



An analysis of the taxation of inbound and outbound expatriates in South Africa

Y Reynders

 **orcid.org/0000-0001-5538-5209**

Mini-dissertation submitted in partial fulfilment of the requirements for the degree **Master of Commerce in Taxation** at the North-West University

Supervisor: Mrs. CE Meiring

Graduation: May/June 2026

DECLARATION

I, Yolandé Reynders, hereby declare that this is my own original work and that all sources had been accurately reported and acknowledged, and this document has not previously in its entirety or in part, been submitted at any university to obtain an academic qualification.

Signed:

DEDICATION

I dedicate this work to my extended family, whose unwavering love and support have been the cornerstone of my academic journey.

To my loving spouse — thank you for your sacrifices, encouragement, and belief in me, even when I doubted myself.

To my mentors and lecturers, for lighting the way and challenging me to grow.

ACKNOWLEDGEMENTS

First and foremost, I would like to thank my Heavenly Father for blessing me with knowledge, opportunity, grace and endurance, without which I would not have been able to persevere.

I would like to express my sincere gratitude to my supervisor, Ms. Corrie Meiring, for her insightful guidance, encouragement, and unwavering support throughout this research journey. Her expertise and mentorship have been invaluable and instrumental in shaping both the process and outcome of this thesis.

I am also deeply grateful to my employer for sponsoring my studies. Their financial support and flexibility provided me with the opportunity to pursue this qualification and balance academic work alongside professional commitments.

I would also like to sincerely thank my editor, Kathleen Wood, for her meticulous review, language editing and proof reading. Your inputs were invaluable and rounded this study into a fine piece of art.

ABSTRACT

Globalisation trends have resulted in increased mobility of resources and alignment of international business processes without the alignment of international tax systems. The trend has contributed to the expansion of the income base of the South African Revenue Service through foreign nationals (inbound expats) finding work opportunities in South Africa due to their scarce skills and to South African permanent residents (outbound expats), temporarily engaging in opportunities abroad.

The main objective of this study is to analyse the taxation in respect of inbound and outbound expatriates to determine whether they are taxed fairly/reasonably when compared to each other and in terms of the OECD Model Tax Convention. Furthermore, this study aims to determine if the two regimes could be aligned or harmonised to reduce unjustifiable differences or potential inequalities between the two regimes. Therefore, a literature study was conducted to evaluate the legislative frameworks and establish the comparison.

The comparison yielded few differences between the taxation of inbound and outbound expatriates but found that the differences that do exist are mainly due to the application of the difference in residency and the existence of Double Taxation Agreements (DTAs).

Key terms: Inbound, Outbound, Expat (Expatriate), Organisation for Economic Co-operation and Development (OECD), Foreign Services Exemption

LIST OF ABBREVIATIONS

4th Schedule	Fourth Schedule to the Income Tax Act No. 58 of 1962
7th Schedule	Seventh Schedule to the Income Tax Act No. 58 of 1962
DTA	Double Taxation Agreement
Expats	Expatriates – for this study, all outbound expats remain South African residents for tax purposes and inbound expats remain non-residents
ITA	Income Tax Act No. 58 of 1962
OECD	Organisation for Economic Co-operation and Development
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital
PAYE	Pay-As-You-Earn
PE	Permanent establishment
s10	Section 10 of the Income Tax Act No. 58 of 1962
s10(1)(o)(ii)	Section 10(1)(o)(ii) of the Income Tax Act No. 58 of 1962
s1(1)	Section 1(1) of the Income Tax Act No. 58 of 1962
s8(1)	Section 8(1) of the Income Tax Act No. 58 of 1962
SA	South Africa
SAIT	South African Institute of Taxation
SARS	South African Revenue Service
ZAR	South African Rand

1 Table of Contents

1	TABLE OF CONTENTS	VII
1.1	INTRODUCTION	1
1.1.1	Background to the Research Area.....	1
1.1.2	Literature Review	6
1.1.3	Outbound Expats	6
1.1.4	Inbound Expats	9
1.1.5	Motivation of Topic.....	10
1.2	PROBLEM STATEMENT	11
1.3	RESEARCH OBJECTIVES.....	11
1.3.1	Main research Objective	12
1.3.2	Secondary research Objectives.....	12
1.4	RESEARCH DESIGN AND METHODOLOGY	12
1.4.1	Research paradigms.....	12
1.4.2	Research Methodologies	14
1.4.3	Methods	14
1.5	ETHICAL CONSIDERATIONS	15
1.6	LIMITATIONS	15
1.7	CHAPTER OVERVIEW	15
1.7.1	Chapter 1: Background and literature review	16
1.7.2	Chapter 2: Analysis and in-depth discussion of the South African tax legislation in respect of outbound expats	16
1.7.3	Chapter 3: Analysis and in-depth discussion of the South African tax legislation in respect of inbound expats.....	16

1.7.4	Chapter 4: Comparison of the South African tax legislation in respect of inbound and outbound expats and evaluate against the OECD Model Tax Convention as norm	16
1.7.5	Chapter 5: Conclusion	16
2	ANALYSIS OF SA TAX LEGISLATION IN TERMS OF OUTBOUND EXPATS	17
2.1	Introduction.....	17
2.2	Tax basis	17
2.2.1	Ordinary residency review of outbound expats in South Africa.....	18
2.2.2	Physical presence.....	19
2.2.3	Double taxation agreement residency test	21
2.2.4	Conclusion	21
2.3	Taxable Income	21
2.3.1	Gross income	21
2.4	Deductions from taxable income.....	28
2.5	Foreign Taxation for South African Expats.....	30
2.6	Responsibility for Discharging tax liability	31
2.7	Deductions from Taxation Payable	32
2.8	Chapter Conclusion	32
3	ANALYSIS OF THE SOUTH AFRICAN TAX LEGISLATION FOR INBOUND EXPATS.....	34
3.1	Introduction.....	34
3.2	Tax basis	34
3.2.1	Ordinary Residency Review of Inbound Expats	35

3.2.2	Physical presence.....	35
3.2.3	Double taxation agreement residency test	36
3.2.4	Determination of source.....	36
3.2.5	Section Conclusion	37
3.3	Taxable income	37
3.3.1	Residential accommodation.....	37
3.3.2	Use of motor vehicle	39
3.3.3	Pension and annuities	39
3.3.4	Section Conclusion	40
3.4	Responsibility for Discharging Tax Liability	40
3.5	Conclusion.....	41
4	SOUTH AFRICAN TAX LEGISLATION FOR EXPATS AND EVALUATION AGAINST THE OECD MODEL TAX CONVENTION.....	42
4.1	Introduction.....	42
4.2	Comparison	42
4.3	The OECD Model Tax Convention.....	43
4.3.1	Residency	44
4.3.2	Income from employment	46
4.3.3	Pensions	47
4.3.4	Exemptions	48
4.3.5	Tax credit	48
4.4	Chapter Conclusion	49
5	CONCLUSION	50

5.1	Introduction.....	50
5.1.1	Objective	50
5.1.2	Methodology	50
5.2	Evaluation criteria	50
5.2.1	Differences in Tax basis	50
5.2.2	Taxable income.....	51
5.2.3	Deductions and exemptions	51
5.3	Recommendations.....	52
5.4	Recommendations for further studies	52
5.5	Final Conclusion	52
REFERENCES.....		53

LIST OF TABLES

Table 4-1: Outbound vs Inbound comparison of Key Differences	42
Table 4-2: OECD Model Tax Convention vs ITA case law to determine residency	45

LIST OF FIGURES

Figure 1-1: Cost of living worldwide by country.....	3
Figure 1-2: Global cost-of-living as a percentage of South African cost-of-living.....	4
Figure 1-3: World unemployment forecast 2023.....	7
Figure 1-4: Tax evasion factors.....	8
Figure 1-5: Ontology vs Epistemology	13
Figure 2-1: Physical presence test	20
Figure 2-2: Global inflation (Macro Trends, 2025) vs SARS foreign subsistence allowance (SARS, 2020b).....	25

1.1 INTRODUCTION

1.1.1 Background to the Research Area

In the 21st century, the 17th century maxim that “No man is an island”¹, still rings true globally in human philosophy and for current economic and juridical reasons. Jahan, Alrajawy, Ali and Martin (2021:66) describe how globalisation has become a reality that needs to be embraced, for businesses and individuals to perform and grow. In terms of the South African gross domestic product (GDP) that is currently struggling to reach a mere 2% growth per quarter, the Organisation for Economic Co-operation and Development (OECD) states that it is inevitable that South African companies and individuals would seek growth elsewhere (OECD, 2022:206–208).

