



Tax Guide  
For Foreigners  
Working In South Africa  
2006/07

**TAX GUIDE FOR FOREIGNERS WORKING  
IN SOUTH AFRICA 2006/07**

**FOREWORD**

This document does not go into the precise technical and legal detail that is often associated with tax. It should, therefore, not be used as a legal reference.

Should you require additional information regarding any taxes administered by SARS you may:

- Contact your local SARS branch
- Visit SARS online at <http://www.sars.gov.za>
- Contact your own advisors

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## 1. Introduction

The purpose of this brochure is to inform individuals who are not South African residents about their income tax commitments. It deals mainly with employment income earned.

Income tax in South Africa is governed by the provisions of the Income Tax Act No. 58 of 1962 (the Act). In terms of the income tax system in South Africa –

- income of non-residents that is derived from a source within or deemed to be within South Africa is subject to income tax in South Africa; and
- residents are taxed on their world wide income.

Therefore, foreigners (non-residents) working in South Africa will be liable for tax on their income earned in South Africa.

Although this guide deals with income tax commitments it is, however, important to note that other requirements need to be met when foreigners wish to work in South Africa. Work permits, for example, will be required and are issued by the Department of Home Affairs. Further information regarding the various types of work permits is available on the Home Affairs website ([www.home-affairs.gov.za](http://www.home-affairs.gov.za)).

## 2. Possibility of becoming a resident

As the tax status of South African residents and non-residents may differ, it is important for an employee to determine his/her status. Two separate tests are applicable to determine whether or not a person is a resident of South Africa, i.e. the “ordinarily resident” test and “physical presence” test.

### 2.1. Ordinarily resident test

This is usually the first test to determine whether the individual is a resident of South Africa. The main aspect in this regard is to determine if a person’s permanent home, to which he/she will normally return, is in South Africa. If so, the individual will be a resident. (For more information regarding the concept of “ordinarily resident” see Interpretation Note 3 available on the SARS website.)

### 2.2. Physical presence test

This test is time-based and is only applicable to an individual who has not been considered ordinary resident during the relevant year of assessment in South Africa. It takes the form of a “physical presence” test.

The “physical presence” test must be done annually in order to determine whether the individual concerned is a resident for the year of assessment under consideration. The test consists of three requirements, i.e. the person must be physically present in South Africa for a period or periods exceeding:

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

In terms of the “physical presence” test, a natural person, who is not ordinarily resident in South Africa, only becomes a South African resident for tax purposes as from the first day of the sixth year of assessment if he/she is physically present in South Africa for the periods as set out above. (See Interpretation Note 4 available on the SARS website for more information.)

A day includes a part of a day, but does not include any day that a person is in transit through South Africa between two places outside South Africa where the person does not formally enter South Africa-

- through a port of entry as defined in the Immigration Act, 2002 (Act No. 13 of 2002); or
- at any other place in the case of a person authorized by the Director General of the Department Home Affairs or the Minister of Home Affairs in terms of section 31(2) (c) of the Immigration Act, 2002.

Where an individual who is resident as a result of the physical presence test is absent from South Africa for a continuous period of at least 330 days after the day on which he/she ceased to be physically present in South Africa, he/she will be regarded as being non-resident from the date on which he/she ceased to be physically present in South Africa.

**Note:** Any person who is deemed to be exclusively a resident of another country for purposes of the relevant tax treaty is excluded from the definition of resident. See also Interpretation Note No 4.

### 3. Income received from employment

Persons who are *not* South African residents are subject to South African income tax on their income that is derived from a source within or deemed to be within South Africa. Non-residents pay income tax at the same rate as residents and are generally entitled to the same deductions and rebates as residents.

It is internationally accepted that the income from employment should be taxed in the country where the services are actually rendered, irrespective of the place where the contract is entered into or where the remuneration is paid. South African legislation and case law support this principle. In other words, a foreign employee working in South Africa is liable for tax under domestic law in respect of his/her employment income earned in South Africa.

The tax position of a foreign employee may, however, be affected by an agreement for the avoidance of double taxation between South Africa and the government of the foreign country in which the foreign employee resides.

### 4. Avoidance of double taxation

Where a person earns employment income from a source in South Africa and is a resident of another country, income tax may be payable in both South Africa and the country of residence.

The South African Government has, therefore, entered into agreements for the avoidance of double tax (commonly referred to as DTAs) with a number of other countries in order to prevent the levying of tax on the same income by more than one country.

The precise terms of these agreements may vary from country to country and it is, therefore, not possible to give details of each DTA here. The relevant DTAs are available on the SARS website and can be found under the link: Legislation / International Treaties.

