent not comply with this duty or should he or she withhold an incorrect amount of tax, personal liability is often imposed.[36]

An agent's duty to inform the revenue authorities of the extent of the payment made to the non-resident and the amount of taxes withheld, may infringe upon a taxpayer's right to privacy. This is especially true where the agent is a bank and as such is subject to bank secrecy rules. Furthermore, in countries which impose exchange control restrictions, like South Africa, either the foreign investor or the resident payer or both may have restrictions on, and repatriating obligations with regard to, the payment, with result that onerous double administration arises with respect to the payment.

[36] See section 35A(7)(*a*) of the Act

A question arises as to the rights of the non-resident where the resident withholds more tax than that which is legally payable. In such circumstances the non-resident will have a claim for the excess taxes against the agent. Where the agent has paid the excess to the revenue authorities, the agent must claim a fund from the revenue authorities within the period laid down in domestic law for the claiming of a refund.[37]

In *Stroud Riley & Co v SIR*[38] it was made clear that where taxes were over paid, the South African Revenue Services has no discretion whether to pay the refund or not but has only to establish whether taxes were indeed overpaid and if so, to make the refund. Alternatively, the non-resident can claim the refund directly from the South African Revenue Services.

In South African domestic law, withholding tax is currently imposed in four instances:

- On royalties and similar income;
- On disposal of immovable property by non-South African residents;
- On non-resident entertainers and sportspersons; and
- On interest.

[37] In terms of section 102 of the Act, the period is 3 years

[38] 1974 (4) SA 534 (E)

8. VALUE ADDED TAX (“VAT”)

Any person who carries on an enterprise or activity where the value of the taxable supplies exceeds R300 000 in any 12 month period, or whose turnover in respect of taxable supplies is expected to exceed the threshold in the following 12 months, is liable to register as a VAT vendor.

Where an amount paid by an employer constitutes remuneration, the related services rendered by the employee to its employer do not give rise to the conducting of an "enterprise" by the employee. Consequently, no VAT liability arises in respect of "remuneration" as defined, paid by employers.

The secondment of expatriate employees by overseas companies to companies in South Africa is on the increase as knowledge, assistance and expertise are in certain instances required from foreign companies (including holding companies and subsidiaries). These expatriates are generally employed by a foreign company, a local company or by means of a dual/split employment contract arrangement.

In certain circumstances, a foreign company may employ natural persons in an expatriate capacity and then supply services in this way to a South African company. Where no employment contract exists between the South African company and each expatriate employee and a payment is made by the South African company for these services, the view is taken from a VAT perspective that the South African company is paying fees for services rendered by the foreign company. This is on the basis that the expatriates are employees of the foreign company.

The mere fact that PAYE is calculated on an amount paid by a South African company in respect of services rendered to it by a foreign company using expatriate employees does not by implication mean that an employment contract exists between the South African company and each expatriate for VAT purposes. In the same light,

one should bear in mind that both PAYE and VAT can be applicable to the same amount paid by the South African company in respect of services rendered to it using the expatriates. The VAT Act defines a "person" widely and by implication does not exclude a foreign company.

The VAT Act requires that an enterprise must first be conducted before a person (i.e. the foreign company) becomes liable to register as a vendor for VAT purposes.

The VAT treatment will thus depend on the contractual relationship between the foreign company, the South African company and each expatriate employee. Where, for instance, no employment contract exists between the South African company and the expatriate employees, the foreign company's employees could be seen to be rendering services in South Africa to the local company. If the foreign company is contractually obliged to pay remuneration to the expatriate employees, and this is paid by the South African company on its behalf, or an amount is paid by the South African company to the foreign company in respect of these services, the foreign company will be required to register for VAT in South Africa where the total consideration "received" by it from the South African company, in respect of these services, exceeds R300 000 per annum.

SARS has in the past ruled that certain foreign companies need not register for VAT purposes if the services (i.e. services by its employees) were to be rendered for a limited period only. This may, however, require a formal written directive from SARS confirming this view.

Where it is determined that a foreign company does not conduct an enterprise for VAT purposes and does not constitute a "resident" as defined in section 1 of the VAT Act, the South African company may have a VAT liability on imported services, to the extent that the relevant services are being used for purposes of making non-taxable supplies.

On the other hand, where employment contracts or split employment contracts have been entered into between the expatriates and the South African company (VAT vendor), it could be argued that the foreign company has no VAT liability in South Africa in respect of the expatriates' presence/ activities.

9. DOUBLE TAXATION AGREEMENTS

A foreigner who earns employment income from a source within or deemed to be within South Africa and who is resident of another country, may be liable for normal tax both in South Africa and in his or her country of residence.

The South African Government has therefore entered into agreements for the avoidance of double taxation with a number of countries (a comprehensive list of these countries are attached hereto as appendix "**5**") to prevent the levying of normal tax on the same income by more than one country.

The domestic laws of both South Africa and the relevant foreign country remain applicable where not Double Taxation Agreement exists.

A foreigner may expect relief from the taxation of employment income in terms of the Double Taxation Agreement in the following circumstances:

- **Temporary employment in the private sector**: Employment income of a foreigner will generally be subject to normal tax in South Africa if a Double Taxation Agreement has been concluded with a foreign country. However if all three of the following requirements are met, the income will not be subject to normal tax in South Africa:

    - the foreigner is physically present in South Africa for a period or periods in aggregate not exceeding 183 days in any 12 month period;

    - the remuneration is paid by or on behalf of an employer who is not a resident of South Africa;

- the remuneration is not borne by a permanent establishment (a fixed place of business through which the business of the employer is wholly or partly conducted) that the employer has in South Africa.

- **Employees of foreign governments working in South Africa**: The remuneration of an employee of a foreign diplomatic or consular mission in South Africa is exempt from normal tax in South Africa if the foreign employee is:

  - Stationed in South Africa for the sole purpose of holding office in South Africa as an official of a foreign government; and

  - Not ordinarily resident in South Africa.

If the employee will as a consequence of the application of the physical presence test become a resident, this will not affect the exemption of his or her remuneration in this regard.

In the event that the employee applies for and receives a permit for permanent residence in South Africa, the exemption no longer applies an liability for normal tax arises from the date of issue of such permit. This is due to residential permanency resulting in the employee being regard as ordinarily resident. Furthermore, where a foreign government carries on business activities in South Africa, the remuneration payable to its employees could also be taxable in South Africa. The taxability of this income may be affected by a Double Taxation Agreement.

Foreign employee who is not exempt from tax in the above circumstances must register as provisional tax payers. South African nationals who are employed by foreign diplomatic or consular missions in South Africa re not exempt from normal tax on their remuneration.

10. CGT (continued from above in relation to individuals)

CGT is as mentioned above taxable in South Africa. Capital gains tax is imposed through the income tax system by including a proportion of the calculated gain in taxable income.

Persons who cease to be residents of South Africa will not escape tax on their capital gains at the time of becoming non-residents. They are treated as deemed to have disposed of all their assets, except those that would still be taxed once they become non-residents. Such persons are also treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by them immediately before ceasing to be residents.

Come residents of South Africa will be subject to tax on capital gains not only respect of assets acquired after becoming residents, but also in respect of their worldwide assets owned by them at the time of becoming residents. They are however permitted to disregard a portion of any gains or losses on assets brought into the tax net because they have become residents. The object is to exclude pre-entry gains and loses.

Portions to be disregarded are that portion of the gains or losses attributable to the period during which the persons concerned held the relevant assets before becoming residents. Such persons are treated as having disposed of and reacquired their assets on the day before taking up residence. Presumable, the person concerned must be treated as having acquired the assets at the commencement of their day of arrival.

Non-residents are subject to CGT on capital gains derived from the disposal of real estate held directly or indirectly through a company or trust (if 80% of the value is attributable to real estate), or the assets of a permanent establishment in South Africa. A deemed capital gain arises on the loss of tax resident status.

11. ESTATE DUTY

A deceased who was not ordinarily resident in South Africa at the date of his death will be liable in South Africa for estate duty on his South African property only.

