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# Worldwide Tax Solutions

## Expat Tax Guide

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# EXPATRIATE TAX RULES



Since March 2020, only the first R1.25 million earned as foreign income is exempt from tax & an “expat tax” will be charged on any income earned above this. However:

- **You must spend more than 183 days outside South Africa in any 12-month period & during the 183-day period, 60 days must've been spent continuously outside South Africa.**
- **You must be an employee earning a salary**
- **This absence from South Africa must be work-related and this exemption will only be allowed once declared in your personal annual tax return.**

This means that any foreign income earned above this R1.25 million will be taxed in South Africa at the relevant marginal tax rate. If any income is earned in South Africa, this will be added and the total will be taxed accordingly. While R1.25 million seems like a generous threshold, this amount doesn't only include your stated basic salary but also any allowance, bonuses and fringe benefits such as housing, security and flights that are part of the employment packages.

An amendment to section 10(1)(o)(ii) of the Income Tax Act, 1962 (the Act<sup>1</sup>) has been promulgated and came into effect on 1 March 2020. The Frequently Asked Questions (FAQs) in this document have been compiled on the basis of questions that employees, employers and the public at large have about the implications of the amendment.

The FAQs are drafted purely to assist employees, employers and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects relating to the amendment. The FAQs are therefore not intended to be used as legal reference. You can find more information about some of the aspects discussed in this document in Interpretation Note 16 “Exemption from Income Tax: Foreign Employment Income”.

The FAQs are also intended to solicit further questions regarding the amendment. The FAQs will therefore be updated periodically to address these questions, as well as any changes to the legislation. In light hereof, it is not envisaged that non-binding private opinions in relation to the amendment will be issued. Any questions that have not been addressed in the FAQs can be sent to **ForeignEmployment@sars.gov.za**, for consideration.

All other FAQs, forms, guides, interpretation notes, notices, and rulings referred to in these FAQs are available on the **SARS website**. Unless indicated otherwise, the latest issues of these documents should be consulted.

#### **SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue : 7 October 2019  
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<sup>1</sup> All references to sections are to sections of the Act unless otherwise indicated.

Question		Answer
<b>Section 10(1)(o)(ii) requirements</b>		
1.	What does the foreign employment income exemption mean?	<p>Section 10(1)(o)(ii) provides for an exemption for foreign employment income received for services rendered outside South Africa, provided the requirements are met.</p> <p>Before 1 March 2020, if the requirements regarding the exemption are met, all remuneration for services rendered outside South Africa is exempt.</p> <p>From 1 March 2020, if the requirements are met, the exemption is limited to R1,25 million. Any remuneration received in excess of R1,25 million will be subject to normal tax in South Africa, irrespective of whether tax is paid in another country.</p> <p>Relief from double tax is available under the domestic law by way of section 6quat credit (subject to limitations) or by way of the treaty provisions (if applicable).</p>
2.	What are the requirements to qualify for the exemption?	<p>In order to qualify for the exemption, a taxpayer must –</p> <ul style="list-style-type: none"> <li>• be a tax resident of South Africa (refer to <b>Question 3</b>);</li> <li>• earn certain types of remuneration (refer to <b>Question 4</b>);</li> <li>• in respect of services rendered by way of <b>employment</b>;</li> <li>• outside South Africa;</li> <li>• during specified qualifying periods (refer to <b>Question 5</b>); and</li> <li>• not be subject to an exclusion (refer to <b>Question 7</b>).</li> </ul> <p>Refer to Interpretation Note 16 (IN 16).</p>
3.	Who does the exemption apply to?	<p>The exemption only applies to a <b>tax resident</b> of South Africa who is an <b>employee</b> and renders employment services outside South Africa and is subject to tax on his or her worldwide income. For more on tax residence refer to <b>Questions 15 to 22</b>.</p> <p>The exemption does not apply to an individual who is a non-resident for tax purposes as foreign sourced income in relation to foreign services is not from a South African source and therefore not subject to tax in the hands of a non-resident in South Africa.</p>
4.	What type of income qualifies for the exemption under section 10(1)(o)(ii)?	<p>The following amounts fall within the scope of the exemption:</p> <ul style="list-style-type: none"> <li>• Salary</li> <li>• Taxable benefits</li> <li>• Leave pay</li> <li>• Wage</li> <li>• Overtime pay</li> <li>• Bonus</li> </ul>

