



Legal & Policy

Income Tax

**Guide on the Taxation of Foreigners
Working in South Africa (2014/15)**



South African Revenue Service

Guide on the Taxation of Foreigners Working in South Africa

Preface

The purpose of this guide is to inform foreigners working in South Africa and their employers about their income tax commitments as well as to provide an overview of the South African tax system.

This guide does not attempt to reflect on every scenario that could possibly exist, but does attempt to provide clarity on the majority of issues that are likely to arise in practice. It does not delve into the precise technical and legal detail that is often associated with tax, and should, therefore, not be used as a legal reference.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for the application procedure.

This guide is based on the legislation applicable to the 2015 year of assessment.

Although this guide deals with income tax commitments, other requirements need to be met when a foreigner wishes to work in South Africa. A work permit, for example, will be required and is issued by the Department of Home Affairs. Further information regarding the various types of work permits is available on the Department of Home Affairs website **www.home-affairs.gov.za**.

For more information you may –

- visit your nearest SARS branch office;
- visit the SARS website at **www.sars.gov.za**;
- contact your own tax advisor or tax practitioner;
- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (between 8am and 4pm South African time).

Comments on this guide may be sent to **policycomments@sars.gov.za**.

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Glossary

In this guide unless the context indicates otherwise –

- “**employee**” or “**foreigner**” means a foreign employee, in other words, an employee who is not resident in South Africa for income tax purposes;
- “**income tax**” means the normal tax payable in South Africa;
- “**Republic**” and “**South Africa**” are used interchangeably as a reference to the sovereign territory of the Republic of South Africa, as defined in the definition of “**Republic**” in section 1(1);
- “**resident**” means a person who is resident in South Africa for income tax purposes;
- “**section**” means a section of the Act;
- “**Schedule**” means a Schedule to the Act;
- “**the Act**” means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

Purpose of the guide

The purpose of this guide is to provide guidance on the income tax obligations of individuals who are not South African residents and who received or to whom amounts accrued from a source within South Africa. It deals mainly with employment income.

The guide does not deal with every possible scenario that could arise. Each case is dependent upon the specific facts and circumstances applicable to the individual.

1. Overview of the South African tax system

1.1 Introduction

Income tax in South Africa is governed by the provisions of the Act. Under the South African income tax system the following amounts are subject to income tax in South Africa:

- Amounts received by or accrued to persons other than residents (**non-residents** or **foreigners**), from a source within South Africa.
- The worldwide income received by or accrued to South African residents (**residents**).

Foreigners working in South Africa are therefore only liable for income tax on income earned by them in South Africa, irrespective of from where or by whom that amount is paid (subject to possible tax treaty relief).

1.2 Residency

1.2.1 Possibility of becoming a resident

As the tax status of a resident and a foreigner may differ, it is important to determine the foreigner’s residency status. Two separate tests are applicable to determine whether a foreigner is a resident of South Africa for income tax purposes, namely –

- the **ordinarily resident** test, if he or she is ordinarily resident in South Africa; or
- the **physical presence** test, if he or she is not at any time during the relevant year of assessment ordinarily resident in South Africa, but was physically present in South Africa for a specific period or periods.

The above tests are in line with international tax trends.

1.2.2 Ordinarily resident test

This is the first step in determining whether a person is resident in South Africa for income tax purposes. A natural person is resident if his or her permanent home, to which he or she will normally return, is in South Africa. A continuous physical presence is not a prerequisite to be ordinarily resident in South Africa.

The courts have held, in ascribing a meaning to the concept “ordinarily resident”, that it refers to, for example:

- Living in a place with some degree of continuity, apart from accidental or temporary absences. A person must be regarded as ordinarily resident if it is part of his or her ordinary regular course of life to live in a particular place with a degree of permanence (*Levene v Inland Revenue Commissioner*¹).
- A residence that is settled and certain and not temporary and casual (*Soldier v COT*²).
- Where a person normally resides, apart from temporary or occasional absences (*CIR v Kuttel*³).

A natural person who becomes ordinarily resident in South Africa will become a resident for tax purposes as from the date that the person became ordinarily resident in South Africa. It follows that any income that is received by or accrued to a person from a source outside South Africa, before that person becomes ordinarily resident in South Africa, will not be subject to income tax in South Africa, unless the person is regarded as a resident by virtue of the physical presence test.

Example 1 – Becoming ordinarily resident in South Africa

Facts:

X became ordinarily resident in South Africa on 1 October 2014.

Result:

All worldwide income (excluding certain income that may be exempt) received by or accrued to X on or after the date upon which X became ordinarily resident (1 October 2014) will be included in X's taxable income for the years of assessment ending on 28 February 2015 and subsequent years.

A natural person who emigrates from South Africa to another country will cease to be a resident as from the date of emigrating.

Example 2 – Ceasing to be a resident

Facts:

B married a Zambian resident and emigrated from South Africa to Zambia on 29 October 2014. B has no business or financial connection in South Africa and does not intend to return to South Africa.

¹ [1928] ALL ER Rep. 746 (HL).

² 1943 SR 130.

³ 1992 (3) SA 242 (A), 54 SATC 298.

Result:

B ceased being a resident in South Africa on 29 October 2014.

For more information, see Interpretation Note No. 3 dated 4 February 2002 “Resident: Definition in Relation to a Natural Person – Ordinarily Resident”.

1.2.3 Physical presence test

This test is **time-based** and is only applicable to an individual who is not ordinarily resident in South Africa during the relevant year of assessment.

This test must be done annually to determine whether a foreigner is a resident for the year of assessment under consideration. The test consists of three requirements, that is, the foreigner must be physically present in South Africa for a period or periods *exceeding* –

- 91 days in aggregate during the relevant year of assessment under consideration;
- 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and
- 915 days in aggregate during those five preceding years of assessment.

Under this test, a foreigner who is not ordinarily resident in South Africa only becomes a resident for South African income tax purposes as from the first day of the relevant year of assessment if that foreigner is physically present in South Africa for the periods as set out above.

A day includes a *part* of a day, but does not include any day that the foreigner is in transit through South Africa between two places outside South Africa where that foreigner does not formally enter South Africa –

- through a “port of entry” as defined in the Immigration Act 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 under the Immigration Act.

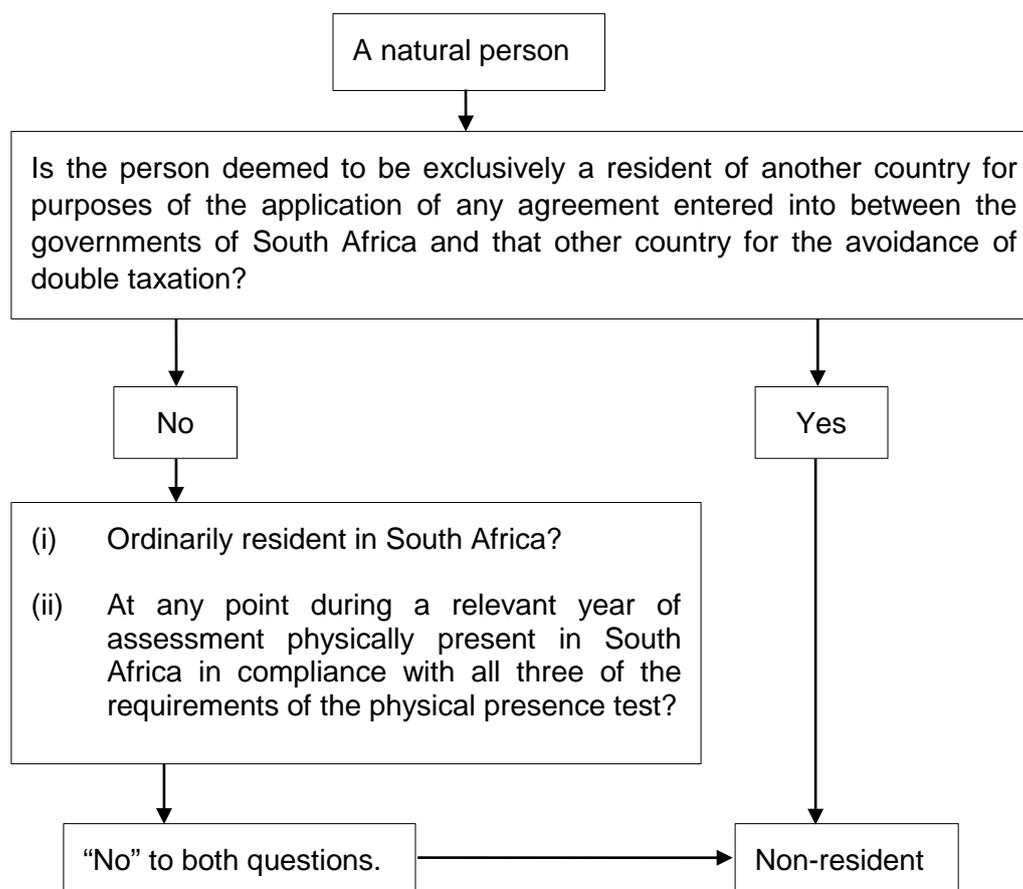
A foreigner who became a resident as a result of the application of the physical presence test and who is absent from South Africa for a continuous period of at least 330 *full* days after the day on which he or she ceased to be physically present in South Africa, will be deemed not to have been a resident as from the day on which he or she ceased to be physically present in South Africa, that is from the day following the day on which that foreigner left South Africa.

For more information see Interpretation Note No. 4 (Issue 3) dated 12 March 2014 “Resident: Definition in Relation to a Natural Person – Physical Presence Test”.

1.2.4 Foreigners who are residents of another country under a tax treaty

A foreigner who is deemed to be exclusively a resident of another country for purposes of a tax treaty is excluded from the definition of “resident”. It follows that while a person may qualify as a resident under the ordinarily resident or physical presence tests, that person will not be regarded as a resident for South African tax purposes if that person is a resident of another country when applying a tax treaty.

Based on the above discussion, the determination of whether a natural person qualifies as a non-resident can be illustrated as follows:



1.3 Obligations under the tax law

Everyone whose income exceeds the tax threshold in any given year of assessment has to fulfil certain obligations under the tax law, which include –

- registering for income tax with SARS by completing and submitting an IT 77 application form (available on the SARS website or from any SARS branch office);
- completing and submitting tax returns within the prescribed time period, usually referred to as “Tax season”;
- declaring income in a manner prescribed by the law;
- claiming allowable deductions against income in a manner prescribed by the law;
- keeping records for income and deductions for at least five years; and
- paying taxes due when they become payable.

It is very important that taxpayers complete their tax returns honestly and accurately. Certain penalties may be levied and non-compliance may be subject to criminal sanctions if full and accurate disclosures of all receipts, accruals and expenses are not made in the tax return.

1.4 The fundamentals of tax for a foreigner

In the sections that follow, the tax treatment of the majority of elements that make up taxable income and how these elements are connected will be explained. However, it is important to keep in mind some fundamental considerations:

- Income from a South African employer for services rendered in South Africa (salary, bonus, benefits, allowances) is subject to South African employees' tax (often referred to as Pay-As-You-Earn or PAYE) which is deducted on a monthly basis. South African employers must deduct employees' tax from a foreigner's income, while in the case of a foreign employer who is not a resident of South Africa employees' tax must be deducted by an agent that is resident in South Africa, and who has the authority to pay any remuneration to the foreigner. Amounts paid or payable to a foreigner by an employer that is not resident in South Africa are not subject to the deduction of employees' tax. The employee may be required to register as a provisional taxpayer to settle his or her South African tax liability.
- Income received by a foreigner for services rendered inside and outside South Africa could be apportioned based on the number of days worked in and outside of South Africa during a year of assessment (see **3.3.1**).
- South African-sourced income received by, or that has accrued to, a foreigner from sources other than an employer (business, investment and rental income) may be subject to income tax and must be included in the foreigner's gross income for the year of assessment.
- The law requires that the taxable income from each source within South Africa must be determined separately. This means that all expenditure relating to a specific source of income must be deducted from that source, for example, rental expenses must be deducted from rental income. Rental expenses cannot be claimed against income from other trades. Taxable income from all sources within South Africa is then added together and assessed losses from particular trades deducted in calculating a foreigner's final overall tax liability.
- Broadly speaking, the unspent portion of any allowance received is added to a foreigner's taxable income and will therefore increase his or her tax liability at the end of the year of assessment.
- The disposal by a foreigner of an asset situated in South Africa may result in a net capital gain, which could also be subject to income tax.

1.5 Record-keeping for income tax purposes

All taxpayers, including foreigners, must keep accurate records of the following for income tax purposes:

- Tax certificates⁴ [IRP5, IT3(a), IT3(b), IT3(c)] and other supporting documents, such as travel logbooks.
- All documentation related to services rendered in South Africa.
- Income received from sources in South Africa, other than from employment.

⁴ The portion of the employee's income that relates to services rendered from a source outside South Africa must be disclosed on the IRP5 or IT3(a) under a non-taxable code. It is incorrect to disclose the income as taxable on the tax certificate and then to claim a deduction on the tax return, as the amounts do not fall within "gross income" as defined in section 1(1).

- All the expenses incurred and claimed for tax purposes.
- All days inside and outside of South Africa. Legible copies of passport entries are sufficient evidence of entering and exiting South Africa.
- A record of any term of employment which requires that services be rendered outside South Africa.

A foreigner is required to retain **ALL** relevant documents in support of a tax return submitted for five years from the date when the tax return was received by SARS, and produce such documentation should the tax return be subject to an inspection or audit.

The burden of proof to substantiate what is declared in a tax return rests on a taxpayer. Failure to retain sufficient evidence, for example, written support that a taxpayer has a contractual obligation to render services both inside and outside South Africa, will leave a taxpayer with some difficulty in satisfying SARS or proving to a court that such an obligation indeed exists.