The definition of 'property' in section 3(2) of the Act excludes the following property held by a deceased person who was not ordinarily resident in South Africa at the date of his death:

- Immovable property situated outside of South Africa (section 3(2)(*c*));

- Movable property physically situated outside of South African (section 3(2)(*d*));

- Any amount owing to the deceased that cannot be recovered in the courts of South Africa (section 3(2)(*f*);

- Any goodwill, licence, patent, design, trademark, copyright or other similar right not registered or enforceable in South Africa or not attaching to any trade business or profession in South Africa (section 3(2)(*f*));

- Any stocks or shares held in a body corporate that is not a company (section 3(2)(*g*)(i));

- Any stocks or shares held in a company where any change of ownership of stocks or shares is not required to be registered in South Africa (section 3(2)(*g*)(ii));

- Any rights to any income produced by or proceeds derived from any property referred to in section 3(2)(*e*), (*f*) or (*g*) (section 3(2)(*h*)).

Estate duty and donations tax are levied at a flat rate of 20% on net assets at death and all capital transfers concluded for no consideration or for inadequate consideration.

Exemptions from donations tax are granted for donations of up to R 100,000 made each year during a person's lifetime. A deceased's estate is subject to duty only to the extent that the net value exceeds R 3,500,000 plus the value of bequests to a surviving spouse. If the deceased spouse's estate has not fully used the R 3,500,000 exemption, the balance can be used in the estate of the surviving spouse. Non-residents are subject to estate duty on assets located in South Africa only and are exempt from donations tax. To prevent double taxation, South Africa has entered into estate tax treaties with 6 countries.

12 CONCLUSION AND SUMMARY

We know that knowledge of tax law is essential for anyone people engaged in any type of business activity. Tax is a cost on business and tax compliance is the most common area where business and government come into contact. In addition, tax also gets very personal. Every individual will at some point or another have certain tax liabilities. Notwithstanding this, most persons in South Africa (residents and non-residents) have very little knowledge about tax law, its implications, their liabilities, exemptions which may be available to them etc.

My reason for registering for this course was solely for the purpose of being able to render tax advice to the expatriate community because of the fine line that exists between the services Eisenberg de Saude renders and the tax implications of the types of permits the foreigners may require and/or apply for and obtain. I, in all honesty, was not overly excited about undertaking this course as I found tax law to be tedious, difficult and bland. I however felt that undertaking this course was necessary and part and parcel with the application of South African immigration laws.

Over this year, however, tax law become particularly fascinating. Not only is it now possible for me to address many and most of the questions raised by my clients (and my South African resident colleagues, family and friends), but I feel that I have some measure of control over my taxable existence. There is a creative element to tax law. With a deep and meticulous understanding of the rules and policy's, I am able to exploit opportunities to mitigate the burden of taxation for individuals and businesses. I now relish the details of tax law.

I hope that this proposal will assist the expatriate community in relation to their tax uncertainties and liabilities. It is extremely important for the expatriate to understand his or her tax status before relocating to South Africa should he or she wish to obtain the most tax benefits as possible.

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SOUTH AFRICAN REVENUE SERVICE

INCOME TAX INTERPRETATION NOTE NO 3

DATE: 4 FEBRUARY 2002

ACT : INCOME TAX ACT, 1962 ("the Act")
SECTION : SECTION 1
SUBJECT : RESIDENT: DEFINITION IN RELATION TO A NATURAL PERSON – ORDINARILY RESIDENT

1. **Background**

The income tax system in South Africa changed from a source-based system of taxation to a residence basis of taxation with effect from years of assessment commencing on or after 1 January 2001.

The consequential amendments to the Act have the effect that South African residents are, but for certain exclusions/exemptions, 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. The normal source principles as determined and developed by our courts continue to be applicable and can, therefore, not be ignored.

The definition of "gross income" in section one of the Act has been amended to include a reference to the word "resident" which has also been defined in section one and means a natural person who is:

- ordinarily resident in South Africa; or
- physically present in South Africa for a specified period (physical presence test).

In other words, two tests are applicable to determine whether or not a person is a resident of South Africa, i.e. the ordinarily resident test and physical presence test. The physical presence test is dealt with in Interpretation Note No. 4 dated 4 February 2002. The implication of agreements for the avoidance of double taxation is also not considered in this document.

The Act does not define "ordinarily resident", and therefore the interpretation given by the courts must be followed.

2. **The law**

Although the Act does not define "ordinarily resident", the courts have interpreted the concept to mean the country to which a person would naturally and as a matter of course return from his/her wanderings. It might therefore be called a person's usual or principal residence and it would be described more aptly, in comparison to other countries as the person's real home. The above approach was followed in the case, *Cohen v CIR* (13 SATC 362) and confirmed in the case *CIR v Kuttel* (54 SATC 298).

The leading Canadian case is *Thompson v Minister of National Revenue* 2 DTC 812 (SCC). In this case it was held that a person is ordinarily resident in the place "where in the settled routine of his life he regularly, normally or customarily lives" or "at which he in mind and in fact settles into or maintains or centralises his ordinary mode of living with its accessories in social relations, interest and conveniences". The English case *Shah v Barnet London Borough Council and Other Appeals* f1983 1 ALL ER 226 (HL) 234b-c describes the meaning of "ordinarily resident" as "that a person must be habitually and normally resident here, apart from temporary or occasional absences of long or short duration". A wider approach was followed in interpreting the concept of "ordinarily resident" in the English case. In the Kuttel judgment, Goldstone JA stated:

"In my judgment it is neither necessary nor helpful to discuss other English decisions in which the words 'ordinarily resident' were considered and interpreted with reference to English income tax legislation. I can find no reason for not applying their natural and ordinary meaning to the provisions now under consideration."

In summary, the courts have held in ascribing a meaning to the concept "ordinarily resident" that it refers to -

- living in a place with some degree of continuity, apart from accidental or temporary absence. If it is part of a person's ordinary regular course of life to live in a particular place with a degree of permanence, he/she must be regarded as ordinarily resident (*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* 23 SATC 292);
- the residence must be settled and certain and not temporary and casual (*Soldier v COT* 1943 SR);
- that ordinarily resident is narrower than resident. A person is ordinarily resident where he/she normally resides, apart from temporary/occasional absences (*CIR v Kuttel* (*supra*)).

In *ITC 1170* (34 SATC 76) it was pointed out by the court that the question whether a taxpayer may be regarded as being "ordinarily resident" at a particular place during a particular period is one of degree, and one is entitled to look at the taxpayer's mode of life beyond the particular period under consideration.

The case of *Robinson v COT* 1917 TPD 542, 32 SATC 41 deals with the interpretation of the word "residence" only and not the term "ordinarily resident". The case is important, though, because it focuses on the

physical presence of the taxpayer and his maintenance of a home as the crucial tests to be applied in the determination of his residence.

In ITC 961 (1061) 24 SATC 648 it was held that a woman who marries a man ordinarily resident in a particular country and sets up home with her husband in that country cannot be said to be ordinarily resident in some other country, even if immediately before her marriage she was ordinarily resident in that other country.

3. **Application of the law**

The question whether a person is ordinarily resident in a country is one of fact and each case must be decided on its own facts having regard to principles already established by case law, meanings expressed in the text books, etc. It is not possible to lay down hard and fast rules. The concept must also not be confused with the terms 'domicile', 'nationality' and the concept of emigrating or immigrating for exchange control purposes.

A physical presence at all times is not a requisite to be ordinarily resident in the Republic. The following two requirements need to be present:

- an intention to become ordinarily resident in a country; and
- steps indicative of this intention having been or being carried out.

A person's mode of life may be such that it cannot be said that he or she has a real home anywhere. A common feature of multinational corporations is that certain staff is virtually permanent wanderers. In such a case the burden would be on the taxpayer to discharge the onus that he/she is not ordinarily resident in the Republic. It is not possible to lay down any clearly defined rule or period to determine ordinarily residence.

The effect of the above is that a natural person may be resident in South Africa even if that person was not physically present in South Africa during the relevant year of assessment. The purpose, nature and intention of the taxpayer's absence must be established to determine whether the taxpayer is still ordinarily resident. The following factors will be relevant in considering the above two requirements:

- most fixed and settled place of residence
- habitual abode, i.e. present habits and mode of life
- place of business and personal interest
- status of individual in country, i.e. immigrant, work permit periods and conditions, etc
- location of personal belongings
- nationality
- family and social relations (schools, church, etc)
- political, cultural or other activities
- application for permanent residence
- period abroad; purpose and nature of visits
- frequency of and reasons of visits

The above list is not intended to be exhaustive or specific, merely a guideline.

