A TAX-COMPLIANCE FRAMEWORK FOR SHORT-TERM ASSIGNMENTS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY – A SOUTH AFRICAN PERSPECTIVE

by

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96216078

Submitted in partial fulfilment of the requirements for the degree
MCom in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

Study leader:
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Date of submission:
2013-09-25

ABSTRACT

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Short term assignments to other countries are increasing and it is important to take note of the associated potential tax compliance requirements. South Africa is part of the Southern African Development Community (SADC) whose main objective is to advance the development and economic growth of the member countries through regional integration. It is difficult for persons with limited or no international tax background to identify potential taxes when going on short term assignments to other SADC countries as very little has been published with regard to the procedure to follow. The procedure to follow and the main tax concepts (corporate tax, personal tax, VAT and withholding tax) have not been published in a user friendly, holistic format to enable such persons to identify potential tax implications. In this research a conceptual tax-compliance framework was created and tested to enable persons to follow the procedure to identify potential taxes that could be triggered when going on short term assignments. It also enables them to have an understanding of the concepts of the main tax principles applicable in SADC countries that have double tax agreements in place with South Africa.

KEY WORDS:

Conceptual tax-compliance framework
Corporate tax
Double tax agreement
Personal tax

Short-term assignment

Value added tax

Withholding tax

OPSOMMING

‘N BELASTINGVOLDOENINGSRAAMWERK VIR KORTTERMYNPROJEKTE IN DIE SUIDELIKE-AFRIKAANSE ONTWIKKELINGSGEMEENSKAP – ‘N SUID-AFRIKAANSE PERSPEKTIEF

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Korttermynprojekte na ander lande is besig om toe te neem en dit is belangrik om kennis te neem van die meegaande potensiële belastingvoldoeningsverpligtings. Suid-Afrika is deel van die Suider-Afrikaanse Ontwikkelingsgemeenskap (SAOG) wat die bevorderdering van die ontwikkeling en ekonomiese groei van die lidlande deur die integrasie van die streke as hoof doelstelling het. Dit is moeilik vir persone met beperkte of geen internasionale belastingagtergrond om die potensiële belastings te identifiseer wanneer hulle op korttermynprojekte na ander SAOG-lande gaan, veral omdat min gepubliseer is oor die prosedure wat gevolg moet word. Die prosedure om te volg en die hoof belastingkonsepte (belasting op toegevoegde waarde, korporatiewe belasting, persoonlike belasting en terughou-belasting) is nie in ‘n gebruikersvriendelike, holistiese formaat gepubliseer, wat sodanige persone in staat stel om om potensiële belastingimplikasies te identifiseer nie. In hierdie navorsing is ‘n konseptuele belastingvoldoeningsraamwerk opgestel en getoets om persone in staat te stel om die prosedure te volg om potensiële belasting te identifiseer wat kan realiseer wanneer korttermyn projekte in die buiteland ter sprake is. Dit stel hulle ook in staat om ‘n begrip te hê van die konsepte van die hoof belastingbeginsels van toepassing in SAOG-lande wat dubbel-belastingooreenkomste met Suid Afrika het.

SLEUTELWOORDE:

Belasting op toegevoegde waarde

Dubbel-belastingooreenkoms

Konseptuele belastingvoldoeningsraamwerk

Korporatiewe belasting

Korttermyn projek

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Due to the perceived untapped tax potential represented by African companies, increased attention is being given to their tax-compliance behaviour by governments (Chr. Michelsen Institute, 2012). In July 2012, the 26 African countries that make up the African Tax Administration Forum (ATAF), met in Pretoria, South Africa, to discuss ways to collectively combat tax evasion and assist one another in the collection of taxes (SARS, 2012). The African Tax Institute (ATI), located in the Department of Economics, University of Pretoria, South Africa, is devoted to training and research in the areas of tax administration on the African continent (University of Pretoria, 2011). One of the goals of the ATI is to effect greater co-operation and co-ordination in the design and implementation of tax systems in Africa, in order to identify non-compliance and to consider widening the tax net. It is, therefore, important to take note of tax-compliance requirements in Africa.

South Africa is part of the Southern African Development Community. Included in the main objectives of the SADC is to advance the development and economic growth of the member countries through regional integration (SADC, 2012). South African residents may therefore prefer to do business with other members of the SADC before considering non-SADC members as business partners.

The type of assignment being conducted in the SADC countries will have an effect on the tax-compliance requirements of each country. Short-term assignments have increased over the past decade and now represent one third of all international assignments (ECA International, 2010). A recent survey indicated that over the next two years short-term assignments were likely to increase by 20%, compared to 11% for long-term assignments (Ernst & Young, 2012).

The common assumption that the employee is not taxed in the host jurisdiction by virtue of meeting the 183-day treaty test can create unexpected financial consequences for many companies (Balbona, Sartoria & Woods, 2006). This emphasises the importance of identifying tax-compliance areas, even for assignments of less than 183 days.

While research has been conducted on some of the individual components of tax-compliance areas for short-term assignments, the research dealt only with some aspects of tax compliance (Balbona, Sartoria & Woods, 2006; Deloitte, 2011; Howe, 2009; and KPMG, 2009). Examples of issues to consider for tax compliance are discussed in an article on Global HR Business, but no procedure to verify tax compliance and identify tax-compliance problems is mentioned (Balbona, Sartoria & Woods, 2006). The 'economic employer' approach for short-term foreign employees is discussed by Deloitte (2011). The most comprehensive discussion is provided by Howe, who deals with the treaty basics, the 'economic employer' approach, and steps to avoid tax traps on short-term assignments (Howe, 2009). There is a discussion published of aspects of tax compliance, how to count the days that the taxpayer has been present in a given tax jurisdiction, residency and tax implications in the home country (KPMG, 2009). The publications mentioned here all deal with one or more aspects to take into consideration in order to identify potential taxes triggered by a short-term assignment; however, the discussions do not cover the entire spectrum of issues to be addressed and do not come to grips with all the practicalities.

There are publications available from international audit firms that deal with the taxation regime in various countries. Deloitte has the 'Highlights series' and PWC has a document called 'Worldwide tax summaries: Corporate taxes 2012/13' (Deloitte, 2013; and PWC, 2013). The International Bureau of Fiscal Documentation (IBFD) hosts a website with more details on the specific taxes in different countries (IBFD Research Tax Platform, 2013). These publications deal with countries' taxes in general from the countries' own perspective. They do not deal with the steps to follow to identify potential taxes when visiting different countries on a short-term assignment.

Lastly, the book "International tax – A South African perspective", provides information on the international context, including double tax agreements (DTAs), but the book is very cumbersome and does not set out the steps to be followed in a simplified format. (Honiball & Olivier, 2011).

Although aspects of tax compliance on short-term assignments have been dealt with in the literature, there are some aspects that available publications still fall short on. None of the above-mentioned sources focuses on short-term assignments to SADC countries, and the terminology and concepts used in the publications are difficult for a person with limited or no international tax background to understand. No publication includes the procedures to be followed and a summary of the main tax concepts as a whole, from beginning to end, in a simplified, practical format.

This study will create a simplified and practical framework that can be used to identify tax-compliance requirements when rendering services for a short term in a SADC country outside South Africa, including procedures to be followed and the principles underpinning the main taxes.

This will allow persons who are not international tax experts to provisionally identify tax-compliance requirements by following the procedures and understanding the main tax concepts, as set out in a framework, without having to make use of the services of international tax experts.

1.2 PROBLEM STATEMENT

The existing literature on short-term assignments is not sufficient for practical application when determining the potential taxes that are triggered by short-term assignment to a SADC country.

Aspects of procedures to follow when identifying tax-compliance areas in the different countries, are discussed in publications, but not as an integrated whole.

At the current state of literature, the only extensive research attempt to address the tax-compliance burden for a taxpayer, as a result of short-term assignments to other countries, was conducted by Howe (2009). In this research he provided for a series of steps that should be followed on such assignments. This research, however, did not take into account the various factors and changes that could influence these steps as a result of the different forms of taxation found in different countries. Further, the steps are provided as general guidelines and for that reason are difficult to apply in practice.

This study attempts to expand on the research conducted by Howe (2009) by taking into account the various taxes incorporated by various countries. Furthermore it seeks to facilitate the practical application of guidelines by providing a conceptual framework.

From a South African perspective there is no tax-compliance framework that provides a basis for the understanding of different types of taxes that have to be complied with when rendering services for a short term in a SADC country. Also, there is no publication available for persons with limited or no international tax background that demonstrates the flow from beginning to end, and that sets out and explains the procedure and the taxes to comply with in the form of a simplified structure and as an integrated whole.

1.3 PURPOSE STATEMENT

The aim of this research is to create a conceptual framework for tax compliance that can be used by South African residents when rendering services on short-term assignments elsewhere in the Southern African Development Community – a framework that explains the concepts and procedures to be followed in order to identify taxes that will be applicable.

1.4 RESEARCH OBJECTIVES

The research objectives are:

- To identify and explain the procedures to be followed to identify taxes that have to be complied with. If the procedures can be identified and explained, it will be much easier to follow a comprehensive, structured approach in identifying potential taxes that are triggered when going on short-term assignments.

- To identify and explain the main articles of the DTA (double tax agreement) dealing with professional services rendered. Given that DTAs are difficult to interpret and follow, it will be useful to identify and explain the main DTA articles that are applicable to provide tax relief.
- To identify and explain the local taxes potentially required for compliance in Botswana, Mauritius, Mozambique and Namibia. This will provide an insight into whether there are different taxes in different countries and what the similarities of the taxes are.
- To apply the procedures to a practical scenario to determine the taxes triggered in each of the four countries. This will be done to determine whether the procedures identified can be applied in a real-life situation to identify potential taxes that are triggered on short-term assignments.
- To develop a conceptual tax-compliance framework based on the procedure and compliance requirements identified for the above-mentioned four African countries. The procedures and taxes identified will be summarised in a conceptual framework.
- To test the effectiveness and accuracy of the framework by applying it to similar practical scenarios in two other SADC countries.

The conceptual framework will be developed in the context of countries that are part of the SADC. The units that will be used for the conceptual framework will be the taxes in the different countries.

1.5 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY

The findings of this study will provide any South African tax resident rendering services for a short period in a SADC country with a basic conceptual tax-compliance framework, including the procedures to follow to identify potential taxes. This will be beneficial in a number of ways, both from a practical and academic point of view:

- A person will be able to identify tax-compliance requirements from a legal point of view.
- A person will be able to identify any costs relating to the required tax compliance at proposal stage, allowing the person to evaluate whether the proposed project will be profitable or not.
- Potential differences in the interpretation of the same definition or tax type among different countries will be identified.
- The framework could be used as a basis for further research on tax compliance requirements, in different scenarios, with fewer delimitations.
- A person with limited or no international tax background will be able to use the procedures and framework to identify potential taxes that will have to be complied with.

The next chapter (Chapter 2) discusses the delimitations and assumptions that apply to the proposed study. This is followed in Chapter 3 by a list of definitions of the key terms used in the study. In Chapter 4, the following are addressed:

- what short-term assignments are;
- procedures to follow to identify potential tax requirements;
- relevant articles on DTAs;
- local taxes in the selected countries;
- treatment of foreign taxes paid;
- application of the procedures in a practical scenario to identify the taxes triggered in each of the four countries;
- summary of the procedures and key principles identified, in the form of a conceptual framework;
- framework testing; and
- conclusion whether the research objectives were met.

Lastly, the research design and methods will be discussed in Chapter 5.

CHAPTER 2

DELIMITATIONS AND ASSUMPTIONS

2.1 DELIMITATIONS

The research will not take into account tax administrative requirements and will only include countries with a double tax agreement with the Republic of South Africa; and the framework is only conceptual. Only corporate, withholding, individual and turnover taxes (VAT) will be addressed. Taxes in jurisdictions such as the central state and provincial administrations, and social taxes, will be excluded. Taxes in each SADC country could be different and therefore the framework can only serve as a guide to identify tax compliance when rendering services for a short term in another SADC country. The framework assumes that no agents are used to perform services. Only transactions with unconnected persons are included.

2.2 ASSUMPTIONS

The following assumptions are made for the purposes of this study:

The entity in South Africa has no other activities or representation in the country where the services are performed. All services relating to the assignments are performed outside South Africa.

When performing services for a short term in a SADC country, South African residents:

- have the relevant work permits and comply with all other non-tax related legislation;
- have the intention to comply with all tax- related requirements; and
- took all prescribed vaccinations and medical precautions.

CHAPTER 3

DEFINITION OF KEY TERMS

The study involves a number of key concepts, namely *assignment*, *branch*, *business profits*, *corporate tax*, *domicile*, *double tax agreement*, *enterprise*, *final tax*, *home country*, *host country*, *non-empirical research*, *residence based*, *short-term assignment*, *ordinary resident*, *permanent establishment*, *personal income tax*, *source-based*, *tax jurisdiction*, *technical fees*, *value-added tax* and *withholding tax.* The manner in which these key terms are defined for the purpose of this study is considered below:

Assignment: An assignment can be defined as: 'a task or piece of work allocated to someone as part of a job' (*Oxford Dictionaries*, 2013). Applying and clarifying the definition for this study, given that this study deals only with services rendered, the definition for an assignment is adjusted to read as follow: 'services rendered by someone as part of a job'.

Branch: 'A part of a business carried on by a corporation, usually through an office or other fixed place of business'. (See Chapter 4.3.2.3)

Business profits: 'Income derived from any trade or business'. (See Chapter 4.3.2.3)

Corporate tax: 'A tax that must be paid by a corporation based on the amount of profit generated. The amount of tax, and how it is calculated, varies depending upon the region where the company is located'. (See Chapter 4.4.2)

Domicile: 'The establishment of a fixed place of residence which usually applies to natural persons'. (See Chapter 4.4.3)

Double tax agreement: 'An international treaty concluded between two states to determine the incidence of tax in, and the application of tax laws by, each state with the object of avoiding double taxation'. (See Chapter 4.1)

Enterprise: 'The carrying on of any business by any person, including independent professional services for tax treaty purposes'. (See Chapter 4.3.2.3)

Final tax: 'The final withholding tax is an amount of income withheld by the payer from the payee. The payer pays this amount to the government as an income tax due from the payee. The payee no longer needs to file an income tax return for that particular income since the payer already paid it on his behalf'. (See Chapter 4.4.3)

Home country: In the 'Glossary of South African international tax terms' in Honiball & Olivier (2011:841), the term *home country* is defined as follows: 'The resident country of an investor or holding company which would make outbound investments overseas'.
However, in the context of this study, the definition is adjusted as follows to be more appropriate: 'The country where a person is a resident'.

Host country: In the 'Glossary of South African international tax terms', the term 'host country' is defined as follows (Honiball & Olivier, 2011:841): 'The country in which the investor or holding company makes outbound investments overseas'. However, in the context of this study, the definition is adjusted as follows to be more appropriate: 'A country where the services will be performed by a person from a home country'.

