

# CRITICAL ANALYSIS OF THE TAXATION OF SOUTH AFRICAN EMPLOYEES WORKING ABROAD

By

TALITA CORNELIA VAN WYK  
Student nr 99164214

Submitted in partial fulfilment of the requirements for the degree  
M.Com in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

Supervisor:

Mrs. H. du Preez

Date of submission:

**November 2011**

## **ABSTRACT**

# **CRITICAL ANALYSIS OF THE TAXATION OF SOUTH AFRICAN EMPLOYEES WORKING ABROAD**

By

Talita Cornelia van Wyk

STUDY LEADER: MRS. H DU PREEZ  
DEPARTMENT: TAXATION  
DEGREE: MAGISTER COMMERCII

Companies trading in international markets and assigning their employees to these global positions has become a daily occurrence, also in the lives of many South Africans. The taxation planning around these assignments can become a complex matter which can either be beneficial to the employee or result in surprising tax liability.

Although many articles have been written on the taxation effect on South African employees working abroad, little research has been performed combining not only the South African legislation, but also taking the effect of double taxation agreements and the legislation of other countries into consideration. This study extends on these prior articles by analysing the taxation of an individual from a South African perspective in combination with double taxation agreements and legislation of the United States of America, Australia and Saudi Arabia.

The aim of this study is to create a structure for planning an employee's taxation liability when sent on a secondment assignment and to provide all the relevant aspects that should be taken into consideration to determine the employee's final tax liability.

This study discusses the South African legislation relevant to employment income, determining the employee's resident status, the relevant double taxation agreements articles and three countries: USA, Australia and Saudi Arabia, double taxation agreements and legislation on non-residents. The study concludes by summarising the taxation effect on a South African employee working in one of these countries.

Keywords:

*Employee*

*Double taxation agreement*

*Employment income*

*Tax liability*

*United States of America*

*Australia*

*Saudi Arabia*

## OPSOMMING

### 'n KRITIESE ONTLEDING VAN DIE BELASTING OP SUID-AFRIKAANSE WERKNEMERS WAT IN DIE BUITELAND WERK

Deur

TALITA CORNELIA VAN WYK

STUDIELEIER: MEV. H DU PREEZ  
DEPARTEMENT: BELASTING  
GRAAD: MAGISTER COMMERCII

Maatskappye wat in internasionale markte handeldryf en hulle werknemers in buitelandse poste aanstel het 'n alledaagse deel van baie Suid-Afrikaners se lewens geword. Die belastingbeplanning rondom hierdie opdragte kan 'n komplekse berekening word wat of gunstig vir die werknemer kan wees of in 'n onverwagse belastingimplikasie kan ontaard.

Alhoewel daar al baie artikels geskryf is ten opsigte van die belastingeffek vir Suid-Afrikaanse werknemers wat oorsee werk, is daar min navorsing gedoen wat die Suid-Afrikaanse wetgewing met die effek van dubbelbelastingooreenkomste asook die belastingwetgewing van ander lande kombineer. Hierdie studie is 'n uitbreiding van hierdie artikels deurdat dit die belastingeffek van Suid-Afrikaanse individue analiseer deur Suid-Afrikaanse wetgewing te kombineer met dubbelbelastingooreenkomste en belastingwetgewing van die Verenigde State van Amerika, Australië en Saoedi-Arabië.

Die doel van die studie is om 'n struktuur daar te stel om 'n individu se belastingaanspreeklikheid te beplan wanneer hy in 'n internasionale pos aangestel word en om al die relevante aspekte in ag te neem om sy finale belastingaanspreeklikheid te bepaal.



Die studie bespreek Suid-Afrikaanse wetgewing rakende werknemers inkomste, die bepaling van die individu se inwoner-status, die relevante dubbel belasting-ooreenkomste artikels en drie lande: VSA, Australië en Saoedi-Arabië, se dubbel belasting-ooreenkomste en wetgewing op nie-inwoners. Die studie kom tot die gevolgtrekking deur die belasting effek van 'n Suid-Afrikaanse werknemer wat in een van die bogenoemde lande werk, op te som.

*Sleutelwoorde:*

*Werknemer*

*Dubbelbelastingooreenkoms*

*Werknemers inkomste*

*Belastinglas*

*Verenigde State van Amerika*

*Australië*

*Saoedi-Arabië*



## TABLE OF CONTENTS

CHAPTER 1.....	1
INTRODUCTION .....	1
1.1    BACKGROUND.....	1
1.2    PROBLEM STATEMENT .....	2
1.3    PURPOSE STATEMENT .....	3
1.4    RESEARCH QUESTIONS.....	3
1.5    DELIMITATIONS AND ASSUMPTIONS .....	4
1.5.1    DELIMITATIONS.....	4
1.5.2    ASSUMPTIONS .....	4
1.6    DEFINITION OF KEY TERMS.....	5
1.7    OVERVIEW OF CHAPTERS.....	6
CHAPTER 2.....	7
RSA INCOME TAX .....	7
2.1    INTRODUCTION .....	7
2.2    THE EFFECT OF CHANGES IN THIS LEGISLATION.....	8
2.2.1    Source base taxation system to residence base taxation system .....	8
2.2.2    Definition of resident.....	9
2.3    CURRENT LEGISLATION ON INCOME RELATED TO EMPLOYMENT.....	13
2.3.1    South African pension fund .....	14
2.3.2    Foreign pension funds .....	14
2.3.3    Relocation allowances.....	16
2.3.4    Capital gains/losses on assets sold.....	17
2.3.5    Exemptions available for tax relief.....	19
2.4    CONCLUSION.....	22
CHAPTER 3.....	23

THE ROLE OF DOUBLE TAXATION AGREEMENTS .....	23
3.1 OBJECTIVES OF DTA: .....	23
3.2 THE RELATION BETWEEN DOMESTIC LAW AND DTAS: .....	23
3.3 RELEVANT DTA ARTICLES FOR RSA EMPLOYEES WORKING ABROAD: .....	24
3.3.1 Residency:.....	24
3.3.2 Independent personal services:.....	25
3.3.3 Income from employment: .....	25
3.3.4 Directors' fees: .....	26
3.3.5 Pensions and annuities: .....	27
3.3.6 Other: .....	27
3.4 CONCLUSION.....	27
CHAPTER 4.....	28
UNITED STATES OF AMERICA (USA).....	28
4.1 UNITED STATES OF AMERICA: TAXATION ON NON-RESIDENTS WORKING IN THE USA.....	28
4.1.1 Residency:.....	28
4.1.2 Taxation on Non-Residents:.....	29
4.2 COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN USA .....	29
4.3 RSA/USA DOUBLE TAXATION AGREEMENT:.....	30
4.3.1 Residency:.....	30
4.3.2 Independent personal services.....	31
4.3.3 Income from employment.....	31
4.3.4 Director's fees .....	32
4.3.5 Pensions and Annuities .....	32
4.4 COMPARISON OF THE RSA/USA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT .....	33
4.5 CONCLUSION.....	35

CHAPTER 5.....	36
AUSTRALIA.....	36
5.1    AUSTRALIA: TAXATION ON NON-RESIDENTS WORKING IN AUSTRALIA....	36
5.1.1    Residency:.....	36
5.1.2    Taxation on non-residents:.....	36
5.2    COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN AUSTRALIA:.....	37
5.3    RSA/AUSTRALIA DOUBLE TAXATION AGREEMENT:.....	38
5.3.1    Residency:.....	38
5.3.2    Independent personal services:.....	38
5.3.3    Income from employment:.....	38
5.3.4    Director’s fees:.....	39
5.3.5    Pensions and Annuities.....	39
5.4    COMPARISON OF THE RSA/AUSTRALIA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT.....	39
5.5    CONCLUSION.....	42
CHAPTER 6.....	43
SAUDI-ARABIA.....	43
6.1    SAUDI-ARABIA: TAXATION ON NON-RESIDENTS WORKING IN SAUDI- ARABIA.....	43
6.1.1    Residency:.....	43
6.1.2    Taxation on non-residents:.....	43
6.2    COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN SAUDI-ARABIA:.....	44
6.3    RSA/SAUDI ARABIA DOUBLE TAXATION AGREEMENT:.....	45
6.3.1    Residency.....	45
6.3.2    Independent personal services.....	45
6.3.3    Income from employment.....	46
6.3.4    Director’s fees.....	46





6.3.5	Pensions and Annuities .....	47
6.4	COMPARISON OF THE RSA/SAUDI-ARABIA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT .....	47
6.5	CONCLUSION.....	49
CHAPTER 7.....		51
CONCLUSION.....		51
7.1	INTRODUCTION .....	51
7.2	CONCLUSION.....	51
7.3	RECOMMENDATION.....	52
7.4	FUTURE RESEARCH .....	52
LIST OF REFERENCES.....		53

## LIST OF FIGURES

Figure 1: Physical presence test.....	12
Figure 2: Flowchart determining the tax implication of a pension fund. ....	16

## LIST OF TABLES

Table 1: Abbreviations .....	6
Table 2: Comparison of tax legislation of the RSA and USA: .....	30
Table 3: DTA Articles and the taxation effect on RSA employees working in the USA.....	34
Table 4: Comparison of tax legislation of the RSA and Australia: .....	37
Table 5: DTA Articles and the taxation effect on RSA employees working in Australia .....	40
Table 6: Comparison of tax legislation of the RSA and Saudi-Arabia: .....	44
Table 7: DTA Articles and the taxation effect on RSA employees working in Saudi-Arabia .....	47

# **CRITICAL ANALYSIS OF THE TAXATION OF SOUTH AFRICAN EMPLOYEES WORKING ABROAD**

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 BACKGROUND**

Economic globalization has changed national economies into international economies and companies in these economies to companies with international work forces. This created a global market for skilled professionals. According to United Nations statistics more than 200 million people are currently living outside their home countries (Wikipedia, 2010); giving rise to employees of international companies working all over the world and being subject to different tax regimes.

Careful planning is needed when sending these employees on their global assignments (Harraway and Raymund, 2001) as tax savings as well as unknown tax obligations can be created as a result of misconceptions and interpretations of tax laws (Korten, 2011). Consideration must be given to the remuneration paid to these employees because the employee might be disadvantaged if the cost of living and currency exchange rate is higher than it would be in his/her home country (Rogers and Farrand, 2009).