Globalisation results in increased mobility of resources, more specifically human capital, which then results in an increased income base for the revenue services of the respective countries. Globalisation also leads to international alignment of business processes, but not necessarily the alignment of international tax systems – although there are some similarities (Pippin, 2020).

In an ideal world the alignment of tax systems, methodologies and legislations would ease the administrative burdens they impose. Unfortunately, there are several factors in the design of tax legislations all over the world - including but not limited to - economic and social priorities (OECD, 2005). As a result, there is a growing need for (a) tax treaties between the applicable countries; (b) legislation to govern local and foreign tax affairs; and (c) solutions to the complexities in their calculations and enforcement.

Globalisation has broadened the income base for the South African Revenue Service (SARS) due to (a) foreign nationals finding work opportunities in South Africa for their scarce skills (contributing income tax, by way of their South African sourced income); and (b) South African permanent residents, temporarily engaging in opportunities abroad (giving raise to additional tax revenue for SARS on their worldwide income earned). The foreign nationals working in South Africa are referred to as “inbound expatriates” (expats) and South Africans temporarily working abroad are referred to as “outbound expats” (BDO, 2019). Such increased revenue is due to the definition of gross income in section 1(1) of the Income Tax Act No. 58 of 1962 (ITA), that stipulates that South African residents will be taxed on their worldwide income (and accrued income), whilst non-residents are only taxed in South Africa, on their South African sourced income (and accrued income). This resident-based taxation was implemented in South Africa in

¹ Attributed to the English metaphysical poet John Donne (1572-1631)

2001 (du Plessis, 2019:28). The ITA stipulates that when an individual is either ordinarily resident in South Africa or considered to be physically present, the individual will be considered as a resident for tax purposes. However, if a person does not meet the requirements by means of being ordinarily resident or physically present, he/she is automatically considered to be a non-resident (SARS, 2018a:1). Consequently, an inbound expat is a non-resident and will therefore be subject to paying tax on passive income generated in South Africa and remuneration for services rendered in South Africa; whilst the outbound expat will be considered to remain a tax resident as long as he/she remains an ordinary resident (not permanent emigration) and will be taxed on worldwide income.

When “source-based taxation” (of inbound expats) and “resident-based taxation” (in respect of outbound expats) is applied, a potential for double taxation arises and the expat would be subject to tax in both the country where income is generated as well as the country in which they are resident. Accordingly, double taxation agreements (DTAs) have been formulated and implemented between several countries, specifically to reduce the possibility of double taxation and to provide relief where such double taxation would occur (Krause, 2015:1).

Additional relief has been provided to residents in the form of the implementation of section 10(1)(o)(ii) of the ITA (s10(1)(o)(ii)) in 2001, in conjunction with said DTAs (Africa, 2021:5; du Plessis, 2019:28). This section provides for the foreign remuneration (earned by a South African employee working abroad for at least 183 days in a 12-month period, of which 60 days are consecutive), to be completely exempted from income tax in South Africa.

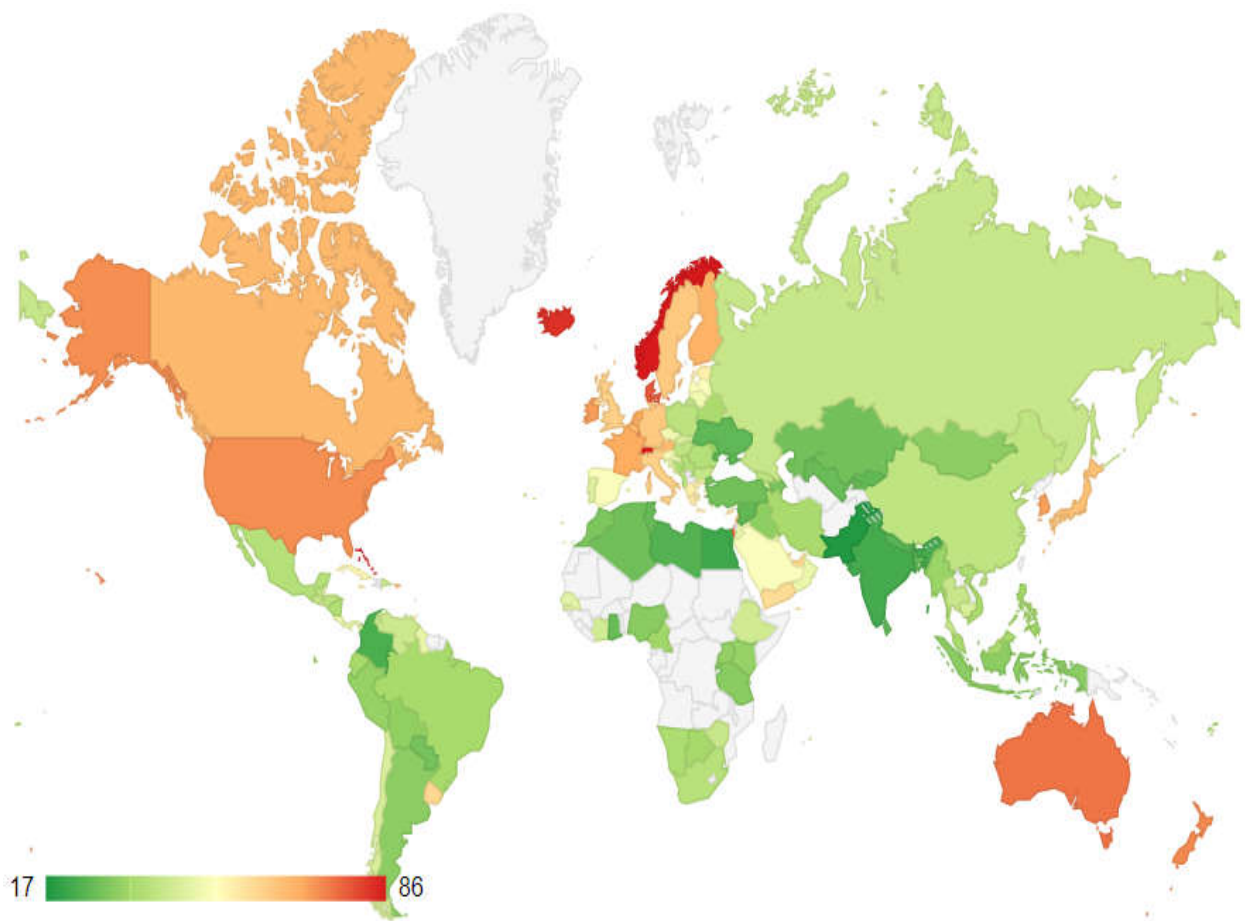
However, National Treasury in SA has suggested an update to s10(1)(o)(ii), in respect of foreign employment income earned by South African residents to eliminate potential “double non-taxation”. This term refers to the situation where certain countries raise no (or an extremely limited) personal tax on income, which means the person is not paying (or paying minimal) personal tax on earnings in the host country whilst the amount is also fully exempt in South Africa. As a result, since 1 March 2020, such income is no longer fully exempt (SARS, 2021a:1).