Non-empirical research: 'Studies in which the researcher answers questions regarding theoretical perspectives without collecting new data or re-analysing existing data'. (See Chapter 5.2)

Ordinarily resident: 'The country to which he would naturally and as a matter of course return from his wanderings'. (See Chapter 5.4)

Permanent establishment: 'A fixed place of business through which the business of an enterprise is wholly or partly carried on'. (See Chapter 4.3.2.2)

Personal income tax: 'Tax paid on one's personal income as distinct from the tax paid on the firm's earnings'. (See Chapter 4.4.2)

Residence-based: 'Residents of the country will be taxed on their worldwide income, while non-residents will be taxed on income from a source in that country'. (See Chapter 4.1)

Short-term assignment: ‘An assignment by a tax resident of one country in another country for a period of less than 183 days’. (See Chapter 4.2)

Source-based: ‘Residents and non-residents of the country will be taxed only on revenue from activities that had their originating cause in that country. (See Chapter 4.1)

Tax jurisdiction: ‘An area subject to its own tax regulations, such as a municipality, city or country’. (See Chapter 5.3)

Technical fees: ‘Payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature’. (See Chapter 4.4.2)

Value-added tax: ‘An indirect tax levied on the consumption of goods and services’. (See Chapter 4.4.2)

Withholding tax: ‘A tax levied by the source country at a flat rate on the gross amount of dividends, royalties, interest or other payments made by residents to non-residents. The tax is collected and paid to the government by the resident payer’. (See Chapter 4.4.2)

Below is a summary of the abbreviations used in this document:

Table 1: Abbreviations used in this document

Abbreviation	Meaning
Deloitte	Deloitte Touche Tohmatsu
DTA	Double Tax Agreement
IBFD	International Bureau of Fiscal Documentation
MTC	Model Tax Convention
PWC	Price Waterhouse Coopers
SARS	South African Revenue Service
SADC	Southern African Development Community
VAT	Value Added Tax

CHAPTER 4

LITERATURE REVIEW

4.1 AN OVERVIEW

Individuals and corporations resident in South Africa are taxable on worldwide income (Deloitte, 2013). The implication is that SARS may tax South African residents and corporations on income received from sources within and outside South Africa. When services are performed in a country other than South Africa, that income is taxed in South Africa. A person may think that in such instances one should look at ‘international tax’. This is based on a misconception – ‘international tax’ does not refer to any form of tax, it refers to the study of how the different tax systems of each state interact when cross-border events occur (Honiball & Olivier, 2011:1). Also, the way in which international transactions will be taxed will depend on the domestic law of each state (Honiball & Olivier, 2011:1).

When deciding whether income is taxable in a particular country, it has to be determined whether a connection exists between the income and the country in question. The connecting factor is determined by the domestic law of the different countries. There are two connecting factors, respectively referred to as ‘residence jurisdiction’ and ‘source jurisdiction’ (Honiball & Olivier, 2011:9-10). The connecting factor is also referred to as the ‘tax basis’ of a country and can be either ‘residency based’ or ‘source-based’. ‘Residency based’ refers to the principle according to which the connectivity factor for taxation is residence in a country, where residents are usually taxed on their worldwide income, while non-residents are usually taxed on income from a domestic source (Honiball & Olivier, 2011:849). In simplified form, the ‘residency-based’ tax system implies that residents of the country will be taxed on their worldwide income, while non-residents will be taxed on income from a source in that country. The meaning of ‘source’ is ‘the originating cause of revenues arising from transactions, activities, products, servicing or financing’ (Honiball & Olivier, 2011:849). This implies that in the ‘source-based’ tax system residents and non-residents of the country will be taxed only on revenue from activities that had their originating cause in that country.

Therefore, if one of the applicable countries uses the residency-based tax system, the same income is taxable in two countries. Relief measures are usually available under domestic law or under tax treaties to eliminate or ease the burden of double taxation (Honiball & Olivier, 2011:10). Honiball and Olivier (2011) state that a tax treaty is also referred to as a double tax agreement (DTA). A DTA is 'an international treaty concluded between two states to determine the incidence of tax in, and the application of tax laws by, each state with the object of avoiding double taxation' (Honiball & Olivier, 2011:841). Howe (2009) states that tax treaties come into play when two different countries are allowed to tax the same income. The effect is that a person is taxed on the same income twice if a treaty is not in place. The DTA between two countries needs to be analysed to determine whether there are relief from any taxes payable.

When performing services outside South Africa, the taxable entity needs to consider all taxes in the local legislation of the foreign country. The implication is that if a certain tax was triggered, in a country outside South Africa, but not dealt with in a DTA, relief will not be available, as in the case of value-added tax (VAT).

The literature review to follow will include discussions of the following areas:

- what short-term assignments are;
- procedures to follow to identify potential tax implications when rendering services on a short-term assignment;
- the main DTA articles applicable when services are rendered;
- local taxes in the selected countries;
- South African treatment of foreign taxes paid in another country;
- application of the procedures in a practical scenario by applying the procedures identified;
- creation of a conceptual framework based on the procedure and compliance requirements identified;
- framework testing on two other SADC countries;
- conclusion on the appropriateness of the framework; and
- a summary of contributions made and suggestions for future research.

4.2 DEFINITION OF A SHORT-TERM ASSIGNMENT

As this study only deals with short-term assignments, it is very important to establish what a short-term assignment is. A few publications are discussed below where short-term assignments and a rule called 'the 183-day rule' are mentioned.

Tahvanainen, Welch and Worm (2005:665) state that the definition of 'short-term assignment' is not clear-cut. They also state that each country may interpret short-term assignments differently from other countries. In the glossary of South African international tax terms in Honiball and Olivier (2011:838), there is a term called the '183-day rule'. This rule is used to determine whether a person will be taxed in his home country or in the country where the services are rendered (host country).

Howe (2009) states that one of the three main treaty conditions applicable when an individual is employed by a host country, and wants to claim exemption from tax in the host country, is that he does not spend more than 183 days in the host country. This agrees with article 15: 'Income from employment' of the Model tax convention or MTC (OECD, 2010:31). Howe neglects to mention that the 183 days may fall in any 12-month period. According to Howe (2009) article 15 is also referred to as the 'dependent services' article. In an article published by Deloitte, the 183-day rule is referred to when discussing the tax implications for short-term assignments (Deloitte, 2011). It is common for cross-border business travellers to think they will incur no tax implications when spending less than 183 days in another country during a year (KPMG, 2009).

Therefore, for the purposes of this study, and taking into account the above-mentioned publications, a short-term assignment is defined as 'an assignment by a tax resident of a home country in a host country for a period of less than 183 days'.

Now that it has been established what a short-term assignment is, the procedure to identify tax compliance and the main DTA articles will be identified and discussed.

4.3 IDENTIFICATION AND DISCUSSION OF THE PROCEDURES TO IDENTIFY TAX COMPLIANCE AND THE MAIN DTA ARTICLES

Below is a discussion of the basic procedure to follow in order to identify tax compliance on short-term assignments, including highlighting the articles in the *Model tax convention* (OECD, 2010).

At present, only Howe (2009) addresses procedures to follow in order to identify potential tax implications on short-term assignments by means of academic research.
The procedures he mentioned are as follow:

1) Check the host country's domestic law for when a person will become taxable.
2) If taxable, check if the home and host countries have a DTA treaty and then find the latest version of the treaty.
3) Establish from the manager and your finance team if the compensation will indeed remain in the home country and will not be charged to the host entity or a client in the host country.
4) Establish if the host country has adopted the 'economic employer' approach.

These procedures are discussed and analysed below:

4.3.1 Host country's domestic law

'Check the host country's domestic law for when a person will become taxable' (Howe, 2009).

Howe only mentions 'person', but, local legislation relating to both the individual performing the services as well as the entity (employer) that the individual (employee) is representing needs to be considered.

In short, all the relevant taxes in a host country that are triggered when professional services are rendered in that country should be identified at this stage.

4.3.2 Existence of a treaty

'If taxable, check if the home and host country have a treaty and then find the latest version of the treaty' (Howe, 2009).

Honiball and Olivier (2011:268) state that international treaties are also referred to as double tax agreements (DTAs). The DTAs South Africa have with other countries can be obtained on the SARS website under 'Legal and policy' (SARS, 2013).

This study only focuses on professional services rendered and, as fees for professional services form part of business profits, only articles in the DTA that relate to business profits will be analysed.

International organisations published model tax conventions (MTCs) in an attempt to achieve a degree of standardisation in the contents of treaties by their members (Honiball & Olivier, 2011:268). The best known MTC is the one developed by the Organisation for Economic Co-operation and Development (OECD), and this is consequently the MTC used in this study (Honiball & Olivier, 2011:268). As the MTC is published in an attempt to provide guidelines and standardise tax treaties between countries, it does not have legislative force and therefore treaties between countries could differ from the MTC.

The four articles relating to income from professional services in the MTC are discussed below (OECD, 2010: 24-27, 31):

The DTA determines the conditions under which the profits of the business (article 7: 'Business profits'), the profits of independent personal services (article 14: 'Independent personal services') and the remuneration of the individual (article 15: 'Income from employment') are taxed (OECD, 2010:26-27, 31). Article 5: 'Permanent establishment' also needs to be taken into consideration as it determines when an entity has a permanent establishment, which triggers tax consequences per article 7.

4.3.2.1 Article 14: 'Independent personal services'

Article 14: 'Independent personal services' is shown as deleted in the MTC (OECD, 2010:31).

According to the commentary on article 14 of the MTC, the reason for the deletion of the article is that there was never really an intention to differentiate between the concepts of profits arising due to an enterprise carrying on business in a host country through a PE, dealt with in article 7: 'Business profits', and 'Independent personal services' as per article 14 of the MTC (OECD, 2010). The commentary also states that there is no difference between how profits are allocated and how taxes are calculated between the two articles. It is therefore as if article 7 substituted article 14.

4.3.2.2 Article 5: 'Permanent Establishment'

Article 7: 'Business profits' do not state when a permanent establishment is triggered, but rather what the implication is when a permanent establishment is triggered (OECD, 2010:26-27). To understand when a permanent establishment will be triggered, article 5: 'Permanent establishment' should be considered before article 7 is discussed further (OECD, 2010:24-25).

The main use of the concept of a permanent establishment is to determine whether the host country has the right to tax the profits of the home country entity due to services rendered in the host country (OECD, 2010:92).

Paragraph 1 of article 5 states that: 'The term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on' (OECD, 2010:24). Paragraphs 2 and 3 list instances specifically **included** in the definition of a 'PE '. Paragraph 4 lists instances specifically **excluded** from the permanent establishment definition (OECD, 2010:24-25). Paragraphs 5 and 6 deal with brokers and agents, but brokers and agents are excluded from this study. Paragraph 7 lists instances that would not necessarily create a permanent establishment, when there is activity or representation for the home country in the host country and vice versa. However, one of the assumptions of this study is that the home country has no representation or activity other than the services for the specific assignment.

The main parts of the definition of a permanent establishment are as follows (OECD, 2010:92):

- A 'place of business' must exist, that is a facility such as premises or an office, or where the machinery or equipment used is situated.
- The place of business must be 'fixed', which means that the distinct place has to have a certain degree of permanence.
- The business of the enterprise should be carried on through this fixed place of business. This means that the persons who in some way, are dependent on the enterprise, conduct the business of the enterprise in the country where the fixed place is situated.

Honiball and Olivier (2011:848) state that a permanent establishment can be defined as 'A tax treaty concept used to determine when an enterprise has sufficient connection with a country to subject it to tax on its income attributable to the permanent establishment'. The wording is different from the wording used in the MTC, but it provides another way to understand what is meant by the term permanent establishment for the purposes of this study the definition as stated in the MTC will be used.

It is important to inspect each treaty to find the definition of a permanent establishment in each country and determine under what circumstances it is triggered. As mentioned earlier, the MTC is just a guide, and a country does not have to follow its exact terms.

Now that it has been established when an entity is likely to be a permanent establishment in another country, article 7 'Business profits' will be discussed. Article 7 indicates when business profits will be taxed.

4.3.2.3 Article 7: 'Business Profits'

Paragraph 1 of article 7 states that profits of an enterprise in one country (home) shall only be taxed in that (home) country unless it arises from an enterprise that carries on business in the country (host) that the services are performed in through a PE situated therein (host) (OECD, 2010:26). If a permanent establishment is created in the host country, profits attributable to the permanent establishment may then be taxed in the other (host) country.

Income derived from professional services or other activities of an independent nature will fall under article 7 as business profits (Honiball & Olivier, 2011:324).

There is no specific definition for 'business profits'; however, the 2006 US Model Technical Explanation states that the term is intended to cover 'income derived from any trade or business' (Honiball & Olivier, 2011:325). That will include income from professional services rendered.

The term 'enterprise' is defined as follows: 'The carrying on of any business by any person, including independent professional services for tax treaty purposes' (Honiball & Olivier, 2011:841).

The country where the permanent establishment was triggered can only tax the business profits attributable to the permanent establishment (Honiball & Olivier, 2011:851). Further, the business profits may also be taxed in the state of residency of the entity.

A permanent establishment can also be referred to as a 'branch' (Honiball & Olivier, 2011:3). The definition of a branch is: 'a part of a business carried on by a corporation, usually through an office or other fixed place of business. A branch is not separately incorporated' (Honiball & Olivier, 2011:839).

Article 7 also deals with withholding tax, although it does not appear so at first sight. If there is a binding double taxation treaty between South Africa and the other country, the payments for services rendered should be treated as business profits. It is therefore exempt from withholding tax in the state where the services were rendered. The reason for this is that profits shall only be taxable in the state where the services are rendered if the entity carries on business in that state through a permanent establishment (OECD, 2010:26).

Article 7, paragraph 4, states that if profits are dealt with separately, in another article, the provisions of that other article will take preference over article 7 (OECD, 2010:27).

The next article to be analysed is article 15: 'Income from employment'.

4.3.2.4 Article 15: 'Income from Employment'

This article discusses where the remuneration of the individual who performs the service will be taxed (OECD, 2010:31).

Article 15, paragraph 1, states that salaries, wages and other similar types of remuneration derived by a resident of one country shall be taxable in the country where the employment is exercised (OECD, 2010:31).

The commentary in the MTC states that: 'Employment is exercised in the place where the employee is physically present when performing the activities for which the employment income is paid' (OECD, 2010:31).

However, three requirements are then stated that, if met, render the remuneration taxable only in the country where the person is resident (OECD, 2010:31).

Article 15 is subject to the provisions of article 16: 'Directors fees', article 18: 'Pensions' and article 19: 'Government service'. This means that the provisions of articles 16, 18 and 19 will not be affected by the provisions of article 15 (OECD, 2010:31). However, as this study only deals with professional services, these articles will not be discussed further.

The three requirements that need to be met by a person in order that remuneration is not taxable in the host country are as follows (Deloitte, 2011; KPMG, 2009; and OECD, 2010:31):

- Article 2(a): The employee/recipient does not spend more than 183 days in the host country in any 12-month period;
- Article 2(b): The remuneration is not paid by an employer or person being resident in the host country; and

- Article 2(c): The remuneration is not borne by a permanent establishment the employer has in the host country.

The commentary in the MTC on article 15 clarifies a few issues that may not be clear when the article is interpreted. The main areas of interpretation as per the commentary are clarified below (OECD, 2010:251-268):

4.3.2.4.1 Article 2(A):

- The 183-day period is not limited to only a calendar year or fiscal/financial year. It relates to any 12-month period;
- Presence for only a part of a day counts as a full day, irrespective of whether the taxable entity is entering or leaving the country; and
- Saturdays, Sundays, public holidays and normal holidays or leave days also counts as days. The main exception is days of sickness preventing the individual from leaving the country.