1.6 Tax season

The following aspects are important to note:

- **Employer filing season:** This is a period in which all registered employers are required to submit employees' tax (PAYE) declarations. In this way, SARS receives details of an employee's employment income and is therefore able to offer a pre-populated and customised tax return.
- **Pre-populated tax return:** The information received from the employer is inserted into the tax return so that the foreigner only needs to verify the information and add any income and expenses from other sources within South Africa.
- **Customised tax returns:** The return is designed to suit the factors that impact a foreigner's tax affairs.
- **Improved electronic service:** SARS's eFiling service enables a foreigner to complete and submit returns at his or her comfort and convenience. The foreigner can also visit a SARS branch office where a SARS employee can assist him or her to complete and submit returns electronically.

The due dates for manual submissions, electronic submissions by non-provisional taxpayers and electronic submissions by provisional taxpayers are available on the SARS website.

2. Meaning of key income tax concepts

Before addressing how to compute a foreigner's tax liability and the tax treatment of the most important components of that foreigner's taxable income, it is necessary to define some of the most important concepts that are discussed in this guide.

Gross income – refers to the total amount (excluding amounts of a capital nature) received by or accrued to any person within a year of assessment. The receipts and accruals may be in cash or in any other form if the monetary value can be established. As a foreigner, only amounts received from a South African source will be included in gross income.

Exempt income – refers to the type of income that may be received by or accrued to a person on which no tax is imposed. For instance, a portion of local interest received or accrued is exempt from tax.

Deductions – refers to expenditure or losses actually incurred by a person during a year of assessment in the course of producing income which that person is allowed to deduct against that income. The relevant deductions can only be claimed against the income it relates to. For example, a person may not claim expenses incurred for business purposes against his or her salary income received from his or her employer. Each trade is initially looked at separately and, if there is a tax loss in any trade, the tax loss may qualify for set-off against the taxable income of the person's other trades. Secondly, deductions may only be claimed to the extent allowed by the law, for example, there are limitations to the extent to which expenditure incurred will be allowed as a deduction against an allowance received from the employer.

Taxable capital gains – when an asset situated in South Africa is sold or disposed of or is deemed to have been disposed of under the law, there is a possibility that the profit on the disposal will be included in taxable income under the capital gains tax provisions of the Act.

Year of assessment – the year of assessment for individuals runs from the beginning of March in one year to the end of February in the following year.

Income tax liability – refers to the amount of tax a person is liable to pay for the year.

Employees' tax – is the amount of money that an employer who is resident in South Africa deducts (or withholds) from an employee's remuneration each month and pays over to SARS as part-payment of that employee's annual tax liability. The amount is calculated according to an employee's level of earnings using the applicable tax rate. The system whereby employees' tax is deducted and accounted for on a monthly basis is also referred to as Pay-As-You-Earn (PAYE).

At the end of each month, all employees receive a notice of their remuneration (payslip) which indicates a deduction of employees' tax. The deduction is an estimate of the employees' income tax liability for the year spread over 12 months, which their employer is obliged to withhold and pay over to SARS.

A foreigner's South African-sourced employment income is subject to monthly employees' tax if paid by an employer who is resident in South Africa. Other income from a South African source is subject to income tax and may be subject to provisional tax. For more information on provisional tax, see 5.

Applicable tax rate – every year during the Budget Speech, the Minister of Finance announces the tax tables which will apply to each income group (tax bracket) in the coming year of assessment. The tax table for individuals for the 2014/15 year of assessment is shown in **Annexure A**.

3. How to determine a foreigner's tax liability

3.1 Introduction – Deriving taxable income

The amount of a foreigner's tax liability is determined by applying the applicable tax rate⁵ to that foreigner's taxable income. Calculating taxable income can be reduced to the following steps:

- (1) Determine the amount of gross income derived by the foreigner. Gross income is the total amount (excluding amounts of a capital nature) received by or accrued to a foreigner in a given year of assessment, from a source within South Africa.
- (2) Deduct the aggregate amount of exemptions that the foreigner is entitled to from that foreigner's gross income. The difference is known as income.
- (3) Subtract allowable deductions available to the foreigner from his or her income and add any South African taxable capital gains derived by that foreigner. The result will be the taxable income derived by the foreigner that is subject to South African income tax.

The basic theoretical model for deriving taxable income is set out in the table below.

| | | |
|--------------|-----------------------|---------------|
| | Gross income | xxxxxx |
| <i>less:</i> | Exempt income | (xxxxxx) |
| | Income | xxxxxx |
| <i>less:</i> | Allowable deductions | (xxxxxx) |
| <i>add:</i> | Taxable capital gains | xxxxxx |
| | Taxable income | xxxxxx |

Note: The concepts of receipts or accruals of income under the Act are different to the same concepts when used according to accounting principles. For example, certain income of a capital nature may be fully included for accounting purposes, while only a portion of that income may be included for income tax purposes.

The income tax payable on taxable income is determined by applying the tax rates for the year of assessment. A person is not required to apply the tax rates in order to determine the amount of income tax that is payable when completing a tax return. SARS will perform this calculation and notify the person of the outcome when that person subsequently receives his or her tax assessment.⁶

3.2 Non-taxable amounts

It may happen that amounts are received which are not taxable and do not get included in gross income. Two common examples are advances and reimbursements.

⁵ See **Annexure A**.

⁶ Taxpayers using e-filing to submit their returns can obtain an estimate of their tax liability when completing their returns by using the tax calculator functionality.

3.2.1 Advances

An advance is an amount of money granted by a principal (employer) to a recipient (employee) when the employer requires the employee to incur business-related expenses on behalf of the employer. The employee **is obliged** to prove and account for the business-related expenditure to the employer. The employer recovers the difference from the employee when the actual expenses incurred are less than the advance granted, and *vice versa*.

There will be no tax implications for the employee. For example, there is no inclusion in gross income for the advance received and no deduction for the expenditure incurred.

3.2.2 Reimbursements

A reimbursement of business expenditure occurs when an employee has incurred business-related expenses on behalf of an employer out of his or her own pocket (that is, without having had the benefit of an allowance or an advance) and is subsequently reimbursed for the exact expenditure by the employer after having proved and accounted for the expenditure.

Generally speaking, there will be no tax implications for an employee who is in receipt of a reimbursement. That is, no deduction for the expenditure incurred may be claimed by the employee and the employee is not required to include such reimbursement in his or her gross income.

If an employee receives an allowance and a reimbursement for the same expense for which he or she is entitled to claim a tax deduction, then the amount of the reimbursement must be added to the allowance and included in that employee's gross income. For example, an employee who uses his or her private car for business purposes and who is able to claim a reimbursement for the distances travelled for business purposes. The reimbursement is added to the employee's travel allowance upon submission of a tax return and the combined amount is taxable, unless a deduction may be claimed for business travel against that travel allowance [see **3.6.1(a)**].

3.3 Gross income

The Act defines "gross income" in relation to a non-resident as the "total amount, in cash or otherwise, received by or accrued to" an individual (excluding receipts of a capital nature) in any given year of assessment, *from a source within South Africa*. Therefore, gross income will include some components of a foreigner's remuneration package plus some of the amounts received from other sources in South Africa.

A foreigner will pay income tax at the same rate as a resident and is generally entitled to the same deductions and rebates as a resident.

It is internationally accepted that income from employment should be 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. South African legislation and case law support this principle.⁷ In other words, a foreigner working in South Africa is liable for income tax under domestic law for employment income earned in South Africa.

⁷ *CIR v Lever Bros and Unilever Ltd* 1946 AD 411; *ITC 938 24 SATC 375*; *ITC 1104 29 SATC 46*.

The tax position of a foreigner may, however, be affected by a tax treaty that has been entered into between South Africa and the government of the foreign country if the foreigner is regarded as a resident of that other country for tax purposes.

Generally, a foreigner's remuneration package consists of –

- salary – the salary is taxable (bonuses are also taxable);
- allowances – allowances are generally also taxable (although a foreigner may be entitled to a deduction for some of the related expenditure he or she incurs – see 3.6.1); and
- benefits – some benefits received are taxable, whilst others are not (see 3.3.3 for a discussion of the benefits foreigners typically receive).

Income from other sources may include amongst others trading profits, directors' fees, rental income, pensions.

All these amounts are added together to arrive at a foreigner's gross income.

3.3.1 Apportionment of income

A foreigner's income is only subject to tax in South Africa if it is from a source within South Africa. As explained, employment income is from a South African source if the services that generated that income were rendered in South Africa. This means that, ordinarily, a foreigner's income from services rendered outside South Africa will not be subject to tax in South Africa.

However, this test is not absolute. The correct test is to determine what services the employee was engaged to perform, and then to determine the location where those services were required to be rendered.

While it is accepted that it is correct to apportion income if it is clear that it is derived from more than one source, if the services rendered outside of South Africa by the foreigner are merely casual and accidental,⁸ or subsidiary and incidental,⁹ then the source of the employment income will be fully South African.

Since the amount of income to be apportioned between South Africa and the foreign jurisdiction is determined by where the services are rendered, and not just where the foreigner is present, SARS accepts that work days, as opposed to total days, is the correct method to apportion the foreigner's income if a part of the income is not from a source in South Africa. This approach may be illustrated as follows:

$$\frac{\text{Work days inside South Africa}}{\text{Total work days for the period}} \times \text{Employment income earned} \\ = \text{Gross income subject to taxation in South Africa}$$

"Work days" does not include weekends, public holidays or leave days. Only days of actual services rendered are considered. To the extent that incidental work days outside of South Africa are regarded as being from a source within South Africa, those days must be considered to be work days inside South Africa.

⁸ ITC 773 SATC 72.

⁹ COT (SR) v Shein 1958 (3) SA 14 (FC), 22 SATC 12.

All amounts received in respect of employment may qualify for apportionment, including cash, allowances and taxable benefits granted in respect of the employee's employment, unless the taxable benefit is received for exclusive use in South Africa.

3.3.2 Allowances

An allowance is an amount of money granted by an employer to an employee to defray business-related expenditure undertaken by the employee on behalf of the employer if the employer is certain that the employee will incur the expenditure. The employee is not obliged to prove or account for the business expenditure to the employer.

Allowances an employee may typically receive include a travel allowance, an allowance for accommodation, meals and incidentals when travelling for work, a cellular telephone allowance or a housing allowance.

Technically, the amount which is included in taxable income is the amount of the allowance less allowable expenditure. For ease of understanding, in this guide a practical approach has been adopted – the full amount of the allowance has been treated as taxable under gross income and the deduction that the foreigner may be entitled to claim for the expenses incurred is dealt with separately (see **3.6.1**).¹⁰

Allowances form part of an employee's remuneration and are therefore subject to employees' tax deductions on a monthly basis. An employee may arrange with the employer to deduct and pay a higher amount of employees' tax to SARS on a monthly basis than is necessary if he or she believes that expenditure incurred will not exceed the amount of the allowance. This could help prevent an employee having to make a large cash payment at the end of the year to settle his or her total tax liability.

3.3.3 Taxable benefits

A benefit in kind, rather than in cash, received from the employer remains taxable under certain conditions. The Act prescribes the valuation methodology that should be used by the employer to determine the cash equivalent (taxable) value of the benefit. The **taxable amount** or cash equivalent of the benefit is equal to the value of the benefit less any contribution an employee makes towards the benefit. The taxable amount of the benefit is subject to the deduction of employees' tax.

Examples of taxable benefits include the following:

- Free or cheap residential accommodation
- The use of an employer-owned motor vehicle for private purposes
- The acquisition of an asset from the employer, either free of charge or at a reduced cost (for example, if an employee stays in an employer-owned residence and the employer replaces any personal items which were stolen)
- The use of free or cheap services provided by the employer
- The private use of an asset owned by the employer
- Low-interest or interest-free loans from the employer
- Payment of medical scheme contributions for an employee and his or her dependants

¹⁰ The answer is the same irrespective of whether a person follows the technical method or the practical method.

- Payment of medical-related services and medicines for an employee and certain relatives and dependants
- The settlement of a debt on behalf of an employee by his or her employer or the release from a debt owed to the employer

The tax implications of the most common benefits received by foreigners are discussed below.

(a) Residential accommodation

Residential accommodation provided in South Africa to an employee is taxable in the hands of the employee for the duration of his or her employment in South Africa.¹¹

The rental value¹² of residential accommodation supplied by the employer is *the greater of* –

- the total costs borne by the employer for the accommodation, less any amount paid by the employee (if rented by the employer); or
- an amount calculated in terms of a formula, which is based on a percentage of the employee's remuneration and the nature of the accommodation provided, less any amount paid by such employee.

No value is placed on the accommodation (in other words, no tax implications arise) provided by the employer to the employee while the employee is away from his or her usual place of residence outside South Africa –

- for a period **not exceeding two years** from the date of arrival of that employee in South Africa, for the purposes of performing the duties of his or her employment; **or**
- if the accommodation is provided to that employee during the year of assessment and that employee is physically present in South Africa for a period of **less than 90 days** in that year.

However, the above exclusions do not apply –

- if the employee was present in South Africa for longer than 90 days during the year of assessment immediately preceding the date of arrival referred to above; or
- to the extent that the cash equivalent of the value of the taxable benefit derived from the occupation of the residential accommodation exceeds an amount equal to R25 000 per month during which the benefit is granted. Thus, if the rental value is less than R25 000, no value is placed on the accommodation provided. To the extent that the rental value is greater than R25 000, the excess is taxable.

Once an employer has determined the rental value of the accommodation under the formula, and the employer is of the view that, due to the situation, nature or condition of the accommodation, or for any other reason, the rental value determined under the formula is more than the actual rental value of the accommodation, the employer may apply to SARS for a tax directive. SARS may reduce the rental value to an amount that is fair and

¹¹ Employees who share residential accommodation must each be taxed on the full amount of the cash equivalent of the value of the taxable benefit. The Act does not provide for a reduction in the value the taxable benefit on the basis that accommodation is shared by more than one person.