The original draft amendment proposed repealing the entire exemption, but this action has since been widely criticised. Accordingly, The SA National Treasury originally decided to implement a limitation to R1m, but this was changed to R1.25m just before the actual implementation date (Africa, 2021:9). This limitation specifically impacts expats working in countries with no or limited personal income tax payable – such as United Arab Emirates, Saudi Arabia and Qatar. Foreign remuneration generated by expats in these countries was not taxed nearly as much as it would have been if generated in their home country (Mahomed, 2019:9).

At the onset, the R1.25m threshold would seem fair, but the outbound expats impacted by this change consider the implementation of the expat tax to be unfair as the remuneration structures of outbound expats would include compensation for extended hours, housing in the foreign country, travel back to their home country and other living expenses – which are all taxable employee benefits in terms of the Seventh Schedule to the ITA (7th Schedule) (BusinessTech, 2019; Saunders *et al.*, 2019:16).

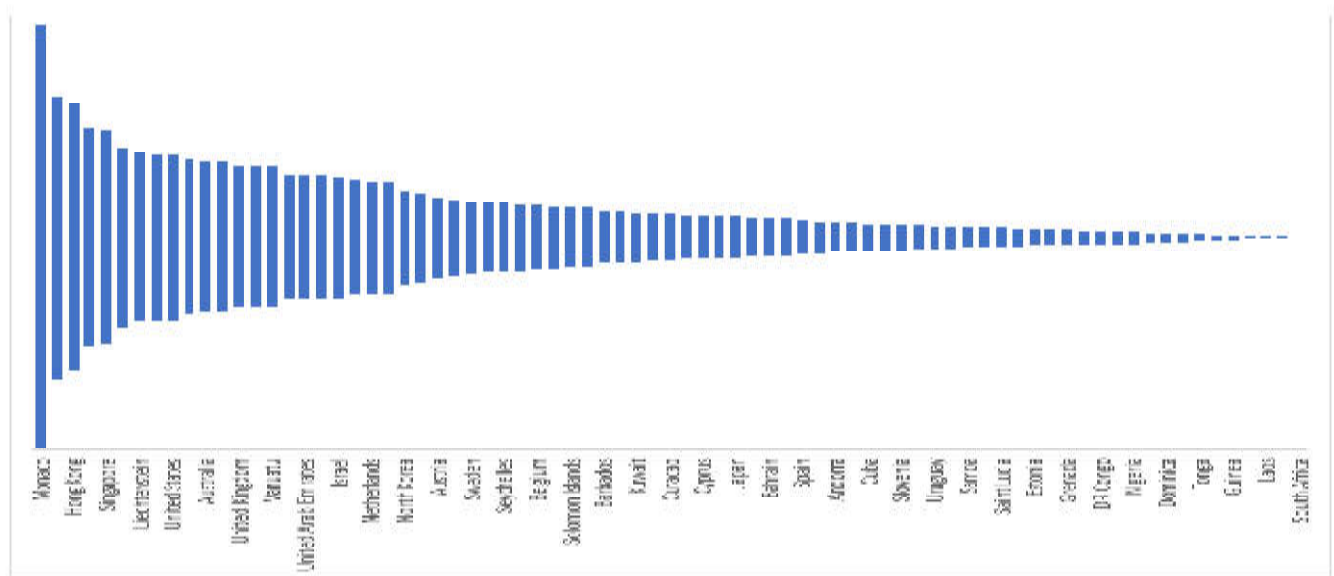
According to Numbeo (2023) (see Figure 1.1 below) the cost of living in most foreign countries, are much higher than in South Africa, as indicated in figures 1-1 and 1-2 below. Hence whilst working abroad, an expat might enjoy a larger (previously) “untaxed” salary but sacrifice most of the “additional” funds to pay for living expenses and housing in the foreign country. The colour scale below ranges from dark green (representing lower cost of living) to dark red (representing higher cost of living).

Figure 1-1: Cost of living worldwide by country



Source: Numbeo (2023)

Figure 1-2: Global cost-of-living as a percentage of South African cost-of-living



Source: Data for graph extracted from Numbeo (2023)

Figures 1.1 and 1.2 above show the countries considered to have a higher cost-of-living than South Africa, in terms of a percentage of the South African cost-of-living. Numbeo (2023) states that the cost of living in South Africa is \$899 per month per individual, whilst in United Arab Emirates it would cost \$1 766, Saudi Arabia would cost \$1 014; and Qatar would be \$1 890. Therefore, even if there are no personal taxes raised in these countries, their cost-of-living is double of what it costs in South Africa.

Whilst outbound expats receive additional taxable benefits for working in a foreign country, (as defined in the 7th Schedule), inbound expats would enjoy certain exemptions in respect of some or all similar employee benefits in South Africa (Mazwi, 2018:36). One of the exemptions is provided in respect of housing in terms of paragraph 9(7A) and (7B) of the 7th Schedule. The paragraph states that where the employer provides accommodation for a period during the assignment, of up to a maximum of two years, at a value less than R25 000 per month and such housing benefit would have zero value for tax purposes for an inbound expat (Madden & Vally, 2020:37). Such exemption would be R300 000 over a period of 12 months (using the maximum allowed). Accordingly, the inbound expats' tax scale is not increased by the provision of housing as part of the foreign assignment. There is no similar exclusion available to outbound expats for housing and this would accordingly use up to R600 000 (double the cost incurred in South Africa as deduced above from Figure 1-2) of the R1.25m exemption provided.

Therefore, as seen above, after a portion of the limited exemption currently available is applied to exempt the housing benefit of approximately R600 000, about \$2 900 per month ((R1 250 000 – R600 000) = R650 000 / 12 / current USD-ZAR exchange rate) remains to cover

additional cost-of-living. This part of the compensation of the outbound expat, being taxable, would result a drastic increase in the total remuneration package of the relevant employee. This could lead to an employee (previously taxed on minimum tax scales) to be subject to tax on a higher scale with limited to no real additional financial or quality-of-life benefit (i.e. paying for two places of residence – one being the permanent living quarters in South Africa and the second temporary accommodation in the host country) (Africa, 2021:60).

Van Heerden *et al.* (2025:5) has highlighted the fact that fairness is one of the commonly accepted principles of a good tax system and further states that a tax system should also be **perceived** to be fair. However, in the case where two taxpayers (inbound vs outbound expats) are taxed on similar benefits in a different manner, the perceived fairness is questioned, especially when considering what these tax revenues would be used for. These expenditures would include education, health, housing, and other services in respect of infrastructure (Van Heerden *et al.*, 2025:1) as the main purpose of a tax system is the imposition of compulsory payments on citizens (which could be expanded to those that are ordinarily resident or physically present in the country – whether permanently or temporarily) to generate income to finance general expenditures incurred by the country.

The question then arises: Who uses most of the services funded by tax revenue in South Africa: inbound or outbound expats? Should the user of the infrastructure/services not bear a greater part of the costs, than those that are absent in that same time? This potential unfairness impacts the taxpayer's willingness to be compliant or can ultimately lead to tax evasion (Ferreira, 2020:34).

Schussler and Fraser (2021) refer to outbound expats as “economic warriors”, because not only do they decrease unemployment by seeking opportunities abroad, but they also generate income in foreign countries which they then remit to South Africa for their families. If South Africa could increase the number of outbound expats, it could a) improve its GDP; b) increase flow of funds to South Africa (which in turn affect the South African Rand (ZAR) exchange rate) and c) decrease local unemployment and state dependence (Schussler & Fraser, 2021). However, the differences in inbound and outbound taxation, and the imposition of the limitation of the foreign remuneration exemption tend to deter South Africans from working abroad and could ultimately result in South Africans considering emigrating from South Africa, making a loss of income to SARS and expendable income in South Africa (Van Rooy, 2021:8).

In light of the above facts, and considering the differences in concessions contained in the South African tax system for inbound and outbound expats, it may be necessary to determine a) if the extent the systems for inbound and outbound expats are similar; b) identify areas where prejudice would be presumed; and c) which of these areas can then be aligned - if at all.

