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AN INTERNATIONAL TAXATION COMPARISON OF SOUTH AFRICAN EMPLOYEES WORKING ABROAD

by

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ABSTRACT

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Human migration and the search for something better has been part of humankind's existence for centuries. In today's world, migration is triggered by a variety of factors. One such factor is the influence of tax on the income of skilled employees.

Although prior research has been performed to determine the influence of tax on employee migration, this research made use of complex formulae and did not focus on a South African point of view.

This study aims to determine whether tax plays a role when a South African skilled worker decides to migrate to the United Kingdom (UK) or Australia with the intention of working there. The study compares the different income tax consequences of a South African resident working in South Africa *versus* the same South African resident working abroad. The comparison is done by analysing the income tax acts of the three different countries.

The study attempts to establish the difference in tax consequences for a South African skilled employee migrating to the United Kingdom or Australia on a temporary *versus* a permanent basis. Examples are used to illustrate the different effects.

Together with known statistics and the results of the illustrative examples, the study concluded that individuals in the United Kingdom and Australia, in most cases, pay less tax compared to individuals in South Africa.

Keywords:

Income Tax Act

Permanent employee migration

Skilled employees

South African resident

Temporary employee migration

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OPSOMMING

’N INTERNASIONALE BELASTINGVERGELYKING VAN SUID-AFRIKAANSE WERKNEMERS WERKSAAM IN DIE BUITELAND

deur

DANETTE REYNEKE

STUDIELEIER: PROF M CRONJE

DEPARTEMENT: BELASTING

GRAAD: MAGISTER COMMERCII

Die migrasie van mense en die soeke na iets beters is reeds eeue lank deel van menswees. In die hedendaagse wêreld word menslike migrasie deur ’n aantal faktore aangespoor. Een van hierdie faktore kan moontlik die impak van belasting op geskoolde werknemers wees.

Alhoewel daar voorheen studies gedoen is oor die impak van belasting op werknemermigrasie, is sodanige studies deur middel van komplekse formules uitgevoer en het die fokuspunt nooit Suid-Afrikaanse werknemers ingesluit nie.

Hierdie studie beoog om te bepaal of inkomstebelasting ’n rol speel in die besluitnemingsproses van ’n Suid-Afrikaanse werknemer wat verhuis na die Verenigde Koningryk of Australië. Om die doelwit te behaal sal die studie die verskillende belastinggevolge vergelyk van ’n Suid-Afrikaanse inwoner wat in Suid-Afrika werksaam is *versus* dieselfde Suid-Afrikaanse inwoner werksaam in die buiteland. Die vergelyking word gedoen deur die verskillende inkomstebelastingwette van die drie lande te ontleed.

Die studie gaan verder deur die verskillende belastingberekeninge vir ’n Suid-Afrikaanse inwoner wat na die Verenigde Koningryk of Australië verhuis het op ’n tydelike basis *versus* ’n permanente basis uit te voer. Voorbeelde word gebruik om die verskillende gevolge te illustreer.

Die resultate van die voorbeelde tesame met beskikbare statistiek, lei tot die studie se gevolgtrekking dat die Verenigde Koningryk en Australië se belastinglas vir individue in die meerderheid gevalle minder is as die belastinglas van individue in Suid-Afrika.

Sleutelwoorde:
Geskoolde werknemers
Inkomstebelastingwet
Permanente werknemermigrasie
Suid-Afrikaanse inwoner
Tydelike werknemermigrasie

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CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

South Africans frequently accept international employment offers. According to Clarke and Salt (2003:569) the number of employment permits issued to South Africans by the United Kingdom (UK) government increased by 1109% from 1995 to 2002 alone. This highlights the movement of employees, especially skilled employees, across international borders. Numerous factors need to be taken into account during the decision-making process about whether or not a cross-border employment opportunity should be pursued. One such factor includes getting to know the tax consequences on earnings and tax benefits in the country to which the individual chooses to migrate. How much weight do tax consequences and benefits carry in the decision-making process? Although international studies have been done, there is still uncertainty about the impact of tax on the migration of South African employees.

The Organisation for Economic Co-operation and Development (OECD) (Egger & Radulescu, 2009:1365) argue that taxation can be an important tool used by a government to attract highly skilled employees to a specific country. Egger and Radulescu (2009:1365) also suggest that the tax liability payable by highly skilled workers with regard to the income differ surprisingly much from country to country. Liebig and Sousa-Poza (2004:140) identify that countries have introduced tax incentives to better their chances of attracting the highly skilled workers they require. Since 2000 approximately 34 000 taxpayers left France permanently each year to settle in countries with lower income taxes, such as the United Kingdom (Simula & Trannoy, 2009:163).

It is therefore important to gain an understanding of how many migrations out of South Africa are aided by positive tax consequences in the countries to which workers migrate.

Little is known about the cost of cutting down taxes to a competitive level *versus* the cost of losing skilled employees to other countries and replacing them.

This study focuses on different features of the income tax laws of the UK and Australia compared to those of South Africa to enable an analysis of the differences in tax consequences and benefits for a resident choosing to migrate from South Africa. The analysis will attempt to shed some light on the competitiveness of the South African Income Tax Act 58 of 1962 and if tax can therefore influence the migration of skilled employees.

1.2 PROBLEM STATEMENT

To date the studies and comparisons done on the influence of tax on cross-border migration of skilled employees mostly concentrated on first world countries such as the United States of America (USA), Sweden and Germany. These studies also relied on complex formulae. Among these studies are those done by Egger and Radulescu (2009), Liebig and Sousa-Poza (2004) and Simula and Trannoy (2009). Studies done on South African skilled employee migration are limited and do not necessarily focus on the tax aspect of these migrations. These studies also fail to pinpoint specific sections in the income tax acts of the different countries being compared that provide a greater tax incentive to skilled employee than South Africa.

This study focuses on the differences in the tax laws of South Africa, the UK and Australia to identify tax consequences or benefits (if any) where South African residents benefit from migrating to the UK or Australia. It differs from previous studies which used formulas to calculate the impact of tax on migration and the ideal tax model for a country. The practical contributions of this study will attempt to assist South African employers to understand how tax implications in other countries can influence skilled employee migration, resulting in an understanding of why professionals seek employment opportunities abroad.

1.3 PURPOSE STATEMENT

The main purpose of this study is to evaluate the influence of tax on the cross-border migration of skilled South African workers to the UK and Australia. The study seeks to determine whether differences in tax laws of these countries can act as an incentive for employee migration. This is done by comparing sections of the income tax laws of the different countries and analysing available statistics.

1.4 RESEARCH OBJECTIVES

The study will be guided by the following specific research objectives, namely:

- to analyse and compare sections in the income tax acts of South Africa, the UK and Australia to determine the income tax benefits South African residents working abroad receive;
- to analyse statistics relating to employee migration to the UK and Australia in order to establish whether tax plays a role in future employee migration; and
- to determine some of the benefits a South African resident will enjoy in the UK and Australia if the migration is temporary *versus* it being permanent.

1.5 DELIMITATIONS

The study has several delimitations. Firstly, the study only focuses on the migration of skilled employees to the UK and Australia. Other countries are excluded from the proposed study for the purpose of simplification.

Secondly, the study is limited to the influence of income tax on the migration of employees. No other tax will be taken into account such as capital gains tax, donations tax, VAT and excise duty to name a few.

Thirdly, other factors such as better working and living conditions, higher gross income and experience that may also influence an individual's decision to migrate abroad will not be taken into consideration for this study.

Lastly, the study is only concerned with the influence of income tax on the migration of skilled employees. Unskilled workers are therefore not being taken into account.

1.6 ASSUMPTIONS

The study will be done based on the following assumptions:

- the taxable income used in the comparisons is assumed to be simplistic, earned from only one source country and that the individual, for the sake of the comparison, did not earn any other income from any other source;
- when one aspect of the Income Tax Act is evaluated, for example the marginal tax rates, the study will assume that no other aspects or *section*s will have a material impact on the comparison;
- the study will further assume that the Double Tax Agreements between the two countries being evaluated will not have an influence on the tax calculations done for the purpose of the comparison unless stated otherwise;
- if an individual migrates abroad, the individual will earn the exact same amount of income in terms of monetary value in the foreign country as was the case in the resident country;
- a fixed exchange rate is used as on 2011-01-01 to convert amounts to the same currency for the purpose of comparison. The variations in exchange rates for the complete 2010/2011 tax year will not have an effect on the translation of these accounts as it assumes the exchange rate to remain fixed for that year; and
- the study will assume that the difference in tax periods for South Africa, the UK and Australia will not have a substantial impact on the comparison done in chapter 5 of the income tax for an individual working in South Africa *versus* an individual working in the UK or Australia for any given year.

1.7 DEFINITION OF KEY TERMS

The study contains a number of key terms and abbreviations which are defined as follows:

Double tax agreement: An agreement entered into between two countries where both countries make a compromise as to their right to tax a taxpayer resident in one country and earning in another (Olivier & Honiball, 2008:1).

Emigration: The act of leaving one's own country to settle permanently in another (Oxford Dictionary).

Employee migration: The cross-border movement for purposes of employment in a foreign country (International Organization for Migration website, 2011).

Income tax: The tax levied on the net of personal income reduced by acceptable expenses and allowances as determined in terms of the Income Tax Act 58 of 1962.

Monetary value: "The property of having material worth, often indicated by the amount of money something would bring if sold." (Dictionary.com)

Taxable income: The remaining amount of income after all allowable deductions and allowances has been deducted including any amount that should be included in a person's taxable income as determined by the Income Tax Act 58 of 1962.

Refer to the following table for an explanation of the applicable abbreviations used:

Table 1: Abbreviations

Abbreviation	Meaning
AUS	Australia
AUD	Australian Dollar
DTA	Double Tax Agreement
HMRC	Her Majesty's Revenue and Customs
RSA	Republic of South Africa
SARS	South African Revenue Services
The Act	Income Tax Act 58 of 1962
UK	United Kingdom
USA	United States of America

1.8 RESEARCH DESIGN AND METHODS

A qualitative non-empirical approach was followed based on the review of available literature on the chosen subject. The study was researched through the reviewing of available and relevant literature collected and the application thereof to the study topic to enable supported conclusions on the impact of tax on the migration of South African employees. No new data was collected and no data was re-analysed to change form. This research method limits the information that can be used for the study as available data on this subject is not easily found. On the positive side this method ensures that readers are familiar with the information although the information is viewed from another point of view.

1.9 OVERVIEW OF CHAPTERS

Chapter 2 focuses on South Africa and the South African Income Tax Act 58 of 1962 (referred to as the Act). Firstly it focuses on the statistics available for South Africa in terms of migration and the possible reasons therefore. The Act will be discussed in chapter 2.3, focusing on how a South African resident is taxed on personal income. This includes an example to illustrate basic income tax calculation. In chapter 2.4 the study focuses on the definitions of a South African resident and non-resident with the aim of determining the difference in tax consequences for both.

In chapter 3 the focus shifts to the UK and the UK Income Tax Act of 2007. In chapter 3.2 the study looks at available statistics of South Africans migrating to the UK. The study

continues in chapter 3.3 by looking at the UK Income Tax Act to determine what constitutes a UK resident and how they are taxed. This aims to assist in the comparison done at a later stage were a South African resident might choose to migrate to the UK on a permanent basis. An example is included to illustrate the calculation. Chapter 3.4 focuses on the difference between a UK resident and UK non-resident in terms of how they are taxed in the UK. The chapter also briefly focuses on the DTA between the UK and South Africa and what it entails for an individual earning income in both countries.

Chapter 4 focuses on Australia and the Australian Income Tax Assessment Act of 1997. Chapter 4.2 focuses on available statistics of South Africans moving to Australia. Chapter 4.3 determines how an Australian resident is taxed based on the Australian Income Tax Assessment Act of 1997 and also includes an example to illustrate the calculation. In chapter 4.4 the difference between an Australian resident and an Australian non-resident in terms of the Australian Income Tax Assessment Act of 1997 is examined. This assists further in determining the difference between how an Australian resident is taxed compared to an Australian non-resident. The chapter briefly focuses on the DTA between Australia and South Africa and what it entails for an individual earning income in both of these countries.

In Chapter 5 Chapters 2, 3 and 4 above are compared. The comparison is done by using the South African tax consequences as per Chapter 2 as bases and comparing it in turn with the tax consequences of the UK and thereafter the tax consequences of Australia. The comparison focuses on whether or not a South African resident will be taxed more in the UK or Australia if the resident were present in that country on a temporary or permanent basis. The comparison is achieved by way of examples to illustrate the differences in tax consequences.

Chapter 5 also goes on to reach the conclusion of the study and to make future recommendations.

1.10 TRANSLATED MONETARY VALUES

The study makes continuous use of the Australian Dollar and the UK Pound amounts in examples to illustrate the different tax aspects of these countries. To enable a comparison at a later stage the data expressed in monetary values will also need to be comparable. This is achieved by converting all monetary values for the different countries to the same currency. The South African Rand will be used as the currency for this comparison.

For simplification purposes the following table was drafted to summarise the foreign exchange translations to Rand by using the exchange rates as depicted on 2011-01-01 (XE.com, 2011). The exchange rates on this date were R10.35: £1 for the Pound and R6.78: AUD1 for the Australian Dollar.