The circumstances of the person must be examined as a whole, and the personal acts of the individual must receive special attention. As stated in ITC 1170, one is entitled to look at the taxpayer's mode of life beyond the particular period under consideration. It is not possible to specify over what period the comparison must be made. The comparison must cover a sufficient period for it to be possible to determine whether the person is ordinarily resident in South Africa.

A natural person, who became ordinarily resident, will become a resident as from a specific date. That date will be the date on which he or she became ordinarily resident in the Republic. It, therefore, follows that a natural person will not be taxable in the Republic on any income earned outside the Republic prior to the date on which he or she became ordinarily resident in the Republic, unless it was deemed to be of a South African source and was therefore taxable in terms of paragraph (ii) of the definition of "gross income" in section one of the Act.

Example:
Mr. X became ordinarily resident in the Republic on 1 October 2001. All income received by or accrued to Mr. X from a source outside the Republic prior to 1 October 2001 will be excluded from his income for the year of assessment ending 28 February 2002. All income (worldwide) received by or accrued to Mr. X, on or after 1 October 2001 (excluding certain income that may be exempt) will be included in his taxable income for the year of assessment ending 28 February 2002.

A natural person, who emigrates from the Republic to another country, will cease to be a resident as from the date that he or she emigrates.

Example:
Ms. A, emigrated to Zambia on 29 October 2001 and married a Zambian resident. She has no business or financial connection in the Republic and does not intend to return to the Republic. In these circumstances Ms. A ceased to be a resident on 29 October 2001.

4. **Further references**

(1990) 29 Income Tax Reporter 195 'Ordinarily Resident' and 'Carrying on Business'

Silke on South African Income Tax, paragraph 14.41

Meyerowitz on Income Tax, paragraph 5.16

Butterworths: Income Tax Practice Manual "Ordinarily Resident", page A 568(1)

IR20 Residents and non-residents: Liability to tax in the United Kingdom (http://www.inlandrevenue.gov.uk/pdfs/ir20/htm)

Law Administration
SOUTH AFRICAN REVENUE SERVICE

SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 4 (Issue 3)

DATE: 8 February 2006

ACT : INCOME TAX ACT, 1962 (the Act)
SECTION : SECTION 1
SUBJECT : RESIDENT: DEFINITION IN RELATION TO A NATURAL PERSON – PHYSICAL PRESENCE TEST

1. Purpose

The purpose of this Note is to explain the requirements of the physical presence test to which a natural person, who is not at any time during the relevant year of assessment ordinarily resident in the Republic of South Africa ("the Republic"), must comply with before becoming a **"resident"** as defined in section 1 of the Act.

2. Background

2.1 A natural person can become a resident for income tax purposes by-

a) being ordinarily resident in the Republic, [see paragraph (a)(i) of the definition of **"resident"** in section 1 of the Act]; or

b) complying with all the requirements of the physical presence test as set out in paragraph (a)(ii) of the definition of **"resident"** in section 1 of the Act.

2.2 This Note focuses solely on the physical presence test. For more information on the concept of ordinarily resident, see Interpretation Note No. 3 dated 4 February 2002. It is important to note that a natural person can be a resident of more than one country, for example, of the Republic and of another country with which the government of the Republic has entered into a Double Taxation Agreement ("tax treaty"). This situation is discussed in paragraph 4.4.

2.3 Interpretation Note 4 (issue 2) deals with legislation prior to the Revenue Laws Second Amendment Act , 2005 (Act No. 32 of 2005).

Issue 3 takes into account the amendments to the definition of "resident", which is applicable to a person -

- who is a resident due to the fact the he/she complies with the requirements of the physical presence test on 28 February 2005, with effect from years of assessment commencing on or after 1 March 2006. This means that the old requirements will be applicable to such a person for the 2006 year of assessment, and the new requirements will only be applicable with effect from the 2007 year of assessment; and
- who is not a resident on 28 February 2005, with effect from years of assessment commencing on or after 1 March 2005 (the new requirements will be applicable to such a person with effect from the 2006 year of assessment).

3. The law

The term **"resident"** is defined in section 1 of the Act and reads as follows (after taking into account amendments enacted by the Revenue Laws Second Amendment Act, 2005 (Act No.32 of 2005):

"**'resident'** means any-

(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:

Provided that-

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

(B) where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or

(*b*) person (other than a natural person)...

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;"

4. Application of the law

4.1 Time rule

4.1.1 The word **"resident"**, as defined in section 1 of the Act, was introduced in the Act and is applicable with effect from years of assessment commencing on of after 1 January 2001, i.e. in the case of a natural person, as from 1 March 2001 which is the commencement date of the 2002 year of assessment.

4.1.2 The physical presence test, also known as the day test or time rule, is based on the number of days during which a natural person is physically present in the Republic. The purpose or nature of the visit in the Republic is irrelevant. It must be determined annually whether or not all the requirements of the physical presence test have been met.

4.1.3 Paragraph (a)(ii) of the definition of **"resident"** refers to a natural person, who is not at any time during the relevant year of assessment

ordinarily resident in the Republic. It, therefore, follows that where a natural person was at any time during the year of assessment under consideration ordinarily resident in the Republic, the physical presence test is not applicable to that natural person during that year of assessment.

4.1.4 Items (aa) and (bb) contain the requirements to which a natural person must comply with before that person can be regarded as a resident for income tax purposes.

4.2 Requirements

4.2.1 The requirements refer to the number of days which a natural person must be physically present in the Republic during the year under consideration as well as during the five years of assessment preceding the year of assessment under consideration (new requirement), or the three years of assessment preceding the year of assessment under consideration (old requirement).

These requirements are that the person must be physically present in the Republic for a period or periods exceeding-

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

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

iii) 915 days (new requirement) or 549 days (old requirement) in aggregate during the five (or three years) preceding years of assessment.

4.2.2 Note that the number of days, referred to in each of the three above-mentioned requirements, refers to-

a) an aggregate number of days during the relevant year or years of assessment; and

b) the aggregate number of days must exceed the specified number of days.

4.2.3 If a natural person complies with all the requirements referred to above, the person is a resident of the Republic.

4.3 Proviso (A) – Determining the number of days

4.3.1 In terms of proviso (A) to the definition of **"resident"** a day includes a part of a day. A day begins at 00:00 and ends at 24:00. Therefore, a person who arrives in the Republic through a port of entry at 23:55 would be regarded to be physical present in the Republic for a day.

4.3.2 Any day during which a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ***"port of entry"*** as contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002) ("the Immigration Act"), will be excluded in counting the number of days.

4.3.3 The term ***"port of entry"*** is defined in section 1 of the Immigration Act and reads as follows:

> "means a place designated as such by the Minister where all persons have to report before they may enter, sojourn or remain within, or depart from the Republic."

4.3.4 The admission to the Republic and the departure from the Republic by a person is dealt with in section 9 of the Immigration Act. Section 9(1) of the Immigration Act provides that no person shall enter or leave the Republic at a place other than through a port of entry.

4.3.5 Based on the ordinary meaning of the word "person" and in the context the word is used, "person" refers to a resident, citizen or a foreigner. A foreigner, resident or citizen must, therefore, report at a port of entry to enter or leave the Republic. However, in terms of section 31 of the Immigration Act, the Minister of Home Affairs may, for good cause, waive any prescribed requirement or form upon application. In order to take account of this possibility, proviso (A) provides that:

> "or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act;"

4.3.6 Therefore, once a person enters through a port of entry or a place as permitted by the Minister of Home Affairs, and leaves through a port of

entry, both the day of arrival and departure, as indicated in his/her passport, are included in the count of the number of days.

4.4 Duel residence and treaties

4.4.1 Any 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.

Tax treaties provide a separate set of rules for determining whether a person is a resident of a country. Under most of these tax treaties a person is a resident of a country if that person is liable to tax in that country by reason of that person's domicile or residence. If a person is a resident of two countries by virtue of the criteria described in the tax treaty, that person's residence is determined by virtue of the various tie-breaker rules. Where a person is exclusively deemed to be a resident of another country for purposes of the tax treaty (by virtue of tax treaty tie-breaker rules or otherwise), that person will not be a resident for purposes of the Act regardless of any other rules pertaining to the definition of **"resident"** contained in the Act.

