

**EXPATRIATE TAX IN AFRICA: THE TAXATION OF INBOUND
EXPATRIATES WORKING IN BOTSWANA, NAMIBIA, NIGERIA AND
SOUTH AFRICA**

by

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ABSTARCT

EXPATRIATE TAX IN AFRICA: THE TAXATION OF INBOUND EXPATRIATES WORKING IN BOTSWANA, NAMIBIA, NIGERIA AND SOUTH AFRICA

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The growth in multinational corporations looking to expand and invest in foreign countries, particularly in the emerging markets such as Africa, has grown tremendously. “Africa is already the world’s second fastest growing economy after expanding 5% a year in the past two years, well above the global average.” (World Economic Forum, 2013). This has resulted in the movement of human capital between different tax jurisdictions and an increase in expatriates all across the world.

The focus of the study is to expand on the current knowledge on the taxation of inbound expatriates working within South Africa, Botswana, Namibia and Nigeria, as the world has turned its focus on Africa in terms of investment and expansion, as supported by Shelley (2004:3), and to provide both employers and employees with knowledge of the different tax regimes (source-based taxation and residence-based taxation) found in some of the emerging and fastest growing markets in Africa: namely Botswana, Namibia, Nigeria and South Africa.

It was found that the African tax landscape provides for a vast range of tax systems, of which, most are either residence-based or source-based. The tax systems of South Africa and Nigeria are similar in that they are residence-based. In each of these two countries, tax residents are taxed on their worldwide income, while non-residents are only taxed on income from specific sources. Therefore, residency is an essential concept in each of these tax systems. The above-mentioned countries, however, apply different methods and factors in determining the concept of residency.

As a result of the difference in determining tax residency and differences in their domestic income tax legislations, the taxability of income earned abroad differs in these countries.

The tax systems of Botswana and Namibia are similar in that they are source-based. In each of these countries, income is taxable when it is from a source or deemed source within these countries. Although in exceptional circumstances, some income which is not from a source within these countries may be taxable, relief is applied in terms of the domestic legislation, in order to lessen the burden of tax. Source is therefore a vital concept in each of these tax systems. The definition and application of the term source is different in both countries. However, similarities are found in that the source is primarily where the services were physically rendered.

Both employers and employees should consider the basis of taxation (source basis and residence basis) that is applied by the prospective host country when making a decision regarding an assignment to a foreign country as this forms a major factor in how their income (both local and foreign) will be treated.

Key words:

Residence-based tax system
Source-based tax system
Inbound expatriates
Income tax
South Africa
Botswana
Nigeria
Namibia

OPSOMMING

BELASTING IN AFRIKA : DIE BELASBAARHEID VAN NIE-INWONERS WAT WERK IN BOTSWANA, NAMIBIË, NIGERIË EN SUID-AFRIKA

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Oor die laaste jare het multinasionale besighede met die oog op uitbreiding in ander lande, geweldig toegeneem. Hierdie is veral waar in die markte in Afrika. “Afrika is alreeds die wêreld se vinnigste groeiende ekonomie en het vir die afgelope twee jaar 5% per jaar, ver bo die internasionale gemiddeld gegroei” (Wereld Ekonomiese Forum, 2013). Dit het tot gevolg gehad dat menslike hulpbronne tussen die onderskeie lande en belastingstelsels geskuif het, asook ‘n toename in nie-inwoners regoor die wêreld.

Hierdie studie fokus daarop om uit te brei op die huidige kennis in die veld van belasting, veral met betrekking tot nie-inwoners wat in Suid Afrika, Botswana, Namibië en Nigerië. Die studie is van toepassing in ‘n tydperk waarin die wêreld se ekonomiese fokus op Afrika gerig is, veral ten opsigte van beleggings en uitbreiding soos ondersteun deur die bevindinge van Shelley (2004:3). Die studie poog verder om inligting aan beide werkgewers en werknemers te verskaf rakende die belastingstelsels (brongebaseerde en verblyfgebaseerde stelsels) wat gevind kan word in die vinnigste groeiende markte in Afrika; naamlik Suid Afrika, Botswana, Namibië en Nigerië.

Daar kom in Afrika ‘n wye reeks belastingstelsels voor, waarvan die meeste óf verblyfgebaseerd óf brongebaseerd is. Die belastingstelsels van Suid Afrika en Nigerië is beide ‘n verblyfgebaseerde stelsel. In elk van hierdie lande word belasting inwoners belas op hul wêreldwye inkomste, terwyl nie-inwoners net belas word op inkomste uit spesifieke bronne. As gevolg hiervan is belasting burgerskap ‘n sleutel faktor in elk van hierdie belastingstelsels, alhoewel belasting burgerskap op verskillene maniere bepaal word in hierdie twee lande.

Die belasbaarheid van inkomste word op verskillende maniere vasgestel in bogenoemde lande, as gevolg van die verskille in plaaslike belasting wetgewing en die toepassing avn wetgewing rondom die definisie “inwoner”.

Die belastingstelsels van Botswana en Namibië stem ooreen; beide lande gebruik die brongebaseerde stelsel. In elk van hierdie lande is inkomste belasbaar as dit van ‘n bron of geagte bron binne die land afkomstig is. In buitengewone omstandighede word inkomste van bronne buite die spesifieke land ook belas. Daar kan egter vir verligting aansoek gedoen word in terme van die plaaslike wetgewing ten einde die belastinglas te verminder. Die sleutel-konsep in hierdie geval is die bron van inkomste. Die definisie en toepassing van die term “bron” verskil in bogenoemde lande, maar kan tog ook ooreen aangesien die bron meestal is waar die dienste fisies gelewer word.

Die werkgewers en werknemers moet dus die belastingstelsels (bron of verblyf) wat deur die gasheer-land toegepas word oorweeg voordat daar ‘n besluit geneem word oor ‘n aanstelling in die buiteland, aangesien dit ‘n belangrike faktor is, in hoe hul inkomste (beide plaaslik en buitelands) belas sal word.

Sleutelwoorde:

Bron-gebaseerde stelsel van belasting
Verblyf-gebaseerde stelsel van belasting
Inkomstebelasting
Nie-inwoners
Suid Afrika
Botswana
Namibië
Nigerië

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EXPATRIATE TAX IN AFRICA: THE TAXATION OF INBOUND EXPATRIATES WORKING IN BOTSWANA, NAMIBIA, NIGERIA AND SOUTH AFRICA

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

The growth in multinational corporations looking to expand and invest in foreign countries, particularly in the emerging markets such as Africa, has grown tremendously. “Africa is already the world’s second fastest growing economy after expanding 5% a year in the past two years, well above the global average.” (World Economic Forum, 2013). This has resulted in the movement of human capital between different tax jurisdictions and an increase in expatriates all across the world. The above is further supported by the statement that globalisation and the significantly lower intercontinental travel costs have created a global market, in which employers who could not find a specified skill in the local market could effectively recruit on a global scale for the skill, which has resulted in a steady increase in the number of expatriate jobs in various industries (Expatscareers, 2013). The World Bank, in conjunction with the United Nations, has also released statistics indicating that more than 215 million people worldwide are living outside their home countries (Expatscareers, 2013).

As a result of this increase in the movement of expatriates, it is, therefore, important to understand the impact of these human capital movements from an individual tax perspective. It is complicated enough for individuals to understand their native tax systems and expatriates’ taxes can be totally confusing. Some of the questions posed by the expatriates include the following: “How does the income tax system in my new country of residence/temporary residence work?”, “Does my new country of residence tax expats or do tax rules back home still apply?” (Expatica, 2013). It is therefore vital to both employers and employees that the “mystery” of these questions is unravelled and simplified, in order to aid in ensuring that the movement of these expatriates to foreign countries is made as seamless and efficient as possible.

As reflected by the questions raised above, it is clear that taxation forms a critical part of any expatriate's decision-making process when considering taking on an assignment in a foreign country. Claus, Claus and Dorsam (2010:13) have also taken the stance that the effects of taxation are a major contributing factor in the decision-making process of moving abroad and it is therefore important to provide an in-depth analysis of the effects of taxation on these foreign assignments, which will apply to expatriates from their host country perspective. The focus of the study is to expand on the current knowledge on the taxation of inbound expatriates working within South Africa, Botswana, Namibia and Nigeria, as the world has turned its focus on Africa in terms of investment and expansion, as supported by Shelley (2004:3), A comparison of these countries' respective tax legislations and the application thereof on inbound expatriates working within these countries will provide both employers and employees with knowledge of the different tax regimes (source based taxation and residence-based taxation) found in some of the emerging and fastest growing markets in Africa: namely Botswana, Namibia, Nigeria and South Africa.