¹² With effect from 1 March 2015, new rules for the valuation of this taxable benefit came into operation. For more information on the new rules, please consult the Guide for Employers in respect of Fringe Benefits (2016 Tax Year) PAYE-GEN-01-G02 available on the SARS website.

reasonable if satisfied that this is the case. This reduction may only be considered if one or more of the following factors relating to the accommodation, which could influence the rental value of the accommodation, are present:

- **Situation** – this relates to where the accommodation is located, for example, the property is situated in a remote area such as a small mining town with no or limited choice of accommodation for employees and a lack of opportunity available to employees to own their own property.
- **Nature** – this refers to the type of accommodation, for example, the accommodation is a hostel or is constructed from prefabricated panels.
- **Condition** – this relates to the state of the accommodation, for example, the accommodation is in a state of disrepair.
- **Other factors** – this includes any relevant factor that would satisfy SARS that the rental value determined under the formula is higher than the actual rental value, for example, the employee is obliged due to the nature of his or her duties to stay near or on the employer's business premises (such as proto team members, security members) or the employer has entered into an arm's length lease agreement with an independent landlord and the actual rent payable is much less than the rental value determined in accordance with the formula.

SARS is not obliged to reduce the rental value if any of the aforementioned factors are present. In each instance, the circumstances applicable must be presented to and be considered by SARS before it may exercise this discretion. Employers are not permitted to reduce the value to an amount that they consider fair and reasonable without a directive from SARS authorising such a reduction. To do so will result in an under-deduction of PAYE by the employer, with possible penalty and interest consequences.

For more information, see the following documents on the SARS website:

- *PAYE-GEN-02-G01 Guide to Determine Fringe Benefit Value on Accommodation*
- *PAYE-GEN-01-G02 Guide for Employers in respect of Fringe Benefits*

Example 3 – Taxable benefits: residential accommodation: formula value is greater

Facts:

P (a foreign resident who has never been to South Africa before) was sent by the employer to assist one of its branches in South Africa for a five-year term with effect from March 2014. P earns R200 000 per month and the rental costs to the employer for the accommodation is R30 000 per month. No consideration was given by P for the accommodation.

Result:

Since P was not present in South Africa in the 2014 year of assessment, P will qualify for an exemption in the first two years up to a maximum of R25 000 per month.

Actual costs incurred: R30 000 per month

Value as per formula: $(R2\ 400\ 000 - R70\ 700) = R2\ 329\ 300 \times 19 / 100 \times 12 / 12 = R442\ 567$ per year = R36 881 per month.

As the value under the formula (R36 881) is greater than the actual cost (R30 000), the rental value under the formula is the rental value as determined by applying the formula.

Thus, R11 881 (R36 881 – R25 000) must be taxed on a monthly basis.

In the above example, had the actual costs of the accommodation been R20 000 per month, the rental value would still be reduced by a monthly amount of R25 000, even though the actual cost is less than that. The benefit would still be R36 881 as per the formula, less R25 000, resulting in R11 881 being taxable on a monthly basis.

Example 4 – Taxable benefits: residential accommodation: actual costs are greater

Facts:

Q (a foreign resident who has never been to South Africa before) was sent by the employer to assist one of its branches in South Africa for a five-year term with effect from March 2014. Q earns R200 000 per month and the rental costs to the employer for the accommodation is R40 000 per month. No consideration was given by Q for the accommodation.

Result:

Since Q was not present in South Africa in the 2014 year of assessment, Q will qualify for an exemption in the first two years up to a maximum of R25 000 per month.

Actual costs incurred: R40 000 per month

Value as per formula: $(R2\ 400\ 000 - R70\ 700) = R2\ 329\ 300 \times 19 / 100 \times 12 / 12 = R442\ 567$ per year = R36 881 per month.

As the value under the formula (R36 881) is less than the actual cost (R40 000), the rental value is the actual rent payable, plus any other costs incurred by the employer for the accommodation.

Thus, R15 000 (R40 000 – R25 000) must be taxed on a monthly basis.

(b) Use of a motor vehicle

A taxable benefit arises when an employer has granted an employee the right of use of a motor vehicle¹³ for private or domestic purposes and such use has been granted –

- free of charge; or
- for a consideration payable by the employee which is less than the value of the private or domestic use.

For a taxable benefit to arise the employee must have been given the right to use the company car for private or domestic purposes. The absence of such private use means a taxable benefit does not arise. Private use includes, amongst others, travelling between the employee's home and his or her place of employment.

The cash equivalent of the value of the taxable benefit, which is included in the employee's gross income, is equal to the value of private use less any consideration given by the

¹³ A "motor vehicle" includes a motor cycle.

employee to the employer for private use (excluding any consideration given for the cost of licences, insurance, maintenance or fuel).¹⁴

The value of private use is equal to –

- where the vehicle is owned or rented by the employer, other than rental under an “operating lease”:

| |
|--|
| Fixed percentage per month × the determined value of the motor vehicle |
|--|

OR

- where the employer rents the vehicle under an “operating lease”:

| |
|--|
| Actual cost incurred under operating lease + cost of fuel incurred on the same vehicle |
|--|

Should the motor vehicle be owned or rented (other than under an “operating lease”) by the employer, then the private use is calculated as a fixed percentage, generally **3,5%** of the determined value per month. However, the fixed percentage may be reduced to **3,25%** of the determined value per month if the motor vehicle was the subject of a maintenance plan when it was acquired by the employer.

A maintenance plan is –

- a contractual obligation undertaken by the provider in the ordinary course of trade within the general public;
- to underwrite the costs of all maintenance of that motor vehicle (other than top-up fluids, tyres or abuse of the motor vehicle);
- for a period of at least three years or a distance of 60 000 kilometres, whichever comes first.

In order for the fixed percentage to be reduced to 3,25%, the maintenance plan must commence at the same time that the motor vehicle is acquired by the employer. The rate does not increase to 3,5% once the maintenance plan expires, but remains at 3,25%. A motor vehicle is not the subject of a maintenance plan if the maintenance plan is either a top-up or an add-on plan that was taken out after the acquisition of the motor vehicle. In these circumstances the rate of 3,5% must be used.

The determined value¹⁵ in broad terms means the –

- original cost to the employer (excluding any finance charge or interest payable and including any VAT borne by the employer) if the motor vehicle was acquired by the employer;
- retail market value of the vehicle if it is held by the employer under a lease other than an operating lease; or

¹⁴ Employees who share the right to use a motor vehicle must each be taxed on the full amount of the cash equivalent of the value of the taxable benefit. The Act does not provide for a reduction in the value of the taxable benefit on the basis that the vehicle is shared by more than one person.

¹⁵ With effect from 1 March 2015, new rules for the valuation of this taxable benefit came into operation. For more information on the new rules, please consult the Guide for Employers in respect of Fringe Benefits (2016 Tax Year) PAYE-GEN-01-G02 available on the SARS website.

- market value of the vehicle in any other case.

The value to be placed on the private use of a motor vehicle is determined for each month or part of a month during which an employee was entitled to use the motor vehicle for private purposes. An employee who only had the use of a motor vehicle for part of a month must apportion the value of private use according to the number of days that the employee had the use of the motor vehicle. For instance, if the employee is first granted the right to use a motor vehicle in the middle of the month (for example, 15 June), the value of the private use must be based on the total number of days that the employee had the right to use that motor vehicle. In other words, 15 days in June divided by the total number of days in that month, that is, 30 days.

The value of the private use of the motor vehicle may not be reduced if, for whatever reason, the employee does not temporarily use the motor vehicle for private purposes, for example, going on holiday or being outside South Africa for a period of time.

In instances when more than one vehicle is made available to an employee at the same time, each vehicle represents a separate taxable benefit. However, if SARS is satisfied that each vehicle was used during the year of assessment primarily for business purposes, the value to be placed on the private use of all the vehicles is deemed to be that only of the vehicle with the highest value of private use.

Exclusions

Available for use by employees in general

The value of the private use of the motor vehicle by an employee is deemed to be nil if *all* three of the following requirements are met:

- The motor vehicle is available and used by employees of the employer in general (that is, the motor vehicle is a pool car generally used by the employees for business purposes and which is not allocated to a particular employee).
- The private use of the motor vehicle by the employee is infrequent or merely incidental to business use.
- The vehicle is not normally kept at or near the residence of the employee when it is not in use outside of business hours.

Nature of employee duties

The value of the private use of the motor vehicle by an employee is deemed to be nil if –

- the nature of the employee's duties are such that the employee is regularly required to use the motor vehicle for the performance of those duties outside normal working hours; and
- the employee is not permitted to use that motor vehicle for private purposes other than –
 - for travelling between his or her place of residence and his or her place of work; or
 - private use that is infrequent or merely incidental to business use.

For purposes of employees' tax, 80% of the cash equivalent of the right to use a motor vehicle is treated as remuneration and accordingly 80% of the benefit is subject to employees' tax on a monthly basis. However, in the event that an employer is satisfied that

at least 80% of the use of the motor vehicle during a year of assessment will be for business purposes, only 20% of the cash equivalent of the use of the motor vehicle is included as remuneration and is subject to employees' tax.

This does not mean that only a portion (80% or 20%, as the case may be) is subject to income tax. The full taxable benefit (that is 100%) is potentially taxable when the employee submits an annual tax return and the employee is unable to claim sufficient deductions for business use or the cost of expenses borne. It is only for the purposes of employee's tax that 80% or 20%, as the case may be, is subject to tax.

For more information on the correct tax treatment of this benefit, see Interpretation Note No. 72 dated 22 March 2013 "Right of Use of a Motor Vehicle".

(c) Personal use of business cellular phones and computers

A taxable benefit arises when an employee is granted the right to use an employer's asset (such as a cell phone or a laptop) for private or domestic purposes.

The cash equivalent value of the taxable benefit is equal to the value of the private or domestic use of the asset *less* any consideration payable by the employee for such use or any amount spent by the employee on repairing and maintaining the asset.

Subject to specified exceptions, the value of private use is calculated using one of the following methods:

- If the asset is held by the employer under a lease or hiring agreement, the *rent* payable by the employer for the period of use; or
- If the asset is owned by the employer, an amount calculated for the period of use at the rate of *15% per annum of the lesser of the cost or the market value* of the asset at the date the employee obtained the use of the asset.

However, if the employee is granted the sole right of use of the asset over its useful life or a major portion of its useful life, the value of the private or domestic use is equal to the *cost of the asset to the employer* and the benefit is treated as accruing to the employee on the date he or she was first granted the right to use the asset. This would often be the case when an employee is granted the use of an employer-purchased laptop or cell phone as employees would generally have the use of these assets over their useful lives.

Exclusions

No value is placed on the private or domestic use of an asset if the asset consists of a cellular phone or computer that the employee uses **mainly** for the purposes of the employer's business. The term "**mainly**" has been interpreted to mean usage in excess of 50%.¹⁶

For more information on the tax treatment of this benefit, see Interpretation Note No. 77 dated 4 March 2014 "Taxable Benefit – Use of Employer-Provided Telephone or Computer Equipment or Employer-Funded Telecommunication Services".

(d) Free or cheap services

A taxable benefit will arise to the extent that a service, which has been rendered to an employee at the employer's expense, is used for the employee's private or domestic

¹⁶ *Sekretaris van Binnelandse Inkomste v Lourens Erasmus (Eiendoms) Bpk* 1966 (4) SA 434 (A).

purposes. The service can be rendered by the employer, although often rendered by a service provider under an arrangement with the employer. This would include, for example –

- the monthly subscription and call charges payable by an employer to a telecommunications service provider (but see the possible exclusion below);
- network access to enable the employee to make and receive telephone calls and internet connectivity;
- home leave flights for the employee and the employee's family;
- the cost of tax or work permit services rendered to the employee by a third party, at the employer's cost; and
- security costs incurred for an employee's private safety (including his or her family) at his or her home. The payment of such costs by an employer would be fully taxable as a benefit in the hands of the employee

The amount of the taxable benefit is equal to the cost to the employer of rendering or having the service rendered¹⁷ less any consideration payable by the employee for such services.

Exclusions

No value is placed on the private or domestic use of communication services (for example, access and call charges to a telecommunication service provider), if the service is used *mainly* for business purposes. For example, if the employer's cellular phone is used mainly for business purposes, the portion of the bill that relates to private use will not result in a taxable benefit in the hands of the employee.

No value is placed on the provision of a flight which was undertaken by an employee mainly for business purposes. For example, when an employer incurs the cost for a flight that is used mainly for business purposes, the portion of the cost that relates to private use will not result in a taxable benefit in the hands of the employee. The costs of a flight for family members will remain a taxable benefit in the hands of the employee.

No value is also placed on the private use of a telecommunication service if the service is rendered to employees as a benefit to be enjoyed by them at their place of work. For example, private calls made from the office using the employer's fixed line service.

For more information on the tax treatment of this benefit, see Interpretation Note No. 77.

(e) Payment of an employee's debt

A taxable benefit arises in the hands of an employee when the employer settles the employee's debt to a third party, whether directly or indirectly, without requiring that employee to make any payment for the amount paid by the employer. The employer may also release the employee from an obligation to pay an amount owing by that employee to the employer.

The value of the benefit is the amount paid by the employer or the amount of the debt from which the employee has been released. There is no limitation on the method by which this debt may have arisen or the size of the debt.

¹⁷ To the extent the service is used for private or domestic purposes.

Examples of a payment of an employee's debt are:

- School fees for the employee's children
- Payment of the employee's liability to a third party
- Membership fees at a club

There could be instances when an employee receives an assignment-specific benefit that is taxable in South Africa when the employer pays a debt on behalf of the employee, even though that benefit is not taxable in the employee's home country.

For example, the benefit of the payment of school fees is regarded as an assignment-specific benefit and therefore could form part of the assignment benefit package, and the employer would normally settle the tax on the benefit. It is not included in the employee's hypothetical tax calculation because it is not a benefit the employee would have received if he or she had stayed in the home country. Whether the payment of school fees is a taxable benefit in the home country is irrelevant in determining whether that benefit is taxable in South Africa. Payment of school fees by an employer on behalf of an employee will always qualify as a taxable benefit in the hands of the employee while on assignment in South Africa. The employee would have to carry the cost of the school fees out of his or her own pocket if this assignment benefit was not received from the employer.

Certain employers contractually agree to settle an employee's tax liability whilst that employee is on secondment in a foreign country (see 6.4). The objective is to ensure that the seconded employee remains tax-neutral and is in no worse a position than if the secondment had not been accepted. This practice, which encourages employees to accept secondment assignments in foreign countries, is known as tax equalisation.