Table 2: Summary of translated monetary values

Taxable income in Rand (A)	Equivalent taxable income in Pound (A / 10.35)	Equivalent taxable income in AUD (A / 6.78)
6 596,78	637,37	972,98
8 898,00	859,71	1 312,39
23 898,00	2 308,99	3 524,78
24 408,00	2 358,26	3 600,00
26 596,75	2 569,73	3 922,82
40 680,00	3 930,43	6 000,00
46 269,00	4 470,43	6 824,34
46 596,75	4 502,10	6 872,68
47 276,75	4 567,80	6 972,97
47 289,00	4 568,99	6 974,78
58 986,00	5 699,13	8 700,00
66 596,77	6 434,47	9 822,53
67 016,25	6 475,00	9 884,40
74 396,75	7 188,09	10 972,97
76 269,03	7 368,99	11 249,12
87 969,00	8 499,42	12 974,78
98 221,50	9 490,00	14 486,95
99 774,00	9 640,00	14 715,93
100 000,00	9 661,84	14 749,26
106 269,00	10 267,54	15 673,89
108 309,00	10 464,64	15 974,78

Taxable income in Rand (A)	Equivalent taxable income in Pound (A / 10.35)	Equivalent taxable income in AUD (A / 6.78)
139 962,00	13 522,90	20 643,36
140 000,00	13 526,57	20 648,97
173 193,50	16 733,67	25 544,76
175 913,50	16 996,47	25 945,94
180 736,00	17 462,42	26 657,23
200 000,00	19 323,67	29 498,53
203 400,00	19 652,17	30 000,00
213 193,50	20 598,41	31 444,47
250 860,00	24 237,68	37 000,00
257 273,50	24 857,34	37 945,94
300 000,00	28 985,51	44 247,79
303 400,00	29 314,01	44 749,26
339 000,00	32 753,62	50 000,00
387 090,00	37 400,00	57 092,92
400 000,00	38 647,34	58 997,05
406 800,00	39 304,35	60 000,00
439 000,00	42 415,46	64 749,26
445 359,00	43 029,86	65 687,17
500 000,00	48 309,18	73 746,31
506 800,00	48 966,18	74 749,26
528 473,50	51 060,24	77 945,94
600 000,00	57 971,01	88 495,58
610 200,00	58 956,52	90 000,00
710 200,00	68 618,36	104 749,26
720 669,00	69 629,86	106 293,36
966 491,88	93 380,86	142 550,42
1 288 200,00	124 463,76	190 000,00
1 388 200,00	134 125,60	204 749,26
2 000 000,00	193 236,71	294 985,25

From table 2 it can easily be determined that if an individual earned R100 000 during a tax year in South Africa, the equivalent thereof will be either £9 661,84 or AUD14 749,26.

CHAPTER 2

PERSONAL INCOME TAX IN SOUTH AFRICA

2.1 INTRODUCTION

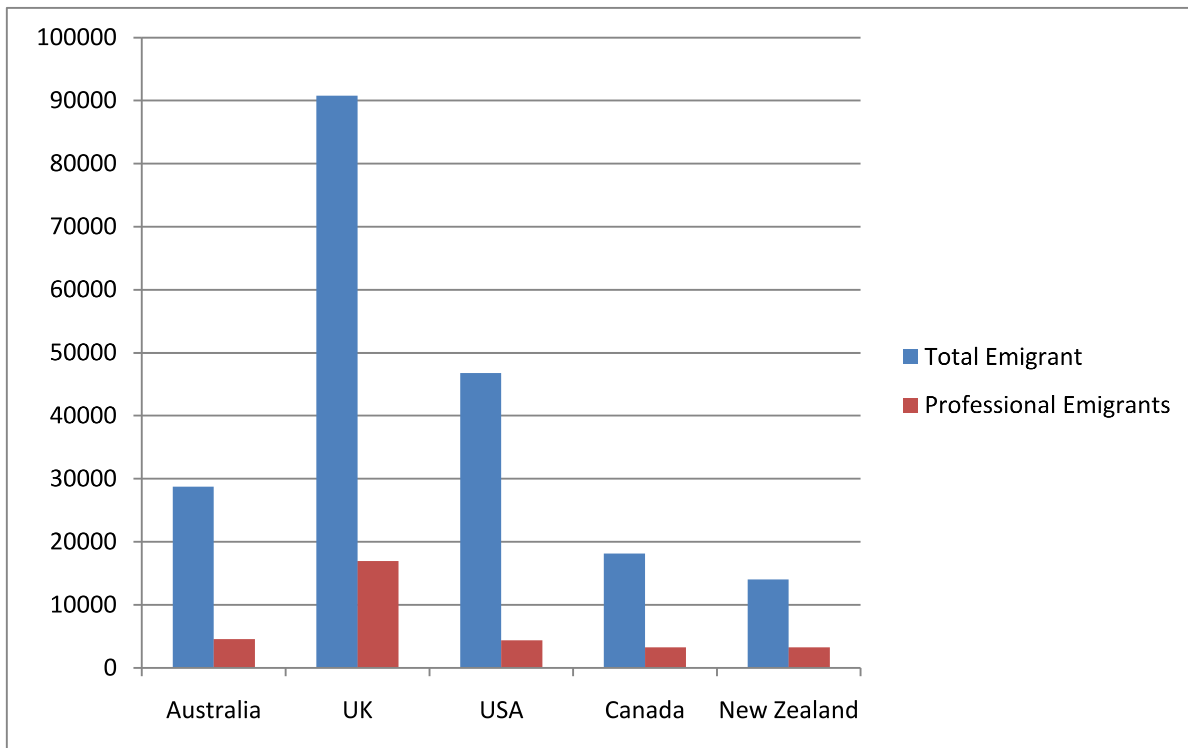
Chapter 2 focuses on South Africa and the South African Income Tax Act and what it entails in terms of income tax on personal income. The study interprets statistical data available for South Africa in terms of South Africans migrating abroad and the possible reasons therefore.

2.2 STATISTICAL DATA

Recent research done by the South African government in connection with the emigration of South Africans to other countries such as the UK and Australia are limited. Polzer (2010:3) stated that since 1994 no accurate estimates exist for residents who have emigrated from South Africa with the closest and most recent estimation being that of the Centre of Development and Enterprise done in 1994. They estimated that 520 000 South Africans emigrated between 1989 and 2003 (Polzer, 2010:3). In 2003 alone the total number of self-declared emigrants leaving South Africa tallied to 16 165 (Statistics South Africa, 2003:2).

Crush and Williams (2005:22) reported during the United Nations Expert Group Meeting on International Migration and Development that the World Bank estimated the total number of South African to emigrate during the period 1998 to 2003 at 521 571. According to them the World Bank estimate differed largely from the official data which showed that only 130 965 South Africans migrated during that period. Crush and Williams (2005:22) went further and broke the estimated migration down for the top five countries South Africans migrated to during the period 1987 to 1997. They showed the total number of emigrates per country *versus* the professional emigrant (skilled workforce) per country. The data compiled by them is summarised in figure 1 below:

Figure 1: Emigration from South Africa between 1987 and 1997



Source: Crush and Williams (2005:22)

As seen in figure 1 above, the United States of America, Australia and the UK have been the top three countries of choice for professional South Africans to migrate to.

Piaser (2003:1) stated that countries will see an increase in their unskilled worker population while a negative migration effect will be seen in the skilled worker population. According to Piaser (2003:1) this negative migration effect will be due to an individual's desire to escape high tax rates. Piaser (2003:1) also describes the income tax equilibrium where income tax is taken from the rich to distribute to the poor. When a country loses highly skilled employees, it throws the equilibrium out of balance as funds available for distribution will decrease (Piaser, 2003:1). Accordingly every government is enticed to reduce tax rates on high salaries to try and attract skilled employees which in return will increase tax revenue (Piaser, 2003:1).

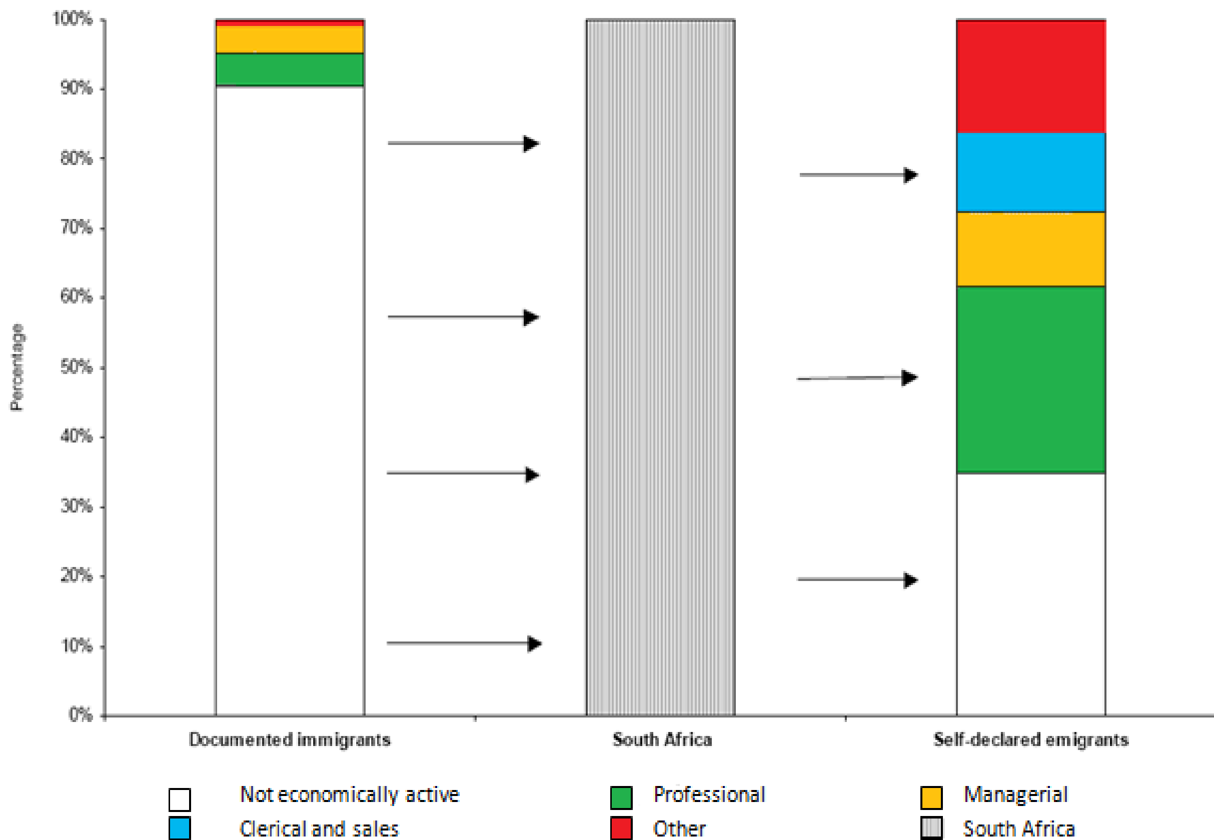
According to Dzvimbo (2003:14), the Netherlands has implemented tax incentives since 1995 to attract highly skilled individuals by offering them a 30% tax exemption allowance.

The allowance can be obtained if the skilled emigrant fulfils all the requirements of the vacancy which could not be filled by a resident of the Netherlands.

During a study done by Bezuidenhout, Joubert, Hiemstra and Struwig (2009:213), medical doctors emigrating from South Africa were given a questionnaire in which they had to indicate the main reasons for them leaving South Africa. Of the respondents, 51,7% indicated that the South African income tax system was a reason for them leaving.

Figure 2 below first shows all documented immigrants to South Africa for 2003 by Statistics South Africa, sorted by their occupation. Subsequently it shows all the self-declared emigrants migrating out of South Africa also categorised by occupation.

Figure 2: Percentage distribution of documented immigrants to South Africa and self-declared emigrants from South Africa by occupational category, 2003



Source: Statistics South Africa (2003:11)

Based on figure 2 above it can be noticed that almost 50% of people leaving South Africa are skilled employees. These include professionals, managerial staff, clerks and sales staff. This leads to a loss in skilled employees in South Africa as the immigrants entering South Africa consist of only about 10% skilled employees as shown in figure 2 above.

Combine these known theories and statistics with modern technology and the number of employment opportunities in countries worldwide and it can safely be assumed that a vast number of skilled South Africans still migrate across borders today. The question arises whether the influence of tax plays a role in these figures?

The following chapter concentrates on what the Act states and how South Africans are taxed on their personal income in South Africa in terms of the Act's requirements.

2.3 TAX ASPECTS

The study first summarises the content of the Act relating to the tax on the personal income of South Africans and thereafter explains the consequences by way of an example. The overall aim of this chapter is to establish a basic tax calculation to be used as comparison to other countries at a later stage of the study.

Income tax acts differ vastly from country to country, but they do share basic concepts and other similarities do exist, enabling a comparison for the benefit of the study at a later stage. Although these income tax acts consist of a variety of elements such as donations tax and capital gains tax, this study focuses mainly on personal income tax payable by individuals. This helps to pinpoint the influence income tax has on the migration of skilled employees.

According to section 1 of the Act the tax year for a South African individual extends from the first of March to the end of February in the subsequent year. For the purpose of the study and the included example, the 2010/2011 tax year is used. The tax year for a South African individual will therefore be from 01 March 2010 until 28 February 2011.

The general formula for calculating an individual's income tax liability is taking the taxable income and multiplying it by an applicable tax rate. Taxable income is arrived at by adding up all gross income for an individual as described in section 1 of the Act and then deducting all the non-taxable income and general deductions. Non-taxable income is covered in section 10 of the Act while the most basic general deductions are covered in section 11 of the Act. For the purpose of simplification, the regulations of these sections are not included in the study and therefore all examples are based on taxable income with the assumption that all calculations are correct.