		<ul style="list-style-type: none"> <li>• Gratuity</li> <li>• Commission</li> <li>• Fee</li> <li>• Emolument</li> <li>• Allowance (including travel allowances, advances and reimbursements)</li> <li>• Amounts derived from broad-based employee share plans</li> <li>• Amounts received in respect of a share vesting</li> </ul>
5.	What are the qualifying periods (that is, the “days test”) that need to be met for purposes of section 10(1)(o)(ii)?	An employee who is a tax resident in South Africa must be outside South Africa for a period or periods exceeding 183 full days (in aggregate) during any 12-month period, and a continuous period exceeding 60 full days during that 12-month period.
6.	Does any of the requirements that applied before 1 March 2020 change going forward?	<b>No</b> , the requirements to qualify for the exemption remain the same. The only change that is effective from 1 March 2020 is that the exemption is now limited to a maximum of R1,25 million.
7.	Who is excluded from the application of section 10(1)(o)(ii)?	<p>The following categories of individuals are excluded from the exemption:</p> <ul style="list-style-type: none"> <li>• A public office holder appointed or deemed to be appointed under an Act of Parliament</li> <li>• Employees who are employed in the national, provincial or local sphere of government, certain constitutional institutions, national and provincial public entities and municipal entities</li> <li>• Independent contractors and individuals who are self-employed also do not qualify for the exemption as such persons are not in an employment relationship</li> </ul>
8.	If I meet all the requirements for section 10(1)(o)(ii), is all my foreign employment income exempt?	The answer depends on the amount of remuneration you earn for the services rendered outside South Africa. If the amount of your remuneration is R1,25 million or less, the full amount will be exempt from normal tax in South Africa, provided the amount relates to services rendered outside South Africa. If the amount of your remuneration is more than R1,25 million, only R1,25 million will be exempt and any excess above R1,25 million will be subject to normal tax in South Africa. Also refer to <b>Question 14</b> .
9.	How should the taxable benefits received while rendering services outside South Africa be valued?	<p>The provisions of the Seventh Schedule are applicable to the relevant taxable benefit provided. The cash equivalent of the value of the taxable benefit as calculated under the Seventh Schedule will be applicable.</p> <p>If paid in a foreign currency, the amount should be converted using the average exchange rate. Refer to <b>Question 39</b>.</p>

10.	If I receive a travel allowance that falls within the R1,25 million exemption, can my taxable income be reduced in respect of my business kilometres travelled?	<b>No</b> , if the amount earned was exempt, the amount is not included in “taxable income”. As there is no inclusion in taxable income there is nothing that can be reduced as a result of the business kilometres travelled that relates to the exempt amount. Also refer to <b>Question 11</b> .
11.	If I receive a travel allowance and a <i>portion</i> of the allowance is exempt under section 10(1)(o)(ii), can my taxable income be reduced in respect of all my business kilometres travelled?	Your taxable income can only be reduced in respect of business kilometres travelled during the period when the allowance was included in taxable income.
12.	If I received remuneration in excess of R1,25 million, which includes a travel allowance, how will the R1,25 million exemption be attributed on assessment in respect of the travel allowance?	<p>The R1,25 million exemption must be apportioned on a <i>pro rata</i> basis between the travel allowance and the total remuneration. For example, an employee receives total remuneration of R1,5 million which includes a travel allowance of R300 000 for the year of assessment. The exempt portion of the travel allowance is calculated as follows:</p> $\text{Travel allowance} / \text{Total remuneration} \times \text{R1 250 000}$ $\text{R300 000} / \text{R1 500 000} \times \text{R1 250 000}$ <p>= R250 000 of the travel allowance will be exempt from normal tax on assessment.</p> <p>Thus, R50 000 will be included in taxable income.</p> <p>Any deductions claimed for the year of assessment will be limited to the amount of the allowance included in taxable income.</p>
13.	Is the R1,25 million exemption allowed in respect of each year of assessment or should it be apportioned if I did not work a full year of assessment outside South Africa?	<p>The R1,25 million exemption is available in respect of each year of assessment. This will apply even if you rendered services for only part of the year of assessment, provided the “days” requirements are met.</p> <p>Refer to <b>Question 5</b> on the “days” requirements applicable under section 10(1)(o)(ii).</p>
14.	Should my income be apportioned?	<p><b>Yes</b>, if you rendered services inside and outside of South Africa, the income received should be apportioned and only the income received in respect of work days outside South Africa during which services were rendered, will be exempt. From 1 March 2020, the exemption is limited to R1,25 million.</p> <p>See IN 16 for more guidance on the apportionment method that should be applied.</p>

15.	Does the change to section 10(1)(o)(ii) result in a new “expat tax” being levied?	<b>No</b> , there is no new “expat tax” introduced. The only effect of the change relating to section 10(1)(o)(ii) is that the exemption is limited to R1,25 million. If the R1,25 million is exceeded, such excess is subject to normal tax according to a taxpayer’s marginal rate of tax.
<b><i>Tax residence</i></b>		
16.	Who is a tax resident in South Africa?	<p>A person is a tax resident if he or she is ordinarily resident or becomes a resident by way of physical presence.</p> <p>For more details on the different tests to become a tax resident in South Africa, refer to the following interpretation notes:</p> <ul style="list-style-type: none"> <li>• Interpretation Note 3 “Resident: Definition in Relation to a Natural Person – Ordinarily Resident” (IN 3)</li> <li>• Interpretation Note 4 “Resident: Definition in Relation to a Natural Person – Physical Presence Test”</li> </ul>
17.	Is tax residency based on citizenship?	<b>No</b> , citizenship is one of the indicators that may point to someone being ordinarily resident, but that is not conclusive. Various factors may play a role and must be taken into account to determine whether a person is ordinarily resident in South Africa. Refer to IN 3 for more detail in this regard.
18.	How does “financial emigration” impact my tax residence?	The term “financial emigration” has been used in the public at large with reference to the process of acquiring approval from the South African Reserve Bank to emigrate from South Africa for exchange control purposes. Emigration is not connected to an individual’s tax residence. It is merely one factor that may be taken into account to determine whether an individual broke his or her tax residence. An individual’s tax residence is not automatically broken when he or she emigrates for exchange control purposes. The deciding factor remains whether an individual ceased to be ordinarily resident in the Republic.
19.	Must I notify SARS if I cease to be a tax resident in South Africa?	<b>Yes.</b>
20.	How should I notify SARS if my tax residence status changes?	<p>SARS can be informed of a taxpayer’s intention to cease to be a resident through the wizard on the income tax return where the taxpayer is asked whether he or she “ceased to be a tax resident”. When a taxpayer ceased to be a tax resident it should be indicated on the income tax return together with the date on which it occurred.</p> <p>Alternatively, SARS can be notified when an application is made for a tax clearance certificate via eFiling when emigrating from South Africa with the intention to cease to be ordinarily resident in the Republic (that is, not on the income tax return).</p>