A taxable benefit arises if an employer pays part or all of the employee's South African tax liability. Should the employer also choose to settle the income tax on this benefit, a further taxable benefit will arise. This will continue on a recurring basis until a final income tax liability is determined. To simplify this recurring calculation for the taxable benefit of the tax liability in South Africa, SARS accepts the use of a gross-up formula that is calculated as follows:

Steps

- (a) Calculate the tax on the "tax-free" salary.
- (b) Multiply the tax determined in step (a) by $100 \div (100 - \text{marginal tax rate applicable to the employee})$.
- (c) Add the figure determined in step (b) to the "tax-free" salary to obtain the grossed-up salary after iteration.
- (d) If the grossed-up salary after iteration as determined in step (c) falls within the same tax bracket as the "tax-free" salary, the calculations in steps (e), (f) and (g) are not required.
- (e) If the grossed-up salary after iteration as determined in step (c) falls into a higher tax bracket as the tax bracket that applies to the "tax-free" salary derived by the employee, calculate the tax on the grossed-up salary after iteration from step (c).
- (f) Subtract the figure calculated in step (b) from the tax calculated in step (e).

- (g) Multiply the figure determined in step (f) by $100 \div (100 - \text{marginal tax rate applicable to the employee})$.
- (h) The taxable benefit derived by the employee is equal to the result of step (b) plus the result of step (g) – if applicable. The taxable benefit must be added to the employee's "tax-free" salary to arrive at the employee's taxable income.

Example 5 – Income tax liability of an employee

Facts:

Y (below the age of 65 years) is not a South African resident. For the 2014/15 year of assessment Y is employed by a South African company who undertakes to bear the South African income tax liability on the taxable income of R120 000. The income tax payable on R120 000 (after accounting for the annual rebate of R12 726) is R8 874.

Result:

Apply gross-up formula:

Steps

- (a) The income tax payable on R120 000 is R8 874
- (b) $R8\ 874 \text{ [step (a)]} \times 100 / (100 - 18 - \text{marginal rate applicable to employee}) = R10\ 821,95$
- (c) "Tax-free" salary R120 000 + R10 821,95 [step (b)] = R130 821,95 grossed-up salary after iteration.
- (d) R130 821,95 falls within the same tax bracket (below R174 550), thus the calculations in steps (e), (f) and (g) above are not required.
- (e) Not applicable.
- (f) Not applicable.
- (g) Not applicable.
- (h) Taxable benefit derived by the employee = R10 821,95 [step (b)] + Rnil [step (g)] = R10 821,95.

Total taxable income is R120 000 (tax-free salary) + R10 821,95 (taxable benefit) = R130 821,95. Tax is R10 821,95 (R23 537,95 less a rebate of R12 726) paid by the employer; leaving the employee with R120 000 which is "tax-free".

Example 6 – Income tax liability of an employee

Facts:

Y (below the age of 65 years) is not a South African resident. For the 2014/15 year of assessment Y is employed by a South African company who undertakes to bear the South African income tax liability on taxable income of R320 000. The income tax payable on R320 000 (after accounting for the annual rebate of R12 726) is R57 421.

Result:

Apply gross-up formula:

- (a) The Income tax payable on R320 000 is R57 421
- (b) $R57\ 421 \text{ [step (a)]} \times 100 / (100 - 30) \text{ (marginal rate applicable to employee)} = R82\ 030$
- (c) "Tax-free" salary R320 000 + R82 030 [step (b)] = R402 030 grossed-up salary after iteration.

- (d) R402 030 falls within a higher tax bracket (above R377 450), so steps (e), (f) and (g) must be performed.
- (e) Tax on grossed-up salary of R402 030 as calculated in (c) above = R83 259
- (f) Tax [step (e)] - figure calculated in step (b) = R83 259 – R82 030 = R1 229
- (g) R1 229 [step (f)] × 100 / (100 – 35) (marginal rate applicable to employee) = R1 890,76
- (h) Taxable benefit derived by employee = R82 030 [step (b)] + R1 890,76 [step (g)] = R83 920,76

Total taxable income is R320 000 + R83 920,76 = R403 920,76. Tax is R83 920,76 (R96 646,76 – annual rebate of R12 726) paid by the employer, leaving the employee with R320 000 which is “tax free”.

For more information on various tax reimbursement policies, see **6.4**.

(f) Employer contributions to medical schemes

A taxable benefit arises in the hands of an employee should an employer during any period directly or indirectly make any contribution or payment to any medical scheme registered under the Medical Schemes Act 131 of 1998 (MS Act) or to any fund which is registered under any similar provisions contained in the laws of any other country where the medical scheme is registered, for the benefit of the employee or the dependants of the employee.

The value of the benefit is the amount of any contribution or payment made by the employer for a year of assessment, directly or indirectly, to the scheme. If the contributions by the employer relating to the employee and his or her dependants cannot be specifically attributed, the amount of the taxable benefit is equal to the total contribution by the employer divided by the number of employees for which the contribution was made. SARS may direct an alternative apportionment that produces a fair and reasonable result if satisfied that this apportionment method does not reasonably represent a fair apportionment.

Exclusions

No value is placed on the taxable benefit derived from an employer by –

- a person who by reason of superannuation, ill-health or other infirmity retired from the employ of the employer; or
- the dependants of a person after such person’s death, if such person was in the employ of the employer on the date of death; or
- the dependants of a person after such person’s death, if such person retired from the employ of the employer by reason of superannuation, ill-health or infirmity.

(g) Costs incurred for medical services

A taxable benefit arises in the hands of an employee should an employer directly or indirectly incur any amount (other than the employer contribution or payment to any medical scheme or similar fund as discussed above) for any medical, dental and similar service, hospital services, nursing services or medicines provided to the employee, the employee’s spouse, child, relative or dependant.

The value of the benefit is the amount incurred by the employer for these medical services. The amount of the taxable benefit is equal to the amount incurred by the employer for all medical services divided by the number of employees who are entitled to make use of those services if the amount cannot be attributed to a specific employee.

Exclusions

No value must be placed on any taxable benefit –

- resulting from the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health, to the employee, the employee's spouse or children for a scheme or programme of that employer, which –
 - constitutes the carrying on the business of a medical scheme, or
 - does not constitute the carrying on of the business of a medical scheme, if that employee and his or her spouse and children are –
 - beneficiaries of a medical scheme, or
 - beneficiaries of a medical scheme and the total cost of that treatment is recovered from that medical scheme;
- for services rendered or medicines supplied for purposes of complying with any law of South Africa;
- derived from an employer by –
 - a person who retired by reason of superannuation, ill-health or infirmity;
 - the dependants of an employee (who was employed at the date of death) after that employee's death;
 - the dependants of a deceased retired employee who retired by reason of superannuation, ill-health or infirmity; or
 - a person who during the relevant year of assessment is entitled to the rebate for persons over the age of 65;
- for services rendered by the employer to its employees in general at the employees' place of work for better performance of their duties.

(h) Employer contributions to insurance funds

A taxable benefit arises in the hands of an employee should an employer during any period make any payment to an insurer under an insurance policy directly or indirectly for the benefit of the employee or that employee's spouse, child, dependant or nominee.

The value of the benefit is the amount of any expenditure incurred by the employer during a year of assessment for any premiums payable under the policy of insurance. Should it not be possible to attribute an appropriate portion of any expenditure for insurance premiums paid by an employer to the employee for whose benefit the insurance premium is paid, the amount of that expenditure in relation to the employee is deemed to be an amount equal to the total amount of expenditure incurred by the employer on insurance policies during that year of assessment for the benefit of the employee divided by the number of employees for whom the expenditure is incurred.

Note: Employer contributions to foreign insurance funds are similarly a taxable benefit in the hands of the employee if such contributions are for the direct or indirect benefit of the employee.

(i) Employer contributions to foreign pension funds

Employer contributions to a foreign pension fund that is similar to an approved South African fund or social security systems are not subject to tax in South Africa. Contributions by an

employer to a pension fund are made by the employer as a result of an obligation that rests on the employer under rules of the fund, and therefore do not accrue to the employee.

Contributions by an employer to a foreign pension fund where the obligation to make those contributions vests in an employee under the rules of the fund, will result in a taxable benefit in the hands of the employee.

3.3.4 Tax-free benefits

The following benefits are not subject to tax:

(a) Relocation costs

Payments by an employer to cover expenses such as the transfer of an employee on taking up employment, the transfer from one place of employment to another or the termination of employment are exempt from tax in the employee's hands.

The following expenses are also exempt in the hands of the employee:

- The expenses of transporting the employee, members of his or her household and personal goods and possessions from the employee's previous place of residence to his or her new place of residence.
- Any other costs that SARS may allow which have been incurred by the employee for the sale of his or her previous residence and in settling-in the permanent residential accommodation at his or her new place of residence. Costs that SARS will consider allowing include, for example, bond registration and legal fees, transfer duty; cancellation of bond, agent's commission on sale of previous residence, telephone, water and electricity connection. To simplify administration, SARS will allow an amount equal to one month's basic salary if such amount is paid to the employee to cover settling-in costs.
- The cost of renting temporary residential accommodation for the employee and members of his or her household during a period of not more than 183 days after his or her transfer took place or after his or her date of appointment.

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

(b) Look-see trips

Payments by an employer to cover expenses relating to look-see trips or for the services of a relocation consultant, before or after accepting employment in South Africa, do not attract income tax in South Africa.

3.3.5 Other taxable income

(a) Royalties

Amounts received for the imparting of any scientific, technical, industrial or commercial knowledge or information, commonly known as "know-how" payments, are specifically included in the definition of "gross income" and are taxable in a foreigner's hands. Given that a non-resident is only subject to income tax on income derived from a source in South Africa, a foreigner will only be subject to South African income tax on know-how payments received from a source in South Africa.

A foreigner will have derived an amount of royalty from a source in South Africa if the royalty is –

- attributable to an amount incurred by a resident, unless that royalty is an amount attributable to a permanent establishment which is situated outside South Africa; or
- received or accrues for the use or right of use of or permission to use any “intellectual property” as defined in section 23I (essentially a patent, design, trade mark, copyright or property or right of a similar nature) in South Africa.

A final withholding tax of 15%¹⁸ (or lower rate determined in a relevant tax treaty) is payable on royalties or similar payments made to a person who is a non-resident for the right of, or the grant of permission to use in South Africa –

- patents, designs, trademarks, copyright, models, patterns, plans, formulas or processes or any property or right of a similar nature; or
- any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc.

The withholding tax must be paid over to SARS by the last day of the month following the month during which the royalty was paid.

A foreigner is exempt from the withholding tax on royalties if –

- that foreigner was physically present in South Africa for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the royalty was paid, or at any time during that 12-month period carried on business through a permanent establishment in South Africa; or
- the royalties are paid by a headquarter company in certain circumstances.

(b) Rental income

The source of rental income is generally regarded to be where the property is used on a day-to-day basis. Foreigners will, therefore, be subject to income tax on rental income that arises in South Africa and expenses such as rates and taxes, bond interest, insurance and repairs for such property may be claimed as a deduction.

(c) Business income

Business income received by or accrued to a foreigner from carrying on a trade or business within South Africa is taxable in South Africa as such income will have been derived from a source in South Africa. The taxability of the income may be affected by the provisions of a tax treaty.

(d) Pensions and annuities

A pension or annuity payable to any foreigner for services rendered inside South Africa will be taxable in South Africa. The taxability of the pension may however be affected by the provisions of a tax treaty. The fund administrator is obliged to withhold employees' tax on a monthly basis from any pension or annuity payment.

¹⁸ The rate increased from 12% with effect from 1 January 2015 to 15% and the new rate applies to any royalties that are paid or became due and payable after that date.

Annuities received from a source within South Africa, such as from retirement annuity funds, insurance policies,¹⁹ trusts and estates are subject to income tax in South Africa. However, the capital element of a purchased annuity is exempt from income tax. The certificate issued by the insurance company will reflect the capital content. Annuities are subject to the deduction of employees' tax when the source is in South Africa. (The taxability of the annuity may be affected by the provisions of a tax treaty.)

(e) Share incentive schemes

Any gains or losses made by a foreigner on the *vesting* of equity instruments (essentially shares and options) which were acquired by the foreigner on or after 26 October 2004 by virtue of employment or the holding of the office of director, and which are attributable to a South African source, are subject to income tax in South Africa.

The requirements, circumstances, exclusions, valuation methodology as well as procedural matters relating to the inclusion or deduction of amounts that relate to the vesting of equity instruments in the hands of employees and directors are prescribed in the Act.²⁰ Gains or losses made that relate to "qualifying equity shares" acquired under a broad-based employee share plan contemplated in the Act are exempt from tax.

Unrestricted equity instruments vest (in other words, the valuation of the gain or loss and the trigger of the taxing event occurs) upon acquisition of that instrument by the employee or director. By contrast, in the case of *restricted* equity instruments, the valuation and taxing event are generally deferred until the employee can freely trade with the equity instrument, being the point when all restrictions are lifted or are no longer applicable. Gains or losses under a wide range of employment equity schemes, such as share purchase schemes, share option schemes, deferred delivery schemes, convertible debenture schemes, as well as vested or contingent rights in a share trust, will be taxable in South Africa.

The gain to be included in the employee's income is generally the market value of the share at the date that the share vests, less any amount paid by the employee or director for the share or right.

Any gain or loss made on the sale of shares acquired under an employee share scheme will be subject to the ordinary capital or revenue rules. Generally, shares held as capital assets will be subject to CGT, while shares held as trading stock will be subject to income tax. For more information on this aspect, see the *Tax Guide for Share Owners* (Issue 4) dated 17 February 2014 available on the SARS website.

It may be necessary to apportion the gain made by a foreigner from the vesting of an equity instrument, if the employment services for which the equity instrument was acquired were rendered both within and outside of South Africa. See **3.3.1** for an explanation on apportionment.

For more information, see Interpretation Note No. 55 (Issue 2) dated 20 March 2011 "Taxation of Directors and Employees on the Vesting of Equity Instruments".