4.4.2 The above exclusion is only applicable with effect from 26 February 2003. However, where a person is deemed to be exclusively a resident of another country for purposes of the tax treaty, the person will for the full 2003 year of assessment not be regarded as a **"resident"** for income tax purposes. Where the year of assessment ended prior to 26 February 2003 (due to the death or insolvency of the person), the person can still be regarded as a **"resident"** for income tax purposes for the period of assessment which ended on the day of his/her death or on the day before the day on which the order of sequestration is issued to the person. Refer to Interpretation Note No. 25.

4.5 Date on which a natural person becomes a resident

4.5.1 The effect of the definition is that a natural person who is not ordinarily resident in the Republic can, in terms of the physical presence test, only become a resident for tax purposes after a period of six consecutive years of assessment during which the person is physically present in the Republic. Prior to the amendment a person would have become a resident as from the fourth year of assessment.

4.5.2 A person will be a resident with the effect from the first day of the first year during which all the requirements of the physical presence test have been met. In these circumstances the person will be taxable in the Republic on his/her worldwide income (i.e. income derived within and outside the Republic) received by or accrued to or in favour of him/her (excluding certain income that is exempt) as from the first day of that year of assessment.

4.5.3 Where a person ceases to be a resident (refer to paragraph 4.6) during a year of assessment, and the person returns to the Republic during the following year of assessment for a period or periods exceeding 91 days in aggregate (complies with the first requirement), that person once again becomes a resident as from the first day of that following year of assessment, provided that the person also complies with the second and third requirements referred to in paragraph 4.2 above. Refer to Example B.

4.6 Date on which a natural person ceases to be a resident

4.6.1 A natural person, who is a resident by virtue of the physical presence test, ceases to be a resident as from the day after the day on which he/she left the Republic, provided that he/she is physically outside the Republic for a continuous period of at least 330 full days after the day on which he/she left the Republic. [Proviso (B) to the definition of **"resident"**.] See also the solution on Example A, paragraph (c).

4.6.2 It is not a requirement that the total number of 330 full days must all be in one year of assessment. The only requirement is that the 330 days must be for a continuous period, for example, 29 November 2005 to 3 October 2006.

4.6.3 **Note:** A natural person, who is ordinarily resident, spending time outside the Republic and has the intention of returning to the Republic as his/her permanent home, is regarded to be a resident, regardless of the period of time spent outside the Republic.

5. Examples

Basic Example:

X, not ordinarily resident in the Republic, was physically present in the Republic for the following number of days:

Year of assessment	Number of days
2001	95
2002	110
2003	115
2004	92
2005	151
2006	355

X was present in the Republic for more than 91 days since the 2001 year of assessment, but never complied with the previous 549 days requirement, during the three preceding years of assessment. X was therefore not a resident. The new requirements of five consecutive years and 915 days will therefore be applicable on X with effect from the 2006 year of assessment.

Requirements (2006 year of assessment)	Compliance
91 days in aggregate during the year of assessment under consideration	Yes
91 days in aggregate during each of the 5 years of assessment preceding the current year of assessment	Yes
915 days in aggregate during the 5 preceding years of assessment (95 + 110 + 115 + 92 + 151 = 563)	No

X is therefore not a resident in terms of the physical presence test for the 2006 year of assessment.

5.1 Example A

Z is a citizen of Argentina and employed by a South African company, who also has a branch in Argentina. Z never visited the Republic before 29 June 2000 and is not ordinarily resident in the Republic. Z was physically present in the Republic for the following periods:

Year of assessment	Period in the Republic	Number of days in the Republic
2001	29/06/2000 – 28/02/2001	245
2002	1/03/2001 – 21/05/2001	82
	08/11/2001 – 29/02/2002	114
2003	01/07/2002 – 28/02/2003	243

2004	29/06/2003 – 15/07/2003 29/08/2003 – 30/11/2003	17 94
2005	01/11/2004 – 30/11/2004	30

Solution:

a) **Determination of residence of Z in respect of the 2004 year of assessment (the old requirements are applicable in respect of 2004)**

First requirement:

Number of days, in aggregate, physically present in the Republic during the 2004 (current) year of assessment.

2004 = 111 days (17 + 94) [exceeding 91 days]

Second requirement:

Number of days, in aggregate, physically present in the Republic during each of the three years of assessment preceding the current year of assessment.

2001	=	245 days	[exceeding 91 days]
2002	=	196 days (82 + 114)	[exceeding 91 days]
2003	=	243 days	[exceeding 91 days]

Third requirement:

Number of days, in aggregate, physically present in the Republic during the three preceding years of assessment:

245 + 196 + 243 = 684 days [exceeding 549 days]

As all three requirements have been complied with, Z is a resident of the Republic, notwithstanding the fact that Z is not ordinarily resident in the Republic.

b) **Determination of the date from which Z became a resident**

Due to the physical presence test, Z became a resident as from the first day of the 2004 year of assessment, that is from 1 March 2003 and is taxable on the worldwide income in cash or otherwise received by or accrued to or in favour of Z (excluding certain income that is exempt) for the full year of assessment.

c) Determination of the date from which Z is deemed to have ceased to be a resident

Z is physically outside the Republic for a continuous period of 335 full days (1 December 2003 to 31 October 2004) which is more than the required minimum period of at least 330 full days. After the continuous period of at least 330 full days that Z was physically outside the Republic, Z is deemed not to be a resident as from the commencement of the 330 day period, that is 1 December 2003, the day following the day of depart ure, namely 30 November 2003.

For capital gains tax purposes this will be treated as a disposal. Z will be treated as having disposed of assets (for example, shares listed on the JSE) for an amount equal to the market value of the assets and to have immediately reacquired the assets at a cost equal to the market value. Kindly refer to the Comprehensive Guide to Capital Gains Tax for further information.

If an assessment has been issued to include worldwide income for the full year, a reduced assessment must be issued in order to exclude income, in cash or otherwise received by or accrued to or in favour of Z on or after 1 December 2003, that is not from a source within or deemed to be within the Republic. The reduced assessment can only be issued once proof of the actual period of physical absence has been obtained. A reduced assessment will also be subject to the three-year prescription period contained in section 79A of the Act. The 2004 reduced assessment will therefore reflect the following -

i) taxable income, worldwide, for the period 1 March 2003 to 30 November 2003 during which period Z was a resident; and

ii) taxable income, from a source within or deemed to be within the Republic, for the period 1 December 2003 to 28 February 2004 during which period Z was not a resident.

d) **Determination of residence of Z in respect of the 2005 year of assessment (old requirements)**

First requirement:

Number of days, in aggregate, physically present in the Republic during the 2005 year of assessment.

2005 = 30 days [not exceeding 91 days]

Due to the fact that Z was physically present in the Republic for a period or periods not exceeding 91 days in aggregate during the 2005 year of assessment, Z does not comply with the first requirement.

It is not necessary to consider the **second and third requirements**, as the first requirement was not complied with. Z is therefore not a resident, in which case Z is only liable for tax in the Republic on taxable income from a source within or deemed to be within the Republic.

5.2 Example B

Use the same information as in Example A, except for the 2005 and 2006 years of assessment for which the information is as follows:

Year of assessment	Period in the Republic	Number of days in the Republic
2005	01/11/2004 to 28/02/2005	120
2006	01/03/2005 to 04/06/2005	96

Solution:

Determination of residence of Z in respect of the 2005 year of assessment

First requirement:

Number of days, in aggregate, physically present in the Republic during the 2005 (current) year of assessment.

2005 = 120 days [exceeding 91 days]

Second requirement:

Number of days, in aggregate, physically present in the Republic during each of the three years of assessment, preceding the current year of assessment.

2002	=	196 days (82 + 114)	[exceeding 91 days]
2003	=	243 days	[exceeding 91 days]
2004	=	111 days (17 + 94)	[exceeding 91 days]

Third requirement:

Number of days, in aggregate, physically present in the Republic during the three preceding years of assessment:

196 + 243 + 111 = 550 days [exceeding 549 days]

As all three requirements have been complied with Z is regarded to be a resident for the full year of assessment, i.e. from 1 March 2004 to 28 February 2005.

Note: Z would, therefore, only deemed not to have been a resident from 1 December 2003 to 28 February 2004. Although Z was physically outside the Republic for a continuous period of 335 days (1 December 2003 up to and including 31 October 2004) which is more than the required minimum period of at least 330 full days, it has no effect on the 2005 year of assessment. The three requirements must be applied each year in determining whether a natural person is deemed to be a resident.