4.3.2.4.2 Article 2(b):

- If the remuneration is charged by the contractual employer in the home country to the employer in the host country, the remuneration is not seen as being paid by the employer or resident in the home country. This applies even if the remuneration was physically paid by the employer or other person in the home country.
- It is important to determine whether an employment relationship exists that is different from the formal/contractual relationship. This is also referred to as the 'economic employer' principle. Many countries have begun to define 'employer' as the 'economic employer' and not the 'legal employer' (KPMG, 2009). It is a matter of domestic law of the country of source to determine whether an employment relationship exists. What matters is not the way the employer/employee relationship is characterised in the formal contract, but what the actual 'substance over form' relationship is.

One of the key considerations to be taken into account is who ‘supervises and controls’ the person providing the service (Deloitte, 2011). However, there are a number of key indications that should be taken into account to determine the actual employer/employee relationship, including (OECD, 2010:251-268):

- Which entity bears the responsibility or risk for the results produced by the individual’s work;
- Who has the authority to instruct the individual regarding the manner in which the work has to be performed;
- Who controls and has responsibility for the place at which the work is performed;
- Whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided;
- Who puts the tools and materials necessary for the work at the individual’s disposal;
- Who determines the number and qualifications of the individuals performing the work;
- Who has the right to select the individual who will perform the work and to terminate the contractual arrangements entered into with that individual for that purpose;
- Who has the right to impose disciplinary sanctions related to the work of that individual; and
- Who determines the holidays and work schedule of that individual.

Therefore, if a person providing the service meets the requirements of being economically employed by the host employer, the relief offered by a DTA will fall away. The remuneration will be seen as being paid on behalf of an employer that is then actually a resident of the state that the services are rendered in.

4.3.2.4.3 Article 2(c):

- The main intention of the phrase ‘borne by’ is that the remuneration must not be deductible by a person or permanent establishment in the state where the services are rendered; and

- If the remuneration is paid by a permanent establishment that the home country has in the host country, the host country will have the taxing rights on the remuneration.

The three above-mentioned requirements that need to be met by a person in order that remuneration is not taxable in the host country are the proposed requirements for DTAs (OECD, 2010:31). However, the specific wording in the DTA with each country has to be considered as it is different from the MTC.

In summary, the DTA articles dealing with professional services rendered are as follows:

- Article 14, substituted by article 7 determines whether a permanent establishment exists and in which country the profits will be taxed;
- Article 5 determines when a permanent establishment exists; and
- Article 15 determines in which country the remuneration of the individual will be taxed.

The conditions in a DTA should be analysed to identify whether there is relief from any of the local taxes identified in the host country.

4.3.3 Will the compensation be charged to the host country?

'Establish from the manager and your finance team if the compensation will indeed remain in the home country and will not be charged to the host entity or a client in the host country' (Howe, 2009).

This is in order to ensure compliance with article 15(2)(b), which states that remuneration should be paid by an employer who is not a resident of the country in which the services are rendered (OECD, 2010:31).

In short, if the employer in the home country recharges the client in the host country for the salary and other related costs of the individual performing the services, the relief provided by the DTA will not apply.

4.3.4 Economic Employer approach

'Establish if the host country has adopted the 'economic employer' approach' (Howe, 2009).

This has been dealt with in detail above where the requirements of article 15 were discussed.

4.3.5 Summary of procedures

The above-mentioned procedures to identify potential tax consequences can be summarised, in simplified format, as follows:

Steps one and two are used to identify taxes that are triggered and relief offered by the DTA. Steps three and four identify instances where the relief under the DTA relating to tax on the remuneration of the individual will not be available.

1) Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services.
2) If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax liability in the host country.
3) Establish whether the compensation will be paid by the home country and not charged to any entity in the host country, as the latter may disqualify relief provided by the DTA.
4) If applicable, establish whether the host country has adopted the 'economic employer' approach as it may disqualify the relief available provided by the DTA.

It is not be clear from the procedure mentioned by Howe that there are implications for both the employee and the employer and also that VAT and withholding taxes should be taken into account. The procedures described by Howe are very basic. Another shortcoming of the discussion in Howe is that none of the DTA articles are pointed out. Later in the study the simplified procedure will be applied to a scenario and, if possible, it will be expanded to be more detailed and comprehensive. (Howe, 2009.)

The main DTA articles used to provide potential tax relief and the procedures to follow when determining whether taxes are triggered when going on a short-term assignment have been discussed and identified above. Next, the local taxes in each of the four countries will be identified and discussed.

4.4 IDENTIFICATION OF THE LOCAL TAXES IN THE SELECTED COUNTRIES

4.4.1 Overview

Below are, first, the definitions of the main taxes existing in the four different countries and then a discussion of main taxes in table format:

4.4.2 Tax Concepts

There are four main taxes in each of the four countries selected (see next section):

1) **Corporate tax** is defined as: ‘A tax that must be paid by a corporation based on the amount of profit generated. The amount of tax, and how it is calculated, varies depending upon the region where the company is located’. (InvestorWords.com, 2013.)

2) **Personal income tax** is defined as: ‘Tax paid on one's personal income as distinct from the tax paid on the firm's earnings’ (Business Dictionary, 2013).

3) **Withholding tax** is defined as: ‘A tax levied by the source country at a flat rate on the gross amount of dividends, royalties, interest or other payments made by residents to non-residents. The tax is collected and paid to the government by the resident payer’. (Honiball & Olivier, 2011:851.) In simple terms, withholding tax is tax that will be paid over to the host country’s revenue authority on payments to non-resident entities, such as a South African company.

The term '**technical fees**' means: 'payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature' (RKG Consulting, 2013).

In Botswana, professional services rendered in another country is classified as technical service fees and also as consultancy fees (Deloitte, 2013; and PWC, 2012). It can also be classified as consultancy fees under the heading of technical service fees (IBFD, 2013). Therefore, although not all publications use the exact same term for 'technical fees', the terms used all fall within the definition of 'technical fees'.

4) **Value-added tax** (VAT) is defined as: 'An indirect tax levied on the consumption of goods and services' (Honiball & Olivier, 2011:851).

The taxes identified in each of the four selected countries are summarised in Table 2 below:

4.4.3 Country taxes identified in table format

Table 2: Identification of local taxes in the selected countries

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
<u>**Corporate tax**</u>				
Residency	A company is a resident company in Botswana if its place of incorporation or its registered office is in Botswana; also, if it is managed and controlled in Botswana (2,4,5).	A company is a resident company in Mauritius if it is **incorporated** in Mauritius or if the **central management and control** is in Mauritius (1,3).	A company is a resident company in Mozambique if its **place of incorporation** or **effective management** is in Mozambique (2,4,5), or if the 'legal seat' of the company is located in Mozambique (3). (The term 'legal seat' refers to where the headquarters of a company are located) (6).	A company is a resident (or domestic) company of Namibia if it is **incorporated** in Namibia (2). It is also a resident company if it is **effectively managed and controlled** in Namibia (4). The term 'resident company' is not used in Namibia, but rather the term 'domestic company' (4). The term 'domestic company' is used in the PWC publication, but no criteria are mentioned for the existence of a domestic company (5).
Tax basis	**Source-based** (2,4,5). The implication of this for non-resident entities is that, if they carry on business in Botswana, they will be liable for corporate tax in Botswana on the same basis as Botswana resident entities (2).	A resident company is taxed on its worldwide income (**residency-based**) (1,3,5). A non-resident company is not taxable on worldwide income, but only on income from a Mauritius source (1,3,5). A non-resident company will only	A resident company is taxed on its worldwide income (**residency-based**) (2,4). A non-resident company is not taxable on worldwide income, but only on income from a Mozambican source (2). A non-resident company will only	**Source-based** (2,3,5). The implication of this for non-resident entities is, that if they carry on business in Namibia, they will be liable for corporate tax in Namibia on the same basis as Namibian resident entities.

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
	If there is no DTA between Botswana and South Africa, a company doing business in Botswana will be taxed in Botswana. This is because local legislation determines that income arising from services rendered in Botswana should be taxed in Botswana (7). As indicated in the business profits article (article 7) of the DTA between South Africa and Botswana, an entity will be taxed in the host country (Botswana) if it carries on business in the host country through a permanent establishment (11). The requirements for qualifying as a permanent establishment are covered by article 5 of the DTA, which sets out the conditions that must be satisfied in order to form a PE (11). Per article 5, the definition of a permanent establishment is: 'A fixed place of business through which the business of an enterprise is wholly or partly carried on' (11). Therefore, the South African company will have to register for income tax in Botswana if it does comply with the requirements for a PE as stated in the DTA.	be taxed, by way of withholding tax, on income derived within Mauritius (3). This will be the case if the company does not have a permanent establishment in the country. Had there been no DTA between Mauritius and South Africa, a non-resident company doing business in Mauritius would have been taxed in Mauritius. This is because local legislation determines that income arising within Mauritius should be taxed there (7). It is clear from the article on business profits (article 7) of the DTA between SA and Mauritius, that an entity will be taxed in the host country if it carries on business in the host country through a permanent establishment (8). The requirements for triggering a permanent establishment are covered in article 5 of the DTA, which defines what is required for a PE to be formed (8). Per article 5 of the DTA, the definition of a permanent establishment is: 'A fixed place of business through which the business of an enterprise is wholly or partly	be taxed, by way of withholding tax, on income derived within Mozambique (4). This will be the case if the company does not have a permanent establishment in the country. Had there been no DTA between Mozambique and South Africa, a company doing business in Mozambique would have been taxed in Mozambique. This is because local legislation determines that income arising from Mozambique should be taxed in the host country (7). It is clear from the article on business profits (article 7) of the DTA between South Africa and Mozambique, that an entity will be taxed in the host country if it carries on business in the host country through a permanent establishment (9). The requirements for triggering a permanent establishment are covered in article 5 'permanent establishment' of the DTA, which defines what is required for a permanent establishment to be formed (9). Per article 5 of the DTA, the definition of a permanent establishment is: 'A fixed place of business through	If there had been no DTA between Namibia and South Africa, a company doing business in Namibia would have been taxed in Namibia. This is because local legislation determines that income arising from Namibia should be taxed in that country (7). When examining the business profits article (article 7) of the DTA between South Africa and Namibia, it becomes clear that an entity will be taxed in the host country (Namibia) if it carries on business in the host country through a permanent establishment (10). The requirements for qualifying as a permanent establishment are explained in article 5 of the DTA, which sets out the conditions that must be satisfied in order to form a permanent establishment (10). Per article 5, the definition of a permanent establishment is: 'A fixed place of business through which the business of an enterprise is wholly or partly carried on'. Therefore, the South African company will have to register for income tax in Namibia if it does comply

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
	The main difference between article 5 of that DTA and article 5 of the MTC is as follows: Article 5(3)(b) of the DTA states that a permanent establishment will exist in Botswana only if services are rendered by an entity through employees in Botswana for a period of more than 183 days in a 12-month period in relation to the same or a connected project (11). The MTC does not state the number of days (14). (This implies that a South African entity can have employees working on a separate unrelated project, but the days worked on the project by the other employees should not be added to the days of the first mentioned project to determine whether the 183 day threshold is exceeded).	carried on' (8). Therefore, the South African company will have to register for income tax in Mauritius if it meets the requirements for a PE. In Chapter 4.3.2 it was explained that article 14 of the MTC was deleted and replaced by article 7 'Business profits'. However, the DTA between Mauritius and South Africa contains article 14 'Independent personal services' (8). In summary, article 14(1) states that professional services rendered by persons of an independent character shall be taxable only in the home country, unless they have a fixed place regularly available to them in the host country for the purpose of performing those activities (8). Since, as explained in Chapter 4.3.2, the intention of article 14 'Independent personal services' was actually the same as article 7 'Business profits', the requirements stated in article 7 will be a better indication of whether a fixed base exists. Article 7 deals with the issue of having a fixed place in more detailed	which the business of an enterprise is wholly or partly carried on' (9). Therefore, the South African company will have to register for income tax in Mozambique if it meets the requirements for a permanent establishment . The main differences between article 5 of the DTA between South Africa and Mozambique and article 5 of the MTC are as follows: Article 5(3)(b) of the DTA states that a permanent establishment will exist in Mozambique only if services are rendered by an entity through employees in Mozambique for a period of more than 180 days in a 12-month period in relation to the same or a connected project (9,14). (This implies that a South African entity can have employees working on a separate unrelated project , but the days worked on the project by the other employees should not be added to the days of the first mentioned project to determine whether the 180 day threshold is	with the requirements of a PE. In Chapter 4.3.2 it was explained that article 14 of the MTC was deleted and replaced by article 7 'Business profits'. However, the DTA between Namibia and South Africa contains article 14 'Independent personal services' (10). In summary, article 14(1) states that professional services rendered by persons of an independent character shall only be taxable in the home country unless they have a fixed place regularly available to them in the host country for the purpose of performing those activities (10). Since, as explained in Chapter 4.3.2, the intention of article 14 'Independent personal services' was actually the same as article 7 'Business profits', the requirements stated in article 7 will be a better indication of whether a fixed base exists. Article 7 deals with the issue of having a fixed place in more detailed terms than article 7. Article 14(2) indicates which services are specifically included in the term 'professional services' which,

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
		terms than article 7. Article 14(2) indicates which services are specifically included in the term 'professional services' (8). Among others, it includes the services of lawyers, engineers, architects and accountants (8). There are no material differences between article 5 of the DTA between South Africa and Mauritius and article 5 of the MTC, except for a few differences between specific inclusions (paragraphs 2 and 3), and exclusions (paragraph 4) (8,14).	exceeded). The other main difference between article 5 of the DTA and the MTC is in article 5(3)(c) stating that services performed in Mozambique by an individual of an independent character will have a permanent establishment in Mozambique if 180 days are exceeded in any 12-month period (9,14).	among others, include services of lawyers, engineers, architects and accountants (10). There are no material differences between article 5 of the DTA between South Africa and Namibia and article 5 of the MTC, except for a few differences between specific inclusions (paragraph 2) (10,15). Also, the DTA includes paragraph 3 of the MTC with paragraph 2 (10,14).
Rate	Corporate tax - 28% (2,4,5) Branch – 30% (2,4,5)	Corporate tax - 15% (2,3,5). The effective tax rate after granting tax credit is 3% for offshore companies (15).	Corporate tax - 32% (2,4,5)	Corporate tax - 34% (1,4,5).