1.2 PROBLEM STATEMENT

The problem, therefore, is that a study on inbound expatriates working in the aforementioned countries has never been conducted in depth from an African context. This assumption is based on the fact that insufficient literature exists in this regard, especially from a comparative study perspective of source and residence based taxation systems in Africa. Literature available only provides the basic effects of taxation in these countries, such as that published by the following leading audit, tax and advisory firms globally (Ernst & Young, 2013), (Grant Thornton, 2012), (Deloitte, 2013), (KPMG, 2012) and (PriceWaterhouseCoopers, 2012). Expatriates from various countries are only exposed to their home countries' tax legislation (Expatica, 2013) and it is, therefore, vital to provide an understanding of the different tax systems and the effects thereof on their assignments in these countries.

The question therefore remains, what are the effects of the South African, Namibian, Nigerian and Botswana tax legislations on inbound expatriate individuals working in these countries, from an employment and personal tax perspective?

1.3 PURPOSE STATEMENT

The main purpose of the study is to expand on the current knowledge base and provide an in-depth analysis of the taxation of inbound expatriates working within South Africa, Botswana, Namibia and Nigeria. The study seeks to identify provisions in the different countries' Income Tax Acts/legislations that will be applicable to both the employment and personal income of these expatriates whilst working inside the aforementioned countries.

1.4 RESEARCH OBJECTIVES / RESEARCH QUESTIONS

The study is guided by the following specific research objectives:

- to identify and discuss the tax consequences for an inbound expatriate working in South Africa;
- to identify the tax consequences for an inbound expatriate working in Botswana;
- to identify the tax consequences for an inbound expatriate working in Nigeria;
- to identify the tax consequences for an inbound expatriate working in Namibia; and
- to compare source-based taxation countries (Botswana and Namibia) and residence-based taxation countries (South Africa and Nigeria).

1.5 DELIMITATIONS

The proposed study has several delimitations related to the contexts and constructs which are as follows:

- it will focus on non-resident inbound expatriates working in South Africa, Nigeria, Namibia and Botswana only;
- the research will consider, but not discuss in detail, the possible implications of the DTAs' entered into between the aforementioned countries;

- the discussion on personal income will be limited to the following components, Interest income, Dividend income and Rental income earned within the aforementioned countries only; and
- this study will not cover any immigration requirements (e.g. visas) necessary for an inbound expatriate to work in the aforementioned countries. This would also include any administrative requirements such as registration for income tax/personal tax purposes.

1.6 ASSUMPTIONS

The research conducted is based on the following basic assumptions:

- all inbound expatriates working in the aforementioned countries are assumed to be under the prescribed age of retirement which is 65;
- all inbound expatriates taking up employment in South Africa, Botswana, Namibia or Nigeria may eventually trigger tax residency in the respective host countries; and
- the assumption when considering the tax implications of the inbound expatriates working in the aforementioned countries, will be that all inbounds are from a single country with which South Africa, Nigeria, Namibia and Botswana have a Double Taxation Agreement.

1.7 DEFINITION OF KEY TERMS

The following key terms are used in this study and can be defined as follows:

“Employment income” refers to income received by virtue of employment or the holding of an office.

“Expatriate” refers to an individual who takes up employment and lives in a country other than the country of their citizenship.

“Host country” refers to the country in which an expatriate takes up employment once they have left their country of birth.

“Inbound expatriate” refers to an individual who leaves his/her country of birth to take up employment in a foreign country: This individual will be considered as an inbound expatriate in the host country. For example, a citizen of the United Kingdom taking up employment in South Africa, Botswana, Namibia or Nigeria (Host countries).

“Normal tax” refers to a basic rate of taxation (as on income) that is applied to a large group of taxpayers to which varying surtaxes may be added for smaller subgroups (Merriam-Webster, 2013).

A “Strike price” is the price at which a specific derivative contract can be exercised. “Strike price” is mostly used to describe stock and index options, in which strike prices are fixed in the contract. For call options, the strike price is where the security can be bought (up to the expiration date), while for put options the strike price is the price at which shares can be sold (Investopedia, 2013).

Table 1: Abbreviations used in this document

Abbreviation	Meaning
SARS	South African Revenue Services
DTA	Double Taxation Agreement
PAYE	Pay As You Earn
PITA	Personal Income Tax Act
CGT	Capital Gains Tax

1.8 SUMMARY OF CHAPTERS

This study consists of 7 chapters.

The initial chapter is an introduction to the study and provides background information on the chosen topic, the objectives and purpose of the study and the assumptions and delimitations of the study.

The second chapter focuses on the South African tax system and aims to provide an understanding of the tax consequences of inbound expatriates working in South Africa.

The third chapter focuses on the Botswana tax system and aims to provide an understanding of the tax consequences of inbound expatriates working in Botswana.

The fourth chapter focuses on the Namibian tax system and aims to provide an understanding of the tax consequences of inbound expatriates working in Namibia.

The fifth chapter focuses on the Nigerian tax system and aims to provide an understanding of the tax consequences of inbound expatriates working in Nigeria.

The sixth chapter is a comparison of the tax consequences relating to inbound expatriates working in South Africa, Botswana, Namibia and Nigeria.

The final chapter serves as a summary of the findings of this research paper and concludes on how the aforementioned tax systems operate. This chapter also includes recommendations for future research.

CHAPTER 2

THE SOUTH AFRICAN TAX SYSTEM

2.1 GENERAL TAX SYSTEM

Normal tax in South Africa is governed by the provisions of the Income Tax Act, No.58 of 1962 (ITA). In terms of the income tax system in South Africa, the worldwide income received by or accrued to a South African resident is subject to normal tax, whilst, the income received or accrued to a person other than a resident (non-resident) from a source within South Africa is subject to normal tax, as defined under “gross income” in Section 1 of the ITA.

In terms of Section 5(b) of the ITA, the South African year of assessment with regard to an individual covers the period of 12 months that commences on 1 March of the one year and ends on the last day of February of the following year

Individuals who are resident and non-resident are taxed at the same rates. The rates for the 2013/2014 year of assessment are presented in the following table:

Table 2: South African income tax rates for individuals for the 2013/2014 year of assessment

Taxable Income (R):	Rates of Tax:
0 – 165,600	18% of taxable income
165,601 – 258,750	R29,808 + 25% of taxable income above R165,600
258,751 – 358,110	R53,096 + 30% of taxable income above R258,750
358,111 – 500,940	R82,904 + 35% of taxable income above R358,110
500,941 – 638,600	R132,894 + 38% of taxable income above R500,940

638,601 and above	R185,205 + 40% of taxable income above R638,600
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Source: Government Gazette (2013:6)

The South African Revenue Services (SARS) is the authority charged with the administration of the income tax system in South Africa (Expatica, 2012:1).

Income tax is a tax levied on all income and profit received by a taxpayer (which includes individuals, companies and trusts). It is the national government's main source of income and is imposed in terms of the Income Tax Act, No. 58 of 1962 (South African Revenue Services, not dated). The form of tax that people generally associate with the concept of income tax is "normal" income tax. But the Income Tax Act is also the source of a number of other taxes that, although they have their own particular names, still form part of the income tax system. A few examples of taxes which may affect taxpayers are capital gains tax and donations tax. The Act also establishes a few methods of paying income tax - namely SITE, PAYE and provisional tax (SARS, not dated).

2.2 RESIDENCY IN SOUTH AFRICA

Based on the above-mentioned facts, it is evident that the South African tax system is based on residency. An individual is regarded as a resident for tax purposes under either the ordinarily resident test or the physical presence test, as evidenced in the definition of "resident" in paragraph (a)(i) and (ii) of Section 1 of the ITA.

a. Ordinarily resident test

The ordinarily resident test is usually the first test that is applied in order to determine whether a person is resident in South Africa, as if they have met the requirements of being ordinarily resident, the physical presence test will not be applicable. The term ordinarily resident is mentioned in the aforementioned definition of "resident" but it is not defined in the income tax act, however, the SARS has issued interpretation note 3 to the ITA on the matter to aid in explaining the practical implications and meaning of the term.

A person will be considered to be ordinarily resident in South Africa if he deems South Africa to be his/her real home, that is where his/her permanent place of abode is and to where he/she returns after temporary absences (*Cohen v CIR*, 1946) and this principle was further confirmed in *CIR v Kuttel*. South African nationals and permanent residents who usually live in South Africa are regarded, for tax purposes, as being ordinarily resident. Should the above-mentioned circumstances apply, an individual will be considered to be ordinarily resident in South Africa and will be taxable on his/her worldwide income in accordance with the definition of “gross income” in Section 1 of the ITA.

