

A COMPARISON OF THE TAX EFFECTS FOR SOUTH AFRICAN, FRENCH AND JAPANESE EMPLOYEES WORKING ABROAD

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ABSTRACT

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Globalisation might become the catchword of the 20th century. In the period following World War II technological innovations have effectively changed planet earth to “One World” (Straubhaar & Wolter, 1997). As a result of this, employee migration and its effects, has gained in significance. Individuals can now easily choose to work anywhere around the globe. Opportunities for skilled professionals are rapidly increasing, and individuals are capitalising on these opportunities. In recent years much attention has been directed, within OECD countries, to the emigration of highly qualified persons attracted to countries where job opportunities are more plentiful and research funding more generous (Dumont & Lemaître, 2005).

In an empirical study, conducted by Liebig and Sousa-Poza (2005), it was stated that, besides expected wages and job opportunities, the costs of migration and the subjective evaluation of a location, two other factors help determine the expected net return from migration: taxes and network effects.

This study is aimed at comparing the tax consequences for South African, Japanese and French employees working abroad. It is clear from the information obtained that the relevant countries have very different tax systems. In each of these three countries tax residency is a fundamental principle as residents are taxed on worldwide income while non-residents are taxed on income only from a source within that particular country. However, the principals and factors that are considered in determining tax residency differ between the countries. This difference in determining tax residency has an impact on the tax consequences for employees working abroad as the taxability of amounts earned from abroad is dependent on one’s residency status. Furthermore, the conditions for exemption of amounts earned from abroad for tax purposes differ between the countries.

Keywords: Employee Migration Taxation Residency
French Japanese South African

OPSOMMING

'N VERGELYKING VAN DIE BELASTINGGEVOLGE VIR SUID-AFRIKAANSE, FRANSE EN JAPANESE WERKNEMERS WAT IN DIE BUITELAND WERK

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Globalisering kan die slagspreuk van die 20ste eeu word het. In die tydperk ná die Tweede Wêreldoorlog het tegnologiese innovasies die planeet aarde effektief verander na "Een Wêreld" (Straubhaar & Wolter, 1997). As gevolg hiervan het werknemermigrasie en die gevolge daarvan meer belangrik geword, aangesien individue nou maklik kan kies om op enige plek ter wêreld te gaan werk. Geleenthede vir geskoolde professionele werkers neem vinnig toe, en individue benut hierdie geleenthede. Baie aandag is in die afgelope jaar in die Organisasie vir Ekonomiese Samewerking en Ontwikkeling lande geskenk aan die emigrasie van hoogs gekwalifiseerde persone wat na lande gelok is waar werkgeleenthede meer algemeen en navorsingsbefondsing ruimer is (Dumont & Lemaître, 2005).

In 'n empiriese studie het Liebig en Sousa-Poza (2005) dit gestel dat, naas die verwagte lone en werkgeleenthede, die koste van migrasie en die subjektiewe evaluering van 'n plek, twee ander faktore bydra om die verwagte netto-opbrengs van migrasie te bepaal: belasting en netwerkgeleenthede.

Hierdie studie is daarop gemik om die belastinggevolge vir Suid-Afrikaanse, Japannese en Franse werknemers wat in die buiteland werk, te vergelyk. Dit is duidelik uit die inligting wat verkry is dat die betrokke lande baie uiteenlopende belastingstelsels het. In elk van hierdie drie lande is inwonerstatus 'n fundamentele beginsel, omdat inwoners belas word op wêreldwye inkomste, terwyl nie-inwoners belas word op inkomste wat slegs uit 'n bron binne daardie spesifieke land verdien word. Die beginsels en die faktore wat oorweeg moet word in die bepaling van inwonerstatus verskil tussen die lande. Hierdie verskil in die bepaling van inwonerstatus het 'n impak op die belastinggevolge vir werknemers wat in die buiteland werk, as die belasbaarheid van die bedrae wat in die buiteland verdien word, afhanklik is van 'n individu se inwonerstatus. Verder verskil die voorwaardes vir die vrystelling van die bedrae wat uit die buiteland vir belastingdoeleindes verdien is, tussen die lande.

Sleutelwoorde: Werknemer Migrasie Belasting Inwoner
 Franse Japannese Suid-Afrikaanse

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Globalisation could possibly be the catchphrase of the 20th century. Recent technological innovations and advancements have effectively changed planet earth to “One World” (Straubhaar & Wolter, 1997).

As a result of this, employee migration and its effects, has gained significance. Individuals can now choose to work anywhere around the globe, with little effort. Opportunities for skilled professionals are rapidly increasing, and individuals are capitalising on these opportunities. According to United Nation (UN) statistics, in 2010 more than 200 million people were living in a country other than their home country (Wikipedia, 2010).

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 the income tax burden on skilled workers differs remarkably between countries.

Furthermore, Egger and Radulescu (2009) mention that some countries explicitly provide special treatment for expatriates. These countries include Austria, Belgium, Canada, Denmark, Finland, France, Japan, Netherlands, New Zealand, Norway, and the United Kingdom.

A comparison of the tax effects of two of these countries regarding employee migration will therefore be of great interest and relevance.

1.2 PROBLEM STATEMENT

Due to the increase of expatriation in the 20th century, numerous studies have been conducted on employee migration to analyse trends. Taxation is an important component in the consideration of employee migration and differs remarkably amongst different countries.

No previous studies were identified which compare the tax consequences of South Africa, France and Japan with regard to employee migration. This study aims to compare the tax effects of employee migration for French and Japanese employees to that of South African employees.

1.3 PURPOSE STATEMENT

The main purpose of this study is to compare the tax consequences for Japanese and French employees working abroad, to that of South Africa. This study can be used as a basis for further studies, with regard to analysing and comparing the tax consequences of countries whose citizens are working abroad.

Since employee migration is increasing, and is carrying more weight in the globalisation of businesses, such a study will be useful. It can be used to improve the tax system in South Africa and to ensure that it is in line with that of other countries.

1.4 RESEARCH OBJECTIVES

This analysis is guided by the following specific research objectives:

- to identify the normal tax consequences for South African employees working abroad;
 - to identify the normal tax consequences for French employees working abroad;
 - to identify the normal tax consequences for Japanese employees working abroad;
- and

- to compare the tax consequences of South Africa, France and Japan for employees working abroad.

1.5 DELIMITATIONS

The study has several delimitations. Firstly the study is limited to the context of South African, French and Japanese citizens, working abroad for remuneration. As such, volunteers and public benefit organisations will not be considered. Employees working for the state of any of these countries will also be excluded from the study.

Secondly, the study will only focus on salaried individuals who are permanently employed abroad. Therefore, wage earning individuals who travel abroad and fill temporary posts, will not be considered.

The effect of double taxation agreements will not be considered.

Finally, the study will focus on the income tax consequences of the remuneration earned from working abroad as well as other employment related incomes and deductions. Therefore other tax consequences, for example capital gains tax, will not be considered in this study.

1.6 DEFINITION OF KEY TERMS

This study involves various key concepts. These terms can be defined in a number of ways. The following definitions for these concepts were employed (see chapter 2.1).

Developed / developing countries: a developed country is a country that has a high level of development according to certain criteria. Countries not fitting such definitions are classified as developing countries or undeveloped countries (Wikipedia, 2011(a)).

Employee: the definition of an employee is twofold. Firstly, it defines an employee as any person, excluding an independent contractor, who works for another person, or for the state and who receives or is entitled to receive remuneration. Secondly, it defines an employee as any other

person who, in any manner, assists in carrying on or conducting the business of an employer (Modise, 2008).

Migration: in general, migration is a process in which an individual or a group shifts their residence from one population (or place) to another. Apart from its spatial dimension, migration also implies the disruption of work, schooling, social life and other patterns. A migrant is someone who breaks off activities and associations in one place and recognises their daily life in another place. A move within the same area is considered mobility, not migration, because the mover can continue day to day life without significant disruption (JRank, *Marriage & Family Encyclopaedia*, not dated).

Mobility: includes long, medium and short term assignments, business travels and virtual assignments (Peixeto, 2006). Labour mobility suggests leaving one country or area to go to another where there is work (Wiki Answers, 2011).

Expatriation: an expatriate (expat) is a person temporarily or permanently residing in a country and culture other than that of the person's upbringing or legal residence.

The abbreviations used in this document are summarised in the table below.