Where no DTA exists, the domestic tax laws of both South Africa and the relevant foreign country remain applicable.

As a general guideline only, you may expect relief from taxation in terms of the DTAs in the following cases:

#### 4.1. Temporary employment in the private sector

Where a DTA has been concluded with a foreign country, the employment income of an employee will generally be subject to tax in South Africa. However, if all three of the following requirements are met the income will not be taxed in South Africa -

- the employee is present in South Africa for a period or periods in aggregate not exceeding 183 days in any twelve month period (not necessarily a year of assessment); and

- the remuneration is paid by, or on behalf of, an employer who is not a resident of South Africa; and
- the remuneration is not borne by a “permanent establishment” that the employer has in South Africa. A “permanent establishment” means in essence a fixed place of business through which the business of the employer is wholly or partly conducted.

### Example

X is a United Kingdom (UK) resident who is employed by a UK company. X has been seconded to render services in South Africa for a period of five months. Remuneration is paid by the UK company and it does not have a permanent establishment in South Africa.

SA has no right to tax the remuneration in terms of the DTA with the UK as the –

- employee (UK resident) is in South Africa for a period not exceeding 183 days in aggregate in any twelve months; and
- remuneration is paid by an employer who is not a resident of South Africa; and
- remuneration is not borne by a permanent establishment or a fixed base which the employer has in South Africa.

### 4.2. Employees of foreign governments working in South Africa

The remuneration of an employee of a foreign diplomatic or consular mission in South Africa is exempt from income tax in South Africa if –

- the employee is stationed in South Africa for the sole purpose of holding office in the Republic as an official of a foreign government; and
- the employee is not ordinarily resident in South Africa.

**Note:** The fact that the employee will as a consequence of the application of the physical presence test (see par 2.2) become a resident will not affect his/her remuneration exemption in this regard.

It must be noted that where the employee applies for and receives a permit for permanent residence in South Africa, the exemption falls away and liability for normal tax arises, from the date of issue of the permit for permanent residence. Furthermore, where a foreign government carries on business activities in South Africa, the remuneration payable to its employees could also be taxable in South Africa. (The taxability of this income may be affected by a DTA.)

South African nationals who are employed by foreign diplomatic or consular missions in South Africa (i.e. locally recruited employees) are not exempt from income tax on their emoluments.

Where the employees are not exempt from tax in the above circumstances, they must register as provisional taxpayers with their local SARS branch office.

### 4.3. Directors' fees

Where a resident of a foreign country derives directors' fees or other similar remuneration in his/her capacity as a member of a board of directors of a company which is a resident of South Africa, South Africa will generally have a right of taxation on the directors' fees. The same fees may also be taxable in the foreign country. Generally, but depending on the foreign legislation and normally within specified limits, a credit will be allowed in the foreign country in respect of the income tax paid in South Africa.

## 5. What is the tax threshold?

Every individual who receives taxable income in excess of a specific amount in a year of assessment is liable for income tax. This amount for the 2007 year of assessment is R40 000 if you are under 65 years or R65 000 if you are 65 years and older. Once these thresholds have been exceeded the specific rates at which individuals are taxed depend on the amount of taxable income received.

The final income tax (normal tax) payable by a taxpayer can only be calculated once the total taxable income earned by the individual for the full year of assessment has been determined. This is normally only done after the end of the year of assessment once a taxpayer's income tax return has been processed and an assessment is issued.

### 5.1. Tax rates for individuals: 2006/07

Taxable income (R)	Rates of tax (R)
1 - 100 000	18% of each R1
100 001 - 160 000	18 000 + 25% of the amount above 100 000
160 001 - 220 000	33 000 + 30% of the amount above 160 000
220 001 - 300 000	51 000 + 35% of the amount above 220 000
300 001 - 400 000	79 000 + 38% of the amount above 300 000
400 001 and above	117 000 + 40% of the amount above 400 000

<b>Rebates (Individuals only)</b>	<b>2006/07</b>
Below age 65	R7 200
Age 65 and over	R4 500

<b>Tax thresholds</b>	<b>2006/07</b>
Below age 65	R40 000
Age 65 and over	R65 000

## 6. Year of assessment

A year of assessment (tax year) in South Africa with regard to persons other than companies covers a period of 12 months that commences on 1 March and ends on the last day of February of the following year. In respect of the 2007 year of assessment the period will, therefore, be 1 March 2006 up to and including 28 February 2007.