21.	How should I notify SARS if my tax residence status changed in a prior year and I did not inform SARS during that year of assessment?	Refer also to <b>Question 22</b> . If a capital gain was so deemed and you did not declare it, you can do it now through the Voluntary Disclosure Programme to eliminate any potential penalties and prosecution.
22.	What are the tax implications if I cease to be a tax resident in South Africa?	A deemed disposal for capital gains tax purposes takes place at the time when an individual ceases to be a tax resident. The individual will be deemed to have disposed of his or her worldwide assets, excluding immovable property situated in South Africa.
<b>Double tax situation</b>		
23.	Will the change to section 10(1)(o)(ii) result in a double tax scenario?	<p>If an individual earns employment income in excess of R1,25 million and there is no tax treaty or the tax treaty between South Africa and the foreign country does not provide a sole taxing right to one country, both countries will have a right to tax the income. The portion of the income in excess of R1,25 million may end up being subject to double tax.</p> <p>Generally, under the provisions of the relevant tax treaty, if an employee renders services in a foreign country <b>exceeding</b> 183 days, both countries enjoy the right to tax the income. The country of source enjoys the first right to tax the employment income and the country of residence, in our case South Africa, will provide double tax relief in the form of a foreign tax credit to the extent that double tax arises, subject to limitations.</p>
24	What remedies do I have to relieve the double taxation?	<p>Section 6quat is the mechanism under South Africa's domestic law to claim relief from double tax where the amount received for services rendered outside South Africa is subject to tax in South Africa and in the foreign country. This credit may be claimed on assessment through an individual's income tax return, provided certain requirements are met. For more detailed information on the provisions of section 6quat, refer to Interpretation Note 18 "Rebate or Deduction for Foreign Taxes on Income".</p> <p>Alternatively, relief from double tax may also be sought by way of the treaty provisions.</p> <p>An employer may at his or her discretion, under paragraph 10 of the Fourth Schedule, apply for a directive from SARS to take into account the potential foreign credit to determine the employees' tax (PAYE) liability on a monthly basis. The employer will be able to apply for such a directive through a dedicated channel that will be made available to the public by SARS. Refer to <b>Questions 43 to 47</b>.</p> <p>Even when a directive is issued to the employer that allows the employer to take into account a potential foreign tax credit on the payroll for PAYE purposes, the employee is still required to submit an income tax return in which the actual foreign tax credit under section 6quat has to be claimed.</p>



## FAQs: Foreign Employment Income Exemption [Section 10(1)(o)(ii)]

25.	If there is no tax treaty applicable between South Africa and the host country, what legislation will be applied?	The domestic tax legislation of each country will be applied independently of each other. The employee will be able to claim a section 6 <del>quat</del> credit on assessment in respect of any double tax that arose, subject to certain requirements.
26.	Should an employer that has a PAYE withholding obligation take the provisions of a tax treaty into account in relation to employees rendering services outside South Africa?	<b>Yes</b> , it is important to take the treaty into account to be able to determine which country has a right to tax the income. This will determine whether an employee has a normal tax liability in South Africa in which case the employer is obliged to withhold PAYE.  Refer also to <b>Questions 34 to 42</b> that deal with various payroll issues.
27.	Will the tax treaty apply to the first R1,25 million of remuneration earned?	<b>No</b> , the tax treaty will not apply as there will be no double taxation due to the fact that the R1,25 million is exempt from normal tax in South Africa.
28.	Will the tax treaty apply to the amount of remuneration exceeding R1,25 million?	<b>Yes</b> , the tax treaty will apply as the portion of the remuneration in excess of R1,25 million may be subject to double taxation.
29.	Is the exemption under section 10(1)(o)(ii) dependent on the provisions of a tax treaty?	<b>No</b> , the R1,25 million is exempt under domestic law and not under a tax treaty. The exemption is therefore not dependent on the application of a tax treaty and applies irrespective of whether there is a tax treaty or not.
<b>Compliance matters</b>		
30.	If I qualify for the exemption, do I have to submit an income tax return in South Africa?	<b>Yes</b> , the Public Notice issued under section 25 of the Tax Administration Act, 2011 read with section 66 of the Act specifically provides that an individual working outside South Africa is required to submit an income tax return.
31.	If I am employed, only get paid by one employer and earn <b>less than</b> R1,25 million, do I have a normal tax liability in South Africa?	<b>No</b> , provided you only receive employment income and no other income from a source inside or outside South Africa that may be subject to normal tax. To the extent that any employment income relates to services rendered inside South Africa, such income will be subject to normal tax in South Africa (see <b>Question 14</b> ).  As noted in <b>Question 30</b> , the individual is still obliged to submit a tax return.