If an individual is not ordinarily resident in South Africa, it is necessary to consider whether that individual is tax resident by virtue of the physical presence test as reflected in paragraph (a)(ii)(aa)-(B) of the definition on “resident” in the ITA.

b. Physical presence test

This test is time-based and is only applicable to a person who is not considered ordinarily resident in South Africa. This test must be carried out annually in order to determine whether a person is tax resident for the year of assessment under consideration (SARS, 2006: 3). In accordance with Section 1 of the ITA under the definition of “resident”, the test consists of three requirements, that is, a person must be physically present in South Africa for a period or periods exceeding:

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

Where an individual who became tax resident through the physical presence test is absent from South Africa for a continuous period of at least 330 days, he/she would have ceased to be a tax resident in South Africa and will be regarded as a non-resident from the day he/she left South Africa in accordance with paragraph (a)(B) of the definition of the term “resident” in section of the ITA.

2.3 THE TAXATION OF INBOUND EXPATRIATES IN SOUTH AFRICA

A non-resident is subject to normal tax on his/her income that is received or accrued from a source within South Africa in terms of the definition of “gross income” in Section 1 of the ITA. He/she will pay “normal tax” at the same rates as a resident and is generally entitled to the same deductions and rebates as a resident (Government Gazette, 2013).

In the case of non-resident taxpayers, it is important to establish the meaning of the term “source” in the South African tax context. The term “source’ is not defined in the ITA, thus, we have to place reliance on precedents set by case law in South Africa to determine the intended meaning of the term. The principal test of “source” was formulated in the case CIRi v Lever Brothers and Unilever Ltd. In the aforementioned case, it was held that “...the source of receipts, received as income, is not the quarter from whence they come, but the originating cause of their being received as income and that this originating cause is the work which the taxpayer does to earn them, the quid pro quo which he gives in return for which he receives them. The work which he does may be a business which he carries on, or an enterprise which he undertakes, or an activity in which he engages and it may take the form of personal exertion, mental or physical...”

In the case of Overseas Trust Corporation v CIR, it was further held that “the source of any income may be said generally to be the location of the business, capital, or service which produces the income. If this income-producer is located in the Union, then the particular income has been earned from a source within the Union.”

The SARS further went on to say that it is generally accepted from case law that income from employment in respect of non-residents should be taxed in the country where the services are actually rendered, irrespective of the place where the contract is entered into or where the remuneration is paid, which is a principle supported by South African legislation and case law (SARS, 2002).

The tax position of a non-resident may, however, be affected by an agreement for the avoidance of double taxation between South Africa and the government of the foreign

country in which the non-resident employee resides. Where a DTA has been concluded with a foreign country, the employment income of a non-resident will generally be subject to tax in South Africa if the non-resident is rendering services within South Africa, unless the following three requirements are met:

- The non-resident is physically present in South Africa for a period or periods in aggregate not exceeding 183 days in any rolling 12 month period;
- The remuneration is paid by, or on behalf of, an employer who is not a resident of South Africa; and
- The remuneration is not borne by a 'permanent establishment' that the employer has in South Africa (OECD, 2003: Article 15).

Non-resident employees working in South Africa will generally be liable for normal tax on the following various types of income from a source within South Africa in accordance with the definition of "gross income" in Section 1 of the ITA and the definition of "remuneration" in the fourth schedule to the ITA.

Employment income

The basis of employee taxation is "remuneration," as defined in paragraph 1 of the fourth schedule to the Income Tax Act, which consists of salary, leave pay, allowances, wages, overtime pay, bonuses, gratuities, pensions, superannuation allowances, retirement allowances and stipends, whether in cash or otherwise. These payments, together with the cash value of any fringe benefits received, form part of gross income. The above-mentioned "remuneration" will be taxable at the tax rates for individuals, as mentioned in 2.1 and Table 2 above.

However, certain employer-provided allowances and benefits have overriding rules which are specifically attributable to them, such as travel allowances, employer-provided accommodation and right of use of an employer-provided vehicle, amongst others.

- Travel allowance: Section 8 (1)(b) provides that, 80% of the travel allowance is included in the taxpayer's remuneration when calculating "normal tax", provided that, where an employer is satisfied that at least 80% of the use of the taxpayer's motor vehicle for which he/she receives a travel allowance will be used for business

purposes, then only 20% of the allowance will be subjected to “normal tax” on a monthly basis.

- Employer-provided accommodation: In accordance with Section 9 (1)(a) of the seventh schedule to the ITA, the value of the occupation of a residential accommodation which has been provided by an employer to an employee will be taxable in the hands of the employee. The value to be placed on the accommodation benefit is the higher of actual costs paid by the employer towards the accommodation or the formula, as determined in terms of Section 9 (2) and (3) of the seventh schedule to the ITA. Section 9 (7A) of the seventh schedule to the ITA, however, provides that no value shall be placed on such a benefit, if the employee is away from their usual place of residency which is outside South Africa for a period which does not exceed 2 years from the date of arrival in South Africa for the purposes of performing his/her duties or if that employee is present in South Africa for a period that does not exceed 90 days in a year. Paragraph (7B)(i) of Section 9 of the seventh schedule to the ITA provides a proviso, which states that Section 9 (7A) will not apply if the employee was in South Africa for a period exceeding 90 days during the prior year of assessment immediately preceding the date of arrival in paragraph (7A) of the seventh schedule to the ITA or, in the case where the accommodation exceeds R 25 000 per month, paragraph (7B)(ii) states that the amount exceeding R 25 000 per month will not be subject to the provisions of paragraph(7A).
- Right of use of a motor vehicle: The right of use of a motor vehicle is included in the taxpayer’s gross income in accordance with Section 7 of the seventh schedule to the ITA and is taxed in the same manner as the travel allowance mentioned above.
- Medical aid fringe benefit: This benefit arises when the employer contributes towards the employee’s medical aid. According to Section 2(d) of the fourth schedule to the Act, the contributions made by the employer on behalf of the employee are taxable in the hands of the employee at his marginal tax rates. The employee is, however, entitled to medical tax credits in terms of Section 18 (1)(a) and Section 18 (2)(a)-(c) of the ITA.
- Employer-provided stock options: There are two taxable events in terms of equity which are applicable in South Africa and are as follows:

(i) In terms of Section 8A and 8C of the ITA, employees are taxed on the difference between the market value of shares and similar rights as of the date of vesting (for tax purposes) and the consideration given/paid by the employee. In the case of non-resident employees, the incentive is only taxed in South Africa, based on South African related services rendered.

(ii) Residents are taxable on the whole gain made on exercise of the stock options and Capital Gains Tax "CGT" will be applicable. Non-residents are, however, not subject to CGT arising from the exercise of stock options in South Africa (SARS, 2010).

Self-employment and passive income:

- Independent contractors: Professional fees paid to non-residents are subject to employees' withholding tax, even if the non-resident is an independent contractor; this principle is further expanded upon in interpretation note No. 17, as issued by SARS.
- Investment income: Domestic dividends are subject to a withholding tax of 15%. Interest income is generally taxable in South Africa, unless the non-resident is physically outside South Africa for a period exceeding 183 day in aggregate during the year of assessment. Should the non-resident have not complied with the aforementioned days outside South Africa, in terms of Section 10 (1)(h) of the ITA, the first R 23 800 for individuals under 65 years of age and R 34 500 for individuals over 65 years, will be exempt and the amount thereafter will be subject to a withholding tax of 10% as of 01 January 2013.
- Rental income: Non-residents who receive rental income from a property situated in South Africa will be subject to normal tax on rental income earned from a property situated in South Africa, in accordance with the definition of "gross income" as defined in Section 1 of the ITA. A non-resident will however be able to claim expenses which he/she incurred in the production of the aforementioned rental income in terms of Section 11(a) of the ITA, such as rates and taxes, interest incurred on bond, insurance and repairs in respect of such property, which may be claimed as a deduction against the rental income earned from that property.

Apportionment of income in South Africa

In South Africa, income tax is imposed on SA-sourced income of non-residents in terms of Section 1 of the ITA, as per the above facts. However, some inbound expatriates make use of South Africa as a “head office” in terms of the services which they are obliged, in terms of their employment contracts, to render in other tax jurisdictions. Therefore, based on the fact that South Africa only taxes non-residents on South African sourced income, this remuneration should not be included in their taxable income in South Africa.