Determination of residence of Z in respect of the 2006 year of assessment

Requirements (2006 year of assessment)	Compliance
91 days in aggregate during the year of assessment under consideration	Yes
91 days in aggregate during the 3 years of assessment preceding the current year	Yes
549 days in aggregate during the 3 preceding years of assessment (243 + 111 + 120 = 474)	No

Z will therefore not be regarded as a resident in terms of the physical presence test for the 2006 year of assessment. The old requirements are still applicable in this instance due to the fact that Z complies with the

requirements of the physical presence test in respect of the 2005 year of assessment.

5.3 Example C

Use the same information as in Example A, except for the 2005 year of assessment for which the information is as follows:

Year of assessment	Period in the Republic	Number of days in the Republic
2005	01/11/2004 to15/11/2005	15
	26/11/2004 to 09/02/2005	76

Z retuned to Argentina on 9 February 2005 to prepare for a holiday (15 February 2005 to 27 February 2005) in Botswana. The aircraft from Argentina landed at the Johannesburg International Airport on 15 February 2005 at 05:00. Z entered the Airport buildings at 05:15 but did not go through a "port of entry" or received a concession from the Minister of Home Affairs. The aircraft to Botswana departed from the Johannesburg International Airport on 15 February 2005 at 07:00.

Z's flight returned to Johannesburg International Airport on 27 February 2005 where it landed at 20:00. Without going through a "port of entry" or been permitted by the Minister of Home Affairs to enter at any other place, Z went on board of the flight to Argentina at 21:00.

Solution:

First requirement:

Number of days, in aggregate, physically present in the Republic during the 2005 year of assessment.

2005 = 15 days + 76 days = 91 days [not exceeding 91 days]

Although Z entered the airport building on 15 February 2005 and 27 February 2005, Z did not enter the Republic through a port of entry.

These two days are therefore not included in the count of the number of days physically present in the Republic. Due to the fact that Z was physically present in the Republic for a period or periods not exceeding

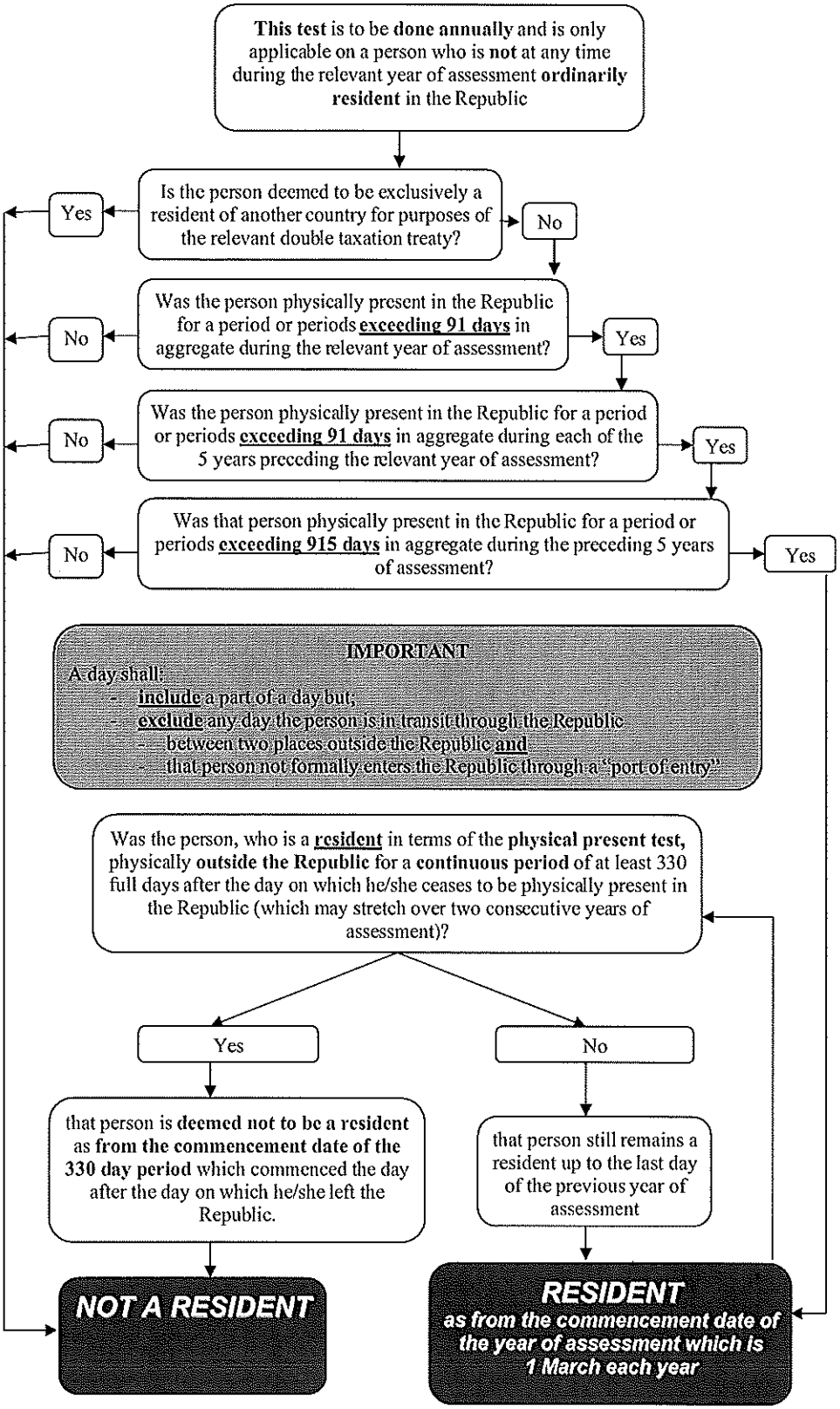
91 days in aggregate during the 2005 year of assessment, Z does not comply with the first requirement.

It is not necessary to consider the **second and third requirements**, as the first requirement was not complied with. Z is therefore not a resident, in which case Z is only liable for tax in the Republic on taxable income from a source within or deemed to be within the Republic.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
Date of first issue: 4 February 2002
Date of second issue: 31 March 2004

PHYSICAL PRESENCE TEST

"Diagram"



SOUTH AFRICAN REVENUE SERVICE

INCOME TAX INTERPRETATION NOTE NO. 6

DATE: 26 MARCH 2002

ACT : INCOME TAX ACT, 1962 ("the Act")
SECTION : SECTION 1
SUBJECT : RESIDENT: PLACE OF EFFECTIVE MANAGEMENT (PERSONS OTHER THAN NATURAL PERSONS)

1. Background

The Revenue Laws Amendment Act, 2000 (Act No. 59 of 2000) introduced a definition of "resident" in section 1 of the Act, which includes the term "place of effective management" as one of the tests to determine the residence of a person other than a natural person.

The inconsistent use of the concepts "managed and controlled", "managed or controlled" and "effectively managed" was addressed simultaneously and a more uniform approach is now followed in the Act. The reference to "managed or controlled" in Practice Note No. 7 dated 6 August 1999, paragraph 1.1.3, is therefore no longer applicable.

As a result of this definition a person, other than a natural person, which has its place of effective management in the Republic will be regarded as a "resident" as defined. The effect hereof is that such person will be subject to income tax on its worldwide income, i.e. income derived within and outside the Republic. It is, however, important to note that a person other than a natural person is also a resident if it is incorporated, established or formed in the Republic. This note, therefore, only deals with the "place of effective manage-

ment" test to determine the residence of a person, other than a natural person.

2. The Law

In terms of paragraph (b) of the definition of "resident" in section 1 of the Act, the word "resident" is defined as a person, other than a natural person, which is-

- incorporated, established or formed in the Republic; or
- which has its place of effective management in the Republic.

An international headquarter company is, however, excluded.

The term "place of effective management" is not defined in the Act and the ordinary meaning of the words, taking into account international precedent and interpretation, will assist in ascribing a meaning to it.

The term "effective management" or "effectively managed" is used by various countries throughout the world, as well as by the Organisation for Economic Co-operation and Development (OECD) in its publications and documentation. However, the term does not have a universal meaning, and the various countries and the members of the OECD have attached different meanings to it.

3. Application of the Law

3.1 Introduction to the meaning of place of effective management

The concept of effective management is not the same as shareholder-control or control by the board of directors. Management focuses on the company's purpose and business and not on the shareholder-function.