¹⁹ With effect from 1 March 2014, certain pay-outs received from specified insurance funds (mainly risk funds with no surrender or cash value that provide income or capital protection) are exempt from tax, even if the pay-out is in the form of an annuity.

²⁰ Section 8C.

3.4 Exempt income (exemptions)

Exempt income refers to income that is not subject to income tax. The relevant amounts must nevertheless be included in the foreigner's gross income before the relevant exempt amounts are deducted from gross income. This is because some types of income, such as interest, are only partially exempt. That is, the exemption is limited to a specific amount prescribed in the legislation. Interest and dividends are emphasised in this guide because they are the most common forms of exempt income received by foreigners in South Africa.

3.4.1 Interest and dividends

(a) South African interest²¹ and dividends

The Act makes specific provision for the exemption of interest received by or accrued to any person who is a foreigner. The full amount of interest is exempt from tax under this exemption, unless the foreigner was –

- physically present in South Africa for longer than 183 days in aggregate during the twelve-month period prior to the date that the interest is received or accrues; or
- at any time during the year of assessment carrying on a business through a permanent establishment in South Africa.

To the extent that the foreigner does not qualify for the above exemption, there is also a further interest exemption available for local interest income received during a year of assessment.

Interest received or earned from a South African source in the 2015 year of assessment is exempt up to R23 800 if a foreigner is younger than 65 years of age and up to R34 500 if a foreigner is 65 years or older.

Dividends from South African resident companies are generally exempt from income tax, but may be subject to the withholding tax on dividends at a rate of 15% (or such lower percentage as may be prescribed in an applicable tax treaty).

(b) Foreign interest and dividends

Foreign interest and foreign dividends are not subject to tax in the hands of a foreigner in South Africa as such amounts are not from a source within South Africa.

3.4.2 Other exempt income

The other types of income that may be relevant to an employee, and which may be fully or partially exempt include –

- pensions received from a social security system of a foreign country;
- certain foreign pensions;
- royalties or payments for authorship, if the royalty is taxable in a foreign country; and
- bursaries and scholarships for the employee and certain relatives.

²¹ From 1 March 2015, any interest received by a non-resident from a South African source is subject to a withholding tax at the rate of 15%.

3.5 Income

$$\text{Gross income} - \text{exempt income} = \text{income}$$

Expenses incurred in the course of a foreigner's duties may be deductible against any income earned by the foreigner. The deduction of expenses is explained below.

3.6 Deduction of expenses

The Act sets out which expenditure qualifies for a tax deduction, and in some instances the method for calculating the tax-deductible amount. This guide discusses some of the more likely items of expenditure an employee may incur and which may qualify for a deduction.

It is essential that a foreigner keep accurate records and supporting documentation of the expenditure incurred. These records and supporting documents must not be submitted with the tax return but must be retained for a period of five years from the date when the return was received by SARS. It need only be submitted upon request by SARS (see 1.5).

3.6.1 Deductions for expenditure incurred in relation to allowances received

In the course of a foreigner's duties as an employee, costs may be incurred on behalf of the employer which can be defrayed by either including certain *allowances* in the foreigner's remuneration package (see 3.3.2), through amounts *advanced* to him or her (see 3.2) or by the *reimbursement* of actual expenditure (see 3.2).

In relation to allowances received, an employee may only claim a deduction for the expenditure actually incurred by that employee in line with the principles and calculation methods set out below. The amount that may be claimed is limited to the amount of the allowance received. It is important to keep accurate records and supporting documentation of all expenditure and claims. No deduction may be claimed for amounts that are actually incurred by the employer, for example, the employer has reimbursed an employee for expenditure that the employee has incurred in the course of his or her duties.

In relation to advances and reimbursements (see 3.2), no deduction is available.

(a) Travelling allowance

This allowance is granted to an employee to cover costs incurred on travelling for business purposes. Eighty percent (80%) of the allowance is generally subject to the deduction of employees' tax (PAYE) on a monthly basis. However, in the event that the employer is satisfied that at least 80% of the use of the vehicle for a year of assessment will be for business purposes, only 20% of the travel allowance or advance needs to be included as remuneration and is subject to employees' tax on a monthly basis. The full allowance remains taxable on assessment unless an employee *claims sufficient expenses incurred using his or her private vehicle for business travel*. The calculation of the allowable deduction, which is limited to the amount of the allowance, is set out below.

Accurate travel records are required in order to claim a deduction of business-related travel expenses. Employees must substantiate their travel deduction by way of accurate written records of business travel (often referred to as a logbook). Two methods may be used to calculate the deduction – the employee can choose either method a) or b):

- a) Actual business kilometres travelled during the year of assessment multiplied by the deemed rate per kilometre (see **Annexure B**).

- b) Actual business expenditure, that is, actual business kilometres travelled during the year of assessment multiplied by actual expenditure divided by total kilometres (see **Annexure B**). The employee must be able to provide accurate information to substantiate the expenses.

The logbook must reflect the following minimum information:

- The odometer reading at the beginning of the year of assessment (1 March).
- The odometer reading at the end of the year of assessment (28/29 February).
- Details of business mileage, including date, destination, reason for the trip and kilometres travelled.

No deduction for travelling is permitted if detailed records are not kept. Expenditure on private travelling (for example, travel from home to office) is not deductible.

If the allowance granted to an employee is for a vehicle that the employee has been granted the right to use (that is, an employer-owned company car) the allowable deduction is Rnil.

(b) Allowance for accommodation, meals and other incidentals

An employee may receive an allowance to cover the cost of expenses he or she will incur for accommodation, meals and other incidentals incurred while away on business. The allowance would be applicable if the employer does not pay for or reimburse the employee for the expenditure incurred.

As noted earlier, the allowance is fully taxable but the employee will be entitled to a deduction against the allowance received if the employee is required to spend **at least one night away** from his or her usual place of residence in South Africa. The deduction is always limited to the amount of the allowance.

The deduction available for accommodation is the actual expenditure incurred by the employee, limited to the allowance provided for accommodation.

The deduction available for meals and incidentals (commonly referred to as a subsistence allowance) may be calculated as follows:

- Actual expenditure, limited to the amount of the allowance (the employee must retain the supporting documentation to prove the expenditure incurred); or
- The amount as set by SARS and published in the *Government Gazette*. The amount for meals and incidentals for travel in the Republic is R335 per day and for incidentals R103 per day, for the year ended 28 February 2015. The amount for travel outside the Republic depends on the particular country where the travel occurred – a list of the rates is available on the SARS website.

(c) Other allowances

Generally speaking, other allowances are fully taxable and no deduction is permitted for related expenditure.

For a more detailed explanation on how allowances, advances and reimbursements work, and how a deduction may be claimed, see Interpretation Note No. 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements”.

3.6.2 Other allowable deductions, not associated with an allowance

An employee may be entitled to a deduction against his or her remuneration for the following items:

- Wear-and-tear of certain assets owned and used for purposes of his or her duties as an employee.
- Insurance policy premiums that provide cover against the loss of income as a result of illness, injury, disability or unemployment, provided the amounts payable under the policy will constitute income.
- *Bona fide* donations made to a public benefit organisation (PBO) approved by SARS. Donations can be made either directly to the PBO or by the employer via the payroll system on the employee's behalf. No deduction will be allowed unless it is supported by a valid prescribed receipt issued by the PBO. The deduction is limited to 10% of a person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and any severance benefit) calculated before allowing any deduction for the donation made to the PBO or any deduction for medical expenses. A person must claim the amount reflected on all the receipts if donations are made to more than one PBO. The limitation will be calculated by SARS and a roll-over provision applies to amounts exceeding 10% of taxable income. For more information see the *Tax Exemption Guide for Public Benefit Organisations in South Africa* (Issue 4) available on the SARS website.
- An employee who is required to repay any amount that was previously included in that employee's taxable income can claim as a deduction the amount actually repaid in the year of assessment in which it is repaid.

Subject to certain requirements and limitations, home office expenses (expenses that relate to that part of the house used for the purposes of trade) could be allowed as a deduction in determining taxable income. For more information on claiming home office expenses, see Interpretation Note No. 28 (Issue 2) dated 15 March 2011 "Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office".

An employee wishing to claim any of these expenses must be able to provide relevant supporting documentation upon request. An employee cannot claim deductions for private or domestic expenses. For more information on the deductions permitted to an employee, see Interpretation Note No. 13 (Issue 3) dated 15 March 2011 "Deductions: Limitation of Deductions for Employees and Office Holders".

3.6.3 Retirement fund contributions

(a) Pension fund contributions

An employee's contributions to a foreign pension fund during the period of employment in South Africa will generally not qualify as a deduction for purposes of calculating his or her South African income tax liability. Certain tax treaties entered into by the South African government with a foreign counterpart provide exceptions to this rule.

Only contributions (limited to 7,5% of pensionable salary) made to a South African-approved pension fund will be taken into account in determining the allowable pension deduction.

All contributions to a South African registered pension fund must be disclosed on the IRP5 employees' tax certificate. The amount reflected on the IRP5 certificate represents the

employee's contributions to the fund and must be claimed in the tax return. The full contribution must be disclosed on the tax return; any limitations will be calculated by SARS.

The limitations are as follows:

i. *Current contributions*

The deduction will be limited to the greater of –

- R1 750; or
- 7,5% of a foreigner's gross retirement-funding employment income (pensionable salary).

No excess may be carried forward to the following year of assessment, but may be available for offset against the taxable portion of a foreigner's lump sum benefit upon retirement.

ii. *Arrear contributions*

Arrear contributions are permitted up to a maximum of R1 800 annually. Any excess contributions over R1 800 will be carried forward to the following year of assessment.

(b) Retirement annuity fund contributions

Contributions made to an approved retirement annuity fund during the year of assessment must be claimed in full in the tax return. The deduction will be limited as follows:

i. *Current contributions*

The deduction will be limited to the greater of –

- 15% of taxable income from non-retirement-funding income;
- R3 500 less current deductions to a pension fund; or
- R1 750.

Any excess will be carried forward to the following year of assessment.

ii. *Arrear contributions*

Arrear contributions are permitted up to a maximum of R1 800 annually. Any excess contributions over R1 800 will be carried forward to the following year of assessment.

Proof of payment, being a certificate from the fund or insurer, must be available on request.

(c) Provident fund contributions

Contributions to a provident fund do not qualify for a deduction.

3.6.4 Medical expenses

Medical scheme contributions and medical expenditure could be paid by either the employer or the employee. Should the employer pay the medical scheme contribution for or on behalf of the employee or the employee's dependants, the payment will be included in the employee's income as a taxable benefit. In calculating the medical scheme fees tax credit (**MTC**) or additional medical expenses tax credit (**AMTC**) available to the employee for medical contributions or expenses, the employee is deemed to have paid the expense even if that expense is paid by the employer.

Any contributions paid by the employer to foreign medical aid schemes will be treated as a taxable fringe benefit in the hands of the employee. In calculating any deduction the employee is entitled to, the employee is deemed to have paid the expenses.

(a) Medical scheme fees tax credit (MTC)

The MTC is a tax rebate available to taxpayers who contribute to a registered medical scheme. In other words, the MTC is deductible from any income tax payable by the taxpayer and is not a deduction against the taxpayer's income.

The following definition applies in the context of the MTC.

Dependant

A "dependant"²² is defined as –

- (a) the spouse or partner, dependent children or other members of the member's immediate family in respect of whom the member is liable for family care and support; or
- (b) any other person who, under the rules of a medical scheme is recognised as a dependant of a member.

If a foreigner²³ pays contributions to a registered medical scheme for his or her own benefit, or for the benefit of his or her dependants, an MTC equal to –

- R257 per month for the foreigner; or
- R514 per month for the foreigner and one dependant; or
- R514 per month for the foreigner and one dependant, plus R172 per month for every additional dependant,

will be allowed as a credit against the income tax payable by the foreigner for each month in that year of assessment for which medical scheme contributions are paid. The deduction will be limited to the tax payable and cannot create a refund.

Certain medical related arrangements or products are marketed by entities that are not regulated by the MS Act, for example long-term insurers. These products do not qualify for an MTC in South Africa, similarly if a foreign product is marketed by an entity that is not regulated under legislation that is similar to the MS Act, it will not qualify for an MTC.

A South African employer who makes contributions to a foreign medical scheme in respect of an employee has the obligation to determine whether the legislation which governs such foreign scheme is similar to the provisions of the MS Act and whether such contributions will therefore qualify for an MTC.

²² A "dependant" for purposes of the MTC means a "dependant" as defined in section 1 the Medical Schemes Act, 1998.

²³ Contributions to a registered medical aid scheme paid by an employer have been included in the employee's taxable income as a taxable benefit under the Seventh Schedule are deemed to have been paid by that employee for purposes of calculating this rebate.

(b) Additional medical expenses tax credit (AMTC)

The following definitions apply in the context of the AMTC.

Dependant

A “*dependant*”²⁴ is defined as –

- | |
|---|
| <ul style="list-style-type: none">(a) a person’s spouse;(b) a person’s child and the child of his or her spouse;(c) any other member of a person’s family in respect of whom he or she is liable for family care and support; and(d) any other person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund contemplated in section 6A(2)(a)(i) or (ii), |
|---|

at the time the fees contemplated in section 6A(2)(a) were paid, the amounts contemplated in paragraph (a) and (b) of the definition of “qualifying medical expenses” were paid or the expenditure contemplated in paragraph (c) of that definition was incurred and paid;

“Qualifying medical expenses” comprise the following:

- (i) Expenses that have been paid by the foreigner during the year of assessment to any duly registered –
 - medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopaedist for professional services rendered and medicines supplied to the foreigner or any dependant;
 - nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency for the services of such nurse, midwife or nursing assistant), for illness or confinement of the foreigner or any dependant; and
 - pharmacist for medicines as prescribed by a person mentioned in the first bullet point above for the foreigner or any dependant.

The abovementioned expenses will only qualify as a deduction if it is not recoverable from a medical scheme.

- (ii) Expenses listed in (i) above paid and incurred by a foreigner outside South Africa and which are not recoverable from a medical scheme.
- (iii) Any expenses that are prescribed by SARS that are necessarily incurred and paid by a foreigner in consequence of any physical impairment or disability²⁵ of the foreigner or any dependant.

