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AN INTERNATIONAL COMPARATIVE STUDY OF THE EFFECT OF PERSONAL INCOME TAX ON LABOUR MIGRATION

by

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All things are possible through the Lord Almighty. He has blessed me with a reliable support structure and for that I will be eternally grateful.

My deepest gratitude to all those who supported me along this journey. Your words of encouragement kept me constantly focused on the ultimate goal. Without you, hope may have been lost along the way:

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- my study leader, for your continued assistance and guidance. Your insight made this process a lot less daunting.

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ABSTRACT

AN INTERNATIONAL COMPARATIVE STUDY OF THE EFFECT OF PERSONAL INCOME TAX ON LABOUR MIGRATION

by

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STUDY LEADER: PROF M CRONJE

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Individuals are constantly on the lookout for tax incentives or ways in which they can pay less tax without ending up in the tax authorities' bad books. Driven by the desire for a better life, individuals are willing to try everything within their legal powers and rights to avoid having to pay exorbitant taxes. South African employees are in no way an exception to these circumstances. Urged on by their belief that South African taxes are unreasonably high, individuals have crossed international borders in the hope of finding a location where their income will not be subject to exorbitant taxes.

Research on the effects of taxation on labour migration has been carried out in countries such as Australia, the Netherlands, Norway and Indonesia. Although greatly affected by the growing population of labour migration, the majority of the research conducted in South Africa with regard to labour migration has focused mainly on the reasons motivating migration among skilled South African labourers. As far as could be determined, little or no research has been conducted to assess whether the reasons (*inter alia*, the South African personal income tax system) cited by South Africans justify the rapid rate at which South Africans flee from the country.

The aim of this study is to establish whether South African employees working in the Netherlands and Australia receive any tax incentives or beneficial tax treatment that they otherwise would not have received had they remained employed in South Africa. This objective will be achieved by assessing whether a South African employee is placed in a

more beneficial tax position when they accept international employment assignments in the Netherlands and Australia as opposed to the tax position they would find themselves in should they turn down any and all international employment assignments (i.e. remain employed in South Africa no matter what).

The study will discuss the tax principles an employee will be subject to upon accepting an international employment assignment in either Australia or the Netherlands. The tax principles of the respective countries will then be compared to those applicable to employees who remain employed in South Africa. This comparison will be conducted with the primary objective of establishing in which of the three countries a South African employee receives the most beneficial tax treatment.

Keywords

Labour migration

Personal income tax

Tax incentives

Beneficial tax treatment

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OPSOMMING

’N INTERNASIONALE VERGELYKENDE STUDIE VAN DIE EFFEK VAN PERSOONLIKE INKOMSTEBELASTING OP ARBEIDSMIGRASIE

deur

NOMVULA DZUNISANI MABASO

STUDIELEIER: PROF M CRONJE
DEPARTEMENT: BELASTING
GRAAD: MAGISTER COMMERCII

Individue is voortdurend op die uitkyk vir belastingtoegewings of maniere waarop hulle minder belasting kan betaal sonder om by die belastingowerheid in die moeilikheid te kom. Aangedryf deur die begeerte vir 'n beter lewe, is individue bereid om alles te probeer om binne hul wetlike magte en regte te voorkom dat hulle buitensporige belasting betaal. Suid-Afrikaanse werknemers is geen uitsondering in hierdie verband nie. Gemotiveer deur hul siening dat Suid-Afrikaanse belasting onredelik hoog is, het individue internasionale grense oorgesteek het in die hoop om 'n plek te vind waar hul inkomste nie onderhewig sal wees aan buitensporige belasting nie.

Navorsing oor die effek van belasting op arbeidsmigrasie is in lande soos Australië, Nederland, Noorweë en Indonesië onderneem. Die meeste van hierdie navorsing het gefokus op die redes waarom geskoolde Suid-Afrikaanse werkers emigreer. Sover vasgestel kon word, is min of geen navorsing gedoen om te bepaal of die redes (onder meer, die Suid-Afrikaanse persoonlike inkomstebelastingstelsel) aangehaal deur Suid-Afrikaners die vinnige tempo regverdig waarteen Suid-Afrikaners die land verlaat nie.

Die doel van hierdie studie is om vas te stel of Suid-Afrikaanse werknemers in Nederland en Australië enige belastingtoegewings of voordelige belastingbehandeling ontvang wat hulle nie sou ontvang het as hulle in Suid-Afrika in diens gebly het nie. Hierdie doel sal bereik word deur te bepaal of 'n Suid-Afrikaanse werknemer in 'n meer voordelige

belasting posisie geplaas word wanneer hulle internasionale indiensnemingsopdragte in Nederland en Australië aanvaar, in teenstelling met die belasting posisie waarin hulle hulself sal bevind indien hulle alle internasionale indiensneming werkopdragte van die hand wys (maw tot elke prys in Suid-Afrika in diens bly).

Die studie sal die belastingbeginsels bespreek waaraan 'n werknemer onderhewig sal wees by die aanvaarding van 'n internasionale indiensnemingsopdrag in Australië of Nederland. Die belastingbeginsels van die onderskeie lande sal dan vergelyk word met dié wat van toepassing op werknemers wat in Suid-Afrika in diens bly. Hierdie vergelyking sal plaasvind met die primêre doel om te bepaal in watter van die drie lande 'n Suid-Afrikaanse werknemer die mees voordelige belastinghantering ontvang.

Sleutelwoorde:

Arbeidsmigrasie

Persoonlike inkomtebelasting

Belastingaansporings

Voordelige belastingbehandeling

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AN INTERNATIONAL COMPARATIVE STUDY ON THE EFFECTS OF PERSONAL INCOME TAX ON LABOUR MIGRATION

CHAPTER 1

INTRODUCTION AND PROBLEM STATEMENT

1.1 BACKGROUND

As far back as 1450 B.C, in the times of the Israelites' exodus from Egypt, people have been on a constant quest to find 'The Land of Milk and Honey' (Bible, 1998). Motivated by the desire for a better life, people have over the years ventured into lands far and near. At first people left their villages and ventured into nearby towns (rural – urban migration), all in the hope of finding something 'bigger and better' (Harris & Todaro, 1970:126-127). Factors contributing to these moves were, *inter alia*, the growth and development of residential housing; the desire to develop urban-based networks and an increasing dependence on cash wages (Wood, 1968:5). Urbanisation slowly evolved into globalisation. With a heightened curiosity and a greater desire to live the 'good life', people started crossing international borders. Reasons cited for the desire to cross these borders included, *inter alia,* what was perceived by migrants as unfavourable home country taxes (Castles, 2000:272).

South Africans joined the migrating masses and one-by-one started departing from what was once their homeland. Faced with two options; stay in South Africa and be subjected to what was perceived as unreasonable South African taxes or accept assignments in countries such as Australia or the Netherlands; men, women and children packed their bags and set off for what they believed to be 'greener pastures'. At first only a small number of South Africans crossed international borders, and as time went by, the number of South Africans emigrating increased (Bailey, 2003:239). Lured by the prospects of a better and safer life, South Africans have taken a greater interest in international employment assignments. A large proportion of the migrating masses were skilled professionals (Crush & Williams, 2005:3).

Years later and with the South African soil marked by the footprints of departing children, the country finds itself experiencing a skills shortage. As current statistics stand, it would appear that South Africans are in general more willing to accept assignments outside South Africa rather than remaining in their homeland. Countries such as Australia, the United Kingdom and the United States of America are proving to be popular destinations for South Africans seeking reprieve from the South African personal income tax system (Crush & Williams, 2005:18). With the large number of skilled South Africans leaving South Africa for international employment assignments, the question on many lips remains 'Is the South African personal income tax system enough to motivate skilled professionals to migrate?' Is there indeed a possibility that South Africans working abroad receive tax incentives or beneficial tax treatment that they would not have received had they opted to stay in South Africa?

1.2 STATEMENT OF PROBLEM

Countries such as the United States of America, Canada, Australia, the Netherlands, Norway and the United Kingdom have conducted studies on the various effects labour migration has had and still has on the country of origin (Zorlu & Hartog, 2005: 113-115). Research on the effects a tax system has on labour migration has been carried out in Indonesia (Rochjadi & Leuthold, 1994:333), the findings of which indicated that there was indeed a relationship between labour migration and taxation. Although South Africa is also a developing country, as far as could be determined, there have been few or no studies conducted to assess whether the current South African taxation system has an effect on labour migration. The studies carried out have looked mainly at migrants' perceptions of current matters or situations and how these perceptions influenced their decision to leave South Africa.

1.3 STATEMENT OF PURPOSE AND IMPORTANCE OF STUDY

The purpose of this study is to assess whether or not South Africans working in Australia or the Netherlands receive any beneficial tax incentives or treatment that they would not receive while working in South Africa. The study will examine and assess the tax treatment a South African employee will be subject to under each of the following three conditions:

- the employee accepts an international employment assignment to Australia;
- the employee accepts an international employment assignment to the Netherlands; and
- the employee declines all international employment assignments and opts to remain employed in South Africa.

The study will assess the tax treatment that an employee of each country (namely, South Africa, Australia and the Netherlands) is subject to. The research will specifically examine the tax treatment that a South African outbound employee assigned to either Australia or the Netherlands will be subject to. The analysis of the Australian and Dutch tax systems will examine the tax principles applicable to both residents and non-residents of the respective countries; the analysis of the South African tax system will also examine the tax principles applicable to both residents and non-residents. The South African personal income tax system will be compared to those of Australia and the Netherlands. In assessing this, the research will attempt to establish whether or not the current South African taxation system can indeed be listed as one of the factors pushing migrants to accept international assignments in countries like Australia and the Netherlands.

The emigration of skilled labourers results in a ‘brain drain’, which is a decrease in the number of skilled people that are a vital element in a country’s national economy (Oosthuizen & Ehlers, 2007:15). As previously stated, very little or no research has been conducted to assess the effects that the current South African taxation system could have on the increased popularity of labour migration. It is therefore clear that it would be beneficial for the South African government and South African residents to understand how the South African taxation system compares with the tax systems of other countries.

Knowing and understanding how the South African tax system fares, could assist in the effective management of the 'brain drain' that South Africa is currently experiencing. Should the current South African taxation system fare poorly (when compared to the taxation systems applicable in Australia and the Netherlands) the research to be conducted will provide a general idea of the areas in which the taxation system falls short. Should the results however be the opposite (i.e. the taxation system does not fare poorly), there will then be some evidence that the current taxation system cannot be listed as one of the factors motivating labour migration.

1.4 RESEARCH OBJECTIVES

The following objectives will guide the study:

- to conduct a comparison of what constitutes 'income' (i.e. gross income less exemptions) in the hands of an employee under the taxation systems of Australia, the Netherlands and South Africa;
- to identify and analyse the deductions that the employee mentioned above is entitled to when calculating their 'taxable income' in each of the countries (namely, Australia, the Netherlands and South Africa); and
- to assess, taking into consideration the relevant DTAs (Double Tax Agreements), which of the above mentioned countries offer an employee more 'beneficial' tax treatment.

1.5 DELIMITATIONS

The proposed study has four basic delimitations, namely:

- it will focus only on and address the personal income tax systems applicable in South Africa, Australia and the Netherlands;
- when assessing and comparing the various personal income tax systems, the study will focus only on the taxation principles applicable to employment income. As a result, it will not discuss the tax implications applicable should an employee receive

any passive income (i.e. rental, dividend or interest income) or income other than employment income;

- when assessing the South African personal income tax system, the study will address the tax principles that apply to South African outbound resident and non-resident employees. When assessing the Australian and Dutch personal income tax systems, the study will address the tax principles applicable to inbound resident and non-resident employees; and
- the research will consider but not discuss in detail the possible implications of the DTA's entered into between South Africa and Australia or the Netherlands respectively.

1.6 ASSUMPTIONS

The research conducted is based on the following basic assumptions:

- all inbound and outbound employees are assumed to be under the prescribed retirement age of 65;
- all outbound South African employees taking up employment in either the Netherlands or Australia may eventually trigger tax residency in the respective countries (i.e. they may take up assignments long enough to be taxed as residents in the Netherlands or Australia);
- the inbound and outbound employees only receive employment income (i.e. they do not receive any passive income); and
- in cases where a South African outbound employee triggers tax residency in Australia or the Netherlands while retaining their South African tax residency, their residency status will be determined in accordance with the relevant DTA.

1.7 DEFINITION OF KEY TERMS AND ABBREVIATIONS USED

Included in the study are a number of key concepts or terms; for the purpose of the study, the terms or concepts are defined.

Assessable income: The value of income which will be subject to tax.

Brain drain: A decrease in the number of skilled people that are a vital element in a country's national economy (Oosthuizen & Ehlers, 2007:15).

Colonise: To establish or join a colony (Oxford Pocket Dictionary, 1990:138).

Colony: Settlement or settlers in a new country fully or partly subject to mother country; their territory; group of one nationality, occupation (Oxford Pocket Dictionary, 1990:138).

Country of origin: The country from which a migrant migrates.

Decolonisation: The loss of a country that was previously held as a colony (Oxford Pocket Dictionary, 1990:189).

Domicile: Place of dwelling; place of permanent residence, fact of residing (Oxford Pocket Dictionary, 1990:218).

Double Tax Agreement: An international agreement between two countries concluded to avoid the double taxation of a specific amount of income.

Employment income: Income received by virtue of employment or the holding of an office.

Expatriate: An individual who works and lives in a country other than their own.

High income earner: An employee who earns an annual gross income in excess of R500 000 or the equivalent thereof.

Inbound employee: A foreign employee coming into a country to take up employment, as seen from the viewpoint of the country in which the employment is to be taken up (a South African leaving South Africa to take up employment in Australia would, from an Australian perspective, be considered an inbound employee).

International migration: The movement of people across international borders with the intention of settling in another country for a period of at least one year (Muus, 2001:32).

Low income earner: An employee who earns an annual gross income less than R500 000 or the equivalent thereof.

Outbound employee: An employee leaving their country of residence to take up employment in a foreign country (a South African leaving South Africa to take up

employment in the Netherlands would, from a South African perspective, be considered an outbound employee).

Pull factors: Factors that attract or motivate people to migrate to a specific country (Marks, 2004:18).

Push factors: Factors that persuade or encourage people to migrate from a specific country. (Marks, 2004:18).

Receiving country: The country to which a migrant migrates.

Reside: To have one's home or dwelling place (Oxford Pocket Dictionary, 1990:635).

Superannuation: Pension, payment made to obtain this (i.e. a payment made as a result of old age) (Oxford Pocket Dictionary, 1990:745).

Skilled labourer: An employee that in not involved in the manufacturing process (Boeri, Brucker, Gourinchas & Cahuc, 2005:645).

Taxable income: Total income that will be subject to tax.

The following abbreviations are used in the study.

Table 1: Abbreviations used in this document

Abbreviation	Meaning
AUD	Australian Dollar
CGT	Capital gains tax
DTA	Double tax agreement
ESS	Employee share scheme
ETP	Eligible termination payments
EU	Euro
GDP	Gross domestic product
MV	Market value
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay as you earn
PAYG	Pay as you go
UN	United Nations
ZAR	South African Rand

1.8 RESEARCH DESIGN

The study will follow a qualitative, non-empirical research design through an extended literature review. The main aim of this study is to establish whether or not the current South African personal income tax system can be listed as one of the factors motivating labour migration among South Africans. The choice to migrate is one made by individuals and this choice is guided primarily by how the migrants perceive the current status in their home country. Migrants have listed personal income tax as one of the factors motivating their desire to migrate. This study will, taking into consideration the fact that migrants desire the most beneficial tax treatment, assess whether the South African tax system can indeed be listed among the factors motivating emigration from South Africa. In order to meet the objectives of the study, the tax laws applicable in three countries (namely, South Africa, Australia and the Netherlands) will be compared and analysed to establish which of the three countries offers migrants the most favourable tax treatment. The study will however only focus on the personal income tax principles applicable to employees under the age of 65.

1.9 BRIEF OVERVIEW OF CHAPTERS

The research comprises three main chapters. In chapter 2 the literature will be reviewed. In this chapter the findings of past studies which covered the following topics: the origins and history of international migration, including a discussion of the theories that were developed with regard to migration; the various factors motivating migration among migrants; the effects of migration on both the countries of origin and the receiving countries; present day migration trends and a brief overview of the tax incentives the Australian and Dutch tax authorities offer migrants to attract them to their respective countries will be examined and discussed.

Chapter 3 will aim to highlight the main taxation principles applicable to employees in each of the three countries (namely, South Africa, Australia and the Netherlands). As tax laws are constantly amended or revised, the research will analyse the most recent tax years for which employees have submitted the relevant tax returns and have been assessed on such submitted returns (namely the 2009/2010 tax years).

Chapter 4 will then summarise the findings of this research paper and conclude on how the South African tax system compares to those of Australia and the Netherlands. A conclusion will then be drawn as to whether or not the South African tax system can indeed be listed as one of the factors motivating migration among South Africans.

CHAPTER 2

INTERNATIONAL MIGRATION

2.1 INTRODUCTION

Over the years, research has been conducted on labour migration trends among skilled professionals. This chapter will discuss some of the research conducted on labour migration, highlighting specifically, research which focused on the factors cited as contributors to the increasing popularity of migration among labourers. The chapter will further discuss the origins and effects of labour migration as well as current migration trends.

2.2 THE ORIGIN, HISTORY AND DEVELOPMENT OF INTERNATIONAL MIGRATION

Migration has been listed as one of the three components of population growth (the other two components being fertility and mortality) (Simelane, 1999:3). International migration has been defined as the movement of people across international borders with the intention of settling in another country for a period of at least one year (Muus, 2001:32).

Some of the events that triggered the ‘African labour migration pandemic’ can be found by carefully analysing the historical imposition of colonial control on the African continent. African labour migration was triggered when a large number of central and southern African tribesmen departed from their villages of origin in response to the demand for labour in mines and plantations (Wood, 1968:7). With an estimated 150 million international migrants, Africa is listed as one of the top continents of origin in the world (Simon, 2002:1&2).