32.	If I am employed and I earn <b>more than</b> R1,25 million remuneration, do I have a normal tax liability in South Africa? If so, how should my liability be settled?	<p>If you are employed by a local employer, PAYE will be deducted from your remuneration in excess of R1,25 million.</p> <p>If you are employed by a foreign employer that has no representative employer in South Africa, no PAYE will be withheld from your remuneration in excess of R1,25 million. You will have to settle your tax liability by way of provisional tax in respect of all your taxable income.</p> <p>Refer to Interpretation Note 1 “Provisional Tax Estimates” (IN 1) for more details on provisional tax.</p>
33.	What is the impact on me if I work in a tax haven, being a low tax jurisdiction with a low tax rate or no tax?	<p>The exemption under section 10(1)(o)(ii) will apply in respect of remuneration earned up to R1,25 million. Any income in excess of R1,25 million will become subject to normal tax in South Africa.</p> <p>If remuneration in excess of R1,25 million is received, there will not be a double tax situation in the foreign country if no taxes are imposed on income in that country. Since there will be no double taxation in this instance, no section 6quat credit can be claimed at the end of the year of assessment.</p> <p>However, should a low tax rate be imposed in the foreign country, a rebate under section 6quat may be claimed.</p>

**Payroll related issues**

34.	How should the R1,25 million exemption be calculated to determine the PAYE withholding obligation?	<p>The R1,25 million should be accumulated on a monthly basis in respect of <b>all</b> qualifying remuneration items. As soon as the R1,25 million limit is reached, the income in excess of R1,25 million becomes subject to normal tax. The R1,25 million cannot be smoothed or averaged over the year of assessment. It must be calculated by adding up all remuneration items received from the beginning of the year of assessment or applicable start date of an assignment until the R1,25 million limitation is reached.</p> <p>The following example illustrates the cumulative basis on which the R1,25 million should be calculated.</p> <p>An employee goes on secondment to a foreign country on 1 March 2020. The employer is satisfied that the employee will qualify for the exemption under section 10(1)(o)(ii) and exercises the discretion to apply the exemption through the payroll. The employee receives the following monthly remuneration:</p> <table><tr><td>Salary:</td><td>R200 000</td></tr><tr><td>Travel allowance:</td><td>R50 000</td></tr><tr><td>Accommodation benefit:</td><td>R30 000</td></tr></table>	Salary:	R200 000	Travel allowance:	R50 000	Accommodation benefit:	R30 000
Salary:	R200 000							
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		<table><tr><th>Items</th><th>March</th><th>April</th><th>May</th><th>June</th><th>July</th></tr><tr><td>Salary</td><td>R200 000</td><td>R200 000</td><td>R200 000</td><td>R200 000</td><td>R200 000</td></tr><tr><td>Travel allowance</td><td>R50 000</td><td>R50 000</td><td>R50 000</td><td>R50 000</td><td>R50 000</td></tr><tr><td>Accommodation benefit</td><td>R30 000</td><td>R30 000</td><td>R30 000</td><td>R30 000</td><td>R30 000</td></tr><tr><td>Accumulated total</td><td>R280 000</td><td>R560 000</td><td>R840 000</td><td>R1 120 000</td><td>R1 400 000</td></tr><tr><td>Exempt</td><td>R280 000</td><td>R280 000</td><td>R280 000</td><td>R280 000</td><td>R130 000</td></tr><tr><td>Subject to normal tax</td><td>R0</td><td>R0</td><td>R0</td><td>R0</td><td>R150 000</td></tr></table> <p>It is accepted that in the month of July, in which the R1,25 million limitation will be exceeded, the employer, from a payroll perspective, can follow various different options to make up the R1,25 million exemption in that month, for example:</p> <p><u>Option 1</u></p> <ul style="list-style-type: none"><li>• R130 000 salary</li></ul> <p><u>Option 2</u></p> <ul style="list-style-type: none"><li>• R50 000 travel allowance</li><li>• R30 000 accommodation benefit</li><li>• R50 000 salary</li></ul> <p><u>Option 3</u></p> <ul style="list-style-type: none"><li>• R80 000 salary</li><li>• R50 000 travel allowance</li></ul>	Items	March	April	May	June	July	Salary	R200 000	R200 000	R200 000	R200 000	R200 000	Travel allowance	R50 000	R50 000	R50 000	R50 000	R50 000	Accommodation benefit	R30 000	R30 000	R30 000	R30 000	R30 000	Accumulated total	R280 000	R560 000	R840 000	R1 120 000	R1 400 000	Exempt	R280 000	R280 000	R280 000	R280 000	R130 000	Subject to normal tax	R0	R0	R0	R0	R150 000
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35.	Does an employer have a choice to withhold PAYE from my foreign employment income?	<p>The potential for an exemption under section 10(1)(o)(ii) does not automatically waive the obligation of an employer to deduct PAYE under the Fourth Schedule. An employer that is satisfied that the provisions of section 10(1)(o)(ii) will apply in a particular case may, however, elect not to deduct PAYE in such case. In the case where the exemption was not applicable, the employer will be liable for the employees' tax not deducted as well as the concomitant penalties and interest.</p> <p>An employer that has deducted or withheld PAYE where it subsequently transpires that the remuneration qualifies for exemption under section 10(1)(o)(ii) may not refund over-deducted PAYE to an employee. The employee must claim a refund on assessment. Supporting documentation in the form of, for example, a travel schedule, a passport and an employment contract, may be requested from the employee to substantiate the exemption claimed on assessment.</p>																																										