This principle is further supported by the following court cases which specifically dealt with the “source” of employment income earned in respect of services rendered:

- In ITC 97, the appellant entered into a contract in France as a representative of a French firm in the Union. Under the terms of the contract, his principals reserved the right to send him to any country and require him to function as their agent there. In fact, each alternate year, he returned to Europe and, whilst there, he was employed at various European centres in the firm’s business. The appellant claimed that the salary paid in respect of work done outside the Union was derived from a source outside SA and so was not liable for tax in the Union. CIR contended that the absences were casual and incidental to employment, and that salary was received within the Union. The court held that the appellant had been contracted to render services both outside the Union as well as within the Union and had rendered such services. The payment in respect of work done outside the Union was therefore derived from a source outside the Union.
- In ITC 396, the appellant was employed by a company which was registered and had a head office in the Union. The appellant was required by his employment contract to spend time at other offices outside the Union. CIR contended that the appellant derived his taxable income from within the Union. The court held that the appellant was paid for services rendered outside the Union and that the source of his salary in respect of those services was therefore outside the Union. The court concluded that the appellant’s salary should be apportioned according to time spent outside the Union.

- Whilst in ITC 837, the appellant derived income in terms of his employment contract with a company registered and carrying on business in the Union. As part of his duties, he was required to render services in two other companies within the group, which were located outside the Union. He spent 49 days in Rhodesia and 37 days in Portuguese East Africa. His salary was paid entirely by the Union company. CIR sought to tax the full salary in the Union. The appellant contended that a portion of his salary, relative to the period that he rendered services in Rhodesia and Portuguese East Africa, was attributable to a source outside the Union, and should therefore be excluded from taxable income. Court agreed that a portion of the appellant's salary accrued from a source outside of the Union.

Taking into account the decisions of the courts in the cases mentioned above, it appears that the following general principles would apply to source in respect of services rendered: Employment income may be apportioned between SA-source and non-SA source if the employment contract is clear that the employee must render services both inside and outside of SA (ITC 396, ITC 837). It is therefore clear that the source of a non-resident inbound expatriate's employment income for services rendered in South Africa would generally be South Africa. However, where it is clear that the non-resident expatriate is required to render services both within and outside SA, only employment income relating to services rendered in SA should give rise to SA-source income.

Social Security

South Africa does not have an extensive social security system which affects employees; therefore, inbound expatriates working in South Africa will only be subject to minimal social security contributions.

The compulsory social security system contributions which inbound expatriates will be mandated to make in South Africa are as follows:

- Unemployment Insurance Fund, hereafter referred to as "UIF" contributions: UIF is governed by the Unemployment Insurance Act No. 30 of 1996 and was established to protect employees against unemployment. The contributions are withheld on a monthly basis by the employer through the payroll at a rate of 2% of the employee's

salary (1% by the employer and 1% by the employee); this tax is then paid over to SARS (Department of Social Development, 2010:8).

2.4 CONCLUSION

The South African tax system is a residence-based system of taxation. Inbound expatriates working in South Africa may be taxed either as residents or non-tax residents depending on their stay within South Africa and where they consider their real home to be. Employment and personal income are taxed in accordance with the tax tables which are released yearly by the Minister of Finance.

CHAPTER 3

BOTSWANA TAX SYSTEM

3.1 GENERAL TAX SYSTEM

Botswana makes use of a source-basis of taxation. In terms of section 9 under the definition of “gross income”, the gross income of every person for each tax year shall be the total amount, whether in cash or otherwise, accrued or deemed to have accrued to him or her in that tax year from every source situated or deemed to be situated in Botswana, but shall not include any amount of a capital nature except to the extent specified in the Act (Botswana government, 2012).

The Botswana year of assessment with regard to an individual covers the period of 12 months that commences on 1 July of the one year and ends on the last day of June of the following year (Income Tax Act, CAP 52-01, 1995).

Individuals who are resident and non-resident are taxed at the same rates. However, the tax threshold is only applicable to residents of Botswana. The rates for the 2013/2014 year of assessment are presented in the following table:

Table 3: Botswana Income tax rates for individual residents for the year of assessment 2013/2014

Taxable Income		Tax Payable				
P	P	P		%		P
0	36,000	0	+	0		
36,001	72,000	0	+	5	over	36,000
72,001	108,000	1,800	+	12,5	over	72,000
108,001	144,000	6,300	+	18,75	over	108,000
144,001	and over	13,050	+	25	over	144,000

Source: KPMG (2013)

Table 4: Botswana Income tax rates for individual non-residents for the year of assessment 2013/2014

Taxable Income		Tax Payable				
P	P	P		%		P
0	72,000	0		5	of each Pula	
72,001	108,000	3,600	+	12,5	over	72,000
108,001	144,000	8,100	+	18,75	over	108,000
144,001	-	41,850	+	25	over	144,000

Source: KPMG (2013)

Since Botswana is a source-based country, there is not much foreign earned income that is taxable in Botswana, except where the amounts are deemed to be sourced in Botswana. In such cases, credits are applied to the foreign income earned; however, such credits are limited to actual tax payable in Botswana. If the income taxable in Botswana was taxed in another jurisdiction that has a DTA with Botswana, the taxpayer is given credit for the tax paid in that other jurisdiction. The credit is limited to the amount of tax payable in Botswana, in accordance with Part IX division II 61-64 of the Act (Botswana government, 2012).

3.2 RESIDENCY AND SOURCE IN BOTSWANA

In terms of Part I paragraph(a), under the definition of the concept “Resident in Botswana”, individuals are considered to be resident in Botswana for any year of assessment if they meet the following conditions:

- Their permanent place of abode is in Botswana;
 - They are physically present in Botswana for 183 or more days during the year of assessment, whether or not they maintain a place of abode in Botswana;
 - They maintain a place of abode and are physically present in Botswana for more than 183 days in the year of assessment, apart from temporary absences from Botswana;
- or

- After staying in Botswana for 183 or more days during a year of assessment, they physically remain in Botswana into the next tax year, even if they do not stay in Botswana for 183 days during the latter year of assessment (Income tax Act, CAP 52-01, 1995).

Based on the above, it is clear that Botswana considers individuals to be residents once they have spent more than 183 days in Botswana. Therefore, the aforementioned favourable tax rates would apply even to an inbound tax once they have spent more than 183 days in Botswana.

3.3 THE TAXATION OF INBOUND EXPATRIATES IN BOTSWANA

In terms of “gross income,” as defined in Section 9 of the Act, both residents and non-residents of Botswana are taxed on amounts that are sourced or deemed to be from a source within Botswana. An understanding of what constitutes Botswana source or deemed Botswana source is therefore imperative in ascertaining what will be taxable in Botswana. According to Part III Division I Section 11, amounts deemed to be of a Botswana source are any amounts that accrued to any person which are deemed to have accrued from a source situated in Botswana where it has accrued to such person in respect of:

- “Any contract made by such person in Botswana for sale of goods, whether such goods have been or are to be delivered in or out of Botswana;
- Any service rendered or work done by such person in Botswana, whether the payment thereof is made by a resident or a non-resident and wherever the payment is made; or
- Any service rendered or work done outside of Botswana:
 - (i) by such person under a contract of employment with the government,
 - (ii) by such person, being a resident, for or on behalf of his employer in Botswana during that person’s temporary absence from Botswana, whether the payment for such service rendered or work done is made by a resident or a non resident and wherever the payment is made...”

These amounts which are deemed to be of a Botswana source will become taxable in the taxpayer's hands at the earliest of receipt or accrual as stipulated in Part III Division II Section 32 of the Act which provides that accrual, in terms of employment income, occurs when it is received by that person or when the employment income is due and payable, even though not actually paid to him; or credited in account, reinvested, accumulated, capitalised, carried to reserve or otherwise disposed.

Non-resident individuals working in Botswana will be subject to normal tax on the following income which has accrued to them from a source in Botswana or that is deemed to be from a source within Botswana.

Employment income

All salaries paid, and benefits provided, for work performed in Botswana are taxable in Botswana, regardless of where they are paid or provided in terms of in terms of Part II Division I Section 11(b) of the Act. Salaries and benefits provided for work rendered out of Botswana, in terms of an inbound expatriate, will only be taxable upon the inbound expatriate becoming resident in Botswana and on condition that the inbound expatriate is only temporarily outside Botswana, as provided in Part II Division I Section 11(c)(ii).

Employment income is defined in Part IV Division II Section 32 paragraph(1)(a)-(f) and includes:

- any amount accrued by way of wages, salary, leave pay, severance pay, fee, commission, bonus or gratuity;
- any amount accrued in commutation of monies due under any contract of employment or service, or any amount received in commutation of a pension;
- any travelling, entertainment or other allowance to the extent to which it does not constitute monies wholly and necessarily expended for business purposes;
- the annual value of any residence provided for an employee; and
- the value of any other benefit or advantage granted to an employee in respect of his/her employment.