Between 9% and 19% of South Africa’s skilled labourers are migrating to OECD (Organisation for Economic Co-operation and Development) countries (OECD, 2006:130). As a result of decolonisation, former colonial powers have had to deal with migration flows from their colonies (Muus, 2001:33). During the 1980s and 1990s the migration flows from

developing countries to developed countries increased rapidly (Castles, 2000:275). With nearly 75 million international migrants in 1965, the number of international migrants rose to 105 million in 1985 and reached a staggering 120 million in 1990 (Simon, 2002:1). These increases in migration trends stemmed from the development of markets in the countries of origin (Massey, 2003: 11). Labour migration slowly grew in popularity, and as a result, net migration in the 15 European Union member countries has, since the 1980s, not been below 50 000 migrants (Muus, 2001:31).

According to Wood (1968:14), the five basic causes that set labour migration in motion are:

- rural hunger precipitating seasonal migration;
- economic diversification concomitant with the building of roads, railways and public works, the opening of mines, development of cash crops and trade-all offering opportunities for employment;
- the demand for and citing of educational (particularly secondary and technical) facilities in the larger urban centres;
- the growing acceptance of the town as a 'way of life' presenting an appeal to the wider cultural horizons of young people; and
- to escape tax and kinship obligations in the rural area.

Driven by the disparity in income levels, people have ventured into countries other than their own (Castles, 2000:272). International migration was and is still used as a way of tackling poverty and accessing education or dignity (Simon, 2002:2). South Africa's re-entry into the international economy meant that skilled labourers moved to where they were most valued and prized (Marks, 2004:7). Crush and Williams (2005:17) point out that the skilled labourers produced in South Africa are being readily transferred to and recognised or valued in industrial countries. Between 1987 and 1997 South Africa recorded a total of 198 393 emigrants. Table 2 lists the number of South African emigrants during the period 1987-1997 as well as the countries they emigrated to.

Table 2: Emigration from South Africa (1987-1997)

Country emigrated to	Professionals	Total emigrants
Australia	4 533	28 747
Canada	3 251	18 125
New Zealand	3 214	14 009
United Kingdom	16 959	90 788
United States	4 339	46 724
TOTAL	**32 296**	**198 393**

Source: UN (United Nations) expert group meeting on international migration and development (2005:18)

It can be noted from the above table that a total of 28 747 South Africans emigrated to Australia between 1987 and 1997. Of the 28 747 emigrants, 4 533 were skilled employees. A total of 90 788 South Africans migrated to the United Kingdom. Of the 90 788 emigrants, 16 959 of them were skilled labourers. In this day and age, more people than ever live outside their country of origin. International migration increased in popularity over the years and it is expected that emigration rates will increase in future (Bohlman, 2010:1-2). Its increased popularity has therefore made it important to understand the dynamics of labour migration.

Various theories attempting to explain the reasons for labour migration have been developed over the years. The theories developed include 'The neoclassic theory', 'the new economics of migration theory' and 'the dual market theory' (Massey, Arango, Hugo, Kouaouci, Pellegrino & Tayler, 1993:433-439). Harris and Todaro (1970:129) developed a hypothesis that labour migration to urban areas is a positive function of the urban-rural expected wage differential. Their hypothesis therefore implies that migration is expected to cease when the wage differential is nil (i.e. the wages offered in the countries of origin and receiving countries are the same). Rochjadi and Leuthold (1994:333) were of the opinion that changes to a country's taxes resulted in a change to the labour supply in that country. They found that an increase in Indonesian taxes resulted in a decrease in the Indonesian labour supply (increased emigration). Rochjadi and Leuthold (1994:334) found that the taxes levied reduced the 'utility of workers who can no longer maintain their pre-tax utility levels even if revenue from taxes was returned to them in a lump sum fashion'. Their findings indicated that the migrants' choices to migrate were therefore spurred by the fact that they just could not afford the cost of living given their current wages or salaries.

Some researchers view the decision to migrate as one made by a household with the aim of minimising the risks to their family income or to overcome capital constraints on the family's production activities (Massey *et al*, 1993:432). What follows next is a brief discussion of the neoclassic, new economics of migration and dual market migration theories.

2.2.1 Neoclassic theory

On a macro level the neoclassical theory states that international migration is caused by geographical differences in labour supply and demand. Labourers in low wage countries are believed to move to high wage countries (Massey *et al,* 1993:433). On a micro level it is believed that people migrate because they expect a net positive monetary return as a result of their move (Massey *et al,* 1993:434). The theory implies that migration stems from an international differential in wages or salaries and people will in essence migrate to where they can, considering their skills, be most productive. People migrate as a result of wage differences and employment conditions. A person will therefore migrate if their move results in their individual cost to benefit calculation yielding a positive net return (Bohlman, 2010:2).

2.2.2 New economics of migration theory

The new economics of migration theory is based on the assumption that the wage differential that is seen to drive migration under the neoclassic theory is not a major deciding factor (Massey *et al,* 1993:439). According to this theory, migration may also be driven by the desire to diversify ones risk through a transitional movement. The decision to migrate is made by the family unit as a whole, with the main aim of minimising the family's risk (Bohlam, 2010:2).

2.2.3 Dual labour market theory

According to the dual labour market theory, the choice to migrate is driven primarily by the intrinsic labour demands of the industrial society (Bohlam, 2010:2). In essence, international migration is as a result of the continued demand for cheap and abundant immigration labour.

2.2.4 Conclusion

Massey (2010:14) summarises that wage differentials are, in theory, either necessary or sufficient for international migration to occur. Even with equal wages, people may have the incentive to migrate if other markets are inefficient or poorly developed. Things are however different in practice, with large-scale international migration rarely occurring in the absence of the wage gap. Chen (2006:742) is of the opinion that the governments of countries of origin that wish to increase their countries' economic growth should aim to put some sort of restrictions on the emigration of skilled labourers. The governments of countries of origin will therefore need to investigate and consider the factors that motivate emigration from that country. Understanding the reasons cited might lead to a better understanding of how to better manage labour migration. What follows is a discussion of some of the factors motivating emigration. It will focus mainly on the motivating factors given by South Africans who have either emigrated or are considering emigrating.

2.3 REASONS CITED BY SOUTH AFRICANS FOR EMIGRATING

2.3.1 Introduction

Since labour recruitments were stopped, migration to Europe is dominated by pull factors related to the economic condition in the receiving country (Boeri, *et al*, 2005:114). Listed among the top receiving countries are Australia and the United Kingdom ('UK') (Simon, 2002:4). Some of the major factors pushing migration from countries of origin have been, *inter alia*, what is perceived as 'better salary structures' in places such as Australia and Europe (Bailey, 2003:247). Labour migration has been perpetuated by the increased demand for labour. The population move is therefore in response to a demand for money

to meet tax and local consumer needs (Wood, 1968:12). Other than the desire for more money, it is also believed that higher levels of welfare benefits may increase the incentive to migrate (Boeri *et al*, 2005:631). In general, migrants tend to move to places where ‘positive demand shocks have led to better labour market outcomes and higher wages’ (they opt for places that are more prosperous and offer high native wages) (Boeri *et al*, 2005: 114&135).

2.3.2 Migration push and pull factors

People tend to leave their country of origin due to a ‘lack of confidence’ in their country, which is aggravated by misgovernment, poor working conditions and low pay (Crush & Williams, 2005: 19). South African migrants ranked the country’s economic conditions (namely its high cost of living, taxation, safety and security and the standard of public and commercial service) as their major areas of dissatisfaction (Marks, 2004:18). Table 3 lists the factors that South African migrants were dissatisfied with.

Table 3: Dissatisfaction with living conditions in South Africa

Factor dissatisfied with	White people (%)	Africans (%)	Total (%)
Cost of living	72	64	**71**
Present level of taxation	75	74	**74**
Relative share of taxes paid in comparison to others	59	59	**59**
Personal safety	65	61	**66**
Family’s safety	69	54	**68**
Continued public enmities	79	37	**70**
Customer service	65	27	**56**
Future of children in South Africa	61	29	**55**
Availability of affordable/quality products	29	31	**28**
Job	18	39	**23**
Job security	20	44	**26**
Level of income	30	60	**37**
Prospects for professional advancements	32	35	**30**
Ability to find house wanted	17	37	**21**
Ability to find a good school for children	27	27	**27**
Ability to find medical services for family	19	23	**21**

Source: UN expert group meeting on international migration and development (2005:20)

In total, 71% of South Africans were dissatisfied with the cost of living while 74% were dissatisfied with the present level of taxation. It can therefore be deduced that people migrate in search of a better livelihood and will therefore migrate from low to high wage regions in an attempt to increase their income and better their quality of life (Castles, 2000:272).

In his study, Lund (2009:10) found that people migrated because of poor working conditions in the country of origin and higher salary offers in the receiving country. Push factors in South Africa together with reciprocal pull factors in the receiving country motivated their decision to migrate. It can therefore be said that South Africans migrate to take advantage of better political, social and economic circumstances or other conditions in the receiving country (Marks, 2004:3 & 7). Bailey (2003:246) expresses agreement with Marks and listed the following push and pull factors that could be conceived as the major forces driving migration in South Africa:

- **Push factors**:
  cost of living;
  levels of taxation;
  safety;
  standard of public and commercial services in South Africa;
- **Pull factors**:
  highly attractive salaries in countries like Europe and Australia

Previous studies indicate that international migration among South Africans has become increasingly popular as a result of, *inter alia*, what is perceived by the migrants as an excessively high South African taxing regime (Oosthuizen & Ehlers, 2007:16*,* Bezuidenhout, Joubert, Hiemstra & Strawig*,* 2009:211*).* Table 4 lists some of the reasons South African doctors opted to leave South Africa. In general, doctors felt that the South African push factors played a greater role than the receiving country's pull factors when deciding to leave South Africa (Bezuidenhout *et al,* 2009:212).

Table 4: Reasons doctors leave South Africa

Reasons selected	Response (%)
Financial	86.20
Better job opportunity	79.30
High crime rate	75.90
Wanted to change immediate circumstances	58.60
Personally wanted to experience something new	58.60
Feeling of restlessness	55.20
Extended duty hours	55.20
High prevalence of HIV/AIDS	51.70
SA income tax system	51.70
Better schooling opportunities of children	50.00
Dealing with business aspects of practice	48.30
On-call duties	46.40
Racial discrimination	44.80
Professional development	41.40
New dispensing laws	32.30
Meeting patient demands	31.00
Personal circumstances	20.70
Family abroad	17.90

Source: South African Family Practice (2009:213)

Doctors ranked the South African income tax system in sixth position when listing their reasons for migrating (response rate of 51.7%) (Bezuidenhout *et al*, 2009:213). Oosthuizen and Ehlers (2007:14) also used the hierarchy of needs in an attempt to better understand the factors motivating labour migration. Based on the hierarchy of needs, people have a number of basic needs − namely deficiency and growth needs (Oosthuizen & Ehlers, 2007:15). Deficiency needs must be met in order for a person to be satisfied and growth needs focus on a person's growth and development. Deficiency needs encompass: physiological, safety and belonging needs. Growth needs include esteem and self-actualisation needs. Oosthuizen and Ehlers (2007:16 & 17) investigated the internal (profession specific factors) and external (general conditions in South Africa) factors motivating migration as listed by nurses in South Africa and then grouped these reasons according to the five basic needs as listed in the hierarchy of needs. Tables 5 to 8 will list the reasons given by nurses for leaving South Africa (as grouped according to the hierarchy of needs).

Table 5: Financial factors motivating emigration among nurses

Factors	Response (%)
Inability to maintain standard of living in South Africa	95.50
Inability to save money in South Africa	93.20
Better salaries in foreign countries	91.00
Working overtime to meet financial needs in South Africa	84.90
Decline in the general economic system in South Africa	79.30
Decline in public service	69.40

Source: Health SA Gesondheid (2007:21)

Table 6: Working conditions motivating emigration among nurses

Factors	Response (%)
Inadequate staffing	94.20
Risks due to staff shortages	88.20
Management insensitive to staff needs	77.30
Working conditions	75.00
Conditions in hospitals	74.10
Lack of support by senior members of staff	35.70

Source: Health SA Gesondheid (2007:21)

Table 7: Personal growth and career factors motivating emigration among nurses

Factors	Response (%)
Challenge to work in another country	79.30
Gain experience in another country	70.10
Inadequate career advancement opportunities in SA	70.10
Lack of recognition	66.30
Expertise not valued in SA	48.90
Frustrated with job	42.20

Source: Health SA Gesondheid (2007:2)

Table 8: Safety and security factors motivating emigration among nurses

Factors	Response (%)
Risk of contracting HIV/AIDS	49.40
Unsafe working environment	42.50
Crime and violence in SA	42.40
Affirmative action policy	39.50

Source: Health SA Gesondheid (2007:22)

Nurses leaving South Africa listed the high personal income tax as one of their reasons for migrating (Oosthuizen & Ehlers, 2007:16), with 51,7% of doctors attributing their desire to migrate to the current South African personal tax system (Bezuidenhout *et al*, 2009:211). From the responses received, it is evident that financial factors have a major influence on migrants' decision to leave South Africa.

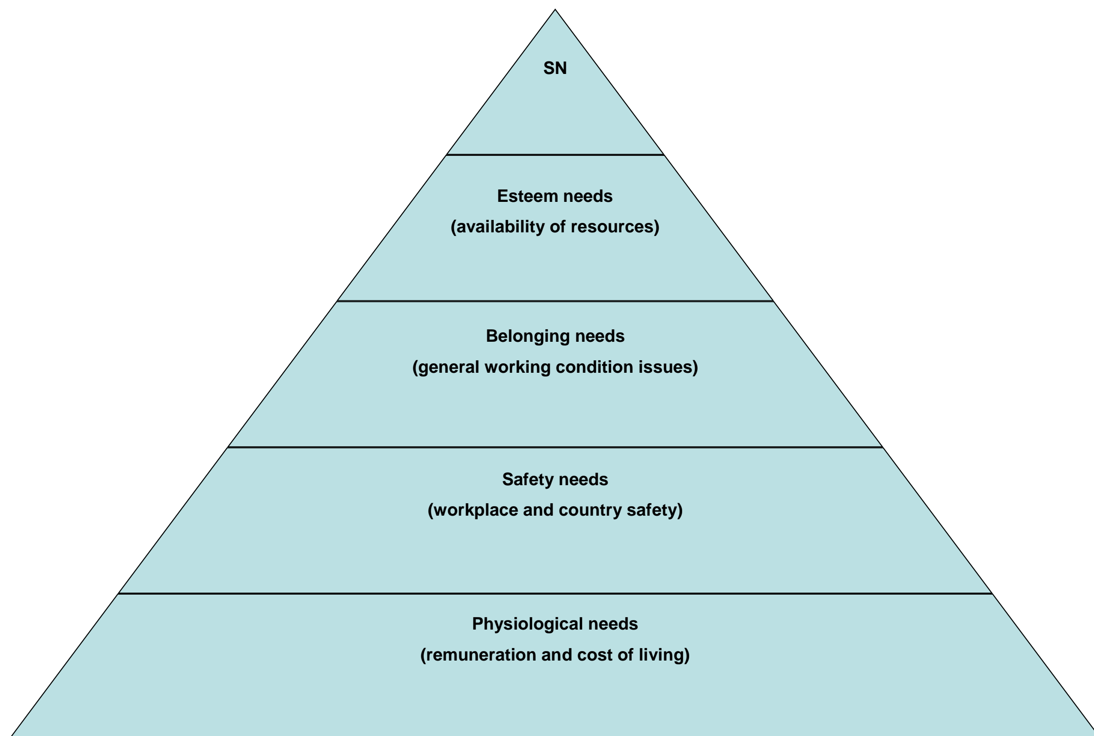
Human needs are arranged in the following order of hierarchy: physiological, safety, belonging, esteem and self-actualisation (Oosthuizen & Ehlers, 2007:16). Once the physiological needs are met, the safety needs become predominant. Only when these needs (physiological and safety) are fairly well satisfied will the social need of belonging emerge as dominant. After individuals have satisfied the needs mentioned above to some extent, they feel the need for esteem; including both self-esteem and recognition from others. Once esteem needs begin to be adequately satisfied, the self-actualisation needs become more dominant. Table 9 will illustrate how the reasons listed by South African nurses link to the hierarchy of the five basic needs (Oosthuizen & Ehlers, 2007:23), while Figure 1 illustrates how the needs rank in order of importance (Oosthuizen & Ehlers, 2007:24).

Table 9: Internal & external factors motivating migration among nurses within the hierarchy of needs

Need	Internal motivating factor	External motivating factor
Physiological	Unsatisfied needs due to poor remuneration and working conditions.	Unsatisfied needs due to cost of living and general economic system in SA.
Safety	Unsatisfied needs due to risks and lack of safety in the workplace.	Unsatisfied needs due to crime and violence in SA.
Belonging	Unsatisfied needs due to working overtime.	No unsatisfied needs at this level while in SA.
Esteem	Unsatisfied needs due to inability to have the desired standard of living.	Unsatisfied needs due to lack of resources and general conditions in hospitals in SA.
Self actualisation	Unsatisfied needs due to inadequate career advancement opportunities and frozen posts in public hospitals.	Unsatisfied needs due to inability to realise full potential in SA.

Source: (Adapted) Health SA Gesondheid (2007:23)

Figure 1: Factors contributing to the emigration of South African nurses within the hierarchy of needs



Source: Health SA Gesondheid (2007:24)

SN = Self-actualisation needs (career potential)

2.3.3 Conclusion

In summary, it can be stated that people will migrate in the hopes of improving their general well-being (Bohlam, 2010:3). It is evident from the above facts that people who are not satisfied with the conditions (whether financial or not) in their country of origin will seek satisfaction in another country. It is therefore imperative that the governments of countries of origin fully comprehend the factors that lead to an increase in emigration rates. As previously stated, an understanding of these factors could assist in the effective management of labour migration. The following section of the study will assess the impact labour migration has on both countries of origin and receiving countries. This section will

serve to emphasise why it is important to analyse and understand the factors driving labour migration.

2.4 THE EFFECTS ON COUNTRIES OF ORIGIN AND RECEIVING COUNTRIES

International migration inevitably has an effect (both positive and negative) on the country of origin and the receiving country. Migration patterns can result in the following changes for both countries:

- a change in factor income (i.e. changes in wages and capital rent);
- a change in employment opportunities; and
- a change in the tax rate matching the social security or similar budget (Boeri, *et al*, 2005:642).