Table 1: Abbreviations

Abbreviation	Meaning
CRDS	Contribution au remboursement de la dette sociale (France social charge)
CSG	Contribution sociale généralisée (France social charge)
LIT	Local Inhabitant Tax
MNC	Multinational Corporations
NIT	National Income Tax
OECD	Organisation for Economic Co-operation and Development
PACS	The French version of civil partnership, but open to both same and opposite sex couples
PAYE	Pay As You Earn
PS	Prélèvement Sociale Contribution additionnelle (France social charge)
RSA	Revenu de solidarité active (France social charge)
SARS	South African Revenue Services

1.7 RESEARCH DESIGN AND METHODS

This study constitutes a qualitative non-empirical literature review. This research method is appropriate for this study, as the tax consequences for South African, French and Japanese employees working abroad are analysed and compared, using existing (secondary) data. This data will be used to obtain an understanding of the specific topic and to provide an overview of the tax consequences for the countries chosen. The disadvantage of this research method is that it is driven by existing data and information is limited to the sources used.

1.8 SUMMARY OF CHAPTERS

This study consists of five chapters. This first chapter constituted an introduction to the study, detailing the background for the chosen topic, as well as the purpose and objectives of the study.

In the second chapter the author provides further information on employee migration and expatriation in general, including the trends of migration. The relationship between tax and migration is also examined.

The author presents a basic understanding of the tax system in each of the countries relative to the study in the third chapter. This chapter is structured according to country.

A detailed analysis of the tax consequences of each of the relevant countries, for employees working abroad, is contained in the fourth chapter. It includes a comparison of the tax consequences between the three countries. This is done by means of a case study, which is then applied to each of the relevant countries.

The final chapter includes the conclusion to the study and the findings noted. A final conclusion is reached and future research recommendations given.

CHAPTER 2

MIGRATION AND EXPATRIATION

2.1 INTRODUCTION

This chapter provides background to the study and attempts to define the concepts of migration and expatriation in order to better understand the terms around which this study focuses.

2.2 BACKGROUND: EMPLOYEE MIGRATION

2.2.1 Defining the terms

This study aims to focus on the tax consequences of employee migration. It is therefore important to understand the concept of “employee migration”. This is done by analysing the definitions of each of these words.

i. Employee Migration:

Employee is defined by Merriam-Webster (not dated) as: “one employed by another, usually for wages or salary and in a position below the executive level”.

According to Modise (2008) the definition of an employee is twofold. “Firstly, it defines an employee as any person, excluding an independent contractor, who works for another person, or for the state and who receives or is entitled to receive remuneration. Secondly, it defines an employee as any other person who, in any manner assists in carrying on or conducting the business of an employer.”

Migration is defined as “the movement of people across a specified boundary for the purpose of establishing a new or semi-permanent residence” (INDEPTH Network, 2008). JRank (not dated) defines migration as “a process in which an individual or a group shifts

their residence from one population (or place) to another”. Aside from the spatial element, there is also an implication of disruption of ones work or life. A migrant is someone “who breaks off activities and associations in one place and recognises their daily life in another place”. A move within the same area is considered mobility, not migration, because the mover can continue day to day life without significant disruption.

For the purposes of this study, migration refers to a person who has shifted his/her residence to another country. Migration results in different tax consequences compared to those of an employee working in his/her home country.

The concept **employee migration** would therefore refer to an individual, who earns remuneration from working for another person, and has shifted his/her residence to another place in order to fulfil such employment.

ii. Mobility:

The concept of mobility is also relevant, in order to distinguish between mobility and migration. Mobility includes “long, medium and short term assignments, business travels and virtual assignments” (Peixeto, 2006).

As noted above, migration involves a disruption in one’s day to day life, whereas mobility does not.

Labour mobility suggests leaving one area to go to another where there is work. Migration is just leaving one country or area for another, and could be for any number of reasons: retirement, health, family, work, improved benefits, and such like (Wiki Answers, 2011).

iii. Developed vs Developing country:

The difference between a developed and a developing country also needs to be understood. A developed country is “a country that has a high level of development” according to certain criteria. The criteria that should be used and the classification of a

country as developed are argumentative subjects. Countries that do not meet this classification are considered developing or undeveloped countries (Wikipedia, 2011(a)).

Characteristics of a developing country include relatively low levels of affluence, lower per capita income, lower education levels and higher unemployment and poverty rates. Developing countries may be aspiring to improve these aspects, but may not have achieved them as yet. These countries usually suffer from war, disease, poverty, natural disasters, and so on (*Blurt It*, not dated).

On the contrary, developed countries have advanced economies. This includes technological improvements, infrastructure and a steady government. Such development usually results in a higher per capita income, good education health-care whilst the death and birth rates are almost the same (*Blurt It*, not dated).

iv. Expatriation:

The concept of expatriation is also relevant for the purposes of this study. An expatriate is defined as “one who has taken up residence in a foreign country” – this is not expatriation but an expatriate, per the Free Dictionary (not dated). In Wikipedia (2010), an expatriate is defined as “a person temporarily or permanently residing in a country and culture other than that of the person's upbringing or legal residence”.

The term “expatriate” refers to all foreign-born persons living abroad, irrespective of the intended or actual duration of stay.

The current status of increasing expatriation statistics around the globe is the source for the relevance of this study.

2.2.2 Career expatriates

In the past 20 years, issues relating to international migration and the international mobility of skilled or qualified workers have been receiving increasing attention from policy-makers. Demographic inequalities between developed and developing countries, including

considerable differences in wages, have encouraged the movement of employees from surplus economies to those where they are most in need (Dumont & Lemaître, 2005:5).

As the international operations of companies' escalates, so does the requirement and priority for the development of employees with global competencies (Black et al., Connor, Kohonen, and Suutari in Andresen & Biemann, 2009:1). Globally competent managers are characterised as having the ability to “interact effectively with people who are culturally different, to deal with various competitive and political environments and to see rapid change and uncertainty as an opportunity” (Evans et al., Early & Ang in Andresen & Biemann, 2009:1).

The most powerful mechanism to develop these characteristics is considered to be international experience (Black et al., and Evans et al., in Andresen & Biemann, 2009:2). As a result, “international business skill development and foreign work experience are increasingly viewed as part of career progression by both multinational companies and employees” (Evans et al., Stahl et al., Suutari & Brewster and Vance in Andresen & Biemann, 2009:2) and as a prerequisite to senior management positions (Forster & Morrison et al., in Andresen & Biemann, 2009:2).

In order to successfully implement global strategies, a company is dependent on getting the right employees with the precise skills at the required time. In order for this to be achieved, employees would need to be moved across national borders (Selmar, 1999:1).

“Since organisations with international business operations need a workforce that is available for international assignments, international firms regard it as a strategic imperative to try to develop internationally mobile expatriate managers (Selmar, 1999:1).”

This situation of the increasing international mobility of qualified employees also creates a concern about “brain drain” in developing countries and the resulting potential economic loss (Dumont & Lemaître, 2005:6).

Selmar(1999:1) explains that global mobility is “a reality and a necessity” in the current global business situation. International firms need first-rate managers in the international

market in order to be able to successfully compete against large global competitors (Selmar, 1999:1).

2.2.2.1 Trends in length of expatriation

Hyper-competition in the global business environment has resulted in increased focus on cost reduction and effectiveness by global companies (Selmar, 1999:2). Expatriates are among the most costly employees of any organisation, which has resulted in many global companies opting for shorter term international assignments, in order to reduce costs. The traditional secondment of three to five years has been replaced by assignments of more than one month but less than a year (Selmar, 1999:2).

The actual benefits for the expat employee also need to be considered in these fast-changing economic conditions. An international secondment is more likely to be regarded as a part of a long-term professional path for an employee and employees will generally return home after only one assignment as they are expecting to return to the organisation in a more favourable position (Selmar, 1999:2). Otherwise, the international secondment may simply be viewed as a temporary opportunity to live overseas (Selmar, 1999:2).

The above statements provide support for the basis of the study. Since the length of foreign assignments are shorter in nature, an individual would remain a tax resident of his/her home country while working overseas. This is discussed in detail under the tax residency analysis of each country.

2.2.3 OECD: Migration

2.2.3.1 OECD: Background

The mission of the Organisation for Economic Co-operation and Development (OECD) is “to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems” (OECD, not dated (a)).

The OECD originated in 1960, as an organisation devoted to global development, formed by 18 European countries, the United States and Canada. Today the OECD consists of 34 member countries from around the globe, including many of the world's most developed countries as well as developing countries (OECD not dated(a)).

