AN INTERNATIONAL TAXATION COMPARISON OF SOUTH AFRICAN, DUTCH AND AUSTRALIAN EMPLOYEES WORKING ABROAD

By

Ismail Adam

Student no: 25145453

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

Supervisor:
Mrs. H. du Preez

Date of submission

24 July 2012

ACKNOWLEDGEMENTS

The writing of this dissertation has been one of the most significant academic challenges I have ever had to face. I would have been unable to complete this without the support, patience and encouragement of my family members, especially my wife, Zaheerah, without whom this effort would have been worth nothing. Your love, support and constant patience have taught me so much about sacrifice, discipline and compromise – I can't count the number of times that I was ready to give up and you pushed me saying "you're almost there"... Now, I'm finally here. Thank you.

ABSTRACT

AN INTERNATIONAL TAXATION COMPARISON OF SOUTH AFRICAN, DUTCH AND AUSTRALIAN EMPLOYEES WORKING ABROAD

by

Ismail Adam

SUPERVISOR: Mrs. H. du Preez

DEPARTMENT: TAXATION

DEGREE: MAGISTER COMMERCII

The effects of globalisation and economic growth have resulted in employee migration becoming increasingly popular. According to the World Bank (2011), more than 215 million people are living outside their countries of birth during 2011. Egger and Radulescu (2009) suggest that the progressivity of the tax system at high income tax brackets is quantitatively the most important component for expatriates or migrants. Data suggests that countries differ remarkably with regard to the income tax burden on highly skilled workers.

The main purpose of this study is to compare the tax consequences relating to South African, Dutch and Australian employees working abroad. The study provides a better understanding of the tax consequences for a South African, Dutch and Australian employee working abroad.

It was found that the tax systems in the Netherlands, Australia and South Africa are similar in that they are all residence based. In each of these three countries tax residents are taxed on worldwide income while non-residents are only taxed on income from specific sources. Therefore, tax residency is an essential concept in each of these tax systems. However, the basis used to determine tax residency, and the factors considered, differ from country to country. Since there is a difference in determining tax residency, the taxability of amounts earned from abroad also differs between the countries as the taxability of income earned is determined according to one's residency status.

Key words:

Migration	Taxation
Employee	Residency
South-African	Australian
Dutch	Netherlands

OPSOMMING

'N INTERNASIONALE VERGELYKING VAN DIE BELASTING VAN SUID-AFRIKAANSE, NEDERLANDSE EN AUSTRALIESE WERKNEMERS WAT IN DIE BUITELAND WERK

deur

Ismail Adam

STUDIELEIER: Mev. H. du Preez

DEPARTEMENT: BELASTING

GRAAD: MAGISTER COMMERCII

Een van die gevolge van globalisering en ekonomiese groei is dat werknemer-migrasie toenemend gewild geword het. Volgens die Wêreldbank (2011) woon meer as 215 miljoen mense in 2011 buite hul land van geboorte. Egger en Radulescu (2009) stel voor dat die progressiwiteit van die belasting teen 'n hoë inkomste die belangrikste komponent vir uitgewekenes of migrante is. Data dui daarop dat lande merkwaardig verskil ten opsigte van die inkomstebelasting op hoogs-geskoolde werkers.

Die hoofdoel van hierdie studie is om die belastinggevolge met betrekking tot Suid-Afrikaanse, Nederlandse en Australiese werknemers wat in die buiteland werk, te vergelyk. Die studie bied 'n beter begrip van die belastinggevolge vir ’n Suid--Afrikaanse, Nederlandse en Australiese werknemer wat in die buiteland werk.

Daar is gevind dat die belastingstelsels in Nederland, Australië en Suid-Afrika soortgelyk is, in die sin dat hulle almal op verblyfplek gebaseer is. In elk van hierdie drie lande word belasbare inwoners op wêreldwye inkomste belas, terwyl nie-inwoners net op die inkomste van spesifieke bronne belas word. Daarom, is belasting-inwoning 'n belangrike konsep in elk van hierdie lande. Maar die basis wat gebruik word om belasting-inwoning te bepaal en die faktore wat oorweeg is, verskil tussen hierdie lande. Aangesien daar 'n verskil in die bepaling van belasting-inwoning is, is daar ook ’n verskil in die belasbaarheid van die bedrae wat uit die buiteland verdien is, want die bepaling van die belasbaarheid van inkomste is op 'n mens se verblyfstatus gebaseer.

Sleutelwoorde:

Migrasie
Werknemer
Suid-Afrikaanse
Nederlandse
Belasting
Inwoner
Australiër

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

AN INTERNATIONAL TAXATION COMPARISON OF SOUTH AFRICAN, DUTCH AND AUSTRALIAN EMPLOYEES WORKING ABROAD

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

The effects of globalisation and economic growth have resulted in employee migration becoming increasingly popular. In 2011, according to the World Bank (2011), more than 215 million people are living outside their countries of birth.

Starting at the end of the 1900's a worldwide market for skilled professionals was created due to globalisation. Expatriation was dominated by professionals being sent by their employers to foreign subsidiaries or headquarters during the latter half of the 20th century (Expatcareers, 2010).

In a study by Claus, Claus and Dorsam (2010), it was found that the taxation effects of a country affects migration decisions, particularly of educated migrants. Therefore it is important to review the tax consequences of working abroad, even though these secondments may be relatively short in nature.

Where the employee and employer are resident and the employee is temporarily performing services or any particular employment situation, and any combination of countries, potentially creates a unique set of employer and employee tax obligations. A review of information supplied by tax experts in five foreign countries namely Argentina, Canada, France, Germany, and South Africa suggested that there is a wide variety of approaches to the problem of taxing expatriate employees and foreign employers. These countries illustrate the diversity of tax regimes that affect multi-national employee transfers (Mayo, not dated).

1.2 STATEMENT OF PROBLEM

As demonstrated above the taxation effects of a country affect the migration decisions of individuals wanting to work overseas. No literature could be found that aims to compare the tax consequences relating to South African, Dutch and Australian employees working abroad.

1.3 STATEMENT OF PURPOSE

The main purpose of this study is to compare the tax consequences relating to South African, Dutch and Australian employees working abroad. The study provides a better understanding of the tax consequences for a South African, Dutch and Australian employee working abroad.

1.4 RESEARCH OBJECTIVES

The study is guided by the following specific research objectives:

- to identify the tax consequences for a South African employee working abroad;
- to identify the tax consequences for a Dutch employee working abroad;
- to identify the tax consequences for an Australian employee working abroad; and
- to compare the tax consequences of the above three countries with regard to residents working abroad.

1.5 DELIMITATIONS

The proposed study has several delimitations related to the contexts and constructs of the study. It is limited to the context of South African, Dutch and Australian employees working abroad. In this study the tax consequences of government employees working abroad are not considered.

Secondly the study is focused only on the tax consequences of the income earned as a result of employment abroad. Therefore other taxes are not considered, for example tax relating to investments, assets or estates.

1.6 DEFINITION OF KEY TERMS

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

An “employee” is a person who is hired to provide regular services to a company in exchange for compensation and who does not provide these services as part of an independent business (see chapter 2.2.1) (Investor Words, not dated).

Remuneration is defined as reward for employment in the form of pay, salary, or wage, including allowances, benefits (such as company car, medical plan, pension plan), bonuses, cash incentives, and monetary value of the non-cash incentives (see chapter 2.2.2) (Business Dictionary, not dated).

Migration is defined as “the movement of people from one place to another” (see chapter 2.2.3) (Sokrates Comenius, not dated).

Table 1: Abbreviations

Abbreviation	Meaning
EEA	European Economic Area
FITO	Foreign income tax offset
HSBC	Hong Kong and Shanghai Banking Corporation
ITAA	Income Tax Assessment Act
OECD	Organisation for Economic Co-operation and Development.
SARS	South African Revenue Services
MoMi	Modern Migration Policy Act

1.7 RESEARCH DESIGN AND METHODS

This study follows a qualitative, non empirical research design. An extended literature review on secondary resources is performed. The tax consequences of South African, Dutch and Australian employees working abroad are compared and analysed using existing (secondary) data.

This data is used to obtain an understanding of the specific topic and to provide an overview of the tax consequences for the above mentioned countries. The disadvantage of this research method is that it is driven by existing data and information is limited to the sources used in this study.

1.8 SUMMARY OF CHAPTERS

This study has five chapters.

The initial chapter is an introduction to the study and provides background for the chosen topic. The objectives and purpose of the study are also mentioned in this chapter.

The second chapter provides information regarding migration trends in general and particular trends for South Africa, Netherlands and Australia.

In the third chapter the tax systems for South Africa, Netherlands and Australia are analysed. The tax consequences for employees working abroad are particularly focused upon.

The fourth chapter contains a comparison of the tax consequences relating to South African, Dutch and Australian employees working abroad.

The final chapter serves as a conclusion to the study and includes recommendations and avenues for future research

CHAPTER 2

MIGRATION TRENDS

This chapter consists of an analysis of migration trends which provides support for the relevance of the study.

2.1 MIGRATION TRENDS IN GENERAL

The previously labelled 'Brain Drain' that had become a concerning focus for many countries have now developed into the international mobility of employees (NaukriHub, not dated). This topic of international mobility of employees is currently one of the main focus areas for human resource departments, and is fuelled by a considerate increase in globalisation, increased operating domain of multinational companies as well as the attraction of the ‘grass being greener on the other side’ (NaukriHub, not dated).

The concept of distance no longer has an influence, due to the increase of globalisation and the flow of technological advancements and resources across geographic and political barriers (NaukriHub, not dated).

According to statistics of the Wide World of Work (2012), there has been an estimated increase of 42% in the number of international migrants from 2000 to 2012. There are currently approximately 214 million international migrants worldwide as compared to 150 million migrants in 2000 (Wide World of Work, 2012).

The significant increase in international mobility of employees has many challenges and complexities involved (NaukriHub, not dated).