## 7. Filing of income tax returns

A foreign employee who receives employment income that exceeds a specified annual equivalent (R60 000 per annum or the equivalent thereof for the 2007 year of assessment) must complete an income tax return. In cases where a foreign employee receives employment income and other income from a South African source, for example, interest in excess of the exemption limits or rental income, an income tax return must be completed by a foreign employee, irrespective of whether employment income or the equivalent thereof exceeds R60 000 or not.

Foreign employees only receiving net remuneration which is below the R60 000 threshold will generally be subject to a withholding tax known as standard income tax on employees (SITE) if their remuneration is paid or payable by a South African employer or a South African agent of a non-resident employer having authority to pay remuneration. Foreign employees who fall under this category are not required to complete income tax return. However, these employees may need to register as a provisional taxpayers if their remuneration is paid or payable by a non-resident employer – see paragraph 12.

Any individual who has to complete an income tax return must register for income tax by completing an IT 77 form. The individual must register within 60 days after he/she becomes liable for income tax. The IT 77 form can be obtained from a local SARS branch office or from the SARS website.

Income tax returns must be submitted within a stipulated time. If you are unable to render your tax return within the prescribed period, you must apply for an extension at your SARS office. Online applications for extensions can also be made on the SARS website, under Electronic Site / Extensions.

## 8. Summary of different types of employment income

Generally, income from employment can be divided into three broad categories:

### 8.1. Salary

Cash remuneration such as salaries, wages, bonuses, overtime pay, leave pay, etc.

### 8.2. Allowances

Allowances are generally paid to employees to cover costs incurred on behalf of an employer. The portion of the allowance not expended for business purposes must be included in the employee's taxable income. The most common types of allowances are travel and subsistence allowances.

### 8.3. Fringe benefits

Where an employee receives a benefit that is not in cash, such a benefit is taxable where it is received by virtue of employment and can be valued in terms of the legislation contained in the Seventh Schedule to the Act (the Seventh Schedule).

Examples of such benefits that will be taxed include:

- The acquisition of an asset from an employer at a value that is less than market value
  - Free or cheap services provided by the employer
  - The private use of an asset owned or paid for by the employer
  - Free or cheap residential accommodation provided by an employer
  - Use of an employer-owned motor vehicle
  - Low interest or interest-free loans from your employer
  - The settlement of a debt on an employee's behalf by an employer
- (See "EMP 10 Guidelines for Employers" available on the SARS website for further information)

## 9. Specific types of fringe benefits

Listed below are some common items in respect of which general tax guidelines will be discussed further.

### 9.1. Residential accommodation

Where a foreign employee has been provided with residential accommodation in South Africa, the benefit will be taxable in the hands of that employee for the duration of his/her employment in South Africa. However, there is an exclusion to this rule contained in paragraph 9(7) of the Seventh Schedule, which effectively provides that no value must be placed on the accommodation provided by the employer to the employee where the employee is away from his/her usual place of residence for the purposes of performing his/her duties of employment.

The residential accommodation supplied by the employer is valued at the greater of –

- the cost borne by the employer, less any amount paid by the employee; or
- by utilising the formula prescribed in paragraph 9 of the Seventh Schedule, which is based on a percentage of remuneration, less any amount paid by the employee.

#### Example

An employee receives cheap accommodation (17% category). The remuneration factor is R100 000. He also pays R500 per month towards the use of the accommodation.

The monthly value of the fringe benefit is calculated as follows:

$$[(R100\ 000 - R40\ 000) \times 17\% \times 1/12] - R500 \\ = R350 \text{ per month}$$

**Note:** Where, by reason of the situation, nature or condition of the accommodation or any other factor, the market-related rental value of the accommodation is lower than the amount arrived at by way of the above formula, the market-related rental value is taken into account for tax purposes. In such an instance, your employer must approach the local SARS office to confirm whether the market value may be used.

### 9.2. Use of company car

When a foreign employee is granted the use of a motor vehicle by his/her employer, he/she is deemed to have received a benefit based on the "determined value" of the vehicle. From 1 March 2006, the benefit is calculated at 2,5 per cent per month of the determined value.

#### Determined value in broad terms means:

- Where the employer is the owner of the vehicle, the determined value is the original cost to him/her.
- Where the vehicle is held under a lease it is the retail market value thereof at the first time the employer obtained the right of use thereof.
- In any other case, the determined value is the market value of the vehicle at the time the employer first obtained the vehicle or the right of use of the vehicle.