Both France and Japan are members of the OECD. Although South Africa is not currently a member of the OECD it has been offered enhanced engagement. "In May 2007 OECD countries agreed to invite Chile, Estonia, Israel, Russia and Slovenia to open discussions for membership of the organisation and offered enhanced engagement to Brazil, China, India, Indonesia and South Africa". While enhanced engagement is distinctively different to membership of the OECD, it has the potential to lead to membership (OECD, not dated (b)). Therefore, South Africa could become a member of the OECD within the near future.

2.2.3.2 *OECD: A new perspective on Immigrants and Expatriates*

The knowledge driven economies of many OECD countries requires qualified employees, in order to sustain economic development. For this purpose, these countries have been attempting to draw in qualified resources from around the world. Retention of qualified employees and returning expats constitute significant challenges, which OECD countries have been trying to counter (Dumont & Lemaître, 2005:5).

A comparison by Dumont and Lemaître (2005:8), between the percentage of foreign-born and non-citizens in the total population in OECD countries, clearly shows that many European countries have managed to employ immigrants in sizeable numbers over the past years.

Of the French population, ten per cent are foreign-born while six per cent are non-citizens. Of the Japanese population, one per cent are non-citizens Dumont and Lemaître (2005:20).

These countries have a considerable amount of individuals working and/or living abroad. Table 2 below details the statistics of OECD expatriates in other OECD countries.

Table 2: OECD expatriates in other OECD countries

	Nationals registered abroad at embassies or consulates	Native-born living abroad (OECD Censuses)
United States	3 071 167	1 227 249
France	1 392 764	1 119 130
Switzerland	828 036	319 176
Australia	562 668	328 405
Japan	556 561	656 690

Source: Dumont & Lemaître, 2005:21

According to the study by Dumont and Lemaître (2005:11), in the 29 OECD countries that were reviewed, 36.3 million persons (46%) of the total foreign-born population, come from another OECD country. In certain host countries the share of the foreign-born individuals from other OECD countries is very high (between 65% and 85%). On the other end, it is only 11% in Japan.

The study by Dumont and Lemaître (2005:11) also indicates that “the largest expatriate group consists of persons born in Mexico, with nearly 9.5 million people, of whom the vast majority are resident in the United States. The number of persons born in Germany and in the United Kingdom, residing in other OECD member countries, is also large – more than three million people from each country. The number of persons born in Turkey, Italy and Poland, and residing in other OECD countries, amounts to over two million persons each”.

OECD countries have recently directed much consideration to the emigration of highly qualified individuals who are attracted to countries where “job opportunities are more prevalent and research funding more generous” (Dumont & Lemaître, 2005:10)

Table 3 below illustrates the distribution of educational achievement for expats from Japan and France, living in other OECD countries. It highlights the relative significance of the relocation of highly qualified persons (such as persons with tertiary education). Japan has one of the highest proportions of expats with tertiary education (almost fifty per cent).

Table 3: Extract from table indicating number and distribution of OECD expatriates by level of education

Country	Tertiary	Upper secondary and post-secondary non-tertiary	Less than upper secondary	Unspecified	Total
France	348 432 36.4%	313 538 32.8%	294 700 30.8%	56 911	1 013 581
Japan	281 664 49.7%	220 158 38.9%	64 529 11.4%	9 641	575 992

Source: Dumont & Lemaitre, 2005:21

Note: only an extract of the full table is included above, as it is only France and Japan that are the OECD countries relevant to this study

From the above table, it is evident that migration is most prominent in highly qualified persons.

For the purposes of this study it is also important to determine if the tax effects of relocating impact the migration decision.

2.3 TAX AND MIGRATION

2.3.1 Tax consequences of globalisation

Over the past period, industrial countries have become increasingly integrated with each other and the world economy. They engage in international trade more freely and more capital flows between them, although the degree at which each economy is connected with the outside economy differs among the industrial countries. At the same time, each economy tries to maintain autonomous fiscal policy in the midst of globalisation. Financing publicly provided goods and services, and redistribution policy through taxation, is crucial for each autonomous jurisdiction. There are large distinctions in the tax systems between the countries, as are the different tax rates (Takashima, 2005:33).

Takashima (2005) studied the average effective tax rates for OECD countries on labour, capital and consumption between 1965 and 1988. The average effective tax rates represent the tax burden in a representative agent model as well as the magnitude of tax distortion in each market. According to their calculation, the level of the tax rates and the time trends are seen as quite different among the sample countries. For example, the level of consumption tax in the United States and Japan is maintained at a low rate throughout the sample period. On the other hand, European countries and Canada show high levels of tax. The trends of consumption tax also differ among countries. France, the United States, and Japan exhibit a stable trend; while the United Kingdom, Canada, and Italy exhibit decreasing rates up until the end of 1970's and rising afterward. For the labour tax, all the examined countries show a rising trend, but with different speeds. For instance, the U.S. labour tax rate rose until 1982, but was stable thereafter. France, Italy, and Japan exhibit a steady increase throughout the period. Canada shows a rise and fall as does the United Kingdom. The difference among the countries is also seen in the capital tax as well, though, as noted above, it is more prone to the business cycles that the countries experience.

2.3.2 Tax and labour

A study by Leibfritz, Thornton and Bibbee (1997:9) states that labour taxes have risen noticeably in OECD countries, especially for social security. For the period 1975-95 the average effective labour-tax wedge rose from 34 to 36 % in the United States, 24 to 34 % in Japan and 47 to 53 % in Europe.

Labour taxes create a wedge between what employees receive and what employers' pay, and analysis suggests that employment drops as a result, thereby decreasing potential productivity (Leibfritz, *et al.*, 1997). The magnitude of the drop in employment is dependent on "labour-market institutions and the wage-bargaining framework". In countries with elastic labour markets, the taxes are generally shifted back onto labour, decreasing the take-home remuneration. By contrast in countries with inelastic labour markets labour taxes are generally shifted forward to producers, and therefore decreases demand for labour (Leibfritz, *et al.*, 1997).

This results in a decrease in employment and growth, if the decrease in labour demand is not replaced by an increased demand for capital. Research shows that the elasticity of labour demand is much higher than the overall elasticity of supply; therefore labour taxes are generally more misleading in countries where there are inelastic labour markets. The bulk of the tax effect is dependent on the demand rather than the supply of labour (Leibfritz, *et al.*, 1997).

2.3.3 Tax effects on migration

In an empirical study conducted by Liebig and Sousa-Poza (2005:3), it was stated that “besides expected wages and job opportunities, the cost of migration and the subjective evaluation of a location, two other factors help determine the expected net return from migration: taxes and network effects”.

The most noteworthy finding of the study by Liebig and Sousa-Poza (2005:22) is that “the community tax burden has a significant impact on highly skilled migration. Both highly skilled natives and immigrants react to tax differences in a similar way, that is, they are more inclined to migrate to low-tax areas. This result is very robust and holds even after several factors, including quality-of-life measures, are controlled for”.

2.4 CONCLUSION

Migration and labour mobility are becoming increasingly popular due to the effects of globalisation. Furthermore tax is a considerably influential factor in this process.

It is therefore valuable to analyse and compare the tax consequences of different countries for individuals working abroad as this will potentially affect the migration decision.

This study will only focus on individuals who remain residents of South Africa, France or Japan for tax purposes while earning income from abroad. It is therefore crucial to understand the tax systems of these countries, specifically the basis on which residency is determined and individuals are taxed. This is considered in Chapter 3.

CHAPTER 3

TAX SYSTEMS

3.1 INTRODUCTION

It is necessary to understand the tax systems of each of the three countries relevant to this study. This understanding is critical when considering the tax consequences for employees working abroad.

3.2 TAX SYSTEM IN SOUTH AFRICA

3.2.1 Income tax in South Africa

Income tax is levied in South Africa in terms of the Income Tax Act no 58 of 1962 (hereafter referred to as “the Act”). The South African tax year is from 1 March to 28/29 February. South Africa’s taxation system has been residence based since 2001. South African tax residents are taxed on their worldwide income (i.e. South African income and foreign income). Non-residents are taxed in South Africa in accordance with source-based principles (Deloitte, 2008).

There are two separate tests to determine whether or not a person is a South African tax resident; the “ordinarily resident” test and physical presence test (Advanced Tax Practitioners, 2008).

A natural person can become a resident for income tax purposes by

- a) being ordinarily resident in the Republic, (paragraph (a)(i) of the definition of “resident” in section 1 of the Act); or
- b) complying with all the requirements of the physical presence test (paragraph (a)(ii) of the definition of “resident” in section 1 of the Act).