Based on the above statistics, 3.1% of the world’s population are migrants. This means that 1 of out of every 33 persons in the world today is a migrant (Wide World of Work, 2012).

Over the past 10 years the percentage of migrants compared to the total population has remained reasonably stable, increasing by only 0.2% (from 2.9% in 2000 to 3.1% in 2012) (Wide World of Work, 2012).

However, there is a notable variance in the percentage of migrants between countries. According to the Wide World of Work (2012), countries with a high percentage of migrants include Qatar (87%), United Arab Emirates (70%), Jordan (46%), Singapore (41%), and Saudi Arabia (28%) while countries with a low percentage of migrants include South Africa (3.7%), Slovakia (2.4%), Turkey (1.9%), Japan (1.7%), Nigeria (0.7%), Romania (0.6%), India (0.4%) and Indonesia (0.1%).

An article by Ernst & Young (2011) that analyses the transformation of the global workforce due to the demographic shift indicates that due to an aging population, employers worldwide face the challenge of recruiting from a shrinking workforce, regardless of an increasing global population. One of the factors contributing to this predicament is the globalism and mobility of the talent market (Ernst & Young, 2011).

As a result of economic development as well as increased integration across markets, many talented people have explored career opportunities abroad (Ernst & Young, 2011). The number of migrants has grown 42% in the last decade, with most of the migration directed toward OECD countries (Ernst & Young, 2011).

The motivation behind the increasing migration trend is the pursuit for greater exposure in multifaceted work environments, as opposed to the ordinary, homely environment that does not facilitate developing the competence to manage challenges (NaukriHub, not dated).

The recent trend is most commonly seen in the IT industry. Other industries where international experience and exposure is considered key for career development and progression are the pharmaceuticals industry, scientific research, and professions like sales and distribution (NaukriHub, not dated).

With global corporations increasing their presence in many countries, abundant opportunities are becoming available to capable and experienced employees from foreign countries to apply their skills elsewhere in the corporation (NaukriHub, not dated). Employees are also keen to put in the maximum effort for challenging and rewarding career opportunities and improved standards of life (NaukriHub, not dated). The pursuit of an overseas opportunity is considered to be a sign of empowerment and progression in an employee's career (NaukriHub, not dated).

2.2 MIGRATION TRENDS: NETHERLANDS

Early Dutch immigration history has been deeply influenced by individuals from former colonies as well as through recruitment programmes. During the period 1945 to 1965, approximately 300 000 people migrated to the Netherlands. Foreign labourers were recruited from other countries to provide relief to the labour shortages in the thriving Dutch economy. During this period many Dutch nationals also left the Netherlands in pursuit of better economic prospects (OECD, 2008).

Figure 1 below illustrates the foreign labour force in certain OECD countries (OECD, 2008). Per the below figure Canada, Australia, Switzerland and Luxembourg are the countries with a higher percentage of foreign labourers. The Netherlands has a foreign labour force of approximately 12% (OECD, 2008).

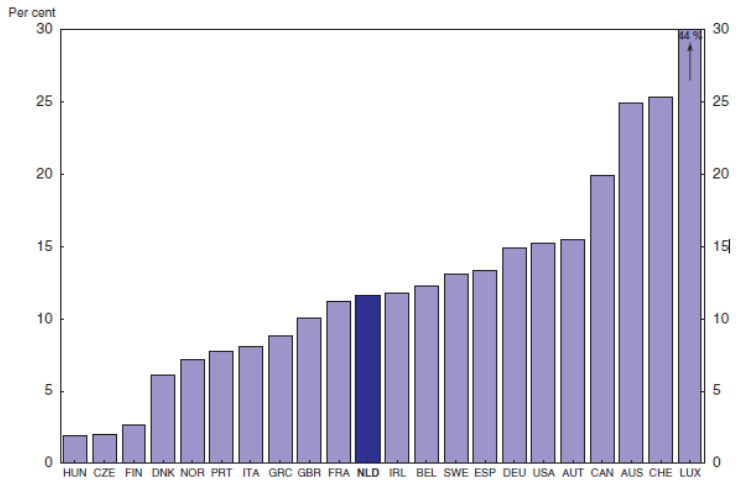


Figure 1: Share of foreign-born labour force in selected OECD countries, 2005.

Source: (OECD, 2008)

Initially, immigrant labourers worked in sectors with shortages, such as manufacturing or horticulture. Foreign workers were also dominant in the mining, manufacturing and energy sectors, the hotel and restaurant sector and in other services (refer Figure 2 below) (OECD, 2008).

	Agriculture and fishing	Mining, manufacturing and energy	Construction	Wholesale and retail trade	Hotels and restaurants	Education	Health and other community services	Households	Administration and ETO	Other services
Austria	1.2	22.3	*8.8*	*14.4*	*12.0*	4.2	*8.8*	(0.4)	2.9	25.0
Belgium	1.2	17.3	6.9	13.6	*7.4*	6.2	*10.7*	*0.6*	9.1	*27.1*
Canada	1.2	*19.8*	6.0	14.1	*7.8*	5.5	9.6	...	3.6	*32.5*
Czech Republic	3.7	29.9	8.8	*18.2*	*4.6*	5.1	6.1	...	4.5	*18.9*
Finland	...	20.1	5.1	*14.5*	*8.9*	6.8	*13.6*	...	...	26.9
France	1.9	14.6	*10.3*	11.9	*5.9*	6.0	9.7	*5.8*	6.8	*27.2*
Germany	1.3	*32.0*	*6.4*	12.9	*7.6*	3.9	*10.1*	*0.7*	3.3	21.9
Greece	6.1	*16.3*	*27.3*	11.4	*9.2*	2.7	2.4	*13.4*	1.4	9.7
Ireland	2.2	16.6	8.4	11.5	13.2	6.4	*12.5*	...	2.9	*25.4*
Japan[1]	0.5	*58.7*	1.8	13.1	[1]	...	...	...	...	*25.9*
Luxembourg	1.0	*10.5*	*16.0*	*12.2*	*6.0*	1.9	6.3	*4.2*	12.2	*29.8*
Netherlands	**1.5**	***20.4***	**4.5**	**15.0**	***8.2***	**5.4**	**12.2**	**...**	**4.6**	***28.2***
Norway	...	13.7	4.5	12.6	*8.6*	8.0	20.7	...	3.7	27.0
Spain	*6.0*	13.6	16.3	12.2	*12.0*	3.6	*3.7*	12.2	2.0	18.5
Sweden	0.6	17.2	2.7	12.1	*6.6*	10.8	18.6	...	3.9	27.5
Switzerland	1.1	19.7	*8.4*	*15.2*	*7.3*	6.1	*13.4*	*1.3*	3.4	24.1
United Kingdom	0.4	11.8	4.3	13.6	*9.0*	8.4	*14.5*	*1.0*	5.2	*31.9*
United States	*2.5*	*14.3*	9.6	13.0	11.9	16.4	...	...	2.5	*26.6*

Figure 2: Employment of foreign born by sector in selected OECD countries

Source: (OECD, 2008)

Contrary to most other OECD countries, immigrants in the Netherlands are under-represented in the construction sector and the public sector (OECD, 2008).

Figure 3 below illustrates the population of early immigrants in the Netherlands.

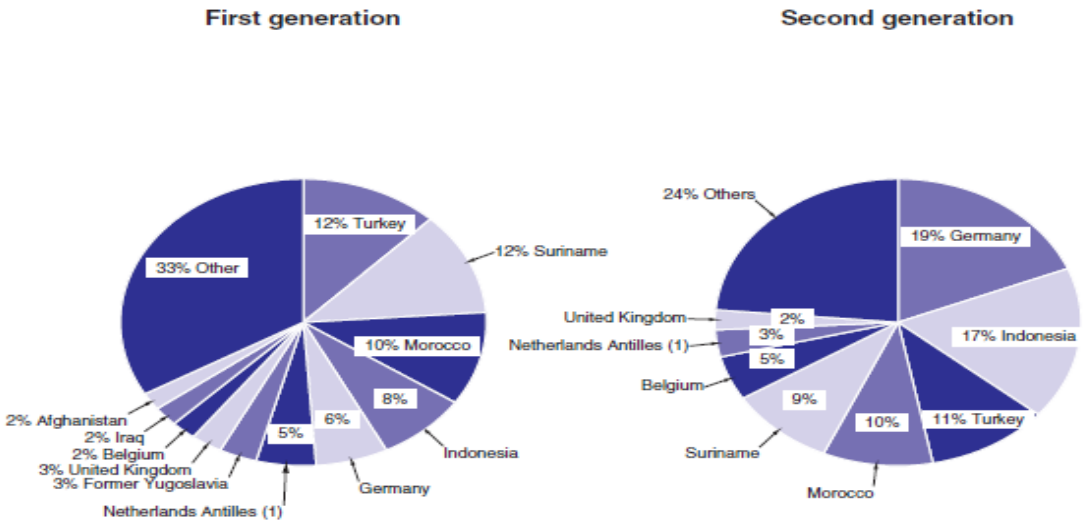
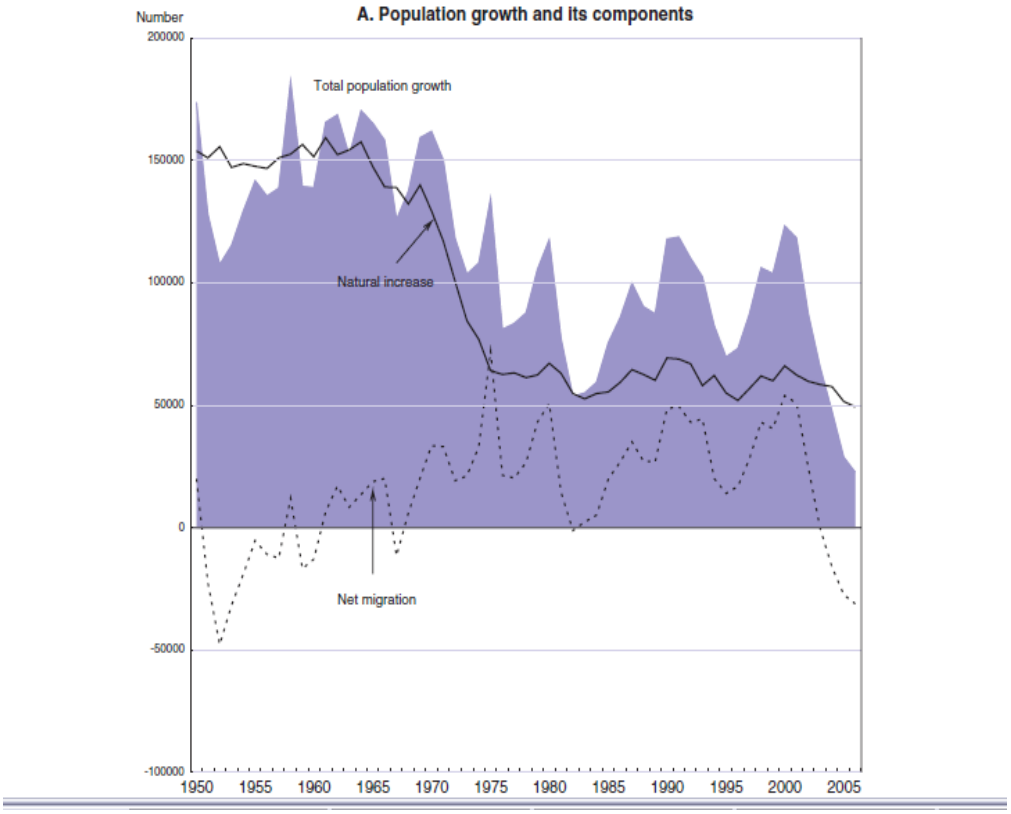