It was found in a recent study that a 3% change in migration patterns results in a 0,5% change in a country's gross domestic product (GDP) (Boeri, *et al,* 2005:633). The impact of migration on countries of origin and receiving countries depends highly on the flexibility of the countries labour markets (Boeri, *et al,* 2005:643). Migration trends can lead to a 'brain drain' in the local labour supply of the country of origin (Castles, 2000:275), which in turn impacts the availability of skilled workers in that country (Chen, 2006:725). In essence, the country of origin loses output as some of its resident employees move to other countries (Simelane, 1999:4). Migration affects the economy and eventually stagnates economic progression to a significant extent (Nash, 2010:11).

Bailey (2003:248) found that migration results in a deprivation of skilled people contributing to the economy of the country of origin. This loss of skill costs the country of origin money as a result of a decrease in the countries net productivity (which has an adverse effect on the country's economic growth) and a decrease in the country's ability to develop as a knowledge society (this affects the country's ability to compete globally). At the opposite end of the spectrum, the GDP of the receiving country may increase substantially, provided that migration involves a substantial fraction of non-manufacturing workers (skilled labourers) (Boeri, *et al,* 2005:645). Based on the above facts, it is evident that

labour migration and the ‘brain drain’ can only benefit the receiving country (Marks, 2004:3).

The South African Government spends $100 000 on average educating people to become doctors (Bezuidenhout, *et al*, 2009:212). This $100 000, when converted at the average exchange rate for the 2009 year ($1:R8.4005) amounts to R840 050 (Oanda, 2011). The emigration trend among doctors in South Africa therefore causes great financial strain on the country’s budget. The continued increase in the emigration rate will inevitably result in a decrease in the country’s GDP. This will in turn affect the investment sector and result in a loss of competitiveness (Bohlman, 2010:10). It is estimated that 233 609 skilled labourers migrated from South Africa between 1987 and 1997, which resulted in a cost of $7,8 billion in lost human capital (Marks, 2004:37). Converted at the average exchange rate for the 2004 year ($1:R6.4102), the government lost just over R50 billion.

Skilled emigration, in the long run, reduces the country’s economic growth (Bohlman, 2010:10). As a developing country, South Africa can scarcely afford to lose its human capital as this hinders the country’s economic development. There is therefore cause for concern among South Africans (particularly the government). The ‘brain drain’ together with its driving factors and adverse implications is a matter that requires careful consideration. As previously stated, understanding the factors that result in the ‘brain drain’ or increased migration patterns can lead to more efficient and effective management of the problem and its impact on the country’s economy. Analysing the factors that drive migration can assist in shedding some light on whether or not current tax systems can indeed be listed as push factors. What follows is an overview of current migration trends among skilled labourers. This section will highlight the increasing popularity of emigration among skilled South African workers.

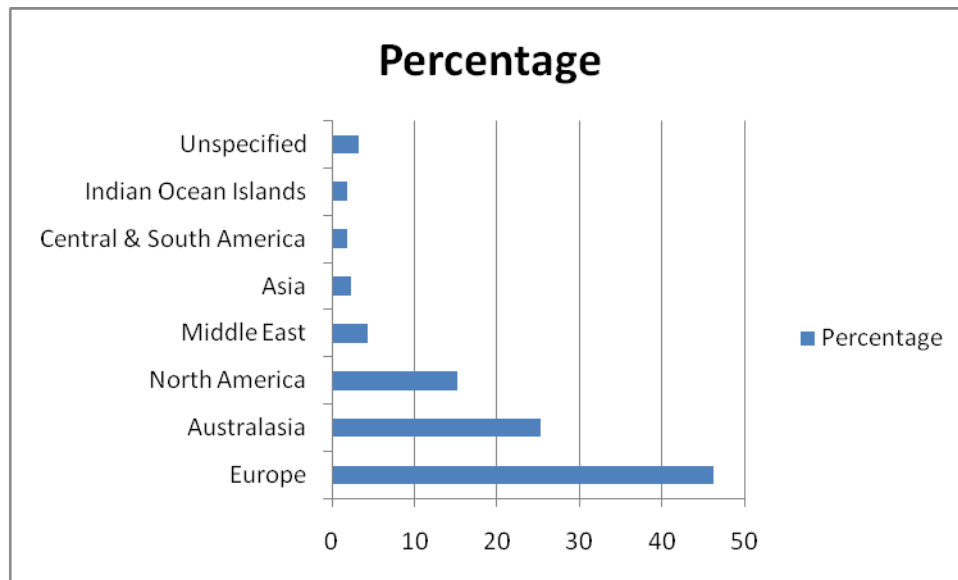
2.5 CURRENT MIGRATION ACTIVITY

2.5.1 Popular destinations for South African migrants

Of late, most migration flows have originated from the South, with the big world migration systems focusing on the centres of globalisation (Simon, 2002:2). As a result of the focus on the centres of globalisation, large volumes of international migrants originate from developing countries. There has been a drastic increase in the number of skilled migrants leaving South Africa for foreign destinations (Crush & Williams, 2005:3). Europe is among the places where migration is, from an economic perspective, very sought after. This is due to the fact that there are numerous opportunities to make large potential gains from migration (Boeri, *et al,* 2005:631). Lately the number of highly skilled non-European migrants in European countries has increased substantially (Muus, 2001:36). The Netherlands is among the European countries that have issued an increased number of work permits to non-European employees (South Africans are listed among some of the recipients of these permits) (Muus, 2001:37). It is expected that the current African migration trends will intensify. The expected intensification of the situation is due to the developing world's growing demand for entrance into high-wage labour markets (Hatton & Williamson, 2001:23).

The most popular emigration destinations, according to South Africans, are Europe and Australia (Bohlman, 2010:2). A significant number of South Africans have emigrated to the five major 'brain drain' countries – namely Australia, Canada, the United States, New Zealand and the United Kingdom (Crush & Williams, 2005:18). Of these destinations, South African nurses have relocated to the Netherlands, the United Kingdom and Australia to name but a few (Oosthuizen & Ehlers, 2007:17). Figure 2 illustrates the migration of South African skilled employees by destination.

Figure 2: Emigration of South African professionals by destination (1970 – 2000).



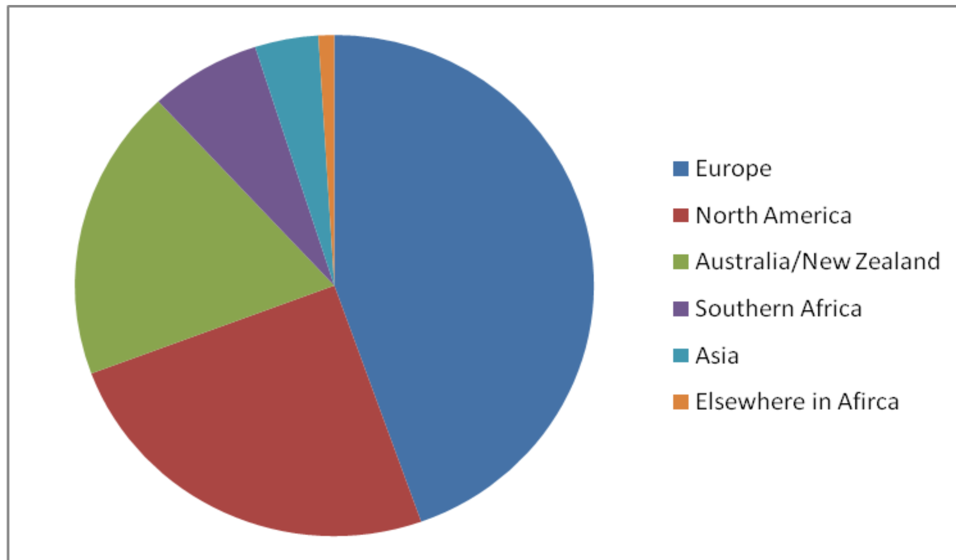
Source: Skills migration (2003:243)

As depicted above, close to half of South Africa's migrating population has migrated to Europe. A quarter of the migrating population selected Australia as their migration destination.

2.5.2 Future prospects of migration in South Africa

As previously stated it is expected that the current African migration trends will intensify. This can be illustrated by the desire to emigrate as expressed by South Africans still living in South Africa. A great number of South African final-year students expressed that they would be interested in migrating from South Africa (Crush & Williams, 2005:20). Figure 3 illustrates the preferred countries of destination listed by South African students (45% preferred countries in Europe while 25% preferred Australia/New Zealand). Men expressed a greater desire to migrate, with 73% saying that they have considered migrating. Women had a much lower desire to migrate, with 61% saying they had considered the alternative (Crush & Williams, 2005:21).

Figure 3: Preferred destination among South African students



Source: Adapted - Social contagion of migration from South Africa (2010:8)

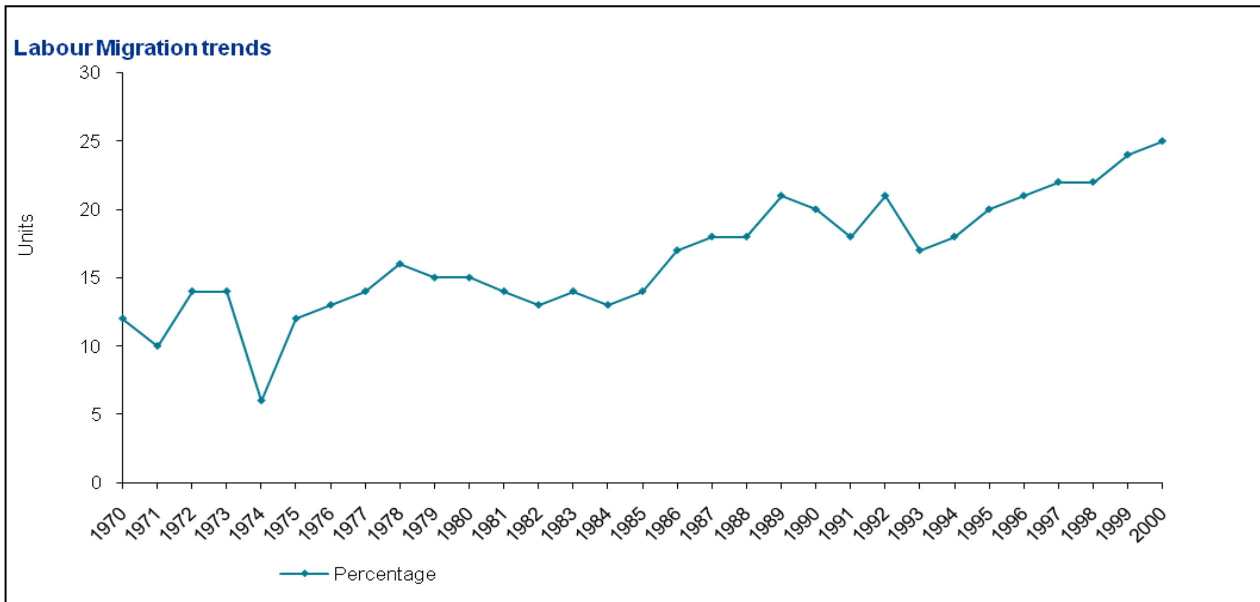
Nurses still living in South Africa also expressed a desire to migrate. In total, 81% of them said they had or are considering migrating. Their reasons for considering the prospects of migration were similar to those of their counterparts who had already accepted employment in foreign countries (i.e. financial, working conditions, personal growth and safety reasons) (Oosthuizen & Ehlers, 2007:20).

2.5.3 Statistical data on migration activity

African immigrants to the United States increased by over 9% from 1995 to 1997 (Hatton & Williamson, 2001:4). It was also found that at least 86% of American immigrant doctors originated from South Africa, Nigeria or Ghana (Bezuidenhout, *et al,* 2009:212).

The World Bank estimates that over 720 000 South Africans emigrated between 1983 and 2003. Of the 720 000 emigrants, 521 571 were skilled labourers (Crush & Williams, 2005:18). Figure 4 illustrates the percentage of skilled labour migration as a percentage of total migration among South Africans for the period 1970 to 2000.

Figure 4: Professional South African emigrants as a percentage of total South African emigrants (1970 – 2000).

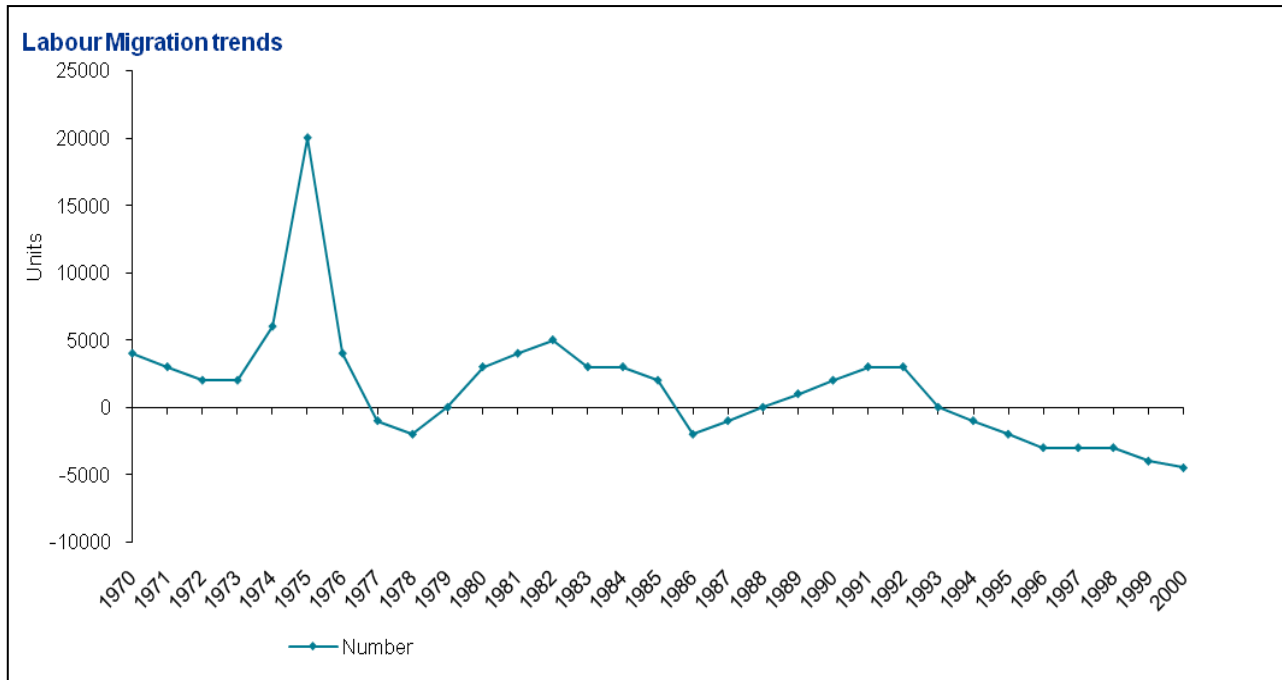


Source: Skills migration (2003:239)

As is clearly evident from the above table, the emigration of skilled South African labourers has increased over the years. It would also appear that unless something changes, the current migration trend will continue to increase.

From 1994 South Africa has, regarding professional workers, been in a net emigration state, with more people leaving than entering its borders (Simelane, 1999:14). This trend is illustrated in Figure 5.

Figure 5: Net immigration of South African professionals (1970 – 2000)



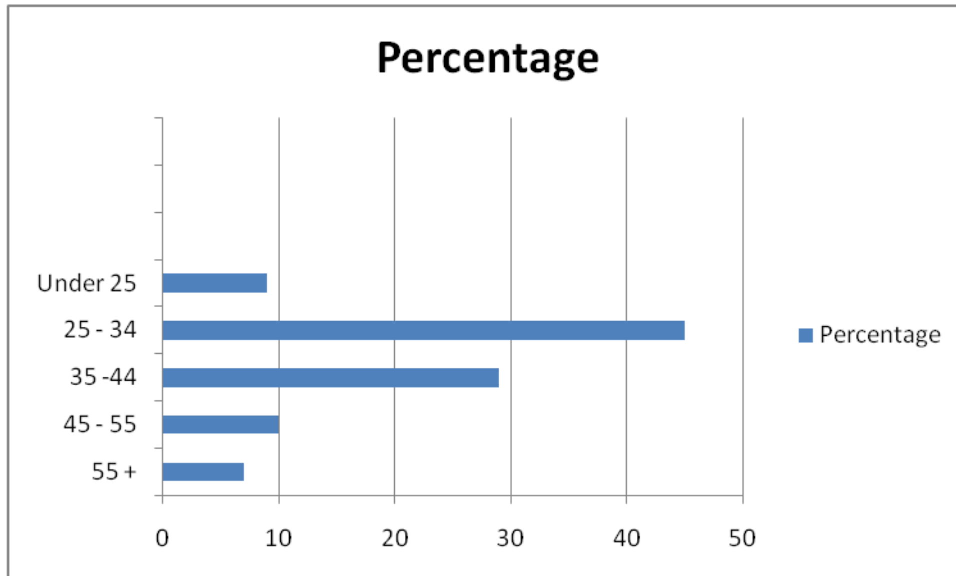
Source: Skills migration (2003:239)

Figure 5 reflects how South Africa's skilled employees have been emigrating faster than the country has been receiving immigrants (i.e. net migration has been in the negative since 1994 and has been increasing at a rapid rate since then). As a result of this negative migration trend, it can clearly be concluded that South Africa is losing its skilled employees to a number of foreign countries. This loss is however, unfortunately, not reciprocated by an inflow of foreign skilled employees. Data from Statistics South Africa indicates that in 2000 2 339 skilled labours emigrated from South Africa and only 331 immigrated to South Africa, resulting in a net loss of 2 100 skilled labourers in that year alone (Marks, 2004:9). Given the nature of South Africa's economy, it cannot afford the continuation of the current 'brain drain'. Government needs to find a way to address this situation without losing the support of its citizens.

The number of emigrating South Africans is said to range from anything between 8 000 and 16 000 emigrants per annum and has averaged a staggering 10 400 emigrants per annum over the past 10 years (Kahn, Pillay, Vellers, Penieri & Westcott, 2006:92). It has also been estimated by the OECD that 35 000 South African nurses worked outside South Africa in 2005 alone (Oosthuizen & Ehlers, 2007:14).

South African professionals tend to migrate when they are much older and more qualified (Marks, 2004:16). Figures 6 and 7 illustrate the emigration of professionals per age group. Figure 6 will illustrates the age specific migration trends for the period 1970 to 1993, while Figure 7 will illustrates the age specific trends for the period 1994 to 2000.