3.2.1.1 Ordinarily resident test

Being ordinarily resident in the Republic is usually the first test used to decide whether an individual is a tax resident of South Africa (paragraph (a)(i) of the definition of “resident” in section 1 of the Act).

The main characteristic in this respect is to ascertain if a person’s permanent home, to which he/she will typically return, is in South Africa. If this is the case, the person is considered a tax resident of South Africa (Advanced Tax Practitioners, 2008).

The concept of “ordinarily resident” has not defined in the Act. It is widely held (from case law) to be the country which a person considers to be his/her real home – the place where his permanent place of abode is, where his belongings are kept, which he/she leaves for temporary absences and to which he/she regularly returns after such absences. If the taxpayer is habitually and normally resident here, apart from temporary or occasional absences of long or short duration or if he/she decides to settle permanently in South Africa, South Africa is then recognised as being his/her real home and the individual attains residence by virtue of being “ordinarily resident” (KPMG, 2010(c)).

3.2.1.2 Physical presence test

Interpretation Note No 4 (issue 2), Resident: Definition in relation to a natural person – Physical Presence Test (31 March 2004), explains all the requirements of the physical presence test. A natural person, who is not at any time during the applicable year of assessment ordinarily resident in the Republic of South Africa, must comply with all of these requirements before he/she becomes a “resident” as defined in section 1 of the Act.

The physical presence of an individual must be assessed annually in order to decide whether the individual concerned is a resident for the relevant year of assessment (Advanced Tax Practitioners, 2008).

As per the requirements of the physical presence test, an individual who is not ordinarily resident, is considered a resident in South Africa if he/she is physically present in the

Republic for a period exceeding 91 days during the current year of assessment, as well as during each of the five preceding years of assessment, and he/she was physically present in the Republic for a period exceeding 915 days (or part-days) in aggregate during those preceding five years (KPMG, 2010(c)).

A natural person must comply with all three of the above requirements in order to be considered a resident of South Africa for tax purposes. Therefore, if any of the requirements are not met, then, for tax purposes, a person is not considered a resident based on physical presence in South Africa (Advanced Tax Practitioners, 2008).

A natural person, who became resident in terms of physical presence in South Africa, and who leaves South Africa for an uninterrupted period of 330 full days is deemed not to be a tax resident from the day he/she was no longer physically present in South Africa (KPMG, 2010(c)).

All employers in South Africa are required to withhold PAYE (Pay-as-you-earn) from an employee's remuneration. The rate of tax to be withheld is determined by the South African Revenue Service (SARS). This rate is published in the SARS EMP10 Guidelines. This tax that has been withheld must then be paid over to SARS by the employer (Tax Consulting South Africa, 2010).

The obligation to ensure that withholding of PAYE is correct rests with the employer. Should an employer withhold the incorrect amount of tax, it is considered as a debt owed to SARS (Tax Consulting South Africa, 2010).

The employer must use an IRP501 form to report to SARS the PAYE at the end of a tax year. This form includes the PAYE withheld by the employer from each employee. Each employee also receives an IRP5 certificate which details the remuneration paid and the PAYE that has been withheld. The employee uses this certificate in filing his/her income tax return (Tax Consulting South Africa, 2010).

3.3 TAX SYSTEM IN FRANCE

3.3.1 Income tax in France

Personal income tax is levied in France in terms of the Code général des impôts (general tax code) of France (hereafter referred to as “the CGI”). The French tax year begins on 1 January and ends on 31 December (Association of International Life Offices, not dated). France has a source based tax system, which is dependent on a person’s tax residency. French tax residents are taxed on their worldwide income, while non-residents are taxed, in France, only on income that is earned from a source in France (Taxback.com, not dated).

Therefore, a French tax resident who works abroad will still be subject to tax in France on the remuneration earned from his/her employment abroad, as such a person is taxed on worldwide income. Consequently it is imperative to understand the definition of residence for French tax purposes.

A person who’s stay in France is intended to be permanent or indefinite will be considered a tax resident of France from the day of arrival in France (AngloInfo.com, 2011).

If this is not the case, a person is considered a tax resident once any of the following four criteria have been fulfilled:

- France is the place of one’s main residence or home. This test indicates a degree of permanence and ignores absences that are temporary in nature. This criterion will be most significantly considered by the French authorities in assessing tax residency. If a person’s spouse and children reside in France, such person is also most likely to be considered a tax resident of France, irrespective if that person is working overseas;
- A person’s primary place of abode is situated in France. This concept generally implies that a person will have spent at least 183 days in France during a year. This will also apply to a person who spends less than 183 days in France during a

calendar year but still spends more time in France than in any other country. This period of 183 days does not have to be uninterrupted, and includes part days;

- An individual's principal activity is located in France. This criterion implies that a person's livelihood is situated in France or his/her main source of income is in France (even if not salaried income), unless such a person can demonstrate that it is only incidental; or
- A person's most substantial assets are located in France. This criterion suggests that France is the centre of one's economic interests. For example if one's primary investments are held in France, or it is the place from where one's assets are managed, or if a person's income is mainly earned in France (AngloInfo.com, 2011).

It is important to note that for a person to be considered a tax resident of France, only one of the above criteria needs to be met. France is different from other countries in that the consideration of being domiciled in France does not necessarily reflect the intention to return to or to remain in France; rather, it is a synonym for tax resident (PWC, 2011).

Certain types of income are taxed at a progressive scale tax rate. This includes earnings, pension, rental and some forms of investment income. The progressive rates range from 0% to 41%.

Furthermore, a fixed rate of income tax of 19% is used on interest and capital gains. By election, this rate can also be used for interest and dividends from other EU countries (AngloInfo.com, 2011).

One of the main differences between tax in France and that of other countries is that in France the taxable income is assessed as the total income of the household. Therefore taxes are calculated on a family basis rather than on an individual basis.

The larger the family size, the lower the income tax (KPMG, 2010(a)). The family is divided into a number of *parts familiales*. This avoids a higher tax rate being applied in the situation where there is high income, but more than one household member (AngloInfo.com, 2011).

The computation of income tax is quite complex. The total net income of the taxpayer must be determined and divided by a coefficient corresponding to the marital status and number of dependents in order to arrive at the net taxable income per part. The income tax table is then applied to the result and the income tax thus computed is subsequently multiplied by the same coefficient to arrive at the gross tax burden (KPMG, 2010(a)).

If however the net taxable income exceeds a certain ceiling, the benefit from additional dependents is gradually reduced so that a high earning taxpayer does not receive the full benefit of the coefficient system (KPMG, 2010(a)). The coefficient system also takes into consideration the taxpayer's marital status and the number of dependent children (KPMG, 2010(a)).

The income of a married or PACS couple (the French version of civil partnership, but open to both same and opposite sex couples) would be divided as follows:

- One part for each partner;
- An additional half part for each of the first and second children; and
- A whole part for the third and each subsequent child (AngloInfo.com, 2011).

As noted above, there is a maximum benefit that a household can receive from this system (AngloInfo.com, 2011.).

Employers in France are not required to withhold income tax from the salaries of their French-resident employees. Instead, income tax is generally paid the year following the year in which the income is received and tax laws, including tax rates for income received in a year, are normally not enacted until late in that same year (KPMG, 2010(a)).

Income tax is not deducted at source from the income of French tax residents. It is therefore the individual's responsibility to ensure that they retain sufficient funds to pay their tax liability when this falls due (AngloInfo.com, 2011). However, French tax residents receive a salary net of social security contributions (This is further explained under chapter 2.3.2).

Income tax for residents are payable in the year after the income is earned. The tax liability is payable in either three instalments or ten monthly payments, according to the option the taxpayer' exercises. Except if the taxpayer has chosen the monthly payment option, he/she must make payments on the 15th of February and the 15th of May. Each payment is equal to one-third of the amount of the previous year's total income tax. The final payment is due on 15th September after the actual assessment is received (KPMG, 2010(a)).

Withholding employer income tax is required when a non-resident receives compensation that is taxable in France, and a monthly withholding tax return must be filed by the employer. This income is subject to progressive income tax withholding rates of 0%, 12%, and 20% depending on the amount of total taxable compensation. When compensation reaches the 20% bracket, an annual individual non-resident income tax return is also required even though tax has been withheld at the source. Similarly, if a non-resident receives taxable French-source income, other than compensation, then an annual non-resident return must be filed.