Disability

A “disability” is defined as –

| |
|--|
| <p>“disability” means a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation –</p> |
|--|

- | |
|--|
| <ul style="list-style-type: none">(a) has lasted or has a prognosis of lasting more than a year; and |
|--|

²⁴ A “*dependant*” for purposes of the AMTC differs from a “dependant” for purposes of the MTC.

²⁵ The list of prescribed qualifying physical impairment or disability expenditure is available on the SARS website.

- (b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

The foreigner claiming the AMTC, the person with the disability and medical practitioner are all required to complete a Confirmation of Diagnosis of Disability (ITR-DD) form which must be retained by the foreigner and only submitted to SARS if requested. The ITR-DD is available on the SARS website.

Physical impairment

The term “physical impairment” is not defined in the Act. However, in the context of the now repealed section 18(1)(d) it has been interpreted as a disability that is less restraining than a “disability” as defined. This means the restriction on the person’s ability to function or perform daily activities after maximum correction is less than a “moderate to severe limitation”. Maximum correction in this context means appropriate therapy, medication and use of devices.

Child

A “child” is defined as –

“**child**” means a person’s child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—

- (a) was unmarried and was not or would not, had he or she lived, have been —
- (i) over the age of 18 years;
 - (ii) over the age of 21 years and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year; or
 - (iii) over the age of 26 years and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or
- (b) in the case of any other child, was incapacitated by a disability from maintaining himself or herself and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of that year;

Persons under 65 years of age

In addition to the MTC, a foreigner who is below the age of 65 will be entitled to an AMTC that is limited to 25% of the aggregate of the amounts referred to below as exceeds 7,5% of the foreigner’s taxable income (excluding certain retirement related lump sums and withdrawals), before taking into account this deduction:

- All contributions paid by a foreigner²⁶ to a registered medical scheme for the benefit of that foreigner or his or her dependant that exceeds four times the MTC to which the foreigner is entitled; and

²⁶ Contributions to a registered medical aid scheme paid by an employer which have been included in an employee’s taxable income as a taxable benefit under the Seventh Schedule are deemed to have been paid by that employee for purposes of calculating this deduction.

- Actual qualifying medical expenses (including physical impairment expenses) paid by the foreigner²⁷ and not recoverable from the medical scheme, for the foreigner and any dependant at the time such expenses were paid.

Persons 65 years of age and older

If the foreigner is 65 and older he or she will, in addition to any MTC be entitled, to an AMTC, being the aggregate of –

- 33,3% of the total amount of contributions paid by the foreigner to a medical scheme as exceeds three times the amount of the MTC to which that foreigner is entitled; and
- 33,3% of the amount of qualifying medical expenses.

Persons with a disability

If the foreigner, the foreigner's spouse or child is a person with a disability, that foreigner will be allowed an AMTC equal to the aggregate of –

- 33,3% of the total amount of contributions paid by the foreigner to a medical scheme as exceeds three times the amount of the MTC to which he or she is entitled; and
- 33,3% of the amount of qualifying medical expenses.

The list of prescribed qualifying physical impairment or disability expenditure is available on the SARS website.

3.7 Taxable capital gains

This guide only deals with the basic principles applicable to capital gains and losses in respect of foreigners. For more information, see the SARS website for the –

- *Comprehensive Guide to Capital Gains Tax* (Issue 5), published as a draft for public comment;
- *ABC of Capital Gains Tax for Individuals* (Issue 8);
- *ABC of Capital Gains Tax for Companies* (Issue 6); and
- *Guide for Valuations of Assets for Capital Gains Tax Purposes*

A foreigner who has a net taxable capital gain must include that amount in his or her taxable income. A net capital loss may not be deducted in arriving at the foreigner's taxable income but may be carried forward and set-off against any capital gain derived in the subsequent year of assessment.

3.7.1 General

Capital gains tax (CGT) is not a separate tax, but forms part of the income tax system and is a tax on the disposal of capital assets. CGT is only applicable on the disposal or deemed disposal of an asset on or after 1 October 2001. Events that trigger a disposal include a sale, donation, exchange, loss, death and cessation of residence in South Africa.

²⁷ Qualifying medical expenses paid by an employer which have been included in an employee's taxable income as a taxable benefit under the Seventh Schedule are deemed to have been paid by that employee for purposes of calculating this deduction.

Foreigners are liable to pay CGT on any capital gain made on the disposal of the following assets:

- Immovable property in South Africa (that is land and buildings) that does not constitute trading stock.
- Any right or interest in immovable property in South Africa (such as a long-term lease).
- Shares in a company if 80% or more of the market value of its net assets comprise immovable property in South Africa, and the foreigner holds directly or indirectly 20% or more of the shares in the company.
- Assets of a permanent establishment (that is, a branch of a foreign company) situated in South Africa.

The foreigner need not register separately for CGT if registered for income tax. However, if a foreigner is not registered for income tax purposes, for example, as a result of being a non-resident and receiving no taxable income in South Africa and an asset in South Africa is disposed of by the foreigner resulting in a taxable capital gain or an assessed capital loss, then the foreigner must submit an income tax return.

A **capital gain** on the disposal of an asset during a year of assessment equals an amount by which the “proceeds” (essentially the consideration received for the asset) received or accrued on the disposal exceed the “base cost” of the asset (essentially the expenditure incurred in acquiring the asset and in certain circumstances expenditure incurred in maintaining the asset).

A **capital loss** on the disposal of an asset during a year of assessment equals an amount by which the base cost of the asset exceeds the proceeds received or accrued on the disposal.

Natural persons and special trusts are entitled to an annual exclusion of R30 000 of capital gains or losses during a year of assessment. The annual exclusion is increased from R30 000 to R300 000 for the year of assessment if the natural person has passed away.

CGT does not apply to the first R2 million of the capital gain from the sale of a primary residence.

In the case of natural persons and special trusts, only 33,33% of the net capital gain is included in taxable income when calculating the tax payable. For companies, close corporations and trusts, 66,67% of the net capital gain is included in taxable income.

Roll-over relief or deferral is available if the asset is either disposed of involuntarily and is replaced or is disposed of in order to acquire another similar business asset that qualifies for a capital allowance.

3.7.2 Withholding of amounts from payments to non-resident sellers of immovable property

With effect from 1 September 2007, a purchaser of immovable property (which has been disposed of for R2 million or more) is obliged to withhold the following amounts from the purchase price payable, if the seller of the property is not a resident:

- 5% of the amount payable, if the non-resident seller is a natural person
- 7,5% of the amount payable, if the non-resident seller is a company

- 10% of the amount payable, if the non-resident seller is a trust

The withholding obligation applies to any immovable property situated in South Africa, which is owned by a person who is not resident in South Africa. The non-resident seller may apply for a tax directive that no amount (or a reduced amount) be withheld if certain conditions are met. The local SARS branch office should be approached with details of the transaction, should a tax directive be required.

The amount withheld by the purchaser is an advance payment of the seller's liability for income tax for the year of assessment in which the seller disposes of the property. The purchaser must pay the amount withheld to SARS within –

- 14 days after the date on which the amount was withheld, if the purchaser is a resident; or
- 28 days after the date on which the amount was withheld, if the purchaser is a non-resident.

3.8 Taxable income and calculating the foreigner's tax liability

After subtracting exempt income, allowable deductions and adding taxable net capital gains to gross income, the result is taxable income.

Taxable income is then multiplied by the tax rate (see **Annexure A**) that applies to a foreigner's income bracket and after deducting applicable rebates (see **Annexure A**), the figure obtained is the foreigner's income tax liability for the year.

The income tax liability is not necessarily the amount a foreigner will have to pay at the end of the year of assessment. During the year there may have been monthly payments made to SARS through employees' tax (PAYE) deductions and a foreigner may also have paid provisional tax. These amounts are offset against the normal tax liability and any difference will either be a refund due to the foreigner or an extra payment due by the foreigner. The employer would normally pay any taxes that are due by the foreigner on his or her behalf to SARS if a foreigner is on assignment in South Africa on a tax equalised basis.

4. Tax on foreign entertainers and sportspersons

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson for his or her performance in South Africa, must deduct or withhold from that payment an amount of tax, known as "tax on foreign entertainers and sportspersons", at a rate of 15% on all payments made to such foreign entertainer or sportsperson. The resident who deducted or withheld the tax must pay it over to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold the tax and to pay the tax over to SARS will render the resident personally liable for the tax.

In the event that it is not possible to account for the withholding tax (for example, the person who is liable for the payment to the foreign entertainer or sportsperson is not a resident), the foreign entertainer or sportsperson will be held personally liable for the 15% tax that must be paid over to SARS within 30 days after the amount is received by or accrued to the foreign entertainer or sportsperson.

The 15% withholding tax on foreign entertainers and sportspersons is a final tax on such payments received by or accrued to the foreign entertainer or sportsperson. It therefore

follows that if any other income is received by or accrued to the foreign entertainer or sportsperson from a source within South Africa, only such other income is subject to income tax in South Africa. Amounts received by or accrued to foreign entertainers or sportspersons, which are subject to this 15% withholding tax does not have to be included in calculating their tax liability.

Any person who is primarily responsible for founding, organising or facilitating a specified activity in South Africa and who will be rewarded directly or indirectly for that function of founding, organising or facilitating, must notify SARS of the performance within 14 days of concluding the agreement and provide SARS with the details relating to the performance as may be required by SARS.

The 15% withholding tax on a foreign entertainer or sportsperson is not applicable to a foreign entertainer or sportsperson who is employed by a South African employer, *and* who is physically present in South Africa for more than 183 days in aggregate in a 12-month period that begins or ends in a year of assessment in which the specified activity is exercised. In these circumstances the foreign entertainer and sportsperson has to pay income tax on the same basis as a resident, that is, at the prescribed rate of income tax, which may require the submission of an income tax return. In these circumstances no withholding tax needs to be deducted. Such payments, made by the South African employer to the foreign entertainer or sportsperson (employee), are regarded as remuneration, which is subject to income tax in South Africa by way of employees' tax deducted by the South African employer.

5. Provisional tax

Provisional tax is not a separate tax but refers to provisional tax payments to be made by a provisional taxpayer to SARS in a manner provided by the Act.

A foreigner who is subject to tax on employment income in South Africa, but who is being remunerated by a foreign employer that does not have an agent having the authority to pay remuneration in South Africa, may pay provisional tax. He or she must also complete an IT 77 form to register as a taxpayer.

A foreigner who earns taxable income that is not subject to employees' tax deductions (for example, interest, rental income or business income), may be required to register as a provisional taxpayer, and would then have to pay provisional tax on this income on a six-monthly basis. If no employees' tax is deducted from the foreigner's remuneration, the foreigner must ensure that his or her taxes are paid via provisional tax. A South African employer may be subject to penalties and interest for not withholding the correct amount of employees' tax.

Provisional tax is intended to assist taxpayers in meeting their tax liabilities on an on-going basis as opposed to paying a large amount once a year on assessment. The provisional tax paid (as in the case of employees' tax) will be offset against the final income tax that the foreigner has to pay for the year of assessment.

5.1 Who is liable to pay provisional tax?

A provisional taxpayer is any –

- individual who earns income other than remuneration, for example business income or farming income;

- company or close corporation; or
- person who is notified by the Commissioner that he or she is a provisional taxpayer.

The following individuals are exempt from the payment of provisional tax:

- An individual below the age of 65 who does not derive any income from the carrying on of any business, and that individual's taxable income for the 2015 year of assessment –
 - does not exceed the tax threshold of R70 700; or
 - derived from interest, foreign dividends and rental income from letting fixed property does not exceed R20 000.
- An individual who is 65 years of age or older and that individual's taxable income for the 2015 year of assessment –
 - does not exceed R120 000;
 - will not be derived wholly or in part from the carrying on of any business; and
 - will not be derived otherwise than from employment income (that is, salaries and wages), interest, dividends or rental of fixed property.

The taxable amount of interest and dividends is determined by deducting a specified exempt amount from the total amounts derived. The specified exemption from the sum of interest and taxable dividends for the 2015 year of assessment is R23 800 for an individual below the age of 65 and R34 500 for an individual who is 65 years of age or older.

Foreign dividends and foreign interest will not be taxable in the hands of the foreigner as such amounts are not from a source within South Africa. This means that a foreigner younger than 65 years of age who only receives a salary and interest from a South African bank will only qualify as a provisional taxpayer for the 2015 year of assessment if the total interest received exceeds R23 800 for the 2015 year of assessment.

5.2 When is provisional tax due?

Provisional tax is due as follows:

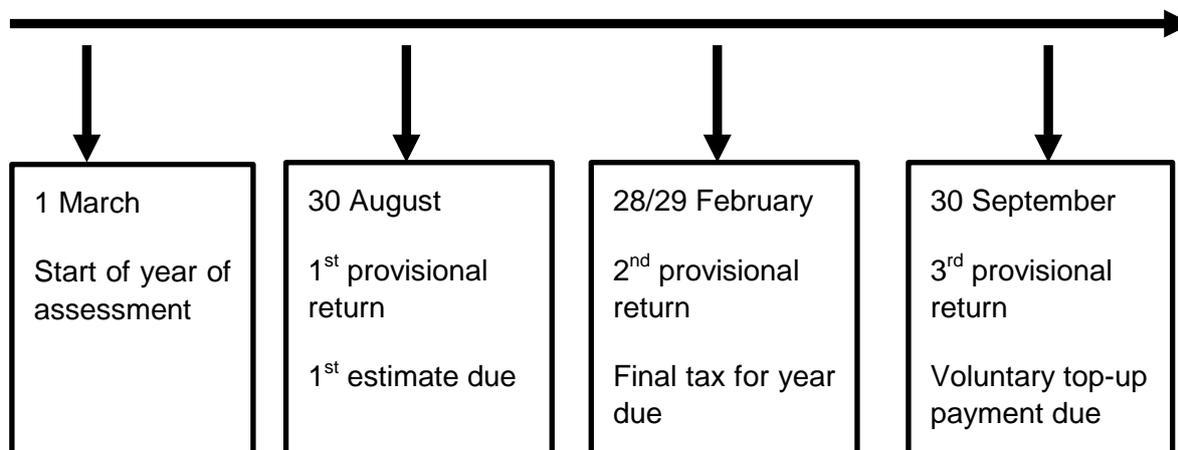
- First payment – six months after the beginning of the year of assessment, that is, 31 August.
- Second payment – not later than the last day of the year of assessment, that is, 28 or 29 February.
- A voluntary third or “top-up” payment – seven months after the end of the year of assessment, that is, 30 September. This is only necessary if the individual's taxable income is in excess of R50 000. Payment can be made to avoid liability to pay interest that will arise due to the final income tax not being settled within seven months after the end of the year of assessment.