Where any second (or further) vehicle is made available to that foreign employee or his/her family, and the vehicle is not used primarily for business purposes, the benefit is calculated as follows:

- 2,5 per cent per month on the value of the vehicle with the highest value; and
- 4 per cent per month on the other vehicle(s)

#### Exclusions

No taxable benefit will arise in the following instances –

- (a) • the vehicle is available for the use by employees in general;
- the private use (if any) is incidental to its business use; and
  - the vehicle is not normally kept at or near the residence of the employee when it is not in use;
- or
- (b) • the employee is regularly required to use the employer-owned vehicle for the performance of his or her duty outside the normal working hours; and
- the private use is travelling between his or her place of residence and his or her place of work or the private use is infrequent or incidental to business use.

### 9.3. Relocation costs

Payments by an employer (as defined) to cover expenses such as –

- the transfer of a foreign employee on taking up employment;
- the transfer from one place of employment to another; or
- the termination of employment,

will be exempt from tax in the employee's hands.

The expenses that will be exempt are -

- the expenses of transporting the foreign employee, members of his/her household and personal goods and possessions from the previous place of residence to the new place of residence; or
- any costs as the Commissioner may allow which have been incurred by the foreign employee in respect of the sale of his/her previous residence and in

settling in permanent residential accommodation at his/her new place of residence. For example, bond registration and legal fees; transfer duty; cancellation of bond; agent's commission on sale of previous residence and telephone, water and electricity connection. To simplify administration, it will be acceptable and treated as tax-free if an amount equal to one month's basic salary is paid to the employee to cover settling-in costs; or

- the cost of renting temporary residential accommodation for the employee and members of his household during a period of not more than 183 days after his/her transfer took place or after his/her date of appointment.

Where a foreign employee may be required to sell personal assets upon his/her temporary relocation to South Africa and is reimbursed by the employer for a loss suffered as a result of such sale, the amount so paid by the employer is taxable in South Africa.

#### 9.4. Home (domestic) security costs

Security costs incurred in respect of an individual's private safety (including family) at his/her home are not deductible for tax purposes as it is an expense of a private nature. The payment of such costs by the employer would be fully taxable as a fringe benefit in the hands of the employee.

#### 9.5. Employees' tax paid on behalf of an employee

Where the employer pays part or all of the employee's South African tax liability on his/her behalf, a taxable benefit will arise. Should the employer also choose to settle the tax on this benefit, a further taxable benefit will arise. This will continue on a recurring basis until a final tax liability is determined.

To simplify this recurring calculation, SARS accepts the use of a gross-up formula which is as follows:

First fringe benefit amount (employee's initial tax liability settled by the employer) x 100/ (100 – marginal tax rate applicable to the employee)

#### Example

Y (below age 65) is not a South African resident. For the 2006/07 tax year Y is employed by a South African company who bears the South African tax liability on taxable income of R120 000. The amount of tax payable on R120 000 is R15 800. The marginal tax rate is 25 per cent.

The amount of tax and fringe benefit (total tax) which the employer must pay on behalf of Y will be determined as follows:

$$\begin{aligned} & R15\,800 \times 100 / (100 - 25) \\ & = R21\,066,67 \end{aligned}$$

In other words, the total tax amounts to R15 800 (tax) + R5 266,67 (fringe benefit) = R21 066,67

## 10. Tax deductions that foreign employees may claim

### 10.1. Pension fund contributions

Contributions to a foreign pension fund by a foreign employee during his/her period of employment in South Africa will generally not qualify as a deduction for purposes of calculating his/her South African liability. Certain DTAs provide exceptions to this rule.

Contributions (limited to 7,5 per cent of pensionable salary) made to a South African approved pension fund will be taken into account in determining the allowable pension deduction.

### 10.2. Retirement annuity fund contributions

Contributions made to a South African approved retirement annuity fund will be taken into account as a deduction.

The deduction is limited to the greater of -

- 15 per cent of non-pensionable salary; or
- R3 500 less pension fund contributions; or
- R1 750

### 10.3. Medical expenses

#### Persons under 65 years

If you are under 65 years of age you may claim the following expenses as a deduction -

- any contribution to a registered medical scheme in respect of yourself, your spouse and dependant, as long as it does not exceed the following monthly amounts -
  - (a) R500 in respect of yourself; or
  - (b) R1 000 in respect of yourself and one dependant; or
  - (c) R1 000 in respect of yourself and first dependant, plus R300 for every additional dependant thereafter.

The amounts in (a), (b) or (c) above, as the case may be, must be reduced by any contributions paid by the employer which has not been included as a taxable benefit in your remuneration; and

- the total of –
  - any contributions to a registered medical scheme which have not been allowed as a deduction above and also have not been treated as a tax-free benefit;
  - any qualifying medical expenses (including physical disability expenses); and
  - contributions by the employer to the Medical Scheme taxed as a fringe benefit,
 as exceeds 7,5% of your taxable income before allowing any of the medical deductions above.