Figure 3: The population of first and second generation immigrants in the Netherlands.
Source: (OECD, 2008)

The above figure illustrates that immigrants came from many different countries. In the first generation, immigrants largely came from Turkey, Suriname and Morocco. In the second generation, a large number of immigrants came from Germany and Indonesia (OECD, 2008).

Approximately 10% of the Dutch population is made up of second generation immigrants (OECD, 2008).

For the first time since the 1960's, net migration turned negative in the Netherlands during 2003. This situation was the result of a simultaneous decrease in immigration into the Netherlands as well as an increase in emigration out of the Netherlands (refer to Figure 4) (OECD, 2008).



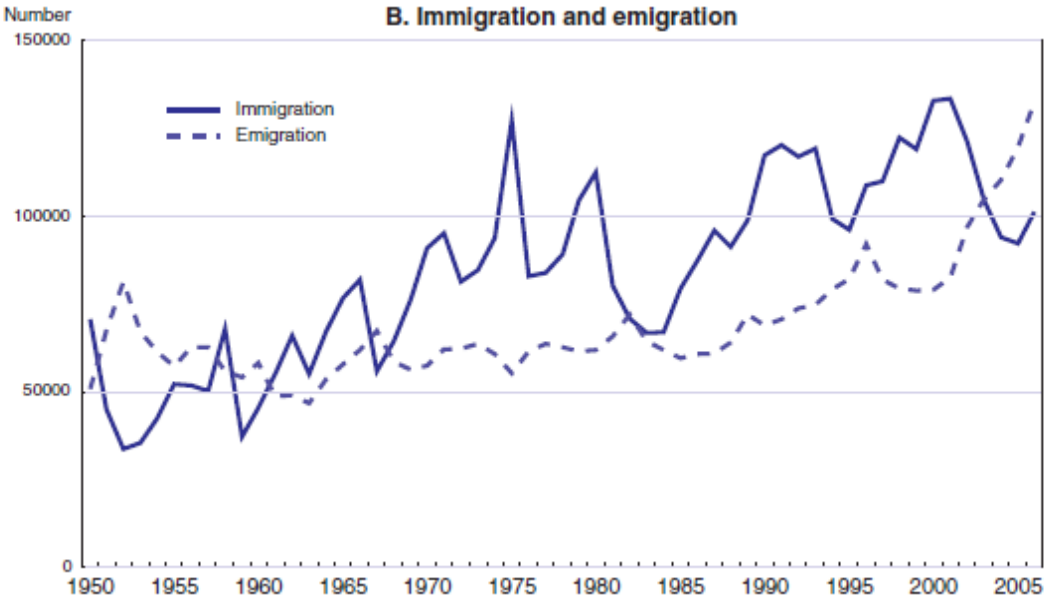


Figure 4: Immigration, emigration and the impact on population growth (OECD, 2008).

Source: (OECD, 2008)

Per Figure 4, it is clear that the number of Dutch individuals leaving the country increased considerably from 2003. This was most likely caused by the poor economic development in the Netherlands as compared to other countries (OECD, 2008).

After this increase in emigration, the government introduced a scheme in 2004 to attract skilled employees which was designed to stimulate innovation in the Netherlands in order to improve the economy. This scheme exempts individuals earning more than € 45 000 from having to obtain a work permit, which is normally a requirement for foreign employees. The scheme also accommodates employees under the age of 30; PhD students, post-doctorate researchers and professors under 30. Furthermore, individuals who qualify under this scheme are granted a five year residence permit (unless if their contract is shorter) as well as their accompanying family members (OECD, 2008).

Almost 4 000 individuals entered the Netherlands under this scheme during 2006, accounting for almost 10% of all entrants. In order to further facilitate the availability of skilled resources, the government also reduced restrictions on international students graduating from universities in the Netherlands (OECD, 2008). These students are an easily accessible source of high skilled labour. Furthermore, they are also familiar with the culture and language of the Netherlands. Although the number of foreign students in Dutch universities is below the average as compared to other OECD countries, it is increasing rapidly (OECD, 2008).

Before the government reduced the restrictions, these students were required to find a job within 3 months after graduating. This term has since been extended to a year and the income requirement for these groups has been reduced to € 25 000 (OECD, 2008).

The Netherlands also has tax incentives in place in order to attract foreign skilled labour. Under what is termed the “30% rule” foreign employees working in the Netherlands are allowed to receive a non-taxable allowance of up to 30% of ordinary employment income. They are also entitled to a tax-free reimbursement on school fees with regards to children attending international schools for a period of 10 years (OECD, 2008).

In order for a foreign employee to be entitled to this tax-free allowance, the employee must have skills that are limited in the Dutch market. The qualification is based on a set of criteria including educational accomplishments, work experience and salary. The salary criterion is not clearly defined but tax experts suggest that an annual salary of €45 000 is usually sufficient to qualify for this scheme. The incentives provided by the Netherlands are attractive as compared to similar schemes in other countries as the tax exemptions provided are fairly big and can be obtained for a longer duration. The incentive scheme however does not appear to be well directed and is also economically pricey (OECD, 2008).

It also appears that the qualifying criterion could be better defined, for example, by explicitly defining the salary criterion as an indicator for shortage. The targeting of the scheme would be enhanced if this criterion is set at a relatively high level for a shorter period. The attractiveness of the scheme could be further improved by raising the value of the tax exemptions. However, this could also possibly raise the tax differences between inborn and foreign workers (OECD, 2008).

During 2010, the Dutch parliament endorsed a new alien's act, which is referred to as the "Modern Migration Policy Act" (often referred to by its Dutch abbreviation 'MoMi'). This act was expected to be effective as of 1 January 2011. However, due to technical problems with the new computer system, this date could not be met. It is expected that this law will take effect within a short period of time (Euraxess, 2010).

This Modern Migration Policy is aimed at allowing more selective admittances into the country. The Netherlands is pursuing to continue to allow migrants with required economic and cultural prospects to enter the country, while having a more restrictive policy applicable to others. The admission procedure must be made faster and simpler in order to facilitate this and the administrative burden must be significantly reduced. This new policy is aimed at stimulating the knowledge economy in the Netherlands (Euraxess, 2010).

One of the core changes that will be affected by the new act is regarding sponsors. Sponsors will become a key part of the admission process, and will be allowed to apply for

admission and residence permits for their employees. They will also be allowed to appeal in the case where an application is refused (Reurs, M, 2011).

2.3 MIGRATION TRENDS: AUSTRALIA

Based on an article in Super Review (2009), research indicated that Australians living abroad are considered to be on average the highest paid in the world with twenty per cent earning more than $320,000. According to a HSBC survey, Asia is considered to be the most remunerative destination for Australian expatriates where around twenty five per cent are earning more than $200,000 a year, while Russia, Japan and Qatar were also regarded as high paying destinations (Super Review, 2009).

A universally mobile labour market is one of the outcomes of recent technological advancements and the effects of globalisation, particularly for skilful employees. The amount of Australians working abroad permanently or for extensive periods is continually rising. In the short term, this situation results in a number of challenges for the domestic economy and also hinders growth and development in the long-term. A prompt and suitable response is needed to address these challenges. Individuals returning to the country carry many advantages which cannot be realised through migration or even preservation (Jorgarajan, not dated).

Australia being mainly a country of migrants is no stranger to migration. On 30 June 2004 24% of the Australian population was born abroad. After the Second World War, Australia had an increase of migration, mainly from Europe, which has progressively continued. The United Kingdom (UK) holds the largest number of overseas-born Australians which comprises 24% of all Australians born overseas. Recent decades have seen a move in origin but not numbers, with more immigrants lending to come from countries in Asia. The greatest increase in Australian migrants between 1996 and 2001 was from Asia (an increase of 45%) (Jorgarajan, not dated).

The “brain drain”, the loss of experienced workforce to alleged greener pastures abroad has been one of the most substantial problems of emigrants from Australia. Australian

migration tremendously comprises highly-skilled, highly-educated people. As an example, there are twenty Australian born and educated professors at Harvard University and Massachusetts Institute of Technology alone. Top positions in global enterprises such as General Motors Boston, Consulting Group, M&C Saatchi, HSBC Group Axa and Toyota are occupied by Australians. The number of Australians in high international positions is extraordinary given the comparatively small population, (Jorgarajan, not dated).