In order to determine the meaning of "place of effective management", one should keep in mind that it is possible to distinguish between-

- the place where central management and control is carried out by a board of directors;
- the place where executive directors or senior management execute and implement the policy and strategic decisions made by the board of directors and make and implement day-to-day/regular/operational management and business activities;
- the place where the day-to-day business activities are carried out/conducted.

3.2 General approach

The place of effective management is the place where the company is managed on a regular or day-to-day basis by the directors or senior managers of the company, irrespective of where the overriding control is exercised, or where the board of directors meets.

Management by these directors or senior managers refer to the execution and implementation of policy and strategy decisions made by the board of directors. It can also be referred to as the place of implementation of the entity's overall group vision and objectives.

Management structures, reporting lines and responsibilities vary from entity to entity, depending on the requirements of the entity, and no hard and fast rules exist. It is therefore not possible to lay down absolute guidelines in this regard.

3.3 Practical application

If these management functions are executed at a single location, that location will be the place of effective management. This location might or might not correspond with the place from where the day-to-day business operations/activities are actually conducted from/carried out.

If these management functions are not executed at a single location due to the fact that directors or senior managers manage via distance communication (e.g. telephone, internet, video conferencing, etc.) the view is held that the place of effective management would best be reflected where the day-to-day operational management and commercial decisions taken by the senior managers are actually implemented, in other words, the place where the business operations/activities are actually carried out or conducted.

If the nature of the person, other than a natural person, is such that the business operations/activities are conducted from various locations, one needs to determine the place with the strongest economic *nexus*.

3.4 Relevant facts and circumstances

No definitive rule can be laid down in determining the place of effective management and all the relevant facts and circumstances such as those listed below must be examined on a case-by-case analysis.

- Where the centre of top level management is located;
- Location of and functions performed at the headquarters;
- Where the business operations are actually conducted;
- Where controlling shareholders make key management and commercial decisions in relation to the company;

- Legal factors such as the place of incorporation, formation or establishment, the location of the registered office and public officer:
- Where the directors or senior managers or the designated manager, who are responsible for the day-to-day management, reside;
- The frequency of the meetings of the entity's directors or senior managers and where they take place;
- The experience and skills of the directors, managers, trustees or designated managers who purport to manage the entity;
- The actual activities and physical location of senior employees;
- The scale of onshore as opposed to offshore operations;
- The nature of powers conferred upon representatives of the entity, the manner in which that powers are exercised by the representatives and the purpose of conferring the powers to the representatives.

The above list is not intended to be exhaustive or specific, but serves merely as a guideline.

4. Controlled foreign entity

An entity that has its place of effective management in the Republic is regarded as a "resident" as defined in section 1 of the Act and is, therefore, subject to income tax in its own right. Such entity will, therefore, not be regarded to be a "controlled foreign entity" as defined in section 9D of the Act in relation to another resident.

"4"

Schlumberger

Steven Nieting
Wireline Operations Manager - EAR

January 17, 2014

Dear

I am pleased to confirm your new assignment as EAR and CWA Reservoir Domain Champion, effective February 01, 2014, or after immigration authorization is obtained if later.

Located in Cape Town, you will report to Miguel Saade, Sales & Marketing Manager for EAR WL, and functionally to Philippe Bozzolan , WL Sales Manager for CWA.

As of the same date, your grade will remain unchanged and your salary will be:

USD 196,000

You will continue to participate in a 0-20% Performance Incentive Program (PIP).

In this position and for this calendar year, you will be eligible for a 0-10% Stretch PIP.

This salary will carry you through the current year's merit cycle.

All terms and conditions are as per the International Mobile Manual.

I wish you continued success in your career with Schlumberger.

Sincerely,

SNM

Steven Nieting
Wireline Operations Manager - EAR

Cc: Personnel File
HR Transaction

Schlumberger

CWA Reservoir Domain Champion
Cape Town, South Africa
GIN: 10709683

January 17, 2014

Congratulations on your new assignment in Cape Town. To help you familiarize with your letter of assignment, this document contains a summary of all of the key components of the package.
In addition to the information below, you can find more detailed information in the Employee Manual at http://www.hub.slb.com/display/index.do?id=id1399378 .

Employee Group: International Mobile (IM)
Employee Grade: B05
Annual Base Salary: USD 196,000

International Premium:
As an IM employee assigned to this location with a Geographical Coefficient of 1.00 you will be eligible to receive an International Premium (IP) of 10% applied to your base salary. The IP is paid when you are both On and while on Vacation; there are special rules if you are on Leave of Absence, Medical Leave, Maternity Leave, etc. and these will be communicated if and when you move to one of these leaves. IP is not admissible compensation for IS deferred benefits or PIP (if you are eligible); IP is admissible compensation for DSPP and is subject to EMBO contribution. It subjected to periodic review and may change based on the management discretion.

Incentive:
PIP is an annual bonus program through which you may earn 0-20% of base salary by achieving the Key Performance Objectives (KPOs). These KPOs are based on the four key focus areas of Growth, Return, Integrity and Engagement.

In this position and for this calendar year, you will be eligible for a 0-10% Stretch PIP.

Relocation Benefits

Travel Entitlement:
Company will pay for economy air travel. Reasonable accommodation, food and other transport required during transit will be reimbursed against receipts.

Personal Effects:
Shipment of Personal Effects will be as stated in Section 12 of the IM manual. In order to arrange insurance coverage for your personal effects shipment (where applicable), please log on to: http://www.xn.com. The first time you visit the provider's site click '**First Time user** link on the left hand side on the site home page. Then complete the **personal registration profile** on the right hand side of the screen. The sponsored access code is: slbaccxn.

the published share price at a predefined date. Please note that the benefit will be subject to taxation in accordance with local legislation in your Host Country. For more information on the DSPP please visit www.dspp.slb.com.

International Staff Deferred Medical Plan (DMP) - Post Employment Medical:
You are eligible to participate in the DMP which is designed to provide continued medical coverage, under certain conditions, to International Mobile employees and their families for a short period upon their departure from the Company. The principle is to contribute during active service in order to benefit from medical coverage after leaving Schlumberger provided that you stay unemployed. Participation in this Plan starts upon completion of one year company seniority. For more details on the DMP rules, please visit: www.baco.slb.com.

The IM Manual can change and any changes would take precedence over Terms & Conditions stated in the letter.

Other Important Information

Spousal Assistance:
If your spouse/partner is seeking to continue his/her professional activities in the new location of assignment, the following benefits may be applicable:

- Outplacement support (if available in your location)
- Language training
- Educational assistance/ retraining
- Visa & work permit support

For additional information, please contact your Personnel Manager in your new assignment location.

Partnerjob.com:
Partnerjob.com is a non-profit association where member companies post job openings and where dual careers spouses/ partners can find job opportunities.
If your spouse would like to see the positions posted in partnerjob.com and whether there are suitable ones in the new location, please visit the website www.partnerjob.com. This website will give him/her access to post a resume and consult a job database, provide job search information and a link to the members' web sites.

Schlumberger Spouses Association:
The Schlumberger Spouses Association (SSA) is a global, voluntary, social organization for all spouses and partners of Schlumberger employees. It is designed to provide a welcoming and supportive environment for all members and their families, through ongoing social events and community involvement.To join the SSA, your spouse/partner needs to complete an on-line form at the following website : www.ssafara.net.

Code of Conduct:
You are reminded to acknowledge reading and understanding of the Code of Conduct. More details on the Code of Conduct as well as Schlumberger Ethics and Compliance standards can be found at : vww.ethics.slb.com

Visa Compliance:
It is your responsibility to ensure full compliance with the immigration legislation of the country you are assigned to. The Visa Team will help you to go through your visa and work permit applications. Please refer to the contact below to initiate the process.

Temporary Living:
You are eligible for reimbursements for lodging, meals, transportation, laundry and other similar expenses incurred while securing permanent accommodation. This reimbursement is limited to the value of one month of the new base salary and is made by expense report upon presentation of receipts. Submission of the expense report must occur within six months of transfer.
The claims are for actual incurred expenses only. The maximum time period allocated for temporary living is one month upon arrival at location. Temporary living expenses are not provided if the employee moves into company provided accommodation on arrival or from the date an employee moves into company provided accommodation.

Lease Cancellation:
The Company will reimburse costs arising from the cancellation of an unexpired lease agreement on rented accommodation at the sending location. This is limited to a maximum of 3 months' rental costs.