**Note:** The contributions by the employer that exceed the exempt amounts in (a), (b) or (c) above, as the case may be, will be taxed as a fringe benefit in your hands.

#### Handicapped persons

If you, your spouse or child is a handicapped person as defined in section 18(3) of the Act (see below), you will be allowed to deduct all your contributions to a registered medical scheme, qualifying medical expense and physical disability expenses necessarily incurred and paid.

[For the purposes of section 18 a handicapped person means -

- a blind person as contemplated in the Blind Persons Act, 1968 (Act No. 26 of 1968);
- a deaf person, being a person whose hearing is impaired to such an extent that he cannot use it as a primary means of communication;
- a person who as a result of a permanent disability requires a wheelchair, calliper or crutch to assist him to move from one place to another;
- a person who requires an artificial limb; or
- a person who suffers from a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973).]

#### Persons 65 years and older

Persons 65 years of age and older may deduct contributions to a registered medical scheme, all allowable medical and physical disability payments. In other words, there is no limit.

#### **Example:**

Total contributions to the Medical Scheme (taxpayer is under 65 years and has one dependant), R1 800 x 12 = R21 600. Employer's contributions to the Medical Scheme, R1 200 x 12 = R14 400. Other qualifying medical expenses paid during the tax year, R2 000. Expenses necessarily incurred and paid during the tax year in consequence of a physical disability, R1 000 (the taxpayer does not qualify as a handicapped person as defined).			
<b><u>Calculation of deduction of medical expenses for the tax year</u></b>			
Salary for the year			R117 600
Add: Employer's contribution		R14 400	
Less: Exempt medical contribution		<u>(R12 000)</u>	
Add: Taxable benefit			<u>R 2 400</u>
Taxable income before allowing medical deductions below			R120 000
Total medical scheme contributions	R21 600		
Less: Medical scheme contributions by employer	<u>(R14 400)</u>		
Medical scheme contributions by taxpayer	R 7 200		
Add: Other medical expenses	R 2 000		
Add: Physical disability expenses	R 1 000		
Add: Taxable benefit deemed as medical expenses	<u>R 2 400</u>		
Total medical expenses to be taken into account in application of 7,5% of taxable income threshold	R12 600		
Less: 7,5% x R120 000	<u>(R 9 000)</u>		<u>R 3 600</u>
Taxable income			<u>R116 400</u>

#### **10.4. Other allowable deductions**

- Legal expenses under certain (in practice very limited) qualifying circumstances.
- Wear and tear in respect of certain asset purchases by the employee such as a computer required for purposes of employment.
- Insurance policy premiums against the loss of income as a result of illness, injury, disability or unemployment, provided the amounts payable under the policy will constitute income.
- Bad and doubtful debts incurred in respect of employment. For example, salary income taxed in the previous year of assessment that was never paid. The

outstanding salary may be claimed as a bad debt if proof is submitted that the employer will not be able to pay it.

- Donations to approved bodies carrying on certain public benefit activities as set out in Part II of the Ninth Schedule to the Income Tax Act. The deduction is limited to 5% of your taxable income as calculated before allowing this deduction and medical expenses. A deduction may only be allowed if the claim is supported by a receipt issued by the approved body.

**Note:** You cannot claim deductions for private and domestic expenses.

## 11. Employees' tax obligations of the South African employer or "representative employer"

South African employers must deduct employees' tax from their employees' income, or in the case of an employer who is not a resident of South Africa, an agent of such employer having the authority to pay remuneration ("representative employer").

For ease of administration, employees' tax consists of two components, i.e. SITE (Standard Income Tax on Employees) and PAYE (Pay-As-You-Earn) and must be paid to SARS on a monthly basis.

SITE is applicable only on the annualised "net remuneration" up to R60 000. The determination of SITE is done at the end of the year, and may represent only a portion of the employees' tax deducted during the year. The balance of employees' tax after determining the SITE portion represents PAYE.

Employees' tax is therefore a withholding tax on employment income and will be set-off against the final income tax (normal tax) liability of the employee for the year of assessment.

A South African employer or "representative employer" is obliged to issue an employees' tax certificate (IRP 5) to each employee to whom employment income has been paid or has become due and from which employees' tax has been deducted.

This tax certificate serves as a receipt for payments of employees' tax. It also discloses, amongst other things, the total employment income earned for the year of assessment and the total SITE and/or PAYE that was deducted by the employer and paid to SARS.