3.3.2 Taxes specific to France: Social charges

Social charges are an additional tax in terms of the Finance Act 1991. This is effectively another form of income tax in France, and is levied on income and capital gains received by French residents (AngloInfo.com, 2011).

Social charges are calculated based on the income declared in the tax return. Notification of the amount payable is received from the French authorities in the autumn following the submission of the tax return (AngloInfo.com, 2011).

Social charges consist of four components:

- CSG (Contribution sociale généralisée);
- CRDS (Contribution au remboursement de la dette sociale);
- PS (Prélèvement Sociale Contribution additionnelle); and
- RSA (Revenu de solidarité active).

The amount differs for each type of income, and the position can be summarised as in the table below.

Table 4: Summary of social charges in France

	Salaries and unemployment benefits (on 97% of gross)	Retirement or disability pensions (on 95% of gross)	Investments, annuities, rental income and capital gains
CSG	7,5%	6,6%	8,2%
CRDS	0,5%	0,5%	0,5%
PS	0%	0%	2,5%
RSA	-	-	1,1%
Total	8%	7,1%	12,3%

Source: AngloInfo.com (2011)

Approximately half of the social charges payable may be tax-deductible, but this is dependent on the type of income. Social charges on income taxed at fixed rates are not tax deductible at all, whereas those paid on income taxed at the progressive scale rates are tax-deductible (AngloInfo.com, 2011).

3.4 TAX SYSTEM IN JAPAN

3.4.1 Income tax in Japan

Tax is levied in Japan in terms of the Income Tax Act no 33 of March 31, 1965. The Japanese tax year runs from 1 January to 31 December (KPMG, 2010(b)). An individual is taxed on income as a wage-earner or as a self-employed person.

Each individual is treated as a separate taxpayer and all taxpayers (including spouses and children) file separate tax returns. Individuals whose income exceeds a specified amount are required to file a tax return. Furthermore, Japanese resident taxpayers who are earning employment income from outside of Japan are also required to file a tax return (KPMG, 2010(b)).

Individuals who meet the definition of a "permanent resident" in Japan are taxed on their worldwide income. A foreign resident who is employed in Japan pays tax only on income earned in Japan (WorldWide Tax.com, 2011). This is the same as in France as discussed above.

A resident in Japan is defined as: "a person who has an address (domicile) in Japan and has resided continuously in Japan for one year or more". A person who enters Japan as an employment income earner and has the intention to reside in Japan, is presumed to be a resident immediately after entering Japan except if his/her stay in Japan will clearly not exceed one year (Principles of the Japanese Tax System, not dated).

Careful consideration should be given to the criteria around the above residence test. It is possible that an individual, who leaves Japan and leaves his family behind, with the intention to return, may be considered a tax resident based on the assertion that the individual's "...centre of vital interests..." or "...base to carry out their life..." has not changed and hence they have not broken their Japanese residence status. (The Japan Tax Site, 2010.)

However, taxpayers in Japan are divided into three groups, which is different to France and South Africa who only have two groups of taxpayers (resident and non-resident). In Japan a resident is then further classified as either permanent or non-permanent. The three groups of taxpayers in Japan are as follows:

- *non-permanent resident*: "a person who has no intention of living permanently in Japan and who has had an address (domicile) or residence in Japan continuously for not more than five years, and is not a Japanese national is regarded as a non-permanent resident";
- *permanent resident*: "all residents, other than non-permanent residents, are permanent residents"; and
- *non-resident*: "all individuals who are not residents are non-residents".

(Principles of the Japanese Tax System, not dated).

The tax consequences for an individual are dependent on the taxpayer situation, as per the above groupings. The tax consequences are summarised in Table 5

Table 5: Tax consequences in Japan per category of taxpayer

	Source of Taxable Income			
	Income from sources in Japan		Income from sources abroad	
	Paid in Japan	Paid abroad	Paid in Japan	Paid abroad
Non-permanent resident	Taxable	Taxable	Taxable	Only the portion deemed remitted to Japan is taxable (this means that the remainder retained abroad is not taxable).
Permanent resident	Taxable	Taxable	Taxable	Taxable
Non-resident	In principle taxable		Not taxable	

Source: Principles of the Japanese Tax system (not dated)

Japanese employers are required by law to withhold taxes from all Japanese employees. The amount of tax withheld is generally a bit higher than the actual income tax rates (Principles of the Japanese Tax system, not dated). At year end, the actual income tax assessment is completed and the excess withholding tax is returned to the taxpayer (Principles of the Japanese Tax system, not dated).

A final return must be filed by a resident taxpayer for each tax year by the 15th March of the following year. In the situation where a resident taxpayer has left Japan, the taxpayer is required to file a tax return before the departure date or by 15th March of the following year on the condition that the taxpayer appoints a tax agent before leaving Japan. An exception applies for a person whose total salary has been subjected to year-end adjustment of withholding tax (KPMG, 2010(b)).

Employees who have a gross income of less than 20,000,000 yens in a tax year are not required to file a tax return as this is automatically done by the employer (*Principles of the Japanese Tax System*, not dated).

Non-resident taxpayers who have not been subject to withholding tax must file a return by the day of his/her departure from Japan, or by the 15th of March of the following year if a tax agent has been appointed (KPMG, 2010(b)).

Residents are taxed on a sliding scale, in proportion to taxable income earned. The rate runs from 5% to 40%. A flat tax rate of 20% is applied to non-resident taxpayers on remuneration arising from sources in Japan (KPMG, 2010(b)).

3.4.2 Taxes specific to Japan: Individual taxes

There are two types of individual taxes in Japan, a National Income Tax (NIT) and a Local Inhabitant Tax (LIT) (KPMG, 2010(b)).

Permanent and non-permanent tax residents are subject to both of the above taxes, while non-residents are only subject to the NIT. Both types of taxes are based on the same income items. However, the types of deductions allowed against income differ for the two taxes (KPMG, 2010(b)).

The tables below show the general income and deduction items for both taxes:

Table 6: General income and deduction items for taxes in Japan

Income Items	Subject to NIT	Subject to LIT*
Employment Income	X	X
Business Income	X	X
Rental Income	X	X
Dividend Income	X	X
Capital Gains	X	X
Occasional Income	X	X
Miscellaneous Income	X	X
Interest Income	X	X

Retirement Income	X	X
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*Non-residents are not subject to LIT

Deductible Items	Deductible for NIT	Deductible for LIT*
Personal deduction (exemption)	X	X
Employment Income deduction	X	X
Capital Gains deduction	X	X
Occasional Income deduction	X	X
Casualty losses	X	X
Medical expenses	X	X
Social insurance premiums	X	X
Life insurance premiums	X	X
Earthquake insurance premiums	X	X
Contributions on or donations to local or national government bodies, and so on in Japan, or certain specified political donations	X	X*

*No deduction but tax credit is available for the Local Inhabitant Tax under some conditions

Source: KPMG (2010(b))




The above tables provide a summary of the income and deduction items applicable in Japan.

3.5 COMPARISON OF THE OVERALL TAX BURDEN

It is difficult to compare tax rates around the world and the comparison requires a degree of subjectivity. In most countries, the calculation of tax is exceptionally complex, and the burden of paying tax falls on different groups in each country (Wikipedia, 2011(b)).

However, the following table can be used to compare the overall tax rates in each of the countries relevant to this study:

Table 7: Overview of tax rates per country

Country/Region	Corporate	Individual	Payroll tax (usually reduces taxable income)
 France	33.33%	0–40% (income tax)	45% (social charges employers) 21% (social charges employees)
 Japan	40.69%	5–50% (40% national + 10% local)	25.63%
 South Africa	28%	0–40%	

Source: Wikipedia (2011(b))

The above is only an extract of the full table, as it is only these three countries that are relevant for the purposes of this study. According to the above table it appears that South Africa and France have a lower individual tax rate than that of Japan. However, French tax residents have to also pay social charges, which are not applicable to South Africans.

France is among the OECD countries with the highest tax and social security burden on labour income. An average earning single taxpayer's net income is slightly more than 50% of total cost to company, while higher earning single taxpayers take home even less than 47%. The average tax wedge (income taxes plus employee and employer social security contributions minus cash transfers as a percentage of total labour costs) in France is at least 13% above the OECD average for every family type, and the difference in the OECD average has widened relative to 2000. In France, single parents with two children at 67% of the average wage face the highest tax wedge in the OECD; it is about 21% of points above the OECD average. Single-earner couples with two children, and average earnings, also face the highest tax wedge in the OECD; it is more than 17% higher than the average (OECD, 2010(b)).