In terms of section 6 of the Act, taxpayers are eligible for a tax rebate every tax year. This rebate is deducted from the income tax calculated when determining the actual income tax payable. This rebate is revised annually and consequently differs for tax year to tax year. According to section 6 individuals under the age of 65 are entitled to a so-called primary rebate of R10 260 for the 2010/2011 tax year. Individuals above the age of 65 are entitled to the same primary rebate and also to an additional secondary rebate. The secondary rebate for the 2010/2011 tax year amounts to R5 675.

Individuals are taxed based on various income tax brackets depending on their taxable income calculated on the fact that different tax rates apply according to section 5(2) of the Act. Refer to table 3 below for the South African income tax brackets and corresponding tax rates.

Table 3: South African income tax rates for the 2010/2011 tax year

Taxable income	Tax rate
R0 – R140 000	18%
R140 001 – R 221 000	R25 200 + (25% of amount above R140 000)
R221 001 – R305 000	R45 450 + (30% of amount above R221 000)
R305 001 – R431 000	R70 650 + (35% of amount above R305 000)
R431 001 – R552 000	R114 750 + (38% of amount above R431 000)
R552 001 and above	R160 730 + (40% of amount above R552 000)

Source: South African Revenue Services (2010:6)

The tax brackets depicted in table 3 above can best be explained by way of the following example.

Example 1

If the South African income tax brackets depicted in the table above were to be used, an individual with a annual taxable income of R400 000 would fall in the fourth bracket for the 2010/2011 tax year (R305 001 – R431 000). For the example it is assumed that the individual is below the age of 65 as that is the case in the majority of the South Africa's work force, in which instance the individual will be eligible only for the primary rebate of R10 260 (section 6 of the Act). The income tax payable for the individual can then be calculated as follows:

R70 650 + [(R400 000 – R305 000) x 35%] – R10 260 = R93 640.

Based on the above formula, the individual will have a tax liability of R93 640 in South Africa for the 2010/2011 tax year.

It is important to keep in mind that South Africa also has a minimum taxable income threshold were individual earning below this threshold will not be liable for income tax. For the 2010/2011 tax year this threshold is R57 000 for individuals below the age of 65. Individuals who are 65 years of age and above will not be liable for income tax if they earn less than R88 528.

In the following chapter the study focuses on the difference between being a South African resident and being a non-resident. The definitions will first be discussed and thereafter the differences will be illustrated by using examples.

2.4 TEMPORARY *VERSUS* PERMANENT RESIDENCE

The term "resident" is defined in section 1 of the Act. Accordingly a natural person is a resident if he or she is:

- ordinarily resident in South Africa; or
- not ordinarily resident in South Africa but passed the physical presence test.

Ordinarily resident is not defined in the Act. Court cases are, however, available to try and define the concept and make it easier for an individual to determine whether he or she is a South African resident by being ordinarily resident in the country. The facts of each case

should be taken into account when determining if an individual is ordinarily resident in South Africa or not.

When the applicable court cases and normal meaning of the term "ordinarily resident" are taken into account, it can be summarised into the following indicators to consider when determining where an individual is ordinarily resident:

- the place where the individual stays with a degree of permanency in his or her normal lifestyle (Stiglingh, Koekemoer and Wilcock, 2011:54);
- the country where the individual owns a home, for example a house or an apartment (Stiglingh *et al.*, 2011:54);
- the country in which the individual has business responsibilities (Stiglingh *et al.*, 2009:54);
- the country where a person returns to naturally after his or her travels (*Cohen v CIR*, 1946 AD 174 (13 SATC 362)); and
- the degree of continuity with which an individual stays in a country (*Levene v IRC*, 1928 AC 217 (13 TC 486)).

Mahomed (2010:43) states that physically domiciled alone is not enough to establish residency. He goes further to summarise the following factors that could influence the court's decisions on whether or not an individual is a resident in a country:

- the most fixed and settled place of residence;
- the individual's present habits and way of life;
- the individual's place of business and personal interest;
- the individual's status in the country, for example if he or she is an immigrant with a work permit and the conditions of such work permit;
- location of personal belongings;
- the individual's nationality;
- family and social relations such as where the children go to school;
- political, cultural or other activities;
- the individual's application for permanent residence in that country;
- the time frame the individual spends abroad as well as the purpose and nature of the visits; and
- the frequency of the individual's visits and the reasons for these visits.

These factors should be considered separately and in aggregate for each individual and each case. When an individual is not ordinarily resident in South Africa based on the above or the factors are not clear, the individual can still be deemed a resident if the physical presence test is passed. The physical presence test is described in section 1(a)(ii) of the Act and is used when an individual is only present in South Africa for part of a tax year. The physical presence test states that the individual is deemed to be a South African resident if that individual is present in South Africa for:

- 91 days in the current tax year;
- 91 days in each of the previous five tax years; and
- 915 days in total for the previous five tax years.

For this test, a part of a day will be considered as a full day, except when the individual is travelling through the country for the day to a final destination outside of South Africa. If an individual classified as a South African resident by means of the physical presence test, leaves the country again for a continuous period of 330 days, the individual will then cease to be a South African resident. If the same individual were to return to South Africa in the following tax year for a period of more than 91 days, the individual may then again be classified as a resident of South Africa. A non-resident will not be an ordinarily resident in South Africa and that does not satisfy the physical presence test.

Now that there can clearly be distinguished between a South African resident and non-resident, it is important to know how each is taxed in South Africa. A resident is taxed on worldwide income received or accrued to the resident during the applicable tax year. This differs from a non-resident as they are only taxed on income received by them or accrued to them from a South African source, in other words non-residents are taxed on a source base.

The difference can best be explained by the following two examples were example 2 deals with a South African resident while example 3 involves a non-resident earning income in South Africa.

Example 2

A South African resident, assumed to be younger than 65 years of age, earned taxable income of R400 000 from an employer in South Africa as well as R100 000 from an overseas company for a service rendered by the resident in that country in the 2010/2011 tax year. The resident will be liable for income tax in South Africa on both amounts as a South African resident is taxed on worldwide income. The South African resident will therefore have a taxable income of R500 000 for the tax year, assuming that section 10 and 11 deductions and allowances have already been taken into account. The income tax for the resident can therefore be calculated as follows using table 3 above:

R114 750 + [(R500 000 – R431 000) x 38%] – R10 260 = R130 710.

Based on the calculation above, the resident will be liable for income tax of R130 710 in South Africa for the 2010/2011 tax year.

Example 3

A South Africa non-resident earned R400 000 from an overseas employer as well as an amount of R100 000 from a South African company for services rendered by the non-resident in South Africa. The non-resident will be liable for income tax in South Africa on only the R100 000 because it is the only amount from a South African source and non-residents are taxed on the source base. The R400 000 will be taxed in the overseas country. The South African income tax liability of the non-resident will be calculated as follows using table 3 above:

(R100 000 x 18%) – R10 260 = R7 740

Based on the above formula the non-resident will be liable to pay the South African Revenue Services (SARS), income tax of R7 740 for the 2010/2011 tax year.

Section 6*quat* provides that a South African resident, earning income from a source outside South Africa, can claim a rebate for foreign taxes paid. In other words, if a South African resident paid tax in another country on income from that country, the individual will be allowed to deduct the amount of foreign tax paid from the individual’s tax payable in South Africa. The rebate will only be allowable if the individual included the foreign income in his or her South African income tax calculation. The individual will then calculate the income tax liability as normal, including the foreign income, and the section 6*quat* rebate

will be deducted from the income tax liability. The individual cannot simply deduct the total amount of foreign tax paid as the rebate has the following limitations:

- the rebate will not be allowed against exempt income such as the foreign dividend exemption of R3 700 (2011 tax year) allowed in terms of section 10(1)(i)(xv) of the Act;
- the rebate may not cause an assessed income tax loss, in which case the rebate can be carried forward to the following tax year;
- according to section 6*quat*(1B)(a), expenses allowed for deduction to arrive at the taxable income must be allocated between the local and foreign taxable income; and
- the rebate can only be claimed if the individual can proof to the SARS that the foreign tax was indeed paid and that it is in no way refundable.

The rebate in terms of section 6*quat* is calculated as follows:

$$\frac{\text{Taxable income from foreign sources}}{\text{Taxable income from all sources}} \times \text{Normal tax liability calculated}$$

The rebate calculated by the formula, limited to the actual foreign tax paid, will be deducted from the income tax liability. Example 4 below will attempt to clarify the above-mentioned principles.

Example 4

A South African resident earns taxable income of AUD50 000 from business in Australia and R100 000 from employment in South Africa. If we were to use the exchange rate of R6.78: AUD1 as depicted on 2011-01-01 (XE.com, 2011), the total taxable income of the resident in Rand will be R439 000 (R100 000 + [AUD50 000 x 6.78]) (table 4; column C). This will place the resident in the fifth tax bracket of table 3. The individual's normal South African income tax liability for the 2010/2011 tax year will then be calculated as follows: R114 750 + [(R439 000 – R431 000) x 0,38] – R10 260 = R107 530 (table 4; column D).

Based on the above formula, a South African resident taxable in South Africa on his worldwide income, will be liable for income tax of R 107 530 in South Africa at this stage. The picture then changes if the individual already paid income tax in Australia on the taxable income of AUD50 000 earned overseas because the individual will then be eligible

for the rebate in terms of section 6*quat*. Assuming that the resident paid income tax of AUD8 550 in Australia on the AUD50 000 earned, the individual's rebate in terms of 6*quat* rebate can now be calculated using the following elements:

- taxable income from foreign sources of R339 000 (AUD50 000 x 6,78) (table 4; column B);
- taxable income from all sources of R439 000 (R100 000 + R339 000) (table 4; column C);
- normal tax liability of R107 530 as calculated above; and
- foreign tax liability of R57 969 (AUD8 550 x 6,78) (table 4; column E)

The rebate is calculated as follows:
(R339 000 / R439 000) x R107 530 = R83 035,69 limited to the actual foreign tax paid of R57 969.

This rebate will then be deducted for the resident's normal income tax liability calculated in South Africa of R107 530 to arrive at the actual income tax payable by the resident for the 2010/2011 tax year. To summarise example 4, the resident in South Africa will pay income tax in South Africa of R49 561 (R107 530 – R57 969) (table 4; column G) if foreign income tax was already paid in Australia on the AUD50 000 earned there.

Following the same process as in example 4 above, the calculation was repeated for hypothetical taxable incomes from a South African and foreign source. The reason for this is to elaborate on the impact of the rebate in terms of section 6*quat* available for South African residents *versus* when the rebate is not available. Note that the hypothetical taxable income (table 4; columns A, B and C) is not calculated in these examples but given to simplify the calculation of the rebate in terms of section 6*quat*. Column D is calculated by using table 3 and then deducting the section 6 primary rebate of R10 260 from the income tax payable. The foreign tax paid (table 4; column E) is calculated by converting the foreign taxable income in Rand per column B to AUD using table 2. Thereafter the foreign tax per column E is calculated using table 7 (p.43) and converted back to Rand using table 2 again. The rebate in terms of section 6*quat* (table 4, column F) and the actual income tax payable in South Africa (table 4; column G) are calculated using the formula illustrated in example 4 above. It is important to remember that the rebate in

terms of section 6*quat* (table 4; column F) deductable from the income tax payable in South Africa (table 4; column D), is limited to the actual foreign income tax paid (table 4; column E). The total tax payable (table 4; column H) is calculated by adding the income tax payable in South Africa after the deduction of the rebate in terms of section 6*quat* (table 4; column G) to the foreign income tax paid (table 4; column E). The results calculated are summarised in table 4 below:

Table 4: Summary of results – Hypothetical tax calculations for section 6*quat*

Hypothetical taxable income from RSA source	Hypothetical taxable income from foreign source	Total world-wide taxable income [A + B]	RSA tax on world-wide income per table 2 (p. 13)	Foreign tax paid on foreign source taxable income	6quat available [(B/C x D)]	Actual income tax payable in RSA	Total tax payable (E + G)
A	**B**	**C**	**D**	**E**	**F**	**G**	**H**
Rand	**Rand**	**Rand**	**Rand**	**Rand**	**Rand**	**Rand**	**Rand**
100 000	203 400	303 400	59 910	58 986	40 163	19 746	78 733
100 000	339 000	439 000	107 530	57 969	83 035	49 561	107 530
100 000	406 800	506 800	133 294	78 309	106 993	54 985	133 294
100 000	610 200	710 200	213 750	143 736	183 653	70 014	213 750
100 000	1 288 200	1 388 200	484 950	400 359	450 016	84 591	484 950

Column D in table 4 represents the income tax that would have been payable by an individual resident in South Africa if the rebate in terms of section 6*quat* was not applicable. In contrast to this, column H represents the income tax payable by the same individual resident in South Africa on worldwide income if the rebate in terms of section 6*quat* is deducted. When these two columns are compared, it is noted that only the first scenario's column D and H differs. This can be explained by the fact that the rebate in terms of section 6*quat* (table 4; column F) for scenario one is less than the actual foreign income tax paid (table 4; column E). In other words, the allowable deduction in South Africa is less than the actual foreign income tax paid. In the other scenarios the rebate in terms of section 6*quat* (table 4; column F) is more than the actual foreign income tax paid (table 4; column E) and as discussed above, the deduction will then be limited to the actual foreign income tax paid. Based on the above results it can be summarised that the rebate in terms of section 6*quat* will prevent an individual to pay double taxation on the same income if the rebate calculated is greater than the actual foreign income tax paid. In cases

where the rebate in terms of section 6*quat* calculated is less than the actual foreign income tax paid, it may result in an individual paying double taxation to a degree.