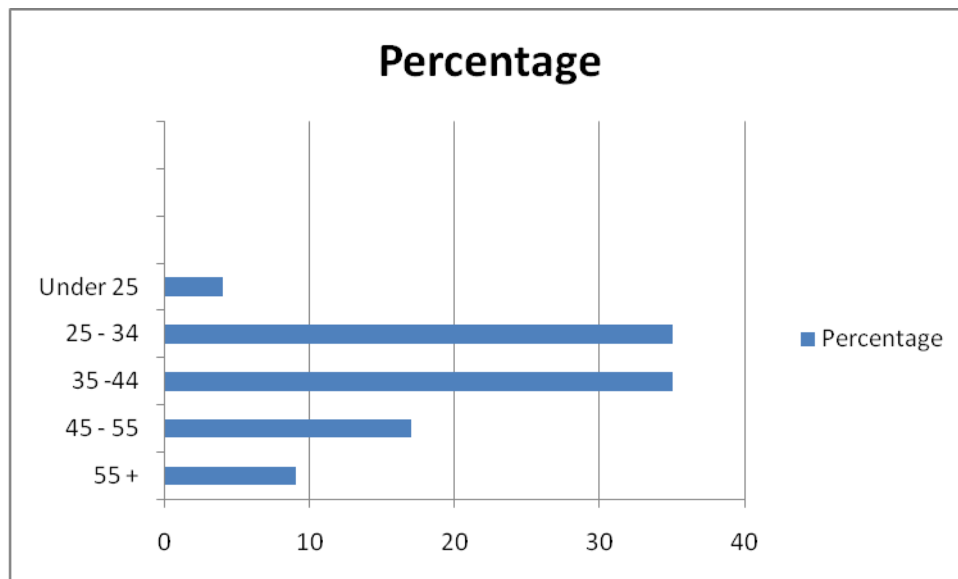
Figure 6: Emigration of South Africans per age group (1970 – 1993)



Source: Skills migration (2003:242)

The majority of skilled migrants were between the 25-34 and 35-44 age groups (Bailey, 2003:242). Most people within those age groups fall well within the working class of a country's economy. The high migration rate of older and more experienced individuals or employees can obviously only have negative effects of the country's GDP.

Figure 7: Emigration of skilled South Africans per age group (1994 – 2000).



Source: Skills migration (2003:242)

As with the period 1970 to 1993, there are higher migration patterns among individuals within the 25 to 34 and 35 to 44 age groups during the period 1994 to 2000. Although there was a decrease (10% drop) in the number of 25 to 34 year-olds migrating during the 1994 to 2000 period, it should be noted that this has been counteracted by an increase in the number of 35 to 44 year olds migrating (6% increase). As with the earlier time period, the high migration rate among skilled individuals results in a negative impact on GDP. The high migration trends obviously indicate that there are some major pull factors attracting South Africans to foreign countries.

2.6 POSSIBLE TAX INCENTIVES MOTIVATING MIGRATION

2.6.1 Introduction

According to Australian, Dutch and South African tax laws, tax is levied at progressive tax rates (KPMG, 2010:11). As a result, the rate at which tax is levied is determined by an individual's total taxable income. The maximum tax rates for each of the respective countries are as follows:

- Australia – 45%;
- the Netherlands – 52%; and
- South Africa – 40%.

From the above tax rates, it is evident that South Africa has the lowest maximum tax rate. Although South Africa's maximum tax rate is lower than those of the Netherlands and Australia, migrants are still eager to leave South Africa for the above mentioned destinations. The tax rate applied depends entirely on a person's total taxable income. The desire to migrate could therefore be motivated by the income bracket at which the maximum tax rates apply.

The highest tax rates for each of the following countries become applicable at the respective United States (US) Dollar amounts (KPMG, 2010:27):

- Australia - $158 033;
- the Netherlands - $69 337; and
- South Africa - $73 113.

Despite the fact that South Africa has the lowest maximum tax rate, when compared to those of the Netherlands and Australia, an individual with a tax liability in South Africa ends up paying tax at the maximum rate a lot sooner than they would in Australia. This therefore implies that an individual pays a lot more tax sooner than they would have had they been taxed in Australia.

The effective tax rates in each of the following countries (calculated by dividing the total tax due by the total taxable income) are (KPMG, 2010:10):

2.6.1.1 *Effective tax rate on $100 000*

- Australia – 26,5%
- the Netherlands – 28,5%; and
- South Africa – 31,2%.

2.6.1.*2 Effective tax rate on $300 000*

- Australia – 37,3%;
- the Netherlands – 44,2%; and
- South Africa – 37,1%.

From the above listed figures, it is evident that the effective tax rates in all three countries increases as the taxable income increases. The increase in the South African effective tax rate (5,9% increase) is however lower than those of the Netherlands (15,7% increase) and Australia (10,8% increase). Based on the above information, in can therefore be deduced that the tax payable (in US Dollars) in each of the countries is:

2.6.1.3 On $100 000

- Australia - $26 500;
- the Netherlands - $28 500; and
- South Africa - $31 200.

2.6.1.4 On $300 000

- Australia - $111 900;
- the Netherlands - $132 600; and
- South Africa - $111 300.

As can be expected (and as illustrated in the above figures), an individual's tax liability increases as his/her taxable income increases. South African middle-class individuals pay more tax when compared to middle- class Australian and Dutch individuals. The inverse is however applicable for higher income earners in South Africa, they surprisingly pay less tax than Australian and Dutch higher income earners. It is therefore evident that middle class South Africans would have a smaller tax liability had they been liable for tax in Australia or the Netherlands as opposed to being liable for South African taxes. The South Africa tax system therefore appears to favour the 'cream of the crop'.

In each of the respective countries, residents are taxed on their world-wide income while non-residents are taxed on income from a source within the respective country. In all three countries, the source of employment income is determined by establishing where the

employment services were physically rendered. (KPMG, 2010:11). Further to the above, employers in each of the three countries are required to withhold tax on all employment income paid to employees. The amount to be withheld is determined in accordance with the respective country's tax laws. Despite their similarities, there are various factors that differentiate the tax laws applicable in each of the three countries. Other than having different tax rates, the countries also have different ways of determining an individual's taxable income.

2.6.2 Incentives offered by the Netherlands and Australia

To draw migrants to one's country, one obviously has to offer them something they feel they would otherwise not receive from their home country. As previously stated in this study, people generally migrate because of a level of dissatisfaction with the situation in their home country. The levels of dissatisfaction cited by South African migrants together with the negative migration trends in South Africa could serve as a further indicator that Australia and the Netherlands, among other countries, offer South African migrants something of value (whether monetary or not) to attract them to the respective countries.

2.6.2.1 Australia

According to the OECD (2006:134), the following are among the tax-related incentives offered by Australia to skilled migrants:

- all foreign sourced income received by eligible temporary residents is exempt from tax for a four-year period. This is done to encourage the establishment of businesses that require a skilled labour force; and
- non-residents are not taxed at the same tax rates that apply to residents (a person's residency status is determined in accordance with the Australian tax rules).

2.6.2.2 The Netherlands

According to the OECD (2006:134), the following are among the tax-related incentives offered by the Netherlands to skilled migrants:

- expatriates may qualify for a special facility known as the '30% rule'. In terms of this rule, the migrant employee can be paid a tax-free allowance of up to 30% of their regular employment income. This allowance can be paid tax free for a maximum period of ten years; and
- expatriate employees can also be granted a tax free reimbursement allowance for the school fees of children attending international schools. This therefore implies that South Africans working in the Netherlands may be entitled to a tax free reimbursement on any fees paid for children attending schools in South Africa or any country other than the Netherlands.

2.6.3 Incentives offered by South Africa

South Africa offers what is known as a tax-free threshold. A taxpayer will be exempt from filing a return or paying any taxes should they receive income below the relevant threshold (KPMG, 2010:228). Unlike Australia, residents and non-residents are taxed at the same tax rates. As with Australia, a person's residency status is determined in accordance with the relevant tax laws. South Africa also offers what are known as the 'primary and secondary rebates'. These rebates are deductible from a person's tax liability and are granted based on a person's age.

2.6.4 Summary

From the above, it would appear that the Netherlands and Australia offer more migrant specific incentives. The tax incentives offered by South Africa apply equally to residents and non residents. The Australian and Dutch incentives focus specifically on giving migrants tax-free receipts. The granting of a tax-free amount reduces a taxpayer's taxable income. A reduced taxable income results in a reduced tax liability. Further to the above, the Australian and Dutch tax systems appear to favour lower income earners. Unfortunately for South Africa, majority of its emigrants appear to be average, middle-

class individuals. Considering the above facts, it would appear that South African taxpayers may indeed be justified when listing the current South African personal income tax system as one of the factors motivating labour migration.

2.7 CONCLUSION

Labour migration has over the years grown in popularity. With technological developments, people are now able to cross international borders with little or no hassle. As previously stated, people migrate with the hope of improving their general well-being. If an individual is unhappy in his/her home country, he/she will actively seek out a place where he/she can achieve their desired happiness. South Africans are no exception to the rule. In the hopes of building a better life for themselves, they have ventured into foreign lands. Dissatisfied with numerous factors in South Africa, they have considered and even accepted employment assignments to various foreign countries. What they perceive as 'better offers and opportunities' in foreign lands have unfortunately had negative effects on the South African economy. The number of skilled employees that the country has lost to foreign countries has unfortunately left it lacking a number of necessary skilled professionals. From the research conducted, it is obvious that there is indeed something that South African migrants receive in foreign countries that they otherwise did not receive in South Africa.

Various countries offer incentives to attract migrants to their borders (some of which include tax incentives or lower tax liabilities). In the chapter that follows, a country-by-country analysis of the personal income tax systems applicable in Australia, the Netherlands and South Africa is presented. The chapter will aim to analyse tax incentives available to South Africans working abroad that are not available to them should they choose to remain in South Africa.

CHAPTER 3

A COUNTRY-BY-COUNTRY TAX SYSTEM ANALYSIS

3.1 INTRODUCTION

This chapter will aim to highlight the main taxation principles applicable to employees in each of the three countries (namely, South Africa, Australia and the Netherlands). The research will however only focus on the personal income tax principles applicable to employees below the age of 65, as it is assumed that individuals over the age of 65 have opted to retire. As tax laws are constantly amended or revised, the research will analyse the most recent tax years for which employees have submitted the relevant tax returns and have been assessed on such submitted returns (namely the 2010 tax year).

The analysis of the Australian and Dutch personal income tax systems will focus on the tax laws applicable to inbound employees. The analysis of the South African personal income tax system will focus only on the tax laws applicable to outbound employees. When analysing the relevant tax principles, the research will briefly discuss how an employee's residency status will be determined in cases where they are dual resident (i.e. instances where the employee is a tax resident in South Africa and the Netherlands or South Africa and Australia). When highlighting the main taxation principles applicable to employees in each of the countries, the research will assess and compare which amounts constitute 'total income' (gross income less exemptions) in the hands of an employee and the deductions and tax rebates the employee is entitled to.

In assessing the laws applicable, a comparison between the respective tax laws will be conducted. This comparison aims to establish which of the three countries' tax laws place an employee in the most beneficial tax position. This comparison will assist in ascertaining whether or not the South African personal income tax system can indeed be listed as one of the factors motivating labour migration among South African skilled workers.

For ease of reference, all amounts in a foreign currency have been converted into South African Rand. The rates used are the average exchange rates for the respective tax years discussed in the study. The respective rates used are Australian Dollar (AUD) 1: R6,6514 and EU 1: R9.6906 (Oanda, 2011).

3.2 AUSTRALIAN TAX LAWS

3.2.1 Introduction

All references to Australian tax laws, unless stated otherwise, were obtained from Toryanik's summary (2010: 1 - 30) and the provisions of the Income Tax Assessment Act (1936) as amended (hereafter referred to as the Assessment Act).

Australia taxes on a residency basis; this implies that residents are taxed on their worldwide income while non-residents are taxed only on Australian sourced income. The Australian tax year runs for the twelve-month period starting 1 July. For the purposes of this study, the tax laws analysed will be those applicable during the twelve-month period beginning 1 July 2009 and ending 30 June 2010 (namely the 2009/2010 Australian tax year).

An individual is considered a resident of Australia if they reside (according to the ordinary meaning of the word) in Australia or comply with the relevant statutory requirements. According to the statutory requirements, an individual is considered an Australian resident if they comply with any of the following conditions:

- their domicile is in Australia (the individual may not have a permanent place of abode outside Australia and the Commissioner is to be satisfied that no such abode exists);
- the individual has been in Australia for more than six months (whether for a continuous or intermittent period) during the Australian tax year. This provision will, however, not apply if the Commissioner is satisfied that the individual has a usual place of abode outside Australia and the individual does not intend taking up residency in Australia. An individual is considered to have a place of abode outside Australia if they intend or expect to leave Australia at the end of their visit to Australia; and

- the individual is a Commonwealth public servant covered by the Public Sector Superannuation Scheme, or is the spouse or child (under the age of 16) of any such person (section 6(1) of the Assessment Act).

When assessing whether an individual is a resident by virtue of the fact that they reside in Australia (i.e. in terms of the ordinary meaning of the word, also known as the 'ordinary meaning' test), various factors, none of which will necessarily be conclusive, need to be considered. These factors include the individual's physical presence in Australia; where the individual maintains their home, family and business ties. Individuals whose intended stay is for a period of less than six months are not regarded as residing in Australia according to the 'ordinary meaning' test (*FCT v Miller* (1946) 73 CLR 93; 8 ADT 146) Conversely, an individual residing in Australia for more than two years is normally regarded as having met the 'ordinary meaning' test for the duration of their stay (Toryanik, 2010:2).

An overseas visitor to Australia on a working holiday who lives in temporary accommodation (i.e. an inbound employee) is generally not regarded as residing in Australia according to the 'ordinary meaning' test (*FCT v Miller* (1946) 73 CLR 93; 8 ADT 146). The quality and character of an individual's behaviour while in Australia will therefore assists in ascertaining whether or not the individual is an Australian resident. The following factors will be taken into consideration:

- the intention or purpose of the individual's presence;
- the individual's family, business or employment ties;
- the location of the individual's assets as well as the manner in which these assets are maintained; and
- the individual's social and living arrangements (tax ruling TR 98/17)

All ordinary and statutory income, regardless of its type, earned during the tax year is included in taxable income (Toryanik, 2010:3). Total taxable income is calculated as gross income less any exempt income and allowable deductions.

3.2.2 Employment income and exemptions

3.2.2.1 *Salaries*

According to Australian tax laws, employment income includes various types of payments made by an employer to an employee (including directors' fees) (section 26(e) of the Assessment Act). Fringe benefits (although received by employees from their employer) are however not taxable through the employee. These benefits (also known as benefits in kind) are as a result taxable through the employer and are subject to a separate fringe benefit tax. (Toryanik, 2010:4). Fringe benefits include but are not limited to: the provision of a motor vehicle; low interest loans; fully paid holidays; accommodation and payment of personal expenses (Toryanik, 2010:4).

An employee is taxed on employment income received for their benefit; this income is taxable upon the earlier of receipt or accrual (section 5 of the Assessment Act). The source of employment income is generally the place where the employment services are physically performed or rendered (KPMG, 2010:11); the relevant source is not defined in legislation, but is rather determined by case law. Employment income therefore includes:

- directors' fees;
- salary;
- wages;
- bonuses;
- long-service leave pay;
- payments made by the employer to employees to stop strikes; and
- any payment made by an employer in return for personal services rendered by the employee (section 26(e) of the Assessment Act).

3.2.2.2 *Pension income*

Pension income, including superannuation lump sum payments, received by employees 60 years or older is not subject to tax (Toryanik, 2010: 4). Pension payments are generally not made to employees under the age of 60. Payments made to employees younger than 60 years will however be taxable. The taxable pension payments will then be taxed at the concessional tax rates. The Australian tax law applies special tax rules when taxing pension income from non-complying superannuation and foreign (not of an Australian source) pension funds. (Toryanik, 2010: 4).

3.2.2.3 *Stock options*

Special provisions are applicable when valuing employment income received in the form of shares. These provisions apply irrespective of whether the shares are held in the employees' company of employment or another company. For the purpose of this study, the only provisions to be analysed are those applicable from 1 July 2009 (i.e. the commencement of the 2009/2010 Australian tax year) (division 83A of the Assessment Act).

Employees (both past and prospective) are sometimes granted shares or the right to acquire shares in a company. These arrangements are known as employee share schemes (ESS). The difference between the market value (MV) of the ESS and the consideration paid by the employee upon acquisition is included in the employees' assessable income (division 83A of the Assessment Act). Benefits received under an ESS that are at a real risk of forfeiture and meet certain qualifying conditions may be subject to concessional treatment. This concessional treatment is also available under salary sacrifice schemes that meet certain conditions.

In cases where an ESS meets certain conditions (including that at least 75% of employees are entitled to the ESS benefit), such benefit will only be subject to tax when the deferred taxing point occurs (division 83A of the Assessment Act). The taxing of qualifying ESS benefits can be deferred for a maximum of seven years (division 83A of the Assessment Act). An ESS that does not qualify for deferral may be subject to a tax exemption of up to

AUD 1 000 (R6 651), provided the ESS satisfies certain conditions and the employee's adjusted income is not in excess of AUD 180 000 (R1 197 252). Should an employee incur and pay tax on an ESS that was subsequently forfeited, such employee is entitled to claim a refund of any taxes paid. This refund is however only claimable if the forfeiture was not the result of the employee making a choice or was as a result of a condition of the ESS to protect employees against drops in the ESS market value. (division 83A of the Assessment Act).

3.2.2.4 *Termination payments*

Payments received for the termination of employment are taxable. These payments, together with payments for unused annual leave, sick leave and long-service leave are granted concessional tax treatment (section 27A-27J of the Assessment Act). Residents are taxable on such payments regardless of their source, while non-residents are only taxable on these payments if they are of an Australian source (section 6 of the Assessment Act). Termination payments have the same source in the employee's hands as the employment income previously paid to the employee. Payments from a pension fund (received upon termination of employment) however have their source where the fund is located (ruling IT 2168).

Lump sum payments are taxable if received as a result of employment, regardless of whether or not it is required by the employment contract (section 27A-27J of the Assessment Act). If the payment is a gift (i.e. not as a result of employment) it is not taxable. Should the payment however be as a result of the termination of the employee's employment it will be taxable regardless of whether or not is was a gift.