The tax burden on labour income in Japan is relatively low among OECD countries, in spite of tax burden increases for most family types over the past eleven years. An average earning single taxpayer's net income is approximately 70% of total cost to company. The

average tax wedge (income taxes plus employee and employer social security contributions minus cash transfers as a percentage of total labour costs) of single taxpayers earning 167% of the average wage is about 6% lower than the OECD average. Only single parents with two children at 67% of the average wage face a tax wedge that is higher than the OECD average; however, the difference is less than 2% (OECD, 2010(a)).

3.6 CONCLUSION

It is clear from the above analysis that the relevant countries have very different tax systems. The basis of determining tax residency and the specific tax consequences for employees working abroad will therefore also be different. This is analysed in Chapter 4.

CHAPTER 4

TAX CONSEQUENCES: WORKING ABROAD

4.1 INTRODUCTION

In this chapter the tax consequences for employees working abroad are examined for each of the countries relevant to the study. The effect on tax residency is considered, as well as any specific tax consequences that are applicable to employees working abroad. This is done individually for each country. This effect is then followed by a comparison between the different countries.

4.2 SOUTH AFRICA

4.2.1 Residency

If a person is “ordinarily resident” in South Africa for tax purposes, that person can still be considered “ordinarily resident” in South Africa, even while working abroad temporarily. The duration of the period that one spends abroad will not influence the tax residency of such a person if it is clear that South Africa is still the ordinary place of residence of that person.

This would mean that South Africa is “the place where his permanent place of abode is, where his belongings are stored, which he leaves for temporary absences and to which he regularly returns after such absences” (KPMG, 2010(c)). Therefore even if a person works abroad for a relatively long period of time, he/she may still be considered as “ordinarily resident” in South Africa for tax purposes.

Per Interpretation Note No 4 (issue 2), Resident: Definition in relation to a natural person – Physical Presence Test (31 March 2004), “a natural person, who is a resident by virtue of the physical presence test, ceases to be a resident as from the day after the day on which

he/she left the Republic, provided that he/she is physically outside the Republic for a continuous period of at least 330 full days after the day on which he/she left the Republic”.

Therefore if a person works abroad for a continuous period of 330 days, that person will no longer be a tax resident of South Africa from the day of departure, if he/she was previously a resident in terms of the physical presence test.

Furthermore, the provisions of a double tax agreement entered into between South Africa and a tax treaty partner may also be applicable. This agreement would then override the basic rules of residency.

4.2.2 Specific tax consequences related to working abroad

If a person is no longer considered to be a tax resident of South Africa, the income earned while working abroad will not be taxable in South Africa. This is because the source of this income is the country in which the services are rendered, and non-residents are not taxed in South Africa on foreign source income.

If a person remains a tax resident of South Africa, then the income earned by that person while working abroad, will still be subject to tax in South Africa. This is because residents are taxed on worldwide income (Deloitte, 2008). The following specific rules would then apply in respect of such income:

4.2.2.1 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 Swart in Stighling ed, 2011:92).

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

- “the transfer of the employee from one place of employment to another place of employment;
- the appointment of the employee as an employee of the employer; or
- the termination of the employee’s employment” (De Swart in Stighling ed, 2011:92).

The expenses borne by the employer that are exempt for the employee comprise the following:

- “the expense 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 transfer took effect or after he/she took up the appointment. The rented accommodation must be only temporary, in other words while the employee is in search of permanent residential accommodation” (De Swart in Stighling ed, 2011:92).

The employer must have borne the above expenses, that is, he must either have incurred them himself or have reimbursed his employee (De Swart in Stighling ed, 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 Swart in Stighling ed, 2011:93).

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 will not be accepted (De Swart in Stighling ed, 2011:93).

4.2.2.2 *Remuneration earned outside South Africa*

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

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 twelve-month period;
- the period outside South Africa includes a continuous period of absence of more than 60 full days during that twelve-month period;
- 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 in Stighling ed, 2011:94).

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

In the calculation of the number of days during which a person is outside South Africa, the Income Tax Interpretation Note No 16, Exemption from Income Tax: Foreign Employment Income (27 March 2003), determines that “weekends, public holidays, vacation leave and sick leave spent outside South Africa are considered 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”.

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 Swart in Stighling ed, 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 one year, the remuneration is deemed to have accrued evenly over the period for which the services were rendered” (De Swart in Stighling ed, 2011:94). The amount received can thus 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 a year, is deemed to have accrued over such a period (De Swart in Stighling ed, 2011:94).

The exemption is 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.

This exemption in terms of section 10(1)(o)(ii) applies only to the normal tax on the remuneration. It does not extend to other income earned by the taxpayer during his absence, nor does it extend to other taxes (De Swardt in Stighling ed, 2011:94).

Furthermore, this exemption is not applicable 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 like other sections in the Income Tax Act.

If a person works abroad for less than 183 days, the remuneration earned while working abroad is subject to tax in South Africa, if that person is a tax resident of South Africa.

4.2.3 Relief of double taxation

Section 6*quat* of the Income Tax 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 the following:

- “a rebate against normal South African tax of any foreign of any foreign taxes paid on any income from foreign sources (s6*quat*(1)); or
- a deduction against income of any foreign taxes paid on income from a South African source” (section 6*quat* (1C)).

The following table is a comparison between the rebate and the deduction that is deductible in terms of section 6*quat*.

Table 8: Section 6*quat* rebate and deduction

Section 6<i>quat</i> rebate	Section 6<i>quat</i> 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 a trade 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 in Stighling ed (2011:594)

The above table compares the section 6quat rebate and section 6quat 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 is discussed in detail, as it is the rebate that is relevant in terms of this study. This is because income earned while working abroad is from a foreign source.

4.2.3.1 Section 6quat rebate

It is important to note that the section 6quat rebate is a rebate against tax and not against income (Bruwer in Stighling ed, 2011:594). This means that the rebate is used to reduce a person's tax liability.

A South African tax resident who earns income while working abroad, is allowed to claim a section 6quat rebate if foreign taxes were paid on the income earned from working abroad. If however the income earned while working abroad is exempt from South African tax in terms of any of the sections discussed above, the section 6quat rebate is not available, as the income has to have been included in the taxable income of the person 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 (section 6quat(1A)(a)(i)) (Bruwer in Stighling ed, 2011:594).

The amount of foreign taxes which qualify for the section 6quat rebate is limited to an amount calculated according to the following formula (section 6quat (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 in Stighling ed, 2011:595)

Interpretation Note No 18, Rebate or deduction for foreign taxes on income, issued by SARS on 31 March 2009, 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 subject to (Bruwer in Stighling ed, 2011:595).

The foreign taxes must be “taxes on income proved to be payable to any sphere 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 in Stighling ed, 2011:595).

4.3 FRANCE

4.3.1 Residency

In order to assist with the determination of resident status the general rule applied is that, if a taxpayer spends 183 days per calendar year in France, then the taxpayer is deemed to be resident of France (French-Property.com, not dated).

Non-residence is based on a person not being resident in France for 183 days in a tax year (John Jenner International Limited, not dated). Therefore if a French individual works abroad for a period longer than 183 days, such an individual will most likely be considered to be a non-resident for tax purposes and is only taxed on income earned from a French source.

However, it is important to note that if France remains the main residence or home of an individual or the centre of his/her “economic interests”, he/she will still be considered a tax resident in France, even if such an individual works abroad for longer than 183 days.

“A number of factors are taken into consideration when determining whether a person will sever French tax residency. They are:

- the number of days present outside France during the tax year;
- whether the person's family accompanies him/her to the host country;
- whether the person establishes tax residency in another country; and
- whether tax treaty residency overrides domestic law" (HSBC, 2011).

4.3.2 Specific tax consequences related to working abroad

If the employee is a non-resident of France during the assignment, then only French-sourced income is taxed. If the employee is a resident of France, worldwide income earned during the assignment is subject to income tax (KPMG, 2010(a)).

If a person's "residence for tax purposes" remains in France, he/she is liable to tax in France on worldwide income, including the remuneration for working abroad. Such a person is therefore bound to file an income tax return with the tax assessment service that covers his/her usual residence (Impots.gouv.fr, not dated).