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
<u>Personal tax</u> **Residence**	Individuals will be deemed to be resident in Botswana if: • They have resided there for a period of **183 days** or more in any tax year (2,4); or • Their **permanent place of abode** is in Botswana (4).	Individuals will be deemed to be resident in Mauritius if: • They are **domiciled** in Mauritius (2,3); unless their permanent place of abode is outside Mauritius (3); or • They spend more than **six months** of a tax year in Mauritius (1,3); and • They have a combined presence in Mauritius of **270 days** in the current year and the **previous two years** (2,3). The glossary of South African International tax terms indicates that domicile refers to: 'The establishment of a fixed place of residence' and states that it usually applies to natural persons (12). A tax year is the same as a calendar year and it runs from 1 January to 31 December (1).	The IBFD publication states that persons are residents of Mozambique if: They have been present there for more than **180 days** in a calendar year (2,4); or They own and occupy a **permanent residence** in Mozambique on 31 December (2,4).	There is no definition of the term 'residence' in Namibia but the terms 'ordinarily resident'/'ordinary resident' are used (4). The term 'ordinary resident' is determined by case law on the facts and circumstances of the specific individual (4). It is not relevant where a person is a resident for Namibian tax purposes, but it only comes into consideration if Namibia has a DTA with another country (1). The reason why it is not relevant is because Namibian residents and non-residents are taxable only on income received or accrued from a Namibian source. The DTA may provide relief from tax, while there will be no relief from being taxed in two countries if no DTA is in place.
Tax basis	**Source-based** (2,4). Botswana has the right to tax income if the service was rendered in Botswana.	**Source-based**. If the service was rendered in Mauritius, the income relating to the service will be taxed in Mauritius.	Per the IBFD and Deloitte publications, residents are taxed on their **worldwide income**, while non-residents	**Source-based** (1,4). In other words, if the service was rendered in Namibia, the income from the service will be

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
	In practise the implication is that the salary that the person working in the host country is earning, will be taxable in the host country and the home country for the period that is spent in the host country, unless mitigated by a DTA.	Residents of Mauritius will be taxed on both Mauritius-sourced income and on foreign income remitted to Mauritius (1).	are only taxed on income from a Mozambican source (2,4). In other words, if a service was rendered in Mozambique, the income from the service will be taxed in Mozambique.	taxed in Namibia.
Rate	The tax rates increase with the amount of income, with the top rate at 25% (2,4).	Non-resident individuals and resident individuals are taxed at a flat rate of 15% (1,3).	The tax rates increase with the amount of income, with the top rate at 32% (2,4).	The tax rates increase with the amount of income, with the top rate at 37% (1,4).
<u>Withholding tax</u> **Rate**	**15%** for technical service fees (2,4,5). This means that the legislation of the local country normally requires 15% tax to be withheld from payments by residents to non-residents. However, this could be reduced or eliminated if there is a different percentage stated in a DTA in the 'technical fees' clause. Inspection of the DTA between South Africa and Botswana, shows that article 20 is a	**10%** for technical service fees (1,3,5). This means that the legislation of the local country normally requires 10% tax to be withheld from payments by residents to non-residents. However, this could be reduced or eliminated if there is a different percentage stated in the 'technical fees' clause of the DTA. There is no specific article defining technical service fees in the DTA between Mauritius and South	**20%** for technical service fees (2,4,5). This means that the legislation of the local country normally requires 20% tax to be withheld from payments by residents to non-residents. However, this could be reduced or eliminated if there is a different percentage stated in the 'technical fees' clause of the DTA. There is no specific mention of technical service fees in the DTA between Mozambique and South Africa,	**25%** for technical service fees (1,4,5). This means that the legislation of the local country normally requires 25% tax to be withheld from payments by residents to non-residents. However, this could be reduced or eliminated if there is a different percentage stated in the DTA in the 'technical fees' clause. There is no specific mentioning of technical service fees in the DTA between Namibia and

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
	'technical fees' clause (11). It states that: 'the tax charged in the Contracting State in which the technical fees arise, shall not exceed 10% of the gross amount of such fees' (11). The implication is that only 10% tax is to be withheld from payments by Botswana resident entities to non-resident South African entities and not the normal 15% that would have been withheld if there had been no DTA in place. The IBFD guide states that the withholding tax is a final tax (4). A final tax is: 'An amount of income withheld by the payer from the payee. The payer pays this amount to the government as an income tax due from the payee. The payee need not file an income tax return for that particularly income any longer, since the payer already paid it on his behalf' (1). In other words, the South African entity does not have to register for tax in Botswana, even though withholding tax is levied.	Africa, and therefore the withholding taxes on professional services rendered in Mauritius will normally be subject to 10% withholding tax (8). It is stated in the IBFD publication that the withholding tax is a final tax (3). Even though there is no service fees clause in the DTA between South Africa and Mauritius, there is still a possibility not to have withholding tax deducted from payments from a Mauritius entity to a South African entity. Article 22 'Other income' of the DTA states that income derived by a non-resident not dealt with in any of the foregoing articles of the DTA shall be taxed in Mauritius (8). Article 7 'Business profits' states, in summary, that the profits derived from Mauritius by a South African entity shall only be taxed in Mauritius if the South African entity carries on an enterprise through a permanent establishment in Mauritius (8). The implication is that payments to South African entities will not have any withholding tax deducted when payment is made by a	and therefore professional services rendered in Mozambique will be subject to 20% withholding tax (9). The IBFD guide states that the withholding tax is a final tax (4). Even though there is no service fees clause in the DTA between South Africa and Mozambique, there is still a possibility not to have withholding tax deducted from payments from a Mauritius entity to a South African entity. Article 21 states that income derived by a non-resident not dealt with in any of the foregoing articles of the DTA shall be taxed in Mozambique (9). Article 7 states, in summary, that the profits derived from Mozambique by a South African entity shall only be taxed in Mozambique if the South African entity carries on an enterprise through a permanent establishment in Mozambique. The implication is that payments to South African entities will not have any withholding tax deducted when payment is made by a Mozambican entity, provided	South Africa, and therefore the withholding taxes on professional services rendered in Namibia will be subject to 25% withholding tax (10). The IBFD guide states that the withholding tax is a final tax (4). Even though there is no service fees clause in the DTA between South Africa and Namibia, there is still a possibility not to have withholding tax deducted from payments from a Namibian entity to a South African entity. Article 22 'Other income' of the DTA between South Africa and Namibia states that income derived by a non-resident not dealt with in any of the foregoing articles of the DTA shall be taxed in Namibia (10). Article 7 'Business profits' states, in summary, that the profits derived from Namibia by a South African entity shall only be taxed in Namibia if the South African entity carries on an enterprise through a permanent establishment in Namibia. The implication is that payments to South African entities will not have any withholding tax deducted when

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
		Mauritian entity, provided the South African entity does not carry on an enterprise through a permanent establishment.	the South African entity does not carry on an enterprise through a permanent establishment.	payment is made by a Namibian entity, provided the South African entity does not carry on an enterprise through a permanent establishment.
<u>**VAT**</u> **Taxable transactions**	VAT applies to the taxable supply of services by an entity in Botswana (4). A taxable supply in Botswana can be described as follows: 'A taxable transaction includes any transaction carried on continuously or regularly in Botswana or partly in Botswana, whether or not for a pecuniary profit, involving or intended to involve wholly or partly the supply of goods or services to any other person for consideration' (4). Private or recreational activities and the supply of services by an employee to an employer due to employment are excluded from being a taxable supply (4).	VAT applies to the taxable supply of services by a VAT-registered entity (taxable person) in Mauritius (3). A taxable person is a person who is registered for VAT (3). A taxable supply in Mauritius is: 'The supply of services performed in Mauritius' (3). Non-resident companies not conducting business in Mauritius through a permanent establishment do not need to register for VAT (3). However, a **reverse charge mechanism** applies when the services are utilised or performed in Mauritius (3). When a "reverse charge VAT mechanism" is applied, the VAT for services delivered inside the country (Mauritius) by a foreign entity is owed by the recipient of the services and not by the foreign service provider. VAT must not be	VAT is chargeable on the supply of services by an entity in Mozambique, and on the importation of goods (2,4). There is no general definition of a taxable person in Mozambique, but a list is available in the IBFD publication regarding certain types of transactions where persons are deemed to be taxable for VAT purposes (4). Included in that list is the following: 'Any individual or body corporate established in Mozambique which purchases certain listed services from a supplier not established in Mozambique. Such services include the services of consultants, engineers, lawyers, economists, accountants and advice bureaux in any field, including organization, marketing and development; data processing and the supply of information;	VAT applies to the taxable supply of services by an entity in Namibia and the import of services into the country (4). A taxable supply in Namibia can be described as: 'any transaction carried on continuously or regularly in Namibia or partly in Namibia, whether or not for a pecuniary profit, involving or intended to involve, in whole or in part, the supply of goods or services to any other person for consideration' (4).

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
		charged on invoices to the recipient. The recipient has to calculate, report and pay the VAT (16.) The supply is treated as if it were made by a taxable person, which allows the taxable person to claim the input VAT on the supply of those services (3).	banking and financial' (4). The implication is that it includes professional services as covered in this study.	
Registration	If the value of a company's taxable supplies is more than BWP 500 000 in a 12-month period, or if it is expected to be more than that in a 12-month period, the company has to register for VAT (4). Registration needs to be done within 21 days after becoming liable for VAT (4).	The Mauritius information derived from the IBFD publication was updated on 1 March 2013 (3). It states that the VAT registration threshold changed on 1 March 2013 from MUR 2 000 000 to MUR 4 000 000. A non-resident entity does not have to register for VAT due to the reverse charge mechanism being in place. However, a non-resident company conducting business in Mauritius through a PE will not be treated as a non-resident entity.	No threshold amount of supplies that triggers registration is stated (2,4,5). Non-residents with PEs in Mozambique must account for VAT in the same way as resident Mozambican entities. The representative must be a local (Mozambican) entity and is jointly liable with the non-resident (South African) entity for the fulfilment of all potential VAT obligations in Mozambique. The obligations laid down in the Mozambican VAT Code must be complied with by the representative on behalf of the South African entity (4.) Therefore, representative is a separate Mozambican entity, responsible for all VAT compliance of the non-resident entity (South African), jointly liable with the non-resident entity for any VAT compliance.	If the value of a company's taxable supplies is more than NAD 200 000 in a 12-month period, or if it is expected to be more than that in a 12-month period, the company has to register for VAT (4). Registration needs to be done within 21 days after becoming liable for VAT (4).

TAX TYPE	BOTSWANA	MAURITIUS	MOZAMBIQUE	NAMIBIA
			If a non-resident does not have a permanent establishment, but has a representative in Mozambique, the representative must comply with all the laws and obligations regarding VAT in Mozambique on behalf of the non-resident entity. If the non-resident does not have a permanent establishment or a representative in Mozambique, then the Mozambican entity purchasing the services must comply with the VAT laws and obligations (4). It is as if they act on behalf of a South African entity regarding VAT legislation (4). The Mozambican VAT system is in essence the same as the '**reverse charge**' VAT system used in Mauritius as described in the previous column. However, none of the publications specifically states that a 'reverse charge' mechanism is used.	
Rate	12% (2,4,5)	15% (1,3,5).	17% (2,4,5).	15% (1,4,5).

<u>Sources:</u>

1) Deloitte, 2012
2) Deloitte, 2013
3) IBFD, 2012
4) IBFD, 2013
5) PWC, 2012
6) Wikipedia, 2013
7) Howe, 2009
8) Notice, 1997
9) Government notice, 2009
10) Notice, 1999
11) SARS, 2004
12) Honiball and Olivier, 2011:841
13) RKG Consulting, 2013
14) Model Tax Convention on Income and on Capital, condensed version (OECD, 2010:24-25)
15) Anon., 2012:85
16) Insatax, 2012

The local taxes in the four selected SADC countries have now been identified. A discussion and explanation of relief available to South African residents from paying tax a second time on the same income when they have paid tax in another country is done in the next chapter.

4.5 TREATMENT OF FOREIGN TAXES PAID

Under 'Unilateral double taxation relief', the IBFD publication for SA specifies when there will be relief from tax in SA (IBFD, 2013). The relief is in the form of a credit available against such income taxed in SA to the value of any taxes paid in the host country that are not recoverable. Section 6quat(1) of the South African Income Tax Act No. 58 of 1962 makes provision for a rebate against normal South African tax of any foreign taxes paid on income from foreign sources (SAICA Legislation handbook, 2012:31; de Swardt et al, 2012:618). The 6quat rebate is a rebate against tax and not against income, which means that the rebate can only be utilised against a tax liability once the tax liability has been calculated (de Swardt et al, 2012:619).

Only foreign taxes on income proven to be payable to any sphere of government of a foreign country, without any right of recovery, will be allowed as a rebate (de Swardt et al, 2012:620). In other words, to qualify for the credit, it should not be possible to claim back the tax paid outside South Africa from the revenue authority the tax was paid to.

Per s 6quat(1B), the amount of the foreign tax that can be used as a rebate is limited to the amount calculated by the following formula: (Taxable income derived from all foreign sources / Taxable income derived from all sources) X Normal South Africa tax payable on taxable income from all sources (de Swardt et al, 2012:620).

Next, the procedure will be applied in a practical scenario to identify taxes triggered in each of the four selected countries.

4.6 APPLICATION OF THE PROCEDURES IN A PRACTICAL SCENARIO

In the previous chapters the procedures to identify potential taxes that have to be complied with, the DTA articles dealing with professional services and the local taxes in each country have been identified and discussed. In this chapter, the procedure will be applied to each of the four countries, with a short discussion. This will be done in the context of a specific practical scenario relating to a short-term assignment.

Scenario: A South African tax resident, legally employed by a South African entity, performs a due diligence for a client of the entity in another country for a continuous period of 160 days. An invoice will be sent to the client in the other country for R320 000. The invoice is not specifically for the re-charge of the employee's salary, including a profit margin. The South African entity has no other assignments in the other country and all profits are taxable in South Africa. Remuneration of the individual is taxable in South Africa.

The practical scenario applied to Botswana is summarised in Table 3 below:

4.6.1 Scenario applied to BOTSWANA

Table 3: Scenario applied to Botswana

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services	As Botswana is not the place of incorporation of the South African company or of its registered office, and since it is not managed and controlled in Botswana, it is not a Botswana resident (3). Therefore, tax will only be payable on income arising from a Botswana **source** at 30%, the tax rate of **a branch** (3). However, in step 2, the effect of the DTA will be considered.	Since less than 183 days are spent in Botswana and the employee's permanent place of abode is not in Botswana, the individual will not be seen as a resident of Botswana (3). However, the person will be liable for tax on the income derived from a Botswana **source**, in other words, the salary paid in South Africa will be taxable in both South Africa (South African residents are taxed on worldwide income) and Botswana for the 160 days spent in Botswana (3). This is reduced by the DTA in place, which will be discussed in step 2.	Withholding tax of 15% is levied on technical fees paid to South Africa (3). This is reduced by a DTA, which will be considered in step 2.	As services are rendered in Botswana to another person for consideration, and it is not for private or recreational purposes, the services are classified as 'taxable supplies' (3). The invoice for R 320 000 needs to be converted to Botswana Pula. If it is more than BWP 500 000, the South African company will need to register for VAT in Botswana. If not, there will be no VAT implications.
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax	As mentioned above in Chapter 4.3.2, the payments for services rendered should be treated as business profits. Article 7 of the DTA between Botswana and South Africa states that no tax is payable in Botswana, unless the South African entity carries on	Article 14 in the DTA between South Africa and Botswana is in principle the same as article 15 in the Model Tax Convention on Income and on Capital (1,2). Per the DTA, there are three criteria to be met to qualify for relief offered by the DTA (1). As not more	Article 20(1) of the DTA between South Africa and Botswana states that technical fees can be taxed in the country where they arise (1). However, article 20(2) states that the tax charged in the state in which the technical fees arise shall not be more than	

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
liability in the host country. (All South African DTAs are available on the SARS website).	business in Botswana through a PE (3). To determine whether a permanent establishment exists or not, article 5 'permanent establishment' of the DTA between SA and Botswana needs to be considered (3). Since the South African entity has no fixed place of business through which the business of the enterprise is carried on in Botswana, and none of the specific inclusions were triggered, the South African entity does not have a permanent establishment in Botswana (1). Therefore, there will be no corporate tax implications unless profits are dealt with in another article separately. The article dealing with taxes on profits in the DTA, is article 20 'Technical fees' (1). As stated in Chapter 4.4.2 above, technical fees include professional services. Taxes on profits in article 20 are called 'withholding taxes'. Therefore, there are corporate tax in the form of withholding tax. Refer to the 'withholding tax' column for a discussion on	than 183 days are spent in Botswana, the first requirement of the DTA (article 14(2)(a) is met (1). As stated when corporate tax was dealt with, a permanent establishment has not been created by the South African entity in Botswana and the remuneration is therefore not borne by a permanent establishment that the South African entity has in Botswana (article 14(2)(c). Therefore, two conditions have so far been met. The last condition of the DTA (article 14(2)(b) is discussed in steps three and four.	10% of the gross amount charged for those fees (1,3). The normal rate for Botswana withholding tax is 15%, but the DTA limits this to a maximum of 10% (3). Article 20(3) states that administrative, technical, managerial and consultancy fees are specifically included in the definition of technical fees, but that payments directly made to employees of the Botswana entity making the payment are excluded (1). Article 20(4) and (5) state that the provisions of paragraphs 1 and 2 shall not apply if the South African entity carries on business in Botswana through a permanent establishment situated in Botswana (1). In such cases, the provisions of article 7 'Business profits' will apply. In the scenario, this will not be applicable as the South African entity does not have a permanent establishment in Botswana. Therefore, 10% withholding tax should be deducted from payments made by the entity in Botswana to the entity in South Africa. In the scenario this implies that 10% of R 320 000,	

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	withholding tax.		converted to Pula, will be paid over to the Botswana United Revenue Authority and the remaining 90% will be paid to the South African entity. Article 20(5) states that technical fees are deemed to arise in the country where the payer is resident (1). This has the effect that services will be deemed to arise in Botswana even if some of the services that an entity of Botswana is paying for were rendered in South Africa. Therefore, Botswana will have the right to levy 10% withholding tax on any payments made to South Africa.	
Step 3: Establish whether the compensation will be paid by the home country and not charged to any entity in the host country, as the latter may disqualify relief provided by the DTA.		As the employee's salary is paid by the South African entity, and no fees specifically covering the salary or other costs relating to the employee are charged to the Botswana client, the last requirement is partially met (article 14(2)(b)) (1). Step 4, the last step, still needs to be taken into account.		
Step 4: If applicable, establish whether the host country has adopted the		Since the South African entity is responsible for the deliverable and the individual remains under its supervision and control, and there is no		

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
‘economic employer’ approach as this. may disqualify the relief provided by the DTA.		evidence of other factors indicating an economic employer/employee relationship, the last requirement (article 14(2)(c)) is also met (1). (The economic employer principle was addressed in Chapter 4.3.2.4 above). Therefore, no personal tax is payable in Botswana.		