36.	What is the impact of the exemption on SDL and UIF?	<p>Any amount that is exempt under section 10(1)(o)(ii) no longer constitutes “remuneration” as defined in paragraph 1 of the Fourth Schedule. The reason for this is that “remuneration” is defined to mean “...<i>any amount of income</i>...”. “Income” as defined in section 1(1) excludes exempt income.</p> <p>These exempt amounts are not subject to the deduction of UIF or SDL as they do not constitute “remuneration”. Only the remuneration that remains taxable in South Africa will be subject to the deduction or withholding of levies or contributions under these statutes.</p>
37.	Under which income source codes should the income be disclosed?	<p>For employees’ tax certificate (IRP5 certificate) purposes, each remuneration item in respect of foreign service income must be disclosed under the relevant foreign income source code. For example, foreign sourced salary income must be disclosed under code 3651, bonus payments under code 3655 and medical aid contributions under code 3860.</p> <p>Code 3652 may not be used for any remuneration item that may qualify for exemption under section 10(1)(o)(ii) as there are specific foreign income source codes for each item that should be used. If an employer discloses any foreign sourced income under code 3652, the exemption under section 10(1)(o)(ii) will not be applied on assessment.</p> <p>An employer that is satisfied that the employee qualifies or will qualify for the exemption under section 10(1)(o)(ii) and applies the exemption for PAYE purposes, should disclose the exempt portion of the remuneration under information source code 4587, limited to R1,25 million.</p> <p><i>For example:</i></p> <ul style="list-style-type: none"> <li>• <b>Code 3601</b> – <b>Gross salary earned in South Africa</b> (if applicable), subject to normal tax.</li> <li>• <b>Code 3651</b> – <b>Gross salary earned outside of South Africa.</b></li> <li>• <b>Code 4587</b> – <b>The portion of the remuneration qualifying for the section 10(1)(o)(ii) exemption as taken into account by the employer for PAYE purposes (limited to R1,25 million).</b></li> </ul> <p>If the employer does not apply the exemption through the payroll, the information source code 4587 should be zero.</p> <p>If there is no foreign income source code, code 4587 may not be used.</p> <p>If the entire foreign sourced income is exempt and the employer applies the exemption through the payroll, the value of the information source code should not be more than the value of the foreign income source code.</p> <p><b>Code 4587 – R900 000</b></p>

		<p>For example, an employee receives a salary of R800 000 and a bonus of R100 000 and qualifies for the exemption which the employer applies through the payroll for PAYE purposes. The IRP5 disclosure is as follows:</p> <p><b>Code 3651 – R800 000</b></p> <p><b>Code 3655 – R100 000</b></p>
38.	If I have a South African employer and earn South African sourced income as well as foreign sourced income, should my income be disclosed on one or two IRP5 certificates?	<p>SARS prefers a single certificate, where possible, but where separate certificates are issued, the PAYE, SDL and UIF liabilities must be calculated on the total amount that is subject to PAYE, SDL and UIF.</p> <p>If one IRP5 certificate is used, the employer must ensure the correct IRP5 source codes are used in respect of the South African and foreign sourced income. If two IRP5 certificates are used, one related to the South African sourced income and one related to the foreign sourced income, the employer must ensure the correct amount of PAYE, SDL and UIF is calculated and withheld on the combined income from the two IRP5 certificates.</p>
39.	What foreign exchange rate should be used on a monthly basis if amounts paid from a foreign employer should be processed through the South African payroll?	<p>Section 25D(1) provides that the spot rate should be used on a monthly basis by the employer as and when the amounts are received or accrued to the employees. The average exchange rate is catered for under section 25D(3) should an employee elect to do so.</p>
40.	Should the amounts paid by the foreign employer, that is not required to be paid or processed by the South African employer, be taken into account to calculate the R1,25 million exemption?	<p><b>Yes</b>, for the determination of the R1,25 million exemption, the remuneration items provided by both the local and foreign employer must be taken into account. The R1,25 million exemption has to be determined with reference to all income received by the employee for the services rendered abroad irrespective of which employer (local or foreign) is making the payment.</p>
41.	Does the foreign employer have a liability to withhold PAYE from the remuneration paid to a resident employee working outside South Africa?	<p>The answer depends on whether the foreign employer has a representative employer in South Africa. If there is a representative employer in South Africa, such employer will have an obligation, subject to the provisions of a tax treaty, to withhold PAYE in South Africa on the remuneration <b>in excess</b> of R1,25 million. The remuneration not qualifying for the exemption will also be subject to SDL and UIF.</p> <p>If there is no representative employer in South Africa, the foreign employer does not have any obligation to withhold PAYE. Such employee will be required to register as a provisional taxpayer and settle any tax liability in South Africa by way of provisional tax payments. Refer to IN 1 for more details on provisional tax. .</p>