This IRP 5 tax certificate must be submitted by the foreign employee with his/her annual income tax return. (See EMP 10 Guideline for Employers on the SARS website for more information.)

## Example

Y is not a South African resident and is employed by a foreign company to render services to its branch in South Africa for a period of two years. The branch pays Y a monthly salary.

The South African branch must deduct employees' tax on remuneration paid or payable to Y, and provide him with an IRP 5 tax certificate which must accompany Y's income tax return.

## 12. Foreign employee rendering services in South Africa and remunerated by a non-resident employer

Where a foreign employee is taxable on employment income in South Africa, but he/she is being remunerated by a foreign employer who does not have an agent having the authority to pay remuneration in SA, the employee must register for provisional tax purposes.

### 12.1 Provisional tax

Provisional tax is usually payable where an individual earns taxable income that is not subject to employees' tax. It is payable by the taxpayer on a six-monthly basis. Provisional tax paid will be set-off against the employee's final income tax (normal tax) liability for the year of assessment, determined on assessment.

Every provisional taxpayer must apply at the local SARS branch office for registration as a provisional taxpayer within 30 days after the date on which he/she qualifies as a provisional taxpayer. (See IRP12 Guidelines for Provisional Tax available on the SARS website for more information.) He/she must also complete an IT 77 form to register as a taxpayer – see paragraph 7.

## 13. Summary of other possible taxable income

### 13.1. Interest income

The Act makes specific provision for the exemption of interest received by or accrued to any person who is not a resident. In terms of this exemption the full amount of the interest is exempt from tax. This exemption is not applicable in the following circumstances, namely-

In the case of a natural person-

- if that person was physically present in South Africa for a period exceeding 183 days in aggregate during that the of assessment; or
- if that person at any time during the year of assessment carried on a business through a permanent establishment in South Africa.

### 13.2. Dividends

In terms of the Act dividends received by or accrued to any person (non-residents and residents) from a source within South Africa (resident companies) are exempt from tax. Dividends from Collective Investment Schemes are also exempt in the hands of non-residents in the circumstances described in paragraph 13.1.

### 13.3. Rental income

The source of rental income is generally regarded to be where the property is utilised on a day to day basis. Non-residents will, therefore, be subject to tax on rental income, which arises in South Africa and expenses such as rates and taxes, bond interest, insurance and repairs may be claimed as a deduction.

### 13.4. Royalties

In the case of non-residents, “know-how” payments received for the use, or right of use, of intellectual property or the grant of the permission to use such property in South Africa, are subject to a final withholding tax of 12 per cent (or a rate determined in a relevant agreement for the avoidance of double taxation) on the payments received.

### 13.5. Capital Gains Tax (CGT)

Non-residents will be taxed on capital gains made from the disposal of the following assets:

- Immovable property situated in SA or any interest or right in immovable property situated in SA. The term “interest in immovable property situated in SA” includes a direct or indirect holding of 20% or more of the equity shares in a company, and 80% or more of the current market value of the shares of that company are directly or indirectly attributable to immovable property situated in SA.
- Assets attributable to a permanent establishment in South Africa.

The first R12 500 of any capital gain made by an individual in a year of assessment is excluded from CGT and 25% of the balance is included in taxable income.

### 13.6. Business income

Business income received by or accrued to a non-resident from carrying on a trade/ business within South Africa is taxable in South Africa. The taxability of the income may be affected by an agreement for the avoidance of double taxation.

## 14. Tax obligations on leaving South Africa

Before a foreign employee departs from South Africa, he/she will have to show that he/she has complied with the South African tax laws. For this purpose, the employee must ensure that he/she has been assessed for tax purposes on the income that is taxable in South Africa and that any outstanding amounts of tax have been paid. The foreign employee will then be issued with a tax clearance certificate, which will facilitate his/her departure from South Africa.

## 15. Value-added tax (VAT)

### 15.1. Rates of tax

Value-added tax (VAT) is levied on the supply of goods and on services rendered by registered vendors throughout the business cycle. Effectively the tax is levied on the value-added by an enterprise. As vendors levy and pay over the tax included in their prices, VAT is borne by the final consumer. VAT is also levied on the importation of goods into South Africa by any person. It is levied at the standard rate of 14 per cent, but certain supplies are subject to a zero-rate or are exempt from VAT. VAT is levied on an inclusive basis, which means that VAT has to be included in all prices on products, price lists, advertisements and quotations.