1.1.2 Literature Review

Globalization is facilitated by the technological revolution that occurred during the last decade of the 20th century (Jahan *et al.*, 2021:665). More companies globally are expanding their operations beyond the country where they are registered. As growth can be hampered by the South African economic growth restrictions. It appears, therefore, that SA companies must, as part of their goals, engage in foreign operations if their vision includes growth. The involvement in foreign trade operations is not limited to the import and export of goods but also includes services. In turn, service trade operations will probably lead to more inbound and outbound expats.

Services can be rendered by South Africans directly to foreign clients, thanks to global technological advances (Jahan *et al.*, 2021:665). Similarly, foreign individuals or companies can also render services to South African based companies from their home countries. However, in some respects it is required that some of the services must be rendered on the premises of the client in a country other than where the employee is a resident. In this case, additional tax obligations may arise for such employees who are sent on secondment. Employees that are sent to another country to render services are referred to as expatriates (expats) and this term includes both inbound and outbound expats (Ferreira, 2020:3).

Studies conducted in respect of inbound and outbound expats are summarised as follows:

1.1.3 Outbound Expats

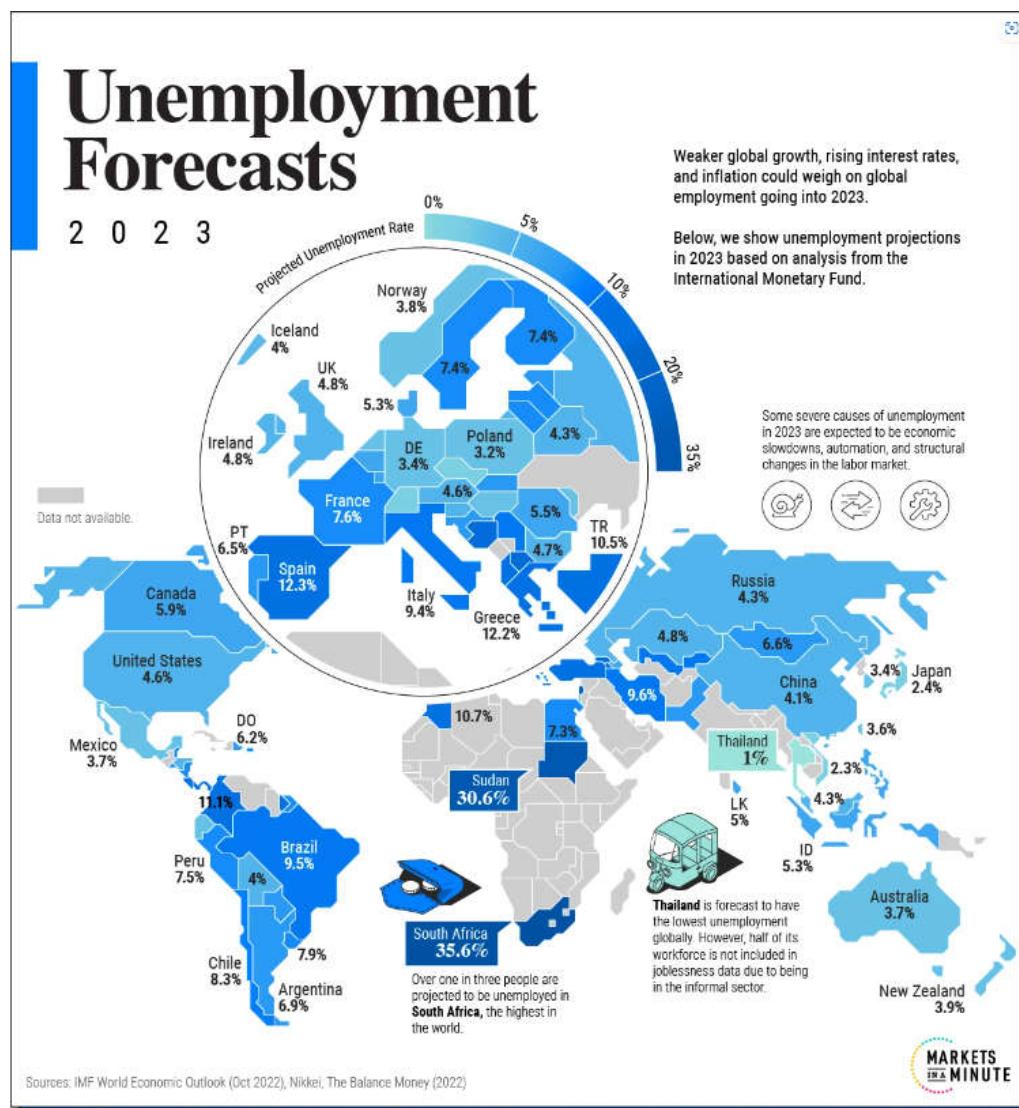
Individuals or employees working in a country other than where they are resident, are referred to as outbound expats (Ferreira, 2020:3). As highlighted above, outbound expats are usually still residents for tax purposes and will therefore be subject to tax on their worldwide gross income. In 2001 (when resident-based taxation was implemented in South Africa) s10(1)(o)(ii) was promulgated providing relief from potential double taxation caused by the change in South Africa's tax base (du Plessis, 2019:28). This section fully exempted foreign remuneration, but was, however, revised, effective 1 March 2020 and to be limited to R1.25 million per tax year (Sanders, 2020).

Many researchers investigated the resulting tax implications of the amendment and noted that expats would forthwith be taxed on remuneration previously not taxed in South Africa (Africa 2021:58, Sanders, 2020:22; & Van Rooy 2021:48). It was also noted that this "additional" tax burden, could befall the employer in cases where employment contracts were based on a "take-home pay" (Africa, 2021:58; Sanders, 2020:27). This change in the exemption unfortunately fuels the exodus of SA residents as it motivates already frustrated, "overtaxed" individuals to formally emigrate (Sanders, 2020:30).

After the announcement of the limitation of the foreign remuneration exemption, the implications were widely investigated and researched. Ferreira (2020:29) and Van Rooy(2021:49) note that some of the actions that could be taken by the expat would include either a) to do nothing, b) financially immigrate, c) end tax residency, d) set up a foreign entity; or e) simply move back to South Africa. The latter option, however, would defeat the purpose of why they left initially. In addition, repatriation would mean to seek new employment in a country where unemployment is currently forecast to be the highest worldwide in 2023 (Cloyne & Hürtgen, 2016:75; Neufeld, 2023).

As seen in Figure 1-3 to follow, South Africa is forecast, by the International Monetary Fund, to be the country with the highest unemployment rate in 2023 (International Monetary Fund, 2023).

Figure 1-3: World unemployment forecast 2023

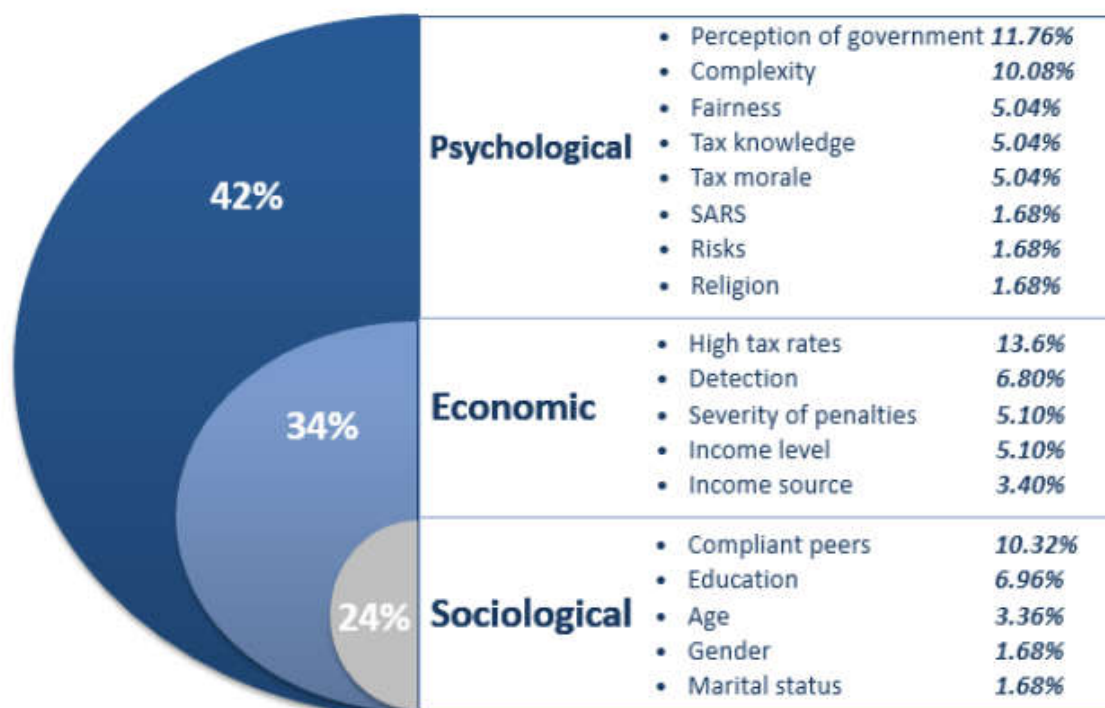


Source: Neufeld (2023)