42.	Does the South African employer have a responsibility to withhold PAYE from an amount paid by the foreign employer?	The obligation to withhold PAYE is determined by who is “liable” to pay the remuneration. The South African employer will only be liable to withhold PAYE if that employer pays or is liable to pay remuneration. If the South African employer acts as the representative employer of the foreign employer in South Africa, it will be required to withhold PAYE on behalf of the foreign employer.
<b><i>Directive under paragraph 10 of the Fourth Schedule (hereinafter referred to as “directive”)</i></b>		
43.	If I am in a double tax position, is there any relief available through the payroll if my employer has a withholding obligation in South Africa?	<p><b>Yes</b>, an employer may apply for a directive to vary the basis on which PAYE is withheld monthly in South Africa.</p> <p>This is not the actual granting of the section 6quat credit. The potential foreign tax credit is taken into account to determine a method on how the PAYE that has to be withheld for payroll purposes. The section 6quat credit will only be granted on assessment, provided the necessary requirements are met.</p>
44.	Can my foreign employer, who does not have a withholding obligation in South Africa, apply for a directive to provide relief for my double tax situation when my income exceeds R1,25 million and I pay tax on that excess in South Africa as well as the foreign country I work in?	<p>The application for a directive can only be made if the employer has an obligation to withhold PAYE. In the case of a foreign employer who has no PAYE withholding obligation, there would be no need to vary the basis on which PAYE is withheld as no PAYE is withheld in the first place.</p> <p>A section 6quat credit will have to be claimed on assessment.</p>
45.	Can an employer automatically apply a potential foreign tax credit through the South African payroll?	<b>No</b> , any possible relief should be applied for by the employer by way of a directive.
46.	Are there any circumstances under which the directive will not be considered?	<p>An application for a directive will not be considered if the following circumstances are applicable to an employee:</p> <ul style="list-style-type: none"> <li>• The employee is below the tax threshold</li> <li>• The employee’s remuneration is exempt (less than R1,25 million)</li> <li>• The employee is not taxed in the foreign country</li> </ul>

47.	Which tax rate will apply to the income that is in excess of the R1,25 million exemption?	<p>The income in excess of R1,25 million will be taxed at the normal tax rate up to 45%, whichever is applicable to the excess portion of the income.</p> <p>For example, an individual (below 65 years of age) earns foreign employment income of R1,5 million. Based on the tax rates applicable to the 2020 year of assessment, the normal tax liability is calculated below.</p> <ul style="list-style-type: none"><li>• R1 250 000 will be exempt</li><li>• R250 000 is subject to normal tax and calculated as follows: <math display="block">= R37\ 062 + [(R250\ 000 - R205\ 900) \times 26\%]</math><math display="block">= R37\ 062 + R11\ 466</math><math display="block">= R48\ 528</math><math display="block">= \text{less the primary rebate of R14 958}</math><math display="block">= \mathbf{R33\ 570}</math></li></ul>
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Many South Africans receive some sort of foreign income, whether it's from dividends, employment, rental income, interest or royalties.

You may be wondering if that income you receive from a foreign country is taxable in South Africa and whether you should declare it in your South African tax return.

The short answer is yes: foreign income is taxable in South Africa.

The South African tax system states that if you're a South African resident (for tax purposes), you will be taxed on all local and foreign income you receive, regardless of where it is paid and where the source of the income is.

This is called the Worldwide Basis of taxation.

So, if you have a South African passport and regard South Africa as your regular place of residence, you will more than likely have to pay income tax in South Africa. Fortunately, there are a few foreign tax exemptions you may be eligible for.

To understand the tax implications of foreign income better, we'll break it down into the types of income:

- Foreign employment income
- Foreign dividends & interest income
- Foreign rental income
- Foreign trade income
- Foreign royalties

### **Foreign employment income tax exemption**

If you think earning an income from a global source isn't taxable on home soil, we're afraid we have some bad news.

Whether you're earning Dollars, Euros or Yen, as a South African, it's more than likely you'll have to pay tax on this income.

This is due to the world-wide basis of tax we mentioned earlier.

Section 10 of the Income Tax Act offers a list of conditions where income earned (or at least a portion of it) for services rendered outside of South African borders will be exempt from income tax.

This exemption will be capped at R 1.25 million per annum from 1 March 2020.



When is foreign income not taxable?

A portion of your foreign income may not be subject to South African tax if you:

- Have a formal employment contract (with a resident or non-resident employer),
- Are a South African tax resident,
- Earn a certain type of remuneration
- Spend at least \*183 days (roughly 26 weeks, or about 6 months) of a consecutive 12-month period outside of SA rendering services to your foreign employer, and
- At least 61 of these days are continuous or unbroken.

### **The 183-day / 61 Continuous Day Test**

The consecutive 12-month period isn't necessarily a calendar, financial or tax year. It's any period of 12 successive months.

Let's pretend you have a contract that starts on 1 April 2021 and is valid for 18 months, ending 30 September 2022.

To see whether you meet the 183 day / 61 continuous day condition, you'll need to:

1. Mark the first date of your contract and count forward 12 months, e.g. 1 April 2021 to 31 March 2022.
2. Now determine whether you spent at least 183 days outside of SA during this period.
3. Then see if at least 61 of these days were continuous, i.e. in a row, with no break.

### **The Matter of Rest Days**

In some cases, employment contracts specify and enforce rest days in line with their Health and Safety Regulations.

For example, if you're working as an airline pilot outside of SA, it might be an employment condition that you work for a specific number of days or weeks before being forced to take a certain number of days or weeks as rest days, for safety reasons.

During this rest period you're still employed, but you're not physically rendering your services.

In cases like this, SARS believes that during a qualifying period (i.e. the 183/60-day test is met), all remuneration that can be attributed to services rendered offshore will qualify for exemption and no apportionment must be done.

A few employers may be brave enough to apply this section of the Act to the taxpayer's situation and not deduct employee's tax, however most will take the safer route of withholding tax, leaving the responsibility on the employee to do their annual tax return and get a refund on the tax paid.