Employees may receive an Eligible Termination Payment (ETP). An ETP is any lump sum payment received as a result of the termination of employment (section 27A-27J of the Assessment Act). Termination of employment can be as a result of retirement, resignation, dismissal or death. Such payments are paid to the employee for their benefit or the benefit of dependants. Such payments are taxable at concessional rates. The amount of an ETP subject to concessional rates is limited and such limit depends on the amount of the ETP

that relates to pre 1983 services (if any) as well as the employee's reasonable benefit limit. (section 27A-27J of the Assessment Act).

ETPs can be paid as either 'golden handshake' payments, payments for unused leave or payments for compensation of loss of office. Lump sum severance payments can be paid in a number of instalments and still qualify for concessional treatment. If the payment is however paid in the form of an annuity, it will not be taxable as a lump sum, but rather as an annuity (section 27A-27J of the Assessment Act). Lump sums received for restraints of trade are not taxable as termination payments, provided the Commissioner is satisfied that the payment is reasonable. This payment may however be subject to capital gains tax (CGT). Lump sums paid as compensation for loss of income through personal injury are not taxed as termination payments and are also exempt from CGT provided the Commissioner is satisfied that the payment is reasonable. (section 118 of the Assessment Act).

Payments made on the death of an employee whose date of death is after 30 June 1994 (also referred to as death benefit ETP's) are subject to special rules (section 27AAA of the Assessment Act). In cases where the payment is made directly to the deceased's dependent, such payment is exempt up to a certain limit. Any amount in excess of the limit is then taxed at the top marginal rate. The above mentioned exemption will apply equally in situations where the payment is made to the deceased's estate and the deceased's dependants are to benefit from the estate. Payments made to non-dependants (either directly or indirectly through the estate) are taxed as ordinary lump sum termination payments. (section 27AAA of the Assessment Act).

Lump sum severance payments are taxed in the year of receipt. Five per cent of the amount relating to employment services rendered prior to 1 July 1983 is included in assessable income and is subject to tax at the ordinary rates. (Toryanik, 2010:6). The payment relating to employment services rendered after 1983 is fully taxable, a rebate is however granted (this is done to limit the rate of taxation to be applied). This rebate is determined by the employee's age; employees who are 55 years or older are granted more beneficial tax treatment. Employers making any lump sum severance payments to employees are by law required to withhold Pay As You Go (PAYG) on such payments

(section 221A of the Assessment Act). Employees may defer the taxing of termination benefits by depositing them immediately into a retirement fund (provided the fund meets various requirements) or an approved retirement savings vehicle. The approved fund will pay tax on 15% of the deposit. When the employee finally receives the deposit back, the amount is taxed as a lump sum from a pension fund (such receipts are subject to tax at lower rates than those applicable to lump sums received from the employer). (Toryanik, 2010:6).

3.2.2.5 *Lump sum payments from pension funds*

Lump sum payments from a pension fund are taxable at concessionary rates provided the fund is a genuine pension fund and the payment is made in accordance with the rules of the fund (Toryanik, 2010:6). Such payments are taxable in the year of receipt. Five percent of the amount relating to fund membership prior to 1 July 1983 is included in assessable income and is subject to tax at the ordinary rates (Toryanik, 2010:6). The payment relating to employment services rendered after 1983 is fully taxable; the employee is however allowed to deduct any contribution to the fund made after 30 June 1983 to the extent that such contributions were not allowed as a deduction. An employee is also granted a rebate; this is done to limit the rate of taxation to be applied. As with lump sums received from the employer, the rebate granted is determined by the employee's age (employees over the age of 55 once again receive more beneficial tax treatment). According to Australian tax laws, any fund making lump sum payments relating to fund membership after 30 June 1983 is required to deduct PAYG from such payments (section 211A of the Assessment Act). The taxation of lump sum benefits from a pension fund may be deferred if the employee immediately transfers the funds into another approved retirement savings vehicle.

3.2.2.6 *Early retirement, redundancy and disability payments*

Any lump sum received by an employee on termination of their employment as part of an approved early retirement scheme or as a result of an employee's dismissal because of their redundancy is to be included in the employee's assessable income (section 27 E & F of the Assessment Act). Any amount received for termination due to redundancy in excess

of what the employee would have received had they resigned voluntarily is taxed differently to the rest of the payment.

The amount of the early retirement payment up to an indexed amount (based on the years of service) is exempt from tax. Payments in excess of the indexed amount are treated as ordinary employer severance payments. In order for these provisions to apply, the early retirement scheme must satisfy certain requirements relating to the class of employees to whom the benefits were paid. Further to meeting the specific requirements, the scheme must have been approved by the Commissioner. (section 27E&F of the Assessment Act.)

A portion of the payment received for termination of employment due to disability is exempt from tax. The exempt amount is calculated in accordance with the following formula, (A*B)/C where:

- A = the amount of the payment;
- B = the number of days from the date of termination of employment until the date employment could have lasted but for the incapacity; and
- C = the number of days of actual employment plus B (section 27E&F of the Assessment Act.).

3.2.2.7 *Payments for unused leave and long-service leave*

Payments for unused annual leave that accrued prior to 18 August 1993 and are made on the termination of an employee's employment are included in the employee's taxable income. A rebate is however granted so that any part of the payment not included in the employee's tax free threshold is taxed at a flat rate of 30% in terms of section 26AC of the Assessment Act. Unused leave payments that accrued after 18 August 1993 are included in the employee's assessable income and taxed at the ordinary tax rates. Concessional rates will however apply should the amount have been received due to termination of employment as a result of *bona fide* redundancy, invalidity or under an approved early retirement scheme (section 26AC of the Assessment Act).

Payments for long-service upon termination of employment relating to services rendered prior to 16 August 1978 are taxed at 5% of the amount being included in assessable income and are taxed at the ordinary rates of tax (section 26AD of the Assessment Act). The portion of the payment relation to services rendered between 16 August 1978 and 17 August 1993 is fully taxable. A rebate is however granted so that any portion of the amount not included in the employee's tax-free threshold is taxed at a flat rate of 30% (section 26AD of the Assessment Act). The portion of the payment relating to services rendered after 17 August 1993 is fully taxable at the ordinary tax rates. A rebate will be received provided the amount was received due to termination of employment as a result of *bona fide* redundancy, invalidity or under an approved early retirement scheme (section 26AD of the Assessment Act).

3.2.3 Allowable deductions

In terms of section 8 of the Assessment Act an employee is allowed to deduct all expenditures or losses incurred in the production of employment income, provided such expenditure or loss is not capital, private or domestic in nature) It is not necessary for the employee to show that the expenditure or loss was incurred as an express or implied condition of their employment. According to Australian tax laws, the expenditure or loss is deductible provided its incurrence is ordinarily expected to occur when the employee carries out his/her duties of employment. Deductible expenditures include, but are not limited to:

- work-related expenses (including expenses relating to protective clothing or protective items that are a significant part of the employment);
- donations made to approved recipients;
- home office expenses (subject to certain restrictions);
- business travel (i.e. travel between places of work);
- education expenses (provided they are directly related to the employee's current employment);
- expenses paid from an allowance received from the employer; and
- insurance premiums (provided the premiums are incurred directly in relation to the employee's employment) (ruling IT 2198).

However, expenses incurred on the following items are not allowed as deductions:

- private or domestic expenses;
- expenses incurred for entertainment;
- expenses of a dual character (i.e. travel from home to work);
- expenses related to deriving capital gains;
- expenses related to bribing or indictable offences;
- relocation expenses;
- medical expenses (a rebate may however, under certain circumstances, be granted);
- expenses relating to the obtaining or changing or employment; and
- expenses relating to retirement fund contributions are generally not allowed (division 34 of the Assessment Act).

3.2.4 2009/2010 Australian tax rates

Australia taxes on a progressive rate system (KPMG, 2010:11); as a result, various tax rates apply and are based on the employee's total taxable income. The rate applied is determined by the employee's income bracket. Table 10 lists the rates applicable during the 2009/2010 Australian tax year.

Table 10: 2009/2010 Australian tax rates

Taxable income (AUD)	Marginal rate (%)	Taxable income (ZAR)
0 – 6 000	0	0 – 39 908
6 001 – 35 000	15	30 915 – 232 799
35 001 – 80 000	30	232 806 – 532 112
80 001 – 180 000	38	532 119 – 1 197 252
Above 180 000	45	Above 1 197 252

Source: Australia Individual tax (14)

If an employee was resident during only part of the year, his/her tax-free income (income subject to tax at 0%) is reduced in proportion to the part of the year in which they were resident. The amount by which the tax-free amount is reduced is included in taxable income and taxed at 29%.

3.2.5 Tax rebates

Rebates (also known as tax offsets) are amounts subtracted from the tax payable on taxable income. These are generally only available to residents. (Toryanik, 2010:11). The rebates available cannot be carried forward to another tax year, and are non-refundable.

3.2.5.1 *Dependant rebate*

The dependant rebate is only available to Australian tax residents. This rebate is granted if the employee contributes to the maintenance of a dependant who is also an Australian tax resident (section 159J of the Assessment Act). The rebate is however apportioned if the employee is only resident for part of the tax year (section 159J of the Assessment Act). An employee who has migrated to Australia can claim this rebate for a period of up to five years after their arrival (section 159J of the Assessment Act). This provision is made at the Commissioner's discretion provided plans have been made for the dependant being maintained to join the employee as soon as possible. The rebates allowable for the 2009/2010 Australian tax year are listed in Table 11.

Table 11: Australian dependant rebate allowed

Dependent	Rebate (AUD)	Rebate (ZAR)
Spouse	2 243	14 919
Child–housekeeper	1 828	12 159
Invalid relative	823	5 474
Parent or spouse's parent	1 645	10 942

Source: Australia Individual tax (12)

A child–housekeeper is a child of the employee who is wholly engaged in keeping house for the employee. The spouse and child–housekeeper rebates are expressly denied if the employee or their spouse is eligible for the family tax benefit (section 159J of the Assessment Act).

3.2.5.2 *Housekeeper offset*

Where the resident employee has a housekeeper who is wholly engaged in keeping house or caring for the employee's dependant, the employee is allowed a rebate AUD 2 190 (R14 567). The rebate is apportioned if the housekeeper was only employed for part of the tax year. (Section 159L of the Assessment Act.)

3.2.5.3 *Medical expense rebate*

Any resident employee who incurred medical expenses in respect of themselves or their dependants is entitled to this rebate in terms of section 159P of the Assessment Act. The rebate is, however, only allowed in cases where the medical expenses incurred are in excess of AUD 1 500 (R9 977). A rebate equal to 20% of the amount of the excess is then allowed. The expenses subject to this rebate exclude any medical expenses that can be claimed from a health fund; expenses relating to the health fund premiums; ambulance transport costs; and cosmetic surgery undertaken for reasons other than health reasons (section 159P of the Assessment Act).

3.2.5.4 *Low-income offset or rebate*

The low-income offset or rebate is only available to resident employees. An offset (i.e. the employee is effectively not liable for tax) is available, in terms of section 159N of the Assessment Act, to all employees whose taxable income in below AUD 63 750 (R424 027). A rebate of AUD 1 350 (R8 979) is available to employees whose income does not exceed AUD 30 000 (R199 542). The rebate thereafter tapers off to a rate of AUD 0.04 (R0.26) of reach AUD 1 (R6 65) of income (section 159N of the Assessment Act).

3.2.5.5 *Private health insurance rebate*

The private health insurance rebate is allowed in cases where an employee and their family maintain private health insurance. The employee is then entitled to a 30% reduction in ongoing private health insurance premiums. (Toryanik, 2010:13).

3.2.5.6 *Education fund*

A refundable tax offset is available for eligible education expenses (Toryanik, 2010:13). The refund is equal to 50% of the expenses incurred on primary and tertiary education of the employee's children. The expenses eligible for the refund include expenses to purchase or hire computers, printers, stationery, educational software, textbooks and the like (Toryanik, 2010:13). The maximum annual offset is AUD 375 (R2 494) for each child in primary school and AUD 750 (R4 989) for each child in secondary school (Toryanik, 2010:13).

3.2.6 International aspects – tax treatment of inbound employees

With effect from 1 July 2006, most foreign income (income not of an Australian source) of a temporary resident is not subject to Australian tax (subdivision 768 of the Assessment Act). Broadly, a temporary resident is an employee who is resident for Australian tax purposes, but holds a temporary Australian visa (section 995 of the Assessment Act). Certain temporary residents may claim a refund of the superannuation balance paid by the employer to an Australian superannuation fund. The refund may be claimed not earlier than six months after permanent departure from Australia and may be subject to a final withholding tax at 35% (Toryanik, 2010:21).

Taxation of Australian non-resident employees depends on whether the employee is subject to treaty protection. Where treaty protection is available, the employee will be taxed in terms of the applicable treaty (Toryanik, 2010:22). Where no treaty protection is available, the non-resident employee is taxed only on Australian sourced income. There is however no comprehensive definition for source in Australian tax laws. The source of income is therefore established in terms of case laws. Non-residents may be eligible for only some of the tax credits, depending on their specific circumstances (i.e. the resident status of their spouse). An employee who is only resident for part of the tax year may nevertheless be entitled to claim some rebates as if they were resident for the entire year. The non-resident employee is able to claim foreign tax credits for foreign tax paid in relation to their Australian assessable income. Income earned by non-resident employees

is subject to different progressive tax rates. Table 12 details the tax rates applicable to non-residents for the 2009/2010 Australian tax year.

Table 12: 2009/2010 Australian tax rates for non-residents

Taxable income (AUD)	Marginal rate (%)	Taxable income (ZAR)
0 – 35 000	29	0 – 232 799
35 001 – 80 000	30	232 806 – 532 112
80 001 – 180 000	38	532 119 – 1 197 252
Above 180 000	45	Above 1 197 252

Source: Australia Individual tax (22)

3.2.7 DTA between Australia and South Africa

It is, in certain circumstances, possible for a South African employee to trigger Australian tax residency before they have broken their South African tax residency. The employee will then be a dual resident (they will be tax resident in both Australia and South Africa). Should it happen that an employee obtains dual residency status, their country of tax residency will be determined in accordance with the DTA entered into between South Africa and Australia. The employee will be deemed to be resident in the country in which they have a permanent home available to them. Should they have a permanent home in both or none of the countries; the employee will be deemed to be resident in the country in which they have closer personal and economic ties (DTA 1992: 2).

3.3 TAX LAWS OF THE NETHERLANDS

3.3.1 Introduction

All references to the Netherland's tax laws, unless stated otherwise, were obtained from Offermanns' summary (2010) and the provisions of the Individual Income Tax Law (2001) (hereafter referred to as the Individual Act) as well as the Wage Withholding Tax Law (1964) (hereafter referred to as the Wage Law).

The Dutch tax year runs in accordance with the calendar year (1 January – 31 December) (KPMG, 2010:62). For purposes of this study, the tax laws analysed will be those

applicable during the twelve-month period beginning 1 January 2010 and ending 31 December 2010 (namely the 2010 Dutch tax year). The income of individuals is grouped into three categories referred to as Box 1, Box 2 and Box 3 income. The income of each box must be calculated separately; a different income calculation and tax rates apply for each box. The three categories are:

- earned income and income from owner-occupied dwellings (Box 1);
- capital gains and other income from a substantial shareholding in a company (Box 2); and
- income from savings and investments (Box 3) (Offermanns, 2010:5).

Box 1 income consists of, but is not limited to, employment income. Income falling under Box 1 less personal deductions and allowances is subject to tax, in terms of articles 2.7 and 8.3 of the Individual Act, at progressive tax rates. Income from a box (with the exception of Box 3) may be negative (i.e. may result in a loss). A negative result from one box can generally not be offset against the positive result of another, it is however possible to carry forward a loss for nine years or carry it back for three years to be offset against profit within the same box (article 4.53 of the Individual Act). The tax due is the total income tax calculated for the three boxes less the levy rebates. The assessment is then based on the income earned in the preceding year.

The Netherlands taxes on a residency basis, implying that resident employees are taxed on their world-wide income and non-residents are taxable only on Dutch sourced income (Offermanns, 2010:6). There is no clear definition of ‘residence’; as a result, an employee’s residency status is determined according to the relevant circumstances. The following factors are considered particularly relevant:

- the availability of a permanent home;
- the place where the employee’s spouse and children live; and
- the place of personal and economic relation (the place of employment) (Offermanns, 2010,6).

A resident employee of the Netherlands who leaves the country without becoming a resident of another country and returns within one year is deemed to have remained resident for the entire period. An employee is deemed to be resident in the Netherlands based on their physical presence in the country (decree IFZ 95/904M). In calculating the days of physical presence, both the days of arrival and departure are included. In cases of employment income, the following holidays are taken into account:

- those taken just before the employee started working in the Netherlands;
- those taken during the time of their employment in the Netherlands; and
- those taken immediately afterwards (decree IFZ 95/904M).

Married individuals not living apart on a lasting basis are treated as partners for tax purposes. Two adults who are not married to each other and living together for an uninterrupted period of more than six months during the calendar year may opt to be treated as partners if both individuals are listed at the same address in the municipal register (article 2.17 of the Individual Act). Partners are however taxed separately on their earned income (i.e. income earned from present or past employment) (article 2.17 of the Individual Act).

3.3.2 Employment income and exemptions

3.3.2.1 *Salary*

Employment income is income from dependant personal services and falls within Box 1. The taxable employment income is employment income less the employee's deductions (article 3.80 & 3.85 of the Individual Act). Employment income generally comprises all benefits received for past and current employment (i.e. all benefits connected with the employees' employment) (article 3.81 of the Individual Act). All employment income received by an employee is subject to wage tax, this tax is withheld by the employer paying the employment income. A fictitious employment may exist in relation to people working at home and people who work for at least two days a week and earn a payment of at least two fifths of the minimum wages. To qualify as a person engaged in 'real' employment, the following conditions need to be met:

- there must be an obligation on the employee to work;
- the employer must have an obligation to pay a salary;
- there must be a situation of subordination; and
- the relationship must exist over a certain period of time (the employment must be regular) (article 610 of the Civil Code, Book 7 (hereafter referred to as the Civil Code)).

The following people, *inter alia*, are treated as engaged in 'real' employment:

- any person who carries on work according to an agreement;
- any person who assists an individual described above;
- any person working as a representative for one principle;
- any person who works as a representative for a principle commissioned to be a third party;
- students who are training to acquire the necessary professional skill and who receive a reimbursement which exceeds the cost of education;
- children aged 15 years and above who work in their parents' business, unless they participate financially in the business;
- a commissioner on the board of a company;
- a manager of a co-operative; and
- a shareholder who works for the company in which he owns a substantial interest (articles 3 & 4 of the Wage Law).