The setting up of a foreign entity for tax planning purposes seems to be a lucrative option, but it would, however, trigger South African tax because it would be a controlled foreign company in terms of section 9D of the ITA (Ferreira, 2020:30). Financial immigration and ceasing to be a tax resident become addressed together and additional stringent rules are applied. There is, however, a cost to financial immigration which is exit tax as detailed in section 9H of the ITA (Africa, 2021:58). Whilst it seems a “small price to pay” not all expats have the financial ability to pay such exit taxes without liquidating their assets (Ferreira, 2020:31; Van Rooy, 2021:53). Another alternative would be to do nothing.

The ultimate risk investigated by Ferreira (2020:34) was that the change in the exemption could lead to tax evasion. Some of the factors are set out in the figure 1.4 below. This shows three main categories that influence tax evasion: a) *psychological*, of which the highest factor is the perception an individual has of government, b) *economic*, where the highest factor is high tax rates, and c) *sociological*, with compliant peers playing the significant role. From these three categories, the major influencing factors are the perception of government and high tax rates (representing 25.36% of the total influence measured). Unfortunately, both factors play an incredibly significant role in South Africa (Ferreira, 2020:37).

Figure 1-4: Tax evasion factors



Source: Ferreira (2020:37)

The main purpose of the limitation of the exemption is to reduce potential double “non-taxation” that still provides relief to low and moderate income-earning individuals. According to Sebashe *et al.* (2021:266) this was indeed achieved, despite the additional employees’ tax calculation difficulties and additional admin burden (i.e. documentary evidence to prove compliance with s10(1)(o)(ii) requirements) for both employer and employee (Atkinson, 2020:9).

1.1.4 Inbound Expats

According to Mosupye (2013:1), one of the reasons why foreign nationals work in South Africa is due to the lack of specific scarce or critical skills in South Africa. Foreign nationals do not necessarily become residents of South Africa based on their employment only (with reference to the evaluation of residents vs non-residents) (du Plessis, 2019:22). In *CIR v Lever Brothers & Unilever Limited* (1946), it was submitted that the origin/source of the income is the provision of the service and consequently, the place of the service provision is the source (Mazwi, 2018; Mosupye, 2013:10). Accordingly, non-residents are only taxed on their income from a South African source, but in the same manner and scale as residents (barring certain exclusions such as non-taxable housing benefits if less than R25 000 per month) which are available to inbound expats only (Mazwi, 2018:22; Mosupye, 2013:7).

Being subject to tax in South Africa, on income generated from sources in South Africa, could lead to double taxation - being taxed in the host or source country as well as the country of origin or residence and as a result, DTAs limit such double taxation. In terms of the OECD DTA model the income generated in the host country would be exempt if:

- the foreign national spends *less* than 183 days in a consecutive 12-month period in the host country,
- the employer of such foreign national is *not a resident* of the host country, and
- the remuneration cost is not borne by a *permanent establishment* of the employer in the host country (Mazwi, 2018:57; Mosupye, 2013:11).

Mosupye (2013:11–13) further elaborates on the types of income that can be generated by a foreign national employee in South Africa. These are a) employment income (as defined in the Fourth Schedule to the ITA (4th Schedule), which includes allowances (in terms of section 8 of the ITA); b) employee benefits (in accordance with the 7th Schedule); c) self-employment income; and d) passive income (the latter two are not necessarily managed via a structured payroll but do require withholding taxes).

Some shortcomings or “gaps” identified by Mazwi (2018:67) in respect of the taxation of inbound expats were named as follows:

- the grey area that exists in the apportionment method used for services rendered outside South Africa, whilst on secondment in South Africa;
- the absence of a mechanism to manage provisional tax/withholding tax in respect of non-resident consultants or sub-contractors, who are not on a payroll;
- withholding taxes on employee share schemes managed by non-residents; and
- the double tax agreement application in respect of expats that are not physically present for 183 days or more.

The basis of South African taxation, as stated above, is firstly to determine whether a person is a resident or non-resident, which in turn determines whether the person will be taxed in South Africa on worldwide income or income sourced in South Africa only.

The literature study reveals that some studies have been conducted on residency and source of income in respect of a) inbound and outbound expats; b) the change in the foreign remuneration exemption and the potential implications; and c) the effects of that change. There have also been studies conducted on the nature of income generated by inbound expats in South Africa and the potential gaps in respect of the relevant tax imposition in terms of withholding or recovery.

However, the differences and similarities in the tax legislation have not been elaborated on yet as applicable to inbound and outbound expats, respectively. Such an evaluation would include the analysis of the legislation, DTAs, rebates and exemptions as well as the effect of these exemptions on remuneration-based calculations and deductions and would fill a gap in the available literature on this topic.

1.1.5 Motivation of Topic

Whilst inbound and outbound expats are subject to tax in South Africa, only inbound expats enjoy certain exemptions from their taxable income such as housing (paragraph 9(7A) and (7B) of the 7th Schedule). Outbound expats do not have exemptions from employee benefits (which includes housing) and are therefore subject to tax. However, outbound expats, unlike inbound expats, do have access to the s10(1)(o)(ii) exemption, which could be offset against qualifying for foreign remuneration, which includes any employee benefits, as well as a section 6 *quat* deduction (a deduction of a portion of foreign taxes paid on the foreign income). This latter benefit has decreased significantly since the limitation of the exemption to the amount of R1.25m, and even more so as the ZAR devalues against foreign currencies. Additionally, the increase in the cost-of-living abroad outweighs the exemption's intrinsic value and the South African equivalent, which then consumes the value of limited exemption provided.

As stated earlier, the main purpose of the limitation of the exemption is to reduce potential “double non-taxation” and thereby “level the playing field” in a South African tax context (the reason for the implementation of a limitation and not a total scrapping of the exemption) (Sebashe *et al.*, 2021:266). However, owing to the cost-of-living comparisons and the devaluation of the ZAR, this may have unintentionally created or increased the gap between the inbound and outbound expat tax regimes.

Furthermore, owing to the differences in the tax legislation in respect of expats, it is critical to understand the requirements and implications and compare the extent to which the differences relate to both inbound and outbound expats (Ernst & Young, 2012:1).

1.2 PROBLEM STATEMENT

The differences in international tax systems inadvertently affect the way in which SARS may impose tax on both inbound and outbound expats in South Africa, in terms of both foreign and local tax legislation and treaties. Accordingly, within the South African tax system, there are different tax concessions for inbound expats than there are for taxing outbound expats. These differences could result in an unjustifiable unfair or unequal tax imposition – which could then lead to unwilling tax compliance.

Based on the problem statement the following research questions can be formulated:

Are inbound and outbound expats taxed fairly and reasonably when compared to: a) each other and b) the OECD Model Tax Convention on Income and on Capital 2017 (OECD Model Tax Convention)? And can the two regimes be aligned or harmonised to reduce unjustifiable differences or potential inequalities between the two?