### **SUPPORTING DOCUMENTS REQUIRED FOR SARS**

In all instances of foreign employment and related travel, it's worth keeping the following documents handy, as you can be pretty sure that SARS will request them:

1. Spreadsheet showing number of days in and out of SA
2. Copy of your passport showing days in and out of SA
3. Letter from your employer stating you're allowed to work overseas (and for what periods), plus what amount was earned during that period
4. Foreign/expat assignment employment contract

5. IRP5 (if applicable) showing foreign employment income earned (e.g source code 3651, 3653, 3655, etc.)

Note, that if you receive an IRP5 which reflects your foreign income, it needs to have the relevant foreign source codes in order for SARS to grant the s10(1)(o)ii exemption.

If your employer has used the local codes, you need to ask them to re-issue you the IRP5 to reflect the foreign income source codes.

1 March 2020 – changes to the foreign employment income exemption National Treasury announced that there would be changes to the Foreign Employment income Exemption in 2017. These changes were made in order to target those South Africans working out of the country on expat contracts, who may not have formally emigrated and were planning to return to live in SA at a later stage. These proposed amendments would have meant that South Africans working overseas in low or zero tax jurisdictions (where they pay little or no tax on employment), would now be subject to tax in South Africa.

This announcement shocked the South African expat community, because many of them were escaping paying tax in South Africa by claiming the s10(1)(o)(ii) exemption, and therefore benefitting from more favourable tax regimes in other countries.

Treasury has since cleared up their stance on this and from 1 March 2020, South African residents who spend more than 183 days working outside the country will be subject to South African tax on foreign employment income over and above R 1.25 million.

### **1. South Africans who have gone overseas for a short-term transfer and who intend to return home at the end of it.**

Let's say you're working in SA for a multi-national company, who then sends you to their office in Bermuda for 6-12 months, so you can gain some valuable offshore experience.

Currently, you'd fall under the s10(1)(o)(ii) exemption. This means that you'd be filing your tax return in South Africa, but claiming your foreign employment income as exempt because you'd be out of the country for at least 183 days (60 being consecutive), within a 12-month period.

Following on from this example, from 1 March 2020, a taxpayer who pays 0% tax in Bermuda and who has historically claimed the s10(1)(o)(ii) foreign income exemption on their South African tax return, will now be required to pay tax on their foreign income exceeding R 1.25 million in South Africa, based on the normal tax tables for individuals.

### **2. A South African who's been working overseas for a number of years and plans to return home once they've finished travelling.**

Someone who's left South Africa shortly after their studies to work in London for a few years. They may have ended up working there for five years already, but they do have plans to return home at some stage in the future.

In this scenario, they probably pay tax in the UK and don't consider themselves a tax resident\* of South Africa, so they don't file tax returns here.

It's these types of taxpayers that will also be affected by the new law.

For example, a taxpayer who pays 20% tax in the UK, will have to declare all of their UK income in South Africa and will now be taxed on foreign earnings exceeding R 1,25 million.

They will be able to deduct the foreign tax they've paid, so they're not taxed on the same income twice - however they will no longer benefit from the lower UK tax rate.

### **3. A South African who has" financially emigrated"**

If you work overseas and have recorded your emigration with the South African Reserve Bank and SARS, this does not necessarily mean that your tax residence has changed.

This is merely only one factor that may be considered to determine whether or not you have broke tax residence.

The deciding factor remains whether or not you break your ordinary residence status.

#### **Double taxation relief**

If you're a taxpayer who works for a South African company, tax may be withheld in both South Africa and the host country where you're working.

Fortunately, South African employers will be able to reduce their monthly tax withholding by the amount of any foreign employee's tax withholding that applies to that income or by means of a Fixed Percentage Tax Directive.

You have Section 6quat on your side for some double tax relief.

Section 6quat is the mechanism to claim relief from double tax where the amount received for services rendered outside of South Africa is subject to tax in South Africa and in the foreign country.

You may claim this credit on assessment when you, as an individual, submit your income tax return that is if you met the specified requirements.

#### **Foreign dividends & interest income**

South African residents that earn foreign dividends generally have to pay tax on those foreign dividends and declare them when submitting their South African tax return.

The tax paid on the foreign dividends depends on the amount and type of shares held in the foreign company.

In most cases, where the taxpayer holds less than 10% of the equity shares and voting rights in the foreign company, then the foreign dividend received will be taxed.

The full amount of the dividend must be shown in the tax return, however SARS will allow a tax exemption which equates to 25/45 of the Rand value of the foreign dividend.

If the taxpayer has paid foreign tax on the dividend, this must also be declared, and SARS will reduce the local tax by the foreign tax paid.

#### **Foreign interest income**

If you earn foreign interest, you need to report the Rand equivalent amount to SARS.

Unlike local interest, there is no exempt portion, however you would be able to deduct any foreign tax you pay.

You need to declare foreign interest in the Investment Income section of your tax return, together with the foreign tax credit

## **Foreign rental income**

If you own property overseas and are receiving an income by renting your property out abroad, then this classifies as “foreign rental income” which is taxable for all South African residents. Any expenses that you incur relating to earning the rental income (bond interest, rates and taxes, insurance and repairs for example), should be claimed as a deduction, so you can reduce your tax liability.

Often the country where your property is located will have deducted or withheld taxes from your rental income.

You would be able to deduct these taxes as a foreign tax credit, so that you never pay tax twice. You would do this by entering the foreign tax paid in the relevant field within the Other Foreign Income section of your tax return.