Mobility Benefits and Insurances

Housing:
Please refer to the housing policy applicable for your assignment location.

Vacation Travel Allowance (VTA):
As specified in section 11 of the IM manual, you will be entitled to a Vacation Travel Allowance. The VTA is intended to cover the travel costs when an Employee, his/her spouse or partner and dependent children return to the home country of the Employee for vacation. It will be provided based on a Full- are, Economy class, Round-
quoted by IATA from the employee's assignment location to the employee's City of Origin as specified in the letter of employment, with a routing by the most direct point-to-point route possible. For the initial part-year of the assignment in 2013 the amount will be prorated based on the date of your transfer. From 2014 this VTA amount will be annualised and will be used as the reference for the next three calendar years (ie 2014 through 2016) in the same location. For the VTA of the fourth calendar year the amount will be reviewed and adjusted if necessary to ensure it is still consistent with the travel fare. The VTA you are entitled to can be found at http://www.evta.slb.com/vacbalance.cfm once you will be in the location. For further details, please contact the Regional Support Center in Douala through AskHR@slb.com.
Your travel costs reimbursable under the IM Manual (Section 11) can be claimed through eClaim at https://eclaims.slb.com, under the Benefits Policy ("Vacation Travel Reimbursable").

Vacation Accrual:
You will be eligible to accrue 42 days per year at a rate of 3.5 days per full month worked. Weekends and public holidays occurring during your vacation period will be counted as vacation days. Note that you will not accrue vacation while on vacation. Your Time Off along with your Time On shall be reported on LoadChart by the 5th of every month at the latest.

Children's Educational Assistance:
Children's Educational Assistance will be provided as specified in the IM manual.

International Health Care Plan:
You and your family (spouse and dependent children) will be provided with medical, dental and vision coverage under the International Health Care Plan which is administered by Mobility Saint Honore (MSH). Coverage is worldwide, with restrictions in the US for maternity, dental and vision treatment. Reimbursement for inpatient services is 100% paid by the plan, whilst outpatient, dental and vision services are covered with a 20% employee cost sharing.
Full details of the plan can be found at http://www.hub.slb.com/display/index.do?id=id1397743.

Life and Incapacity Insurances:
Life and Disability insurance is provided by the Company through Generali Worldwide Insurance Company Limited. Additional Voluntary insurance is available through AXA and Generali. Details of all plans are available at the International Support Center web site => International Staff Policies =>."Insurances":
http://www.hub.slb.com/display/index.do?id=id1397708.

Deferred Benefits

International Staff Pension Plan (ISPP):
Participation in the ISPP starts upon completion of one year of company seniority. Contributions to the plan will be 6% of your admissible compensation. Pension credits are calculated at 3.5% of your Admissible Compensation. You will be vested in the Pension plan after 15 years of service or at age 50 whichever comes earlier. Normal retirement age is age 60, with early retirement available from age 55.
Admissible Compensation is your base salary times any geographical coefficient up to the applicable ceiling (if any), plus Performance Incentive Payment.
At retirement, your annual benefit is the sum of your accumulated pension credits under the plan. For more details on the ISPP rules, please visit: www.baco.slb.com.

Additional Voluntary Contributions (AVC):
For additional pension credits in the ISPP, you may voluntarily choose to participate in the Additional Voluntary Contributions plan by making monthly contributions of up to 6% of your Admissible Compensation into the AVC Fund. All voluntary contributions will be automatically invested in a Balanced Fund specific to the AVC. The funds in the Trust are invested by the Trustee on the advice of investment advisors. Enrollment to the plan requires one year of seniority in the company and can be done online at https://avc.esi.slb.com. Suspension or change of contributions percentage can be done on a quarterly basis online as well. For more details on the AVC rules, please visit www.baco.slb.com.

International Termination Indemnity Plan (ITI):
You will be eligible to participate in the International Termination Indemnity plan (ITI) from the first day of your employment on international contract until 60 years of age. The ITI is designed to provide an indemnity payment to IS employees at time of termination of employment, based on their length of service on International assignment and their last IS salary or last salary at time of termination, whichever is higher. Payment is capped up to a maximum of 15 months Final Base Salary. ITI is not payable in case of Resignation or Termination of employment with Cause. Participation in this Plan starts on first day of transfer. For more details on the ITI plan, please visit www.baco.slb.com

International Staff Profit Sharing Plan (ISPS):
You are eligible to participate in the International Staff Profit Sharing plan. Participation starts upon completion of one year company seniority. It is a 100% Company-paid plan, to which each year, the company may make a contribution based on its profits. The annual contribution allocated to each participant is a percentage of Admissible Compensation, which varies from 0% to a maximum of 15%. For more details on the ISPS rules, please visit: www.baco.slb.com.

Discounted Stock Purchase Plan (DSPP):
You will be eligible to participate in the DSPP, into which you can enroll in June and December of each year. The plan enables employees to use up to 10% of their salary to purchase Schlumberger shares at a discount of 7.5% off

Med-Track/Vaccinations:
Prior to arrival in your new location it is imperative that your Med-Track is up-to-date and you have the necessary vaccinations. For more details on Med-Track, vaccinations and health information please visit the QHSE Health Hub website at http://www.hub.slb.com/display/index.do?id=id26812&file=../healthworld.html.

Malaria specific information is available at:
http://www.hub.slb.com/Docs/sl/healthhub/data/healthpubs/malaria/mal02E/01mal02E.Schlum.html.

EAR Hub Page:
Specific information on EAR Geomarket and HR policies can be found at:
http://www.hub.slb.com/display/index.do?id=id3249724

Key Contacts:
The key local contacts for your transfer to Cape Town are listed below. Please do not hesitate to contact them with any questions.

QHSE Manager:
Neville Cory +255 767 129814
NCory@slb.co

Visa Contact:
Yumnah Hunter +27 76 814 7551
YHunter@slb.com

All Visa Requests to South Africa:
EARVisa@slb.com

HR Representative
Dilshaad Kamrodien +27 82 335 5667
DKamrodien @slb.com

All Payroll (IC & IM) Queries
Regional Support Center – Douala : askhr@slb.com

Best of luck in your new assignment!

Regards,

Signed by candidate

Signature Removed

Juliette Murray Lamotte
EAR GeoMarket HR Manager
JLamotte@slb.com

Summary of all Treaties for the Avoidance of Double Taxation

Country	Treaties in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in SA	Ratified in the other country	Published in Government Gazette	Date of Entry into Force
Algeria	-	-	-	-	21303 dd 21/06/2000	12 June 2000
Australia	-	-	-	-	20761 dd 24/12/1999	21 December 1999
Australia (Protocol)	-	-	-	-	31721 dd 23/12/2008	12 November 2008
Austria	-	-	-	-	17965 dd 30/04/1997	6 February 1997
Austria (Protocol)	-	-	-	-	35049 dd 28/02/2012	1 March 2012
Austria (Protocol)	X					
Bangladesh	X	-	-	-	-	-
Belarus	-	-	-	-	25914 dd 15/01/2004	29 December 2003
Belgium	-	-	-	-	19437 dd 02/11/1998	9 October 1998
Belgium (Protocol)	X	-	-	-	-	-
Botswana	-	-	-	-	26342 dd 12/05/2004	20 April 2004
Botswana (Protocol)	-	21 May 2013 in Pretoria	X	-	-	-
Brazil	-	-	-	-	29073 dd 28/07/2006	24 July 2006
Brazil (Protocol)	X	-	-	-	-	-
Bulgaria	-	-	-	-	27517 dd 22/04/2005	27 October 2004
Cameroon	X	-	-	-	-	-
Canada	-	-	-	-	17985 dd 07/05/1997	30 April 1997
Chile	-	11 July 2012 in Pretoria	X	-	-	-
China (PRC)	-	-	-	-	22041 dd 02/02/2001	7 January 2001
Croatia	-	-	-	-	18460 dd 21/11/1997	7 November 1997
Cuba	X	-	-	-	-	-
Cyprus	-	-	-	-	19638 dd 22/12/1998	8 December 1998
Cyprus (Protocol)	X	-	-	-	-	-
Czech Republic	-	-	-	-	18603 dd 07/01/1998	3 December 1997
Democratic Republic of Congo (DRC)	-	-	-	-	35805 dd 24/10/2012	18 July 2012
Denmark	-	-	-	-	16891 dd 22/12/1995	21 December 1995
Egypt	-	-	-	-	19706 dd 22/01/1999	16 December 1998