In the context of provisional tax it is particularly important to note that if –

- a day notified by SARS or specified in the Act for payment, submission or other action; or
- the last day of a period within which payment, submission or other action under the Act must be made,

falls on a Saturday, Sunday or public holiday, the action must be done not later than the last business day before the Saturday, Sunday or public holiday.²⁸

The timeline for the submission of provisional tax returns looks as follows:



5.3 How much provisional tax must be paid?

A provisional tax return must be completed by estimating the foreigner's total taxable income, (which includes employment income, business income, interest and rentals), for the year of assessment and determining the tax payable on the estimate.

The estimate for the first payment may not be lower than the foreigner's taxable income (as assessed by SARS) for the previous year of assessment (that is the basic amount), unless permission is obtained from SARS. In the event that a foreigner has no assessed taxable income for a previous year of assessment, the foreigner must estimate his or her taxable income for the current year of assessment as accurately as possible. SARS may request a foreigner to justify an estimate submitted and may increase the estimated amount if that foreigner is unable to justify the estimate. The first payment must be half of the total estimated liability for the year of assessment.

The estimate of taxable income for the second payment must be equal to the total liability for the year of assessment. A foreigner (earning a taxable income of R1 million or less for the current year of assessment) who submits an estimated taxable income for the second period which is less than the basic amount *and* less than 90% of the actual taxable income for the year of assessment will be subject to a percentage-based penalty. A foreigner whose taxable income exceeds R1 million for the current year of assessment and the estimate of taxable income for the second period is less than 80% of the actual taxable income for the year of assessment will incur a similar percentage-based penalty.

The tax payable on the estimated taxable income for the year of assessment must be determined by applying the rate of income tax applicable to that amount of taxable income or by using the tables (IRP 12) that are sent by SARS to all provisional taxpayers. Employees' tax, medical scheme fees tax credits, additional medical expenses tax credits, any foreign taxes paid or proved to be payable by the provisional taxpayer to the government of another country and any provisional tax already paid during that year of assessment, can be deducted from the provisional tax payable for the relevant period.

For a more detailed discussion on this topic, see Draft Interpretation Note No. 1 (Issue 2) "Provisional Tax Estimates".

²⁸ Section 244(1) of the TA Act.

6. Employer-related issues

6.1 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 not a resident of South Africa, employees' tax must be deducted by an agent (or representative) who has the authority to pay any remuneration to the foreigner.

Employees' tax consists of Pay-As-You-Earn (PAYE) and must be paid to SARS on a monthly basis. The purpose of PAYE is to ensure that an employee's income tax liability is settled at the same time that the income is earned. The advantage of this system is that the income tax liability for the year of assessment is settled over the course of the whole year of assessment. Employees' tax (PAYE) is therefore a withholding tax on employment income and will be offset against the employee's final income tax liability for the year of assessment.

The mere fact that an employee is a provisional taxpayer does not exempt an employer from its obligation to withhold employees' tax on such employee's employment income.

Example 7 – Employees' tax deduction

Facts:

Y is not a South African resident (foreigner) and is employed by a foreign company to render services to its branch in South Africa for a period of two years. The branch (being the representative employer in South Africa) pays Y a monthly salary.

Result:

The South African branch must deduct employees' tax on remuneration paid or payable to Y, and provide Y with an IRP5 tax certificate after the end of the year of assessment.

6.2 UIF obligations

An employee and his or her employer are exempt from contributing to the Unemployment Insurance Fund (UIF) under the Unemployment Insurance Contributions Act 4 of 2002 if –

- that employee has entered South Africa for the purpose of carrying out a contract of service, apprenticeship or learnership within South Africa; and
- upon the termination of the contract, the employer is required to repatriate the employee or the employee is required to leave South Africa under –
 - the law;
 - the contract of service, apprenticeship or learnership (as the case may be); or
 - any agreement or undertaking.

The employer or "representative employer" and the employee both have an obligation to make UIF contributions if the aforementioned requirements are not met.

6.3 Employees' tax certificates (IRP5)

An employer is obliged to issue an employee with an employees' tax certificate (IRP5) after the end of a year of assessment containing the following information for the year of assessment:

- The employee's total annual remuneration.
- Amounts deducted from the employee's total annual remuneration, for example, pension fund and medical scheme contributions.
- The total amount deducted from the employee's annual remuneration as employees' tax (PAYE) deductions.

An employee is required to use the information on the IRP5/IT3(a) certificate(s) to verify the information in his or her annual tax return.

6.4 Tax reimbursement policies

A taxable benefit arises in the hands of an employee if the employer settles that employee's tax liability [see 3.3.3(e)]. The agreement between the employer and the employee to pay the employee's taxes is usually set out under a tax reimbursement policy.

The objective of tax reimbursement policies is to cancel the effect that any tax differential has on assignment income, over a period of time, in order to safeguard against employees being discouraged from taking up foreign assignments due to prohibitive tax costs. These policies are designed to ensure that an employee does not pay more tax in South Africa than what that employee would have paid if the employee had stayed at home.

The best-known and most common methods that are currently being used in practice are the tax equalisation and tax protection methods. Others that are also used are the net-to-net, lump sum and *laissez-faire* policies. For purposes of this guide the tax protection and tax equalisation policies will be discussed in more detail, whereas only a brief description will be provided of the other policies.

SARS does not endorse any specific tax reimbursement policy – this is an issue to be decided by agreement between the employer and employee.

In order to determine the employee's tax responsibility at the end of a year, irrespective of the reimbursement policy used, the following three calculations must be performed:

- (1) *Hypothetical tax calculation*: This is the home country tax liability based on the hypothetical home country income that the employee would have earned had that employee not taken the foreign assignment. Hypothetical tax is the tax that the employee would have paid on hypothetical home country income, at the home country tax rates, during the assignment period. Hypothetical home country income includes ordinary income elements such as basic salary, bonus, allowances, and equity income. Assignment related benefits are not included.
- (2) *Actual home country tax liability calculation*: This is the actual home country tax due under the home country tax laws and is based on the total actual income and benefits received by the employee, including the income received on foreign assignment.
- (3) *Actual host country tax liability calculation*: This is the actual host country tax due under the host country tax law and is based on the income and benefits received by the employee in the host country only.

6.4.1 Tax protection

A tax protection policy normally provides that the employee is responsible for the lower of the tax calculated under (1) and (2) + (3) above.

This plan is used to protect an employee from paying more tax in South Africa than that employee would have paid in his or her home country. The employee may derive a benefit if South Africa has lower tax rates than the home country, in which case the employee would be refunded the difference between the (low) South African tax and the higher home country tax, provided hypothetical tax is deducted. To the extent that South Africa has a higher tax rate, the employer will cover the excess.

The source of a tax protection payment will be the country where the services were rendered for which the tax protection payment was made. The source rules, as discussed in **3.3.1**, will apply equally to tax protection payments: if a portion of the services are actually rendered outside South Africa and the source is not South African, then the portion of the tax protection payment that relates to non-South African services will not be subject to tax in South Africa. To the extent, however, that the tax protection payment relates to services rendered by the employee in South Africa, the tax protection payment will be a taxable benefit in the employee's hands and the gross-up rules set out in **3.3.3(e)** apply.

Example 8 – Tax protection

Facts:

Z, a resident of Hong Kong, is sent to South Africa to render employment services, and is tax-protected. Hong Kong tax rates are lower than South African tax rates.

Result:

Z is responsible for payment of taxes equal to the hypothetical tax, but the employer will cover any South African taxes that exceed the hypothetical tax.

If Hong Kong tax rates had been higher than South African tax rates, the excess between the hypothetical tax payable in Hong Kong and actual tax payable in South Africa would have been paid out to Z. This payment would have been for services rendered in South Africa, and would be taxable in South Africa.

6.4.2 Tax equalisation

Tax equalisation places an employee in a position where he or she would pay no more or no less tax than what he or she would have paid in his or her home country. The employee would accordingly be in a no better or no worse off position. This method is commonly used by multinational companies.

The employer pays all the actual taxes (that is, the home and host country actual taxes as set out in (2) + (3) above), on all taxable compensation. The employee pays the "hypothetical" tax in (1) on theoretical "stay at home" income only. The hypothetical tax is a reduction of the employee's overall income, typically processed as a negative income item on the payroll.

The hypothetical tax, being a reduction of income, is not an actual tax withholding. The ordinary tax obligations are settled by the employer over and above the hypothetical tax calculation and paid to the home tax authority or SARS. The compensation (net of hypothetical tax) is grossed-up in South Africa [as per **3.3.3(e)**] to arrive at grossed-up

income for South African tax liability purposes. The tax payable in South Africa is then calculated on the grossed-up income.

Tax equalisation could apply partially or fully – that is, to an employee's employment income only, or to the employee's entire personal income.

The employer pays the taxes due on the grossed-up income when the employee is tax equalised. A gross-up represents a taxable benefit that an employee receives when his or her employer pays his or her tax liability, in other words, tax on tax.

Gross-up calculations must be based on the marginal rates applicable in the year that the benefit is granted, not in the year the tax was actually paid. For more details on gross-ups and the resultant taxable benefits, see **3.3.3(e)**.

6.4.3 Net-to-net

The home country spendable base pay (net of taxes) is "grossed-up" in South Africa at the tax rates applicable in South Africa, to determine the new South African gross pay. Any assignment allowances are also grossed-up and added to the new gross pay. There may be adjustments to the new gross pay which are processed through the South African payroll as normal. The net pay after host country taxes should provide the employee with a spendable (net) pay equivalent to the home country net pay.

6.4.4 Lump sum

The estimated assignment costs are calculated and paid to the employee in one lump sum. There is a lot less administration involved. The impact of this policy is that the South African taxes payable on the income received by the employee are included in the lump sum from the employer, and the employee will be responsible for any South Africa taxes that may be payable on the lump sum provided.

6.4.5 Laissez-faire

The employee is required to look after his or her own tax affairs without any involvement from the employer.

7. Avoidance of double taxation

A foreigner who earns employment income from a source within South Africa, and who is a resident of another country, may be liable for income tax both in South Africa and the foreigner's country of residence. The South African government has therefore entered into tax treaties with a number of other countries to prevent the levying of income tax on the same income by more than one country.

The precise terms of these agreements may vary from country to country and it is, therefore, not possible to give details of the tax consequences under each tax treaty here. Some of the most frequently used articles in relation to employment income will be discussed below. The relevant tax treaties are available on the SARS website.

The domestic laws of both South Africa and the relevant foreign country remain applicable where no tax treaty exists.

As a general guideline only, a foreigner could expect relief from double taxation under the tax treaties in the circumstances below.

7.1 Short-term assignments (Assignments for less than 183 days)

The employment income of a foreigner will generally be subject to income tax in South Africa even if a tax treaty has been concluded with a foreign country. However, if *all three* of the following requirements are met, the income will generally not be subject to income tax in South Africa under the tax treaty:

- The foreigner is physically present in South Africa for a period or periods in aggregate not exceeding 183 days in any 12-month period commencing or ending during a year of assessment (not necessarily during a specific year of assessment).
- 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* that the employer has in South Africa.

A permanent establishment in essence means a fixed place of business through which the business of the employer is wholly or partly carried on.

Example 9 – Relief under a tax treaty

Facts:

X is a resident of the United Kingdom (UK) who is employed by a UK company. X has been seconded to render services in South Africa for a period of five months. Remuneration is paid by the UK company that does not have a permanent establishment in South Africa.

Result:

South Africa is prohibited from taxing the remuneration in terms of the tax treaty with the UK as –

- X is in South Africa for a period not exceeding 183 days in aggregate in any 12 months;
- the remuneration is paid by an employer who is not a resident of South Africa; *and*
- the remuneration is not borne by a permanent establishment, which the employer has in South Africa.

Note: To the extent that a short-term assignee receives taxable benefits from the local employer while on assignment in South Africa, such taxable benefits are subject to tax in South Africa. The employee must ensure that the necessary income tax returns are submitted for the duration of the assignment, and any tax that is due on the taxable benefits is paid to SARS.

7.2 Employees of foreign governments working in South Africa

The remuneration of a foreigner working for a foreign diplomatic or consular mission in South Africa is generally exempt from tax in South Africa if the foreigner 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 (note that the term “ordinarily resident” generally means that the employee is resident in South Africa with a degree of permanency).

Note: The fact that the foreigner will, as a consequence of the application of the physical presence test (see **1.2.3**) become a resident will not affect the exemption of remuneration earned by that foreigner in South Africa.

In the event that the foreigner applies for and receives a permit for permanent residence in South Africa, the exemption no longer applies and liability for normal tax arises from the date of issue of such permit. This is due to the fact that once the foreigner receives permanent resident status the employee will be regarded as being *ordinarily* resident in South Africa. Furthermore, remuneration payable by a foreign government that carries on business activities in South Africa to its employees could also be taxable in South Africa. The taxability of this income may be affected by a tax treaty.

Foreigners who are not exempt from tax in the above circumstances must register as provisional taxpayers by visiting their nearest SARS branch office or by requesting registration documentation via the SARS National Contact Centre.

South African nationals who are employed by foreign diplomatic or consular missions in South Africa (that is, locally-recruited employees) are not exempt from normal tax on their remuneration.

8. Operational matters

8.1 Introduction

This Chapter deals only briefly with some of the most important operational matters relevant to foreigners when on assignment in South Africa.