### 15.2. Tourists

VAT borne by foreign tourists may be refunded by the VAT Refund Administrator (VRA) upon departure from South Africa. The tourist must be in possession of a tax invoice and have the goods available for inspection upon departure from South Africa. An administration fee of 1,5 per cent of the VAT inclusive amount of the claim, subject to a minimum of R10 and a maximum of R250, is levied by the VRA for processing the refund.

### Details of VRA Head Office and offices at points of departure from South Africa

Country	Telephone number
RSA	
JIA North side office	011 390 1655
JIA South side office	011 390 2545
Sandton	011 784 7399
CPT Airport	021 934 8675
CPT Waterfront	021 405 4545

VRA Head Office	011 394 1117
Beitbridge	015 530 0113
Lebombo	013 793 8178
<b>NAMIBIA</b>	
Violsdrift	027 761 8002
Nakop	054 571 0011
Windhoek Regional Office	092 64 612 30773
<b>SWAZILAND</b>	
Golela	034 435 1014
Mananga	013 793 8442
Oshoek	017 882 0024
Mahamba	017 826 4611
Jeppes Reef	013 781 0530
Mbabane Regional Office	092 68 404 7193
<b>BOTSWANA</b>	
Gaborone Regional Office	92 67 3170 892
Groblersburg - Customs	014 767 1019
Skilpadshok - Customs	018 364 1469
Ramatlabamba - Customs	018 393 0240
Kopfontein	018 365 9021

## 16. Customs Duty

The duty can be separated into customs duty and anti-dumping and countervailing duty.

Customs duty is levied on imported goods, and is usually calculated on the value of the goods. However, goods such as certain meat, fish, tea, certain textile products and certain firearms attract specific duty rates.

Anti-dumping and countervailing duties are levied on goods considered to be dumped

in South Africa or on subsidised imported goods respectively. These goods are the subject of trade and industry investigations into pricing and export incentives in the country of origin, and the rate imposed will depend on the result of the investigations.

The above duties are either levied on an *ad valorem* basis (percentage of the value of the goods) or as a specific duty (cents per unit, kilogram or litre). The level and type of duty imposed on a product is subject to the following main criteria:

- The value of the goods (customs value)
- The volume or quantity of the goods
- The tariff classification of the goods (tariff heading)

### 16.1. Importation of household effects by immigrants

*Bona fide* household effects may be imported, free of duty and exempt from the VAT normally levied on importation, provided that the importer changes his or her residence to the Republic on a permanent or temporary basis. With temporary residence importers such as contract workers and students may import their bona fide household effects under rebate of duty and exempt from VAT (however, it may be subject to a provisional payment to secure the VAT on importation either in part or in full). The requirement would, however, be that they re-export their household effects at conclusion of the work contract or studies, or they may dispose of it locally, provided they have not sold, lent, hired or disposed of it in any manner whatsoever within a period of six months since importation. Importers taking up temporary residence in the Republic on a continual basis, for example, people with holiday homes, do not qualify for this rebate.

### 16.2. Motor vehicles

Natural persons on change of their residence on a permanent basis to the Republic may import one motor vehicle into the Republic, free of duty and exempt from VAT. Here they would be required to qualify as a permanent resident sanctioned by the Department of Home Affairs. South Africans working or studying abroad do not qualify for this rebate item.

### 16.3. Motor vehicles imported on a temporary basis

Motor vehicles utilised in the Republic by tourists may be imported under rebate of

duty and exempt from VAT for a period of three months, and this may be extended to six months (however, it may be subject to a provisional payment being made to Customs to secure the VAT on importation either in part or in full). After a period of six months the motor vehicles must be re-exported.

### 17. Excise Duty

Excise duty (based on the specific quantity or volume of the product) is levied on certain locally manufactured products and a duty equal to the specific excise duty, is levied on their imported counterparts. This duty is levied as a specific duty on certain luxury items such as tobacco products, liquor products, petroleum products and hydro-carbons.

*Ad valorem* excise duty (based on the value of the product) is levied on various goods such as cosmetics, television receptors and audio equipment.

As liability for Excise duty is based on consumption within the local country borders relief from Excise duty, in the form of full rebates, is granted where excisable products are exported.

### 18. Estate Duty

Where the deceased was ordinarily resident in SA his/her estate will, for estate duty purposes, consist of all property wherever situated, including deemed property (e.g. life insurance policies, payments from pension funds, etc). However, property situated outside SA will be excluded from his/her estate if such property was acquired by him/her before he/she became ordinarily resident in SA for the first time, or after he/she became so ordinarily resident in SA and acquired such property by way of donation/inheritance from a person who was not ordinarily resident in SA at date of such donation/inheritance. The exclusion also applies to property situated outside SA, acquired out of profits/proceeds of any such property acquired in the above circumstances.