According to Part IV Division II Section 32 paragraph 2(a)-(b), the following items shall however, not be included in employment income for the year of assessment:

- the value of any free medical attention provided or medical attention paid for by the employer; and
- the value of any free passage by air, rail, road or sea provided for an employee and his spouse or dependents pursuant to the terms of his/her employment.

Where an employer provides an employee with accommodation in respect of his/her employment, the value to be placed on benefit shall in accordance with Part IV Division II Section 32 paragraph 3(a)-(d) be deemed to be:

- in the case of rateable property in accordance with the Botswana Township Act and regulations, an amount equal to 10% of the rateable value reflected on the valuation roll at the commencement of the tax year;
- in the case where the property becomes rateable as mentioned above during the course of the tax year after the completion of the valuation roll, an amount equal to 10% of the interim valuation made of such property;
- in the case of any property which is not rateable property nor has it been valued, an amount equal to 8% of such amount as may be the value of the property at the commencement of the tax year or upon completion of construction of such property. The aforementioned value is commonly referred to as the 'current capital valuation' value as defined; or
- where the property was not occupied for the full tax year, the value as determined per either of the above mentioned methods as bears to that the same ratio as that period bears to the 12 months, less any contributions made by the employee towards the accommodation.

However, should any of the following apply, then the value of the benefit referred to above will be determined as follows in accordance with Part IV Division II Section 32 paragraph 3(d)(i)-(ii):

- in the case where the property provided during any tax year or an employee whose employment income, excluding the value of the property, for that tax year does not exceed the threshold as determined in accordance with Section 59 of the Act, the value of the benefit will be nil; and

- in any other case, the amount deemed to be the value of the benefit to an employee with regard to any property provided for him by his/her employer in any tax year, shall not be greater than the amount as determined by the formula provided in Part IV Division II Section 32 paragraph 3(d)(ii)(aa) –(bb).

Employer-provided stock options: The principle applied to employer-provided stock options is that the employee is taxed at the time of exercise on the difference between the fair market value of the stock and the strike price in accordance with Division II Section 16.

Self-employment and passive income:

- Business profits from self-employment activities such as the rental of property in Botswana are taxed in accordance with Part IV Division 11 Section 28(1) at the rates referred to in section 31 of this article;
- Investment income: In terms of Part VIII Division III Section 58 paragraph(1)-(4), any interest paid by a resident company to a resident or non-resident is included in the taxable income of that person together with other taxable income and is taxed at the rates referred to in section 3.1 of this article. An exemption of up to P 7 800 of interest income received in a year of assessment is applicable to residents from banking institutions or building societies in Botswana. Any amounts in excess of P 7 800 are subject to a withholding tax of 10% which is considered as a provisional tax and is offset against tax chargeable on assessment. Any dividends from resident companies paid to residents and non-residents are not included in taxable income and are subject to a 15% final withholding tax. The withholding is done in terms of the seventh schedule to the Act.
- Capital gains: Any gains made from the disposal of a capital asset of a Botswana source or deemed to be from a source in Botswana are taxed in accordance with Table IV of the eighth schedule to the Act.

3.4 CONCLUSION

The Botswana tax system is a source-based system of taxation. Inbound expatriates working in Botswana are taxed on their Botswana source or deemed Botswana source remuneration. Employment and personal income are taxed in accordance with the tax

tables which are released yearly, these tax tables differentiate between Botswana citizens and non residents.

CHAPTER 4

NAMIBIAN TAX SYSTEM

4.1 GENERAL TAX SYSTEM

Namibia is governed by the provisions of the Income Tax Act No. 24 “the Act” of 1981 and is a source-based country from a taxation perspective. In terms of the income tax system in Namibia, individuals are taxed on income at progressive marginal rates on income that is from a source within or deemed to be from a source within, Namibia and is generally not affected by the residence of the taxpayer in terms of the definition of gross income in Section 1 and Section 15(1)(f) of the Act.

The year of assessment in Namibia with regard to individuals covers the period of 12 months, which is similar to the South African year of assessment, commencing on 1 March of the one year and ending on the last day of February of the following year (Ernst & Young, 2012:916).

Individuals deriving an annual income of N\$ 5 000 or more that is not subject to PAYE (i.e. Interest income, rental income, taxable dividend etc.) are considered provisional taxpayers and are required to make two provisional payments each year, one on the last weekday in August and one on the last weekday in February in terms of Schedule 2 of the Act.

The same progressive tax rates are applicable to all individuals and normal tax is levied at the following rates for the 2013/2014 year of assessment found in paragraph 1 of the fourth schedule to the Act:

Table 5: Namibian Income tax rates for individuals for the year of assessment 2013/2014

Taxable income		Tax on lower	Rate on
Exceeding	Not exceeding	amount	excess
N\$	N\$	N\$	%
0	50,000	0	
50,001	100,000	0	18
100,001	300,000	9,000	25
300,001	500,000	59,000	28
500,001	799,999	115,000	30
800,000	1,500,000	205,000	32
1,500,001		429,000	37

Source: Income Tax Act No. 24 of 1981 (2012)

4.2 RESIDENCY AND SOURCE IN NAMIBIA

Namibia taxes income on a source basis, as opposed to the residence basis (Income Tax Act, 1981). The Namibian tax system's main focus is therefore not concerned with where the taxpayer is resident. The source-based system rather looks at the place where the services were physically rendered in earning the income, as opposed to where the taxpayer is resident; therefore, if the place where the services were rendered is in Namibia or deemed to be from a source within Namibia, Namibia will seek to tax the income in accordance with the definition of gross income in Section 1 of the Act.

The term "source" is not defined in the Namibian income tax act and reliance is placed on case law to determine the meaning of the term "source". According to Kotze (2008), source is where the originating cause of the income is located: "This could be capital employed, trade carried on, services rendered, or a contract entered into, depending on the circumstances."

The general principle employed in Namibia is that if the originating cause of the income is situated in Namibia, then the source of the income will be considered to be Namibia. Section 15 of the tax Act expounds on source deeming provisions. In accordance with

Section 15 paragraphs (1) – (8) of the Act, circumstances under which amounts will be deemed to have accrued from sources within Namibia includes some of the following:

- An amount will be deemed to have accrued to any person from a source within Namibia if it has been received by or accrued to or in favour of such person by virtue of:
 - any contract entered into by such person within Namibia for the sale of goods, whether these goods will be delivered or have been delivered in or outside of Namibia;
 - the right of use of, or the grant of a permission to use, any patent or copyright or other property of a similar nature in Namibia;
 - any service rendered or work or labour done by such person in Namibia in the carrying on of any trade, whether the payment for such services or work or labour is done for or on behalf of any employer by whom such person is employed in Namibia, or whether the payment for such service or work or labour is made by a person who is resident in or out of Namibia;
 - Any services rendered or work done by such person outside Namibia, during any temporary absence of such person from Namibia, if such person is ordinarily resident in Namibia and such service is rendered for or on behalf of any employer by whom such person is employed in Namibia, no matter who makes the payment and where the payment is made from.

Based on the above, it is clear that further investigation is required into the term “ordinarily resident”. This term is, however, not defined in the Act; however, precedent has been set by way of case law. The term is defined, as with the South African tax system in that the term “ordinarily resident” means the place which an individual considers to be his real home, where he would return to after temporary absences or wanderings, and can be seen as his most fixed (habitual abode) and permanent home (*Minister of Home Affairs v Dickson and Another*, 2008).

4.3 THE TAXATION OF INBOUND EXPATRIATES IN NAMIBIA

According to Section 1 of the Income Tax Act No. 24 of 1981, "gross income" is defined as follows: "In relation to any year or period of assessment means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within Namibia, excluding receipts or accruals of a capital nature."

Based on the above-mentioned definition, it is clear that residents and non-residents of Namibia will be taxable in the same manner and at the same tax rates. This statement necessitates expansion on the income tax implications of employment and personal income received by inbound expatriates which is from a source or deemed source in Namibia, which are as follows:

Employment income

The source of income is determined in accordance with relevant case law from Namibia, which states that the source of the employment income will be the place where the services are rendered, as mentioned above. However, income from services related to employment or a profession in Namibia is deemed to be from a Namibian source, regardless of where services are performed or payment is made in accordance with Section 15 (1)(e).

Where services are rendered outside Namibia, Section 15 (1)(f) states that these services will be deemed to be from a source within Namibia, if the services were rendered during a temporary absence from Namibia and such person is ordinarily resident in Namibia and such services were rendered on behalf of any employer by whom such person is employed in Namibia, whether the payment was made by a resident or non-resident of Namibia and wherever the payment is made from.