KPMG, a well known international auditing firm, has done a survey and consequently created a special department: the International Executive Services (KPMG, 2008). This department specializes in assisting international companies with not only taxation services, but also in helping their employees with settling in other countries while being on an international assignment (KPMG, 2008). McKinley International Risk Management wrote a manual on the policies and procedures companies need to consider when sending employees on international assignments (McKinley, 2010).

Previous research (Rogers and Farrand, 2009) has addressed several aspects of the benefit of secondment of employees, including concessions granted to South African (RSA) pension funds, tax savings on foreign pension funds, relocation allowances and the knowledge gained by the individual. Consideration must be given, however, should RSA employees sell some of their assets before going overseas, and to the capital gain effect on their taxation (Rogers and Farrand, 2009).

Various articles have been written on determining the resident status of individuals from different countries and the impact thereof on their annual tax returns (Harraway and Raymund, 2001; Johnson, Zinneman and David, 1994 and Kaplan and Steven, 1993).

## **1.2 PROBLEM STATEMENT**

RSA taxation legislation changed in January 2001 from a source base taxation system to a residence base taxation system, meaning that residents are taxed on their world-wide earnings. Legislation regarding the definition of a resident also changed in 2001. Included in the definition is the physical presence test, section 1 of the Income Tax Act No. 58 of 1962 (The Act). The physical presence test will deem a natural person a resident of the RSA if the person has been staying in the RSA for a certain period of time. Thus, due to the definition, a natural person may be a resident of more than one country and taxed in both.

The RSA has entered into numerous double taxation agreements (DTAs) with various countries giving guidance to which country may tax certain types of income. People, however, often misinterpret these agreements thinking that they fall under a DTA and are, therefore, totally exempt from RSA taxation on all their income.

The South African Revenue Services (SARS) also broadened section 10(1)(o) of the Act to provide general exemption to employees working abroad if they adhere to the requirements given in the article. Problems with the interpretation of this article led to many employees being taxed in the RSA.

Employees might focus only on the income of employment and other employment related income that will affect the calculation of their taxation. Consideration of all the different legislation on other types of income related to employment such as pension funds, reallocation allowances and capital gains must be taken into account.

The study will make the following contributions to individuals currently working abroad and those who will work abroad in the future. Firstly it will set out the specific legislation that has an effect on these individuals' taxation, how to interpret this legislation and the effect of changes in legislation. Secondly it will guide the individual in planning for international assignments to create the most favourable taxation position. Thirdly it will point out the most common misinterpretations of these legislations.

### **1.3 PURPOSE STATEMENT**

The main purpose of this study is to investigate the tax implications for RSA employees working abroad in terms of:

- the effect of current legislation and DTAs;
- the effect of change in legislations; and
- the effect of misinterpreting the legislation

A comparison will be made between RSA employees working in the USA, Australia and Saudi Arabia to demonstrate the effect of these elements on their taxation.

### **1.4 RESEARCH QUESTIONS**

The study will answer the following questions that will be discussed in the chapters to follow:

Main question:

What should an RSA employee take into consideration when entering into a secondment agreement in order to make an informed decision regarding the impact on his/her taxation?

Subsequent question:

- What is the tax effect on RSA individuals working abroad resulting from the change in SA legislation, taking into account previous legislation, current legislation and, if relevant, changes according to amendment acts?
- What is the tax effect on RSA individuals working in the following countries due to the application of DTAs: United States of America, Saudi Arabia and Australia?
- What are the general misinterpretations made by RSA employees when interpreting The Act and DTAs?

## **1.5 DELIMITATIONS AND ASSUMPTIONS**

### **1.5.1 DELIMITATIONS**

The study has three delimitations. Firstly it will be limited to natural persons and not include any other legal entities, for example companies or trusts. Secondly it will focus on natural persons currently defined as RSA residents and not expatriates. Thirdly the study will focus on RSA legislation and DTA agreements between the RSA and the United States of America, Saudi Arabia and Australia; no focus on, or comparison of legislation regarding this topic in other countries will be made.

### **1.5.2 ASSUMPTIONS**

The following assumptions are made in the study:

- That a literature review is the appropriate research approach.
- That the data collected are accurate.

## 1.6 DEFINITION OF KEY TERMS

The study includes the following key terms, namely employee, RSA resident, DTA, source base taxation, residence base taxation. The interpretation of these definitions with relevance to this study is considered below:

**Employee:** The term refers to a specific relationship between an individual and an entity, in which the individual is hired to perform specific duties in return for remuneration (Wikipedia, 2010).

The term is defined in paragraph 1 of the Fourth Schedule of the Act as:

- any person, except a company, who receives remuneration or to whom it accrues;
- any person, including a company, who receives remuneration or to whom it accrues due to services rendered on behalf of a labour broker or by that person;
- any labour broker;
- any person that the Minister of Finance declares as an employee in the Government Gazette;
- any personal service company or trust; and
- any director of a private company not otherwise included in the definition.

**RSA Resident:** This term is defined in section 1 of the Act as an individual who ordinarily resides in the RSA or adheres to the requirements of the physical presence test.

**DTA:** Honiball and Olivier (2008) describe a DTA as a treaty between two countries based on a model tax convention with specific rules dealing with different types of income.

**Source base taxation:** Van Schalkwyk, in Stiglingh, M., Koekemoer, A.D., Van Schalkwyk, L., Wilcocks, J.S., De Swardt, R.D. and Jordaan K., 2011. refers to this form of taxation as being taxed on income or accrued income from actual sources or deemed sources of that country.

**Residence base taxation:** Van Schalkwyk in Stiglingh, M., et al, 2011. refers to this form of taxation as being taxed on an individual's income received or accrued from world-wide sources.

**Table 1: Abbreviations**

<b>Abbreviation</b>	<b>Meaning</b>
DTA	Double taxation agreement
MTC	Model tax conventions
OECD	Organisation for Economic Co-operation and Development
RSA	Republic of South Africa
SARS	South African Revenue Services
The Act	South African Income taxation Act No 58 of 1962

## **1.7 OVERVIEW OF CHAPTERS**

In Chapter 1 the problems that might arise when RSA employees work on international assignments are considered. Secondly the importance of the study, the assumptions and delimitations of the study follows. Thirdly the key terms and definitions used in the study are explained.

In Chapter 2 the relevant RSA legislation and the effect of changes in this legislation and misinterpretations of the legislation will be discussed. Chapter 3 will focus on the objectives of DTA agreements, the relation between domestic law and DTAs and the interpretation of the relevant articles in DTAs bases on the OECD model. Chapter 4 will focus on USA tax legislation, the DTA agreement between RSA and the USA and the effect of this legislation on RSA employees working in the USA. Chapter 5 will focus on Australian tax legislation, the DTA agreement between RSA and Australia and the effect of this legislation on RSA employees working in Australia. Chapter 6 will focus on Saudi-Arabia tax legislation, the DTA agreement between RSA and Saudi-Arabia and the effect of this legislation on RSA employees working in Saudi-Arabia. The study will conclude in Chapter 7 summarising the importance of the discussed legislation and giving recommendations and future research for the study.



## CHAPTER 2

### RSA INCOME TAX

#### 2.1 INTRODUCTION

There is an increase in business on international markets annually, for example companies opening branches, holding companies buying subsidiaries, international headquarter companies owned by shareholders situated in different countries, clients situated in different parts of the world and multi-national contracts.

Companies make use of these opportunities by sending employees with intimate knowledge of the business to ensure successful implementation of the offshore business operations, also giving the employee the benefit of gaining knowledge of a specific off-shore market; thus resulting in a dual benefit for both the employer and employee (Rogers and Farrand, 2009).

Sending employees on such secondments causes the work force of companies to move from locations and countries with different taxation legislations, giving the need to carefully plan the individuals' taxation aspects as it could result in great tax savings when an individual is outsourced to a branch or company in a different country, but there can also be unforeseen tax implications if the legislation is not carefully considered (Korten, 2011).

Harraway and Raymond (2001) provide examples as to the possible savings when an individual is assigned from the RSA to a country with a lower tax rate, by applying section 10(1)(o) of the Act or the DTA existing between the two countries. It also demonstrates the effect on the tax liability if the legislation is misinterpreted.

The effect of international trading opened up various business opportunities for taxation consulting companies in providing not only taxation services to these international companies, but assisting them in writing manuals on the policies and procedures for employees on international assignments and helping the employees and their families to

settle in by providing guidance to schools, acquiring motor vehicles and so forth (KMPG, 2008).

The next section will look at important RSA taxation legislation relevant to employees working abroad and the effect of changes in this legislation.

## **2.2 THE EFFECT OF CHANGES IN THIS LEGISLATION**

### **2.2.1 Source base taxation system to residence base taxation system**

To be able to plan the outcome of an employee's tax liability when working abroad an understanding needs to be obtained of DTAs and both countries' legislation. The relevant sections of the RSA taxation legislation will firstly be explained.

In 2001 the RSA changed its legislation from source base taxation to residence base taxation, thus broadening the fiscal income of the RSA tremendously. The effect of this was that all individuals that are taxed only on income received or accrued from an RSA source or deemed sources are now taxed on world-wide income.

Thus the connecting factor between the income and the country is the individual who receives the income or to whom the income accrues. This implies that all residents of the RSA must declare all income received from all sources, for example income received from property rentals in other countries (Honiball and Olivier, 2008).

In applying residence based taxation it is ensured that neutral treatment is given to residents who invest in international markets and those who invest domestically.

Honiball and Olivier (2008), explain that a residence basis for taxation is usually justified if the individual or resident contributing to that country enjoys the protection of that government when travelling abroad.

The taxation of non-residents is calculated on the RSA source income or deemed source income.

Understanding the taxation basis used by the RSA and which income will be included due to this basis, the next step will be determining if the employee is a resident of the RSA.

### **2.2.2 Definition of resident**

The definition of a resident, according to section 1 of the Act, is set out as a person who is ordinarily a resident in the RSA or a person that meets the requirements as set out in the physical presence test.

The importance of this definition for RSA employees working abroad is:

Firstly, if a person is a resident he/she will be taxed on their world-wide income, but a non-resident will only be taxed on RSA source income.