The adverse effect of the brain drain has two significant aspects. Firstly Australia's brightest individuals are being lost to other countries that reduce expansion and progress. Predominantly where the education of migrants was funded in some part by taxpayers, research suggests that skilled immigration is unequivocally harmful to those individuals that remain. Secondly one of the main contributing factors to the current skills shortage in the Australian labour market is the brain-drain. During the period 1997 to 2000, a relatively recent detailed examination of skilled worker appointments indicates that the overall loss in terms of individuals amounted to 35,927 (Jorgarajan, not dated).

This resulted in a net loss of approximately 2.2% of all professionals. Comparatively, the net loss during that same stage for all other occupations was only 0.9%. The frequent skills shortage is expected to lead to a rise in labour costs and consequently interest rates, which has the likelihood to severely impact all Australian households and the business sector, bearing in mind the current high levels of borrowing. While the predicament of brain drain is not exclusive to Australia, at the foot of the domestic skills, there is a extreme need to counter this drain, as it negatively affects both efficiency and the economy (Jorgarajan, not dated).

Government initiatives for return migration resulted in Australian expatriates being indifferent, rating it on average the least of all factors when taking into consideration returning. Accordingly, Australians wandering to return are unlikely swayed by that once-off incentive, such as housing subsidies or travel, alternatively, the evidence demonstrates that tax is often a major aspect in the decision-making process of these individuals when deciding whether or not to return to Australia. As such, a tax incentive is likely to be more efficient in inducing Australian expatriates to return rather than a direct subsidy. A recent study which found that tax expenditures do form "framing effects" with

this view coincides. Zelinsky (in Jorgarajan, not dated) concluded that, for a significant part of the broad public, whether or not a benefit is provided through direct intervention or tax relief, individuals are concerned; even where benefits are substantively and procedurally comparable. For these individuals, direct expenditure policies, which are considered undesirable, become attractive when branded as tax subsidies. It appears that these conclusions hold true for Australian expatriates. Consequently, it is argued that the anticipated tax allowance is not substitutable tax expenditure. The “framing effect” is a considerable advantage of the proposed tax concession. This indicates that returning expatriates often have to accept a reduced wage upon their return to Australia. Alternatively, entities may be forced to pay returning citizens higher wages in order to contend with their overseas wage or to compensate them for their high tax liability here. These unreasonably high wages can be a significant cost to companies, affecting profits, shareholder returns and the economy (Jorgarajan, not dated).

The reality of a tax concession is expected to create a sense of kindness in returning expatriates, as they feel that they are being compensated for bringing their exceedingly valued skills back to Australia. As such, they may be more willingly to accept a lower wage, ensuring that companies are able to recruit top individuals for the job at an appropriate cost (Jorgarajan, not dated).

2.4 CONCLUSION

It is clear from the above information, and migration statistics, that migration is increasing rapidly around the globe, specifically in OECD countries. It is becoming increasingly easy and popular for people to live and work outside of their home countries. This situation creates unique tax situations. The tax systems in a person’s home country and the country to which he/she migrates will have a significant impact on the tax consequences of the income earned from abroad.

CHAPTER 3

OVERVIEW OF TAX SYSTEMS AND RESIDENCY

In this chapter the tax systems for South Africa, Netherlands and Australia, and particularly the tax laws, regarding employees working abroad from the respective countries, are dealt with.

3.1 SOUTH AFRICAN TAX SYSYTEM

3.1.1 Tax system in general

South Africa utilizes a residence based tax system. Per this system of taxation, any individual who is regarded as a South African resident, for tax purposes, is taxed on his/her worldwide income. Individuals who are considered to be non-residents for tax purposes, are only taxed on income from a South African source (KPMG, 2010 (a)).

The South African tax year runs from 1 March to 28/29 February each year (KPMG, 2010 (a)).

The source of income earned from employment is not based on where or by whom the income is paid but rather, the source is determined by the location where the services are rendered (KPMG, 2010 (a)).

For the 2010/2011 tax year, the tax rate for an individual ranges between 18% and 40%. (KPMG, 2010 (a)).

The tax authority in South Africa is referred to as the South African Revenue Service (SARS) (KPMG, 2010 (a)).

All remuneration earned by employees is subject to employees' tax which is withheld by the employer and paid over to SARS. Employees’ tax is calculated on a net amount of

remuneration earned, which is calculated after taking into account allowable deductions. On obtaining of a written request from an employee an employer may withhold a larger portion of employees' tax. Any arrangement whereby an employer agrees not to withhold employees' tax is not allowed. Thus the onus of paying employees tax rest with the employer (SARS, not dated).

3.1.2 Residency in general

Residence

Residency for tax purposes is determined based on being either physically present or ordinarily resident in South Africa (KPMG, 2010 (a)).

a. Physical presence test

In terms of the definition of resident, as contained in section 1 of the Income Tax Act of South Africa, an individual can be considered to be a resident as such in terms of the physical presence test. According to this definition, an individual will be considered to be a tax resident of South Africa, in the case where such individual is not ordinarily resident, if all of the following criteria are fulfilled:

- The individual is physically present in South Africa for more than 91 days during the current year of assessment, and
- That person was physically present in South Africa for more than 91 days during each of the five preceding years of assessment, and
- That person was physically present in South Africa for more than 915 days in aggregate during those preceding five years (KPMG, 2010 (a)).

In terms of the physical presence test, all three requirements as stated above need to be met in order for a person to be considered a resident of South Africa (KPMG, 2010 (a)).

An individual who was considered to be a tax resident of South Africa on the basis of the physical presence test will cease to be a resident if he/she leaves South Africa for an uninterrupted period of 330 full days. Such a person will cease to be a resident from the day he/she leaves South Africa (KPMG, 2010 (a)).

b. Ordinarily resident

The theory of ordinarily resident is not defined in the Income Tax Act, No. 58 of 1962 (the Act), as amended. Ordinarily resident is widely held (from case law) to be the country which an individual deems to be his/her real home, that is the place where his permanent place of abode is and where his belongings are stored, which he leaves for temporary absences and to which he frequently returns after such absences (KPMG, 2010 (a)).

.

If the taxpayer is customarily and normally resident here, apart from momentary or occasional absences of long or short periods of time or if he/she decides to settle permanently in South Africa, South Africa will be recognised as being his/her real home and the person will immediately become a resident by virtue of ordinary residence (KPMG, 2010 (a)).

3.1.3 Residency: working abroad

In terms of the law a person can be considered to be an ordinary resident in a country from which he was physically absent throughout the year of assessment. Whether an individual is ordinarily resident in South Africa or not, is not determined exclusively by his/her actions. Ordinarily residency of an individual may be determined by evidence on his/her mode of life outside that year of assessment (De Swardt, 2011:51). Therefore for tax purposes a person can live and work outside South Africa and can still be considered to be a resident of South Africa.

An individual's residency status will not be affected based on the period of employment outside South Africa. A person who is a resident because of his/her physical presence in South Africa ceases to be a resident from the beginning of the year of assessment in which he/she no longer meets the requirements of the physical presence test.

However, person who is resident in terms of the physical presence test is:

- deemed to cease being a resident from the day on which he/she ceases to be physically present in South Africa; if

- he/she is physically outside South Africa for a continuous period of at least 330 full days immediately after the day on which he ceases to be physically present in South Africa (De Swardt, 2011:52).

A person who is deemed to be exclusively a resident of another country for the purposes of a double tax agreement between South Africa and that other country will, however, not be a resident of South Africa, even though he/she meets the qualifying requirements of being a resident (De Swardt, 2011:50).

3.1.4 Specific tax rules for working abroad

3.1.4.1 Relocation benefits

Where an employer pays the relocation costs of an employee who has been transferred from one place of employment to another place of employment, section 10(1)(nB) of the Act provides that such benefit or advantage may be exempt from tax in the employee's hands (De Swardt, 2011:92).

In order to qualify for this exemption, an employer must have incurred expenses in respect of:

- the transfer of the employee from one place of employment to another place of employment; or
- the appointment of the employee as an employee of the employer; or
- the termination of the employee's employment (De Swardt, 2011:92).

The expenses incurred by the employer that will be exempt for the employee comprise of the following:

- the expenses incurred of transporting the employee, members of his household and their personal goods and possessions, from his previous place of residence to his new place of residence;
- those costs which the Commissioner may allow that have been incurred by the employee in respect of the sale of his previous residence and in settling-in at his new permanent place of residence; and

- the expense of hiring residential accommodation in a hotel or elsewhere for the employee or members of his household for a maximum period of 183 days after his transfer took effect or after he took up his appointment; the rented accommodation must be only temporary, i.e. while the employee is in search of permanent residential accommodation (De Swardt, 2011:92).

The employer must have incurred the above expenses, that is, he must either have incurred them himself or have reimbursed his employee (De Swardt, 2011:92).

In practice, SARS allows the exemption for the reimbursement of the expenditure incurred by the employee on:

- New school uniforms;
- The replacement of curtains;
- The registration of a mortgage bond and legal fees;
- Transfer duty;
- Motor vehicle registration fees;
- Telephone, water and electricity connection;
- The cancellation of a mortgage bond; and
- An agent's fee on the sale of the employee's previous residence (De Swardt, 2011:93).

SARS will not accept a loss incurred by the employee on the sale of his previous residence or an architect's fees for the design or alteration of a residence (De Swardt, 2011:93).

3.1.4.2 Remuneration earned outside South Africa

Under certain conditions Section 10(1)(o)(ii) of the Act any form of remuneration derived by an employee in respect of services rendered outside South Africa is exempt from normal tax (De Swardt, 2011:94).

This exemption applies in a year of assessment for amounts received or accrued by way of any salary, leave pay, wage, overtime, bonus, gratuity, commission, fee, emolument, or allowance including any fringe benefit, but only if:

- the employee was outside South Africa for more than 183 full days in total during any period of 12 months; and
- the period outside South Africa includes a unbroken period of absence of more than 60 full days during that period of 12 months; and
- the services were rendered during the period of absence from South Africa; and
- the services were rendered for or on behalf of an employer, who can be situated in or outside South Africa (De Swardt, 2011:94).