Based on the above-mentioned facts and the definition of "gross income" in Section 1 of the Act, any employment salary and benefits received or accrued any inbound expatriate rendering services in Namibia will be taxable in accordance with the tax tables reflected in 4.1 above and any inbound expatriate working in Namibia who considers Namibia to be their real home will also be taxable on any income related to services which they render abroad for a Namibian employer.

The above is further supported by the provisions of Section 1 of the second schedule to the Act under the definition of “remuneration”, which includes any amount which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise in respect of services rendered.

The employment income that will be included in an individual taxpayer’s taxable income will include the following allowances and benefits:

- Employer-provided accommodation: means any amount in cash or otherwise paid under an approved scheme to an employee in respect of employment, which relates to residential accommodation provided by his employer, whether for free or for a charge or for a rental consideration which is less than the rental value of such accommodation; or; any cash payment made or subsidy granted by an employer in lieu of any rental due by the employee for the lease of a private property; or the repayment of any interest which is due on any loan acquired by the employee for the purpose of purchasing a property, as defined in Section 16A of the Act. The value to be included in the taxable income of the taxpayer, however, depends on whether the employer owns the accommodation or whether the accommodation is rented out. Based on the afore-mentioned, the tax implications will be as follows:
 - Where the employer owns the accommodation, the taxable benefit is determined in accordance with the tax table issued by the Namibian Inland Revenue Authority, less any consideration paid by the employee in terms of Section 16A of the Act.
 - Where the employer rents out the accommodation, the taxable benefit is the amount of rent paid by the employer, less any consideration paid by the employee in relation to the accommodation in terms of Section 16A of the Act.
- Right of use of a motor vehicle: in accordance with Section 14(1), this benefit arises when an employer provides an employee with the right to use an employer-owned or employer-rented vehicle for no consideration or a consideration which is not at arm’s length. The value to be included in the taxable income of the assignee will be calculated as follows:

- 18% per annum or 1.5% per month of the purchase price of the vehicle will be the taxable value, where all the running costs (maintenance and fuel costs) are borne by the employer;
 - 16.8% per annum or 1.4% per month of the purchase price of the vehicle will be the taxable value where all running costs (maintenance and fuel costs) are borne by the employee; or
 - Whereby the vehicle has been rented by the employer, and is used by the employee for both business and private purposes, then the taxable value will be the actual costs of the rental borne by the employer.
- Contributions by an employer to approved funds: Any contributions made by an employer on behalf of an employee to an approved Namibian medical aid, provident fund, retirement annuity fund or insurance educational policy are exempt from tax in terms of Section 16 of the Act.
 - Employer-provided stock options: the general approach followed in practice by the Namibian tax authorities is that stock options are taxable on vesting on the difference between the exercise price and the fair market value at the time of exercise on the portion which relates to Namibian services rendered (i.e. of a Namibian source or deemed Namibian source). The Namibian tax legislation does not specifically address the treatment of these stock options (Income Tax Act, 1981).

Capital, exempt receipts and allowable deductions are subtracted from gross income to arrive at the taxable amount in accordance with Section 2(1) of the second schedule to the Act.

Self-employment income

The income received from Namibian sourced investments are taxable in the hands of inbound expatriates as follows, in terms of the definition of gross income in section 1 of the Act:

- Interest and Dividend income: a withholding tax at a rate of 10% on interest income and 20% of dividend income for non-residents is deducted by a Namibian-registered financial institution and is a final tax. (KPMG, 2013). However, interest income

received from the following Namibian sources is exempt from tax in accordance with Section 16 (1)(d) of the Act:

- interest received from a Namibian Post Office savings account;
- any interest credited as interest in respect of any subscription shares in any building society in Namibia; and
- any interest received from stocks or securities issued by the Government of Namibia.

4.4 CONCLUSION

The Namibian tax system is a source-based system of taxation. Inbound expatriates working in Namibia are taxed on their Namibian source or deemed Namibian source remuneration. Employment and personal income are taxed in accordance with the tax tables which are released yearly.

CHAPTER 5

NIGERIAN TAX SYSTEM

5.1 GENERAL TAX SYSTEM

Nigeria is governed by the provisions of the Personal Income Tax Act No. 104 of 1993 "PITA". Nigeria taxes income on a residence basis as opposed to the source basis and in terms of the income tax system in Nigeria, the worldwide income received by or accrued to a Nigerian resident is subject to normal tax, whilst, the income received or accrued to a person other than a resident (non-resident) from a source within Nigeria is subject to normal tax in terms of Section 3 of the PITA.

Under current Nigerian law, taxation is enforced by the three tiers of Government, i.e. Federal, State, and Local Government with each having its sphere clearly spelt out in the Taxes and Levies (approved list for Collection) Decree, 1998 (Ngex, 2008).

The year of assessment in Nigeria with regard to individuals is a calendar year, which covers the period of 12 months, commencing on 1 January and ends on the last day of December (Ernst & Young, 2012:964).

The same progressive tax rates are applicable to all individuals (resident and non resident) and normal tax is levied at the following rates for the 2013 year of assessment as per the sixth schedule to the PITA:

Table 6: Nigerian Income tax rates for individual for the year of assessment 2013

Annual income as set out below:	
First N300,000	7%
Next N300,000	11%
Next N500,000	15%
Next N500,000	19%

Next N1,600,000 21%
Above N 3,200,000 24%

Note: Earners of above N20m, will be subject to top marginal tax rate of 18.96% for non-routine payments

Source: PwC (2012)

5.2 RESIDENCY IN NIGERIA

In relation to the above-mentioned facts, it is evident that the Nigerian tax system is based on residency, and the concept of residency in Nigeria is dealt with under the first schedule to the PITA. An individual is regarded as a resident for tax purposes if he/she falls within one of the following categories:

- Nigerians residing in Nigeria, regardless of their length of stay;
- A Nigerian who takes up foreign employment on the first day of the year of assessment and is liable for tax in Nigeria will be deemed to have residency in the territory in which the principal office of his employer is located; or
- Expatriate employees who hold a Nigerian employment on the first day of the year of assessment, or becomes liable for income tax in Nigeria for that year of assessment as a result of their employment in Nigeria will be deemed to be resident in the territory in which they have a place or principal place of residence on that day; or on the day when the individual begins performing duties in relation to the employment in Nigeria.

Based on the above-mentioned facts, it is therefore important to ascertain the meaning of the terms “place of residence” and “principal place of residence”. In terms of the first schedule to the PITA, the term “place of residence” in relation to an individual is defined as a place which is available for domestic use in Nigeria on any relevant day by any individual and does not include a hotel, rest-house or any other place of temporary lodging.

The term “principal place of residence” is defined as being in relation to an individual with two or more “places of residence” on any relevant day which are not within the same territory:

- in the case of an individual with no source of income other than pension in Nigeria, that those places in which he/she usually resides;
- in the case of an individual who has a source of earned income other than a pension in Nigeria, that place which is nearest to his/her work; or
- in the case of an individual who has a source or sources of unearned income in Nigeria, that place in which he/she usually resides.

In addition to the above, in terms of Section 10 of the PITA, an individual is regarded as a resident for tax purposes if he/she falls within one of the following categories:

- Nigerians residing in Nigeria, regardless of their length of stay;
- Expatriate employees of a resident company who are present in Nigeria for employment purposes; and
- Expatriate employees of a non-resident company who are present in Nigeria for more than 183 days in a 12 month period

We can therefore infer, based on the above-mentioned facts that an inbound expatriate employee becomes tax resident in Nigeria and is taxable on their worldwide income, should they purchase a permanent property in Nigeria or through them performing their employment duties if no DTA exists. Therefore inbound expatriates who are on long-term assignments in Nigeria will end up triggering tax residency in Nigeria, depending on the DTA that is in force between Nigeria and their home country.

5.3 THE TAXATION OF INBOUND EXPATRIATES IN NIGERIA

The basis for taxation in Nigeria is based on certain conditions, as provided by the PITA. Income from an employment derived from Nigeria will not be taxable in Nigeria if:

- The employer is non-resident and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria;
- The employee is not in Nigeria for an aggregate of 183 days (inclusive annual leave or a temporary period of absence) or more in any 12-month period;
- The employee's income is proved to have been taxed in another country under the provisions of the double taxation treaty with that other country (OECD, 2003).