1.3 RESEARCH OBJECTIVES

“You have brains in your head.

You have feet in your shoes.

You can steer yourself any direction you choose.

You’re on your own.

And you know what you know.

And YOU are the one who’ll decide where to go...” (Dr Seuss, 1990:4).

For Dr Seuss, above, (1990), the unknown should not be an obstacle, but a reason for purpose. Firstly, however, the objectives need to decide “where to go”. In that sense it can be said that

research is an instrument used to apply what is known to the unknown – like charting new waters or setting a new course.

1.3.1 Main research Objective

The main research objective of this study is to analyse the taxation in respect of inbound and outbound expats to determine whether they are taxed fairly and reasonably when compared to a) each other, and b) the OECD Model Tax Convention. . Furthermore, can the two regimes be aligned or harmonised to reduce unjustifiable differences or potential inequalities between them?

1.3.2 Secondary research Objectives

The secondary research objectives to achieve the main research objective, would be:

- a) to analyse and discuss the South African tax legislation in respect of outbound expat taxation in depth; (Chapter 2)
- b) to analyse and discuss the South African tax legislation in respect of inbound expat taxation in depth; and (Chapter 3)
- c) to compare the South African tax legislation in respect of inbound and outbound expat taxation and evaluate against the OECD Model Tax Convention as norm (empirical approach) (Chapter 4).

1.4 RESEARCH DESIGN AND METHODOLOGY

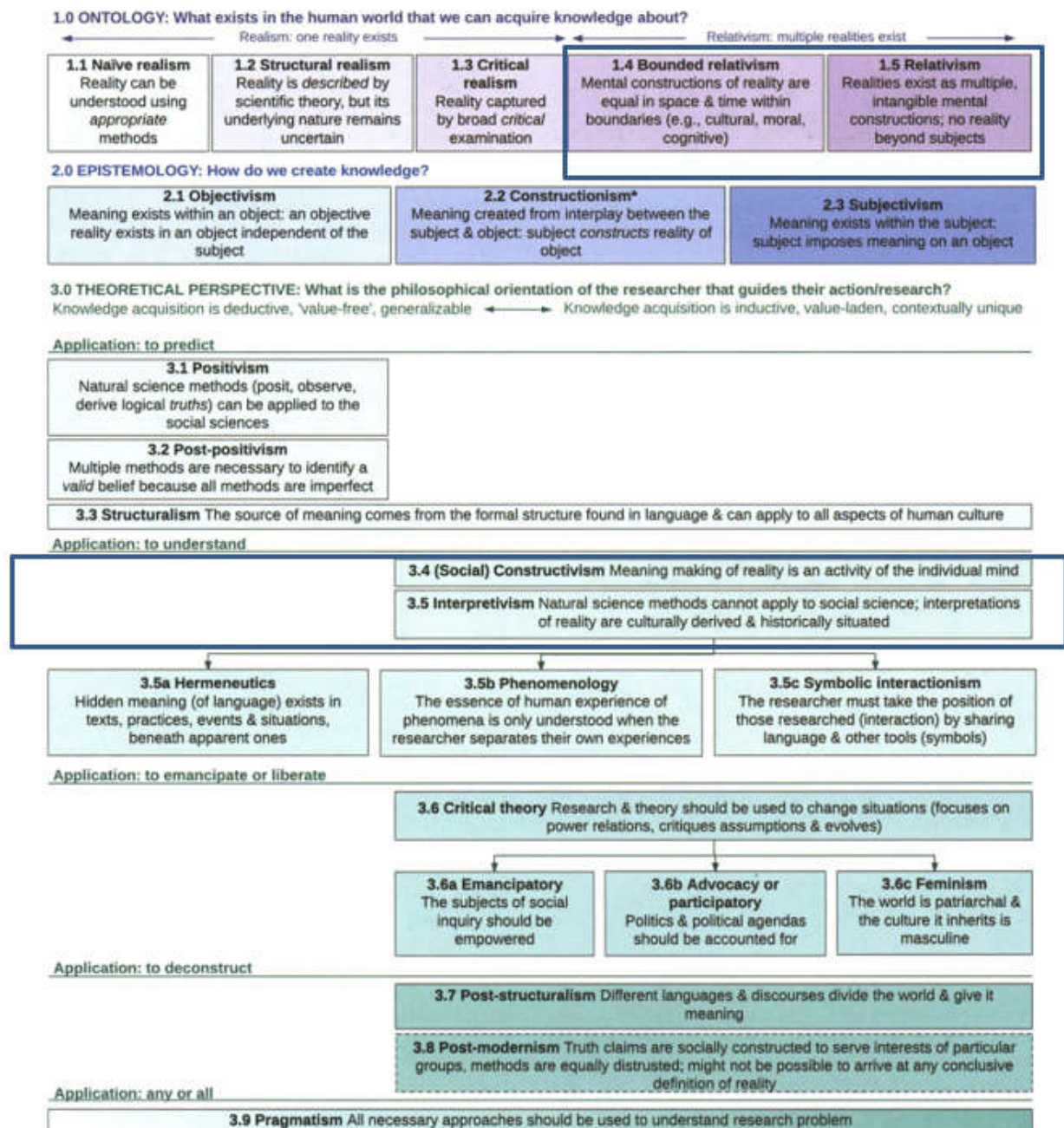
Research design and methodology find their roots in philosophy. The selection of the design and methodology is often based on the researchers' paradigm (Moon & Blackman, 2014:1168).

1.4.1 Research paradigms

A paradigm represents the worldview of an individual and determines the outcome(s) of the research conducted (Creswell, 2007:19). The researcher's perception is often influenced by the researchers' exposure and knowledge, especially to that of the research topic. Among the four types of research paradigms (Healy & Perry, 2000:118), namely: positivism, realism, critical theory, and interpretivism this research will follow an Interpretivist approach based on the nature of the research to be conducted. Interpretivism strives to include richness in the insights acquired rather than striving to create a definitive and universal law that can be generalised (Alharahsheh & Pius, 2020).

Figure 1-5 below, schematically presents the three main parts of social philosophy that drives this present design and methodological research. It consists mainly of the ontological, epistemological and theoretical perspectives (Moon & Blackman, 2014:1168–1170).

Figure 1-5: Ontology vs Epistemology



Source: Moon & Blackman (2014)

1.4.1.1 Ontology

Ontology refers to what reality *actually* looks like (Uddin & Hamiduzzaman, 2011:656). Ontology can be distinguished between realism and relativism. Realism (as described in Figure 1-5 above) assumes or accepts that *one* reality exists, whilst relativism embraces the possibility of *multiple* realities existing. In these terms, taxation is multi-faceted, therefore not only one reality exists. The ITA (Income Tax Act being the primary knowledge) is supported by other existing knowledge, such as DTAs (Double Taxation Agreements); Interpretation Notes; case-law and SARS-issued correspondence. Accordingly, a relativist approach is taken.

1.4.1.2 Epistemological assumptions

Uddin and Hamiduzzaman, (2011:656) further describe epistemology as the study of how we come to know the specific characteristics and relationships of reality can be described. Epistemology can also be distinguished in three categories: objectivism, constructivism and subjectivism. The differences being whether the meaning is derived from the object (objectivism), the subject (subjectivism) or from both (constructivism).

Whilst an objectivist approach would assume that reality exists outside, or independently of the individual mind; a subjective approach assumes that all knowledge is a matter of perspective/interpretation (Moon & Blackman, 2014:1171).

To reach the objective of this study, a constructivist approach is followed, in other words, a combination of objectivism and subjectivism, as although taxation follows logical reasoning, it also requires interpretation to determine the meaning and application adequately.

1.4.2 Research Methodologies

Quantitative research presents generalisable information in the forms of numbers, graphs and trends, whilst qualitative research would present detail findings in words (Streefkerk, 2019). Accordingly, a qualitative research methodology is followed during this study as it is based on the analysis of legislation, cases and other research studies which are theoretical rather than numerical in nature.