<u>Source:</u>

1) SARS, 2004
2) Model Tax Convention on Income and on Capital, condensed version (OECD, 2010:31)
3) Refer to Chapter 4.4.3 above

The practical scenario applied to Mauritius is summarised in Table 4 below:

4.6.2 Scenario applied to MAURITIUS

Table 4: Scenario applied to Mauritius

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services.	As Mauritius is not the place of incorporation of the South African company, and since it is not managed and controlled in Mauritius, it is not a Mauritius resident (3). Therefore, tax will only be payable on income arising from a Mauritius source, at 15% (3). However, in step 2, the effect of the DTA should be considered.	Since less than six months are spent in a tax year in Mauritius, the individual does not have a fixed place of residence in Mauritius and has a combined presence of less than 270 days in the current year and the previous two years, the individual will not be seen as a resident of Mauritius (3). However, the person will be liable for tax on the income derived from a Mauritius source, in other words, the salary paid in South Africa will be taxable in both South Africa and Mauritius for the 160 days spent in Mauritius (3). This is reduced by the DTA between South Africa and Mauritius, which will be discussed in step 2.	The domestic withholding tax rate applicable for Mauritius is 10% for payments made to non-residents for any services rendered in Mauritius (3). This is reduced by a DTA, which will be considered in step 2.	As the professional services rendered are 'the supply of services performed in Mauritius', the services are classified as 'taxable supplies' (1). However, since the reverse charge VAT mechanism is applied for services utilised or performed in Mauritius, there is no need to register for VAT in Mauritius (3). Still, if a permanent establishment exists for the South African entity in Mauritius, it will be required to register for VAT (3). This will be addressed in step 2.
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host	The DTA between South Africa and Mauritius contains article 14 'Independent personal services', which should be read with article 7 'Business profits' (3).	Article 15 in the DTA between South Africa and Mauritius is in principle the same as article 15 in the MTC (1,2). There are three criteria to be met to qualify for relief offered by the DTA (1). As not more than 183	Since there is no specific article in the DTA dealing with withholding tax, the income from the services rendered will be classified as business profits under article 7(4). Further, as article 7 states that only income	As determined in step 2 when the corporate tax implications were discussed in the corporate tax column, no permanent establishment exists in Mauritius. Therefore, there is no need

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
country, providing relief from any tax liability in the host country. (All South African DTAs are available on the SARS website).	As mentioned in Chapter 4.3.2, the payments for services rendered should be treated as business profits. Article 7 states that no tax is payable in Mauritius, unless the South African entity carries on business in Mauritius through a PE (3). To determine whether a permanent establishment exists or not, article 5 'permanent establishment' of the DTA between South Africa and Mauritius needs to be considered (1). Since the South African entity has no fixed place of business through which the business of the enterprise is carried on in Mauritius and none of the specific inclusions were triggered, the South African entity does not have a permanent establishment in Mauritius (1). Therefore, there will be no corporate tax implications unless profits are dealt with in another article in the DTA separately. Since there is no other article relating to profits due to services rendered in Mauritius, no corporate tax is payable (1).	days are spent in Mauritius, the first requirement of the DTA (article 15(2)(a) is met (1). As stated in step 2 when corporate tax was addressed in the corporate tax column, a permanent establishment has not been created by the South African entity in Mauritius and the remuneration is therefore not borne by a permanent establishment the South African entity has in Mauritius (article 15(2)(c) (1). Therefore, two conditions have so far been met. The last condition (article 15(2)(b) is discussed in steps three and four.	derived through a permanent establishment will be taxable in Mauritius and, in this scenario, the South African entity has no permanent establishment in Mauritius, the profits will not be taxable in Mauritius (1). Therefore, as the income is not taxable in Mauritius, the 10% withholding tax that normally applies will not apply and no withholding tax will be levied from payments from the Mauritius entity to the South African entity.	to register for VAT.

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
Step 3: Establish whether the compensation will be paid by the home country and not charged to any entity in the host country, as the latter may disqualify the relief provided by the DTA.		As the employee's salary is paid by the South African entity, and does not charge fees specifically covering the salary and other costs relating to the employee to the Mauritius client, the last requirement is so far met (article 14(2)(b)) (1). Step 4, the last step, still needs to be taken into account.		
Step 4: If applicable, establish whether the host country has adopted the 'economic employer' approach as it may disqualify the relief provided by the DTA.		Since the South African entity is responsible for the deliverable and the individual remains under their supervision and control, as well as the fact that there is no evidence of other factors indicating an economic employer/employee relationship, the last requirement (article 15(2)(c) is also met (1). (The economic employer principle was addressed in Chapter 4.3.2.4 above). Therefore, no personal tax is payable in Mauritius.		

<u>Sources:</u>

1) Notice, 1997
2) Model Tax Convention on Income and on Capital, condensed version (OECD, 2010:31)
3) Refer to Chapter 4.4.3 above

The practical scenario applied to Mozambique is summarised in Table 5 below:

4.6.3 Scenario applied to MOZAMBIQUE

Table 5: Scenario applied to Mozambique

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and it's employee who provides the services.	As Mozambique is not the place of incorporation of the South African company, and since it does not have its place of effective management in Mozambique, and its place of incorporation or headquarters is not in Mozambique, it is not a Mozambique resident (3). Therefore, tax will only be payable on income arising from a Mozambique source, at 32% (3). However, in step 2, the effect of the DTA should be considered	Since less than 180 days are spent in Mozambique, and the employee has no permanent residence in Mozambique, the individual will not be seen as a resident of Mozambique (3). However, the person will be liable for tax on the income derived from a Mozambique source, in other words, the salary paid in South Africa will be taxable in both South Africa and Mozambique for the 160 days spent in Mozambique (3). This is reduced by the DTA in place, which will be discussed in step 2.	The domestic withholding tax rate applicable for Mozambique is 20% for payments made to non-residents for any services rendered in Mozambique (3). This is reduced by a DTA, which will be considered in step 2.	As professional services rendered are part of the list stating Vattable transactions in Mozambique, the services are classified as 'taxable supplies' (3). However, since the concept of the reverse charge VAT mechanism is applied for services utilised or performed in Mozambique, there is no need to register for VAT in Mozambique (3). Still, if a permanent establishment exists for the South African entity in Mozambique, it will be required to register for VAT. This will be addressed in step 2.
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax	As mentioned in Chapter 4.3.2, the payments for services rendered should be treated as business profits (3). Article 7 states that no tax is payable in Mozambique, unless the South African entity carries on business in Mozambique through a PE (1).	Article 14 in the DTA between South Africa and Mozambique is in principle the same as article 15 in the MTC (1,2). There are three criteria to be met to qualify for relief offered by the DTA (1). As not more than 180 days are spent in Mozambique, the first	Since there is no specific article dealing with withholding tax, the income from the services rendered will be classified as business profits under article 7 (1). Further, as article 7 states that only income derived through a permanent establishment will be taxable in	As determined in step 2 when the corporate tax implications were discussed in the corporate tax column, no permanent establishment exists in Mozambique. Therefore, there is no need to register for VAT.

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
liability in the host country. (All South African DTAs are available on the SARS website).	To determine whether a permanent establishment exists or not, article 5 ‘Permanent Establishment’ of the DTA between South Africa and Mozambique needs to be considered (1) Since the South African entity has no fixed place of business through which the business of the enterprise is carried on in Mozambique and none of the specific inclusions were triggered, the South African entity does not have a permanent establishment in Mozambique (1). Therefore, there will be no corporate tax implications unless profits are dealt with by another article separately. Since there is no other article relating profits due to services rendered in Mozambique, no corporate tax is payable (1).	requirement of the DTA (article 14(2)(a) is met (1). As stated in step 2 in the corporate tax column, a permanent establishment has not been created by the South African entity in Mozambique and the remuneration is therefore not borne by a permanent establishment the South African entity has in Mozambique (article 14(2)(c) (1). Therefore, two conditions have so far been met. The last condition (article 14(2)(b) is discussed in steps three and four (1).	Mozambique and, in this scenario, the South African entity has no permanent establishment in Mozambique, the profits will not be taxable in Mozambique (1). Therefore, as the income is not taxable in Mozambique, the 20% withholding tax that normally applies will not apply and no withholding tax will be levied from payments from the Mozambique entity to the South African entity.	
Step 3: Establish whether the compensation will be paid by the home country and that it will not be charged to any entity in the host country, as		As the employee’s salary is paid by the South African entity, and no fees are charged specifically covering the salary and other costs relating to the employee to the Mozambique client, the last requirement is so far met (article 14(2)(b)) (1). Step 4,		

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
the latter may disqualify the relief provided by the DTA.		the last step, still needs to be taken into account.		
Step 4: If applicable, establish whether the host country has adopted the 'economic employer' approach as it may disqualify the relief provided by the DTA.		Since the South African entity is responsible for the deliverable and the individual remains under their supervision and control, as well as the fact that there is no evidence of other factors indicating an economic employer/employee relationship, the last requirement (article 14(2)(c) is also met (1). (The economic employer principle was addressed in Chapter 4.3.2.4 above). Therefore, no personal tax is payable in Mozambique.		

<u>Sources:</u>

1) Government notice: 2009
2) Model Tax Convention on Income and on Capital, condensed version (OECD, 2010:31)
3) Refer to Chapter 4.4.3 above

The practical scenario applied to Namibia is summarised in Table 6 below:

4.6.4 Scenario applied to NAMIBIA

Table 6: Scenario applied to Namibia

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services.	As Namibia is not the place of incorporation of the South African company or of its registered office and since it is not managed and controlled in Namibia it is not a Namibian resident (3). Therefore, tax will only be payable on income arising from a Namibian source at 34% (3). However, in step 2, the effect of the DTA should be considered.	Since residents and non-residents are taxed on their income from a Namibian source, there is no need to determine whether a person is a resident of Namibia (2). Therefore, the salary paid in South Africa will be taxable in both South Africa and Namibia for the 160 days spent in Namibia. This is reduced by the DTA in place, which will be discussed in step 2.	25% withholding tax is levied on technical fees paid to South Africa (4). This is reduced by a DTA, which will be considered in step 2.	As the provision of services is deemed a taxable supply in Namibia, the services are classified as 'taxable supplies' (3). Enterprises with a turnover of more than NAD 200 000 in a 12-month period are required to register for VAT purposes (3). The invoice for R 320 000 needs to be converted to Namibian dollars. If it is more than NAD 200 000, the South African company needs to register for VAT in Namibia. If not, there will be no VAT implications.
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax liability in the host country. (All South African	As mentioned above in Chapter 4.3.2, the payments for services rendered should be treated as business profits. Article 7 of the DTA between Namibia and South Africa states that no tax is payable in Namibia, unless the South African entity carries on business in Namibia through a PE (1).	Article 15 'Dependent personal services' in the DTA between South Africa and Namibia is in principle the same as article 15 in the MTC (1,2). There are three criteria to be met to qualify for relief offered by the DTA (1). As not more than 183 days are spent in Namibia in a 12-month period, the first requirement of the DTA (article 15(2)(a) is met (1). As stated in	Since there is no specific article dealing with withholding tax in the DTA, the income from the services rendered will be classified as business profits under article 7 (1,3). Further, as article 7 states that only income derived through a permanent establishment will be taxable in Namibia and, in this scenario, the South African entity has no	

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
DTAs are available on the SARS website).	To determine whether a permanent establishment exists or not, article 5 'Permanent Establishment' of the DTA between South Africa and Namibia needs to be considered (1). Since the South African entity has no fixed place of business through which the business of the enterprise is carried on in Namibia and none of the specific inclusions were triggered, the South African entity does not have a permanent establishment in Namibia (1). Therefore, there will be no corporate tax implications unless profits are dealt with in another article separately. Since there is no other article relating to profits due to services rendered in Namibia, no corporate tax is payable (1).	step 2 in the corporate tax column, a permanent establishment has not been created by the South African entity in Namibia and the remuneration is therefore not borne by a permanent establishment the South African entity has in Namibia (article 15(2)(c) (1). Therefore, two conditions have so far been met. The last condition (article 15(2)(b) is discussed in steps 3 and 4 (1).	permanent establishment in Namibia, the profits will not be taxable in Namibia (1). Therefore, as the income is not taxable in Namibia, the 25% withholding tax that normally applies will not apply and no withholding tax will be levied from payments from the Namibian entity to the South African entity.	
Step 3: Establish whether the compensation will be paid by the home country and that it will not be charged to any entity in the host country, as		As the employee's salary is paid by the South African entity, and the South African entity does not charge fees specifically covering the salary and other costs relating to the employee to the Namibian client, the last requirement is so far met (article 15(2)(b)) (1).		

PROCEDURES	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
the latter may disqualify the relief provided by the DTA.		Step 4, the last step, still needs to be taken into account.		
Step 4: If applicable, establish whether the host country has adopted the 'economic employer' approach as it may disqualify the relief provided by the DTA.		Since the South African entity is responsible for the deliverable and the individual remains under their supervision and control, as well as the fact that there is no evidence of other factors indicating an economic employer/employee relationship, the last requirement (article 15(2)(c) is also met (1). (The economic employer principle was addressed in Chapter 4.3.2.4 above). Therefore, no personal tax is payable in Namibia.		

