



SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 34

DATE: 12 January 2006

ACT : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION : **Section 10(1)(o)(i) of the Act**
Definition of “remuneration”, paragraph 1 of the Fourth
Schedule to the Act
SUBJECT : **EXEMPTION FROM INCOME TAX: REMUNERATION DERIVED**
BY A PERSON AS AN OFFICER OR CREW MEMBER OF A SHIP

1. Purpose

The purpose of this interpretation note is to provide guidance on the circumstances under which the remuneration derived by a person as an officer or crew member of a ship will be exempt from tax in terms of the provisions of section 10(1)(o)(i) of the Act.

2. Background

Section 10(1)(o)(i) was inserted into the Act in 1993, to bring the provisions of the Act in line with that of other major maritime nations, which exempt their seamen from income tax if they are absent from their home countries for a period exceeding 183 days in aggregate during the year of assessment.

3. The law

2.1 Section 10(1)(o)(i) of the Act

“10. Exemptions.-(1) There shall be exempt from the tax—
(o) any remuneration as defined in paragraph 1 of the Fourth Schedule –
(i) derived by any person as an officer or crew member of a ship engaged-
(aa) in the international transportation for reward of passengers or goods; or
(bb) in the prospecting (including surveys and other explanatory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), where such officer or crew member is

employed on board such ship solely for the purposes of the 'passage' of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981), if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment; "

2.2 Definition of "remuneration" in Paragraph 1 of the Fourth Schedule

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

- (a) any amount referred to in paragraph (a), (c), (cA), (d), (e), (eA) or (f) of the definition of 'gross income' in section one of this Act;
- (b) any amount required to be included in such person's gross income under paragraph (i) of that definition;
- (bA) any allowance or advance, which must be included in the taxable income of that person in terms of section 8(1)(a)(i), other than-
 - i) an allowance in respect of which paragraph (c) applies; or
 - ii) an allowance or advance paid or granted to that person in respect of accommodation, meals or other incidental costs while that person is obliged to spend at least one night away from his or her usual place of residence in the Republic;
- (c) 50 per cent of--
 - (i) the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii); and
 - (ii) the amount of any allowance referred to in section 8(1)(d) granted to the holder of a public office contemplated in section 8(1)(e);
- (d) ...;
- (e) ...;

but not including—

- (i) ...;
- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d) (e) or (f) of the definition of "employee") in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall not be deemed to carry on a trade independently as aforesaid--
 - (aa) if he is subject to the control or supervision of any other person as to the manner in which his duties are performed or to be performed or as to his hours of work; or
 - (bb) if the amounts paid or payable for his services consist of or include earnings of any description which are payable at regular daily, weekly, monthly or other intervals;
- (iii) any pension or additional pension under the Aged Persons Act 1967 (Act No. 81 of 1967), or the Blind Persons Act, 1968 (Act No. 26 of 1968), any disability grant or additional or supplementary allowance under the Disability Grants Act 1968 (Act No. 27 of 1968), or any grant or contribution under the provisions of section 89 of the Children's Act, 1960 (Act No. 33 of 1960);
- (iv) Deleted by section 44 of Act 101 of 1990;
- (v) Deleted by section 6 of Act 30 of 1984;
- (vi) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;
- (vii) deleted by section 19 of Act 19 of 2001;
- (viii) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;"

4. Application of the law

4.1 The wording of section 10(1)(o)(i) of the Act is analysed and interpreted as follows:

Wording	Interpretation
any remuneration as defined in paragraph 1 of the Fourth Schedule	“remuneration” is specifically defined in paragraph 1 of the Fourth Schedule to the Act.
derived by any person as an officer or crew member of a ship	This will include any person whether South African or not, but in practice it typically refers to officers and crew members that are South African citizens employed on a ship. Prior to the introduction of the exemption, residents employed on South African ships were subject to tax on remuneration received irrespective of the period of time spent outside the Republic of South Africa. This exemption was inserted to bring the provisions of the Act in line with that of other maritime nations, which exempt their seamen from income tax if they are absent from their country for more than 183 days in a tax year.
engaged in the international transportation for reward of passengers or goods; or	This will include passenger liners and cargo ships travelling in international waters. The transportation must be for reward, otherwise the exemption will not apply. This means that the reward must be a <i>quid pro quo</i> for the conveyance of passengers or goods. The requirement that the ship must be engaged in the business of transportation means