The 12 month period noted above does not need to correspond with a financial or tax year. In other words, any 12 month period may be used to establish whether a person was outside South Africa for more than 183 days. The services which generate the income should, however, have been rendered during that period (De Swardt, 2011:94).

When calculating the number of days during which a person is outside South Africa, Interpretation Note No 16 (27 March 2003) determines that weekends, public holidays, vacation leave and sick leave spent outside South Africa are deemed to be part of the days during which services are rendered and should therefore be included in the calculation of the 183 day and 60 day periods of absence (De Swardt, 2011:94).

For the purposes of this exemption, a person is deemed to be outside of South Africa if that person is in transit through South Africa between two places outside of South Africa and does not formally enter South Africa through a designated port of entry (De Swardt, 2011:94).

If remuneration is received by an employee during a year of assessment in respect of services rendered by that employee, over a period of longer than 12 months, the remuneration is deemed to have accrued evenly over the period for which the services were rendered (De Swardt, 2011:94). The amount received can therefore be apportioned and the exemption under this section can be claimed in all of the relevant years of assessment. This provision ensures that income from, for example a share incentive scheme, that relates back to services rendered outside South Africa over a period of longer than 12 months, will be deemed to have accrued over such longer period (De Swardt, 2011:94).

The exemption will be available during every year of assessment falling within such period and is not only limited to the year of assessment during which the requirements of section 10(1) (o) (ii) were met (De Swardt, 2011:94).

This exemption applies only to the normal tax on the remuneration. It does not expand to other income earned by the taxpayer during his absence, nor does it expand to other taxes (De Swardt, 2011:94).

Furthermore, according to other sections in the Act, this exemption does not apply to remuneration received from an employer in the national or provincial sphere of government, local authorities or a similar qualifying public entity that is deemed to be from a source in South Africa.

If an individual is a tax resident of South Africa and works in a foreign country for less than 183 days the remuneration earned while working abroad will be subject to tax in South Africa.

3.1.4.3 Relief of double taxation

Section 6*quat* of the Act provides relief to South African taxpayers in respect of amounts which are subject to tax in both South Africa and a foreign country.

Section 6*quat* makes provision for:

- any foreign taxes paid on any income from foreign sources will be subjected to a rebate against normal South African tax (s6*quat*(1)), or
- a deduction against income of any foreign taxes paid on income from a South African source (s6*quat* (1C)) (Bruwer, 2011:593).

The following table is a comparison between the rebate and the deduction that is deductible in terms of s6*quat*:

Table 2: Section 6*quat* rebate and deduction

Section 6*quat* rebate	**Section 6*quat* deduction**
The rebate is a reduction of tax payable	The deduction is a reduction of the income on which tax is calculated
The taxpayer has to be a South African resident	The taxpayer has to be a South African resident
There had to be foreign income	The income had to be received from an employment in South Africa (i.e. from a South African source)
The income had to be included in the taxable income of the resident and may not be exempt	The income had to be included in the taxable income of the resident and may not be exempt
The income had to be subject to foreign tax	The income had to be subject to foreign tax
The foreign tax may not be recoverable	The foreign tax may not be recoverable
The maximum rebate in respect of any foreign tax paid is limited to the total normal tax payable (in South Africa) as determined using the ratio between the total taxable income attributable to the foreign tax and the total taxable income.	The maximum deduction in respect of any foreign tax may not exceed the income on which the foreign tax was levied.

Source: Bruwer (2011:594)

The above table compares the section 6*quat* rebate and section 6*quat* deduction. The main difference is the source of the income to which each applies. The rebate applies to income earned from a foreign source while the deduction applies to income earned from a South African source. Only the rebate will be discussed in detail, as it is the rebate that is relevant in terms of this study. This is because income earned while working abroad will be from a foreign source.

3.1.4.4 Section 6*quat* rebate

It is imperative to note that the s6*quat* rebate is a rebate against tax and not against income (Bruwer, 2011:594). This means that the rebate is used to reduce a person's tax liability.

Should foreign taxes be paid on income earned while working abroad, a South African tax resident will be entitled to claim a section 6*quat* rebate on that income while working

abroad. Should the income earned while working abroad is exempt from South African tax in terms of any of the sections discussed above, the section 6*quat* rebate will not be available, as the income has to have been included in the taxable income of the individual and may not be exempt.

The rebate is an amount equal to the sum of foreign taxes payable by a resident of South Africa in respect of any income from a source outside South Africa that is not deemed to be from a source within South Africa (s6*quat*(1A)(a)(i)) (Bruwer, 2011:594).

The amount of foreign taxes which qualify for the section 6*quat* rebate is limited to an amount calculated according to the following formula (s6*quat* (1B) (a)):

$$\frac{\text{Taxable Income derived from all foreign sources}}{\text{Taxable income derived from all sources}} \times \text{Normal tax payable on taxable income from all sources}$$

(Bruwer, 2011:595)

Interpretation Note No 18 issued by SARS determines that taxable income derived from all foreign sources includes all foreign-sourced amounts included in taxable income, regardless of the rate of foreign tax to which those amounts are subjected to (Bruwer, 2011:595).

The foreign taxes must be taxes on income proved to be payable to any field of government of a foreign country without any right of recovery. According to SARS, the "right of recovery" is interpreted very broadly and includes any form of relief against a foreign tax liability, for example, a refund, a credit or a deduction (Bruwer, 2011:595).

3.2 DUTCH TAX SYSTEM

3.2.1 Tax system in general

In terms of the Netherlands Income Tax Act of 2001, residents are liable for income tax on their world-wide income. Non-residents residing in a European Member State, or in a country with which the Netherlands has concluded a double taxation agreement providing

for the exchange of information, may opt for enforcement of the sections of the Income Tax Act for residents. Non-residents are subjected to tax only on the income from a partial number of sources in the Netherlands (Expatax, not dated).

The Netherlands has completed many double taxation agreements to avoid the double taxation of world-wide income. If no rule is applicable, tax relief may be obtained on the basis of the Unilateral Decree for the avoidance of double taxation. If certain requirements are met foreign employees, temporarily posted to the Netherlands, may request the application of a special tax arrangement known as “the 30% rule” (Expatax, not dated).

The Dutch tax year runs from 1 January to 31 December (KPMG, 2010 (b)).

Tax is calculated by applying a sliding tax scale to the amount of taxable income. The income tax rates are as follows:

Table 3: Progressive tax rate schedule for the Netherlands

Income tax table for 2010				
Bracket	Taxable income bracket		Income Tax Rate	Social Security Tax Rate
Bracket	EUR	EUR	Percent	Percent
1	0	18,218	2.30	31.15
2	18,218	32,738	10.80	31.15
3	32,738	54,367	42.00	0.00
4	54,367	Over	52.00	0.00

Source: (KPMG, 2010 (b)).

3.2.2 Residency in general

Residency is must be assessed based on the virtues of each specific case. The following factors must be considered (not limitative) (KPMG, 2010 (b)):

- the reason for the stay in the Netherlands;
- the duration of stay;
- where the person’s family lives;
- the person’s hub of economic interests;
- the person’s purpose of stay;
- whether or not the person is registered in a municipal register;

- the location where bank accounts are held;
- the location where assets are held; and
- the terms of employment.

The tax courts also take into consideration whether or not there are personal bonds or ties in the Netherlands. The bonds or ties need not be permanent; but rather the strength of the tie is significant. This would include consideration of one's personal circumstances, for example the maintenance of a residence (KPMG, 2010 (b)).

Foreign residence does not necessarily eliminate a person from being considered a tax resident in the Netherlands. Tax treaties would then be used to avoid double taxation in the event of dual residence (KPMG, 2010 (b)).

A Netherlands resident who returns within a year after leaving the country will still be considered a Netherlands tax resident, unless he/she became a resident of a foreign country, as interpreted by Dutch law. Dutch civil servants living in a foreign country, are deemed resident in the Netherlands (KPMG, 2010 (b)).

3.2.3 Residency: working abroad

In most cases, the tax liability will not change if a person is sent overseas to work for one or more short periods. In such situations for the purpose of salaries and income tax the liability will most likely maintain the resident status (Belastingdienst, not dated).

If an individual is seconded abroad for a long time (which, in most cases, means more than 183 days), he/she may be required to pay tax in the country to which they have been seconded. For tax purposes, he/she may be deemed to have emigrated. Emigration is defined as leaving your country of origin to live in a foreign country (Belastingdienst, not dated).

Government personnel and development aid workers are an exception to this rule. When posted in a foreign country from the Netherlands they may remain qualified for treatment as Dutch residents for income tax purposes even in the case of a long-term posting. This

means that the person remains liable to taxation in the Netherlands as a resident taxpayer (Belastingdienst, not dated).

If an individual is seconded in a foreign country it is crucial for that person and the employer to know whether that person is also deemed to be living in the country to which they have been seconded or not. If a person continues to live in the Netherlands, he/she is regarded as a resident taxpayer in the Netherlands and, in most cases, as a non-resident taxpayer in that person's country of employment.

The tax consequences of being seconded in a foreign country depend upon which country a person resides in. It also makes a difference whether or not the Netherlands has a double tax treaty with that individual's country of employment. In the case of short-term or long-term secondment in a foreign country, the following situations are possible (Belastingdienst, not dated):

a) An individual lives in the Netherlands and works in a country with which the Netherlands has a double tax treaty.
b) An individual lives in the Netherlands and works in a country with which the Netherlands does not have a double tax treaty.
c) An individual lives and works in a foreign country.