Secondly, when a person loses RSA tax residency status there is a deemed disposal of his/her capital assets under the Eighth Schedule of the Act, causing a capital gain event which may cause unexpected cash flow problems for the employee in the form of Capital Gains Tax (Tax consulting, 2007).

There is no formal definition in the Act for ordinary residents, but the term has been established by various court cases; the most important of these cases is summarised as follows: In *Cohen v CIR* 13 SATC 362 at 371, the court held that the term “ordinary resident” refers to the country to which a person would naturally return to from his wanderings or travels. This approach was also confirmed in the case of *CIR vs. Kuttel* 54 SATC 298 (Van Schalkwyk in Stiglingh, et al., 2011).

SARS issued Interpretation note 3 of 2002 which confirms this approach; it is made clear in this document that there are no specific rules, but that every case must be judged individually.

Interpretation note 3 refers to the following case: In the Canadian case of *Thompson v Minister of National Revenue 2 DTC 812 (SCC)* it was held that a person is ordinarily a resident where he has his settled routine or centralises his normal living and social relations.

SARS stipulates that the burden will be on the taxpayer to prove he is or is not a resident of the RSA. A number of factors are given as guideline when considering one's residency status, based on the different court cases (Interpretation note 3, 2002):

- fixed or settled place of residence;
- habitual abode;
- place where one's interest and business is;
- the status of the person in the country, for example if he is an immigrant;
- where are the persons' personal belongings located;
- what is the nationality of the person;
- where are the persons' family and social relations located;
- where does the person perform cultural and political activities;
- where did the person apply for permanent residency;
- how long has the person been abroad and what is the purpose of his visits; and
- what are the person's reasons for visits to the country and how frequently does he enter into the country?

Residency is determined under the definition of "ordinary resident" or the physical presence test. The physical presence test will be explained in the following paragraphs.

SARS issued Interpretation 4 of 2006 where the physical presence test is explained, and the effect of DTAs on this test as well as different examples to explain the different situations. Figure 1 is a visual presentation of the process of establishing whether a person adheres to the physical presence test.

In 2006 the RSA changed its rules for the physical presence test from a four year to a six year period placing the legislation more in line with other countries such as Canada and Australia; these countries have similar 'exit taxation' provisions as the RSA when an individual is no longer seen as a resident (Thersby, 2006).

The physical presence test establishes that an individual will be a resident of the RSA if he/she has been physically present in the RSA for the following periods:

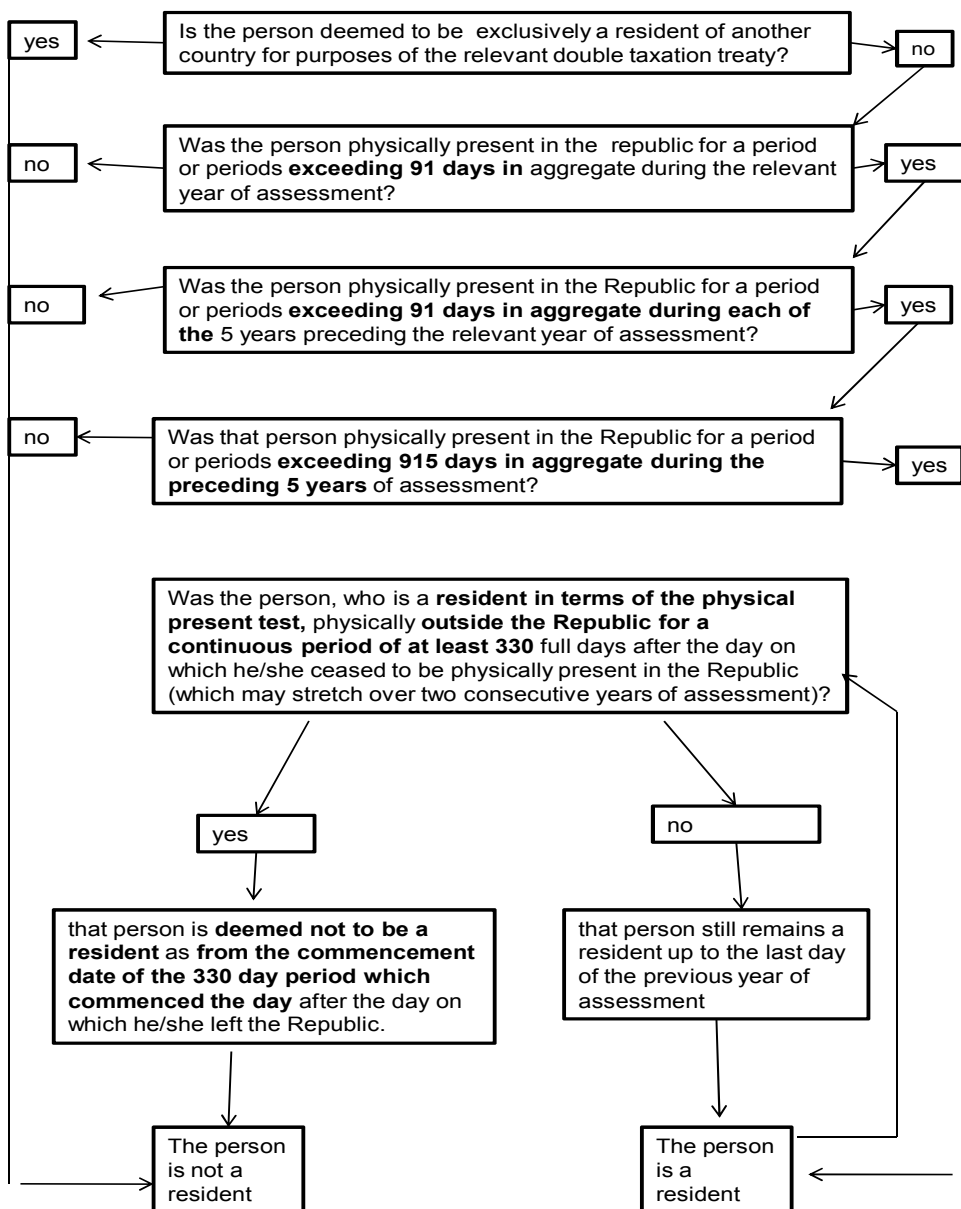
- more than 91 days in the current year of assessment;
- more than 91 days in the previous five years of assessment; and
- an aggregate total of more than 915 days in the previous five years of assessment (Interpretation note 4, 2006).

A natural person ceases to be a resident of the RSA if he was deemed to be resident under the physical presence test on the day after the day he left the RSA and were continuously outside RSA for more than 330 days (Interpretation note 4, 2006).

Misinterpretations may be made as the legislation defines half a day as a full day in the RSA, thus the day on which a person enters the RSA through a customs point will be seen as a full day in the RSA; the same applies to exiting the country. If a person is in transit through the country and does not enter through a formal customs point the person is not seen as being physically present in the RSA (De Swardt, in Stiglingh, et al, 2011).

It is important for a person to establish his country of residence, taking into account all relevant factors not only to determine if he will be liable for taxation in the RSA but because this term is just as important to determine one's tax liability according to a DTA (this will be discussed in Chapter 3).

**Figure 1: Physical presence test**



Source: De Swardt, in Stiglingh, et al, 2011).

## 2.3 CURRENT LEGISLATION ON INCOME RELATED TO EMPLOYMENT

In the previous sections it was established that RSA residents are taxed on their world-wide income. The next sections will focus on the different RSA taxation legislation on income derived from employment.

Before considering the legislation on employment income one has to look at the definitions of *employee* and *remuneration* for taxation purposes.

Employee: The term refers to (Part 1 of the Fourth Schedule to the Act):

- a natural person;
- who receives remunerations or to whom it is accrued;
- for services rendered or for services rendered on behalf of a labour broker;
- any labour broker;
- any person declared as an employee by the Minister of Finance;
- any personal service provider; or
- any director of a private company not otherwise included.

Remuneration (Part 1 of the Fourth Schedule to the Act):

- any amount of income;
- paid to or payable to any person;
- whether in cash or otherwise; and
- whether or not in respect of services rendered.

SARS (2011) expands the definition of remuneration further by including the different types of income and other payment or fringe benefits in the guide to employers.

Current legislation in the RSA includes remuneration under the gross income into taxable income under paragraph (ii)(c) of the gross income definition (Section 1 of The Act).

SARS exempts the following types of remuneration under section 10(1)(c): (De Swardt, in Stiglingh, et al,2011):

- a non-resident holding an office for a government other than the RSA government;

- a non-resident domestic or private servant of a foreign diplomat;
- a person from a foreign state temporarily employed in RSA, providing that there is an agreement for the exemption between the two countries;
- foreign employees of foreign government agencies or employees of organisations providing foreign donor funding; and
- a pension to the former or Vice State President and their surviving spouses

### **2.3.1 South African pension fund**

Paragraph (e) of the gross income definition includes retirement lump sums, thus these amounts will be included in a person's gross income. The Second Schedule of the Act sets out the different formulas to be used in calculation of the taxable portion of these lump sums. These formulas were simplified in 2008. In the Amended Act, No 8 of 2007, lump sums are taxed using a separate table with tax percentages (Government Gazette, 2007).

SARS (2009b) sets out in its Guide on Taxation of lump sum benefits details on how these lump sums were taxed before October 2007 and after this date.

If an employee is nearing retirement age and worked outside the RSA during the last ten years prior to his retirement a concession is granted with regards to his RSA pension fund (Rogers and Farrand, 2009). Section 10(1)(gC) gives a partial exemption where an employee worked outside RSA for at least two out of the last ten years prior to retirement; this is a deemed source provision, thus the pension fund will be deemed an RSA source under section 9(1)(g)(ii) of the Act. The part of the pension that will be taxable in the RSA is calculated by using the ratio of time worked in RSA to the total time of employment. The balance of the pension fund amount will be exempt under section 10(1) (gC).

### **2.3.2 Foreign pension funds**

Paragraph (e) of the Gross income definition also includes income from foreign pension funds (The Act).



Payments received from a foreign pension fund due to contributions made to that fund whilst working abroad will be exempt from RSA taxation under section 10(1)(gC).