2.5 CONCLUSION

Chapter 2 focused on statistics in terms of South Africans migrating overseas and possible reasons for overall employee migration. It showed that South Africans chose the UK and Australia as two of the top three countries to migrate to. Furthermore, Piaser (2003:1) and Dzvimbo (2003:14) indicate that high tax rates can definitely play a part in employees trying to escape it by migrating to other countries with lower tax rates.

The chapter also looked at how South Africans are taxed according to the Act and the applicable rates and rebates for the 2010/2011 tax year. Chapter 2 also distinguishes between South African residents and non-residents and how both groups are taxed. Section 6*quat* rebate was discussed and illustrated.

In chapter 3 the focus shifts to the UK and the UK Income Tax Act 3 of 2007.

CHAPTER 3

PERSONAL INCOME TAX IN THE UNITED KINGDOM

3.1 INTRODUCTION

In this chapter the statistical data concerning South Africans entering and actively working in the UK will be explored. Thereafter, tax regulations prevalent in the UK and how UK residents are taxed based on the Income Tax Act 3 of 2007 will be discussed. The chapter will conclude with a comparison between UK residents and non-residents and how each of these groups is taxed in that country. The last chapter will also consider the terms residence, ordinary residence and domicile and their role in the income tax of individuals present in the UK. The DTA between the UK and South Africa will be summarised with regard to residency. Table 2 will be used for the purpose of the examples to convert all UK Pound amounts to Rand and *vice versa.*

3.2 STATISTICAL DATA

This chapter will focus on the most recent statistics available in terms of South Africans migrating to the UK and the work permits issued by the UK to South Africans.

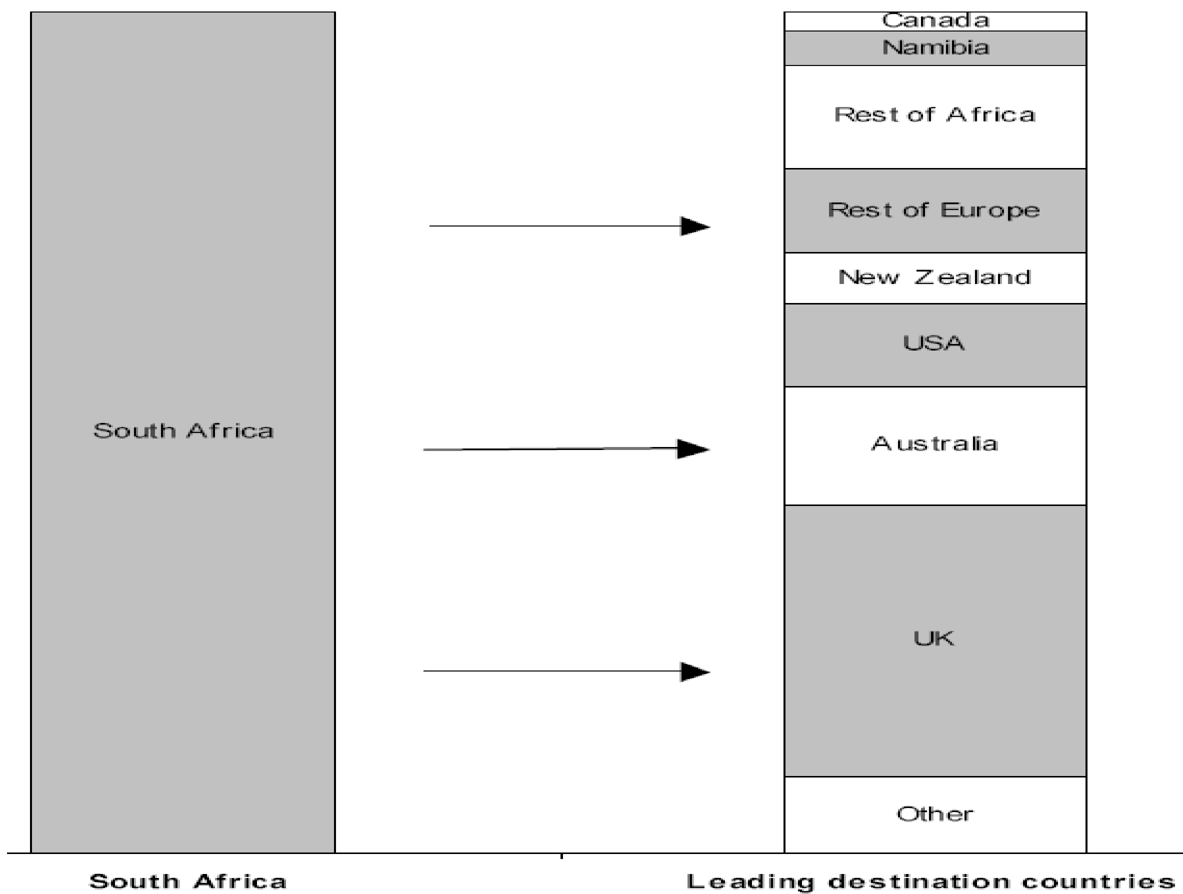
Taxpayers in the UK are divided into three main categories derived from the tax rates they are taxed with, namely starting rate, basic rate and higher rate taxpayers. According to Adam and Browne (2006:6) an estimated 22 000 000 of the total 29 500 000 UK taxpayers for the 2006/2007 tax year were paying tax in the basic rate category. This may be an indication that 74,57% of taxpayers earned a middle class income during the 2006/2007 tax year.

According to Statistics South Africa (2003:9) “[o]ver the years official statistics on self-declared emigration from SA show that the five leading overseas destination countries are the UK, USA, Canada, Australia and New Zealand”. Statistics South Africa (2003:9) indicates that a staggering 140 236 South African residents lived in the UK during 2001.

They also estimated that 10 540 economically active South Africans left the country in 2003.

Figure 3 below shows the main countries where documented South African immigrants chose to migrate to during 2003.

Figure 3: Leading countries of documented immigration to self declared emigration from South Africa, 2003



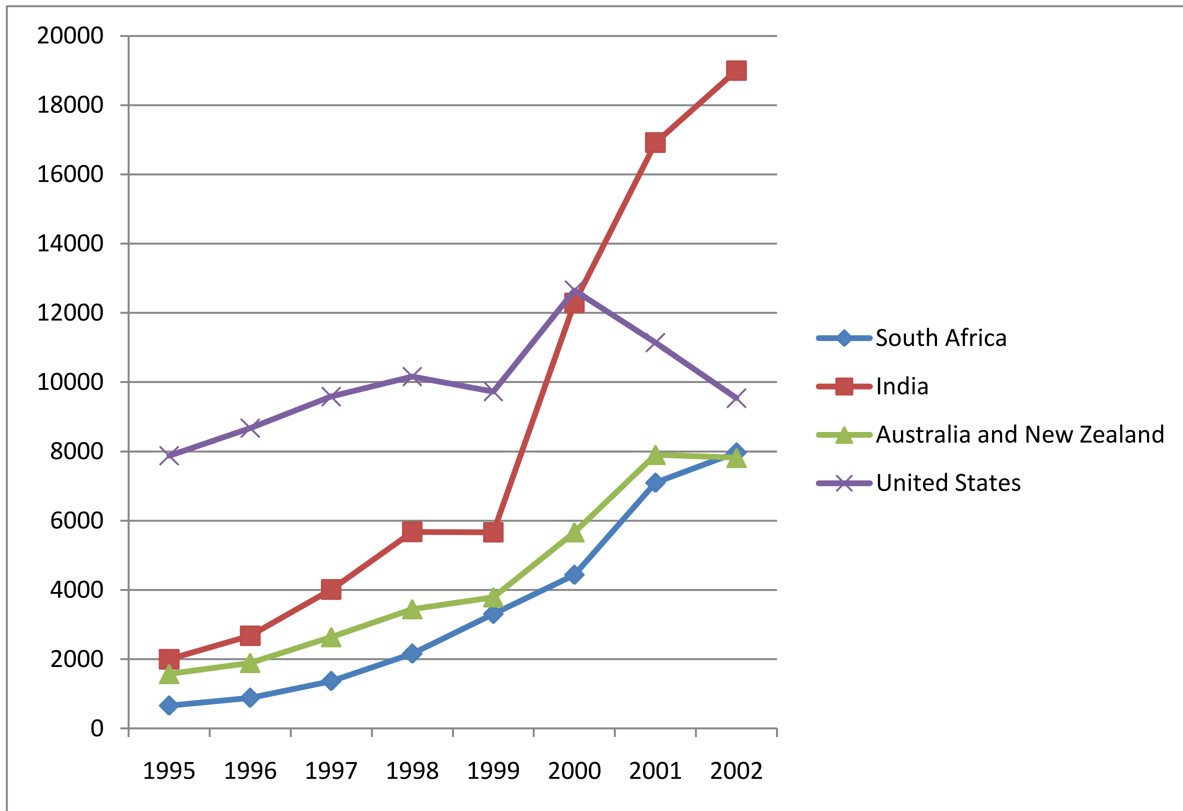
Source: Statistics South Africa (2003:9)

As illustrated in figure 3 above, it is clear that the UK is the country where South Africans most preferred to migrate. Australia seems to be the second most popular country with South African emigrants.

In the UK, Clarke and Salt (2003:569) showed that work permits issued to South Africans increased gradually from 1997 to 2002 with 7 971 permits issued in 2002. The RSA is also

the country issued with the fourth most work permits by the UK. Figure 4 below shows how many work permits the UK issued to the four countries who received the most work permits between 1997 and 2002.

Figure 4: United Kingdom work permits issued per nationality (1997 – 2002)



Source: Clarke and Salt (2003:569)

Figure 4 above clearly shows the steady increase in work permits issued to South Africans for the 1997 to 2002 period.

The following chapter concentrates on what the Income Tax Act of 2007 states with regard to how UK residents are taxed on their personal income in the UK. An example will be used to illustrate a basic tax calculation for a UK resident.

3.3 TAX ASPECTS

The study will summarise the content of the Income Tax Act of 2007 relating to the tax on the personal income of UK residents and thereafter explain the consequences by way of an example. The aim of this chapter and the included tax calculations is to establish the other part of the comparison done with South Africa at a later stage in chapter 5.

The UK tax year commences on 6 April and ends on 5 April in the following year according to section 4(3) of the Income Tax Act of 2007. The 2010/2011 tax year therefore starts on 6 April 2010 and ends on 5 April 2011.

The income tax for UK residents is calculated as follows:
(Taxable income – allowance) x tax rate.

Section 35 to 37 of the Income Tax Act of 2007 describes three possible personal allowances that tax payers are entitled to deduct from taxable income before it is multiplied by the tax rate when determining the income tax payable. According to section 35 of the Income Tax Act of 2007 an individual under the age of 65 are entitled to an allowance per tax year if the requirements are met which stipulates that the individual has to be under the age of 65 for the entire tax year and has to be a UK resident. This allowance is £6 475 for the 2010/2011 tax year.

Section 36 of the Income Tax Act of 2007 grants an allowance to individuals between the age of 65 and 74 provided that the individual:

- is 65 or older during a part or the entire tax year but younger than 75 for the entire tax year;
- is a resident of the UK; and
- the allowance should be reduced by half the excess but not reduced to below the section 35 allowance (£6 475) if the individual’s adjustable net income is more than £22 900 for the tax year.

This allowance amounts to £9 490 in the 2010/2011 tax year.

The term “reduce by half the excess” can be confusing. In short, the HMRC will reduce the age-related allowance by half the amount that the individual’s income exceeds the income limit of £22 900. This reduction will be limited when the basic section 35 allowance is reached, meaning an individual will never be granted a personal allowance of less than the section 35 allowance (£6 475 for the 2010/2011 tax year). This concept is best illustrated by the following example:

Example 5

If an UK resident, aged 68, earned income of £24 500 for the 2010/2011 tax year, the individual’s income exceeded the income limit of £22 900 by £1 600 which represents the excess. HMRC will then reduce the age-related section 36 allowance by £800 which is half the excess. The individual will be entitled to a section 36 allowance of £8 690 (£9 490 – £800).

As stated in section 37 of the Income Tax Act of 2007, an individual who is 75 years or older is allowed a deduction of £9 640 for the 2010/2011 tax year, provided that the individual was 75 or older during the entire tax year and that the individual is a tax resident. This allowance should, in similar fashion to the section 36 allowance, be reduced by half the excess but not reduced to below the section 35 allowance (£6 475) if the individual’s adjustable net income is more than £22 900 for the tax year. Refer to example 5 above for an illustration of the term “reduced by half the excess”.

The term "adjustable net income" used in sections 36 and 37 as mentioned above is dealt with in section 58 of the Income Tax Act of 2007. Section 58 defines how this amount is calculated. Adjustable income is calculated as follows:

- Step 1: Calculate the total of the individual’s net income for the entire tax year;
- Step 2: Deduct any gift or donation made by the individual only if it is a qualified donation;
- Step 3: Deduct the amount of contribution paid during the year in respect of a pension scheme; and
- Step 4: Add back any relief in terms of payments to trade unions or police organisations deducted when the individual’s net income was calculated.

The tax rates are explained in section 6 of the Income Tax Act of 2007 which states that rates are divided into three categories, namely the starting rate, basic rate and higher rate as mentioned in chapter 3. Table 5 below shows the income tax brackets and corresponding tax rates for the UK's 2010/2011 tax year as determined by Parliament.