Country	Treaties in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in SA	Ratified in the other country	Published in Government Gazette	Date of Entry into Force
Ethiopia	-	-	-	-	28494 dd 10/02/2006	4 January 2006
Finland	-	-	-	-	16862 dd 01/12/1995	12 December 1995
France	-	-	-	-	16681 dd 27/09/1995	1 November 1995
Gabon	-	22 March 2005 in Pretoria	X	-	-	-
Germany	-	-	-	-	3898 dd 25/05/1973	28 February 1975
Germany (Protocol)	X	-	-	-	-	-
Germany (Renegotiated)	-	9 September 2008 in Berlin	X	-	-	-
Ghana	-	-	-	-	29856 dd 18/05/2007	23 April 2007
Greece	-	-	-	-	24996 dd 03/03/2003	14 February 2003
Grenada					Proclamation 229 of 1946; Proclamation 271 of 1954 and Proclamation 32 of 1961	5 October 1960
Hong Kong	X					
Hungary	-	-	-	-	17438 dd 13/09/1996	5 May 1996
India	-	-	-	-	18545 dd 12/12/1997	28 November 1997
India (Protocol)	-	26 July 2013 in Pretoria	-	X	-	-
Indonesia	-	-	-	-	19766 dd 16/02/1999	23 November 1998
Indonesia (Protocol)	X	-	-	-	-	-
Iran	-	-	-	-	19637 dd 22/12/1998	23 November 1998
Ireland	-	-	-	-	18552 dd 15/12/1997	5 December 1997
Ireland (Protocol)	-	-	-	-	35134 dd 22/03/2012	10 February 2012
Isle of Man (Limited)	X					
Israel	-	-	-	-	6577 dd 13/07/1979	27 May 1980
Italy	-	-	-	-	19823 dd 08/03/1999	2 March 1999
Japan	-	-	-	-	18391 dd 27/10/1997	5 November 1997
Kenya	-	26 November 2010 in Nairobi	X	-	-	-
Korea	-	-	-	-	16918 dd 26/01/1996	7 January 1996

Country	Treaties in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in SA	Ratified in the other country	Published in Government Gazette	Date of Entry into Force
Kuwait	-	-	-	-	29815 dd 20/04/2007	25 April 2006
Kuwait (Protocol)	X	-	-	-	-	-
Lesotho	-	-	-	-	17948 dd 22/04/1997	9 January 1997
Lesotho (Renegotiated)	X	-	-	-	-	-
Luxembourg	-	-	-	-	21852 dd 06/12/2000	8 September 2000
Luxembourg (Protocol)	X	-	-	-	-	-
Malawi	-	-	-	-	1479 dd 13/08/1971	2 September 1971
Malawi (Renegotiated)	X	-	-	-	-	-
Malaysia	-	-	-	-	29021 dd 13/07/2006	17 March 2006
Malaysia (Protocol)	-	-	-	-	35190 dd 29/03/2012	6 March 2012
Malta	-	-	-	-	18461 dd 21/11/1997	12 November 1997
Malta (Protocol)	-	-	-	-	37243 dd 24/1/2014	17 December 2013
Mauritius	-	-	-	-	18111 dd 02/07/1997	20 June 1997
Mauritius (Renegotiated)	-	17 May 2013 in Maputo	X	-	-	-
Mexico	-	-	-	-	33460 dd 24/08/2010	22 July 2010
Morocco	X	-	-	-	-	-
Mozambique	-	-	-	-	31983 dd 13/03/2009	19 February 2009
Mozambique (Protocol)	X	-	-	-	-	-
Namibia	-	-	-	-	19780 dd 19/02/1999	11 April 1999
Namibia (Renegotiated)	X	-	-	-	-	-
Netherlands	-	-	-	-	3153 dd 18/06/1971	20 January 1972
Netherlands (Renegotiated)	-	-	-	-	31797 dd 23/1/2009	28 December 2008
Netherlands (Protocol)	-	-	-	-	31795 dd 23/1/2009	28 December 2008
Netherlands (Protocol)	X					
New Zealand	-	-	-	-	26798 dd 17/09/2004	23 July 2004
Nigeria	-	-	-	-	31241 dd 22/7/2008	5 July 2008
Norway	-	-	-	-	17504 dd 15/10/1996	12 September 1996
Norway (Protocol)	-	16 July 2012 in Pretoria	X	-	-	-
Oman	-	-	-	-	25913 dd 15/01/2004	29 December 2003
Oman (Protocol)	-	-	-	-	37244 dd 29/1/2014	5 November 2013

Country	Treaties in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in SA	Ratified in the other country	Published in Government Gazette	Date of Entry into Force
Pakistan	-	-	-	-	19849 dd 17/03/1999	9 March 1999
Poland	-	-	-	-	17201 dd 16/05/1996	5 December 1995
Portugal	-	-	-	-	31720 dd 23/12/2008	22 October 2008
Qatar	X	-	-	-	-	-
Romania	-	-	-	-	16680 dd 27/09/1995	21 October 1995
Russian Federation	-	-	-	-	21395 dd 20/07/2000	26 June 2000
Rwanda	-	-	-	-	33475 dd 27/08/2010	3 August 2010
Saudi Arabia	-	-	-	-	31796 dd 23/01/2009	1 May 2008
Senegal	X	-	-	-	-	-
Serbia	X	-	-	-	-	-
Seychelles	-	-	-	-	25646 dd 30/10/2003	29 July 2002
Seychelles (Protocol)	-		-	-	35396 dd 06/06/2012	15 May 2012
Sierra Leone					Proclamation 229 of 1946; Proclamation 271 of 1954 and Proclamation 32 of 1961	5 October 1960
Singapore	-	-	-	-	18599 dd 02/01/1998	5 December 1997
Singapore (Renegotiated)	X	-	-	-	-	-
Slovak Republic	-	-	-	-	20409 dd 25/08/1999	30 June 1999
Spain	-	-	-	-	30837 dd 12/03/2008	28 December 2007
Sri Lanka	X	-	-	-	-	-
Sudan	-	7 November 2007 in Cape Town	X	-	-	-
Swaziland	-	-	-	-	27637 dd 01/06/2005	8 February 2005
Swaziland (Protocol)	X	-	-	-	-	-
Sweden	-	-	-	-	16890 dd 27/12/1995	25 December 1995
Sweden (Protocol)	-	-	-	-	35268 dd 23/04/2012	18 March 2012
Switzerland	-	-	-	-	850 dd 29/09/1967	11 July 1968
Switzerland (Renegotiated)	-	-	-	-	31967 dd 06/03/2009	27 January 2009
Switzerland (Protocol)	X	-	-	-	-	-
Syria	X	-	-	-	-	-
Taiwan (Republic of China)	-	-	-	-	17408 dd 03/09/1996	12 September 1996

Country	Treaties in process of negotiation or finalised but not yet signed	Signed not Ratified	Ratified in SA	Ratified in the other country	Published in Government Gazette	Date of Entry into Force
Tanzania	-	-	-	-	30039 dd 04/07/2007	15 June 2007
Thailand	-	-	-	-	17409 dd 03/09/1996	27 August 1996
Tunisia	-	-	-	-	20728 dd 15/12/1999	10 December 1999
Turkey	-	-	-	-	29464 dd 11/12/2006	6 December 2006
Turkey (Protocol)	-	23 December 2013 in Ankara	-	-	-	-
Uganda	-	-	-	-	22313 dd 24/05/2001	9 April 2001
Ukraine	-	-	-	-	27150 dd 10/01/2005	29 December 2004
United Arab Emirates	X	-	-	-	-	-
United Kingdom	-	-	-	-	24335 dd 31/01/2003	17 December 2002
United Kingdom (Protocol)	-	-	-	-	34971 dd 02/02/2012	13 October 2011
United States of America	-	-	-	-	18553 dd 15/12/1997	28 December 1997
Vietnam	X	-	-	-	-	-
Zambia	-	-	-	-	Proclamations No 174 of 1956 and 60 of 1960	31 August 1956
Zambia (Renegotiated)	X	-	-	-	-	-
Zimbabwe	-	-	-	-	1234 dd 24/09/1965	3 September 1965
Zimbabwe (Renegotiated)	X	-	-	-	-	-