The following conditions must be met:

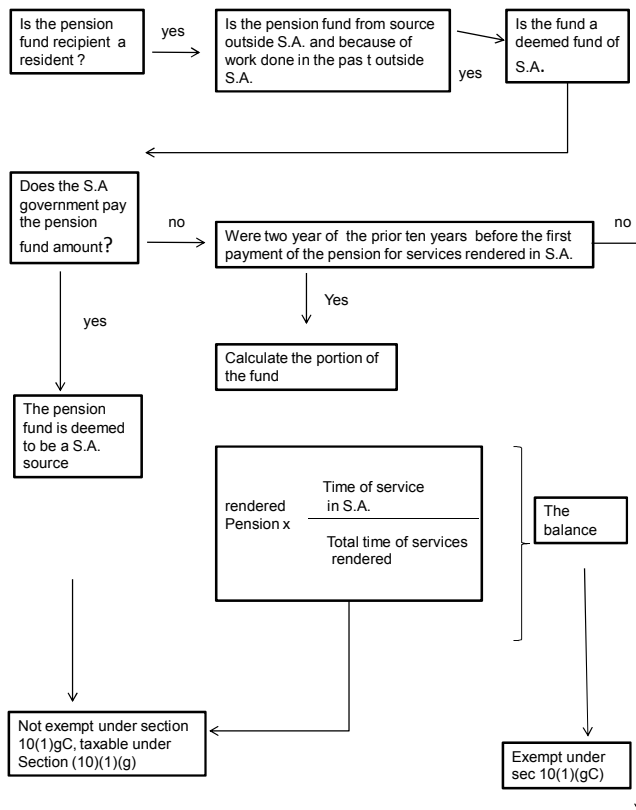
- The fund must be a foreign fund; and
- The fund must not be a deemed source of South Africa.

A pension fund will be deemed to be from an RSA source if the payment was made by the South African government or due to services provided in the RSA in the last two years of the prior ten years before the first payment from the fund was due.

Figure 2 assists in determining if a pension fund will qualify to be exempt under section 10(1)(gC) setting out three possible outcomes:

- a resident of the RSA receives a pension from a source outside the RSA for services rendered outside the RSA; the pension is, however deemed to be from a RSA source because it is paid by the RSA government, thus the section 10(1)(gC) exemption will not apply;
- a resident of the RSA receives a pension from a source outside the RSA for services rendered outside the RSA, the pension was not paid by the RSA government and the person did not render services in the RSA in the last two years during ten years prior to the due date of the pension; the full pension is exempt in terms of section 10(1)(gC); or
- a resident of the RSA receives a pension from a source outside the RSA for services rendered outside the RSA, the pension was not paid by the RSA government and the person did render services in the RSA in the last two years during ten years prior to the due date of the pension; the portion of the pension for services spend outside the RSA will be exempt in terms of section 10(1)(gC).

**Figure 2: Flowchart determining the tax implication of a pension fund.**



Source: (De Swardt, in Stiglingh, et al, 2011).

### 2.3.3 Relocation allowances

When an employer requires from his employee to relocate in the course of his employment or due to a secondment, the relocation allowance will be exempt from RSA taxation under section 10(1)(nB).

The following events will cause expenses to be incurred under this section (De Swardt, in Stiglingh, M., et al (2011) :

- the transfer of an employee to a different location whilst under the same employment;
- the appointment of a new employee; or
- termination of employment.

The following expenses incurred by the employer or paid back to the employee will be exempt from taxation:

- transportation of the employee and his family as well as household effects to their new location; or
- costs incurred by the employee in selling his old residence and settling into his new residence which will be allowed by the Commissioner; and
- temporary accommodation (for example stay in a hotel) pending permanent residence for the employee and his family for a period of 183 days after the termination or relocation.

The cost incurred in settling into the new residence usually comprises the following:

- Expenses incurred with regard to buying and selling a residence, for example: Registration and cancellation fees of a mortgage bond, legal fees, transfer duty and agents' fees. A loss suffered by the employee on selling his old residence or architectural fees paid for his new residence will, however, not be allowed.
- Expenses incurred for settling into the new residence, for example: School uniforms, registration of motor vehicles, connection fees of telephones and water and electricity, replacement of curtains.  
SARS finds it acceptable to give the employee one month's salary tax-free to cover these costs.

It would also be beneficial to determine if the legislation in the new country of residence provides for exempt allowances on these costs, if the employee falls under the taxation legislation of that country during the period of the secondment (Rogers and Farrand, 2009; De Swardt, in Stiglingh, et al, 2011).

#### **2.3.4 Capital gains/losses on assets sold**

When an employee is on a secondment assignment the following two events could have capital gain effects on the employee's taxable income in RSA.

The first event will be if the employee sells his primary residence before leaving on his secondment assignment. The employee might qualify for the primary residence exclusion. To determine if the employee will qualify he should first determine if his residence qualifies under the definition of a primary residence.

Primary residence: defined in section 44 of the Eighth Schedules of the Act.

- The interest in the residence must be held by an individual or special trust who is a resident of the RSA;
- The individual or his/her spouse or beneficiary of the special trust must reside or have mainly resided in the residence; and
- Use or have used it mainly for domestic purposes.

The exclusion in paragraph 45(1)(a) of the Eighth Schedule of the Act will currently exempt the first R1, 500,000 (R1, 000,000 in 2006 and earlier) of the capital gain realised as a result of the sale (Rogers and Farrand, 2009). A R2,000,000 threshold (paragraph 45(1)(b)) was introduced by section 73 of the Taxation Amendments Act 17 of 2009. SARS (2010) explains in its Comprehensive Guide to Capital Gains Taxation that if the proceeds on the disposal of a primary resident is less or equal to R2,000,000 the capital gain/loss must be disregarded (Government Gazette, 2009). For the threshold to apply the primary residence must have been ordinarily resided in on or after valuation date (1/10/2001) and not been used for business purposes (paragraph 45(4) of the Eighth Schedule to the Act).

Secondly there might be a deemed disposal of assets according to paragraph 12(2)(a) of the Eighth Schedule to the Act, if an employee ceases to be a resident (Honiball and Olivier, 2011). The person will be deemed to sell his asset at market value at the time he ceases to be a resident and will be deemed to have a capital gain equal to the difference between the market value and the base cost.

The following assets will be excluded from this section:

- Interest and rights in immovable property as well as certain shares in property owning companies;
- Assets of a permanent establishment in the RSA;

- Section 8B: qualifying equity shares granted to the person less than 5 years prior to the date the person ceased to be a resident;
- Section 8C: equity instruments that have not yet vested in the person at the time he/she ceased to be a resident; and
- Section 8A: marketable securities.

Careful consideration should be given to the possible capital gains events as these might have an unexpected influence on the employee's cash flow if it wasn't accounted for.

### **2.3.5 Exemptions available for tax relief**

Due to the fact that employees and residents of the RSA can be taxed by two countries on the same income, the RSA has adopted three methods (exemption, credit and deduction) in which relief is given to residents. The three methods are discussed below:

#### **a) Exemption methods:**

Section 10 of the Act includes various exemptions, these exemptions include section 10(1)(c) of the Act - employment exemptions (refer to chapter 2.3.2) and chapter (10)(1)(gC) of the Act – foreign pension fund payments (refer to section 2.3) (Honiball and Olivier, 2011).

The study will focus on section 10(1)(o) of the Act; one of the key benefits available to employees. SARS (2003) issued Interpretation note 16 in March 2003 explaining the section and providing clarity on some of the issues that caused misinterpretations.

In summary the section grants exemption for income from employment derived from foreign countries if the following conditions are met (SARS 2003):

- income received or accrued by an employee;
- services rendered on behalf of the employer;
- the employee must be outside the RSA for a period exceeding 183 days in a 12 month period and for a continuous period of 60 days in the 12 month period; and
- the services must be provided during the period.

The general misinterpretations and problems of this article are explained in the following paragraphs.

Grobler (2007) discussed some of the misinterpretations and problems contained in this section before it was amended by the Amendment Act 35 of 2007 (Government Gazette, 2007). Firstly she referred to a major stumbling block that arose for employees on secondment if they received deferred remuneration such as share option gains and bonuses. These types of income were often accrued from services rendered over a period longer than the permitted 12 month period in the legislation when the actual income was received. It is her view that the amendment had a broadening impact by then including the accrued income if earned in the fiscal year; this was done by the adding of sub-paragraph (c) to the section.

The second problem she identified was that the section originally only allowed for the exemption strictly according to the definition of remuneration as defined in the Fourth Schedule of the Act. The definition for the purposes of this section was widened and now includes other forms of remuneration for example share option gains; this was done by defining the types of income included and specifically naming sections 8, 8B and 8C of the Act.

Another problem encountered was that RSA companies sending their employees on secondment did not change the remuneration packages, for example a person's package was made up of basic salary and a travel allowance. When going on secondment the package stayed the same but included a reallocation allowance. The RSA company would deduct employees' tax until they were sure the employees qualified for the exemption under section 10(1)(o). If one looks at the definition of remuneration according to the Fourth Schedule of the Act only 80% (50% in 2004) of the travel allowance is included in the definition of remuneration, thus 20% of the foreign income on the travel allowance will not be exempt and employees' tax should be deducted on that portion. Foreign contracts must be carefully planned and should be specifically tailored for the foreign assignment (Freeman and Andhee, 2004).

SARS (2003) made it clear in Interpretation Note 16 that any termination or severance types of payments are excluded from the exemption.

SARS also deals with one of the general misconceptions regarding the following:

- the days spent outside the country

This means the service must be outside the borders of the RSA. The days spent outside the country include weekends, public holidays, leave and sick leave.

- a 12 month period

This is not necessary a year of assessment or calendar year but any 12 month period starting or ending in a specific year of assessment in which the income will be taxed or exempted.

#### **b) Credit method:**

Section 6 quat of the Act provides for a unilateral tax credit in the form of a rebate in respect of foreign taxes on income. This will provide a resident with a rebate on foreign taxes already paid on income by applying the source principle in the other country.

The rebate is deducted from the normal RSA tax payable.

“Section 6 quat(1B) provides that the rebate shall not in aggregate exceed an amount which bears to the total normal tax payable, in the same ratio as the total taxable income attributable to the specific category of income in respect of which the rebate may be claimed, bears to the total taxable income” (Honiball and Olivier, 2008).

SARS (2009a) issued Interpretation note 18 in March 2009 which discussed in full the different types of methods used for relief to residents. It further explains the different categories of income that qualify for section 6 quat rebates, the method to use in calculating the rebate, the types of foreign taxes that are allowed to be credited, detail on how to translate the foreign taxes to rand and provisos to the section.