Table 5: United Kingdom income tax rates for the 2010/2011 tax year

Taxable income	Tax rate
Savings Income: £0 - £2 440	10%
Basic Income: £0 – £37 400	20%
£37 401 - £150 000	40%
£150 000 and above	50%

Source: Her Majesty's Revenue and Custom (2010:1)

In table 5 above the term "savings income" refers to income originating from passive activities such as pension fund payouts, interest received and dividends received. The term "basic income" therefore refers to income received from employment, business profits and other activities. The normal UK income tax calculation for individuals can be illustrated by the use of the following example.

Example 6

If an individual resident in the UK was earning R400 000 from a UK source, the equivalent in Pound will be £38 647,34 as per table 2. The individual will qualify for the section 35 personal allowance if we assume that he or she is below the age of 65 and will therefore be allowed to deduct the amount of £6 475 in terms of the UK Income Tax Act. This will result in a taxable income for the individual of £32 172,34 (£38 647,34 – £6 475). According to table 5 above and the given tax brackets, the individual will now fall in the second tax bracket (Basic income: £0 – £37 400). The income tax payable by the individual can then be calculated as follows:

(£38 647,34 – £6 475 personal allowance) x 20% = £6 434,47.

Based on the above example the UK resident will be liable for income tax of £6 434,47 in the UK for the 2010/2011 tax year. The amount is translated to the equivalent income tax of R66 596,77 when using table 2.

3.4 TEMPORARY *VERSUS* PERMANENT RESIDENCE

The difference between an UK resident and a UK non-resident will now be discussed and what the different tax consequences entail. The DTA between South Africa and the UK will also be taken into account when considering residency.

Individuals working abroad will either be classified as a temporary or permanent resident in that specific country. This classification plays an important role as it affects the individual's income tax calculation and therefore the income tax liability.

In the UK there is a distinction between residence, ordinary residence and domicile for the purpose of permanent residence. All three need to be understood as they have different tax implications for an individual living in the UK.

The term "resident in the UK" or "residence" is not defined in the Income Tax Act of 2007. Instead, the meaning thereof for tax purposes is derived from court cases and the everyday use of the terms. To assist in the matter of evaluating an individual's residence in the UK, Her Majesty's Revenue and Customs (HMRC) issued a "Residence, Domicile and the Remittance Basis" guidance (2011). One way in which to assist the assessment of residence is the "days of presence" test. According to this test a person will automatically be a resident of the UK if the individual is present in the UK for more than 183 days in a year of assessment. A day is counted if the individual was present in the UK at the end of that day, meaning at midnight (24h00). Normally, if you are then resident in the UK based on the above test, from year to year, you will be ordinarily resident in the UK. This is however not always as easy to determine.

In the same way as the term "residence", the term "ordinarily resident" is also not defined in the Income Tax Act of 2007 and guidelines are set by the HMRC to assist in evaluating the term. These guidelines suggest that the following can indicate that an individual is ordinarily resident in the UK:

- the individual's presence in the UK has a sense of continuity which will lead to the individual being settled there;

- the individual's presence in the UK also forms part of that person's day to day existence for the time being. In other words, the presence forms part of the person's "regular and habitual mode" of life; and
- the individual choose to come to the UK out of his or her own will.

Another aspect to keep in mind is the individual's domicile and the possible effects thereof if an individual is domiciled in the UK or not. Domicile in itself is also not defined in the Income Tax Act of 2007 and therefore the broad understanding is used. According to this broad understanding, domicile is the country where the individual has a permanent home or where that individual's roots lie (HMRC, 2011:12). It is possible for an individual to be a UK resident but still not be UK domiciled. If a UK resident wished to maintain their non-UK domicile status, they will have to hold on to their original passport and maintain their links with their home country (HMRC, 2011:82). To maintain links with their home country, individuals will have to consider keeping a house or vacation home in that country, keeping in touch with family and friends still living there and travel to that country on a frequent basis (HMRC, 2011:6).

When visiting the UK for a short period of time, whether it is for pleasure or work, an individual will most likely stay a non-resident. In some instances, these individuals stay longer and in certain instances the following factors can be evaluated to determine whether an individual is still a non-resident:

- whether or not the individual was a resident in the UK in previous tax periods;
- the number of days the individual is present in the UK;
- the pattern of the individual's visits to the UK;
- the purpose of the individual's visit to the UK - temporary or permanent;
- any family, social or work ties an individual has in the UK; and
- the individual's accommodation during the visit to the UK (is the individual making use of hospitality accommodation such as a hotel or is the individual making use of someone's house?)

In some cases it might seem that an individual is a resident in two countries. In such a case the two countries will have to decide were the individual is actually resident for tax

purposes as the individual cannot be fully taxed on all income in both countries. This is normally done by ways of a Double Tax Agreement (DTA) between the two countries.

On 4 July 2002 the UK and South Africa signed a DTA which was effective on income tax in the UK from 6 April 2003 and in South Africa as of 1 January 2003 (SARS, 2002:1). This DTA is applicable to anyone resident in South Africa, the UK or in both countries at the same time. For the DTA to come into play an individual resident in either of the countries will have to earn income from a South African and UK source for a given tax year. According to this DTA an individual resident in both South Africa and the UK at the same time, will use the rules set out in article 4 of the DTA to determine the individual's status in terms of residency. These rules state that:

- the individual is deemed to be resident only in the country were the individual has a permanent home. In the case were the individual has a permanent home in both countries, the individual will be resident in the country were the individual has a closer personal and economic bond;
- if the individual's sole residence cannot be settled on by the above-mentioned rule, the individual will be deemed resident in the country where he or she has a habitual home or domicile;
- if the individual has a habitual home in both or neither of the countries, the individual will be deemed to be a resident in the country of his or her nationality; and
- if the individual is a national in both South Africa and the UK, the individual's residence must be settled by way of a mutual agreement by the two countries.

Based on the rules above, an individual will determine if he or she is resident in the UK or not. If he or she is resident in the UK, the individual will be taxed as a normal UK resident. If not, the individual will be taxed on UK source income as a non-UK resident.

The above-mentioned factors can assist in considering whether an individual is a UK resident or not even though the evaluation might differ from case to case. Now that the terms “residence”, “ordinary residence”, “domicile” and “non-resident” have been discussed, the focus shifts to what the different terms entail with regard to how an individual is taxed when earning income from a UK source.

UK permanent residents are taxed on worldwide income meaning income earned from a source within or outside the UK which is called the arising basis. The other basis on which a tax payer is taxed in the UK is called the remittance basis. This alternative is available to an individual who is a resident in the UK but is not domiciled or ordinarily resident in the UK. The remittance basis can only be used if the tax payer earns income from a foreign source, meaning a source outside the UK. This basis gives the resident an exemption on foreign income if the foreign income is not brought into the UK at any stage. To summarise, UK residents, whether ordinarily resident or for the first time, who is also UK domiciled, are taxed on worldwide income. In contrast, UK residents, whether ordinarily resident or for the first time, who is non-UK domiciled, are not taxed in the UK for income that is not remitted to the UK, meaning they are only taxed in the UK on income from a UK source.

Non-UK residents are basically only taxed in the UK on income from a UK source. Limits on the income tax liability for these non-UK residents do, however, exist and are contained in section 811. As per section 811 of the Income Tax Act of 2007, a non-UK resident's income tax liability on the income from a UK source is limited to the sum of:

- any amount of income tax deducted from disregarded income (disregarded income being savings income, investment income, annual payments, pension income, social security income and transaction income);
- income tax treated as deducted from or already paid in respect of income;
- any tax credits received in respect of income; and
- the amount that the non-UK resident would have paid in terms of income tax if the non-UK resident's disregarded income, any tax relief and stipulations of double tax arrangements were not taken into account.

In other words, a non-UK resident is taxed in the UK only on income from a UK source limited to the sum of the formula mentioned above. It is therefore clear that a difference exist in the manner in which a UK resident is taxed compared to the way in which a non-UK resident is taxed.

3.5 CONCLUSION

In this chapter the available statistics with regard to South African immigrants moving to the UK and work permits issued by the UK to South Africans were discussed. It illustrated that the UK is one of the favourite choices among South Africans to migrate to. The tax features of the UK were considered which included a description of the UK tax year, how UK income tax is calculated for the 2010/2011 tax year, available allowances and an example illustrating the income tax calculation. In chapter 3.4 the terms “residence”, “ordinary resident” and “domicile” were evaluated and compared. The DTA between South Africa and the UK was briefly mentioned. The difference between resident and non-resident was looked at and how each is taxed in the UK.

Australia and the Australian Income Tax Assessment Act 38 of 1997 will now be dealt with in chapter 4 by evaluating how Australian residents are taxed. The chapter will also summarise available statistical data which relate to the study and evaluate the issue of being an Australian resident *versus* a non-resident and the difference in tax consequences.

CHAPER 4

PERSONAL INCOME TAX IN THE AUSTRALIA

4.1 INTRODUCTION

Chapter 4 focuses on the Income Tax aspects of Australia. Firstly, the statistical data regarding South African immigrants living and assumable working in Australia will be considered. Subsequently, the aspects of the Australian Income Tax Assessment Act 38 of 1997 will be evaluated and the impact thereof on the calculation of an Australian resident's income tax will be summarised. The calculation will then be illustrated by way of an example. The last chapter will focus in the distinction between an Australian resident and a non-resident. The differences in the way residents and non-residents are taxed will be noted and illustrated by using examples. The DTA between Australia and South Africa will be evaluated in terms of residency. Table 2 will be used for the purpose of the examples to convert all UK Pound amounts to Rand and *vice versa.*

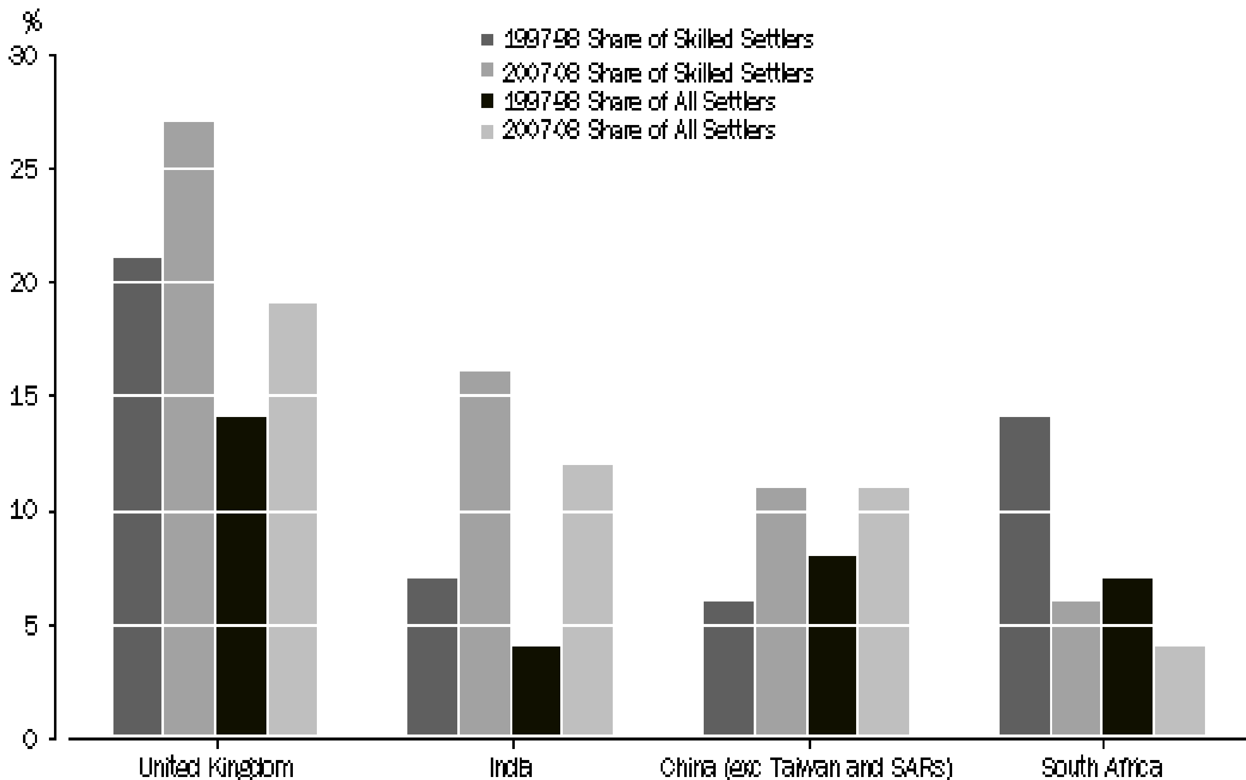
4.2 STATISTICAL DATA

An evaluation of the statistics regarding South African settlers living in Australia as well as visas issued by Australia to South African emigrants follows.

According to the 2006 Census done by the Australian Bureau of Statistics (2009:1), the number of South Africans living in Australia tallied to 104 133, which account for 41,9% of the total African-born population living in Australia at that time. They estimated that the majority of the 104 133 South Africans living in Australia arrived between 1996 and 2006. The Bureau stated that during the period 30 June 1997 to 30 June 2007, 58 977 visas were issued to South Africans. Visas are categorised into three groups, namely humanitarian programme, family stream and skill stream, the latter referring to a profession. Of the 58 977 visas issued to South Africans, 50 914 (that is 86,33%) were categorised as skill stream visas. Furthermore, the 2006 census showed that African migrants made up 10,2% of the total migrants who moved to Australia in 2006.