The tax consequences of each of the above situations are summarised below

a. An individual lives in the Netherlands and works in a country with which the Netherlands has a double tax treaty

If a double tax treaty is applicable, it depends on the text of the treaty whether the Netherlands, or the country of employment, is entitled to charge tax. If the country where that individual is employed is entitled to charge tax, then the employer is not obliged to deduct wage tax from the remuneration given to the employer. In order to ensure that the provisions of the treaty are applied correctly, the Dutch employer would want to receive a certificate of exemption from the Dutch Tax and Customs Administration. This certificate (exempting the employer from deducting wage tax/national insurance contributions at

source) can be obtained from the tax office that deals with that individual's tax affairs. If the Netherlands is entitled to charge tax, then the Dutch employer is required to deduct wage tax/national insurance contributions and employee insurance contributions from that individual's remuneration (Belastingdienst, not dated).

b. An individual lives in the Netherlands and works in a country with which the Netherlands does not have a double tax treaty

The rules that apply to situation (a) are applicable here as well. The only exception is that, instead of a treaty, the provisions of the 2001 Double Tax Decree will determine whether or not the employer is required to deduct wage tax from that individual's remuneration (Belastingdienst, not dated).

c. An individual lives and work's in a foreign country

In virtually every case, tax is charged by the country in which an individual resides and works. The employer is not required to deduct wage tax from an individual's remuneration. If required, the employer can obtain a certificate of exemption from the Dutch Tax and Customs Administration (Belastingdienst, not dated)

There is technically no legal definition of a resident, but the general working trend tends to be that a person is NOT a resident if he/she is in the Netherlands for less than 183 days a year, or the location of the family residence is in a another country, and/or that the company he/she works for does not have an office or branch in the Netherlands. However, under certain circumstances, a person can be considered as a resident for the purposes of taxation or a non-resident taxpayer who qualifies for the "30 % ruling" (Belastingdienst, not dated).

3.2.4 Specific tax rules for working in a foreign country

For residents, salary earned from working in a foreign country should be reported and may be exempted with progression depending on the applicable double tax treaty (United tax network, not dated).

Employment income earned by non-residents from a source outside the Netherlands is generally not subject to income tax in the Netherlands. Employment income from within the Netherlands is calculated based on the number of working days spent in the Netherlands for the taxable year divided by the total number of working days for the year multiplied by the total amount of employment income earned (KPMG, 2010 (b)).

Employment income earned by an employee of a Dutch employer, in respect of services performed outside the Netherlands, will be taxed in the Netherlands in the case where such income is not subject to tax outside the Netherlands, on condition that such employee also performs some employment activities within the Netherlands (KPMG, 2010 (b)).

Residents are liable for tax in the Netherlands based on their worldwide income. In the case where services are performed outside the Netherlands, relief from double taxation may be available based on tax treaties with the relevant country or state (KPMG, 2010 (b)).

3.2.4.1 Relief of double taxation

Depending on the position under domestic rules, aid from double taxation for resident individual taxpayers may be provided by way of a tax treaty (KPMG, 2010 (b)).

Foreign employment income is usually covered by exemption provisions under these treaties. This is commonly referred to as ‘exemption with progression’, as although the income from outside the country is exempt, it is still taken into account when calculating an individual’s taxable income in order to determine which tax brackets should be applied (KPMG, 2010 (b)).

This is done by including the foreign income earned in the taxable income of an individual, but then deducting the tax within the Netherlands that is attributable to this foreign income from the total tax due. The formula used for calculating the exemption is:

(Foreign income/worldwide income) x Dutch tax (not including social insurance premiums) on worldwide income (KPMG, 2010 (b)).

The total tax due is then reduced by this exemption amount. The foreign tax paid/payable on this foreign income may be more or less than the Dutch exemption calculated (KPMG 2, 2010).

In cases where the global income is smaller than the overseas income a carry forward of the excess may be applicable (KPMG, 2010 (b)).

3.3 AUSTRALIAN TAX SYSTEM

3.3.1 Tax system in general

Australia also follows a residence based tax system, as was the case with South Africa and the Netherlands. Therefore, Australian residents are taxed on income from all sources while non-residents are only taxed on income earned from a source within Australia (Australian Government, 2010).

A resident is defined as an individual who resides in Australia and includes:

- an individual who is a resident in Australia, unless he/she is deemed to be resident in a place outside Australia by the Commissioner;
- an individual who was present in Australia for more than half of the tax year, unless the Commissioner concludes that such person is resident of a place outside Australia and has no intention to become resident in Australia; or
- an individual who is a member of a government retirement plan (KPMG, 2010 (c)).

A person who comes to Australia with the intention of residing there for a period of six months or more will be considered tax resident in Australia from the date that such person arrives (KPMG, 2010 (c)).

The Australian tax year runs from 1 July to 30 June (KPMG, 2010 (c)).

Tax is calculated by applying a sliding tax scale to the amount of taxable income. The income tax rates are as follows:

Table 4: Progressive tax rate schedule for Australia

Income tax table for 2009/2010			
Taxable income bracket		Total tax on income below bracket	Tax rate on income in bracket
From AUD	To AUD	AUD	(Percent)
0	6,000	0	0
6,001	35,000	0	15
36,001	80,000	4,350	30
81,001	180,000	17,850	38
181,001	Over	55,850	45

Source: (KPMG, 2010 (c)).

3.3.2 Residency in general

An individual is considered to be a tax resident in Australia if that individual:

- is primarily a resident of Australia;
- has been in Australia for more than half of the income year (unless his/her usual home is overseas and he/she does not intend to live in Australia - for example, a working holidaymaker); or
- is a foreign student enrolled in a course of study for more than 6 months (Australian Government, 2010).

A person who resides in Australia is considered to be a resident of Australia for tax purposes. However, the concept of residence varies from that of domicile and nationality. For example, an individual who visits Australia “as part of the normal order of his life” could be considered a tax resident in Australia, albeit that his domicile or home may be situated in another country (Australian Government, 2010).

An individual does not necessarily need to have an intention to live permanently in Australia in order to be considered resident there; it is not only the duration of the stay that is significant but rather the circumstances surrounding such individual's stay in Australia needs to also be considered. Each individual case is treated on its particular merits by The Taxation Office (Australian Government, 2010).

The definition of "resident" is contained in subsection 6(1) of the Income Tax Assessment Act 1936 (ITAA) and consists of four tests. They are substitute tests and therefore a person may be considered resident in terms of any one of these tests. The four main tests for residency are:

a) the "resides" test (residency);

b) the "domicile" test (residency);

c) the 183 day rule; and

d) the superannuation test.

These tests are discussed below:

a. The "resides" test

This test establishes whether an individual resides in Australia or not, and is dependent on all the circumstances surrounding the case. The following aspects should be considered as part of this test:

- return trips made by an individual to his/her country of origin – the number of trips made, the length of these visits as well as the reasons for these trips are all factors which must be considered; absence that is purely due to business is not in itself sufficient to prove that a person is a non-resident;
- the degree of family and business ties which an individual has in Australia and in the country of origin;
- whether or not the individual's family accompanies him/her to Australia and on return trips to the country of origin;
- whether the individual is employed in the country of origin;

- whether a place of residence is still maintained in the country of origin or is available for the individual's use while there;
- whether the individual's personal items are held in Australia or in the country of origin;
- the extent to which any assets or bank accounts are acquired or maintained in Australia and in the country of origin; and
- whether the migrant has commenced or established a business in Australia.

b. The "domicile" test

An individual, who has a domicile in Australia, will be considered tax resident in Australia unless the Commissioner confirms that such a person is resident of a country other than Australia. In terms of the Domicile Act 1982, an individual establishes a "domicile of choice" in Australia if the individual intends for Australia to be his/her home for an unspecified period of time. The domicile test is discussed in Taxation Ruling IT 2650. Domicile generally means the country in which a person was born unless he/she migrates to another country – then he/she adopts a "domicile of choice" (Australian Government, 2010).

c. The 183 days test

An individual who is present in Australia during a tax year for more than 183 days is considered a tax resident of Australia under this test. This period of 183 days may be continuous or intermittent. This is unless the Commissioner is satisfied that the individual's usual place of residence is outside Australia and that he/she does not intend to take up residence in Australia (Australian Government, 2010).

d. The superannuation test

This is a legal test which deems an individual who is an eligible employee per the Superannuation Act of 1976 to be a resident. This test is an additional test of residence and is applicable where an individual is not considered resident in the ordinary sense as

per one of the above tests. It also applies to the spouse or a child under 16 years of age of an eligible employee. This test applies mainly to people working for the Australian Government in a foreign country (Australian Government, 2010).

3.3.3 Residency: working abroad

If an individual is working in a foreign country he/she will need to determine whether he/she is still an Australian resident for tax purposes (Australian Government, 2010).

If an individual remains an Australian resident while working in a foreign country, he/she must declare his/her worldwide income, both assessable for tax purposes. It is possible for an Australian individual working in a foreign country to still be considered a resident of Australia for tax purposes. It is therefore crucial for an individual to assess whether or not he/she is a resident of Australia for tax purposes (Australian Government, 2010).

A foreign/non-resident of Australia will only need to lodge an income tax return if he/she has Australian income – excluding any income from which non-resident withholding tax has been deducted (Australian Government, 2010).

Foreign employment income, that is exempt from Australian tax, must also be reported as it may be taken into account in working out the amount of tax that one has to pay on his/her quantifiable income (Exfin, 2011).

Figure 5 on the next page represents a flow chart that can be utilised in order to assess if an Australian income tax return should be lodged.