#### **c) Deduction methods:**

RSA legislation provides for specific deduction of foreign taxes under section 11C (4).

This provides for foreign withholding tax payable in respect of foreign dividends received or accrued to an RSA resident.

**d) Other forms of relief:**

DTAs in general provide tax relief under either Article 23A or 23B; relief is provided for double taxation. Article 23A includes an exemption stating that if a resident of a contracting state derived income or owns capital which may be taxed in the other contracting state the first mentioned state must exempt the income. There are, however, certain exemptions on income to this article.

Article 23B has a credit method where the resident state allows as a deduction from its own tax an amount equal to the tax paid in the other state. In Interpretation Note 18 SARS (2009a) gives detailed discussions and examples on these articles (Honiball and Olivier, 2008).

## **2.4 CONCLUSION**

In this chapter the meaning of a resident was discussed, how that person will be taxed in RSA on employment income and the different types of relief or exemptions available. In the next chapter the general interpretation relating to employment income in DTA agreements and the specific articles regarding employment income in three DTA agreements will be discussed.



## CHAPTER 3

### THE ROLE OF DOUBLE TAXATION AGREEMENTS

In the previous chapter an understanding of the RSA tax legislation was obtained; it is now necessary to obtain an understanding of how the taxing rights of the other country in which the resident employee of RSA works are handled by applying DTAs.

#### 3.1 OBJECTIVES OF DTA:

Double taxation occurs when both countries can tax an individual on the same object in the exact same time frame (Covrig, 2011). Thus the main objective of a DTA is to provide relief of double taxation. Other objectives are the sharing of information between two countries, which is an important element for governments as they cannot monitor investments abroad, thus increasing possible tax avoidance (Bacchetta and Espinoza, 2000) and also prohibiting discrimination against non-residents of a country.

The benefits of DTA are as follow: (Saunders, 2001)

- It gives clarity to the taxing rights of each state;
- Avoiding double taxation by both countries on the same income; and
- Prevention of tax evasion through anti-avoidance provisions;

#### 3.2 THE RELATION BETWEEN DOMESTIC LAW AND DTAS:

Three steps should be followed to determine the relation between domestic law and the DTA. Firstly it must be determined if the tax liability is imposed under domestic law, if so step two is to determine if the State has a right to impose tax under a DTA. If the right exists, step 3 will determine whether the DTA imposes any limitations on the State (Honiball and Olivier, 2008).

### **3.3 RELEVANT DTA ARTICLES FOR RSA EMPLOYEES WORKING ABROAD:**

This section will analyse the general interpretation of the relevant articles according to the Organisation for Economic Co-operation and Development Model tax convention (OECD MTC). In chapters to follow the study will look at the specific articles of the DTAs between RSA and United States of America, Australia and Saudi Arabia.

RSA courts use the interpretation notes to the OECD Model Tax Convention (MTC) as most of RSA DTAs are based on this model, although RSA is not a member of the OECD (Honiball and Olivier, 2008).

#### **3.3.1 Residency:**

With regard to employment income the most important aspect is to determine in which country a person is a resident in order to claim benefits under the DTA, but also to determine which country has the right to tax the income received from the employment (Honiball and Olivier, 2011). (See chapter 2 for a discussion on determination of residency in RSA). A person may be a resident of both Contracting states for DTA purposes; the DTA will resolve this by applying a tie-breaker clause - this clause determines in which country the person has exclusive residency (Honiball and Oliver, 2011).

The tie-breaker clause consists of questions, for example:

- In which country does the individual have a permanent home?
- In which country are his/her personal and economic relations closer?

The OECD commentary defines a permanent home as a place available for permanent use and on a continuous basis and not for short durations. It is not required that the place must be owned by the individual, but if rented must be available to the individual (Honiball and Olivier, 2011).

If the person has a permanent home in both or neither countries then the determining factor will be in the country where his/her personal and economic relations are the closest.

In the OECD commentary the person's "centre of vital interest" is determined by his family and social relationships, political activities and where he works. The country in which his personal family and social ties are, will normally take precedence over economical ties (Honiball and Olivier, 2011).

### **3.3.2 Independent personal services:**

Article 14 of DTAs deals with the income from independent personal services. The article states that income from independent professional services will be taxable in the state of residence of the individual, unless he/she has a fixed base. Income attributable to the fixed base will be taxed in the source state if it is regularly available to the resident for purposes of performing his/her activities (Honiball and Olivier, 2011).

Usually a DTA will deem a fixed place as a place that is regularly available for 183 days to the resident, but some of the DTAs can stipulate different time frames.

What is included in the term *personal services*? Article 14(2) includes the following independent persons: scientific, literary, artistic, educational, physicians, lawyers, engineers, architects and accountants. This article restricts the income from these services to individuals and not legal persons such as partnerships (Honiball and Olivier, 2008).

### **3.3.3 Income from employment:**

Article 15 of the DTA deals with income from employment. In general the Source state has limited right to tax the remuneration unless the following three conditions are met:

- The individual is not present in the Source State for a period not exceeding 183 days in a 12 month period;
- The employer is not a resident in the Source state; and
- The remuneration is not earned from a permanent establishment of the employer in the Source state.

The OECD commentary states that the place of employment will be where the employee is physically present when performing the activities for which he is paid. Remuneration is not defined in the model but the understanding is the same as the Fourth schedule definition of the Act and includes in both cases the same types of income.

The commentary to the OECD states that all days of physical presence must be included. This will include holidays and part days, however brief. There are two exceptions to the inclusion of the days, firstly days of sickness will not be included in these days if they prevent the person from leaving and he would otherwise qualify under the 183 day rule if not prevented. Secondly days of transit while on a journey between two points outside the state will not be included in the 183 days.

A problem which might arise with the term permanent establishment is if there is a so-called “triangular case”. The employer has a fixed place of business in the state of activity and the employee works for this employer in a third state thus not the state of activity or in the state where he is a resident. The problem is to determine between which two of the three countries the permanent establishment should be defined.

In a Danish court case, Case no. B 2581/05 (TFS 2006, 635) it was held the DTA is between two countries and does not resolve triangular conflicts and that these conflicts must be resolved between the states by reaching an interpretation that is acceptable to both states (Honiball and Olivier, 2008).

#### **3.3.4 Directors’ fees:**

This is dealt with in article 16 of the DTAs. The state in which the company is resident will have the right to tax.

This article differs from the normal DTA principles where the places where the services are rendered determine the taxability of income. The reason is due to the nature of directors’ duties which is not always possible to ascertain where they are performed.

The article also includes remuneration for directors' duties and any other form of remuneration related to non-directors' duties must be dealt with under the employee remuneration article (Honiball and Oliver, 2008).

### **3.3.5 Pensions and annuities:**

Pensions and annuities are dealt with in article 18 of the DTAs. According to the OECD MTC the article provides that these amounts paid to a resident for consideration of past employment is taxable in the state of residence.

### **3.3.6 Other:**

The following articles will not be dealt with:

- Artist or star companies: dealt with in Article 17(2);
- Government service: dealt with in Article 19(1);
- Students: dealt with in Article 20; and
- Members of diplomatic missions and consular posts: dealt with in Article 28. (Honiball and Olivier, 2008).

## **3.4 CONCLUSION**

To conclude the above it is important to determine in which country an employee is resident and to study all relevant articles of the DTA to determine in which State he will be taxed. Thus careful planning needs to be done before a company second its employees, because every DTA is different from another and every situation and type of income must be considered individually to be able to determine the taxation effect on the employee.

In the next chapters the above articles of the three DTAs will be summarized and a consideration of how an RSA resident employee working in the other country will be taxed by applying the DTA

## CHAPTER 4

### UNITED STATES OF AMERICA (USA)

In the previous chapter the relevant articles in the OECD model agreements were discussed. In this chapter a summary of the USA legislation will be given, followed by a comparison between the taxation effect between the RSA and the USA. Then the relevant articles of the DTA between the USA and RSA will be discussed. The chapter will conclude by summarising the taxation effect in the event of an RSA resident employee working in the USA.

#### 4.1 UNITED STATES OF AMERICA: TAXATION ON NON-RESIDENTS WORKING IN THE USA.

In this section of the study a summary of the USA tax legislation is given:

##### 4.1.1 Residency:

The USA only uses a physical presence test similar to that of the RSA to determine if a person is a resident, called the substantial presence test.

The test requires an individual to be present in the USA for (International Revenue Services., 2011):

- 31 days in the current calendar year; and
- 183 days in total during the present and two prior calendar years counting
  - a) The total amount of days present in the current year;
  - b) 1/3 of the days present in the prior calendar year; and
  - c) 1/6 of the days present in the second year.
- If the above requirements were met and the person has been present in the current year for 183 days in total then he will be a USA resident: if not
- The person must determine if he can prove he has a closer relation to a foreign country, if not he will be a USA resident.

#### **4.1.2 Taxation on Non-Residents:**

Non-residents are only taxed on their source income from the USA. Personal services in the form of self-employment or services performed for an employer as well as pension fund distributions will be from a USA source if the employment duties were performed in the USA.

Taxation on services rendered is withheld by the employer, in the case of self-employment or pension funds an amount equal to 30% of the income must be withheld. The amount of tax payable depends on the person's marital status and number of dependants in the household. There are also allowable deductions and annual exemptions from taxation. The information is completed on a 1040NR or 1040NR-EZ form and submitted to the Internal Revenue Service Centre (IRS) (International Revenue Services., 2011).

#### **4.2 COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN USA**

In the above section the tax legislation for the USA was summarised. The following table will compare the tax legislation implication of an RSA resident if working in the USA assuming the person only qualifies as an RSA resident, does not qualify as a resident in the other countries and no DTA is applied.

**Table 2: Comparison of tax legislation of the RSA and USA:**

<b>Legislation</b>	<b>RSA</b>	<b>USA</b>
Basis on which income will be taxed in the specific country	World-wide income	Source income
Employment income	The employer withholds tax in the form of PAYE	Withholding tax
Self employment	Taxation as per individual tax scale	Withholding tax of 30%
Directors' fees	The employer withholds tax in the form of PAYE	Withholding tax
Pension	The fund will withhold tax according to pension fund scales	Withholding tax of 30%

### **4.3 RSA/USA DOUBLE TAXATION AGREEMENT:**

This section of the study will examine the above articles in the DTA between the RSA and the United States of America (SARS, 1997; Department of Treasury USA, 1998).