The Australian Bureau of Statistics (2009:1) compiled data based on the 2006 Census, showing South Africa as one of the top four countries contributing to the skilled settler population (skilled emigrants) in Australia. Figure 5 below illustrates the percentage of skilled settlers from the top four countries for the period 2007 to 2008, in relation to the total settlers (emigrants) in Australia for the period 1997 to 1998 and 2007 to 2008:

Figure 5: Skilled settlers for top four countries for 1997/1998 and 2007/2008



Source: Australian Bureau of Statistics (2009:1)

As per figure 5 above, 8% of all settlers in Australia for the period 1997 to 1998 were represented by South Africans while they represented 4% for the period 2007 to 2008. When only skilled settlers are taken into account, South Africans represented 14% of the total skilled settlers for the period 1997 to 1998 and 11% for the period 2007 to 2008. According to the 2006 Census done by the Australian Bureau of Statistics (2009:1), South Africa is one of the top three countries with regard to temporary business migrants in Australia. Temporary business visas issued to South Africans made up 8% of the total of 457 visas issued by Australia for the period 1997 to 1998. Statistics South African (2003:1)

showed Australia as the second most popular choice for South African emigrants (refer to figure 3).

The following chapter concentrates on what the Income Tax Assessment Act of 1997 states in terms of how Australian residents are taxed on their personal income followed by an example of a basic Australian income tax calculation.

4.3 TAX ASPECTS

A summary of the Income Tax Assessment Act of 1997, relating to how an Australian resident is taxed, will be discussed. The income tax calculation according to the Income Tax Assessment Act of 1997 will be illustrated by using an example. The aim of this chapter is to formulate a basic income tax calculation for Australia. This calculation will be used at a later stage in chapter 5 to compare with the South African income tax calculation.

According to the definitions of the Income Tax Assessment Act of 1997, the tax year in Australia commences on the first of July and concludes at the end of June in the following year. The 2010/2011 tax year will therefore start on 01 July 2010 and end on 30 June 2011.

Australian income tax is calculated by multiplying the taxable income by the tax rate and then deducting what are known as "tax offsets". There are a number of tax offsets available in Australia but not all Australian individuals are entitled to these tax offset. A few of these tax offsets or rebates will now be discussed.

4.3.1 Rebate or tax offsets

4.3.1.1 Rebate on savings income

Firstly, there is the rebate on savings income. Savings income is income from passive activities such as interest and dividends. Australian residents are entitled to a rebate of 15% of the savings income limited to AUD450 (section 61.55 of the Taxation Laws

Amendment Act 3 of 1998). Refer to the following example for an illustration on how this rebate is calculated.

Example 7

During the 2010/2011 tax year an Australian resident only earned some savings income of AUD1 000. The individual's savings income rebate can be calculated as follows:
AUD1 000 x 15% = AUD150.

If the same Australian resident were to earn a savings income of AUD5 000 for that same year, the savings income rebate will be calculated as follows:
AUD5 000 x 15% = AUD750 limited to AUD450.

From the calculations above it can clearly be seen that an Australian resident will be able to deduct AUD150 as a rebate in the first scenario. In the second scenario the individual's 15% of the savings income was AUD750, however he or she will only be allowed to claim the maximum savings income rebate of AUD450.

4.3.1.2 Rebate on private health insurance premiums

The second rebate is a rebate on private health insurance premiums. According to section 61-G of the Income Tax Assessment Act of 1997, any individual who pays private health fund premiums as part of a Complying Health Insurance Policy may receive a rebate of a percentage of the premium cost. An individual is entitled to the rebate if he or she is the policy holder and pays the cost. The percentage rebate is age related and is stipulated as follows:

- individuals younger than 65 may receive a rebate of 30%;
- individuals aged 65 but younger than 70 may receives a rebate of 35%; and
- individuals aged 70 and older may received a rebate of 40%.

This rebate can be claimed in three possible ways. It can be claimed as:

- a deduction in the individual's monthly premium paid for this private health care;
- the full amount from the Federal Government of Australia, if the individual paid the premium once-off; or

- a rebate from the individual's annual income tax return.

The calculation of the rebate is illustrated in the following example.

Example 8

An Australian resident paid private health insurance premiums of AUD10 000 during a given tax year. The individual is assumed to be under the age of 65 and therefore the allowable tax rebate can be calculated as follows:
AUD10 000 x 30% = AUD3 000.

The individual will be allowed to deduct the AUD3 000 from his tax liability as a rebate if that is the option he chooses.

This is one of only two rebates in Australia were the excess can be carried forward to the following tax year to reduce the tax liability in that year (section 61-G and of the Income Tax Assessment Act of 1997 & section 61.55 of the Taxation Laws Amendment Act of 1998). All other rebates are limited to the tax liability and never carried forward to the following tax period. In the example above, if the individual's tax liability before the private health insurance rebate was AUD2 000, the individual will only be allowed to claim AUD2 000 of the possible AUD3 000 rebate in the current tax year. The excess from the rebate of AUD1 000 may be carried forward by the individual and deducted as an additional rebate in the subsequent tax year (section 61-G and of the Income Tax Assessment Act of 1997 and section 61.55 of the Taxation Laws Amendment Act of 1998).

Due to the complex nature of these Australian rebates and the fact that not all individuals will automatically qualify for it, the rebates will not be taken into account when calculating a normal Australian resident's income tax. This will assist in simplifying the Australian income tax calculation for the comparison to be done in chapter 5.

The Australian income tax brackets for residents and the corresponding tax rates for the 2010/2011 tax year are represented in the following table:

Table 6: Australian tax rates for the 2010/2011 tax year

Taxable income	Tax on income
AUD0 – AUD6 000	Nil
AUD6 001 - AUD37 000	15c for each AUD1 over AUD6 000
AUD37 001 - AUD80 000	AUD4 650 plus 30c for each AUD1 over AUD37 000
AUD80 000 - AUD180 000	AUD17 500 plus 37c for each AUD1 over AUD80 000
Over AUD180 000	AUD54 550 plus 45c for each AUD1 over AUD180 000

Source: Taxcalc.com (2011:1)

Table 6 is used to calculate an Australian resident's income tax based on his or her taxable income after the allowable deductions. The calculation can best be explained by the following example.

Example 9

If an individual who is resident in Australia earns the equivalent of R400 000, which will be AUD58 997,05 (refer to table 2), the individual will fall within the third taxable income bracket (AUD37 001 – AUD80 000) as shown in table 6 above. The calculation of the tax payable by this individual will then be as follows:

AUD4 650 + [(AUD58 997,05 – AUD37 000) x 0.30] = AUD11 249,12.

Based on the above calculation, the individual will be liable for income tax in the 2010/2011 tax year to the amount of AUD11 249,12. This can be translated to R76 269,03 using table 2.

The following chapter discusses the difference between being an Australian resident and a non-resident. The study focuses on how to determine whether an individual is a resident or not and thereafter the differences will be illustrated by the use of examples.

4.4 TEMPORARY *VERSUS* PERMANENT RESIDENCE

The difference between being an Australian resident and being an Australian non-resident will now be discussed. This will be achieved by considering the Income Tax Assessment Act of 1997, applicable case law and the DTA between Australia and South Africa.

There are no clear-cut criteria in the Income Tax Assessment Act of 1997 to determine whether an individual is an Australian tax resident which makes it difficult to determine an individual's residency in borderline cases. In an attempt to shed some light on the process of determining Australian residency, the definition for "Australian taxation resident" per the Income Tax Assessment Act 27 of 1936 needs to be considered (Australian Taxation Office, Taxation Ruling No. IT 2650, 1991). According to the definition an Australian taxation resident:

- resides in Australia;
- has his or her domicile in Australia, unless the Australian Taxation Commissioner is satisfied that his or her permanent place of abode is outside Australia; and
- has actually been in Australia (working at the same place), continuously or intermittently, during more than six months (183 days) of the tax year, unless the Commissioner is satisfied that the individual's usual place of residence is outside Australia and that they do not intend to take up residence in Australia.

The definition above is called the first test of the resident (Australian Taxation Office, Taxation Ruling No. IT 2650, 1991). As seen from the first test, the different components of the definition can be very complex in some cases. An example of the complexity is a case where an individual is only present in Australia for short periods of time during a tax year, making it difficult to determine whether the individual was present in Australia for more than six months.

In the taxation ruling IT 2650 (1991) of the Australian Taxation Office, the second test was formulated to assist in cases where the first test mentioned above did not provide clarity. According to the second test the following factors should be considered in determining the residency of an individual in Australia:

- the amount of time the individual stays in the foreign country;
- the individual's intention to return to Australia at a set time or to visit another country;
- the creation of a permanent type of home outside Australia;
- if the individual leaves or sells his or her permanent residence in Australia;

- the time and duration (whether once or repeatedly) an individual stays in another country other than Australia; and
- the degree of permanence of the individual's home in Australia.

The elements above need to be judged individually and the weight carried by each of these elements will therefore vary. Since an individual's country of domicile assists in indicating an individual's country of residency, the term "domicile" needs to be understood. In the taxation ruling IT 2650 (1991) of the Australian Taxation Office, the Commissioner states that "the primary common law rule is that a person acquires at birth a domicile of origin, being the country of his or her father's permanent home".

Based on the taxation ruling IT 2650 (1991) of the Australian Taxation Office mentioned above, the Commissioner issued a ruling to assist tax payers in establishing if an individual is resident in Australia or not. The ruling noted the following factors to be taken into account:

- how the individual behaves while present in Australia;
- the intention and purpose, whether it be business or vacation, of the individual's visit to Australia;
- whether the individual has family living in Australia or any business ties;
- if the individual has any assets located and maintained in Australia; and
- the individual's social and living arrangements.

These factors mentioned above can then be broken down into more detail if the need arises in more complex cases. The factors should not be considered in isolation but in aggregate to obtain the desired outcome. When an individual migrates to Australia on a permanent basis, it automatically results in the individual falling within the "resident" category from the first day of arrival.

The term "temporary residence" is also defined in the Income Tax Assessment Act of 1997. Accordingly an individual will be a temporarily resident if:

- the individual holds a temporary visa which was granted under the Migration Act 62 of 1958;

- the individual is not an Australian resident at any given time within the meaning of the Social Security Act 4 of 1991; and
- the individual's spouse is not an Australian resident within the meaning of the Social Security Act 4 of 1991.

On 23 December 2008 the DTA between Australia and South Africa became effective when the South African Government published it in the national Government Gazette (SARS, 2008:3). This DTA is applicable to any taxpayer resident in South Africa, Australia or both at the same time (dual residency). For this DTA to be applicable, a taxpayer should earn income from a South African and Australian source during a given tax year. When a taxpayer earns income in both the above-mentioned countries, the taxpayer's country of residency may be difficult to determine. According to this DTA, an individual complying with both South Africa's and Australia's residency criteria will use the rules set out in article 4 of the DTA to determine his or her residency for tax purposes. Article 4 of the DTA states that an individual's residency status will be determined as follows:

- the individual will be resident in the country where he or she has a permanent home;
- if the individual has a permanent home in either countries or none of the countries, the individual will be resident in the country where his or her personal and economic relationships are closer;
- if it cannot be determined where the individuals "centre of vital interests" lie, the individual will be resident in the country of his or her nationality; and
- in the case where an individual's nationality is in both countries, his or her country of residence should be decided on by the authorities of both countries with the help of a mutual agreement.

As per the above-mentioned rules, an individual will determine if he or she is resident in Australia or South Africa. If the individual is a resident in Australia, he or she will be taxed as a normal Australian resident on worldwide income. If the individual is, however, not an Australian resident per the DTA, he or she will be taxed as a non-Australian resident and only be taxed on income from an Australian source.

The residency of an individual is evaluated on an annual basis, always taking into account the outcome of the previous years (Australian Taxation Office, Taxation Ruling No. IT 2650,1991). Now that the definitions have been considered, a distinction can be made between permanent and temporary residence in Australia. The next step will be to evaluate the tax implications for an individual who is an Australian tax resident *versus* an individual who is a temporary resident.

Permanent Australian tax residents are subject to income tax on worldwide income in a similar fashion as South Africa. The tax of the resident is then calculated using the rates given in table 6. In contrast, temporary residents are taxed on all income from an Australian source as well as income from a source other than an Australian source, if it relates to the individual's employment in Australia (subdivision 768-R of the Income Tax Assessment Act of 1997). Furthermore, temporary residents are not considered for the tax-free threshold when earning less than AUD6 000 (table 6), meaning they are taxed on all income, no matter how small. Temporary tax residents are also subject to a higher tax rate for taxable income of AUD37 000 and less. This is depicted in table 7 below:

Table 7: Australian tax rates for non-residents – 2010/2011 tax year

Taxable income	Tax on income
AUD0 – AUD37 000	29c for each AUD1 under AUD37 001
AUD37 001 – AUD80 000	AUD4 650 plus 30c for each AUD1 over AUD37 000
AUD80 001 – AUD180 000	AUD17 500 plus 37c for each AUD1 over AUD80 000
Over AUD180 000	AUD54 550 plus 45c for each AUD1 over AUD180 000

Source: http://www.taxcalc.com.au

Based on the difference in tax approach, it is important to determine whether an individual is a permanent or temporary resident. The differences mentioned above between permanent and temporary residents are illustrated in the following examples.

Example 10

If a permanent resident of Australia earns a taxable income of AUD30 000 for the 2010/2011 tax year, the individual will fall into the second tax bracket as indicated in table 6. The income tax liability will then be calculated as follows:
(AUD30 000 – AUD6 000) x 0,15 = AUD3 600.