	<p>that, for example, the transport of fish from the fishing ground to the port by a trawler will not constitute transportation “for reward” because the trawler is in the business of fishing, and not of transportation.</p>
<p>in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994),</p>	<p>This refers to vessels operated by marine mining companies that are involved in mining at sea outside the continental shelf of the Republic of South Africa. The Maritime Zones Act, 1994 refers to the United Nations Convention on the Law of the Sea, 1982, defining the continental shelf as a distance of 200 nautical miles from the baselines where proof of the existence of geophysical features extending beyond 200 nautical miles, (the Exclusive Economic Zone- hereinafter referred to as the EEZ), has not been provided. For further information in respect of the limits of the continental shelf of the Republic of South Africa refer to the limits of the EEZ as depicted in the map provided by the South African Navy Hydrographic Office (see Annexure A).</p>
<p>where such officer or crew member is employed on board such ship solely for purposes of the “passage” of such ship, as defined in the Marine Traffic Act, 1981 (Act No.2 of 1981)</p>	<p>“Passage” means navigation through territorial waters in a continuous, speedy and efficient manner. The exemption will therefore only apply to officers and crew members, employed on a ship, who are solely involved in the</p>

	navigation of the ship. It will not include officers or crew members involved in the prospecting or mining activities of the ship.
if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment;	<p>The borders of the Republic include the territorial waters, which is a belt of sea within 12 nautical miles (roughly 22,2 km) beyond the coastline of the country. Remuneration from services rendered beyond the coastline of the Republic will therefore only be exempt if the services are rendered outside the territorial waters.</p> <p>The concept of a (full day) means 24 hours (from 0h00 to 0h00). The 183 days do not have to be consecutive or continuous, but a total of 183 days must be exceeded during the year of assessment.</p>

4.2 Notes

4.2.1 Weekends, public holidays, vacation and sick leave spent outside the Republic are considered to be part of the 183 day period of service or contractual period.

4.2.2 The person's absence must have been to render services for or on behalf of his or her employer in terms of an employment contract. This means that the exemption does not apply to self-employed persons or "independent contractors" who are not deemed to fall within the provisions of the Fourth Schedule to the Act.

4.2.3 If called upon, taxpayers will have to submit some form of documentation to confirm their absence from the Republic. This documentation may include employment contracts and copies of passports.

4.2.4 Where a person who has **already** complied with the exemption requirements of section 10(1)(o)(i) in a year of assessment, spends vacation leave or sick leave in South Africa during the same year of assessment, the remuneration received by the person during the period of leave will continue to be exempt from tax in terms of section 10(1)(o)(i). The remuneration will be exempt to the extent that it is attributable to the number of vacation or sick leave days credited to the employee in respect of and during the period of service outside South Africa under a vacation or sick leave scheme operated by the employer. The vacation or sick leave scheme must be similar to vacation or sick leave schemes that generally prevail in the South African business community for persons employed in South Africa.

4.2.5 The potential for exemption under section 10(1)(o)(i) of the Act does not automatically waive the liability of an employer to deduct employees' tax in terms of the Fourth Schedule to the Act. An employer that is satisfied that the provisions of section 10(1)(o)(i) will apply in a particular case may, however, elect not to deduct employees' tax. Where it is found that the exemption was not applicable, the employer will be held liable for the employees' tax not deducted as well as the concomitant interest and penalties.

4.3 Liability for tax on other income

The exemption provided in section 10(1)(o)(i) does not apply in respect of any other income that a resident may earn during the tax period.

4.4 Where the section 10(1)(o)(i) requirements are not met

The circumstances of certain officers or crew members working on board a ship may not be sufficient in order to qualify for the exemption provided in section 10(1)(o)(i) of the Act. It may be possible that these officers or crew members qualify for the exemption provided under the provisions of section 10(1)(o)(ii) of the Act. For further information, refer to Interpretation Note No. 16, Exemption from Income Tax: Foreign Employment Income, available on the SARS website under www.sars.gov.za.