#### **4.3.1 Residency:**

In Article 4 it is stated that a person will be a resident of the USA if under law he/she will be liable for tax due to his domicile, residency or citizenship or any other similar nature unless he is only taxed in the USA due to his income from an USA source.

A person will be a resident of the RSA if the individual is ordinarily resident in the RSA.

If dual residency exists the tie-breaker clause determines that the person will be a resident in the state in which:

- he/she has a permanent home available, if in both then;



- in the state where his/her personal and economic relations (centre of vital interest) are the closest. If this cannot be determined or he has in neither countries a permanent home then;
- the state in which he/she has a habitual abode. If there is a habitual abode in both countries or neither of them then;
- the state in which he/she is a national, if he is in both or in neither then;
- the competent authorities of both states will determine his residency by mutual agreement.

#### **4.3.2 Independent personal services**

In Article 14 the income derived from an independent personal service will be taxed in the state of residency unless a fixed base is regularly available to that person for performing his/her activities. If the person has a fixed base he/she will be taxed in the source state (state where the service is provided) on the income, but only to the extent that it is attributable to the fixed base.

The article has a deeming provision that states that a person will be deemed to have a fixed base if he/she is present in the source state for a period of 183 days or more in a 12 month period beginning or ending in a year of assessment

#### **4.3.3 Income from employment**

In Article 15 it is stated that the income from employment will be taxed in the state where the services are rendered (source state), unless the following three conditions are met:

- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

If all three conditions are met the state of residency may tax the income from remuneration.

#### **4.3.4 Director's fees**

In Article 16 directors' fees earned due to his/her capacity as a member of the board of directors of a company will be taxed in the country in which the company is a resident. The article does not prohibit the state of residency to tax as well; in this case the resident country will give a credit for tax already paid in the source state.

#### **4.3.5 Pensions and Annuities**

Article 18 covers pension and similar payments, payments derived from social security funds, purchased annuities, alimony and child support and contributions. Although all the payments are covered under article 18 each payment is dealt with differently and is described separately.

##### **Pension and other similar payments**

Pension and other similar payments made to an individual will be subject to limited taxation in the source state. The residency state may tax the amounts in accordance with the country's taxation laws.

If the USA is the source state the tax will be limited to 15% of the gross amount of the distribution unless the distribution is subject to a penalty for early withdrawal from the fund, then the amount will be subject to tax under the Code tax rates.

If South Africa is the source state then a portion of the distribution will be taxable in the RSA. The portion will be equal to the distribution amount multiplied by the days of service for the employer in the RSA and divided by the total number of days in service to the employer.

This will only apply if the beneficial owner of the policy:

- has been employed in the RSA for an aggregate of two or more years during the ten year period immediately preceding the date on which the pension became due and
- was employed in RSA for a period of ten or more years.

**Social security benefits:**

Social security benefits paid to a resident of another state will be taxable only in the state that makes the payments.

**Purchased annuities:**

Annuities are only taxable in the state of residence unless it was purchased in the source state while the individual was a resident of the source state, then the source state may also tax the amount derived from the annuity.

**Alimony payments and child support:**

Alimony payments made by a resident of one state to a resident of the other state will be taxable in the state where the payer is a resident and only if the payer may claim the payment as a deduction from income tax. If no deduction is allowed according to that state's income tax legislation then neither country will tax the amount.

Payments for child support made by a resident of one state to a resident of another state will only be taxed if the payer may deduct the payment from income tax in his state of residence. If no deduction is allowed to the payer according his state of residence income tax legislation, neither state will tax the amount. If the amount is, however, allowed as a deduction to the payer, then the recipient of the amount will be taxed in his/her state of residence.

**4.4 COMPARISON OF THE RSA/USA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT**

The following table sets out the different articles of the DTA agreements between RSA and the USA on employment income and the taxation effect of an RSA resident employee working in that country, the assumption is made that the person is a sole resident of the RSA and does not have dual residency.

**Table 3: DTA Articles and the taxation effect on RSA employees working in the USA**

<b>DTA Article</b>		<b>Taxation effect on RSA employee working in the USA</b>
<b>Article 14: Independent personal service</b>		
	<p>Individual will be taxed in State of residency, unless:</p> <p>The person has a fixed base (see chapter 3.5 for definition of a fixed state) in the other State then the individual will be taxed in the Source State</p>	<p>No fixed base – taxed in RSA</p> <p>Fixed base in USA – withholding taxes of 30% must be paid over to the IRS</p>
<b>Article 15: Dependent personal services</b>		
	<p>The employee will be taxed in the Source State, unless the three conditions (see chapter 4.3.3 for the conditions) apply, then the Residency State may tax.</p>	<p>If the conditions set out in 4.3.3 are met: RSA tax.</p> <p>If the conditions set out in 4.3.3 are not met: USA tax, in the form of withholding tax.</p>
<b>Article 16: Directors' fees</b>		
	<p>The Source State has taxing rights (the State in which the company is a resident); the Residency State may tax as well, but will give credit for tax already paid in the Source State.</p>	<p>Taxed in USA in the form of withholding taxation, RSA may also tax but will give credit under Section 6Quat for tax already paid in the USA.</p>
<b>Article 18: Pensions &amp; Annuities</b>		
	<p>The amount will be taxed in the Source but will be limited; the Residency state may also tax but will give credit to tax already paid in the Source State (See chapter 4.3.5 for full discussion on other similar</p>	<p>USA will tax in the form of withholding tax, limited to 15%. RSA may also tax but will give credit under Section 6 quat, or will exempt the income under section</p>

	payments, for example alimony and social security payments).	10(1)(gC), see 2.3.2.
--	--	-----------------------

The above table explains that RSA individuals delivering independent personal services in the USA will be taxed in RSA unless they have a fixed base in the other country or source country, then the person will be taxed in the other country.

Individuals rendering dependent services will be taxed in the Source State (the other countries) unless the following three conditions are met in which case the individual will be taxed in RSA. The conditions are as follow:

- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

Directors fees will be taxed in the Source State but RSA may also tax the income, but will give credit for foreign taxed paid by the individual in the other country.

The USA will tax pensions received by an RSA individual in their country, RSA may also tax and give credit on the foreign taxed already paid.

All foreign countries have different tax legislation on non-residents, see chapter 4.1 for a full discussion on the USA's tax policies on non-residents.

#### **4.5 CONCLUSION**

This chapter discussed the taxation implications of an RSA employee working in the USA taking into consideration the DTA between RSA and USA. In the next chapter the tax implications of an RSA employee working in Australia will be discussed.

## CHAPTER 5

### AUSTRALIA

In the previous chapter the taxation legislation of the USA, the RSA/USA DTA and the effect of this legislation and DTA on an RSA employee working in the USA was discussed. In this chapter the taxation legislation of Australia, the RSA/Australian DTA and the effect of the legislation on an RSA employee working in Australia will be discussed.

#### 5.1 AUSTRALIA: TAXATION ON NON-RESIDENTS WORKING IN AUSTRALIA

In this section of the study a summary of the Australian tax legislation is given:

##### 5.1.1 Residency:

Determination of Australian residency is similar to RSA residency rules. The following three tests are used to determine Australian residency (Australian Taxation Offices, 2011):

- The resides test – this determines residency by looking at the ordinary meaning of the word. One of the important factors is if your day-to-day activities in Australia are similar to your behaviour prior to entering the country.
- The domicile test – this is the first statutory test. Residency is determined by firstly establishing whether the persons' domicile (permanent home) is in Australia, if not by determining if his permanent place of abode is in Australia.
- The 183 day test – this is the second statutory test. According to this test a person may be an Australian resident if physically present for 183 days in an assessment year unless it can be established that Australia is not his usual place of abode and the person will not take up residence in Australia.

##### 5.1.2 Taxation on non-residents:

Non-residents are taxed on income from Australian sources. If the person is an employee, the employer will withhold tax. There are certain deductions, for example: work-related expenses, self-education expenses and car expenses. As in the RSA income, individuals

are not taxed at a fixed percentage but on a scale; foreign residents are taxed on a different scale which is much higher than the residents (Australian Taxation Offices, 2011).

## 5.2 COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN AUSTRALIA:

In the above section the tax legislation for Australia was summarised. The following table will compare the tax legislation implication of an RSA resident if working in Australia assuming the person only qualifies as an RSA resident, does not qualify as a resident in the other countries and no DTA is applied.

**Table 4: Comparison of tax legislation of the RSA and Australia:**

<b>Legislation</b>	<b>RSA</b>	<b>Australia</b>
Basis on which income will be taxed in the specific country	World-wide income	Source income
Employment income	The employer withholds tax in the form of PAYE	Withholding tax
Self employment	Taxation as per individual tax scale	Taxation as per foreign resident tax scale
Directors' fees	The employer withholds tax in the form of PAYE	Withholding tax based on non-resident scales
Pension	The fund will withhold tax according to pension fund scales	Withholding tax based on non-resident scales

### **5.3 RSA/AUSTRALIA DOUBLE TAXATION AGREEMENT:**

This section will examine the above articles in the DTA between the RSA and Australia (SARS, 1999).

#### **5.3.1 Residency:**

According to Article 4 a person will be a resident of Australia as determined by Australia's tax law, but this will not include a person that will pay tax in Australia only due to income derived solely from a source in Australia.

A person will be a resident of South Africa if the individual is ordinarily resident in the RSA.

If dual residency exists the tie-breaker clause determines that the person will be a resident in the state in which:

- He/she has a permanent home available, if in both or neither then;
- In the state where his/her personal and economic relations are the closest.

#### **5.3.2 Independent personal services:**

In Article 14 it is stated that the income derived from an independent personal service will be taxed in the state of residency unless a fixed base is regularly available to that person for performing his/her activities. If the person has a fixed base he/she will be taxed in the source state (state where the service is provided) on the income, but only to the extent that it is attributable to the fixed base.

The article has a deeming provision that states that a person will be deemed to have a fixed base if he/she is present in the source state for a period of 183 days or more in a 12 month period beginning or ending in a year of assessment.