There are three possible cases that could apply to French tax residents working abroad, depending on the situation (Impots.gouv.fr, not dated):

- the taxpayer is working abroad and is liable for tax on his/her remuneration in the country where the taxpayer works and the tax in that country amounts to less than two-thirds of the tax he/she would pay in France;
- the taxpayer's residence for tax purposes is still in France, but the taxpayer carries on certain duties abroad; and
- the taxpayer's residence for tax purposes is still in France, but the taxpayer working abroad is liable for tax on his/her remuneration in the country where the work is carried out and the tax is equal to at least two-thirds of the tax that would be paid on it in France.

The above three situations will now be discussed in detail.

4.3.2.1 *The taxpayer is working abroad and is liable for tax on his/her remuneration in the country where the taxpayer works and the tax in that country amounts to less than two-thirds of the tax he/she would pay in France*

In the case where a taxpayer is working abroad and is liable for tax on his/her remuneration in the country where he/she works and the tax in that country amounts to less than two-thirds of the tax he/she would pay in France, a person is taxed on the remuneration earned for the work abroad up to the level of taxation that would have been applied in France for the same work (Impots.gouv.fr, not dated).

Any remuneration benefits or enhancements that the employee receives for living in the other country are exempt from income tax in France, on condition that all of the following requirements are met:

- “they are paid for periods worked abroad in the employer's direct and exclusive interest;
- they are justified by a physical transfer requiring residence of at least 24 hours in the other country; and
- they are determined before the person leaves France; and are calculated based on the length, number and place of the periods of work abroad, plus account for less than 40 per cent of the remuneration that would have been received had the person stayed in France” (Impots.gouv.fr, not dated).

4.3.2.2 *The taxpayers residence for tax purposes is still in France, but the taxpayer carries on certain duties abroad*

The remuneration earned from abroad by a taxpayer whose residence for tax purposes is still in France, but who carries on certain duties abroad, is eligible for exemption if the following conditions are met (Impots.gouv.fr, not dated):

- “the employer must be established in France or in another European Union Member State, in Iceland or Norway, or in a state party to the Agreement on the European Economic Area that has signed a tax treaty with France containing an administrative assistance clause to prevent tax evasion and tax avoidance;

- the person carried on his/her salaried duties :
 - either for more than 183 days over a period of 12 consecutive months in the following fields:
 - construction and assembling sites, installation of industrial assemblies, their start-up, their operation and associated engineering;
 - exploration and mining of natural resources; or
 - navigation on board vessels registered on the French international register;
 - or for more than 120 days over a period of 12 consecutive months in market research” (Impots.gouv.fr, not dated).

The remuneration earned from working abroad will then be exempt for tax purposes in France.

The exempt income must nevertheless be reported on the tax declaration and is taken into account in determining the tax rate to be applied to the non-exempt income (that is exemption with progression) (KPMG, 2010(a)).

4.3.2.3 *The taxpayer's residence for tax purposes is still in France, but the taxpayer working abroad is liable for tax on his/her remuneration in the country where the work is carried out and the tax is equal to at least two-thirds of the tax that would be paid on it in France.*

In the case where the taxpayer's residence for tax purposes is still in France, but the taxpayer working abroad is liable for tax on his/her remuneration in the country where the work is carried out and the tax is equal to at least two-thirds of the tax that would be paid on it in France, the remuneration is totally exempt from income tax in France (Impots.gouv.fr, not dated).

Tax-free expatriation indemnity:

Residents who are citizens of tax treaty countries (and countries with reciprocity agreements), who travel outside France on business may benefit from a tax-free expatriation indemnity paid by their employer for work performed outside France. To

qualify, this premium should be paid in addition to the usual salary and should be provided for in writing prior to claiming the exemption. It should be calculated by reference to the number of business trips actually made (that is time spent working abroad). The amount should be reasonable in relation to normal salary and in any case may not exceed 40 per cent of daily taxable remuneration per day spent abroad. While exempt from income tax, such indemnities are taken into account for exemption with progression and subject to French social charges, if applicable (KPMG, 2010(a)).

4.3.3 Relief of double taxation

The French tax system is unique in that, apart from treaties, it does not normally grant relief for double taxation, and foreign taxes are simply deductible from the tax base (Ault, Arnold & Gest, 2010:452).

France has a broad network of income tax treaties, some of which also cover wealth taxes. Beneficiaries of income tax treaties may be exempt from French income tax on certain income, but such exempt income must nevertheless be declared and is taken into account in determining the tax rate to be applied to the non-exempt income (that is exemption with progression). Income exempted under treaties concluded by France often includes salaries paid from abroad for services actually rendered abroad, income from the rental of foreign real estate, and income from a foreign business. Foreign tax credits are often available under treaties with respect to taxes paid at source on foreign dividends, interest, and royalties. (KPMG, 2010(a).)

4.4 JAPAN

4.4.1 Residency

Japanese expatriates, working abroad are divided into resident and non-resident. Upon departure from Japan, if it is obvious that they will work abroad continuously for more than one year, they are immediately deemed non-resident. (John Jenner International Limited, not dated).

As discussed in chapter 3.4.1, residency in Japan is determined by a person having a continuous address (domicile) in Japan. Therefore most persons who choose to work abroad are seen as non-residents for tax purposes in Japan.

As noted in Chapter 3.4.1, it is possible that an individual, who leaves Japan and leaves his family behind, with the intention to return, may be considered a tax resident based on the assertion that the individual's "...centre of vital interests..." or "...base to carry out their life..." has not changed and hence they have not broken their Japanese residence status (The Japan Tax Site, 2010).

4.4.2 Specific tax consequences related to working abroad

A non-resident is subject to Japanese income tax solely on income arising in Japan. Furthermore, non-residents are only subject to the National Income Tax (NIT), and not to Local Inhabitants Tax (LIT).

The source of employment income is considered to be the place at which the services are rendered, and therefore remuneration earned by expats working outside Japan, is considered to be foreign-sourced income. The number of days spent for employment outside Japan is used to allocate income earned (KPMG, 2010(b)).

In considering the days spent outside of Japan, the day of departure from Japan is not counted as a day of absence but the day of return to Japan is counted as an absent day. Furthermore, the number of days taken as home leave by the expat must be eliminated from the computation of number of such days spent outside Japan for purposes of allocating the foreign income earned (KPMG, 2010(b)). In general, a non-permanent resident will not be taxed on income from a foreign source. It should be noted that the income allocation is not applied for a permanent resident and registered director of Japanese company (KPMG, 2010(b)).

However, a remittance exception is applicable in Japan, and therefore compensation paid in Japan and/or remitted to Japan is taxable, if such amount exceeds the amount of

income attributed to services in Japan. Therefore, it is necessary for a non-permanent resident taxpayer to ensure that records are kept of remittances to Japan in cases where remuneration is earned outside of Japan (KPMG, 2010(b)).

If an employee receives a reimbursement for the actual moving cost in respect of relocation to/from Japan, it is generally non-taxable (KPMG, 2010(b)).

4.4.3 Relief of double taxation

A tax credit may be applied for resident taxpayers who have income from a foreign source which has been subject to both Japanese tax and foreign tax. The credit is calculated by the following formula:

Foreign sourced income / Entire income taxable in Japan x Japanese income tax.

If the foreign tax paid exceeds the amount to be credited against income tax, as calculated above, the excess may be carried forward for three successive years (KPMG, 2010(b)).

4.5 ILLUSTRATIVE EXAMPLE OF TAX CONSEQUENCES

The tax consequences for an employee working abroad for each of the relevant countries are compared through the application of a case study example. The actual tax is not calculated, but rather the taxability of amounts earned is discussed, as well as any exemptions or credits that may apply.

Case Study

Mr A has resided in Local Country A for the past 5 years. His home, family and the majority of his assets are all based in Local Country A. Mr A is not married and has recently qualified as a chartered accountant. He is seconded to work in Foreign Country B for one year, from 1 July 2011 to 30 June 2012. He plans to return to his home and family after he completes this secondment.

He is employed by Company B, which is registered and incorporated in Foreign Country B. Mr A will receive his remuneration in the currency of Foreign Country B.

The following amounts are relative for the period 1 July 2011 to 30 June 2012:

	Foreign Currency (FC\$)
Remuneration earned from Co B	100 000
Relocation costs paid for by Co B	8 000
Tax paid in Foreign Country B	2 000

The relocation costs incurred by Company B include Mr A's plane ticket to Foreign Country B as well as costs incurred for the transport of his personal possessions to Foreign Country B.

Mr A returned home once during his secondment to visit his family. He arrived in Local Country A on 24 December 2011 and departed on 2 January 2012.

Assume that no double taxation agreement or tax treaty exists between Local Country A and Foreign Country B.