4.5 Practical examples

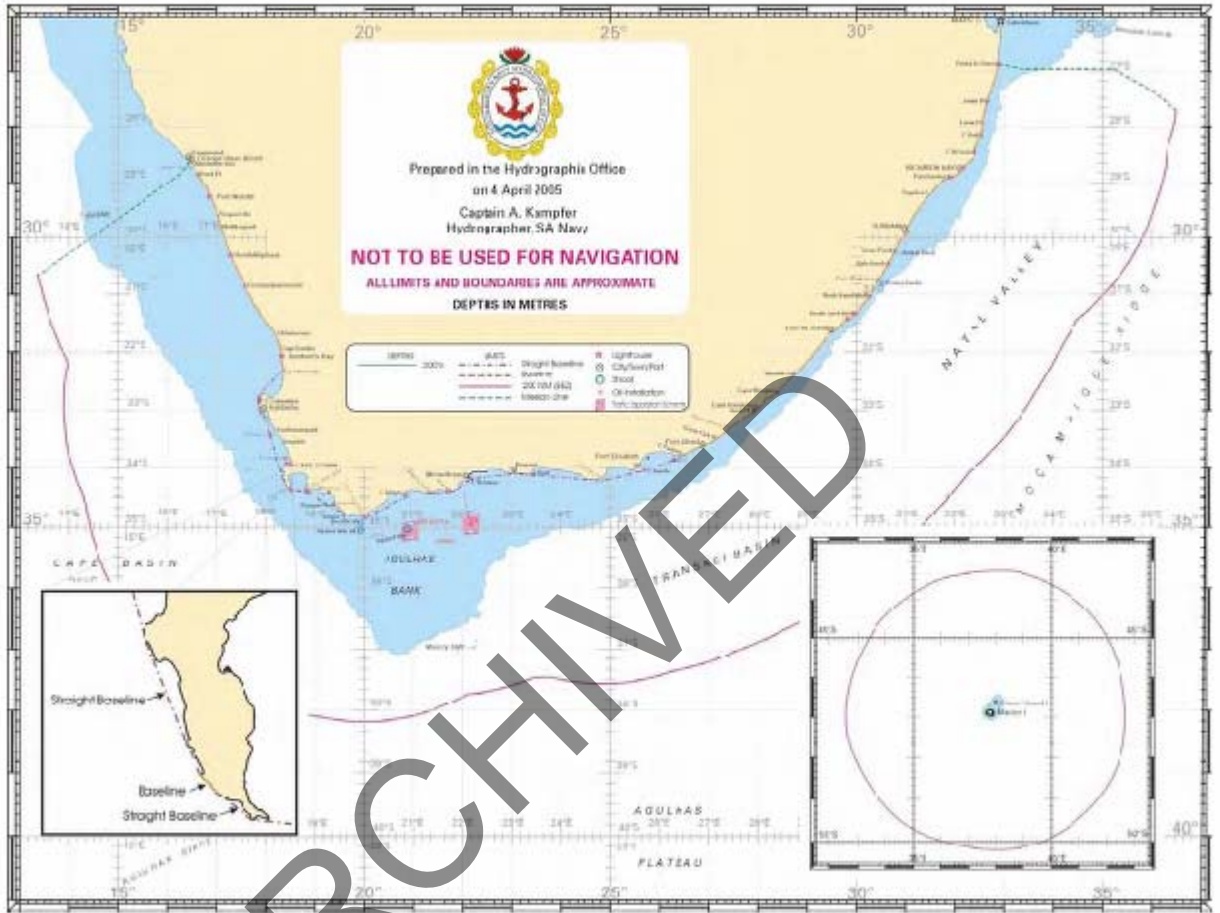
See Annexure B for examples.

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Annexure A



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Annexure B

Example 1 (transportation: salary income only)

X, who is ordinarily resident of South Africa, is employed by a shipping company. He is required, in terms of his employment contract, to be engaged on the company's ship which is involved in the transportation of goods for reward to the Far East. X left for foreign waters on the 20 March 2002 and is expected to arrive back in South Africa on 20 December 2002. He did not return to South Africa during this period for any annual leave or sick leave. X was paid a salary of R200 000 for his services rendered outside the Republic.

X will not be liable for South African normal tax, for the 2003 year of assessment, in respect of the remuneration earned for the period spent outside the Republic which exceeds 183 days in aggregate. He meets the requirements of section 10(1)(o)(i)(aa) of the Act.

Example 2 (mining-salary income only)

Z, works for a South African marine mining company which is involved in the exploration of natural oil within the continental shelf of South Africa. He is a crew member on board one of the company's marine mining vessels. He is involved in the mining activities of the ship and has been outside South Africa for a continuous period of 185 days, during the 2003 year of assessment.

Despite Z being outside South Africa for more than 183 days, he does not meet the requirements of section 10(1)(o)(i)(bb) of the Act. The exemption will only apply in respect of crew or officers employed solely for purposes of the "passage" of the ship. In addition, he did not meet the "outside the continental shelf" requirement. Z will be liable for South African normal tax on his remuneration. His employer will be required to withhold employees' tax on his behalf.

Note: The exemption provided under section 10(1)(o)(ii) of the Act may apply provided that all its requirements are present. For further information refer to Interpretation Note No. 16, Exemption from Income Tax: Foreign Employment Income, available on the SARS website (www.sars.gov.za).

Example 3 (transportation- salary income and interest)

T, who is ordinarily a resident of South Africa, is offered a contract to render services for a sister company on board one of the company's cruise liners which is involved in the transportation of passengers. T left on board the cruise liner on 01 March 2003 and did not return to South Africa until 28 September 2003. She is in receipt of remuneration of R200 000 for the duration of the contract and also earns interest income of R50 000 for the tax year in question as a result of a capital sum invested in ABC Bank in South Africa.

T meets the requirements of section 10(1)(o)(i)(aa) of the Act. She is a crew member on board a ship and is engaged in the international transportation for reward of passengers. Furthermore, she is outside the Republic for more than 183 days in aggregate, during the year of assessment. The remuneration earned in respect of her employment on board the ship will be exempt from tax. The interest income earned in South Africa will be subject to tax.

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