#### **5.3.3 Income from employment:**

In Article 15 the income from employment is deemed to be taxed in the state where the services are rendered (source state), unless the following three conditions are met:



- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of, an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

If all three conditions are met the state of residency may tax the income from remuneration.

#### **5.3.4 Director's fees:**

In Article 16 directors' fees earned due to his/her capacity as a member of the board of directors of a company will be taxed in the country in which the company is a resident. The article does not prohibit the state of residency to tax as well; in this case the resident country will give a credit for tax already paid in the source state.

#### **5.3.5 Pensions and Annuities**

In Article 18 pensions and annuities derived from a source state will be taxed in the state of residency if those amounts are included in the taxable income of the person in the residency state.

### **5.4 COMPARISON OF THE RSA/AUSTRALIA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT**

The following table sets out the different articles of the RSA/Australia DTA agreement on employment income and the taxation effect of an RSA resident employee working in that country, the assumption is made that the person is a sole resident of the RSA and does not have dual residency.

**Table 5: DTA Articles and the taxation effect on RSA employees working in Australia**

DTA Articles		<b>Taxation effect on RSA employee working in Australia</b>
<b>Article 14: Independent personal service</b>		
	Individual will be taxed in State of residency, unless: The person has a fixed base (see chapter 3.4 for definition of a fixed state) in the other State then the individual will be taxed in the Source State	No fixed base – taxed in RSA Fixed base in Australia – taxation as per foreign residents tax scale.
<b>Article 15: Dependent personal services</b>		
	The employee will be taxed in the Source State, unless the three conditions (see chapter 5.3.3 for the conditions) apply, then the Residency State may tax.	If the conditions set out in 5.3.3 are met: RSA tax. If the conditions set out in 5.3.3 are not met: Australia tax in the form of withholding tax on non-resident income tax scales.
<b>Article 16: Directors' fees</b>		
	The Source State has taxing rights (the State in which the company is a resident); the Residency State may tax as well, but will give credit for tax already paid in the Source State.	Australia will tax in the form of withholding tax on non-resident scales. RSA may also tax, but will give credit for foreign taxes paid under section 6 quat.
<b>Article 18: Pensions &amp; Annuities</b>		
	The amount will be taxed in the State of residency if included in taxable income of the Residency State.	The amount will be taxed in RSA unless the amount is exempt under section

		10(1)(gC), then it will be taxed in Australia on foreign resident tax scales.
--	--	---

The above table explains that RSA individuals delivering independent personal services in Australia will be taxed in RSA unless they have a fixed base in the other country or source country, then the person will be taxed in the other country.

Individuals rendering dependent services will be taxed in the Source State (the other country) unless the following three conditions are in which case the individual will be taxed in RSA. The conditions are as follow:

- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

Directors fees will be taxed in the Source State but RSA may also tax the income, but will give credit for foreign taxed paid by the individual in the other country.

Australia does not tax RSA individuals on pensions received if the amount is included in RSA taxable income. If the amount is not included in RSA taxable income then Australia will have taxing rights.

All foreign countries have different tax legislation on non-residents, see chapter 6.1 for a full discussion on Australia's tax policies on non-residents.



## 5.5 CONCLUSION

This chapter discussed the tax implications of an RSA employee working in Australia taking into consideration the DTA between RSA and Australia. The next chapter will discuss the tax implications of an RSA employee working in Saudi-Arabia.

## CHAPTER 6

### SAUDI-ARABIA

In the previous chapter the taxation legislation of Australia, the RSA/Australia DTA and the effect of this legislation and DTA on an RSA employee working in Australia was discussed. In this chapter the taxation legislation of Saudi-Arabia, the RSA/Saudi-Arabia DTA and the effect of the legislation on an RSA employee working in Saudi-Arabia will be discussed.

#### 6.1 SAUDI-ARABIA: TAXATION ON NON-RESIDENTS WORKING IN SAUDI-ARABIA

In this section of the study a summary of the Saudi Arabia tax legislation is given:

##### 6.1.1 Residency:

According to the definition of a non-resident in the Saudi-Arabia law, a person will be non-resident if he does not satisfy the requirements of a resident according to Article 3 of the Saudi-Arabia law (Department of Zakat and Income Tax, 2011).

Article 3 stipulates that a natural person will be a resident of Saudi-Arabia if (Department of Zakat and Income Tax, 2011):

- the person has a permanent place of residence in the Kingdom and resides for 30 or more days in the Kingdom in a tax year; or
- he/she resides for 183 days or more in a tax year in the Kingdom.

##### 6.1.2 Taxation on non-residents:

Individual earning a salary from an entity with no permanent establishment in Saudi or a Saudi legal entity will be taxed on income derived from a Saudi source in the form of withholding tax. If the individual does business through a permanent establishment all income tax provisions applicable to a resident company will apply to that person. The word permanent establishment in terms of Saudi taxation law is a permanent place of activity through which it carries out business in full or in part, including business through an agent (Department of Zakat and Income Tax, 2011).

Withholding tax on employment income or to a foreign entity with a permanent establishment is paid on Saudi source income on a certain percentage depending on the type of service:

- Payments for technical or consulting services – 5%
- Other services which include salaries, director’s fees – 15%

The employer is responsible to withhold the tax and pay it over to the government (Department of Zakat and Income Tax, 2011).

## 6.2 COMPARISON OF TAX LEGISLATION IMPLICATIONS OF AN RSA RESIDENT IN SAUDI-ARABIA:

In the above section the legislation for Saudi-Arabia was summarised. The following table will compare the tax legislation implication of an RSA resident if working in these countries assuming the person only qualifies as an RSA resident, does not qualify as a resident in the other countries and no DTA is applied.

**Table 6: Comparison of tax legislation of the RSA and Saudi-Arabia:**

<b>Legislation</b>	<b>RSA</b>	<b>Saudi-Arabia</b>
Basis on which income will be taxed in the specific country	World-wide income	Source income
Employment income	The employer withholds tax in the form of PAYE	Withholding tax at 15%
Self employment	Taxation as per individual tax scale	Consulting and technical services withholding tax at 5%
Directors’ fees	The employer withholds tax in the form of PAYE	Withholding tax at 15%
Pension	The fund will withhold	Withholding tax of 5%

	tax according to pension fund scales	
--	---	--

### **6.3 RSA/SAUDI ARABIA DOUBLE TAXATION AGREEMENT:**

This section of the study will examine the above articles in the DTA between RSA and Saudi Arabia (SARS, 2008; Parliamentary Monitoring Group, 2007).

#### **6.3.1 Residency**

In Article 4 a person will be a resident of the Contracting State if under law he/she will be liable for tax due to his domicile, residency or citizenship or any other similar nature unless he only is taxed in that State due to his income from a source from that State or capital situated therein.

If dual residency exists the tie-breaker clause determines that the person will be a resident in the state in which:

- he/she has a permanent home available, if in both then;
- in the state where his/her personal and economic relations (centre of vital interest) are the closest. If this cannot be determined or he has in neither countries a permanent home then;
- the state in which he/she has a habitual abode. If there is a habitual abode in both countries or neither of them then;
- the state in which he/she is a national, if he is in both or in neither then;
- the competent authorities of both states will determine his residency by mutual agreement.

#### **6.3.2 Independent personal services**

In Article 14 the income derived from an independent personal service will be taxed in the state of residency except in the following circumstances:

- A fixed base is regularly available to the person for the purpose of performing his activities then only so much of his income attributable to the fixed base may be taxed in the source state; or
- If the individual stays in the source state and the period equals or exceeds an aggregate of 183 days in any 12 month period beginning or ending in that fiscal year then so much of the income derived by that individual from activities performed in the source state may be taxed by the source state; or
- If the remuneration to that individual is paid by a resident of that source state or by a permanent establishment situated in the source state and exceeds the equivalent of \$100 000 (US) in a fiscal year then the source state may tax the remuneration amount.

### **6.3.3 Income from employment**

In Article 15 the income from employment will be taxed in the state where the services are rendered (source state), unless the following three conditions are met:

- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

If all three conditions are met the state of residency may tax the income from remuneration.

### **6.3.4 Director's fees**

In article 16 directors' fees earned due to his/her capacity as a member of the board of directors of a company will be taxed in the country in which the company is a resident. The article does not prohibit the state of residency to tax as well; in this case the resident country will give a credit for tax already paid in the source state.



### 6.3.5 Pensions and Annuities

In Article 18 income derived from pensions and annuities will be taxed in the Source State. However, the Residency State of the individual may also tax these amounts, but will give credit to the amounts paid on tax in the Source State.

Sole taxing rights are given to the Source State from which payments are received from a public scheme that is part of a social security system.

### 6.4 COMPARISON OF THE RSA/SAUDI-ARABIA DTA AGREEMENT AND THE TAXATION EFFECT ON AN RSA RESIDENT

The following table sets out the different articles of the RSA/Saudi-Arabia DTA agreement on employment income and the taxation effect of an RSA resident employee working in that country, the assumption is made that the person is a sole resident of the RSA and does not have dual residency.

**Table 7: DTA Articles and the taxation effect on RSA employees working in Saudi-Arabia**

DTA Articles		Taxation effect on RSA employee working in Saudi-Arabia
<b>Article 14: Independent personal service</b>		
	Individual will be taxed in State of residency, unless: <ul style="list-style-type: none"> <li>• The person has a fixed base in the other State; or</li> <li>• The individual's stay in the Source State exceeds 183 days in a 12 month period; or</li> <li>• Remuneration to that person is paid by a resident or</li> </ul>	No fixed base – taxed in RSA  Fixed base and other provisions, in Saudi-Arabia – Consulting and technical services, withholding tax at 5%

	<p>permanent establishment of the Source State and the amount exceeds \$100 000(US)</p> <p>Then the income will be taxed in the Source State</p>	
<b>Article 15: Dependent personal services</b>		
	<p>The employee will be taxed in the Source State, unless the three conditions (see chapter 6.3.3 for the conditions) apply, then the Residency State may tax.</p>	<p>If the conditions set out in 6.3.3 are not met: RSA tax.</p> <p>If the conditions set out in 6.3.3 are met: Saudi-Arabia tax in the form of withholding tax at 15%.</p>
<b>Article 16: Directors' fees</b>		
	<p>The Source State has taxing rights (the State in which the company is a resident); the Residency State may tax as well, but will give credit for tax already paid in the Source State.</p>	<p>Saudi-Arabia will tax in the form of withholding tax at 15%. RSA may also tax but will give credit for foreign taxes paid under section 6 Quat.</p>
<b>Article 18: Pensions &amp; Annuities</b>		
	<p>The amount will be taxed in the Source State, the Resident may also tax but will give credit to tax already paid in the Source State unless it is an amount received from a public scheme that is part of a social security system, then the Source State has sole taxing rights.</p>	<p>The amount will be taxed in Saudi Arabia in the form of withholding tax at 5%. RSA may also tax, but will give credit for foreign taxes paid under section 6Quat or may exempt the amount under section (10)(1)(gC). If the payment is from a social security system, then only Saudi Arabia may tax.</p>

The above table explains that RSA individuals delivering independent personal services in Saudi-Arabia will be taxed in RSA unless they have a fixed base in the other country or source country, then the person will be taxed in the other country. The following exception to the rule not only taking the fixed base into consideration but will also tax the individual in that country if the individual stay exceeds 183 days in a 12 month period or the remuneration received are paid by a resident or permanent establishment of Saudi-Arabia and the amount exceeds \$100,000(U.S).