When income is derived from an employer-employee relationship, the employer will have already withheld wage tax on all amounts paid to the employee (article 3.81 of the Individual Act). The following payments from an employer to an employee are however not subject to tax (i.e. these amounts are exempt from tax):

- compensation which is not regarded as a remuneration benefit from a social point of view;
- allowances which are not regarded as remuneration benefits from a social point of view;
- claims concerning early retirement;

- pension claims (within certain limits);
- claims based on the Sickness Insurance Law; the Law of Labour and Care; the Disability Insurance Law; and the Unemployment Insurance Law;
- claims concerning periodical payments to compensate for lost wages if insured by an insurance company or pension fund and the payments will be received no later than the age of 65;
- claims on payments for death or disability due to an accident;
- claims on payments, allowances and compensation for education costs made to obtain earned income;
- amounts withheld as payment for an obligatory pension or early retirement regulation;
- compensation for the damage or loss of personal goods suffered in connection with the employment;
- allowances on the death of the employee, their partner or children (to a maximum of three months' salary);
- allowances from a fund to which the employer during the last five calendar years contributed the same amount or less than the employee (sickness, disability, birth and disease allowances are excluded);
- one months' salary for services of 25 or 40 years by the employee;
- office equipment costs up to a maximum of EU 1 815 (R17 588) during the calendar year and the four preceding years if a written agreement with the employer exists specifying that the employee works at home by electronic means (the amount will be exempt provided the office meets certain requirements);
- claims on vacation if the claims at the end of the year do not exceed the weekly working hours in 50 work weeks; and
- the provision for the right to use transport for a maximum period of 24 months (provided the transport is mainly financed by the government because of the traffic disruption pursuant to work on the roads) (article 11 of the Wage Law).

Employees may save part of their gross wage to purchase spare time at a later stage (this can be used to purchase maternity, educational or sabbatical leave) (article 61 (a)-(k) of the Wage Law). The monthly payments received during the leave period may not exceed the gross monthly wages received in the month preceding leave. The saved wages will not

be subject to tax until payments are received, at which time they will be taxed as employment income.

Employers may make a yearly gift in kind equal to EU 70 (R678) on public holidays. These gifts are exempt from tax on the employee, but subject to a final tax of 20% on the employer (article 31(1)(g) of the Wage Law).

3.3.2.2 *Benefits in kind*

An employee may receive benefits in addition to their salary; these benefits can either be benefits in cash or kind (these constitute a fringe benefit to the employee). Benefits in cash include the payment of employees' bills while benefits in kind include the provision of living accommodation. Benefits in cash are taxed the same way as salary, while benefits in kind first need their value determined (these too, once valued, are taxable). (Offermann, 2010:12). All benefits in kind need to be valued at their MV (article 13 of the Wage Law). The following benefits in kind (granted to the employee or paid for on the employee's behalf) may be supplied tax free:

- contributions to employee associations in which at least 75% of the employees may participate (article 32 of the Wage Law);
- personnel travels and festivities (article 32a of the Wage Law);
- board, lodging and meals (articles 35, 51,52 & 51 of the Wage Law);
- laundry, heating, lighting and water (article 34 of the Wage Law);
- clothing for a child who works in a parents' company (article 21 of the Wage Law);
- benefits given to the employee's family members (article 35 of the Wage Law);
- compensation for the purchase of a bicycle up to EU 749 (R7 258) (article 37 of the Wage Law);
- products from the employer's business (article 41 of the Wage Law);
- a subscription ticket for public transport (article 36 of the Wage Law);
- compensation for costs resulting from the obligation under the labour conditions laws (article 43 of the Wage Law);
- accident insurance covering accidents at work (article 44 of the Wage Law);
- outplacement (article 45 of the Wage Law);

- specified fixed costs (article 47 of the Wage Law);
- compensation for meals during work (article 54 of the Wage Law); and
- interest-free loans (article 59 of the Wage Law).

3.3.2.3 *Pension income up to here*

Contributions to pension schemes are often paid by the employer. These contributions are deductible (by the employee) if they are based on a qualifying pension plan; no tax is levied on these contributions, provided they fall within the prescribed limits (article 11(1)(c) of the Wage Law). Should the pension scheme however fall outside the prescribed limits, any contributions made by the employer will be subject to tax. Any pension payments will in future be exempt, provided they relate to the taxable contributions made by the employer. The transfer of a pension claim from a Dutch pension fund to a non-resident insurer triggers a tax charge, unless the pension claim is transferred to a recognised pension fund foreign insurance company (article 19b(2) of the Wage Law). If an employee is a Dutch resident, all their pension rights (including those granted by a foreign employer) are exempt from income tax if they are insured with a Dutch insurer or a recognised foreign insurer and the prescribed limits are not exceeded (article 18(a)(1) of the Wage Law). A foreign pension fund and insurance company are recognised if the following conditions are met:

- the fund or company provides information concerning the implementation of its pension regulations; and
- the fund or company provides a guarantee for the collection of any tax claim arising from the emigration of the insured, or the transfer of a pension claim from a resident to a non-resident pension fund or insurance company (article 19(a)(1)(f) of the Wage Law).

Receipts from a pension fund that are commuted into a lump sum are taxable as income from former employment, unless the transfer results from employment abroad (i.e. employment outside the Netherlands) (article 19 of the Wage Law).

3.3.2.4 *Stock options*

Stock options granted to employees for no consideration or for a consideration below the stocks market value constitute employment income in kind. These stock options are taxable upon exercise or transfer (Offermanns, 2010:16). Where an employee has been employed in various states, a pro rata attribution related to the periods of employment has to be made with respect to the income from the stock option rights.

3.3.2.5 *Termination payments*

Per Dutch tax laws, taxable income includes any benefits received as compensation for losing income in future in terms of article 3.82(a)(2) of the Individual Act. As a result, any income received as a result the cessation of work or the termination of the employer-employee relationship is regarded as employment income. From 2009, employers are required to withhold tax at a rate of 30% on any excessive severance payments surpassing the amount of the employee's annual salary that is equal to or greater than EU 519 000 (R5 029 421) (article 32bb of the Wage Act).

3.3.2.6 *Exempt income*

The following employment related receipts may be granted tax free:

- reimbursed moving costs. An amount equal to 12% of the employee's salary, up to a maximum of EU 7 750 (R75 102) (article 15a(1)(g) of the Wage Law);
- reimbursed subscription to a professional membership (article 15a of the Wage Law);
- reimbursed education costs;
- reimbursement for expenses made with respect to the proper fulfilment of the employment. Reimbursements for mixed expenses are taxable (expenses relating partly to employment and private costs) (article 15a of the Wage Law); and
- up to 20% of the rental value of a study (provided not more than 30% of the employee's income is earned outside the home and the employee has another office space) (article 2.14(3)(b) of the Individual Act).

3.3.3 Allowable deductions

From 2001 actual employment expenses are no longer allowed as a deduction (Offermanns, 2010:11); the previously allowed deduction has been subsequently replaced by an employee rebate (to be discussed later in the paper). Employees are however allowed to deduct the cost of travelling from home to work provided they travel by public transport for at least four days a week to the same place (article 3.87 of the Individual Act). If the employee travels three, two or one day(s) per week, the allowable deduction is three-quarters, half or one-quarter of the deduction allowed for four days' travel The deduction allowed for four days' travel is listed in Table 13 (article 3.87 of the Individual Act).

Table 13: Travel deductions allowed in the Netherlands

Distance travelled (km)	Annual deduction (EU)	Annual deduction (ZAR)
Up to 10	0	0
10 – 15	425	4 119
15 – 20	568	5 504
20 – 30	951	9 216
30 – 40	1 178	11 416
40 – 50	1 537	14 894
50 – 60	1 710	16 571
60 – 70	1 898	18 393
70 – 80	1 962	19 013
Over 80	1 989	19 275

Source: The Netherlands Individual tax (10 – 11)

Moving costs are not deductible (article 15a(1)(g) of the Wage Law). They may however be reimbursed tax free up to a certain amount of the transportation costs. The cost of office space and furniture in the private home is only deductible if not more than 30% of the employee's income is earned outside their home and the employee has another office space. If the employee does not have another office space, the deduction will still be allowed provided at least 30% of their income is earned from work carried out in the office and at least 70% from work initiated in the office space (i.e. making appointments to visit clients) (article 2.14(3)(b) of the Individual Act).

Costs incurred with regards to the subscription fee for a professional membership are not deductible (article 15a of the Wage Law). Costs incurred for courses may be deducted as education costs provided they are in excess of EU 500 (R4 845).

Specific medical expenses are deductible for chronically sick or disabled employees provided they exceed certain thresholds in terms of article 6.20 of the Individual Act. Employees with a low income are entitled to health care compensation provided they comply with certain conditions. Health care and life insurance premiums are not deductible. Annuity premiums and supplementary pension payments are deductible provided a shortage in the pension build-up exists (Offermanns, 2010:34).

Donations made to domestic religious, charitable, cultural and scientific institutes or institutes of benefit to the public are deductible (the institute is to be a resident of the Netherlands). The contribution is deductible if it exceeds 1% of the employee's gross income. For the donation to be deductible, a minimum donation of EU 60 (R581) has to be made. The maximum donation that can be made is 10% of the employee's gross income; the minimum and maximum restrictions do not apply if the donation is in the form of an annuity. (Article 6.39 of the Individual Act.)

Other deductible expenses are:

- payments for the support of minor relatives (the deductibility of this expense is dependent on the relative's age and the degree of support granted) (article 6.13 of the Individual Act);
- expenses relating to training or studying for another profession (article 6.27 of the Individual Act);
- a single premium paid for an annuity to settle pension claims in the case of divorce or legal separation (article 6.6 of the Individual Act); and
- expenses for travelling by car in relation to training or study. This expense is deductible up to a maximum of EU 0.19 (R1.84) per kilometre.

3.3.4 2010 Tax rates in the Netherlands

The Netherlands taxes on a progressive rate system; as a result, various tax rates apply and these are based on the employee's total taxable income. The rate applied is determined by the employee's income bracket. Table 14 lists the rates applicable during the 2010 Dutch tax year.

Table 14: 2010 The Netherlands tax rates

Taxable income (EU)	Tax on higher amount (EU)	Taxable income (ZAR)	Tax on higher amount (ZAR)	Rate on excess (%)
0 – 18 218	6 093	0 – 176 543	59 045	33.45
18 218 – 32 738	12 184	176 543 – 317 251	118 070	41.95
32 738 – 54 367	21 268	317 251 – 526 849	206 100	42
Above 54 367	0	Above 526 849	0	52

Source: The Netherlands Individual tax (39)

3.3.5 Tax rebates

Personal allowances are given in the form of levy rebates, which are similar to tax credits in the sense that they reduce the tax payable by the taxpayer. These rebates include a general levy and various additional rebates. Table 15 lists the rebates available to employees under the age of 65.

Table 15: Levy rebates available to employees below the age of 65

Levy rebate	Amount (EU)	Amount (ZAR)
General levy rebate	1 987	19 255
Employment levy rebate	1 489	14 429
Employment levy rebate (aged 57-59)	1 752	16 978
Employment levy rebate (aged 60-61)	2 012	19 497
Employment levy rebate (aged 62-65)	2 273	22 027
Income above EU 43 385 (R420 427)		
Employment levy rebate	1 433	13 887
Employment levy rebate (aged 57-59)	1 696	16 435
Employment levy rebate (aged 60-61)	1 956	18 955
Employment levy rebate (aged 62-65)	2 217	21 484
Parental levy (per leave hour)	4.07	39.44

Levy rebate	Amount (EU)	Amount (ZAR)
Income above EU 43 385 (R420 427)		
Single parent's levy rebate	945	9 158
Additional single parent's levy rebate (max)	1 513	14 662

Source: The Netherlands Individual tax (36)

The general levy rebate applies to all resident employees. In the case of partners, the partner with the lowest income is also entitled to the employment rebate, provided they earn income (Offermanns, 2010:36). Each partner receives the levy rebates separately, but the maximum rebate is limited to the tax paid by both partners (it is therefore not possible to transfer levy rebates between partners) (Offermanns, 2010:36). The parental levy is granted if an employee exercises their legal right on parental leave (maximum 26 weeks). This maximum deduction is equal to the taxable wage of the preceding year less the taxable wage earned in the calendar year (Offermanns, 2010:37).

Single parents under the age of 65 receive a levy rebate provided they meet all the following requirements:

- they maintain a household with one or more children below the age of 27 at the beginning of the year;
- the single parent must be responsible for the maintenance of at least one of those children to a significant degree for at least six months of the year;
- both the parent and child must be registered at the same address; and
- the single parent may not have a parent (Offermanns, 2010:37).

Single parents are also entitled to an additional single parent's levy rebate if they earn income outside the home and the youngest child of the household is below the age of 16 at the beginning of the calendar year.

3.3.6 International aspects – tax treatment of inbound employees

3.3.6.1 *Taxation of inbounds*

Employees of foreign companies rendering services in the Netherlands on a temporary basis (i.e. on a temporary assignment) can apply for 'the 30% rule'. Should they qualify, 30% of their employment income can be paid to them tax free to compensate them for specific expatriate costs (article 15a(1)(j) of the Wage Law). In order to qualify, the employee needs to satisfy the following conditions:

- the non-resident employee is hired abroad by a domestic employer (the employer must be an employer withholding wage tax);
- it is no hindrance if the employee is a national of the Netherlands or they live abroad; and
- the employee has to have specific know-how which is rarely available in the domestic labour market (article 6 of the Wage Law).

Specific know-how is determined by a combination of the following three conditions:

- the employee's level of education;
- the net level of salary with regard to the employment in the Netherlands corresponding to that in the expatriate employee's country of origin; and
- the employee's relevant working experience in respect of the specific employment (this condition is deemed to have been met if the employee has at least 2.5 years experience in a comparable employment) (Offermanns, 2010:56).

Should the third condition not be satisfied, an employee may still qualify for 'the 30% rule' provided the first and second conditions are met. The provisions of this rule are granted for a period of 120 months starting from the date of employment in the Netherlands. (Offermanns, 2010:56). The request for the application of this rule must be made within four months after the start of employment. The tax inspector may, after a 60-month period, request that the employer prove that the employee still qualifies for the application of this rule. If the special know-how of an employee becomes available in the Netherlands, the

foreign employee then ceases to qualify for the exemption. The 30% rule however does not apply to any payments received as compensation for termination of employment. Employees applying for the 30% rule are deemed to be resident for income earned under box one. This means that the employee is then entitled to the deductions from income in this box, personal deductions and exemptions and the general tax credit. (article 2.6 of the Individual Act).

Pension entitlements are based only on the taxable portion of the employee's remuneration (article 15(a)(1)(j) of the Wage Law). However, should the right to apply the 30% rule be granted, the said pension entitlements will be based on the total remuneration received.

An employer can give an employee a tax-free reimbursement for school fees for an international primary or secondary education for the employee's children (i.e. costs for school fees outside the Netherlands incurred by the employee can be reimbursed by the employer without being subject to tax in the Netherlands) (Offermanns, 2010:57).

An individual who is non-resident is only subject to tax on certain income of a source in the Netherlands. A non-resident who is a resident of a European Union member country or a country with which a tax treaty has been entered into, may opt to be taxed as a resident of the Netherlands (article 2.5 of the Individual Act). Non-resident employees may only deduct expenses for childcare, annuities and pensions (they are not entitled to personal deductions or the general levy rebate).

3.3.7 The DTA between the Netherlands and South Africa

It is, in certain circumstances, possible for a South African employee to trigger tax residency in the Netherlands before they have broken their South African tax residency. The employee will then be a dual resident (they will be tax resident in both the Netherlands and South Africa). Should it happen that an employee obtains dual residency status, their country of tax residency will be determined in accordance with the DTA entered into between South Africa and the Netherlands. The following conditions will be used to determine their country of residency:

- the employee shall be deemed to be resident solely in the country in which a permanent home is available to them. If a permanent home is available to them in both countries, the employee is deemed to be resident solely in the country in which their economic relations are closer (i.e. it looks at their centre of vital interest);
- if their residency cannot be determined under the above provisions, the employee shall be deemed to be resident solely in the country in which the employee has a habitual abode;
- if the employee has a habitual abode in both or none of the countries, the employee shall be deemed to be resident in the country in which they are a national; and
- if the employee is a national in both or none of the countries, the question of their residency shall be settled by a mutual agreement between the relevant competent authorities (DTA 2005: 3).

3.4 SOUTH AFRICAN TAX LAWS

3.4.1 Introduction

All references to South African tax laws unless stated otherwise, were obtained from Badenhorst's summary (2010) and the provisions of the Income Tax Act 58 of 1962 (hereafter referred to as "the Act").

In terms of the gross income definition, as defined in section.1 of the Act, South Africa taxes on a residency basis. As a result, residents are taxed on their worldwide income while non-residents are taxed only on income of a South African source. An employee is resident in South Africa either by virtue of being an 'ordinary resident' or by satisfying the 'physical presence test'.

The term 'ordinary resident' is not defined in legislation and derives its meaning from case law. An employee is seen as a South African 'ordinary resident' if any of the following conditions apply:

- they regard South African as their true and real home;
- they return to South Africa after any and all periods of wandering;
- their usual or principal residence is in South Africa; and
- they live in South Africa with some degree of continuity and carry on their ordinary course of living in South Africa (SARS Interpretation note 3, 2002:687).

To be considered an ordinary resident, two requirements need to be present; there has to be an intention to become 'ordinarily resident' in South Africa and steps indicative of this intention need to be carried out. The following factors, *inter alia*, are considered when trying to establish whether or not the above mentioned requirements are met:

- the location of the employee's most fixed or settled place of residence;
- their present habits and mode of life;
- the employee's place of business;
- the employees' status in the country (i.e. are they immigrants? do they have a work permit?);
- the location of their personal belongings;
- Their nationality;
- The employee's social and family relations;
- Their political and cultural activities;
- Whether or not the employee has applied for permanent residency;
- The period the employee spends abroad as well as the purpose of those visits; and
- The frequency of visits abroad (SARS Interpretation Note 3, 2002:688 of The Act).