1.4.3 Methods

A literature study is deemed most appropriate to achieve the objectives of this study. Therefore, a comparative research method (qualitative research technique) is used to analyse and compare the legislation, case law, documents and regimes in respect of inbound and outbound expat remuneration (document analyses) (Bowen, 2009:27). According to Van Hoecke (2015:135),

comparative studies are used to compare *commonalities* and *differences* in legislation to determine how the differences can be reduced or aligned.

The problem statement also requires doctrinal research which would include detailed analysis and evaluation of the law to determine similarities and interrelations (Hutchinson & Duncan, 2012). Hence, the letter of the law is applied in terms of the analysis of inbound and outbound expats to identify the common attributes that yield potential overlapping aspects.

According to Vaquero (2013), a clear set of rules is required to evaluate legislation. This normativist approach is considered the classic method to deal with the theory of law. Therefore, to measure the fairness of the differences identified during the analyses and comparison, it is necessary to measure the inbound and outbound regimes and their differences against the OECD Model Tax Convention. The purpose of the OECD Model Tax Convention is to provide a standard on which international double taxation problems can be settled; hence it is considered to set the standard against which differences can be measured and resolved (OECD, 2017; Taekema, 2018:2).

1.5 ETHICAL CONSIDERATIONS

Since the study is in the form of a literature study, the extent of the ethical considerations is limited. There is extremely limited to no ethical risk as there are no participants involved in this study and accordingly no interactions will occur. However, due care is taken not to disclose confidential information, and to obtain necessary consent (where applicable) and to refrain from plagiarising other studies. Ethical clearance has been obtained from the North-West University ethics committee.

1.6 LIMITATIONS

As mentioned in paragraph 1.1.1, this study is focused on the global mobility of employees and the different taxation regimes used for these expats. Accordingly, only the differences in respect of employment-related income are dealt with and more specifically, only those sections specifically related to outbound expats and those that differ between outbound expats (resident taxpayers) and inbound expats (foreign employees working in South Africa).

Remuneration of public officers were also excluded from this study.

1.7 CHAPTER OVERVIEW

A chapter layout follows to indicate the flow of research and the reasoning processes. It includes some initial high-level information of the objectives within each chapter.

1.7.1 Chapter 1: Background and literature review

Chapter 1 details the background for the proposed study, problem statement and research question, as well as the research objectives that need to be achieved to address the problem statement and research question. It also sets forth the methodology and current available literature on the relevant building blocks of this study.

1.7.2 Chapter 2: Analysis and in-depth discussion of the South African tax legislation in respect of outbound expats

Chapter 2 consists of an analysis of the South African tax legislation, case law, Interpretation Notes and advanced tax rulings specifically in respect of **outbound** expats. This analysis focuses on areas specific to foreign sourced “remuneration”. This chapter addresses the secondary research objective identified in paragraph 1.3.2.a).

1.7.3 Chapter 3: Analysis and in-depth discussion of the South African tax legislation in respect of inbound expats

Chapter 3 consists of an analysis of the South African tax legislation, case law, Interpretation Notes and advanced tax rulings in respect of **inbound** expats. This analysis focuses on areas specific to South African sourced “remuneration”. This chapter addresses the secondary research objective identified in paragraph 1.3.2.b).

1.7.4 Chapter 4: Comparison of the South African tax legislation in respect of inbound and outbound expats and evaluate against the OECD Model Tax Convention as norm

Chapter 4 compares and analyses the legislation in respect of inbound and outbound expat remuneration to determine to what extent the two regimes are similar/misaligned. Inbound and outbound expat rules are then evaluated against the OECD Model Tax Convention as norm to measure fairness. This chapter addresses the secondary research objective identified in paragraph 1.3.2.c).

1.7.5 Chapter 5: Conclusion

This chapter concludes on the findings of the study to determine whether and to what extent the two tax regimes can possibly be aligned by taking the various advantages and disadvantages into consideration.

The next chapter will present an analysis of SA tax legislation in terms of outbound expats.

2 ANALYSIS OF SA TAX LEGISLATION IN TERMS OF OUTBOUND EXPATS

2.1 Introduction

The purpose of this study is to analyse and compare the taxation in respect of inbound and outbound expats based on South African tax legislation and the OECD Model Tax Convention as a norm. The main research objective is firstly, to determine whether the two regimes can be aligned or harmonised to reduce unjustifiable differences or potential inequalities between the two. The secondary research objective (as identified in paragraph 1.3.2(a)) is to analyse and discuss the South African tax legislation in respect of outbound expat taxation.

The focus of the main and secondary objectives will be in the sections and paragraphs of the ITA that determine if alignment can be achieved. The obvious difference, as deducted from the definition of gross income (s1(1)), would relate to the expats' residency and presence in South Africa, and this will begin to determine how wide SARS can cast its tax net (worldwide vs source income only). After establishing the differences caused by residency and presence, the focus will then shift to net income.

2.2 Tax basis

Differences in the South African tax regime between inbound and outbound expats must be established. South Africa changed its tax base from "source-based" taxation to "resident-based" taxation in 2001 (Sanders, 2020:i). The "source-based" taxation system was aimed at taxing income in South Africa, which was sourced only from South Africa, whilst the change to "resident-based" taxation was aimed at taxing of the world-wide income of those classified as residents of South Africa. Non-residents, on the other hand, were to be taxed only on income sourced from South Africa (du Plessis, 2019:2). The additional tax obligations that arise from foreign employment as mentioned in paragraph 1.1.2 of the Act are a direct result of the tax basis applied in South Africa.

Therefore, for a South African employed abroad, the income generated is subject to tax in South Africa (and most probably in the other country also, depending on the DTAs in place), for as long as the person is deemed to be a resident in South Africa or deemed to be physically present for tax purposes (Africa, 2021:58).

The term 'expatriate' (expat) is, therefore, defined as a person who does not live in their native country (Merriam-Webster Inc., 2019). When referring to an outbound expat, it signifies a person, that lives and works in another country but is still considered to be a *resident* in South Africa for

tax purposes (Ferreira, 2020:3). Outbound expats as *residents* for tax purposes whilst they work abroad will therefore be subject to tax in South Africa on their worldwide gross income.

To establish on what basis an outbound expat is taxed, the definition of a resident should therefore be considered. In section 1(1) of the ITA (s1(1)) a resident is considered as such provided that the person:

- Is *ordinarily* resident in South Africa (paragraph (a)(i) of the definition of "resident" in s1(1))
or
- Meet the *physical presence test* (paragraph (a)(ii) of the definition of "resident" in s1(1))
and
- Not exclusively considered to be a resident of another country in terms of a tax treaty or DTA (du Plessis, 2019:22).

Du Plessis (2019) reviewed the residency definition for natural persons in South Africa in terms of South Africans working in other countries (outbound expats) and the importance of knowing a person's tax residency status for tax purposes. To therefore determine the extent of income of an individual that is taxed in South Africa, it is critical to firstly determine the residency of the individual.

2.2.1 Ordinary residency review of outbound expats in South Africa

The term *ordinarily resident* is not defined in the ITA, therefore reference is to be made to case law which specifically dealt with the evaluation. According to the case *Cohen v Commissioner for Inland Revenue* (1945) a person is deemed to be ordinarily resident in the country to which he would normally return after his wanderings (in this case the secondment) and that his absence for a full tax year does not mean that he has ceased his residency (1945).

In the case *Commissioner for Inland Revenue v Kuttel* (1992) it was submitted that the centre of interest should be the determining factor when an individual's residency is to be determined (1992:6). If a person's economic and personal interests are therefore still in South Africa (e.g. the fact that he still works for his South African employer and has a residence and other personal interests in South Africa), the individual is deemed to still be a resident (du Plessis, 2019:23).