The tax consequences of this case study for each country will now be explained.

4.5.1 South Africa

a) Assumptions

Local Country A is South Africa.

b) Residency

Mr A was previously "ordinarily resident" in South Africa for tax purposes as this was "where his permanent place of abode is, where his belongings are stored, which he leaves for temporary absences and to which he regularly returns after such absences". As he plans to return to South Africa, he will still be considered "ordinarily resident" in South Africa for tax purposes during the period of his secondment. He is considered a

tax resident of South Africa, despite the fact that he is not physically present in South Africa during this period.

The period of his secondment will not affect his tax residency status in South Africa.

c) Taxability of income

As he is a South African resident, he is taxed on his worldwide income. Therefore, all income earned while working abroad is also taxable in his hands in South Africa.

The remuneration of R100 000, as well as the relocation costs paid for by Co B of R8 000, are both taxable in South Africa.

However, these amounts are exempt from income tax as follows:

The remuneration of R100 000 is fully exempt from Income Tax in South Africa under section 10(1) (o)(ii), because:

- Mr A was outside South Africa for more than 183 full days in total during a period of twelve months,
- the period outside South Africa includes a continuous period of absence of more than 60 full days during that period of twelve months,
- 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 is situated outside South Africa.

The relocation benefits of R8 000 will also be fully exempt from Income Tax in South Africa under section 10(1) (nB), as:

- his employer has paid for expenses in respect of the appointment Mr A as an employee; and
- the expenses borne by the employer comprise the expense of transporting Mr A and his personal goods and possessions from his previous place of residence to his new place of residence.

Therefore all amounts earned by Mr A, in respect of his employment abroad, are exempt from income tax in South Africa.

d) Foreign taxes paid

Mr A is entitled to any rebates or deductions in South Africa for the taxes paid by him in Foreign Country B.

This is because section 6quat does not apply to items which are exempt from income tax.

As none of the foreign income earned by Mr A was subject to tax in South Africa, he cannot claim any rebates or deductions for the foreign taxes paid by him.

Had a portion of the foreign income been subject to tax in South Africa, Mr A would have been entitled to claim a section 6quat rebate, as he would then have paid tax both in South Africa and in Foreign Country B.

4.5.2 France

a) Assumptions

Local Country A is France.

The tax that would have been paid in France on both the remuneration and the relocation costs amounts to EU FC\$ 2 500

b) Residency

In France non-residence is based on a person not being resident in France for 183 days in a tax year (John Jenner International Limited, not dated). Therefore, since Mr A works abroad for a period longer than 183 days, he will most likely be considered to be a non-resident for tax purposes and will only be taxed on income earned from a French source.

However, it is important to note that if France remains the main residence or home of an individual or the centre of his/her "economic interests", he/she will still be considered

a tax resident in France, even if such an individual works abroad for longer than 183 days.

A number of factors are taken into consideration when determining whether a person will sever French tax residency, as follows:

- the number of days present outside France during the tax year – this is more than 183 days in Mr A's case;
- whether the person's family accompanies him/her to the host country – in Mr A's case his family remained in France and he travelled alone;
- whether the person establishes tax residency in another country – assume that he did not establish tax residency in another country; and
- whether tax treaty residency overrides domestic law – according to the example, assume no tax treaty in place.

Consequently, it can be concluded that based on the above facts and assumptions, Mr A will still be considered a tax resident of France even though he is outside the country for longer than 183 days.

c) Taxability of income

As he is a French tax resident, Mr A is taxed on his worldwide income. Therefore, all income earned while working abroad is also taxable in his hands in France.

The foreign tax needs to be compared to the tax that would have been paid in France.

Tax paid = EU2 000

French tax that would have been = EU2 500

Therefore foreign tax paid amounts to 80% of tax that would have been paid in France.

The following situation applies: Mr A's residence for tax purposes is still in France, but the remuneration from his work abroad is liable in the country where the work is carried out to tax equal to at least two-thirds of the tax that would be paid on it in France.

In this case, the remuneration earned from abroad is completely exempt.

Mr A will therefore not be subject to any tax in France on the income earned from Company B.

d) Foreign taxes paid

As there is no tax payable in France on the income earned from abroad, there is no credit available for foreign tax paid.

4.5.3 Japan

a) Assumptions

Local Country A is Japan.

Mr A did not reside with his family in Japan but instead, he lived alone and rented out his apartment to non-family members while on secondment.

b) Residency

Mr A was previously considered to be a non-permanent resident of Japan as he had been living in Japan for not longer than five years.

Since it is clear that he will be outside Japan for at least a year, he will be considered a non-resident upon his departure from Japan.

c) Taxability of income

As he is a non-resident of Japan he is only taxed on income from a source within Japan.

The source of his income earned from his employment abroad is the country in which the services are rendered, that is Foreign Country B.

The remuneration earned by Mr A during his secondment is therefore not subject to tax in Japan.

The relocation costs are also not taxable as reimbursements of actual moving cost in connection to the assignees relocation to/from Japan are generally non-taxable.

d) Foreign taxes paid

As the foreign amounts earned by Mr A are not taxable in Japan, he will not be entitled to any rebates / credits for the foreign taxes paid by him.

Had the foreign income been taxable in Japan, Mr A would have been entitled to a foreign tax credit, calculated as follows:

Foreign Sourced income / Entire income taxable in Japan x Japanese Income Tax

4.6 CONCLUSION

In each of the countries, tax residency is a fundamental factor in determining the tax consequences for an individual. However, the basis of determining tax residency differs between the countries. The tax consequences for employees working abroad also differs for each country.

CHAPTER 5

CONCLUSION

5.1 INTRODUCTION

This study aimed to compare the tax effects of employee migration for French, Japanese and South African employees. Secondary resources were used, which derived from various publications including articles and previous studies.

This chapter is used to determine if the objectives of the study are 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.

- to identify the normal tax consequences for South African employees working abroad.

This was done by means of an analysis of the income tax system in South Africa (refer Chapter 3.2). Furthermore, the residency rules and the specific tax consequences for employees working abroad were also analysed (refer Chapter 4.2);

- to identify the normal tax consequences for French employees working abroad:

This was done by means of an analysis of the French tax system. The social charges applicable in France were also briefly discussed (refer Chapter 3.3). Furthermore, the residency rules and the specific tax consequences for employees working abroad were also analysed (refer Chapter 4.3);

- to identify the normal tax consequences for Japanese employees working abroad:

This was done by means of an analysis of the Japanese tax system. The individual taxes applicable in Japan were briefly discussed (refer Chapter 3.4). Furthermore,

the residency rules and the specific tax consequences for employees working abroad were also analysed (refer Chapter 4.4); and

- to compare the tax consequences of South Africa, France and Japan for employees working abroad.

This was achieved by means of an illustrative case study which was applied to each of the relevant countries (refer Chapter 4.5).

5.3 CONCLUSION

The tax systems in South Africa, France and Japan are quite different from each other, according to the information obtained. In each of these three countries tax residency is a fundamental principal, as residents are taxed on worldwide income while non-residents are taxed on income only from a source within that particular country.

However, the principals and factors that are considered in determining tax residency differ between the countries. For example, in South Africa, physical presence in the country does not have a significant effect on a person being considered “ordinarily resident” whereas in Japan a person must be residing in the country to be considered a resident.

This difference in determining tax residency has an impact on the tax consequences for employees working abroad, as the taxability of amounts earned from abroad is dependent on one’s residency status.

Furthermore, the conditions for exemption of amounts earned from abroad for tax purposes differ between the countries. In South Africa the exemption is mainly based upon the period spent outside South Africa. However in France, this is based upon the amount of foreign taxes paid in the other country.

The relief for double taxation is very similar for South Africa and Japan. In both these countries, the credit is determined in proportion to the foreign income earned compared to the total taxable income. However in France, relief for double taxation is mainly accounted for in terms of tax treaties or agreements.

In conclusion, the tax consequences for employees working abroad are considerably different between South Africa, Japan and France.

5.4 RECOMMENDATIONS AND FUTURE RESEARCH

There are various avenues for future research on the topic of tax and employee migration. A further study, which compares the tax consequences of employee migration for all OECD countries, would be beneficial and used as a research tool for companies promoting global mobility and short term secondments.

Furthermore, it is recommended that the research on this topic be gradually moved to deeper levels by specifically comparing one aspect of each countries' tax system (such as double tax relief) to determine the pros and cons of each and to identify countries that have large tax burdens which hinder the opportunities provided by employee migration.

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