An employee who is not an 'ordinary resident' can be treated as a South African resident upon satisfying the conditions of the 'physical presence test' (provided they are not already an 'ordinary resident'). In terms of the resident definition as detailed in section 1 of the Act, the requirements of the physical presence test are (all conditions need to be met):

- the employee must have been physically present in South Africa for a period exceeding 91 days in the current year of assessment;

- the employee must have been physically present in South Africa for a period exceeding 91 days in each of the five years of assessment preceding the current year of assessment; and
- the employee must have been physically present in South Africa for an aggregate period exceeding 915 days during the five years preceding the current year of assessment.

For the purpose of determining the number of days during which an employee was physically present in South Africa, part days are counted as full days and days in transit through South Africa are not included (provided they do not formally enter South Africa through a port) (section 1 of the Act).

As previously stated, non-residents are taxable on income of a South African source. In assessing the source of income, the South African tax authorities look at the originating cause of the income as well as this cause's location. An employee's taxable income is calculated as follows: gross income less exempt income, less deductions and allowances granted.

The South African tax year runs for a 12-month period ending on the last day of February (i.e. 1 March – 28/29 February) (section 1 of the Act). For the purposes of this study, the tax laws analysed will be those applicable during the twelve-month period beginning 1 March 2009 to 28 February 2010 (namely the 2009/2010 South African tax year).

3.4.2 Employment income and exemptions

3.4.2.1 *Salary*

Salary includes amounts (whether in cash or otherwise) derived from employment or from services rendered or to be rendered in South Africa (Badenhorst, 2010:2). South African residents are taxable on all salary received regardless of its source, while non-residents are only taxed on salary with a South African source. The source of employment income is the place where the employment related services are physically rendered. Employment income will be subject to tax irrespective of whether it was received in terms of a service

agreement or voluntarily (section 1 of the Act). Employment income is subject to employees' tax, better known as Pay As You Earn (PAYE), which is to be withheld by the employer (paragraph 2(1) of the Fourth Schedule of the Act).

3.4.2.2 *Benefits in kind*

Benefits in kind are, in principle, taxable as part of employment income. An employee may receive any of the following taxable benefits from an employer:

- interest- free or low-interest loans;
- the provision of residential accommodation;
- the right to use a company car for private or domestic purposes;
- contributions by an employer (on behalf of the employee) to pension, provident or medical funds;
- the acquisition of an asset (by an employee) at less than market value;
- the right to use company assets (other than a motor vehicle of accommodation) for private or domestic purposes;
- providing the employee with free or cheap services;
- the settlement of an employee's debt by their employer; and
- releasing an employee from their obligation to settle a debt (paragraph 2 of the Seventh Schedule of the Act).

A value of each of these benefits is determined and the taxable amount is subject to tax as part of the employee's employment income (paragraph 1 of the Fourth Schedule of the Act). Any benefit granted to an employee is also subject to PAYE.

3.4.2.3 *Stock options*

In terms of sections 8A and 8C of the Act, gains from equity instruments (i.e. from shares or stock options) received by employees in terms of a share incentive scheme are taxable when the equity instrument vests in the employee. The taxable amount upon vesting is the difference between the market value of the share or option upon vesting and the consideration paid by the employee upon acquisition of the share or option. The vesting of

an equity instrument is however dependent on whether the equity instrument is restricted or unrestricted; an employee is therefore only taxable when the instrument becomes unrestricted (section 8A(1) of the Act).

The employee has no immediate tax liability where the shares are granted in terms of a broad-based share scheme unless the shares are disposed of within five years from date of granting. In cases where the share is disposed of within five years, the gain will be subject to income tax (section 8B of the Act). Should the share be disposed of after five years from grant date, the resulting gain will be subject to CGT. The following conditions must be complied with in order for a share scheme to qualify as a broad-based share scheme:

- at least 80% of employees must participate in the scheme;
- the employees are to have full voting and dividend rights; and
- there are to be no disposal restrictions on the shares;
- the consideration paid by employees upon the acquisition of the shares is not to be lower than the prescribed minimum (section 8B(3) of the Act).

3.4.2.4 *Pension income*

Pension and annuities, payable regularly, are taxed at the normal tax rates. Receipts of this nature are fully taxable. Foreign pension payments are however exempt from South African tax if received by a resident under either the social security of a foreign country or from a foreign source in relation to past employment outside South Africa. (section 10(1)(gC) of the Act.)

3.4.2.5 *Termination payments*

Any lump sum payment from an employer to compensate an employee for loss of office is subject to tax in terms of section 1 of the Act). The receipt is however subject to a R30 000 exemption provided the employee complies with any of the following conditions in terms of section 10(1)(x) of the Act:

- the employee is over the age of 55;
- the termination of services must be due to superannuation, ill health or infirmity;
- the employee was not at any time the director of the company from which the payment is received; and
- the termination of services was due to the employee having become redundant or as a result of a reduction of personnel.

The exemption granted (of R30 000) is granted per lifetime and not per lump sum received. The amount of the lump sum in excess of the exemption may, provided certain conditions are met, be subject to tax at concessional rates. Any other lump sums received from the employer will be fully taxable and are not subject to any exemptions or concessional rates. (Stiglingh, Koekemoer, van Schalkwyk, Wilcocks, de Swardt & Jordaan, 2009:84).

Lump sums received from a retirement annuity fund upon the termination of an employee's employment (as a result of retirement or death) are subject to tax. The employer is required to withhold employees tax on all payments received from a retirement annuity fund. The amount to be included in employment income is the benefit received less the allowable deductions (Stiglingh *et al,*2009:329). The taxable portion of such receipts is determined in terms of paragraph 2 of the Second Schedule to the Act. The net receipt is then subject to tax at rates different to those applied to the rest of the employee's income. Lump sums received upon the withdrawal from a retirement annuity are also subject to tax. As with lump sums received upon retirement or death, these receipts are subject to employees tax, and are the taxed net of all allowable deductions and are subject to tax at rates different to those applicable to the rest of the employee's employment income. Table 16 details the rates applicable to lump sums from a retirement annuity fund.

Table 16: Rates applicable to lump sums from a retirement fund

Retirement/death		Withdrawal	
Taxable amount (ZAR)	**Rate (%)**	**Taxable amount (ZAR)**	**Rate (%)**
Up to 300 000	0%	Up to 22 500	0%
300 001 – 600 000	R0 + 18% of amount over R300 000	22 501 – 600 000	18%
600 001 – 90 000	R54 000 + 27% of amount over R600 000	60 001 – 900 000	R103 950 + 27% of amount over R600 000
Above 900 000	R135 000 + 36% of amount over R90 000	Above 900 000	R184 950 + 36% of amount over R900 000

Source: SILKE: South Africa Individual tax (330 & 338)

3.4.2.6 *Exempt income*

Section 10 of the Act provides that the following forms of income, even though received by the employee, will not be subject to tax:

- any disability pension or workmen's compensation;
- any amount received under the South African social security system;
- foreign pension payments received by a resident under the social security of a foreign country or from a source relating to past employment;
- relocation costs paid by an employer on commencement, transfer or termination of service, including moving, selling an old residence and settling into a new permanent home, as well as temporary accommodation costs for up to 183 days prior to the employee obtaining permanent accommodation;
- the first R5 000 of the cost of an asset presented by the employer to an employee as an award for bravery or for long service;
- general, *bona fide* bursaries granted to employees or their relatives;
- the first R300 000 of a lump sum benefit received from a fund upon the termination of employment; and
- the first R30 000 of a lump sum benefit received from an employer upon the termination of employment.

3.4.3 Allowable deductions

The deductions that employees are entitled to are limited in terms of sections 11 and 23(m) of the Act. Deductions can only be claimed if they were incurred as an inevitable concomitant of the employee's employment. Employees are therefore only entitled to the following deductions:

- current contributions to an approved pension fund (limited to the greater of 7,5% of their retirement funding income or R1 750) (section 11(k) of the Act);
- current contributions to an approved retirement annuity fund, limited to the greater of:
  - 15% of their taxable income prior to accounting for certain deductions;
  - R3 500 less the deductible current pension fund contributions; or
  - R1 750 (section 11(n) of the Act)
- arrear contributions for each pension and retirement annuity fund (limited to R1 800 per annum);
- insurance premiums paid by the employee, provided the insurance policy was taken out to protect against loss of income due to injury or death (section 11(w) of the Act);
- medical and dental expenses incurred by the employee (including medical aid contributions);
- donations to an approved public benefit organisation;
- wear and tear on any assets used by the employee in the course of fulfilling their employment-related obligations (section 11(e) of the Act); and
- any legal expenses incurred while carrying out their employment obligation (provided the reason for incurring these expenses is as a result of an inevitable concomitant of the employee's employment and the expanses are not capital in nature) (section 11(c) of the Act).

Private and domestic expenses are generally not deductible (section 23(b) of the Act). A deduction is however allowed for part of the employee's private residence used exclusively and regularly by the employee for business purposes. The expense must be apportioned on the basis of the total area of the residence and the area used for business purposes. An employee may only claim this deduction if his/her income is derived mainly (more than

50%) from commission or other variable payments and their duties are mainly performed otherwise than in an office provided by the employer (Badenhorst, 2010:5).

3.4.4 2009/2010 South African tax rates

South Africa taxes on a progressive rate system; as a result, various tax rates apply and these are based on the employee's total taxable income. The rate applied is determined by the employee's income bracket. Table 17 lists the rates applicable during the 2009/2010 South African tax year.

Table 17: 2009/2010 South African tax rates

Taxable income (ZAR)	Applicable rate
0 – 132 000	18%
132 001 – 210 000	R23 760 + 25% of amount over R132 000
210 001 – 290 000	R43 260 + 30% of amount over R210 000
290 001 – 410 000	R67 260 + 35% of amount over R290 000
410 001 – 525 000	R109 260 + 38% of amount over R410 000
Over 525 000	R152 960 + 40% of amount over 525 000

Source: South Africa Individual tax (6)

3.4.5 Tax credits or rebates

Employees may deduct personal rebates in terms of section 6 of the Act from the normal tax calculated in order to arrive at their final tax liability. If the employee's taxable income is below the minimum level, there will be no tax payable, and there is generally no duty to file a tax return. The threshold for employees below the age of 65 is R54 200.

A primary rebate of R9 756 is available to all employees. A secondary rebate of R5 400 (in addition to the primary rebate) is also available, but is only granted to employees over the age of 65. (section 6(2) of the Act).

3.4.6 International aspects – tax treatment of outbound employees

Employees who remain resident in South Africa while on secondment abroad may be exempt from tax in respect of their foreign employment income for services rendered abroad. To qualify for the exemption, the employee must satisfy all of the following conditions:

- the employee must have been physically absent from South Africa for a period exceeding 183 full days in aggregate during a twelve-month period commencing or ending in the relevant year of assessment; and
- the employee must have been physically absent for a continuous period exceeding 60 full days during the above mentioned twelve-month period (section 10(1)(o)(ii) of the Act).

Should both of the above conditions not be met, the foreign employment income will be subject to tax in South Africa. The employee will therefore be entitled to a foreign tax credit; this is granted to compensate the employee for any foreign taxes paid on the foreign employment income and is granted in terms of section 6quat of the Act.

3.5 CALCULATION OF AN EMPLOYEE'S TAX LIABILITY

3.5.1 Introduction

What follows next are calculations of an employee's tax liability in each of the above discussed countries. The calculations will address an employee's tax liability in cases where they are considered a resident of the respective country as well as their liability should they be considered a non-resident. Further to the above, the calculations will address the tax liability of both low- and high-income earners. The exchange rates used in the examples are AUD1:R6.6514 and EU1:R9.6906 (Oanda, 2011).

3.5.2 Low income earning residents and non-residents

A 34-year-old, single employee has the following employment related income and expenses:

- an annual salary of R120 000 (in cases where the employee is non-resident in any of the countries, R80 000 relates to services physically rendered in that country);
- a bonus of R6 000 (in cases where the employee is non-resident in any of the countries, R4 000 relates to services physically rendered in that country);
- the right to use an asset granted by the employer valued at R5 000, R2 000 of which relates to private use;
- a travel allowance of R10 000;
- contributions of R10 440 to a private medical aid (100% of the contributions were made by the employee);
- contributions to a retirement annuity fund of R2 400; and
- total travel of 920km, 300km of which relate to business travel.

3.5.2.1 *Australia – residents and non-residents*

Table 18: Australia: Tax liability, low income earner

AUSTRALIA TAX LIABILITY - LOW INCOME EARNER				
	NON-RESIDENT		RESIDENT	
	ZAR	AUD	ZAR	AUD
INCOME				
Salary	R 80000,00	$12027,54	R 120000,00	$18041,31
Bonus	R 4000,00	$601,38	R 6000,00	$902,07
Stock options	R 0,00	$0,00	R 0,00	$0,00
Right to use asset	R 0,00	$0,00	R 0,00	$0,00
Travel allowance	R 10000,00	$1503,44	R 10000,00	$1503,44
	R 94000,00	**$14132,36**	**R 136000,00**	**$20446,82**
DEDUCTIONS				
Business travel	-R 3260,87	-$490,25	-R 3260,87	-$490,25
Retirement annuity	-R 2400,00	-$360,83	-R 2400,00	-$360,83
Medical contribution	R 0,00	$0,00	R 0,00	$0,00
	-R 5660,87	**-$851,08**	**-R 5660,87**	**-$851,08**
TAXABLE INCOME	**R 88339,13**	**$13281,28**	**R 130339,13**	**$19595,74**
TAX LIABILITY	**R 24171,75**	**$3634,09**	**R 13563,61**	**$2039,21**
TAX CREDITS				
Private health insurance	R 0,00	$0,00	-R 3120,00	-$469,07
	R 0,00	**$0,00**	**-R 3120,00**	**-$469,07**
TOTAL TAX LIABILITY/REFUND	**R 24171,75**	**$3634,09**	**R 10443,61**	**$1570,14**

The right to use an asset constitutes a fringe benefit and is therefore not taxable in the employee's hands (this amount is however taxable in the employer's hands irrespective of the employee's residency status). The employment income (salary and bonus) received by the non-resident has to be apportioned as non-residents are only taxable on income from an Australian source. The travel allowance received by a non-resident is not apportioned as it relates wholly to services rendered in Australia. A travel deduction is only claimable for business-related travel. Medical expenses are not deductible, a tax credit can however be claimed (the rebate is only applicable to residents).

3.5.2.2 *The Netherlands – Residents and non-residents*

Table 19: The Netherlands: Tax liability, low income earner

DUTCH TAX LIABILITY - LOW INCOME EARNER				
	NON-RESIDENT		RESIDENT	
	ZAR	EURO	ZAR	EURO
INCOME				
Salary	R 80000,00	€ 8255,42	R 120000,00	€ 12383,13
Bonus	R 4000,00	€ 412,77	R 6000,00	€ 619,16
Stock options	R 0,00	€ 0,00	R 0,00	€ 0,00
Right to use asset	R 2000,00	€ 206,39	R 2000,00	€ 206,39
Travel allowance	R 10000,00	€ 1031,93	R 10000,00	€ 1031,93
	R 96000,00	**€ 9906,51**	**R 138000,00**	**€ 14240,60**
DEDUCTIONS				
Business travel	-R 19274,60	€ -1989,00	-R 19274,60	€ -1989,00
Retirement annuity	-R 2400,00	€ -360,83	-R 2400,00	€ -360,83
Medical contribution	R 0,00	€ 0,00	R 0,00	€ 0,00
	-R 21674,60	**€ -2349,83**	**-R 21674,60**	**€ -2349,83**
TAXABLE INCOME	**R 74325,40**	**€ 7556,68**	**R 116325,40**	**€ 11890,78**
TAX LIABILITY	**R 24495,02**	**€ 2527,71**	**R 20741,18**	**€ 2140,34**
TAX CREDITS				
General levy rebate	R 0,00	€ 0,00	-R 19255,22	-€ 1987,00
Employment levy rebate	-R 13886,63	€ -1433,00	-R 13886,63	-€ 1433,00
	-R 13886,63	**€ -1433,00**	**-R 33141,85**	**-€ 3420,00**
TOTAL TAX LIABILITY/REFUND	**R 10608,39**	**€ 1094,71**	**-R 12400,67**	**-€ 1279,66**

The right to use an asset constitutes a fringe benefit which is taxable for the employee (irrespective of their residency status). The employment income (salary and bonus) received by the non-resident has to be apportioned as non-residents are only taxable on income from source in the Netherlands. The travel allowance received by a non-resident is not apportioned as it relates wholly to services rendered in the Netherlands. A travel deduction is only claimable for business-related travel. Employment-related expenses (excluding annuities) are not deductible; the employee is, however, entitled to an employment levy rebate. Residents are also entitled to the general levy rebate.

3.5.2.3 *South Africa – Residents and non-residents*

Table 20: South Africa: Tax liability, low income earner

SOUTH AFRICA TAX LIABILITY - LOW INCOME EARNER		
	NON-RESIDENT	**RESIDENT**
	ZAR	**ZAR**
INCOME		
Salary	R 80000,00	R 120000,00
Bonus	R 4000,00	R 6000,00
Right to use asset	R 2000,00	R 2000,00
Travel allowance	R 10000,00	R 10000,00
	R 96000,00	**R 138000,00**
DEDUCTIONS		
Business travel	-R 3260,87	-R 3260,87
Retirement annuity	-R 2400,00	-R 2400,00
Medical contribution	-R 7500,00	-R 7500,00
	-R 13160,87	**-R 13160,87**
TAXABLE INCOME	**R 82839,13**	**R 124839,13**
TAX LIABILITY	**R 14911,04**	**R 22471,04**
TAX CREDITS		
Primary rebate	-R 9756,00	-R 9756,00
	-R 9756,00	**-R 9756,00**
TOTAL TAX LIABILITY/REFUND	**R 5155,04**	**R 12715,04**

The right to use an asset constitutes a fringe benefit which is taxable for the employee (irrespective of their residency status). The employment income (salary and bonus) received by the non-resident has to be apportioned as non-residents are only taxable on income from a South African source. The travel allowance received by a non-resident is not apportioned as it relates wholly to services rendered in South Africa. A travel deduction is only claimable for business related travel. The primary rebate is available to all employees below the age of 65 (irrespective of their residency status).