<u>Sources:</u>

1) Notice: 1999
2) Model Tax Convention on Income and on Capital, condensed version (OECD, 2010:31)
3) Refer to Chapter 4.4.3 above

For all four countries above, the procedures were applied and it was possible to identify and analyse the taxes that are triggered when going on a short-term assignment.

In the next chapter the conceptual framework will be compiled based on the procedures and other information identified in the chapters up to now.

4.7 CONCEPTUAL FRAMEWORK BASED ON THE PROCEDURE AND COMPLIANCE REQUIREMENTS IDENTIFIED

In the previous chapters the procedures to follow to identify the relevant taxes that are triggered when going on a short-term assignment, and the relevant DTA articles that may provide tax relief when a tax is triggered in another country, were identified and discussed. Also, the local taxes in the four selected countries were identified and discussed. The procedure was then successfully applied to a practical scenario to identify the potential taxes than could be triggered when going on a short-term assignment for all four selected countries.

In this chapter the procedures, taxes and principles identified will be summarised in a conceptual tax-compliance framework.

The conceptual tax-compliance framework is set out in Table 7 below:

Table 7: Conceptual tax-compliance framework

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	Definition: A tax that must be paid by a corporation based on the amount of profit generated. The amount of tax, and how it is calculated, varies depending upon the region where the company is located.	**Definition:** Tax paid on one's personal income as distinct from the tax paid on the firm's earnings.	**Definition:** A tax levied by the source country at a flat rate on the gross amount of dividends, royalties, interest or other payments made by residents to non-residents. The tax is collected and paid to the government by the resident payer.	**Definition:** An indirect tax levied on the consumption of goods and services.
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services. (Use IBFD and Deloitte electronic publications).	a) Determine whether the entity is a **resident** or **non-resident** in the host country. b) Determine what the **tax basis** is of the host country for residents and non-residents. The two main tax bases are: **Residency base:** Entities classified as residents are taxed on their worldwide income. **Source base:** Entities classified as residents are taxed only on income from a source in the host country.	a) Determine whether the individual rendering the service is a **resident** or **non-resident** in the host country. b) Determine what the **tax basis** is in the host country for residents and non-residents. The two main tax bases are: **Residency base**: Individuals classified as residents are taxed on their worldwide income. **Source base**: Individuals classified as residents are taxed only on income from a source in the host country.	a) Determine **whether withholding tax is levied** on technical fees through local legislation in the host country. If not, no withholding tax is payable.	a) Determine whether the services rendered are classified as **'taxable supplies'.** b) If it is classified as 'taxable supplies', determine what **VAT system** is used in the host country. The two main systems are: **Monetary Threshold:** VAT registration is compulsory if a certain monetary threshold is exceeded or will be exceeded in a 12-month period; **Reverse Charge:** VAT levying and declaration is the responsibility of the

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	If an entity is a non-resident in a host country, the income that the entity generated in the host country will be taxable in the host country.	If an individual is a non-resident in a host country, the income that the individual generated in the host country will be taxable in the host country.		client in the host country.
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax liability in the host country. (All South African DTAs are available on the SARS website).	a) Identify the **'business profits' article** (normally article 7) which states that income will only be taxable in the host country if a PE exists in the host country. b) Identify the article dealing with **PEs** (normally article 5) and determine whether the assignment is included or excluded from creating a permanent establishment in the host country. The two main types of inclusions are: **- Specific period**: Where services are furnished through an employee where the services are rendered in the host country for more than a certain period (normally 183 days) in a 12-month period (other criteria per the DTA still have to be taken into account). This in turn can be subdivided into two separate categories: *The period is calculated	a) Identify the **'dependent personal services'** article or the **'income from employment'** article (same meaning), the article that states conditions for tax relief for an individual on **remuneration**. The article states that remuneration shall be taxed in the country where employment is exercised, except when: **Period:** Less than a certain number of days are spent in the host country (normally 183); and **Permanent establishment:** The remuneration is not paid by a permanent establishment that the entity in the home country has in the host country; and See step 3	a) As mentioned in corporate tax, the **'technical fees'** article indicates the maximum rate of withholding tax. b) If no 'technical fees' article exists, no permanent establishment exists and a 'business profits' article exists, then no withholding tax will be payable. c) If no DTA was in place, withholding tax would have been levied at the host country's local withholding tax rate.	a) If a reverse charge VAT mechanism exists and taxable supplies are made, an entity has to register for VAT in the host country if a **permanent establishment exists** in the host country. It was determined whether a **permanent establishment** exists when corporate tax was addressed in step 2.

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	for the **same or related projects**; *The period is calculated for all projects, even if **projects are not related**. - **No specific period:** No specific period is specified, but other criteria listed in the DTA have to be taken into account. c) If a **permanent establishment exists**, income generated in the host country will be taxable in both the home and host country. d) If a **permanent establishment does not exist**, identify whether there is an article in the DTA dealing with **'technical fees'**: If identified, the **'technical fees'** article will indicate the maximum rate at which withholding tax (a form of corporate tax) will be levied. If **no 'technical fees'** article exists, and no permanent establishment exists, there will be no corporate tax payable.			
Step 3: Establish whether the compensation will be		If the entity in the home country charges fees to the		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
paid by the home country and that it will not be charged to any entity in the host country, as the latter may disqualify the relief provided by the DTA.		entity in the host country specifically **covering the salary** and other costs relating to the employee, no relief will be available for the employee from being taxed in both countries on the remuneration.		
Step 4: If applicable, establish whether the host country has adopted the 'economic employer' approach as it may disqualify the relief provided by the DTA.		**Economic employer:** Identify whether an **employment relationship** exists that is different from the formal/contractual relationship. The key indicators are: - Is the entity in the home country contracting to perform agreed services with an **identifiable deliverable** for which they are responsible? - Who will **supervise and control** the employee rendering the services in the host country? - Which entity bears the **responsibility** or **risk** for the results produced by the individual's work? If it is the entity in the host country, the real economic employer would most probably be the entity in the host country. If the '**economic employer**'		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
		principle is applied in the host country, the individual will be taxable on the remuneration in both the home and host countries.		

Source: Chapters 4.1 - 4.6 above

The conceptual tax-compliance framework was constructed based on the procedures identified, and the tax concepts of the four selected SADC countries selected. In the next chapter it will be tested on two other SADC countries.

4.8 FRAMEWORK TESTING

Now that the conceptual tax-compliance framework has been compiled, it will be tested on two other African countries in the Southern African Development Community. The testing is done to get assurance that the framework is also relevant to other SADC countries and not just the four selected SADC countries. Testing will be done by applying the same practical scenario, previously applied to the four selected SADC countries, to two other SADC countries, using the compliance framework to determine potential taxes triggered when rendering services on a short-term assignment.

Scenario: A South African tax resident, legally employed by a South African entity, performs a due diligence for a client of the entity in another country for a continuous period of 160 days. An invoice will be sent to the client in the other country for R320 000. The invoice is not specifically for the re-charge of the employee's salary, including a profit margin. The South African entity has no other assignments in the other country and all profits are taxable in SA. Remuneration of the individual is taxable in South Africa.

4.8.1 Framework applied to MALAWI

The first country selected is Malawi, with which South Africa has a DTA (SARS, 1971).

The conceptual tax-compliance framework is tested for Malawi in Table 8 below:

Table 8: Conceptual tax-compliance framework tested for Malawi

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	Definition: A tax that must be paid by a corporation based on the amount of profit generated. The amount of tax, and how it is calculated, varies depending upon the region where the company is located.	**Definition:** Tax paid on one's personal income as distinct from the tax paid on the firm's earnings.	**Definition:** A tax levied by the source country at a flat rate on the gross amount of dividends, royalties, interest or other payments made by residents to non-residents. The tax is collected and paid to the government by the resident payer.	**Definition:** An indirect tax levied on the consumption of goods and services.
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and it's employee who provides the services. (Use IBFD and Deloitte electronic publications).	a) Determine whether the entity is a **resident** or **non-resident** in the host country. The IBFD publication states that: 'A company is considered a resident of Malawi if it is incorporated in Malawi' (1). As the South African entity is not incorporated in Malawi, it is not a resident of Malawi. b) Determine what the **tax basis** is of the host country for residents and non-residents. Tax basis: Source (3)	a) Determine whether the individual rendering the service is a **resident** or **non-resident** in the host country. The IBFD publication states that: 'Any individual is considered to be resident in Malawi if he is present in Malawi for an aggregate of 183 or more days in any continuous period of 12 months or has a PE in Malawi' (1). As the individual has remained for less than 183 days in Malawi and does not have a permanent establishment in Malawi, he is not a resident of Malawi.	a) Determine **whether withholding tax is levied** on technical fees through local legislation in the host country. If none, no withholding tax is payable. A withholding tax of 15% applies on technical service fees paid to non-residents (3).	a) Determine whether the services rendered are classified as **'taxable supplies'.** Per the IBFD publication: 'A taxable supply is defined as a supply of goods or services made by a taxable person for actual or deemed consideration in the course of, or as a part of, his or her business activities. Anything done which is not a supply of goods will be treated as a supply of services, including performing services for another person' (1). The services rendered are therefore classified as taxable.

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	Therefore, the income that the entity generated in the host country will be taxable in the host country.	b) Determine what the **tax basis** is in the host country for residents and non-residents. Tax basis: Source (2) Therefore, the income that the individual earned while being in the host country will be taxable in the host country.		b) If the services are classified as 'taxable supplies', determine what **VAT system** is used in the host country. A **reverse charge mechanism** applies on imported services, and therefore, VAT levying and declaration is the responsibility of the client in the host country (1).
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax liability in the host country. (All South African DTAs are available on the SARS website).	a) Identify the **'business profits' article** (normally article 7) which states that income will only be taxable in the host country if a permanent establishment exists in the host country. Article 3(1) of the DTA states: 'The industrial and commercial profits of an enterprise of one of the Contracting States shall not be subject to tax in the other Contracting State unless the enterprise is engaged in trade or business in the other Contracting State through a **permanent establishment** in that other Contracting State' (2).	a) Identify the **'dependent personal services'** article or the **'income from employment'** article (same meaning), the article that states conditions for tax relief for an individual on **remuneration**. Article 8(1) states: 'An individual who is a resident of South Africa shall be exempt from Malawi tax on profits or **remuneration** in respect of personal, including professional, services performed within Malawi in any year of assessment if – (a) he is present within Malawi for a period or periods not exceeding in the aggregate 183 days	a) As mentioned in corporate tax, the **'technical fees'** article indicates the maximum rate of withholding tax. No 'technical fees' article identified (2). b) If no 'technical fees' article exists, no permanent establishment exists and a 'business profits' article exists, then no withholding tax will be payable. Therefore, as all the above are complied with, no withholding tax is payable.	a) If a reverse charge VAT mechanism exists and taxable supplies are made, an entity has to register for VAT in the host country if a **permanent establishment exists** in the host country. It was determined whether a **permanent establishment** exists when corporate tax was addressed in step 2. As no permanent establishment exists, it is not needed to register for VAT.

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	b) Identify the article dealing with **permanent establishments** (normally article 5) and determine whether the assignment is included or excluded from creating a permanent establishment in the host country. Article 2(k)(i) states that : 'The term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on' (2). The rest of article 2(k) states other criteria that will trigger a permanent establishment. No specific time periods are mentioned. When this scenario is applied to the conditions in the article, none of the criteria triggers a permanent establishment (2). c) If a **permanent establishment exists**, income generated in the host country will be taxable in both the home and host country.	during that year; and (b) the services are performed for or on behalf of a person resident in South Africa; and (c) the profits or remuneration are subject to South African tax'. Therefore, as the individual is present in Malawi for less than 183 days, services are performed on behalf of a South African resident and the individual's remuneration is taxable in South Africa, no personal income tax is payable in Malawi.		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	No permanent establishment exists. d) If a **permanent establishment does not exist**, identify whether there is an article in the DTA dealing with **'technical fees'**: There is no 'technical fees' article (2). Therefore, since there is no **'**technical fees**'** article, and no permanent establishment exists, there will be no corporate tax payable.			
Step 3: Establish whether compensation will be paid by the home country and that it will not be charged to any entity in the host country, as the latter may disqualify the relief available provided by the DTA.		If the entity in the home country charges fees to the entity in the host country specifically **covering the salary** and other costs relating to the employee, no relief will be available for the employee from being taxed in both countries on the remuneration. This condition is not applicable in the DTA between South Africa and Malawi.		
Step 4: If applicable, establish whether the host country has adopted the		**Economic employer:** Identify whether an **employment relationship**		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
‘economic employer’ approach as it may disqualify the relief provided by the DTA.		exists that is different from the formal/contractual relationship. As an identifiable deliverable will be produced, the individual will be under supervision and control of the South African entity and the South African entity will carry the risk and responsibility of the deliverable, the employer/employee relationship is not different in substance than it is in form.		

<u>Sources</u>:

1) IBFD, 2013
2) SARS, 1971
3) Deloitte, 2012

The effectiveness of applying the framework to Malawi will be discussed next.

4.8.2 Discussion on the effectiveness of applying the framework to MALAWI

Below is a discussion on the effectiveness of the conceptual framework when the procedures are followed and the tax concepts applied to identify potential taxes triggered when going on a short-term assignment to Malawi:

- In step 1 the local taxes in Malawi that could be triggered due to the short-term assignment were identified. No new tax was identified, and no new tax concept within each of the four main taxes not already mentioned in the conceptual framework was identified.

  Therefore, step 1 of the framework was successfully applied to identify taxes in Malawi.

- In step 2 the DTA in place between the home and host country was inspected to determine whether there are relief from taxes identified. The DTA between South Africa and Malawi was not a treaty based on the MTC lay-out. However, it was still possible to identify the relevant articles in the DTA where the principals mentioned in the framework relating to corporate and personal tax were addressed. The key words as indicated in the framework were identifiable in the DTA, even though the structuring of the DTA was quite different from that of the MTC.

  Regarding withholding tax and VAT, no new principle was identified not already included in the framework.

  Therefore, step 2 of the framework to identify potential tax relief available due to the existence of a DTA between South Africa and Malawi was successfully applied.

- In step 3 it was determined whether a condition existed that may disqualify the relief from personal tax provided by the DTA. (Step 3 and step 4 only apply to personal tax). There was no condition mentioned in the DTA that disqualified relief from personal tax that differed from the MTC article.

Therefore, step 3 of the framework to determine whether a condition exists that disqualifies relief from personal tax was successfully applied.

In step 4 the real ‘economic employer’ was identified. The guidelines provided in the framework should be the same for all countries and the conditions in the DTA will have no effect on it.

Therefore, step 4 of the framework to determine the real ‘economic employer’ was successfully applied.

In summary, the procedures and principles in the framework could successfully be applied to determine the potential taxes triggered, and no new principles not already mentioned in the framework were identified.

4.8.3 Framework applied to TANZANIA

The second country selected is Tanzania, with which South Africa has a DTA (Government Notice, 2007).