Remember to always check the rules of the country where the property is held to ensure you are tax compliant there as well, as you may need to submit a tax return there too.

## **Foreign Trade income**

If you earn foreign business or freelance income while based in South Africa, you need to declare the Rand value of the profit in your tax return.

The profit will be taxed just like a local business i.e you can deduct all of your trading related expenses from your business income.

Unlike a local business, there is not a separate section to declare all the revenue and expense items separately.

You can simply work out the foreign profit and declare it as one amount in the foreign income section of the ITR12.

If a South African was earning money from abroad while working remotely in SA, the income would be regarded as sourced in SA, which gives SARS the right to taxation.

To add to the load, the assignment country (i.e the foreign country in which the South African was employed) may also withhold taxes on their income, if their salary is paid through local payroll in the foreign country.

The South African Income Tax Act does not make provision for foreign tax relief in the case where that income is regarded as South African source.

This means that the South African may face double taxation if the assignment country does not have domestic legislation supporting the elimination of double taxation.

**Annexure B – Comparison between section 10(1)(o)(i), (iA) and (ii)**

<b>Relevant aspect</b>	<b>Section 10(1)(o)(i)</b>	<b>Section 10(1)(o)(iA)</b>	<b>Section 10(1)(o)(ii)</b>
<b>Remuneration</b>	As defined in paragraph 1 of the Fourth Schedule to the Act.	As defined in paragraph 1 of the Fourth Schedule to the Act.	Salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C.
<b>Employee</b>	<p>Item (aa): Any officers and crew members, excluding an independent contractor or self-employed person.</p> <p>Item (bb): Only officers or crew members solely employed for the navigation of the ship, excluding an independent contractor or self-employed person.</p>	Any officers and crew members, excluding an independent contractor or self-employed person.	Any employee, excluding an independent contractor or self-employed person.
<b>Employer</b>	Resident or non-resident employers.	Resident or non-resident employers.	Resident or non-resident employers.
<b>Qualifying ship</b>	Any ship (international or South African) engaged in a specified activity (see below).	South African registered ships as defined in section 12Q(1) mainly engaged in a specified activity (see below).	N/A
<b>Activities of ship</b>	<p>Item (aa): international transportation for reward of passengers or goods.</p> <p>Item (bb): prospecting, exploration or mining for or production of any minerals (including natural oils) from the seabed outside the Republic.</p>	<p>Item (aa): international shipping as defined in section 12Q(1), meaning the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic.</p> <p>Item (bb): fishing outside the Republic.</p>	N/A
<b>Qualifying period</b>	During a year of assessment	During a year of assessment	During any 12 month period
<b>Outside the Republic</b>	Item (aa): Beyond the territorial waters (that is 12 nautical miles from the baselines) for any officer or crew member.	Item (aa): Beyond the territorial waters (that is 12 nautical miles) for any officer or crew member.	Beyond the territorial waters (that is 12 nautical miles) for any person rendering employment services; which may

Relevant aspect	Section 10(1)(o)(i)	Section 10(1)(o)(iA)	Section 10(1)(o)(ii)
			<p>include—</p> <ul style="list-style-type: none"> <li>any officer or crew member employed on a ship engaged in prospecting, exploration, mining or production of or for minerals <b>but not</b> employed for the navigation of the ship or for the exploration or exploitation of natural resources; or</li> <li>any officer or crew member employed on a South African ship mainly engaged in fishing but not employed for the exploitation of natural resources.</li> </ul>
	Item (bb): Beyond the edge of the continental shelf or 200 nautical miles, whichever is the greater for an officer or crew member navigating the ship.	For purposes of item (bb): Beyond the edge of the continental shelf or the EEZ (for any officer or crew member, depending on the type of fishing done.	Beyond the edge of the continental shelf (that is 200 nautical miles) for any person or officer or crew employed for the exploration or exploitation of natural resources.
<b>Days requirement</b>	For a period or periods exceeding 183 full days in aggregate during a year of assessment.	No days requirement during a year of assessment.	<p>For –</p> <ul style="list-style-type: none"> <li>a period or periods exceeding 183 full days in aggregate during any period of 12 months; and</li> <li>for a continuous period exceeding 60 full days during that period of 12 months.</li> </ul>
<b>Apportionment required?</b>	No	No	Yes, to the extent that services are rendered outside the Republic.



# Ultimate Expatriate Tax Checklist

WWTS is based in Kloof, Kwa-Zulu Natal

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- Copies of Entry & Exit Passport Stamps
- Travel Tracker listing days
- Payslips or Bank Statements
- Employment Contract or Letter
- Proof of Taxable Worldwide Income
- Proof of Local Income
- Medical Aid and Retirement Tax Certificates
- Details of any Assets Sold





# Penalties on Expat Tax



- The South African Revenue Service (SARS) has become stricter with the implementation of penalties. SARS is currently in the process of issuing penalties for late submissions.
- South Africans working abroad receiving foreign income – remain taxable domestically if they are a resident.
- Income earned abroad is exemption foreign tax credits under the Foreign Exemption and most often, it is also not subject to PAYE.
- Despite these advantages, the expatriate taxpayer must register as a provisional taxpayer if his foreign income will result in a tax liability of more than R30 000 after the Foreign Exemption and foreign tax credits are applied.
- “Failure to include the foreign income in provisional tax returns might lead to understatement penalties of up to 200% of the shortfall during the annual return submission.
- This can result in a sizeable liability for the taxpayer.





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