3.5.3 High income residents and non-residents

A 34-year-old, single employee has the following employment related income and expenses:

- an annual salary of R900 000 (in cases where the employee is non-resident in any of the countries, R600 000 relates to services physically rendered in that country);
- a bonus of R15 000 (in cases where the employee is non-resident in any of the countries, R10 000 relates to services physically rendered in that country);
- a gain on the vesting of stock options in the amount of R150 000 (in cases where the employee is non-resident in any of the countries, R100 000 relates to services physically rendered in that country);
- the right to use an asset granted by the employer valued at R12 000, R7 000 of which relates to private use;
- a travel allowance of R120 000;
- contributions of R30 600 to a private medical aid (100% of the contributions were made by the employee);
- contributions to a retirement annuity fund of R16 000; and
- total travel of 20 800km, 12 500km of which relate to business travel.

3.5.3.1 *Australia – residents and non-residents*

Table 21: Australia: Tax liability, high income earner

AUSTRALIA TAX LIABILITY - HIGH INCOME EARNER				
	NON-RESIDENT		RESIDENT	
	ZAR	AUD	ZAR	AUD
INCOME				
Salary	R 600000,00	$90206,57	R 900000,00	$135309,86
Bonus	R 10000,00	$1503,44	R 15000,00	$2255,16
Stock options	R 100000,00	$15034,43	R 150000,00	$22551,64
Right to use asset	R 0,00	$0,00	R 0,00	$0,00
Travel allowance	R 120000,00	$18041,31	R 120000,00	$18041,31
	R 830000,00	**$124785.76**	**R 1185000,00**	**$178157,98**
DEDUCTIONS				
Business travel	-R 72115,38	-$10842,14	-R 72115,38	-$10842,14
Retirement annuity	-R 16000,00	-$2405,51	-R 16000,00	-$2405,51
Medical contribution	R 0,00	$0,00	R 0,00	$0,00
	-R 88115,38	**-$13247,64**	**-R 88115,38**	**-$13247,64**
TAXABLE INCOME	**R 741884,62**	**$111538,11**	**R 1096884,62**	**$164910,34**
TAX LIABILITY	**R 237014,68**	**$35633,80**	**R 335330,98**	**$50415,10**
TAX CREDITS				
Private health insurance	R 0,00	$0,00	-R 9180,00	-$1380,16
	R 0,00	**$0,00**	**-R 9180,00**	**-$1380,16**
TOTAL TAX LIABILITY/REFUND	**R 237014,68**	**$35633,80**	**R 326150,98**	**$49034,94**

The right to use an asset constitutes a fringe benefit and is therefore not taxable in the employee's hands (irrespective of their residency status). The employment income (salary, bonus and stock options) received by the non-resident has to be apportioned as non-residents are only taxable on income from an Australian source. The travel allowance received by a non-resident is not apportioned as it relates wholly to services rendered in Australia. A travel deduction is only claimable for business related travel. Medical expenses are not deductible, a tax credit can however be claimed (the rebate is only applicable to residents).

3.5.3.2 *The Netherlands – residents and non-residents*

Table 22: The Netherlands: Tax liability, high income earner

DUTCH TAX LIABILITY - HIGH INCOME EARNER				
	NON-RESIDENT		RESIDENT	
	ZAR	EURO	ZAR	EURO
INCOME				
Salary	R 600000,00	€ 61915,67	R 900000,00	€ 92873,51
Bonus	R 10000,00	€ 1031,93	R 15000,00	€ 1547,89
Stock options	R 100000,00	€ 10319,28	R 150000,00	€ 15478,92
Right to use asset	R 7000,00	€ 722,35	R 7000,00	€ 722,35
Travel allowance	R 120000,00	€ 12383,13	R 120000,00	€ 12383,13
	R 837000,00	**€ 86372,36**	**R 1192000.00**	**€ 123005,80**
DEDUCTIONS				
Business travel	-R 19274,60	€ -1989,00	-R 19274,60	€ -1989,00
Retirement annuity	-R 16000,00	€ -2405,51	-R 16000,00	€ -2405,51
Medical contribution	R 0,00	€ 0,00	R 0,00	€ 0,00
	-R 35274,60	**€ -4394,51**	**-R 35274,60**	**€ -4394,51**
TAXABLE INCOME	**R 801725,40**	**€ 81977,85**	**R 1156725,40**	**€ 118611,29**
TAX LIABILITY	**R 345245,88**	**€ 35626,88**	**R 529845,88**	**€ 54676,27**
TAX CREDITS				
General levy rebate	R 0,00	€ 0,00	-R 19255,22	-€ 1987,00
Employment levy rebate	-R 13886,63	€ -1433,00	-R 13886,63	-€ 1433,00
	-R 13886,63	**€ -1433,00**	**-R 33141,85**	**-€ 3420,00**
TOTAL TAX LIABILITY/REFUND	**R 331359,25**	**€ 34193,88**	**R 496704,03**	**€ 51256,27**

The right to use an asset constitutes a fringe benefit which is taxable in the employee's hands (irrespective of their residency status). The employment income (salary, bonus and stock options) received by the non-resident has to be apportioned as non-residents are only taxable on income from source in the Netherlands. The travel allowance received by a

non-resident is not apportioned as it relates wholly to services rendered in the Netherlands. A travel deduction is only claimable for business related travel. Employment related expenses (excluding annuities) are not deductible; the employee is however entitled to an employment levy rebate. Residents are also entitled to the general levy rebate.

3.5.3.3 *South Africa – residents and non-residents*

Table 23: South Africa: Tax liability, high income earner

SOUTH AFRICA TAX LIABILITY - HIGH INCOME EARNER		
	NON-RESIDENT	**RESIDENT**
	ZAR	**ZAR**
INCOME		
Salary	R 600000,00	R 900000,00
Bonus	R 10000,00	R 15000,00
Stock options	R 100000,00	R 150000,00
Right to use asset	R 7000,00	R 7000,00
Travel allowance	R 120000,00	R 120000,00
	R 837000,00	**R 1192000,00**
DEDUCTIONS		
Business travel	-R 72115,38	-R 72115,38
Retirement annuity	-R 16000,00	-R 16000,00
Medical contribution	-R 7500,00	-R 7500,00
	-R 95615,38	**-R 95615,38**
TAXABLE INCOME	**R 741384,62**	**R 1096384,62**
TAX LIABILITY	**R 239513,85**	**R 381513,85**
TAX CREDITS		
Primary rebate	-R 9756,00	-R 9756,00
	-R 9756,00	**-R 9756,00**
TOTAL TAX LIABILITY/REFUND	**R 229757,85**	**R 371757,85**

The right to use an asset constitutes a fringe benefit which is taxable for the employee irrespective of their residency status). The employment income (salary and bonus) received by the non-resident has to be apportioned as non-residents are only taxable on income from a South African source. The travel allowance received by a non-resident is

not apportioned as it relates wholly to services rendered in South Africa. A travel deduction is only claimable for business related travel. The primary rebate is available to all employees below the age of 65 (irrespective of their residency status).

3.6 CONCLUSION

As is evident from the above examples, the amount of income earned has a direct effect of an employee's tax liability. Table 25 summarises the findings of the above example as detailed in chapter 3.5. The table will detail the total tax liability (in Rands) of an employee in each of the three countries (based on whether the employee is resident or non-resident).

Table 25: Example summary

Low income earners			High income earners		
Country	**Resident**	**Non-resident**	**Country**	**Resident**	**Non-resident**
Australia	R10 443,61	R24 171,75	*Australia*	R326 150.98	R237 014,68
The Netherlands	-R12 400,67	R10 608,39	*The Netherlands*	R496 704.03	R331 359,25
South Africa	R12 715,04	R5 155,04	*South Africa*	R371 757,85	R229 757,85

From the above table, the following is evident:

- low income-earning residents receive better tax treatment in the Netherlands;
- low-earning non-residents receive better tax treatment in South Africa;
- high-income earning residents receive better tax treatment in Australia; and
- high-income earning non-residents receive better tax treatment in South Africa.

In conducting the research, the following salient points are of relevance when attempting to resolve the statement of the research problem and achieve the statement of the research purpose:

- the majority of South Africa's migrating population consists of people who feel that they are not earning enough in South Africa due to what they perceive to be excessive South African taxes;

- low-income earning residents receive better tax treatment in the Netherlands, with Australia ranked second;
- low-earning non-residents receive better tax treatment in South Africa, with the Netherlands ranked second;
- high-income earning residents receive better tax treatment in Australia, with South Africa ranked second; and
- high-income earning non-residents receive better tax treatment in South Africa, with Australia ranked second.

It is therefore apparent that the South African tax system favours non-resident low-income earners and high-income earners (regardless of their residency status). This could therefore serve to explain why a large number of South Africans migrate as the majority of the country's population consists of low-income earners.

CHAPTER 4

CONCLUSION

4.1 INTRODUCTION

The existence and continued popularity of 'The Great Exodus' from South African borders cannot be sidelined or swept under the carpet. Labourers have, with little or no hesitation, migrated from South Africa in the quest for their version of 'The Land of Milk and Honey' (Bible, 1998). Skilled labourers have over the years left the country in large numbers, resulting in a skills shortage and adverse effects on the country's economy. It is therefore of high importance that the factors driving labour migration among South Africans are analysed and understood. The analysis of the driving factors will assist in establishing whether the relevant driving factors, as listed by South African migrants, can indeed be listed among the factors driving skilled labourers away from South African shores. As previously stated, personal income tax was, *inter alia*, listed by South African migrants as a factor motivating the acceptance of international employment opportunities (some temporary and others permanent). This chapter will therefore provide an overall analysis of the findings of this study and ultimately answer the pertinent question: 'Do South Africans working abroad receive any beneficial tax incentives or treatment that they would otherwise not receive had they remained employed in South Africa?'

4.2 PROBLEM STATEMENT AND OBJECTIVES

The purpose of this study was to assess whether or not South Africans working in Australia or the Netherlands receive any beneficial tax incentives or treatment that they would not receive while working in South Africa. The conclusion was that the South African tax system favours non-resident low-income earners and high-income earners (regardless of their residency status). This therefore implies that non-resident low income earners and high income earners working in South Africa receive more favourable tax treatment.

The following objectives guided the study:

- to conduct a comparison of what constitutes 'income' (i.e. gross income less exemptions) in the hands of an employee under the taxation systems of Australia, the Netherlands and South Africa, this was discussed in chapter 3 of the research paper;
- to identify and analyse the deductions that the employee mentioned above is entitled to when calculating their 'taxable income' in each of the countries (namely, Australia, the Netherlands and South Africa), this too was discussed in chapter 3; and
- to assess, taking into consideration the relevant DTAs (Double Tax Agreements), which of the above mentioned countries offer an employee more 'beneficial' tax treatment, which was also covered in chapter 3 of the research paper.

4.3 SUMMARY OF FINDINGS

All three countries levy tax on a residency basis (i.e. residence are taxed on worldwide income while non-residents are taxed only on income from a source within that country). Another similarity between the personal income tax systems in the respective countries is that they all levy tax at progressive rates. Table 24 will briefly summarise the personal tax principles applicable to employees in each of the countries.

Table 24: Country-by-country tax system summary

Tax principle	Australia	The Netherlands	South Africa
Tax basis	Residency basis	Residency basis	Residency basis
Tax year	July – August	January – December	March – February
Residency status	• Reside in Australia 'ordinary meaning' • Domicile in Australia • Physically present for more than 6 months	• Availability of permanent home • Social & economic ties • Physical presence	• Ordinary resident • Physical presence test
Tax on pension	• Not taxable if older than 60 • Otherwise taxable at concessional rates	Non-taxable if complies with certain conditions	• Fully taxable
Stock options	Fully taxable	Fully taxable	Fully taxable
Termination payments	• Fully taxable • Subject to concessional rate if meets certain conditions	• Fully taxable • Tax at 30% to be withheld if in excess of certain limits	• Fully taxable • Subject to concessional rates if meets certain conditions

Tax principle	Australia	The Netherlands	South Africa
Source of employment income	Where employment services are physically rendered	Where employment services are physically rendered	Where employment services are physically rendered
Deductions	• Incurred while producing employment income	• Not available, replaced by employee rebate • Public transport travel from work – home	• Incurred while producing employment income
Rates	• Progressive • Top rate of 45% (from R1 194 252 onwards)	• Progressive • Top rate 52% (from R526 849 onwards)	• Progressive • Top rate of 40% (from R525 000 onwards)
Rebates	Available only to residents	Available only to resident	Available to resents and non-residents
Withholding taxes on employment income	PAYG (Pay As You Go)	Wage tax	PAYE (Pay As You Earn)

Although the respective tax years run over different periods, they all run over a consistent 12-month period. According to Australian and South African tax laws, all income (be it employment or passive) is subject to tax at the same rates. The various income sources are aggregated together and tax is calculated on the total amount. The tax laws applicable in the Netherlands however, do not aggregate income from various sources. They instead group their income into three categories and tax each category separately. The categories are subject to tax at different rates; the total tax due per category is then aggregated to calculate the tax due.

In terms of the tax laws of all three countries, employment income is subject to a withholding tax which is to be withheld by the employer. As a result, any and all employment income received by an employee is to be after tax. For tax purposes, the source of the employment income in all three countries is the place in which the employment services were physically rendered. One of the ways in which the Australian tax system differs from those of the Netherlands and South Africa is in its tax treatment of fringe benefits. Unlike South Africa and the Netherlands, Australia does not tax the employee on any fringe benefits received from the employer. They instead tax the employer.

According to the tax laws of all three countries, employees are only entitled to deduct expenses incurred to ensure the production of their employment income. These expenses are however required to be an inevitable concomitant of the employee's employment (i.e. it is reasonably expected, considering the nature of the employee's employment, for the employee to incur that expense). Employees rendering services in South Africa and Australia are allowed to deduct the actual expenditure incurred (the deductions are, however, subject to prescribed limits in certain circumstances). Employees rendering services in the Netherlands are, however, not entitled to deduct the actual expenditure incurred; they are instead entitled to various employee-related rebates.

Although South Africa has the lowest top rate of taxation, this rate becomes applicable at a much lower total taxable income than it would in the Netherlands and Australia. Australia, with the second highest top tax rate, taxes non-residents at different tax rates. South Africa and the Netherlands however do not have different tax rates for residents and non-residents (all employees, regardless of the residency status, are taxable at the same rates). All three countries provide employees with what are known as tax rebates. These rebates effectively decrease the total tax payable by an employee. The majority of the rebates in Australia and the Netherlands are available only to residents. South Africa, however, offers rebates to both residents and non-residents.

Employees (mainly resident employees) in Australia and the Netherlands are entitled to a number of rebates. The rebates offered are granted provided the employee meets a variety of conditions. South Africa, however, offers only two rebates which are dependent on the employee's age. South African employees are also entitled to a tax-free threshold (i.e. the employee will not be subject to tax should they receive income below the prescribed threshold). Australian non-resident employees as well as Dutch employees are unfortunately not entitled to any tax-free thresholds. Although Australia does not provide any tax-free thresholds for its non-residents, it does however exempt Australian temporary residents from Australian taxes.

Employees from all three countries may find themselves in a position where the income earned by them for services rendered by them in foreign countries is not subject to tax in their country of residence. Per Australian tax laws, resident employees are not subject to

tax in Australia on income received for services rendered outside Australia provided they are outside Australia for a continuous period in excess of 90 days. In the Netherlands, income received by a resident for services rendered outside the Netherlands will be exempt from tax in the Netherlands depending on the country in which the foreign services were rendered. The employee is also required to have rendered services outside the Netherlands for at least 45 days. In South Africa, income received by a resident for services rendered outside South Africa will be exempt from South African tax provided the employee is physically outside South Africa for a period exceeding 183 days. Of the 183 days, a continuous period in excess of 60 days is required. Of the three counties, South Africa has the strictest requirements for exempting income from services rendered abroad.

4.4 CONCLUSION

As is evident from the research conducted, a country's personal income tax system can indeed affect labour migration within that country. The effect this has on labour migration however appears to depend to a great degree on the individual's income bracket. High-income earners (irrespective of their residency status) are for example most likely to be favoured by South African and Australian taxes.

The country of preference among low-income earners is affected by their country of residence. Low-income earners are likely to prefer being resident in either the Netherlands or Australia, while non-residents are likely to favour being non-resident in either South Africa or the Netherlands. It would therefore be evident that South Africans would receive better tax treatment should they be non-resident in South Africa. In order to break their South African residency status, it would therefore be required that the individual migrates from the country.

As previously stated, people generally migrate with the main aim of improving their 'quality and standard of living'. According to Oosthuizen and Ehler(2007:16), the physiological need (i.e. financial and cost of living needs) is the first need an individual aims to satisfy. The payment of less tax effectively means a higher net salary or wage (resulting in the satisfaction of the physiological need). South Africans are in no way an exception to the above statement, they too would appreciate paying as little tax as possible. As a result,

numerous low income earners have accepted international employment assignments in countries such as Australia and the Netherlands.

One can therefore conclude that South Africans working abroad (provided they are low-income earners) do indeed receive more beneficial tax incentives or treatment should they accept international assignments to Australia or the Netherlands (with the Netherlands providing the most beneficial tax treatment). It would therefore be more lucrative for low-income earners to emigrate to either the Netherlands or Australia as opposed to remaining a South African employee. In closing, it can be stated that the South African personal income tax system is indeed enough to result in low-income earners leaving the country. South African tax authorities therefore need to consider making the South African personal income tax system as beneficial for low-income earners as it currently is for high-income earners. This could assist in curbing the high migration rates among low-income earners.

4.5 SUMMARY OF CONTRIBUTIONS

The research conducted has shown that the South African personal income tax system can indeed be listed as one of the factors motivating labour migration among low-income earning migrants. Further to this, it has highlighted that the current South African income tax system favours high-income earners. When compared to the personal income tax systems of Australia and the Netherlands, the South African tax system compares poorly with regard to the taxing of low-income earners. This knowledge can therefore explain the reason why labour migration among South Africans has and still is increasing over the years.

4.6 SUGGESTIONS FOR FUTURE RESEARCH

As stated above, the South African personal income tax system does not appear to be beneficial for low-income earners. It would therefore be advisable that, in an attempt to reduce the number of South African labour migrants, a method be devised to make the current personal income tax system more beneficial to low-income earners. In order to establish how best to make the current personal income tax system more beneficial for low-income earners, one could conduct a detailed analysis of possible incentives (i.e. a

low-income earners tax credit or alternatively amending the applicable tax rates) that could be offered to low-income earners. This consideration could serve to make the South African personal income tax system as attractive as those of the Netherlands and Australia, therefore assisting to reduce the number of skilled labourers considering migration.

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