The conceptual tax-compliance framework is tested for Tanzania in Table 9 below:

Table 9: Conceptual tax-compliance framework tested for Tanzania

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	Definition: A tax that must be paid by a corporation based on the amount of profit generated. The amount of tax, and how it is calculated, varies depending upon the region where the company is located.	**Definition:** Tax paid on one's personal income as distinct from the tax paid on the firm's earnings.	**Definition:** A tax levied by the source country at a flat rate on the gross amount of dividends, royalties, interest or other payments made by residents to non-residents. The tax is collected and paid to the government by the resident payer.	**Definition:** An indirect tax levied on the consumption of goods and services.
Step 1: Analyse the domestic law of the host country to determine whether there are tax implications in the host country for both the home country employer and its employee who provides the services. (Use IBFD and Deloitte electronic publications).	a) Determine whether the entity is a **resident** or **non-resident** in the host country. The IBFD publication states that: 'A company is resident in Tanzania if it is incorporated or formed under the laws of the United Republic of Tanzania, or if the management and	a) Determine whether the individual rendering the service is a **resident** or **non-resident** in the host country. The IBFD publication states that 'An individual is deemed to be resident in Tanzania: '- if he has a permanent home in Tanzania and was	a) Determine **whether withholding tax is levied** on technical fees through local legislation in the host country. If none, no withholding tax is payable. A withholding tax of 15% applies on technical service fees paid to non-residents (1).	a) Determine whether the services rendered are classified as **'taxable supplies'.** Per the IBFD publication: 'A taxable supply is defined as any supply of goods or services made by a taxable person in the course of or in the furtherance of his business. Anything which is

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	control of its affairs are exercised in the United Republic of Tanzania during any period in the year of income' (1). As the South African entity is not incorporated in Tanzania and it is not managed and controlled in Tanzania, it is not a resident of Tanzania. b) Determine what the **tax basis** is of the host country for residents and non-residents. Tax basis: Worldwide income (residence) (2) Therefore, the income that the entity generated in the host country will be taxable in the host country.	present in Tanzania during any part of that year of income; or '- where he has no permanent home in Tanzania: ' -if he was present in Tanzania in that year of income for a period or periods amounting in aggregate to 183 days or more; or ' -if he was present in Tanzania in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each such year of income; or '-if he is an employee or an official of the government of Tanzania posted abroad'. (1.) As the individual does not comply with any of the requirements to be classified as a resident, he is not a resident of Tanzania. b) Determine what the **tax basis** is in the host country for residents and non-residents. Tax basis: Worldwide		not a supply of goods but which is done for consideration, including the granting, assignment or surrender of all or part of any right, is regarded as a 'supply of services' (1). The services rendered are therefore classified as taxable. b) If it is classified as 'taxable supplies', determine what **VAT system** is used in the host country. As no specific monetary threshold that triggers VAT registration for non-residents is mentioned, a **reverse charge mechanism** applies on imported services. Therefore, VAT levying and declaration is the responsibility of the client in the host country.

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
		income (residency) (2). Therefore, the income that the individual earned while being in the host country will be taxable in the host country.		
Step 2: If any taxes are triggered, see if there is a DTA in place between the home country and the host country, providing relief from any tax liability in the host country. (All South African DTAs are available on the SARS website).	a) Identify the **'business profits' article** (normally article 7) which states that income will only be taxable in the host country if a permanent establishment exists in the host country. Article 7(1) of the DTA states: 'The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein' (2). b) Identify the article dealing with permanent establishments (normally article 5) and determine whether the assignment is included or excluded from creating a permanent establishment in the host country. Article 5(1) states that: 'For	a) Identify the **'dependent personal services'** article or the **'income from employment'** article (same meaning), the article that states conditions for tax relief for an individual on **remuneration**. Article 14: 'Income from employment' states that remuneration shall be taxed in the country where employment is exercised, except when (article 14(2)): (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned; and (b) the remuneration is not borne by a PE which the employer has in the other State (2).'	a) As mentioned in corporate tax, the **'technical fees'** article indicates the maximum rate of withholding tax. No 'Technical Fees article identified (2). b) If no 'technical fees' article exists, no permanent establishment exists and a 'business profits' article exists, then no withholding tax will be payable. Therefore, as all the above are complied with, no withholding tax is payable.	a) If a reverse charge VAT mechanism exists and taxable supplies are made, an entity has to register for VAT in the host country if a **permanent establishment exists** in the host country. It was determined whether a **permanent establishment** exists when corporate tax was addressed in step 2. As no permanent establishment exists, it is not necessary to register for VAT.

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	the purposes of this Agreement, the term ‘PE ’ means a fixed place of business through which the business of an enterprise is wholly or partly carried on’ (2). The rest of article 5 states other criteria that will trigger a PE . No specific time periods are mentioned. When this scenario is applied to the conditions in the article, none of the criteria triggers a permanent establishment (2). c) If a **permanent establishment exists**, income generated in the host country will be taxable in both the home and the host country. No permanent establishment exists. d) If a **permanent establishment does not exist**, identify whether there is an article in the DTA dealing with ‘technical fees’ There is no **‘technical fees’** article (2). Therefore, since there is no	Therefore, as the individual spends less than 183 days in Tanzania and no permanent establishment exists in Tanzania, income of the individual will not be taxable in Tanzania. However, the third requirement still has to be met.		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
	'technical fees' article, and no permanent establishment exists, there will be no corporate tax payable.			
Step 3: Establish whether the compensation will be paid by the home country and that it will not be charged to any entity in the host country, as the latter may disqualify the relief available provided by the DTA.		If the entity in the home country charges fees to the entity in the host country specifically **covering the salary** and other costs relating to the employee, no relief will be available for the employee from being taxed in both countries on the remuneration. Article 7(2)(b) states the third requirement, which is: 'the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State' (2). Therefore, as the remuneration is paid by the South African employer without specifically recharging it to the client in Tanzania, the income of the individual will not be taxable in Tanzania.		
Step 4: If applicable, establish whether the host country has adopted the 'economic employer' approach as it may		**Economic employer:** Identify whether an **employment relationship** exists that is different from the formal/contractual		

STEPS	CORPORATE TAX	PERSONAL TAX	WITHHOLDING TAX	VAT
disqualify the relief available provided by the DTA.		relationship. As an identifiable deliverable will be produced, the individual will be under supervision and control of the South African entity and the South African entity will carry the risk and responsibility of the deliverable, the employer/employee relationship is not different in substance than it is in form.		

Sources:

1) IBFD, 2013
2) Government Notice, 2007
3) Deloitte, 2013

The effectiveness of applying the framework to Tanzania will be discussed next.

4.8.4 Discussion on the effectiveness of applying the framework to TANZANIA

Below is a discussion of the effectiveness of the conceptual framework when the procedures in the framework are followed and the tax concepts applied to identify potential taxes triggered when going on a short-term assignment to Tanzania:

- In step 1 the local taxes in Tanzania that could be triggered due to the short-term assignment were identified. No new tax was identified, and no new tax concept within each of the four main taxes not already mentioned in the conceptual framework was identified. However, in the discussion of the VAT system in the publications, the term 'reverse charge mechanism' was not specifically mentioned. In an informal discussion with Ms Tracy Smith, senior tax manager at Deloitte, on 19 July 2013, (Smith, 2013) she confirmed that the reverse charge mechanism does apply in Tanzania, even though not specifically mentioned in the publication. This confirmed that the second main VAT system was applicable, since no monetary threshold is mentioned, which is consistent with the framework.

  Therefore, step 1 of the framework to identify taxes in Tanzania was successfully applied.

- In step 2 the DTA in place between the home and host country was inspected to identify whether there are relief from taxes identified. The DTA between South Africa and Tanzania is based on the MTC and that made it easier to find the relevant articles.

  No new principle regarding any of the four main taxes not already included in the framework was identified.

  Therefore, step 2 of the framework to identify tax relief available due to the existence of a DTA between South Africa and Tanzania was successfully applied.

- In step 3 it was determined whether a condition existed that may disqualify the relief from personal tax provided by the DTA. (Step 3 and step 4 only apply to personal tax.) The condition mentioned in the framework agrees with the condition mentioned in the DTA.

  Therefore, step 3 of the framework to determine whether a condition exists that disqualifies the relief from personal tax was successfully applied.

- In step 4 the real 'economic employer' was identified. The guidelines provided in the framework should be the same for all countries and the conditions in the DTA will have no effect on it.

  Therefore, step 4 of the framework to determine the real 'economic employer' was successfully applied.

In summary, even though the VAT system used was not specifically mentioned in the literature, no new principle was identified that was not already mentioned in the framework.

The framework was successfully tested on two other SADC countries and conclusions were drawn. An overall conclusion addressing all research objectives will be formulated below.

4.9 CONCLUSION

In this chapter the findings and conclusion of this study will be discussed. Also, a summary of the main contributions will be made and, lastly, suggestions will be given for future research.

4.9.1 Findings and main conclusion

The main aim of this study was to create a conceptual tax-compliance framework to use when identifying potential taxes that could be triggered when a South African resident renders services on short-term assignments in the Southern African Development

Community. The structure would also include the procedures to be followed to identify the relevant taxes that are triggered in various countries.

First, the procedure to follow in order to identify relevant taxes that are triggered was identified and discussed. Very little material relating to such procedures was found in the literature. However, as part of the study, the procedures that were identified were adjusted to be more comprehensive and easier to comprehend.

Secondly, the main DTA articles dealing with professional services, that make provision for potential tax relief, were identified and explained. Four main articles were identified and the principles of the articles were documented. As the article numbers of all DTAs do not necessarily agree, it was important to note the principles set out in the relevant articles rather than the numbers.

Thirdly, the local taxes in the selected countries were identified and discussed. All four countries had the same types of taxes, but the finer details regarding each tax were not always the same.

Fourthly, a short discussion was done stating how to treat taxes paid outside South Africa in order to get relief in South Africa from double taxation on income.

Fifthly, the procedures identified were applied to a practical scenario to identify the taxes triggered when services are rendered for a short-term in each of the four selected countries. By applying the procedures it was possible to identify the taxes in the selected countries in a structured approach.

Sixthly, the conceptual tax-compliance framework was compiled based on the procedures identified and the tax concepts of the four selected SADC countries. The framework is a summary of the procedures to follow and of the main concepts identified relating to tax and tax relief.

Seventhly, the conceptual tax-compliance framework was tested on two other SADC countries (Malawi and Tanzania) to determine the effectiveness and accuracy of the framework and to confirm that the framework would also be relevant to other SADC countries. The first potential problem encountered was that the DTA between South Africa and Malawi looked different from the MTC and the DTAs studied. However, as the principles of the main articles to take into consideration were stated in the framework it was still possible to identify the relevant articles in the relevant DTA and it was possible to identify possible tax relief provided by the DTA.

The second potential problem encountered was that, when determining whether a condition existed that may disqualify the relief from personal tax provided by the DTA between South Africa and Malawi, no conditions were mentioned in the DTA. However, this was not an issue as the framework does not state that there must be a condition. Therefore, since there was no condition mentioned in the DTA, the standard condition stated in the framework need not be taken into account and relief provided by the DTA is available.

The third potential problem encountered was that the publications where the VAT system of Tanzania was discussed did not specifically indicate that a ‘reverse charge mechanism’ was used. The framework indicated that two main VAT systems exist and that in the one system VAT registration is triggered when a certain monetary amount in taxable supplies is exceeded (VAT threshold). The publication made no mentioning of a VAT threshold and therefore it was assumed that the reverse charge mechanism applied. This was confirmed in an informal discussion with a tax expert (Smith, 2013), and it was therefore correct to assume that the reverse charge mechanism was used in Tanzania.

Based on the above, a conceptual tax-compliance framework was successfully created and applied to identify potential taxes that could be triggered during short-term assignments in SADC countries, including the procedures to be followed.

4.9.2 Summary of contributions

The main contribution of this study is that a comprehensive, simplified conceptual structure, including procedures, has been created that can be used as a guide by persons with limited or no international tax knowledge to identify potential taxes that could be triggered when going on short-term assignments to SADC countries. It also enables persons with limited or no international tax knowledge to comprehend the main concepts relating to taxes in SADC countries and the concepts of DTA articles that may provide relief from being taxed twice on the same income. The structure can also be used as a basis for future research on situations with different variables, especially in view of the fact that so little has been published relating to processes to follow and tax concepts to consider when providing professional services outside South Africa.

4.9.3 Suggestions for future research

Not much has been published relating to tax-compliance structures and procedures for international assignments. There is therefore a great deal of scope for further research, using the basic conceptual tax-compliance framework created in this study as starting point, to identify changes in procedures and potential taxes on different international assignment scenarios. The following are suggested:

- Rendering services in host countries that have no DTA in place with the home country;
- Rendering services in other groups of countries, such as the BRICS countries – Brazil, Russia, India, and China (BRICS, 2013);
- Tax implications in other countries relating to specific industries, such as mining and telecommunications; and
- How the framework could change if different delimitations are used, such as including administrative requirements when taxes are triggered in different countries, making use of agents and doing business with connected persons.

CHAPTER 5

RESEARCH DESIGN

5.1 INTRODUCTION

The aim of this research was to create a conceptual tax-compliance framework to assist South African residents to identify taxes that are triggered, and the procedures to be followed, when they render services on short-term assignments in other countries in the Southern African Development Community.

Below is a discussion on the research design used and the methods used in order to come to conclusions regarding the above-mentioned objective The research design, sources used, specific inclusions in the study and the limitations of the design will be included in the discussion.

5.2 RESEARCH DESIGN

The inquiry strategy used in this study was the 'extended literature review'. Hofstee (2011:121) states that an extended literature review provides an overview of the knowledge in a specific aspect of a field and that it is used to show various specialities in a field and also the links among them.

This methodology made it possible to analyse and combine information drawn from the available literature that describes the taxation systems in various SADC countries, and that sets out the procedures to follow when identifying the tax implications of income earned on short-term assignments in hoist countries. It made it possible to address the research problem and objectives by producing a tax-compliance framework that sets out the relevant procedures, while also identifying the various taxes, in a more flowing format. It also made it possible to incorporate input from experts, thus making the research project more rounded and complete.

The study was non-empirical. Babble and Mouton (2001:75) state that non-empirical research refers to 'studies in which the researcher answers questions regarding theoretical perspectives without collecting new data or re-analysing existing data'.

Existing published information was used in the study. However, Hofstee (2011:121) mentions that it is also possible to include the comments from experts through interviews to extended literature reviews. Leedy and Ormrod (2013:190) mention that semi-structured interviews may exist of one or more individually tailored questions to get clarification from a person.

The study was conducted by synthesising the current knowledge relating to the rendering of services on short-term assignments in the SADC by South African residents, including identifying procedures to be followed to identify the relevant taxes. Information was gathered by studying sources already available.

5.3 SOURCES

Extensive searches were done to identify the most relevant information available on the specific topic. By comparing the information of existing relevant sources it was possible to identify the most relevant information available on the topic. The main source for identifying the procedure to follow when determining tax compliance on short-term assignments was an article published by Howe (2009).

Once the procedures to follow to identify tax-compliance areas were identified and discussed, the specific articles on the DTAs that may provide tax relief were identified and analysed. After that, the specific taxes of four selected SADC countries were determined and discussed.

The main sources identified for determining the taxes in SADC countries other than South Africa were publications by two of the 'Big Four' audit firms as well as the IBFD website. The Big Four audit firms are the largest accounting and auditing firms in the world: Deloitte & Touche Tohmatsu (Deloitte), Ernst & Young (E&Y), KPMG and PriceWaterhouse Coopers (PWC) (AccountingCoach.com, 2013).