Individuals as mentioned above will be subject to normal tax on the following income in Nigeria in accordance with Section 3(1)-(2):

Employment income

Taxable income in Nigeria includes any salaries, wages, fees, allowances or other gains or profit from employment, including bonuses, compensation, premiums or benefits granted or given as a result of their temporary or permanent employment as set out in Section 3(1)(b) of the PITA as amended. The aforementioned taxable items under employment income will exclude, amongst others, however, the following items in terms of Section 3(1)(b)(i)-(xi):

- any reimbursements made by the employer to the employee in relation to the costs incurred by an employee in the course of performing his/her duties. The employee may, however, not make a gain on the aforementioned expenses;
- medical or dental expenses incurred by the employee; and
- the costs of any passage to or from Nigeria by the employee;

Certain benefits and allowances paid by an employer to an employee will also not be included in the taxable income of the employee or certain exemptions/ relief will be granted in terms Section 3(1)(b)(i)-(xi), some of these benefits and allowances are mentioned below:

- Employer provided accommodation: according to Section 5(1) of the PITA, where accommodation is made available to an employee or their spouse as a result of his/her employment and the employee pays no rent or pays rent which is not at arm's length, the employee will be taxable on the benefit under the provisions of Section 3. In terms of Section 3(1)(b)(v)-(vii), no value shall be placed on this accommodation, and if the employer pays an allowance towards the employee's accommodation, then an amount equal to N100,000 per annum will be exempt;
- Subsistence allowance: in terms of Section 3(1)(b)(ix), any amount expended by the employer towards a meal subsidy will be taxable in the hands of the employee if it exceeds an amount of N 5,000;

- Transportation allowance: where an employer provides an employee with a transportation allowance, any amount exceeding N15,000 will be taxable in the hands of the employee according to Section 3(1)(b)(viii); and
- Leave grant: any amounts paid by the employer to the employee in terms of leave during the year of assessment will not be taxable up to 10% of the employee's annual salary, therefore any amounts paid by the employer over the 10% exemption will be included in the taxable income of the employee in terms of Section 3(1)(b)(xii).
- Employer-provided stock options: The taxation of stock options is not addressed by the PIT Act and no prevailing general practice exists (KMPG, 2012).

Self-employment and passive income

- Business income: resident individuals who carry on a trade, business, profession or vocation are subject to tax on income derived from activities inside and outside Nigeria, in terms of Section 3 of the PITA. Non-residents are taxable on business income, only if it is wholly or partially carried on in Nigeria in accordance with Section 6 of the PITA.
- Investment income: withholding tax is imposed on dividends, interest and income from the rental of moveable and immoveable property at a rate of 10%. The 10% withholding tax is considered a final tax for non-residents whilst for residents, the withholding tax on rental income is treated as an advance payment. Investment income earned abroad and repatriated back to Nigeria through a dealer authorised by the Minister of Finance, is exempt from tax (Ernst & Young, 2012).

5.4 CONCLUSION

The Nigerian tax system is a residence-based system of taxation. Inbound expatriates working in Nigeria may be taxed either as residents or non tax residents, depending on their stay within Nigeria and where they consider their real home to be. Employment and personal income are taxed in accordance with the tax tables which are released yearly by the Minister of Finance.

CHAPTER 6

A COMPARISON OF THE TAX SYSTEMS ON INBOUND EXPATRIATES

A comparison of the South African, Botswana, Namibian and Nigerian tax systems will be undertaken in order to provide a practical application of the previously discussed countries' tax legislations. An example is utilised in this regard to provide an understanding and expound on the comparison.

Scenario

Mrs Shortbread is a citizen of country X who is being sent on a 3 year assignment to country Y. Mrs Shortbread is accompanied by her spouse and children on her assignment to country Y. However, she intends returning to her home country of country X once her assignment is completed. Her employment contract states that she will earn the following remuneration and benefits in country Y:

- Salary amounting to 900 000YD per annum(country Y's currency);
- Bonus amounting to 300 000YD per annum;
- Employer provided accommodation amounting to 350 000YD per annum;
- A transportation allowance amounting to 240 000YD per annum;
- School fees for her children amounting to 150 000YD per annum; and
- Her employer will contribute 30 000YD towards her medical scheme.

Mrs Shortbread open's a current account at the local post office in country Y and earns interest income amounting to 10000YD per annum and invests in a portfolio of shares in a company in country Y which yields dividend income of 5 000YD per annum.

6.1 SOUTH AFRICA

The above-mentioned scenario will now be applied to the South African tax system. An assumption will be made that country X is a foreign country and that country Y is South Africa.

Residency

As South Africa's tax system is a residence-based system, we would need to consider what Mrs Shortbread's residency status in South Africa is, as this will determine how she will get taxed in South Africa.

Based on the above-mentioned facts, it is clear that Mrs Shortbread is not a citizen of South Africa, nor does she consider South Africa to be her real home. Therefore, Mrs Shortbread will not be considered to be ordinarily resident in South Africa. Her assignment in South Africa will be for a period of 3 years, which means that Mrs Shortbread will not meet the requirements of the physical presence test during her stay in South Africa.

In view of the afore-mentioned, Mrs Shortbread will be considered to be a non-resident from a tax perspective in South Africa and will be taxed only on South African sourced income.

Taxability of income:

Mrs Shortbread is considered to be non-resident in South Africa, therefore only her South African sourced remuneration will be taken into account in determining her taxable income in South Africa. The calculation for her taxable income would be as follows:

- salary amounting to 900 000 will be fully taxable and will be included in her taxable income;
- bonus amounting to 300 000 will be fully taxable and will be included in her taxable income;

- the calculation for the accommodation will be done as follows, on the assumption that she has met the requirements discussed in the legislation above:

Amount paid by employer towards accommodation: 350 000

Exemption allowable per annum (25 000*12): (300 000)

Amount to be included in taxable income: **50 000**

- the transportation allowance is fully taxable in her hands. However, only 80% of the transportation allowance is taxed on a monthly basis and taxes thereon withheld by the employer, whilst the 20% will have to be justified by the business travel mileage which she has travelled:

Transportation allowance received from the employer: 240 000

Transportation allowance subjected to monthly PAYE withholding (240 000* 80%):**192 000**

Transportation allowance which may be tax-free (240 000 – 192 000): **48 000**

- school fees amounting to 150 000 will be fully taxable and will be included in her taxable income;
- medical aid fringe benefit amounting to 30 000 will be fully taxable and will be included in her taxable income. However, as she belongs to a medical aid scheme, she will be entitled to medical credits in the determination of her taxable income;
- interest income amounting to 10 000 will be subjected to 10% withholding tax at source, which is a final tax and will not be included in her taxable income; and
- dividend income amounting to 5 000 will be subjected to a 15% withholding tax at source, which is a final withholding tax and will not be included in her taxable income.

6.2 BOTSWANA

The above-mentioned scenario will now be applied to the Botswana tax system. An assumption will be made that country X is a foreign country and that country Y is Botswana.

Residency

Mrs Shortbread will be considered a tax resident in Botswana due to the length of her assignment. She will be in Botswana for a period of 3 years and in accordance with the tax legislation in Botswana, once an individual spends more than 183 days in Botswana, they are considered to be tax resident whether or not their permanent place of abode is in Botswana or not. In addition to spending 183 days in Botswana during a year of assessment, she will continue staying in Botswana during the following year of assessment. Mrs Shortbread will therefore be taxable in Botswana on her Botswana-sourced or deemed source remuneration and benefits as the Botswana system is a source-based system of taxation.

Taxability of income:

Mrs Shortbread is considered to be tax resident in Botswana and will therefore be taxed on her Botswana-sourced or deemed Botswana-source income. The calculation of her taxable income in Botswana will be determined as follows:

- salary amounting to 900 000 will be fully taxable and will be included in her taxable income;
- bonus amounting to 300 000 will be fully taxable and will be included in her taxable income;
- the calculation in respect of the employer provided accommodation will be done as follows, on the assumption that the property is a rateable property in terms of the Botswana Township Act and regulations:

The value of the employer-provided accommodation in accordance with the valuation roll:
350 000

The value to be included in her taxable income (350 000* 10%): 35 000

- transportation allowance amounting to 240 000 will be fully exempt from her taxable income on the assumption that this benefit was granted by her employer in terms of her employment and fulfilment of her duties;

- school fees amounting to 150 000 will be fully taxable and will be included in her taxable income;
- the medical aid fringe benefit amounting to 30 000 will be fully exempt from her taxable income;
- interest income amounting to 10 000 will be calculated as follows on the assumption that a post office is considered to be a banking institution in Botswana:

The amount of interest income received from the post office: 10 000

Exemption applicable to interest from banking institutions: 7 800

Withholding tax on the amount which exceeds 7 800 ($2\,200 \times 10\%$): 220

The amount of 2 200 will be included in her taxable income and the withholding tax paid of 220 will be off-set against the tax payable on assessment; and

- the dividend income amounting to 5 000 will be subject to a withholding tax of 15%, being ($5\,000 \times 15\%$) 750 which is a final tax and will not be included in her taxable income.