The resident will then be liable for income tax in Australia of AUD3 600 for the 2010/2011 tax year. This can be translated to R24 408,00 using table 2.

Example 11

If the same individual as in example 8 above, earning taxable income of AUD30 000, was a temporary resident for the 2010/2011 tax year, the individual will fall into the first tax bracket as indicated in table 7 above. The income tax liability will then be calculated as follows:

AUD30 000 x 0,29 = AUD8 700.

The non-resident will be liable for income tax in Australia of AUD8 700 for the 2010/2011 tax year. This is the equivalent of R58 986,00 when converted using table 2.

Based on the above examples it can clearly be observed that temporary residents earning less than AUD37 001 will pay more income tax that a permanent Australian resident earning the same taxable income. This will, however, not be applicable if the taxable income is more that AUD37 001, in which case the taxable income of a permanent resident and a temporary resident will be the same. This can be seen by comparing tax bracket three to five of table 6 with tax bracket two to four of table 7.

4.5 CONCLUSION

In this chapter the most recent statistics relating to South Africans living and working in Australia were discussed. The statistics showed that for the 10 years from 1997 to 2007, 86,33% of visas issued to South Africans were for skilled employment. Statistics indicate that South Africa is one of the top four countries represented by settlers in Australia for the period 1997 to 2007. Features of Australian tax regulations were mentioned and the chapter included an overview of how Australian residents are taxed during the 2010/2011 tax year. The difference between Australian residents and non-residents were evaluated and illustrated with the use of examples. The issue regarding dual residency in South Africa and Australia was considered by taking into account the DTA between these two countries.

Chapter 5 forms the comparison and conclusion of the study. Chapter 5.2 will deal with the comparison. Comparisons will be made between South Africa and the UK on grounds of tax aspects and calculations between South Africa and Australia with regard to the tax aspects and calculations.

CHAPTER 5

COMPARISONS

5.1 INTRODUCTION

In this chapter the difference between the income tax acts and income tax calculations of South Africa and the UK as well as the difference between the income tax acts and income tax calculations South Africa and Australia will be discussed.

5.2 COMPARISONS

The aim is to determine the differences in the income tax acts of South Africa, the UK and Australia when taxing an individual and if there is any tax benefit for a South African resident to emigrate to the UK or Australia.

The comparisons will be done in six basic steps. Firstly, the tax years for the countries will be considered. Secondly, the possible rebates for individuals in each country will be summarised and compared. Income tax rates are one of the basic elements included in all income tax acts as a method of determining income tax payable by an individual. The general formula results in the taxable income being multiplied by this tax rate. Thirdly, these rates will be considered and compared with a special focus on the minimum and maximum tax rates. Fourthly, the minimum taxable income threshold for each country will be compared, being the amount of income an individual can earn without paying income tax. In step five the differences in tax calculations will be compared and illustrated again as these calculations form the basis of the monetary value comparison. Finally, based on the calculations discussed and compared in step five, a table will be compiled to show the outcome of different tax calculations done for each country on the same taxable income. This is to summarise the difference in tax payable by an individual in the different countries if he or she were to migrate from the one to the other and earn exactly the same income in both countries.

The comparison will commence in the next chapter with the focus on South Africa and the UK.

5.2.1 South Africa *versus* the United Kingdom

The UK's tax year commences on 6 April and lasts until 5 April of the subsequent year per section 4(3) of the Income Tax Act of 2007 while South Africa's tax year stretches from 1 March to the last day of February in the following year per section 1 of the Act.

The UK provides residents with the rebates as per section 35 to 37 of the Income Tax Act of 2007. All residents automatically qualify on an annual basis. This is the equivalent of the rebates for South African residents as described in section 6 of the Act. Both the UK and South African rebates are aged classified and can be summarised as follows:

Table 8: South African *versus* UK rebates per age classification - 2010/2011 tax year

Age class	South African rebate Rand	UK rebate Pounds	UK rebate Rand (converted using table 2)
Younger than 65	10 260,00	6 475,00	67 016,25
65 but younger than 75	15 935,00	9 490,00	98 221,50
75 and older	15 935,00	9 640,00	99 774,00

Source: South African Revenue Services (2010:6) & Her Majesty's Revenue and Custom (2010:1)

Note that the South African rebate for individuals aged 65 or older for the 2010/2011 tax year is the primary rebate (R10 260) and secondary rebate (R5 675) counted together in the table above as these older individuals are entitled to both. It is important to keep in mind that the UK rebates for individuals aged 65 and older is reduced when these individuals earn income above the minimum income limit as described in chapter 3. This differs from that of South Africa as these rebates are not reduced when individuals earn more. As seen from table 8 above, UK residents, no matter their age, are entitled to a larger rebate as the rebate provided to South African residents. This is only true if the formula used to calculate the income tax in these two countries is not taken into account.

The income tax rates for the UK, applicable to individuals, are shown in table 5. According to table 5 the minimum tax rate in the UK is 20% (not taking into account only savings income) while the maximum tax rate is 50%. The South African income tax rates applicable to individuals are depicted in table 3. As per table 3 the minimum tax rate is 18% while the maximum tax rate is 40%. Overall, when only these rates are considered, South Africa has the lower minimum and maximum rates.

The UK does not have a fixed minimum taxable income threshold but by implication, individuals who earn less than £6 475 (R67 016,25) per annum will not pay income tax as the minimum rebate available to individuals is the rebate per section 35 of the Income Tax Act of 2007 of £6 475. South Africa, on the other hand, has a minimum taxable income threshold of R57 000 for individuals younger than 65 and R88 528 for individuals aged 65 and above. This minimum taxable income threshold in South Africa works on the same principle as the rebate in the UK as individuals earning income below this threshold will not be liable for income tax. Based on this comparison it seems that individuals below the age of 65 have a bigger threshold in the UK than in South Africa.

It is important to note the difference in the way income tax is calculated in the UK *versus* the income tax calculation in South Africa. UK income tax is calculated by taking the individual's taxable income, deducting the allowance or rebate the individual is entitled to and thereafter multiplying the remaining amount by the applicable tax rate. This differs from the South Africa income tax calculations where the individual’s taxable income is firstly multiplied by the applicable tax rate and thereafter the rebate is deducted to arrive at the income tax payable. The difference can best be illustrated by the following example.

Example 12

An individual, younger than 65 and resident in South Africa, earned taxable income of R100 000 during the 2010/2011 tax year. The individual will fall into the first bracket of table 2 and the income tax liability can be calculated as follows:
(R100 000 x 18%) – R10 260 = R7 740.

The individual will be liable for income tax of R7 740 in South Africa. If the same individual were a UK resident and earned the equivalent of R100 000 in the UK from a UK source,

the individual would earn £9 661,84 as per table 2. The individual will now fall into the second bracket of table 5. The UK income tax calculation will then be done as follows using the applicable rate:
(£9 661,84 – £6 475) x 20% = £637,37.

The individual will be liable for income tax of £637,37 during the 2010/2011 tax year in the UK. This is translated to R6 596.78 using table 2. Based on the two calculations above, the individual will therefore pay R1 143,22 more income tax in South Africa than in the UK.

Following the same principle as in example 12 above, the calculations were repeated for hypothetical taxable incomes representing each of the South African tax brackets. The aim is to elaborate on the impact of the differences in tax calculations and tax rates between South Africa and the UK. The results calculated in this study are summarised in table 9.

Table 9: Summary of results – hypothetical tax calculations between South Africa and the UK

Hypothetical taxable income in Rand (A)	**South African tax bracket**	**South African income tax amount in Rand**	**UK equivalent of taxable income (As per table 2)**	**UK tax bracket**	**UK income tax amount in Pounds (B)**	**UK income tax amount in Rand (B x 10.35)**
100 000	R0 – R140 000	7 740	9 661,84	Basic income: £0 – £37 400	637,37	6 596,75
200 000	R140 001 – R 221 000	29 940	19 323,67	Basic income: £0 – £37 400	2 569,73	26 596,75
300 000	R221 001 – R305 000	62 840	28 985,51	Basic income: £0 – £37 400	4 502,10	46 596,75
400 000	R305 001 – R431 000	93 640	38 647,34	Basic income: £0 – £37 400	6 434,47	66 596,75
500 000	R431 001 – R552 000	130 710	48 309,18	Basic income: £37 401 – £150 000	16 733,67	173 193,50
600 000	R552 001 and above	169 670	57 971,01	Basic income: £37 401 – £150 000	20 598,41	213 193,50
2 000 000	R552 001 and above	729 670	193 236,71	Basic income: £150 000 and above	93 380,86	966 491,88

Table 9 above highlights a possible trend. An individual earning below £37 400 in the UK for the 2010/2011 tax year is likely to pay less income tax than an individual earning the equivalent of less than R387 090 (£37 400 x 10,35) in South Africa. In contrast to this an

individual earning above £37 400 in the UK for the 2010/2011 tax year is likely to pay more income tax than an individual earning the equivalent of more than R387 090 (£37 400 x 10,35) in South Africa.

The next chapter will focus on a comparison between features of the South African income tax and that of Australia.

5.2.2 South Africa *versus* Australia

The Australian tax year starts on 1 July and concludes on the last day of June of the subsequent year per the definitions of the Income Tax Assessment Act of 1997. This differs from South Africa where the tax year spans from 1 March to the end of February in the following year as per section 1 of the Act.

Australian rebates or so-called tax offsets are very complex. Australia offers individuals rebates only if the individual complies with certain requirements. There is no general rebate available to Australian residents. This differs from South Africa where the section 6 primary rebate is automatically given to all individuals and the secondary rebate to all individuals aged 65 and above.

The Australian income tax rates, applicable to individuals, are depicted in table 6. As per table 6, the minimum tax rate is 15% while the maximum tax rate is 45%. In contrast to this, South Africa's income tax rates shown in table 3, portrays a minimum tax rate of 18% and a maximum rate of 40%. Based on this, the minimum tax rate for Australia is less than the minimum tax rate for South Africa while the maximum tax rate for Australia is greater than the maximum tax rate for South Africa. Australia has a different set of tax rates for non-residents as illustrated in table 7. Table 7 shows a minimum tax rate of 29% and a maximum tax rate of 45%. This minimum tax rate is more than the minimum tax rate for Australian residents as well as residents of South Africa. The maximum tax rate for non-residents in Australia is the same as the maximum tax rate for Australian residents but greater that the maximum tax rate for residents in South Africa.

Australia has an overall minimum taxable income threshold of AUD6 000 for Australian residents which is not age dependent. This can be translated to the equivalent of R40 680 using table 2. Australian residents who earn less than AUD6 000 taxable income per annum are therefore not liable for income tax. This is not a rebate as an Australian resident earning taxable income of more than AUD6 000 per annum will not be allowed to deduct the AUD6 000 from their taxable income. For example, if an Australian resident earned taxable income of AUD9 000 for the tax year, he or she will not be allowed to reduce their taxable income by the AUD6 000 to arrive at a taxable income of AUD3 000. South Africa provides a minimum threshold of R57 000 for individuals younger than 65 and R88 528 for individuals aged 65 and above. When the thresholds for the two countries are compared, South Africa provides a bigger minimum taxable income threshold.

Due to the complexity of the Australian rebates and the fact that not all individuals qualify for rebates, these rebates are ignored for the purpose of the income tax calculation. Therefore, the Australian income tax is calculated by multiplying the taxable income of an individual by the applicable income tax rate per table 6. This is unlike the income tax calculation for South Africa where the taxable income multiplied by the income tax rate and then reduced by the rebate to arrive at the income tax liability. The two different calculations can best be illustrated by the following example.

Example 13

An individual, younger than 65 and resident in South Africa, earned taxable income of R200 000 during the 2010/2011 tax year. The individual will fall into the second bracket of table 3 and the income tax liability can be calculated as follows:

R25 200 + [(R200 000 – R140 000) x 25%] – R10 260 = R29 940.

The individual will be liable for income tax of R29 940 in South Africa. If the same individual was an Australian resident and earned the equivalent of R200 000 in Australia from an Australian source, the individual would earn AUD29 498,53 as per table 2. The individual will now fall into the second bracket of table 6. The Australian income tax calculation will then be done as follows using the applicable rate:

(AUD29 498,53 – AUD6 000) x 15% = AUD3 524,78.

The individual will be liable for income tax of AUD3 524,78 during the 2010/2011 tax year in Australia. This is translated to R23 898.00 using table 2. Based on the two calculations above, the individual will therefore pay R6 042.00 more income tax in South Africa than in Australia.

Following the same principle as example 13 above, the calculations was repeated for hypothetical taxable incomes representing each of the South African tax brackets. The aim is to elaborate on the impact of the differences in tax calculations and tax rates between South Africa and Australia. The results calculated in this study are summarised in the following table:

Table 10: Summary of results – hypothetical tax calculations between South Africa and Australia

Hypothetical taxable income in Rand (A)	South African tax bracket	South African income tax amount in Rand	AUS equivalent of taxable income (A / 6.78)	AUS tax bracket	AUS income tax amount in AUD (B)	AUS income tax amount in Rand (B x 6.78)
100 000	R0 – R140 000	7 740	14 749,26	AUD6 001 - AUD37 000	1 312,39	8 898,00
200 000	R140 001 – R 221 000	29 940	29 498,53	AUD6 001 - AUD37 000	3 524,78	23 898,00
300 000	R221 001 – R305 000	62 840	44 247,79	AUD37 001 - AUD80 000	6 824,34	46 269,00
400 000	R305 001 – R431 000	93 640	58 997,05	AUD37 001 - AUD80 000	11 249,12	76 269,00
500 000	R431 001 – R552 000	130 710	73 746,31	AUD37 001 - AUD80 000	15 673,89	106 269,00
600 000	R552 001 and above	169 670	88 495,58	AUD80 000 - AUD180 000	20 643,36	139 962,00
2 000 000	R552 001 and above	729 670	294 985,25	Over AUD180 000	106 293,36	720 669,00

Table 10 indicates a possible pattern when comparing tax payable in South Africa (column 3 in table 10) with the tax payable on an equivalent taxable income in Australia (column 7 in table 10). According to the results shown above an individual resident in South Africa and earning roughly a taxable income of more than R140 000 (AUD20 648,97) per annum will pay more income tax that an individual resident in Australia earning the equivalent.