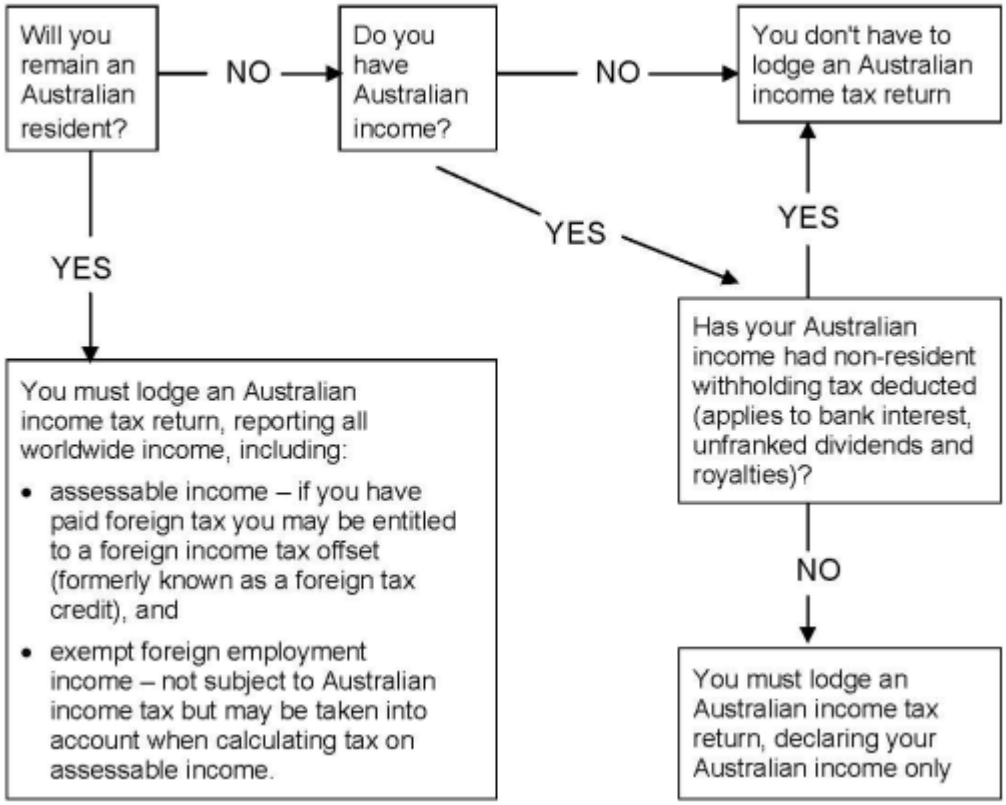


Figure 5: Flowchart explaining whether or not an Australian income tax return should be lodged.

Source: Australian Government, 2010

3.3.4 Specific tax rules for working abroad

Emigrant employees receive favourable treatment for fringe benefit tax purposes with regards to relocation allowances, rental reimbursements, sponsored accommodation, tuition for children, and home leave. These fringe benefits usually relate to temporary secondments for a period of less than 4 years. Foreigners who relocate to Australia permanently are not entitled to these tax benefits (KPMG, 2010 (c)).

Bonuses received by a temporary resident that relate to services performed prior to arrival in Australia, will not be taxable in Australia even if received after ones arrival in Australia (KPMG, 2010 (c)).

However, if the individual is a tax resident of Australia at the time when the income or bonus is received, then it is taxable in Australia. A deduction is allowed for foreign taxes paid on that same income (KPMG, 2010 (c)).

If the individual is tax resident of the country where the services were rendered and is also tax resident of Australia, then the provisions of a relevant double tax treaty needs to be applied in order to assess in which country the income should be taxed (KPMG, 2010 (c)).

Prior to 1 July 2009, an exemption was available for income earned in respect of foreign services for a period of at least 91 days; where such income was taxable in the country where the services were rendered. Foreign earnings paid to an individual on or after 1 July 2009, in respect of foreign services performed before 1 July 2009, remain eligible for this exemption. Note that earnings earned in a foreign country are exempted from tax but must still be included in the individual's total income for tax purposes in order to calculate the appropriate rate of tax that must be applied (KPMG, 2010 (c)).

Income earned by non-residents for working in a foreign country, will not be subject to tax in Australia as they are only taxed on income from a source within Australia (KPMG, 2010 (c)).

3.3.4.1 Relief of double taxation

Australia applies the foreign income tax offset (FITO) system. Per this system, all income earned by an Australian tax resident from a foreign source, including dividends, interest, and royalties, is taxable in Australia. A deduction is then allowed for foreign taxes paid on foreign income earned by such resident (KPMG, 2010 (c)).

A FITO is only available where both:

- a resident has earned foreign income which is included in his/her taxable income; and
- such resident was personally liable for foreign tax on the foreign income earned (KPMG, 2010 (c)).

The deduction for foreign taxes cannot exceed the Australian tax payable on the foreign income (KPMG, 2010 (c)).

3.4 CONCLUSION

The countries that have been chosen for this study have different tax systems. In each of the countries residency is an important principal but the basis of determining tax residency differs between the countries. This results in different tax consequences for individuals working abroad in other countries.

CHAPTER 4

COMPARISON OF TAX CONSEQUENCES

After discussing the tax legislation in South Africa, Netherlands and Australia, a comparison is made between the three countries. An example is used to enhance the explanation.

Example Scenario

Assume Mr D who has been living in country A his whole life decides to work abroad for six months in country B. Mr D earns a total salary of 100,000 (FC) foreign currency for the six month period. He paid foreign tax to the amount of 20,000 (FC) in country B.

4.1 SOUTH AFRICA

The example scenario will now be discussed from a South African point of view.

Assumptions

- Assume country A is South Africa.
- Assume country B is a foreign country.

Residency

A person can, as a matter of law, be an ordinary resident in a country from which he was physically absent throughout the year of assessment.

The term of employment outside South Africa will not affect his residency status.

In terms of the ordinarily test Mr D would be considered a tax resident of South Africa as this is where he would return after his short term employment (assuming).

Taxability of income

In terms of residence Mr D, who is considered to be a South African tax resident, is taxed on his worldwide income. Thus the amount earned in country B is included in gross income for tax purposes.

Section 10(1)(o)(ii) of the Act exempts, under certain circumstances, any form of remuneration derived by an employee in respect of services rendered outside South Africa from normal tax.

This exemption applies in a year of assessment for amounts received or accrued by way of any salary, leave pay, wage, overtime, bonus, gratuity, commission, fee, emolument, or allowance including any fringe benefit, but only if:

- the employee was outside South Africa for more than a total of 183 full days during any period of twelve months, and
- the period outside South Africa includes a continuous period of absence of more than 60 full days during that period of twelve months, and
- the services were rendered during the period of absence from South Africa, and
- the services were rendered for, or on behalf of an employer, who can be situated in or outside South Africa.

Mr D was out of South Africa for more than 183 days in total and for a continuous period of 60 full days. He rendered his service during the period of absence from South Africa and the services were rendered for an employer situated outside South Africa. Thus, in terms of section 10(1)(o)(ii) of the Income Tax Act, Mr D's income, derived from country B, would be considered as exempt income.

Foreign taxes paid

Section 6*quat* of the Act provides relief to South African taxpayers in respect of amounts which are subject to tax in both South Africa and a foreign country.

Mr D's income derived from country B was subject to tax in country B but exempt for tax purposes in South Africa thus he will not be entitled to a relief in terms of section 6*quat.*

4.2 NETHERLANDS

The example scenario will now be discussed from a Dutch point of view.

Assumptions

- Assume that country A is the Netherlands.
- Assume that country B is a foreign country.

Residency

A Netherlands resident who returns within a year after leaving the country will still be considered a Netherlands tax resident, unless he/she became a resident of a foreign country, as interpreted by Dutch law.

Thus based on the above Mr D is considered as a tax resident of the Netherlands

Taxability of income

Under the present Income Tax Act of Netherlands, residents are liable for income tax on their world-wide income

Residents are liable for tax in the Netherlands based on their worldwide income. In the case where services are performed outside the Netherlands, relief from double taxation may be available based on tax treaties with the relevant country or state (KPMG. 2010 (b)).

Thus the amount earned by Mr D in country B would be taxed in the Netherlands.

Foreign taxes paid

Foreign employment income is usually covered by exemption provisions under tax treaties. This is commonly referred to as 'exemption with progression', as although the income from outside the country is exempt, it is still taken into account when calculating an individual's taxable income in order to determine which tax brackets should be applied (KPMG. 2010 (b)).

Mr D will thus be entitled to obtain a tax credit since he has paid tax in both countries.

Mr D would then use the following formula in order to calculate the tax credit available to him:

(Foreign income / worldwide income) x Dutch tax on worldwide income

Where the worldwide income is smaller than the foreign income a carry forward of the excess may apply.

4.3 AUSTRALIA

The example scenario will now be discussed from an Australian point of view.

Assumptions

- Assume country A is Australia.
- Assume country B is a foreign country.

Residency

Australian residents are generally taxed on their worldwide income and non-residents are generally taxed only on their Australian-sourced income.

An individual who is present in Australia during a tax year for more than 183 days is considered a tax resident of Australia under this test. This period of 183 days may be continuous or intermittent. This is unless the Commissioner is satisfied that the

individual's usual place of residence is outside Australia and that he/she does not intend to take up residence in Australia (Australian Government, 2010).

Based on the above it can be concluded that Mr D was in Australia for more than 183 days in a tax year thus he is considered a tax resident of Australia.

Taxability of income

If the recipient is a tax resident of Australia the amount received is taxable in Australia with a credit allowed for foreign taxes paid on that income (KPMG. 2010 (c)).

Thus Mr D would be subject to tax in Australia as he is a tax resident of Australia as defined above.

Foreign taxes paid

Under the foreign income tax offset (FITO) system all assessable foreign-source income, including dividends, interest, and royalties derived by Australian residents (excluding temporary residents), will be subject to Australian income tax with a credit allowed for foreign tax paid on that income (KPMG. 2010 (c)).

Based on the above Mr D will be allowed to obtain the tax credit for foreign tax paid in country in B.

4.4 COMPARISON OF THE TAX CONSEQUENCES

4.4.1 Residency

All three countries compared in this study follow a residence based tax system. Residents are taxed on their world-wide income while non-residents are only taxed on income from a source within the relevant country.

Therefore, the determination of tax residency is a fundamental principle in each of these tax systems. One common factor in determining tax residency between the three countries is that a person does not have to be physically present in a country to be considered a tax resident of that country. Therefore, in the above case study, Mr A remained a tax resident of all the above countries even though he had been seconded to work abroad.