To determine the applicable taxes in a country one has to look at the local tax legislation (Howe, 2009). Due to the potential difficulty in interpreting tax legislation and to find the specific tax acts of each country, this study made use of widely available and simplified sources. At separate informal discussions with Philip Fouché (2012), senior tax manager at Deloitte, and Jaco La Grange (2012), associate tax director at Deloitte, on 4 September 2012, they both stated that the main source used for the identification of taxes in other countries was the IBFD website. They also confirmed that the taxation legislation of other countries is not easily accessible, and interpretation may also be difficult, which is the reason for using sources other than the actual legislation. Because the taxation legislation of the various countries is not used, it is necessary to discuss the validity of the secondary sources used instead. Below is a discussion of the secondary sources used:

- Deloitte: Deloitte has published taxation and investment guides and country highlights on their global website (deloitte.com) (Deloitte, 2012 and 2013). Deloitte (2012 and 2013) publishes 'highlights' guides, providing high-level overviews of taxation matters in nearly 150 countries, and more detailed 'taxation and investment guides' for 35 countries. Deloitte does not state when the separate country publications were last updated, but does indicate the tax year covered by each publication. This can be seen by looking at the country publications for Botswana, Mauritius, Mozambique and Namibia (Deloitte, 2012 and 2013).
- PWC: PWC offers a publication, accessible on their web site, called 'Worldwide tax summaries, corporate taxes 2012/13'. It covers information about corporate tax systems for 152 countries in a user-friendly format. It is written by tax specialists in each country and covers taxes up to 1 June 2012 (PWC, 2012).
- IBFD: The International Bureau of Fiscal Documentation (IBFD) is an independent, non-profit foundation that has the promotion and understanding of cross-border taxation as its main aim (IBFD – 'Mission statement', 2013). The IBFD covers the tax systems of 277 tax jurisdictions (IBFD, 2013). The website indicates when information on each tax jurisdiction was last reviewed (IBFD – Botswana, Mauritius, Mozambique and Namibia, 2013).

Below is a brief comparison of the sources:

PWC was last updated on 1 June 2012 and covers 2012/2013 taxes (PWC, 2012). The Deloitte publications for Botswana, Mauritius Mozambique and Namibia were inspected and were all, except the Mauritius publication, published in 2013 (Deloitte, 2013). The Mauritius publication was published in 2012 (Deloitte, 2012). The information per tax jurisdiction from the IBFD website has variable review dates, ranging, for the four countries selected, from 1 April 2012 for Mozambique to 1 March 2013 for Mauritius (IBDF, 2013). The PWC publication does not cover personal taxes.

The IBFD covers the taxes of 277 tax jurisdictions; PWC covers 152 countries and Deloitte less than 150 countries. A tax jurisdiction is defined as ‘an area subject to its own tax regulations, such as a municipality, city or country’ (BusinessDictionary.com, 2013). The IBFD does not state how many countries it covers, but only the number of tax jurisdictions.

Deloitte and PWC are reputable entities, being part of the ‘Big Four’ international audit firms, as discussed above. The IBFD is the leading provider of international tax research. All publications therefore are authoritative (Investment Consulting Associates, 2013).

This study used the IBFD website as well as the publications from two of the Big Four audit firms to identify the taxes in other countries. Therefore, the sources identified are appropriate to meet the research objectives.

For a discussion of the differences and shortcomings of the information in the three main sources used when the taxes for the selected countries were identified, refer to *Appendix A* on page 92.

After the taxes in each of the four countries were analysed, the treatment of foreign taxes paid by South African residents was discussed.

Before describing the next step followed in creating the conceptual framework, an explanation is given on what was included in the study and why it was included.

5.4 INCLUSIONS

For this study the tax-compliance requirements of Botswana, Mauritius, Mozambique and Namibia were studied. They are all part of the SADC, but have the following main differences:

- The double tax agreement between South Africa and Botswana has a 'technical fees' clause (SARS, 2004).
- Mauritius is seen as a tax haven (Honiball & Olivier, 2011:674) and has a 'reverse charge VAT mechanism' (IBFD, 2013).
- Mozambique has a shorter than normal residency period (IBFD, 2013).
- Namibian residents are taxed on income received or accrued from a Namibian source and has no 'technical fees' clause (IBFD, 2013; Notice, 1999).

Only entities that are deemed South African residents for tax purposes, that perform services in another country, were included in the study. The term 'resident' is defined in the South African Income Tax Act as a person who is ordinarily resident in the Republic or a person physically present in the Republic who meets the criteria as stipulated in the act (Professional tax handbook, 2012:33). Per de Swardt, Koekemoer, Stiglingh, van Schalkwyk and Wilcocks (2012:59) the criteria of physical presence are also called the 'physical presence test'. The term 'ordinarily resident' is not defined. But, in Cohen v CIR the court held that a person is ordinarily resident in 'the country to which he would naturally and as a matter of course return from his wanderings' (de Swardt et al, 2012:59). However, per the IBFD Research tax platform (2013), if a person is deemed to be exclusively a resident of another country according to a double tax agreement, he will not form part of the definition.

According to de Swardt et al (2012:59) South Africa applies the residence-based system of taxation, having the implication that a South African resident is taxed on his worldwide income. This means that a South African resident will also be taxed on income that originated from a source outside South Africa.

Only countries with double tax agreements (DTAs) were included in the study.

After the discussion of the treatment of foreign taxes paid, the procedures earlier identified were applied to a practical scenario for each of the four selected countries to determine the taxes triggered on a short-term assignment. This was done in order to determine whether the procedures can actually be applied in a practical scenario before it can be included in the conceptual framework.

The information and principles were then summarised in the form of a tax-compliance framework, enabling a person with no or limited international tax knowledge to identify tax-compliance areas by following the identified procedures when performing services in the short term in a SADC country. The created conceptual framework was then tested on two other SADC countries to test whether there were any principles that were not covered in the framework.

Lastly, a conclusion was drawn whether the framework could be used as a basis for identifying potential taxes triggered when going on a short-term assignment in a SADC country, and also whether all the objectives were met.

5.5 LIMITATIONS AND STRENGHTS OF THE RESEARCH DESIGN

The main limitation of this research design is that it does not identify and collect new information.

The main strength of this research design is that it provides a good understanding of what information is currently available regarding the specific topic.

5.6 CONCLUSION

Even though the research design had some limitations, it was still appropriate to use in order to develop a possible solution to the problem identified.

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APPENDIX A: DIFFERENCES AND SHORTCOMINGS OF THE INFORMATION IN THE THREE MAIN SOURCES USED

Below is a discussion on some of the differences of the information in the three main sources used:

The 'PE' article (article 5) and the 'business profit' article (article 7) have the same number in the DTAs for all four countries; also, the definition of a PE is exactly the same in all four DTAs (Government Notice, 2007; Government Notice, 2009; Notice, 1997; and Notice, 1999).

The 'other Income' article in the DTA that South Africa has with the four mentioned countries is not always numbered the same. In the Botswana and Mozambique DTAs it is numbered 21, while in the Mauritius and Namibia DTAs it is numbered 22 (Government Notice, 2007; (Government Notice, 2009; Notice, 1997; and Notice, 1999).

The definition of a permanent establishment in the DTAs between South Africa and Botswana, Mauritius and Namibia is exactly the same in all four cases (Government Notice, 2007; Government Notice, 2009; Notice, 1997; and Notice, 1999).

Unlike the IBFD and Deloitte publications, the PWC publication does not address any personal taxes (Deloitte, 2012; Deloitte, 2013; IBF, 2012; IBFD, 2013; and PWC, 2012).

Below is a discussion of some differences in the publications for each of the four selected countries:

- **Botswana**

The PWC publication do not categorise the taxes as clearly with subheadings as the other two publications (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

- ***Corporate tax*:**

Tax basis: The Deloitte guide explains that the implication of the source-based tax system for non-resident entities is that if they carry on business in Botswana, they will be liable for corporate tax in Botswana on the same basis as Botswana resident entities (Deloitte, 2013).

- ***Personal tax*:**

Rate: The Deloitte publication only states that the tax rates increase with the amount of income, with the top rate at 25%, but the IBFD publication also includes the actual tax tables (Deloitte, 2013; and IBFD, 2013).

- **Withholding tax**:

For Botswana, the Deloitte guide classifies fees for professional services rendered in another country as technical service fees, while the PWC guide classifies them as consultancy fees (Deloitte, 2013; and PWC, 2012). The IBFD guide classifies them as consultancy fees under the heading of technical service fees (IBFD, 2013).

Both the PWC and IBFD publications include the DTA withholding tax rate tables. However, only the PWC publication shows the withholding tax rate as 10% on technical fees (IBFD, 2013; and PWC, 2012). The IBFD publication only states the withholding tax rate for dividends, royalties and interest, which does not mean that the IBFD publication is wrong, but that one has to look up the rate in the DTA itself (IBFD, 2013).

Only the IBFD guide states that the withholding tax is a final tax (IBFD, 2013).

- **Value-added tax**

Taxable transaction: The IBFD publication provides the best and most detailed description of a taxable transaction (IBFD, 2013).

Registration: The PWC publication only states that VAT is imposed on taxable supplies and does not state the threshold (PWC, 2012). Over and above the data stated in the

PWC publication, the Deloitte and IBFD publications also state the amount of taxable supplies that triggers registration (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

- **Mauritius**

The PWC publication deals with corporate taxes and VAT, but does not categorise the taxes as clearly with subheadings as the other two publications (Deloitte, 2013; IBF, 2012; and PWC, 2012). The Deloitte publication on Mauritius is shorter than the Deloitte publications on the three other countries (Deloitte, 2013; Deloitte, 2012).

- **Corporate *tax***

Residency: The IBFD publication states that a company is a resident if it's central management and control is exercised in Mauritius, giving a bit more description than the Deloitte publication (IBF, 2012; and Deloitte, 2013).

Tax basis: The IBFD publication states that a non-resident company will be taxed on income derived within Mauritius only by way of withholding tax (IBF, 2012). The Deloitte and PWC publications are not as detailed as the IBFD publication and they do not provide this information (Deloitte, 2013; IBF, 2012; and PWC, 2012).

The Deloitte publication indicates that a tax year is the same as a calendar year and runs from 1 January to 31 December (Deloitte, 2013).

- **Withholding tax**:

The PWC publication does not use the term 'technical' service fees, but states that there is a 10% withholding tax on payments made to a non-resident for any services rendered in Mauritius (PWC, 2012).

It is stated in the IBFD publication that the withholding tax is a final tax, but this is not stated in the Deloitte or PWC publications (Deloitte, 2013; IBF, 2012; and PWC, 2012).

- **Value Added tax**

Taxable transaction: Only the IBFD publication describes a taxable transaction in Mauritius in detail (IBF, 2012).

It is important to take note that the IBFD publication states that non-resident companies not conducting business in Mauritius through a permanent establishment do not need to register for VAT (IBF, 2012).

Registration: The Mauritius information per the IBFD publication was updated on 1 March 2013, while the Deloitte and PWC publications still state the old VAT registration threshold of MUR 2 000 000 as it was published before March 2013 (Deloitte, 2013; IBF, 2012; and PWC, 2012).

- ***Mozambique***

The PWC publication deals with corporate taxes and VAT, but does not categorise the taxes as clearly with subheadings as the other two publications (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

- **Corporate *tax***

Residency: The IBFD publication also states that residency is where the ‘legal seat’ of the company is located (IBFD, 2013).

Tax basis: The PWC publication does not state the tax basis of a company (PWC, 2012). The Deloitte guide indicates that a non-resident company is not taxable on worldwide income, but only on income from a Mozambican source (Deloitte, 2013). The IBFD publication states that a non-resident company will be taxed on income derived within Mozambique only by way of withholding tax (IBFD, 2013).

- **Personal tax**

Residence: The IBFD publication states that persons are deemed to be residents of Mozambique if they are present there for more than 180 days in a calendar year (IBFD, 2013). The Deloitte publication states that persons are deemed to be residents of Mozambique if they are present there for more than 180 days in a tax year (Deloitte, 2013). However, the Deloitte publication mentions that the tax year of Mozambique is a calendar year (Deloitte, 2013). Therefore, even though the two sources used a different term, the period is still the same (Deloitte, 2013; IBFD, 2013).

Rate: The Deloitte publication only states that he tax rates increase with the amount of income, with the top rate at 32%, but the IBFD publication also includes the actual tax tables (Deloitte, 2013; and IBFD, 2013).

- **Withholding tax**:

Both the PWC and IBFD publications include the DTA withholding tax rate tables for countries with which Mozambique has a DTA (IBFD, 2013; and PWC, 2012).

The IBFD guide states that the withholding tax is a final tax (IBFD, 2013).

- **Value-added tax**

Taxable transaction: There is no general definition of who a taxable person is in Mozambique, but a list is available in the IBFD publication regarding certain types of transactions where persons are deemed to be taxable for VAT purposes (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

Only the IBFD publication describes VAT in Botswana in detail, with the other two publications just touching on it (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

The VAT system used in Mozambique is in essence the same as the ‘reverse charge’ VAT system. However, in none of the publications is it specifically stated to be a ‘reverse charge' mechanism, but the IBFD publication describes the concept (Deloitte, 2013; IBFD, 2013; and PWC, 2012).

- ***Namibia***

The PWC publication deals with corporate taxes and VAT, but do not categorise the taxes as clearly with subheadings as the other two publications, and does not discuss personal taxation (Deloitte, 2012; IBFD, 2013; and PWC, 2012).

- **Corporate *tax***

Residency: The IBFD and Deloitte publications state when a company is a resident company of Namibia, but the PWC publication does not state it (Deloitte, 2012; IBFD, 2013; and PWC, 2012). The Deloitte publication only states that a corporation is a resident of Namibia if it is incorporated in Namibia (Deloitte, 2012). The IBFD states that it is also a resident company if it is effectively managed and controlled in Namibia, while the Deloitte publication does not mention the 'effectively managed and controlled' criterion (Deloitte, 2012; and IBFD, 2013).

It is worth mentioning that, per the IBFD publication, the term 'resident company' is not used in Namibia, but rather the term 'domestic company', while the term 'domestic company' is used in the PWC publication, but no criteria are mentioned for the existence of a domestic company (IBFD, 2013; and PWC, 2012).

Tax basis: The IBFD and Deloitte publications call the tax basis 'deemed source', which implies the same meaning as 'sourced base' (Deloitte, 2012; and IBFD, 2013).

- **Personal tax**

Residence: No mentioning is made in the Deloitte publication of when an individual is a tax resident in Namibia (Deloitte, 2012). The IBFD guide states that there is no definition of the term 'residence' in Namibia, but that the term 'ordinarily resident' is used (IBFD, 2013).

Rate: The Deloitte publication only states that the tax rates increase with the amount of income, with the top rate at 37%, while the IBFD publication also includes the actual tax tables (Deloitte, 2012; and IBFD, 2013).

- **Withholding tax**:

Both the PWC and IBFD publications include the DTA withholding tax rate tables for countries with which Namibia has a DTA. However, the IBFD publication only shows interest, royalties and dividends, while the PWC publication also indicates technical fees and director's fees. (Deloitte, 2012; IBFD, 2013; and PWC, 2012.)

The IBFD guide states that the withholding tax is a final tax (IBFD, 2013).

- **Value-added tax**

Taxable transaction: The Deloitte source only mentions 'supply' and not 'taxable supply', however, both the other publications mention 'taxable supply' (Deloitte, 2012; IBFD, 2013; and PWC, 2012). The IBFD provides the best description of taxable transactions (IBFD, 2012).

Registration: The PWC and Deloitte publications do not mention the fact that registration should be done if it is 'expected' that the taxable supplies will be more than NAD 200 000 in a 12-month period, and the Deloitte publication only mentions 'turnover' and not 'taxable supplies' (Deloitte, 2012; IBFD, 2013; and PWC, 2012).