Individuals rendering dependent services will be taxed in the Source State (the other country) unless the following three conditions are in which case the individual will be taxed in RSA. The conditions are as follow:

- the employee is not physically present for more than 183 days in the source state in a 12 month period beginning or ending in a year of assessment
- the remuneration is not paid by, or on behalf of an employer that is a resident of the source state
- the remuneration is not deductible from the taxable profits from a permanent establishment of the employer in the source state

Directors fees will be taxed in the Source State but RSA may also tax the income, but will give credit for foreign taxed paid by the individual in the other country.

Saudi-Arabia will tax pensions received by an RSA individual in their countries, RSA may also tax and give credit on the foreign taxed already paid.

All foreign countries have different tax legislation on non-residents, see chapter 6.1 for a full discussion on Saudi-Arabia's tax policies on non-residents.

## **6.5 CONCLUSION**

From the previous three chapters it is clear that a person who ordinarily lives in one country and works for a period of time in another country can be a resident in both countries, due to the definitions and physical present test applied by tax authorities. It is,

therefore, crucial for an employee on secondment to determine in which country he will be seen as a resident or if he will be a resident of both, as this will determine in which country his tax liability lies. It is further necessary to gain an understanding of the tax legislation of the country to which he is seconded as different tax legislation usually applies to non-residents. For the employee to be able to finally assess his tax liability the most important aspect will be to study the relevant DTA between his country and the country to which he is seconded. This will determine in which country his final residency will be and which country has taxing rights.

In the next chapter a conclusion is drawn for the study in the form of a comparison between the different DTAs and the taxation effect when these DTAs are applied on an RSA resident.

## **CHAPTER 7**

### **CONCLUSION**

#### **7.1 INTRODUCTION**

When an RSA resident is seconded to another country, it is very important for that person to study the DTA agreement, firstly to determine in which country the person will be seen as a resident, secondly to determine the legislation in the DTA according to the specific type of income to determine which country will have the taxing rights relating to the income. Thirdly the person will then have to consider the countries' legislation applicable to that income in order to determine his tax liability in one or both countries.

#### **7.2 CONCLUSION**

This study aimed at answering the main question: What should RSA employees take into consideration when entering into a secondment agreement in order to make an informed decision regarding the impact on his/her taxation? The following questions should be answered when attempting to answer the main question:

- In which country, will the employee be seen as a resident?
- Which country will have sole residency rights according to the DTA?
- Studying the relevant articles of the DTA with regard to the specific employment income to determine in which country the amount will be taxed, or in both.
- Studying the specific country's taxation laws regarding the taxability of income as determined above to determine the final tax liability.

Answering the above questions will give any employee working abroad the starting point to enable that person to interpret and obtain an understanding of the tax consequences of his secondment.

The subsequent questions can be answered as follows:

- Due to change in legislation RSA individuals working abroad are taxed in RSA on their world-wide income, certain forms of relief and exemptions are granted in instances where these individuals are taxed in two countries.
- RSA individuals working in the USA, Australia and Saudi-Arabia and rendering dependent services will be taxed in the country in which the service is delivered unless certain conditions are met.
- The general misinterpretation is made by assuming that DTAs will exempt all forms of income when working abroad.

### **7.3 RECOMMENDATION**

Secondment of employees can be highly beneficial not only for the company operating in global markets but also for the employee gaining experience in an international market. Although the taxation planning for a secondment assignment can be complex it can benefit the employee through assignments in countries with lower living costs or income tax rates.

It is important not only to look at the taxation liability of a secondment, which can be minimized by planning correctly, but one should also consider the experience gained from the assignment, the standard of living gained or given up and the emotional impact on the employee and his/her family. Monetary value must never be the final decision on accepting an assignment.

### **7.4 FUTURE RESEARCH**

Legislation is a complex and ever changing factor in every person's life. Taxation amendments are a daily occurrence and an employee going on secondment must be sure to study the latest taxation laws and DTAs. Every DTA varies from country to country and it is important to make sure the DTA of that specific country is available.

## LIST OF REFERENCES

Australian Taxation Offices. 2011. Non-resident. [Online] Available from: <http://www.ato.gov.au/content/64150.htm>. [Accessed: 2011-09-23].

Bacchetta, P. and Espinoza, M.P. 2000. Exchange-Of-Information Clauses in International Tax Treaties. *International Tax and Public Finance*. 7:275-293 (p19)

Cohen v CIR 1946 AD 174, 13 SATC 362

Covrig, G. 2011. Double taxation avoidance: A factor of economical stability. *Economics, Management, and Financial Markets* 6(2):879-882 (p4).

Department of Treasury USA. 1998. *Technical explanation of the convention between the United States of America and the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains*.

Department of Zakat and Income Tax. 2011. Taxation on non-residents. [Online] Available from: <http://www.dzit.gov.za/en/NewIncomeTaxLaw/NewIncomeTaxLaw4.shtml>. [Accessed: 2011-09-23].

Freeman, C. and Andhee, V. Foreign employment income – an anomaly in the legislation? *Money webs Tax break*. (Dec 2004): 7

Government Gazette 2007. No.8 of 2007: *Taxation Laws Amendment Act, 2007*.

Government Gazette 2007. No 35 of 2007: *Taxation Laws Amendment Act, 2007*.

Government Gazette. 2009. No.17 of 2009: *Taxation Laws Amendment Act, 2009*.

Grobler, S. 2007. Moneywebtax. [Online] Available from: <http://www.moneywebtax.co.za/moneywebtax/view/moneywebtax/en/page269?oid=606&sn=Detail> [Accessed: 2011-08-17]

Harraway, Raymund.2001. Tax for expats *Accountancy SA*. (Jun 2001): 9-11.

Honiball, M. and Olivier, L. 2008. *International Tax: A South African Perspective*. Cape Town. Syber Ink.

Honiball, M. and Olivier, L. 2011. *International Tax: A South African Perspective*. Cape Town. Syber Ink.

*The Income Tax Act No. 58 of 1962*. Pretoria: Government Printer.

International Revenue Services. United States Department of Treasury. 2011. Non-resident. [Online] Available from: <http://www.irs.gov/taxtopics/tc851.html> [Accessed: 2011-09-23].

Johnson, Linda, M., Zinneman, and David E. 1994. Resident or nonresident? New regulations. *CPA Journal*; 64(1)18 (8p).

Kaplan and Stevens, M. 1993. Overlooked concerns accompanying change in resident status. *CPA Journal*; 63(8)68 (1/2p).

KMPG (2008), Global assignment policies and practices survey, 2008.

Korten, M. 2011. Misapplying double taxation agreements. *Tax Talk* 26(1):34 (2p).

Mckinley, M. 2010. *The expatriate handbook*.

Parliamentary Monitoring Group. 2007. Explanatory memorandum on the double taxation convention between the government of the Republic of South Africa and the government of the Kingdom of Saudi Arabia. [Online] Available from: <http://www.pmg.org.za/docs/2007/070905saudi Arabia.pdf>. [Accessed: 2011-08-24].

Rogers, C. and Farrand, H. 2009. It pays to go on secondment. *Moneyweb's Tax Breaks* 282:2 (2p).



SARS(1997). Government notice. *Convention between the Republic of South Africa and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains.*

SARS (1999). Government notice. *Agreement between the Republic of South Africa and the government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.*

SARS 2002(a). Interpretation note 2 to the Income Tax Act.

SARS 2002(b) Interpretation note 3 to the Income Tax Act.

SARS 2003. Interpretation note 16 to the Income Tax Act.

SARS 2006. Interpretation note 4 to the Income Tax Act.

SARS(2008). Government Notice. *Convention between the government of the Republic of South Africa and the government of the Kingdom of Saudi Arabia for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on capital*

SARS 2009(a). Interpretation note 18 to the Income Tax Act.

SARS 2009(b). Guide on the taxation of lump sum benefits

SARS 2010. Comprehensive Guide to Capital Gains Tax, Issue 3.

SARS 2011. Guide for employers in respect of employees' tax (2012).

Saunders, R. 2001. *Understanding double tax treaties*. [Online] Available from:  
[http://www.londontrust.net/filedepot/file/Essays/Jordans\\_Understanding\\_Double\\_Tax\\_Treaties.pdf](http://www.londontrust.net/filedepot/file/Essays/Jordans_Understanding_Double_Tax_Treaties.pdf) [Accessed: 2011-08-24].

Stiglingh, M., Koekemoer, A.D., van Schalkwyk, L., Wilcocks, J.S., de Swardt, R.D. and Jordaan K. 2011. SILKE: Suid-Afrikaanse Inkomstebelasting. Pietermaritzburg. Interpak Books

Tax Consulting. 2007. Tax-guide-2007. [Online] Available from:<http://www.taxconsulting.co.za/tax-guide-2007.php> [Accessed: 2011-08-17]

Thersby, K. 2006. Extended time period for inbound expatriates: new legislation. *Tax Breaks*. 243(4)4 (2p).

Wikipedia. 2010. Expatriate. [Online] Available from: <http://en.wikipedia.org/wiki/Expatriate> [Accessed: 2011-05-27].