The estate of a non-resident is only subject to estate duty to the extent that it consists of certain property of the deceased in SA. Property is defined in the Estate Duty Act and includes deemed property referred to in the above paragraph. The Estate Duty Act, unlike the Income Tax Act, does not have a definition of the word “resident” and only refers to persons who are “ordinarily resident” or “not ordinarily resident”. It therefore follows that any natural person who is not ordinarily resident in South Africa, but who became a resident of South Africa in terms of the physical presence test for income tax purposes, is still regarded as a non-resident for estate duty purposes due to the fact

that such person is not ordinarily resident in South Africa.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. One such deduction is the value of property in the estate that accrues to the surviving spouse of the deceased. The net value of the estate is then reduced by R2.5 million to arrive at the dutiable amount of the estate. The rate of estate duty is 20 per cent of the dutiable amount of the estate.

It should be noted that the South African Government has agreements to avoid double death duties with the Governments of the following countries: Botswana, Lesotho, Swaziland, the United Kingdom, the United States of America and Zimbabwe.

### 19. Transfer Duty

Transfer duty is levied on the consideration payable for the acquisition of fixed property. Transfer duty is calculated as follows where the property is acquired by an individual:

	2006/07
Purchase consideration	Rate
On the first R500 000 of purchase consideration	0%
On the amount that exceeds R500 000 but not R1 000 000	5%
On the amount that exceeds R1 000 000	R25 000 plus 8% on the value above R1m

Transfer duty is calculated at 8 per cent of the purchase consideration where the property is acquired by a person other than an individual, for example, a company or trust.

All transactions relating to a taxable supply of goods, which is subject to VAT, are exempt from transfer duty.

### 20. Stamp Duty

Stamp duty is levied on instruments such as leases of immovable property and unlisted marketable securities at different rates.

## 21. Air passenger tax

From 1 August 2005 to date a tax of:

- R60 per passenger is imposed on all passengers departing to Botswana, Lesotho, Namibia and Swaziland; and
- R120 per passenger is imposed on all passengers departing to other international destinations.

## 22. Conclusion

It is trusted that the information provided in this guide will be of assistance to foreigners working in South Africa with regard to their tax obligations. For more detailed information or where further clarity is required, you may contact any SARS branch office or visit the SARS website ([www.sars.gov.za](http://www.sars.gov.za)).

## EXAMPLE OF HOW YOUR TAX IS CALCULATED

### Details:

A non-resident employee who is under 65 years was employed in SA for the period 1 March 2006 to 28 February 2007 (i.e. the 2007 year of assessment or tax year). The employee contributed R9 000 to a South African pension fund during the tax year. Employees' tax was deducted during the tax year as follows:

SITE	R 3 600
PAYE	R13 815
Provisional tax payments for the tax year	<u>R 6 010</u>
Total tax paid	<u>R23 425</u>
He received the following income:	
Salary	R120 000
Overtime	R 8 000
Bonus	R 10 000
Interest from South African Banks	R 18 000
Dividends from South African companies	R 1 200
Dividends from foreign companies	R 3 000
Net rental	<u>R 20 000</u>
<b>Total income received</b>	<b><u>R180 200</u></b>

### Calculation of taxable income:

Total income received	R180 200
Less: Foreign dividends	<u>(R3 000)</u>
<b>Gross income</b>	<b>R177 200</b>
Less: Exempt income:	
Dividends from South African companies	(R 1 200)
South African interest	<u>(R 16 500)</u>
<b>Income</b>	<b>R159 500</b>
Less: Deductions	
Pension fund contributions	<u>(R 9 000)</u>
<b>Taxable income</b>	<b><u>R150 500</u></b>

The income tax payable on the taxable income of R150 500 is calculated by applying the tax rates for the tax year ending 28 February 2007 (see table in 5.1) as follows:

The taxable income of R150 500 falls within the bracket of R100 001 – R160 000 in the table.

Therefore the tax on the first R100 000 is	R 18 000
And the tax on the amount R50 500 (R150 500 - R100 000) is	
25% x R50 500	<u>R 12 625</u>
Normal tax payable	R 30 625
Less: Primary rebate	<u>(R 7 200)</u>
<b>Net normal tax payable</b>	<b>R 23 425</b>
Less: Employees' tax: SITE	(R 3 600)
PAYE	(R 13 815)
Provisional tax paid	<u>(R 6 010)</u>
<b>Tax payable on assessment</b>	<b><u>R NIL</u></b>





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