However, the details of determining tax residency, for example the period of being physically present, differs slightly between the countries. In South Africa, if a person is not ordinarily resident, he/she is determined to be a resident based on physical presence in South Africa over a period of five years. However, in Australia, a person can be considered a tax resident by merely being present in Australia for more than one half of the current tax year.

4.4.2 Specific tax rules for working abroad

In South Africa a resident is generally granted an exemption from tax on income earned from working abroad provided the employee works abroad for more than a 183 day period (this is subject to certain conditions, refer to chapter 3.1.4.2). Therefore, for secondments less than 183 days, a South African tax resident will be liable to income tax on the income earned from abroad. In the Netherlands, income earned while working abroad is taxable in the hands of a resident and one must look to the provisions of a double tax agreement for relief. In Australia, the income earned from abroad is also generally taxable in the hands of the employee. Therefore it appears that South Africa is the only one of the three countries to provide an income tax exemption for secondments of a longer term.

In the above case study, the income earned from abroad was exempt from income tax for the South African tax resident, but was taxable in the hands of the Australian and Dutch tax residents.

4.4.3 Relief for double taxation

In each of the three countries, a relief for double taxation is provided. The calculation of this relief is the same for each country and is limited to either the foreign tax paid or the local tax liable on the foreign income, whichever is the smaller amount.

Therefore, in each of these countries, an individual will not be burdened with the double taxation of the same amount, as relief will be provided by his/her resident country.

4.5 CONCLUSION

The tax consequences for an individual working abroad differ for each country chosen for this study. Although Mr A remained a tax resident of each of the above countries, there was a difference in the tax consequences due to an exemption available to South African employees working abroad. This exemption was not available to Dutch and Australian employees. In each of the countries relief is available to ensure that an individual is not taxed in both his/her home country and the country to which he/she has migrated.

CHAPTER 5

CONCLUSION

5.1 INTRODUCTION

This study was aimed at comparing the tax consequences relating to South African, Dutch and Australian employees working abroad. It was completed to provide a better understanding of the tax consequences for a South African, Dutch and Australian employee working abroad.

The study consisted of a qualitative, non empirical research design. An extended literature review was performed using secondary resources.

This chapter is used to determine if the objectives of the study were met and to summarise the results of the information obtained.

5.2 OBJECTIVES OF THIS STUDY

The study was guided by four specific research objectives, which are:

- to identify the tax consequences for a South African employee working abroad.

  This was done by means of an analysis of the Income Tax system in South Africa. Furthermore, the residency rules and the specific tax consequences for employees working abroad were also analysed (refer to chapter 3.1).

- to identify the tax consequences for a Dutch employee working abroad.

  This was done by means of an analysis of the Netherlands tax system. Furthermore, the residency rules and the specific tax consequences for employees working abroad were also analysed (refer to chapter 3.2).

- to identify the tax consequences for an Australian employee working abroad.

This was done by means of an analysis of the Australian tax system. Furthermore, the residency rules and the specific tax consequences for employees working abroad were also analysed (refer to chapter 3.3).

- to compare the tax consequences of the above three countries, with regard to residents working abroad.

  This was achieved by means of an illustrative case study which was applied to each of the relevant countries (refer to chapter 4).

5.3 CONCLUSION

The tax systems in the Netherlands, Australia and South Africa are similar in that they are all residence based. In each of these three countries tax residents are taxed on worldwide income while non-residents are only taxed on income from specific sources. Therefore, tax residency is an essential concept in each of these tax systems. However, the criteria used to determine tax residency and the factors considered differ from country to country.

Since there is a difference in determining tax residency, the taxability of amounts earned from abroad also differs between the countries as the taxability of income earned is determined according to residency status.

Furthermore, South African employees working abroad for more than 183 days are usually liable for an exemption from South African income tax on the income earned from abroad. This exemption is not available to Dutch and Australian employees working abroad.

The relief for double taxation is the same for all three countries. In each of the countries the credit is limited to the smaller of the amounts paid either for foreign tax paid or local tax liable on the foreign income.

In conclusion, the tax consequences for employees working abroad differ between the Netherlands, Australia and South Africa. There are differences in determining tax residency as well as different exemptions available to employees working abroad.

However, in each of the countries there is relief available to ensure that an individual is not doubly taxed on the same income. This relief is calculated in the same manner in each of the countries.

5.4 RECOMMENDATIONS AND FUTURE RESEARCH

There are numerous opportunities for future research regarding the impact of taxation on employee migration. Further studies on the impact that taxation has on migration decisions could be used by companies around the globe who offer such employment opportunities. Furthermore, it would also be beneficial to individuals who are considering working overseas, as the tax consequences may impact their decision to migrate or their country of choice.

It is recommended that further research be directed at exploring the countries with the most benefits and incentives for expatriates. This information could then be used as an incentive by companies when offering employment overseas.

Another recommendation is to compare the South African tax rules for employees working abroad to that of other OECD countries, to determine if South Africa's tax rules are similar to that of the OECD countries. Areas of improvement in the South African tax system could then be easily identified and the tax system improved.

LIST OF REFERENCES

Australian Government. 2010. *Guide to foreign income tax offset rules 2009-10*. Australia.

Belastingdienst. Not dated. Tax Consequences for employees seconded abroad. [Online] Available from: http://www.belastingdienst.nl/variabel/buitenland/en/private_taxpayers/private_taxpayers-95.html
[Accessed: 2011-03-05].

Bruwer, L. 2011. International Tax. In: Stiglingh. M. (ed.) *SILKE: South African Income Tax.* South Africa: Lexis Nexis.

Business Dictionary. Not dated. Remuneration [Online] Available from: http://www.businessdictionary.com/definition/remuneration.html
[Accessed 2011-04-27].

Claus, E., Claus, I. and Dorsam, M. December 2010. The Effects of Taxation Migration: Some Evidence for the ASEAN and APEC Economies. [Online] Available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729023&http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1729023
[Accessed: 2011-03-09].

Reurs, M. 2011. Watch Out Morden Migration Policy. [Online] Available from: http://www.indodutchconnect.com/app/webroot/pdf/newslatter/issue_50/watch%20_out.pdf
[Accessed: 2012-02-26].

De Swardt, R. 2011. Exempt Income. In: Stiglingh. M. (ed.) *SILKE: South African Income Tax.* South Africa: Lexis Nexis.

Ernst & Young. 2011. Six global trends shaping the business world. *Demographic shifts transform the global workforce*. [Online] Available from:

http://www.ey.com/GL/en/Issues/Business-environment/Six-global-trends-shaping-the-business-world---Demographic-shifts-transform-the-global-workforce
[Accessed: 2012-06-26].

Euraxess. 2010. The Netherlands. *New Immigration Law*. [Online] Available from: http://www.euraxess.nl/entry-conditions/visa-residence-permits/new-immigration-law
[Accessed: 2012-06-26].

Exfin. 2011. Australian tax Residency Guidelines. [Online] Available from: http://www.exfin.com/australian-tax-residency
[Accessed 2011-05-05].

Expatax. Not dated. Income Tax [Online] Available from: http://www.expatax.nl/incometaxexpatax.htm
[Accessed 2011-04-25].

Expatcareers. 2010. TRENDS IN EXPATRIATION. [Online] Available from: http://www.expatcareers.com/trends/
[Accessed: 2011-03–12].

Investor Words. Not dated. Employee [Online] Available from: http://www.investorwords.com/1696/employee.html
[Accessed 2011-04-26].

Jogarajan, S. Not dated. Bring them home – The case for tax concessions for returning Australians [Online] Available from: http://scholar.google.co.za/scholar?hl=en&q=Sunita+Jogarajan+Tax+Australians&btnG=Search&as_sdt=2%2C5&as_ylo=&as_vis=0
[Accessed: 2011-05-09].

KPMG. 2010 (a). South Africa, Taxation of International Executives [Online] Available from:

http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/TIES/Documents/SOUTH_AFRICA_2010_TIES.pdf
[Accessed: 2011-08–12].

KPMG. 2010 (b). Netherlands, Taxation of International Executives [Online] Available from: http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/TIES/Documents/NETHERLANDS_2010_TIES%20.pdf
[Accessed: 2011-08–12].

KPMG. 2010 (c). Australia, Taxation of International Executives [Online] Available from: http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/TIES/Documents/Australia_2010_TIES.pdf
[Accessed: 2011-08–12].

Mayo, M.A. Not dated. Multinational Employee Transfers Create Tax Concerns. [Online] Available from: http://www.iln.com/articles/tax_concerns.html
[Accessed 2011-03-10].

NaukriHub. Not dated. International Mobility of Employees. [Online] Available from: http://www.naukrihub.com/hr-today/international-mobility.html
[Accessed 2012-06-26].

OECD. 2008. Reaping the Economic Benefits of Immigration. [Online] Downloaded from: http://0-search.proquest.com.innopac.up.ac.za/docview/274596523/fulltextPDF/12FC4B08689791F8F65/3?accountid=14717
[Accessed: 2011-05-09].

SARS. Not dated. Migration [Online] Available from: http://www.sars.gov.za/home.asp?pid=3770
[Accessed 2011-07-09].

Sokrates Comenius. Not dated. Migration [Online] Available from: http://www.ghs-mh.de/migration/projects/define/define.htm
[Accessed 2011-04-27].

Super Review. 2009. Australian expats earning big buks [Online] Available from http://www.superreview.com.au
[Accessed: 2011-04-09].

UnitedTax Network. Not dated. The Netherlands tax guide [Online] Available from: http://unitedtaxnetwork.nl/en/images/stories/brochures/Taxguide.pdf
[Accessed: 2011-08-09].

Wide World of Work. 2012. By the Numbers – Global Worker Migration Trends [Online] Available from: http://www.wideworldofwork.com/2012/02/25/by-the-numbers-global-estimates-and-trends-for-migration-and-migrants/
[Accessed: 2012-06-26].

World Bank.2011. Migration and Remittances [Online] Available from: http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20648762~pagePK:64257043~piPK:437376~theSitePK:4607,00.html
[Accessed: 2011-11-04].