8.2 Registration

A foreigner who renders services in South Africa and who receives taxable income in excess of a specific amount (known as the “tax threshold”) during a year of assessment is liable for income tax. See **Annexure A** for the tax threshold amounts for the 2015 year of assessment.

A foreigner who has not yet registered as a taxpayer must complete an IT 77 registration form, obtainable from any SARS office or from the SARS website.

In addition to the IT 77 registration form, a foreigner will be required to submit the following supporting documentation:

- A certified copy of his or her Identification Document, passport document or drivers licence.
- Bank details: A cancelled cheque or a certified or original copy of a three-month bank account statement from a South African bank.
- Income details for the last three years, for example, copies of salary slips.
- Proof of physical residence, for example, a municipal rates or electricity bill.

In the absence of proof of residential address in a foreigner's name, a Confirmation of Entity Residential Address (CRA01) must be completed. The CRA01 can be obtained at a SARS Branch or downloaded from the SARS website.

Note: Any person who becomes liable for income tax must register as a taxpayer at SARS within 21 business days after becoming liable for tax.

8.3 Filing

The deadlines for the submission of income tax returns are published on the SARS website at the beginning of each tax return filing season.

8.3.1 How to obtain an income tax return

SARS no longer sends out blank printed tax returns. Instead taxpayers will receive a “Request for Income Tax Return” advising them to complete the relevant information. Once the “Request for Income Tax Return” has been completed and returned to SARS, SARS will use the information provided in that completed form and present a taxpayer with an income tax return (ITR12) that contains only the fields that are relevant to him or her. The “pre-populated” ITR12 will also contain information obtained from the IRP5/IT3(a) certificate(s) which have previously been submitted by the employer to SARS.

A preferable alternative is to register on the SARS eFiling website (www.sarsefiling.co.za) so that the tax return can be completed online.

Taxpayers may also complete and submit their tax returns by visiting any SARS branch. In these situations it will not be required to complete a Request for Income Tax Return form and the customisation will be done online.

The “pre-populated” tax return simply means that when a taxpayer receives a tax return it will already contain the latest information received from third parties such as the employer, a retirement fund or a medical aid scheme. Secondly, tax returns contain only the fields that are relevant to a specific taxpayer.

8.3.2 Completing the tax return

A foreigner will typically need the following documentation (where applicable) to complete a return:

- Details of banking particulars
- The IRP5/IT3(a) certificate(s)²⁹
- Certificates that were received for investment income in South Africa (for example, interest income, capital gains) [IT3(b) and IT3(c)]
- Details of medical scheme contributions and medical expenses incurred in South Africa
- Completed confirmation of diagnosis of disability (ITR-DD), if applicable (see 3.6.4)
- Information relating to pension fund and retirement annuity contributions to approved funds in South Africa
- Details of business travel (if a travel allowance was received), for example, a detailed logbook
- Details of days worked inside and outside of South Africa (for example, legible passport copies)

²⁹ The portion of the employee’s income that relates to services rendered from a source outside South Africa must be disclosed on the IRP5 or IT3(a) under a non-taxable code. It is incorrect to disclose the income as taxable on the tax certificate and then to claim a deduction on the tax return, as the amounts do not fall within “gross income” as defined in section 1(1).

- A record of any term of employment that requires that services be rendered outside South Africa
- Information relating to the disposal of capital assets in South Africa
- Financial statements, if applicable, for example, business income from a source within South Africa
- Any other documentation relating to income or deductions

Although a foreigner will be using these supporting documents to complete the tax return, they do **NOT** need to be submitted to SARS with the return. A foreigner is, however, required to retain ALL relevant documents for five years from the date when the tax return was received by SARS, and produce such documentation should the tax return be subject to an inspection or audit.

On receipt of the pre-populated tax return, the foreigner must –

- verify the pre-populated information on the ITR12 against the IRP5/IT3(a) certificate(s);
- correct any incorrect information on the tax return; and
- complete the remaining relevant fields (for example, additional income and deductions).

It is very important to correct any incorrect banking details on the pre-populated ITR12. SARS will not be able to pay out any tax refund due if it does not have the correct bank details or if supporting documentation requested by SARS is not provided. SARS will also only accept a taxpayer's own personal account details.

8.3.3 Submission of the tax return

A foreigner may choose to submit the completed income tax return manually or electronically.

(a) Manual submissions

A foreigner can manually complete the tax return, sign it and either mail it or hand it in at the nearest SARS branch office.

(b) Electronic submissions

In order to use eFiling to complete and submit the tax return electronically a taxpayer must register as an eFiler on the SARS website. Alternatively, a SARS employee can assist in completing and submitting the tax return electronically at the branch office.

Administrative penalties may be levied on tax returns that are submitted after the closing date. The amount of the penalties varies depending on the amount of taxable income. These penalties increase by the same amount on a monthly basis so it is crucial to ensure that the closing dates are adhered to.

8.4 Assessment

The amount of a foreigner's tax liability will depend on his or her total earnings (plus any other income) received or accrued during the year, on all the deductions permitted and on any net capital gain made during the year of assessment.

The assessment a foreigner receives will highlight five important factors:

- The taxable income for the year of assessment
- The total liability for the year
- The employees' tax (PAYE) that was deducted from income during the year
- The amount of tax due by the foreigner (if it still needs to be paid to SARS) or due to the foreigner (if a refund will be received)
- The date by which payment must be made to prevent interest on late payments of income tax

An assessment will indicate the due date by which a taxpayer must pay the outstanding amount if it reflects that an amount of tax is due. Failure to settle the account on or before the "second date" stipulated on the assessment will result in interest being charged for each month the amount remains outstanding.

SARS will refund the amount of tax due through an electronic transfer of funds to a South African bank account if the assessment reflects that such a refund of tax is due to the foreigner. For security reasons no cheques will be issued. The inclusion of correct banking details on the tax return is therefore very important.

A foreigner may lodge an objection against an assessment within the stipulated time period if he or she disagrees with the assessment received. Further detail will be provided on the assessment.

8.5 Refunds in respect of tax equalised employees

It is often the case that an employee who is on a tax equalised contract in South Africa is in a refund position. According to SARS's records, the refund will be due to the employee, irrespective of the tax equalisation agreement between the employer and employee which determines that the tax refund is due to the employer.

SARS must, under the law, pay the refund to the employee. The onus rests on the employer and employee to ensure that the refund is paid by the employee to the employer as per the employment contract.

8.6 Considerations for the employee

The considerations set out below are merely guidelines and do not constitute an exhaustive list. The specific facts and circumstances must in each instance be considered, and may affect the issues relevant to a specific employee's assignment.

8.6.1 Before arrival in South Africa

A foreigner who accepts an assignment to South Africa should consider the following before arrival in South Africa:

- Whether the foreigner will qualify as ordinarily resident in South Africa.
- Whether the foreigner will be required to render services outside South Africa, as income received for services rendered from a source outside South Africa is not subject to tax in South Africa.
- Whether the foreigner's assignment to South Africa will be for less than 183 days, as this will be important in assessing tax relief under a tax treaty (if applicable).

- Whether the foreigner will be entitled to bonus payments, in which case he or she should make sure he or she is aware of the performance period to which the bonus relates.
- Whether it will be necessary to open a bank account in South Africa to receive remuneration in South Africa from the employer.
- If there are any restrictions on bringing funds into South Africa.
- Ensure that he or she understands the tax implications of share events that could occur during the South African assignment, for example, the exercising of share options, which may result in a tax liability in in South Africa. There could also be South African tax implications for awards that take place during the assignment in South Africa, which are only exercised or vest after departure from South Africa.
- If he or she intends to own fixed property in South Africa, income derived from the rental of the property will be subject to tax in South Africa, as well as any taxable capital gain on the sale of such property.
- Any immigration documents required before a foreigner and his or her family may enter South Africa.
- There are very limited social security taxes in South Africa, so consideration should be given to social security taxes that could be paid in the home country for the duration of the South African assignment.

8.6.2 Before leaving South Africa

A foreigner who has worked in South Africa should consider the following before departing from South Africa:

- South African tax laws should have been complied with, meaning that all income tax returns should have been submitted and assessed, any income tax payable in South Africa should have been paid and he or she should have been issued a tax clearance certificate.
- A foreigner who has participated in a South African pension plan should discuss his or her departure with a financial and tax advisor or get the necessary guidance on the financial and tax implications.
- Rental income received on property in South Africa by a foreigner is subject to tax in South Africa and must be disclosed by submitting the relevant tax returns. A foreigner who chooses to retain the property and rent it out after leaving South Africa would be liable to pay income tax on the rental income.
- The sale by a foreigner of any immovable property situated in South Africa (or any real right in respect of immovable property) is subject to capital gains tax in South Africa.
- Determine whether relocation expenses to the home country borne by the employer on behalf of the foreigner will be taxable in South Africa.
- Determine in advance any immigration requirements that may be necessary in order to leave South Africa.
- A foreigner who may be entitled to a tax refund should make sure that the implications are properly understood before leaving to determine whether a bank account needs to remain open in South Africa.

Annexure A – Statutory rates of tax for the 2015 year of assessment

Statutory rates of tax for the 2014/15 year of assessment

| Taxable income | Rate of tax |
|---|--|
| Not exceeding 174 550 | 18 per cent of taxable income |
| Exceeding R174 550 but not exceeding R272 700 | R31 419 plus 25 per cent of amount by which taxable income exceeds R174 550 |
| Exceeding R272 700 but not exceeding R377 450 | R55 957 plus 30 per cent of amount by which taxable income exceeds R272 700 |
| Exceeding R377 450 but not exceeding R528 000 | R87 382 plus 35 per cent of amount by which taxable income exceeds R377 450 |
| Exceeding R528 000 but not exceeding R673 100 | R140 074 plus 38 per cent of amount by which taxable income exceeds R528 000 |
| Exceeding R673 100 | R195 212 plus 40 per cent of amount by which taxable income exceeds R673 100 |

| | | |
|----------------|--|---------|
| Rebates | Primary rebate | R12 726 |
| | Secondary rebate (Additional for persons of 65 years or older) | R7 110 |
| | Third rebate (Additional for persons of 75 years or older) | R2 367 |

| | | |
|-----------------------|---|----------|
| Tax thresholds | The tax thresholds at which liability for income tax commences, are – | |
| | • persons below 65 years | R70 700 |
| | • persons 65 years but not yet 75 | R110 200 |
| | • persons 75 years or older | R123 350 |

Table of amount of administrative non-compliance penalties

| Assessed loss or taxable income for preceding year | Penalty |
|---|----------------|
| Assessed loss | R250 |
| R0 - R250 000 | R250 |
| R250 001 - R500 000 | R500 |
| R500 001 - R1 000 000 | R1 000 |
| R1 000 001 - R5 000 000 | R2 000 |
| R5 000 000 - R10 000 000 | R4 000 |
| R10 000 000 - R50 000 000 | R8 000 |
| Above R50 000 000 | R16 000 |

Annexure B – Travelling expenses

One of the following methods may be used to claim travelling expenses:

| | | |
|---|---|--|
| (a) actual official business kilometres | x | $\frac{\text{total actual expenses}}{\text{total kilometres}}$ |
| or | | |
| (b) actual official business kilometres | x | deemed rate per kilometre |

The following limitations will apply when the first method is used (that is, the claim against the allowance is based on accurate data furnished):

- (a) If the motor vehicle is being leased, the total lease payments for the year of assessment may not exceed the fixed costs for that vehicle as set out in the table below.
- (b) (1) The wear-and-tear of the motor vehicle must be determined over a period of seven years from the date the vehicle was acquired and the cost must be limited to R560 000; and
- (2) The finance charges for the debt incurred to finance the purchase of the vehicle must be limited to an amount which would have been incurred had the original debt been R560 000.

Note: The distance travelled between a place of residence and a place of employment is regarded as private travel and therefore cannot be submitted as part of an official business travel claim.

Scale of rates per kilometre applicable for the 2014/15 year of assessment

| Where the value of the vehicle – | Fixed cost R pa | Fuel cost c/km | Maintenance cost c/km |
|---|--------------------|-------------------|--------------------------|
| does not exceed R80 000 | 25 946 | 92.3 | 27.6 |
| exceeds R80 000 but does not exceed R160 000 | 46 203 | 103.1 | 34.6 |
| exceeds R160 000 but does not exceed R240 000 | 66 530 | 112.0 | 38.1 |
| exceeds R240 000 but does not exceed R320 000 | 84 351 | 120.5 | 41.6 |
| exceeds R320 000 but does not exceed R400 000 | 102 233 | 128.9 | 48.8 |
| exceeds R400 000 but does not exceed R480 000 | 120 997 | 147.9 | 57.3 |
| exceeds R480 000 but does not exceed R560 000 | 139 760 | 152.9 | 71.3 |
| exceeds R560 000 | 139 760 | 152.9 | 71.3 |

Note: As the above scale of rates per kilometre is based on the **value** of the vehicle, the taxpayer must determine the value of his or her vehicle in accordance with one of the following methods:

“**Value**” in relation to a motor vehicle means –

- where the vehicle was acquired by a taxpayer under a *bona fide* agreement of sale or exchange, the original cost of the vehicle to him or her, including any value-added tax paid but excluding any finance charges or interest payable by him or her for the acquisition of the vehicle; or
- where the vehicle is held under a financial lease by a taxpayer (that is, for a period of at least 12 months and the taxpayer accepts the full risk of destruction/loss and liability for insurance and maintenance of the vehicle), or was held by a taxpayer under a lease and he or she acquired ownership on termination of the lease, the cash value of the vehicle as determined for value-added tax purposes, plus any value-added tax paid by the lessor; or
- in any other case, the market value of the motor vehicle at the time the taxpayer, as the recipient of an allowance, first obtained the vehicle or the right of use of the vehicle, plus any value-added tax payable on that value.

Note: Where the distance travelled for business purposes does not exceed 8 000 kilometres per annum, a foreigner may deduct a rate of 330 cents per kilometre regardless of the value of the vehicle and instead of using the table above. This alternative is only available if the foreigner does not receive any other reimbursement or allowance for the vehicle.

See Interpretation Note No. 14 (Issue 3) for additional detailed guidance on the calculation of the deemed rate per kilometre (including examples), if required.