6.3 NAMIBIA

The above-mentioned scenario will now be applied to the Namibian tax system. An assumption will be made that country X is a foreign country and that country Y is Namibia.

Residency

The Namibian tax system is source-based. However, reference is made to individuals who are “ordinarily resident” in Namibia. Mrs Shortbread’s “ordinarily resident” status will therefore have to be considered in Namibia.

Based on the above-mentioned facts in the scenario, it is evident that she will not be considered to be “ordinarily resident” in Namibia as she intends to return to her home country once her assignment has been completed and considers country X to be her real home.

In view of the above, Mrs Shortbread will be considered to be non-resident in Namibia and will be taxable on Namibian source or deemed source income.

Taxability of income:

Mrs. Shortbread is considered to be non-resident from a tax perspective in Namibia, therefore any Namibian source or deemed Namibian source remuneration and benefits will be included in her taxable income. The calculation of her taxable income would therefore be as follows:

- salary amounting to 900 000 will be fully taxable and will be included in her taxable income;
- bonus amounting to 300 000 will be fully taxable and will be included in her taxable income;
- the calculation of the employer-provided accommodation will be calculated as follows:

Where the employer rents out the accommodation, the value to be placed on the accommodation will be calculated as follows: 350 000, less any consideration paid by the employee. The value will therefore amount to 350 000;

- the transportation allowance amounting to 240 000 will be fully taxable and will be included in her taxable income;
- the school fees paid towards her children's education amounting to 150 000 will be fully exempt and will not be included in her taxable income;
- the medical aid fringe benefit amounting to 30 000 will be fully exempt and will not be included in her taxable income on the assumption that the contributions are to an approved fund;
- the interest income amounting to 10 000 will be exempt from tax as it is from a post office in Namibia; and
- the dividend income will be subject to a 20% withholding tax, which is a final tax and the dividend income will not be included her taxable income. The withholding tax will be calculated as follows:

Dividend income received: 5 000

20% withholding tax (5 000* 20%): 1 000.

6.4 NIGERIA

The above-mentioned scenario will now be applied to the Nigerian tax system. An assumption will be made that country X is a foreign country and that country Y is Nigeria.

Residency:

The Nigerian tax system is a residence-based system of taxation. Therefore it is important to consider whether Mrs Shortbread is tax-resident or non-tax-resident in Nigeria, as this will determine how she will be taxed.

Based on the facts provided in the scenario, Mrs Shortbread will be considered to be a tax resident in Nigeria, as her residency status will be triggered when she becomes liable to pay tax in Nigeria and has a place of residence in Nigeria. In addition, Mrs Shortbread will spend more than 183 days in Nigeria during her assignment in Nigeria.

As a result of her residency status in Nigeria, Mrs Shortbread will be taxable on Nigerian source income.

Taxability of income

Mrs Shortbread is considered to be a tax resident of Nigeria, therefore her Nigerian-sourced remuneration will be taken into account in determining her taxable income. Her taxable income will be determined as follows:

- salary amounting to 900 000 will be fully taxable and will be included in her taxable income;
- bonus amounting to 300 000 will be fully taxable and will be included in her taxable income;

- the calculation in respect of the employer provided accommodation will be undertaken as follows:

Where the accommodation is owned by the employer, no value shall be placed on the accommodation. Therefore the value will be zero.

Where the employer pays an allowance towards the employee's accommodation, the value to be placed on the accommodation will be as follows:

Allowance paid by employer: 350 000

Exempt amount: 100 000

Taxable value of the benefit: 250 000;

- the value of the transportation allowance will be calculated as follows in determining which value to be included in the taxable income:

Allowance paid by the employee: 240 000

Exempt amount: 15 000

Taxable value of the benefit: 225 000;

- school fees amounting to 150 000 will be fully taxable and will be included in her taxable income;
- the medical aid fringe benefit will be fully exempt from tax and will not be included in her taxable income; and
- interest and dividend income will be subjected to a 10% withholding tax which is a final tax and will not be included in her taxable income.

6.5 CONCLUSION

The tax consequences in respect of an inbound expatriate working within the aforementioned countries differ. Mrs Shortbread will be considered tax resident in some jurisdictions whilst in others she will be considered non-resident for tax purposes. There are, however, some similarities in the manner in which some components of her remuneration will be tabled such as her salary and bonus, which in all tax jurisdictions are fully taxable in the jurisdiction in which she renders services.

CHAPTER 7

CONCLUSION

7.1 INTRODUCTION

The focus of the study was to expand on the current knowledge of the taxation of inbound expatriates working within South Africa, Botswana, Namibia and Nigeria, as the world has turned its focus on Africa in terms of investment and expansion as supported by Shelley (2004:3), and to provide both employers and employees with knowledge of the different tax regimes (source-based taxation and residence-based taxation) found in some of the emerging and fastest growing markets in Africa – namely, Botswana, Namibia, Nigeria and South Africa.

This study followed a qualitative, non-empirical research design through an extended literature review on secondary resources. The tax consequences of inbound expatriates working in South Africa, Botswana, Namibia and Nigeria are compared and analysed by making use of secondary data.

This data was used to obtain an understanding of the specific topic and to prove an overview of the tax consequences for the above-mentioned countries on inbound expatriates.

7.2 OBJECTIVES OF THE STUDY

This study was guided by the following research objectives:

- to identify and discuss the tax consequences for an inbound expatriate working in South Africa (refer to Chapter 2 of the study);
- to identify the tax consequences for an inbound expatriate working in Botswana (refer to Chapter 3 of the study);

- to identify the tax consequences for an inbound expatriate working in Nigeria (refer to Chapter 4 of the study);
- to identify the tax consequences for an inbound expatriate working in Namibia (refer to Chapter 5 of the study); and
- to compare source-based taxation (Botswana and Namibia) and residence-based taxation countries (South Africa and Nigeria), (refer to Chapter 6 of the study).

7.3 CONCLUSIONS

The tax systems of South Africa and Nigeria are similar in that they are residence-based. In each of these two countries, tax residents are taxed on their worldwide income, while non-residents are only taxed on income from specific sources. Therefore, residency is an essential concept in each of these tax systems. The above-mentioned countries, however, apply different methods and factors in determining the concept of residency.

As a result of the difference in determining tax residency and differences in their domestic income tax legislations, the taxability of income earned abroad differs in these countries.

The tax systems of Botswana and Namibia are similar in that they are residence based. In each of these countries, income is taxable when it is from a source or deemed source within these countries. Although in exceptional circumstances, some income which is not from a source within these countries may be taxable, relief is applied in terms of the domestic legislation in order to lessen the burden of tax. Source is therefore a vital concept in each of these tax systems. The definition and application of the term source is different in both countries. However, similarities are found in that source is primarily where the services were physically rendered.

In conclusion, both employers and employees should consider the basis of taxation (source basis and residence basis) that is applied by the prospective host country when making a decision regarding an assignment to a foreign country as this forms a major factor in how their income (both local and foreign) will be treated.

7.4 IMPORTANCE AND FUTURE RECOMMENDATIONS OF THE STUDY

The focus of the study is to expand on the current knowledge of the taxation of expatriates working within South Africa, Botswana, Namibia and Nigeria, as the world has turned its focus on Africa in terms of investment and expansion as supported by Shelley (2004:3) who states that Africa probably presents the world's last major business opportunity. This will be accomplished by focusing on the application of the above-mentioned countries' tax legislations on expatriates working inside the aforementioned countries and a comparison of their tax legislations and the effects thereof on these expatriates.

The practical implications of this study would include providing potential expatriate employees with an understanding of the tax consequences that will be applicable to their assignments to foreign countries. Lastly, to provide employers with a planning tool with reference to the movement of human capital into the afore-mentioned countries and the tax exposure that will be applicable to these expatriates and remuneration structuring opportunities for these assignments.

Numerous opportunities exist for future research regarding the taxation of expatriates within the African continent. Further studies on the impact of taxation on these expatriate assignees, both inbound and outbound, could be used by companies and individuals to make decisions on global expatriate policies and remuneration structures to fit the different countries within Africa.

It is recommended that further research be conducted within the space of outbound expatriates working within the African continent and the impact of taxation on their remuneration and benefits. In addition, research may be conducted on the taxation effects of short-term assignments within the African tax landscape and the tax exposure it bears for the company and the employees concerned.

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