In the following and last chapter of the study, a conclusion will be drawn concerning the research objective of the study and possible recommendations will be made for South Africa and possible future research studies.

5.3 CONCLUSION AND RECOMMENDATIONS

5.3.1 Conclusion

In an effort to analyse and compare sections in the income tax acts of South Africa, the UK and Australia, to determine the income tax benefits South African residents working abroad receive, the following were considered:

- the differences in tax years for the three countries;
- the rebates available in South Africa, the UK and Australia;
- the different tax rates used in these countries;
- the minimum taxable income threshold available to individuals resident in these countries; and
- the differences in the formula used by each of these countries to calculate the income tax liability for an individual.

The outcome of these comparisons done in chapter 5.1, can shortly be summarised in the following table:

Table 11: Summary of comparisons

Country	2010/2011 tax year	General rebates Rand	Minimum tax rate	Maximum tax rate	Minimum taxable income threshold	Tax calculation
South Africa	01 March 2010 to 28 February 2011	R10 260,00 and R15 935,00	18%	40%	R57 000,00 and R88 528,00	(Income tax x rate) – rebate
UK	06 April 2010 to 05 April 2011	R67 016,25 R98 221,50 and R99 774,00	20%	50%	R67 016,25 R98 221,50 and R99 774,00	(Taxable income – rebate) x rate
Australia	01 July 2010 to 30 June 2011	No general rebates available, only rebates linked to fulfilment of requirements.	15%	45%	R40 680,00	Taxable income x rate

Based on the comparisons done in chapter 5.2 and the table above, the following benefits will be enjoyed by South African employees migrating to the UK or Australia:

- the UK provides a larger automatic rebate for individuals which might be cancelled out by the fact that the rebate is deducted before the amount is multiplied by the income tax rate;
- the UK has a larger minimum taxable income threshold of R67 016,25 for individuals younger than 65;
- Based on table 9, individuals earning less than R387 090 (£37 400) per annum are likely to pay less income tax in the UK than in South Africa;
- Australia has a smaller minimum income tax rate of 15%; and
- Based on table 10, an individual earning approximately more than R140 000 (AUD20 648,97) per annum is likely to pay less income tax in Australia than in South Africa.

Available statistics relating to employee migration from South Africa to the UK and Australia were evaluated and it clearly showed these two countries as a favourite destination for South African emigrants. It also indicated that a big percentage of the foreign population in the UK and Australia consisted of skilled South Africans living there on a long-term basis. Limited statistics could be found indicating that tax played a role in South African skilled employees migrating to the UK and Australia. However, the study done by Bezuidenhout *et al* (2009:213), indicate that 51,7% of participating medical doctors selected the South African income tax system as a reason for leaving South Africa.

To determine some of the benefits a South African resident enjoys in the UK and Australia if the migration is temporary *versus* permanent migration, the study evaluated the difference in how residents and non-residents are taxed in each country. The following table summarises the outcome:

Table 12: Summary of tax consequences for residents *versus* non-residents

Country	Status	Source taxed on	Rates taxed on	Automatic rebates
UK	Resident	Worldwide source	Per table 5	Section 35 to 37 of the Income Tax Act of 2007
UK	Non-resident	UK source	Per table 5	Section 811 of the Income Tax Act of 2007
Australia	Resident	Worldwide source	Per table 6	None
Australia	Non-resident	AUS source	Higher rates per table 7	None

Based on the above table, it can be noted that non-residents who earn income in a country other than his or her resident country, will only be taxed in the foreign country on income from that countries' source. A non-resident is not entitled to any rebates available to residents of that country. Non-resident earning income in Australia is penalised by being taxed with higher rates when earning less than AUD37 000 (R250 860).

South African residents working abroad on a temporary basis will be taxed overseas on the income earned there. These South Africans will, however, be entitled to a section 6*quat* rebate on the foreign income tax paid. Once the South African resident chooses to migrate to the UK or Australia on a permanent basis, he or she will no longer be deemed a South African resident and therefore no longer qualify for the section 6*quat* rebate. Based on this the benefits of the rebate in terms of section 6*quat* needs to be weighed against the benefits summarised above to determine if a South African resident will receive more benefits when migrating to the UK or Australia on a temporary basis rather than a permanent basis. This can be achieved by calculating the different tax consequences in the three different countries for the same taxable income. This concept is illustrated in the following example:

Example 14

A resident in South Africa earned taxable income of R100 000 in the year from a South African source and R203 400 from a foreign source. The individual's South African income tax liability on the total taxable income of R303 400 can be calculated as follows using table 3 assuming that the individual is younger than 65:

R45 450 + [(R303 400 – R221 000) x 30%] – R10 260 = R59 910.

The rebate in terms of 6*quat* is available to this individual, assuming that income tax of R58 986 was paid in the foreign country, is then calculated as follows:
R203 400 / R303 400 x R59 910 = R40 163 limited to the actual foreign income tax paid of R58 986.

The individual's actual tax liability in South Africa is therefore calculated as follows:
R59 910 – R40 163 = R19 747

The total income tax paid by the individual being a South African resident is calculated as follows:
R19 747 + R58 986 = R78 733.

The South African resident will therefore have a tax liability in the 2010/2011 tax year of R78 733.

If the same individual were a UK resident, the total taxable income of R303 400 will be translated to £29 314,01 using table 2. The UK resident's income tax liability for the 2010/2011 tax year can be calculated as follows:
(£29 314,01 – £6 475) x 20% = £4 567,80.

The individual will then be liable for income tax in the UK of £4 567,80 which in turn can be translated to R47 276,75 using table 2.

If the same individual was an Australian resident, the total taxable income of R303 400.00 will be translated to AUD44 749.26 using table 2. The Australian residents' income tax liability for the 2010/2011 tax year can then be calculated as follows:
AUD4 650 + [(AUD44 749,26 – AUD37 000) x 30%] = AUD6 974,78.
The individual will now be liable for income tax of AUD6 974,78 in Australia which in turn can be translated to the equivalent of R47 289,00 using table 2.

Based on the above three calculations, it can be noted that the individual will be liable for less income tax if he or she was an Australian resident earning taxable income to the equivalent of R303 400 in the 2010/2011 tax year. The aim of the example is to try and

explain that an individual resident in South Africa working in the UK or Australia on a temporary basis might not receive the same tax benefits in the UK and Australia than he or she would have when migrating to these countries on a permanent basis.

Following the same principals and calculations as in example 14 above, the following table was compiled to elaborate on the difference in income tax in South Africa, the UK and Australia for the same taxable income by using hypothetical taxable income scenarios.

Table 13: Income tax consequences for South Africa, the UK and Australia

A	B	C	D	E	F	G	H	I	J
Taxable income from RSA source	**Taxable income from foreign source**	**Total world-wide taxable income [A + B]**	**RSA tax on world-wide income per table 3**	**World-wide income in UK per table 2**	**UK tax**	**UK tax per table 2**	**Worldwide income in AUS per table 2**	**AUS tax**	**AUS tax per table 2**
Rand	**Rand**	**Rand**	**Rand**	**Pound**	**Pound**	**Rand**	**AUD**	**AUD**	**Rand**
100 000	203 400	303 400	78 733	29 314	4 568	47 277	44 749	6 975	47 289
100 000	339 000	439 000	107 530	42 415	7 188	74 397	64 749	12 975	87 969
100 000	406 800	506 800	133 294	48 966	16 996	175 914	74 749	15 975	108 309
100 000	610 200	710 200	213 750	68 618	24 857	257 274	104 749	26 657	180 736

Comparing column "D", "G" and "J" in the table above, it can be noted that there are differences in the income tax payable in South Africa, the UK and Australia. According to these columns, in all the scenarios, the most income tax is paid in South Africa.

Considering that the rebate in terms of section 6*quat* do not result in an individual paying less income tax worldwide (only paying less income tax in South Africa) as shown in table 4 and the benefits summarised show individuals paying less income tax in the UK and Australia. Therefore an individual resident in South Africa will benefit more from migrating to the UK and Australia on a permanent basis than doing so on a temporary basis.

5.3.2 Recommendations for South Africa

The South African government can consider the following recommendations based on the outcome of this study to improve the tax environment in South Africa for skilled employees in an attempt to retain skilled employees in South Africa:

- an increase in the minimum taxable income threshold with an increase in the maximum tax rate may assist in distributing income more fairly between the different income classes. This may result in lower income classes earning more income which will be substituted with the higher income class paying more income tax. In other words the tax brackets can be moved;
- an increase in the primary rebate in terms of section 6 can assist skilled workers in paying less income tax in South Africa which in turn can motivate them to earn more income in South Africa; and
- the implementation of a special skilled employee rebate for skilled individuals, who remain in South Africa for a fixed period per year, may assist in retaining skilled employees in South Africa. This may help in turn to increase the number of skilled workers in South Africa by promoting education which again can increase the revenue generated for South Africa by these skilled workers.

5.4 CONCLUSION

In summary the study showed, based on the comparisons done in chapter 5.2 and the table above, the following benefits will be enjoyed by South African employees migrating to the UK or Australia:

- the UK provides a larger automatic rebate for individuals which might be cancelled out by the fact that the rebate is deducted before the amount is multiplied by the income tax rate;
- the UK has a larger minimum taxable income threshold of R67 016,25 for individuals younger than 65;
- Based on table 9 , individuals earning less than R387 090 (£37 400) per annum are likely to pay less income tax in the UK than in South Africa;
- Australia has a smaller minimum income tax rate of 15%; and

- Based on table 10, an individual earning approximately more than R140 000 (AUD20 648,97) per annum is likely to pay less income tax in Australia than in South Africa.

Chapter 6 will summarise the outcome and conclusion of the study in relation to the research objectives and problem statement of the study as set out in chapter 1.

CHAPTER 6

CONCLUSION

6.1 INTRODUCTION

To date the studies and comparisons done on the influence of tax on cross-border migration of skilled employees mostly concentrated on first world countries such as the United States of America (USA), Sweden and Germany. These studies also relied on complex formulae. Among these studies are those done by Egger and Radulescu (2009), Liebig and Sousa-Poza (2004) and Simula and Trannoy (2009). Studies done on South African skilled employee migration are limited and do not necessarily focus on the tax aspect of these migrations. These studies also fail to pinpoint specific sections in the income tax acts of the different countries being compared that provide a greater tax incentive to skilled employee than South Africa.

This study focused on the differences in the tax laws of South Africa, the UK and Australia to identify tax consequences or benefits (if any) where South African residents benefit from migrating to the UK or Australia. It differs from previous studies which used formulas to calculate the impact of tax on migration and the ideal tax model for a country. The practical contributions of this study will attempt to assist South African employers to understand how tax implications in other countries can influence skilled employee migration, resulting in an understanding of why professionals seek employment opportunities abroad.

6.2 OBJECTIVES

The study had the following objectives, namely:

- to analyse and compare sections in the income tax acts of South Africa, the UK and Australia to determine the income tax benefits South African residents working abroad receive. This was discussed in chapter 5.

- to analyse statistics relating to employee migration to the UK and Australia in order to establish whether tax plays a role in future employee migration. This was discussed in chapters 3.2 and 4.2; and
- to determine some of the benefits a South African resident will enjoy in the UK and Australia if the migration is temporary *versus* it being permanent. This was discussed in chapters 3.4, 4.4 and 5.

6.3 RECOMMENDATIONS

The South African government can consider the following recommendations based on the outcome of this study to improve the tax environment in South Africa for skilled employees in an attempt to retain skilled employees in South Africa:

- an increase in the minimum taxable income threshold with an increase in the maximum tax rate may assist in distributing income more fairly between the different income classes. This may result in lower income classes earning more income which will be substituted with the higher income class paying more income tax. In other words the tax brackets can be moved;
- an increase in the primary rebate in terms of section 6 can assist skilled workers in paying less income tax in South Africa which in turn can motivate them to earn more income in South Africa; and
- the implementation of a special skilled employee rebate for skilled individuals, who remain in South Africa for a fixed period per year, may assist in retaining skilled employees in South Africa. This may help in turn to increase the number of skilled workers in South Africa by promoting education which again can increase the revenue generated for South Africa by these skilled workers.

6.4 RECOMMENDATIONS FOR FUTURE STUDIES

Future research studies can expand on this study by evaluating the differences in employee benefits received in South Africa *versus* foreign countries in more detail. This will assist in making the study more specific and pinpointing benefits for South Africans migrating to foreign countries more accurately. The study can assist in creating a platform

for future studies to perform an in-depth empirical research with the aim to update the statistics available regarding the reasons skilled South African choose to emigrate from South Africa. This in turn can help to identify more specifically if the South African income tax system plays an important role in the emigration of skilled South Africans.

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