Based on these cases, it can therefore be established that when a person is sent on a foreign secondment for a prolonged period, or temporarily resides in a foreign country in order to earn a living, but retains the intention to return to South Africa, he/she does not necessarily cease to be a resident, and the resident-based tax remains applicable to the person. In a comparable manner,

a foreign individual that works in South Africa, does not automatically become a *resident* because of the temporary or prolonged residence or employment in South Africa purely due to a working arrangement.

2.2.2 Physical presence

Where a person is considered not to be a resident, based on the criteria discussed above in the case law, it should then be established by means of the *physical presence test* whether the individual is deemed to be a resident for tax purposes for the year under review.

Items (aa) and (bb) of paragraph (a)(ii) of the definition of a "resident" in s1(1), contains the requirements that a natural person must meet before that person is considered physically present (and therefore a resident) for income tax purposes. The individual must be physically present in South Africa for a period or periods longer than:

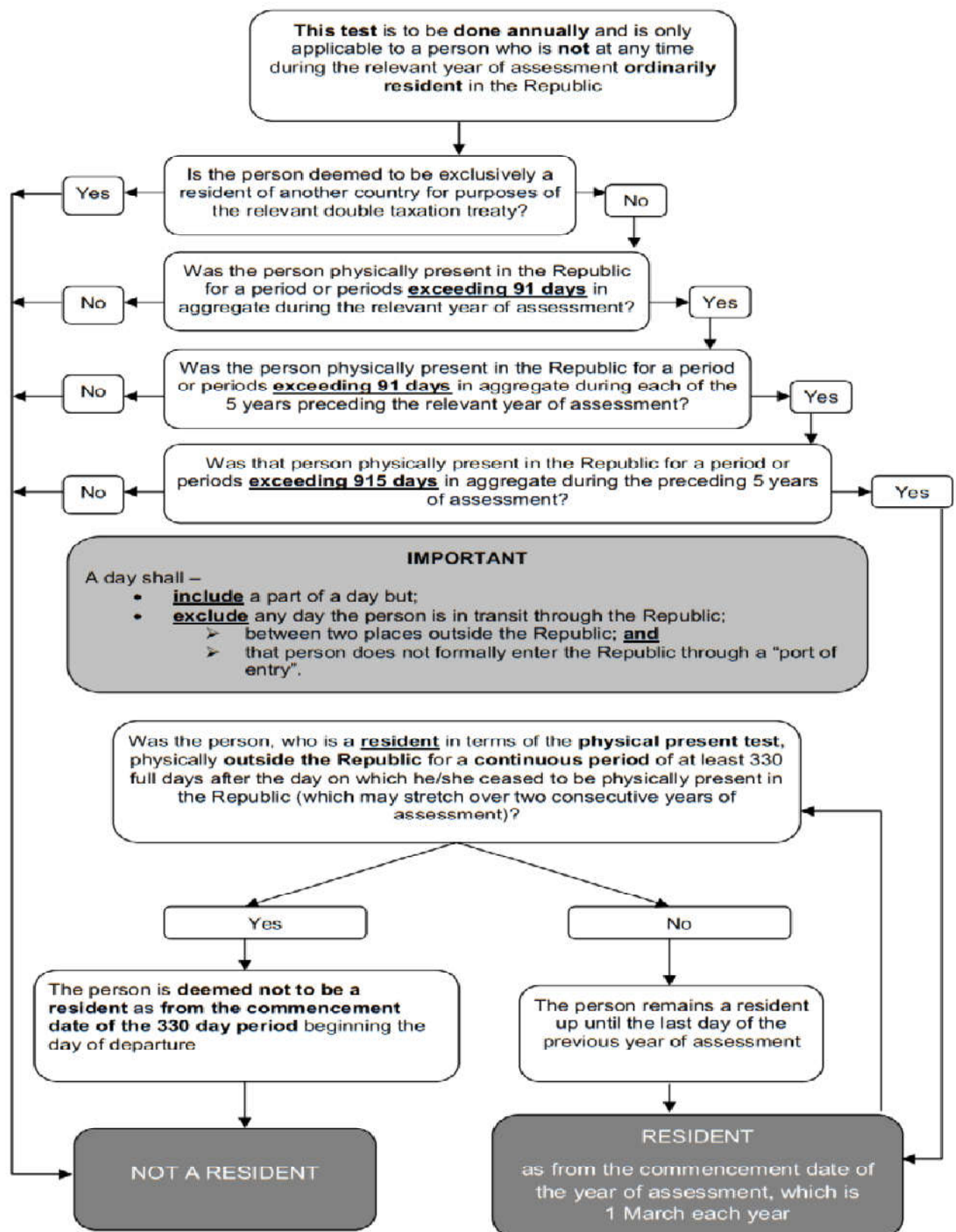
- 91 days in total during the year of assessment, and
- 91 days in total during each of the preceding five years before the year of assessment; and
- 915 days in total during those five preceding years of assessment.

Furthermore, a resident's status will only be terminated 330 days after leaving South Africa. Interpretation Note 4 confirms that a resident will become a non-resident 330 days after he has left the country if the requirements of the physical presence test was met (SARS, 2018a:6).

Therefore, if the person is deemed to be a resident in terms of the physical presence test, he/she is taxable in South Africa on his/her worldwide income, but if deemed to be a non-resident, he/she will only be taxable on income sourced from South Africa (du Plessis, 2019:27).

Figure 2-1 below contains a flow diagram that can be used to determine physical presence:

Figure 2-1: Physical presence test



Source: SARS (2018a)

2.2.3 Double taxation agreement residency test

Where an individual is considered to be a resident of both countries, paragraph 4 of the double tax agreement between the two contracting states will provide clarity on which country would be taxing the individual as a resident (tiebreaker provision) (Mohan, 2016:9).

2.2.4 Conclusion

Therefore, when a person is considered to be a resident of South Africa based on the above analysis, that person is subject to taxation in South Africa on worldwide income. After establishing the residency of an outbound expat, the next step would be to outline outbound expat specific inclusions and exclusions from taxable income.

2.3 Taxable Income

According to the definition in s1(1), taxable income is the amount that remains after amounts allowed by Part I of Chapter II of the ITA, have been deducted from income earned. This remaining amount is the value that is subject to tax. Taxable income, therefore, considers both income (gross income less exemptions) and allowable deductions (allowable deductions and relevant exclusions). The definitions of gross income; allowances and reimbursements; taxable benefits; and exemptions are described below:

2.3.1 Gross income

The definition of gross income in s1(1) states that the total amount, in cash or otherwise, received or accrued to or in favour of a resident during the year of assessment, is gross income and therefore included in taxable income for the resident. The definition further elaborates on items specifically included in gross income (whether it is of a capital nature or not) (*Income Tax Act No. 58 of 1962, s.a.*).

As mentioned in Chapter 1 (refer 1.1.1), this study focuses on *global mobility of employees* and the difference in the basis of taxation of these expats. Accordingly, only the differences in respect of employment related income are dealt with and more specifically, only those sections specifically related to outbound expats. . And only those differences between outbound expats (resident taxpayers) and inbound expats (foreign employees working in South Africa).

Employment related income can include, but is not limited to:

- Salaries and wages – local and foreign as elaborated on in the 4th Schedule,
- Awards – included by paragraph (c) of the definition of gross income in s1(1),

- Allowances and reimbursements, advances, equity earnings – as detailed in section 8 of the ITA,
- Taxable benefits – as included by paragraph (i) of the definition of gross income in s1(1) and as detailed in the 7th Schedule, and
- Post employment related income:
 - annuity – as detailed in paragraph (a) of the definition of gross income in s1(1)(a),
 - retirement or pension fund income in paragraph (a) or paragraph (e) of the definition of gross income in s1(1), and
 - Lump sum payments – as detailed in paragraph (d) of the definition of gross income in s1(1).

It is obvious that employment-related earnings, to be included in gross income, can only result from an employee-employer relationship as confirmed in *Income Tax Case 1523*. Such a relationship is usually established and governed by an employment contract or agreement, which needs to stipulate the employment terms but more importantly the remuneration, allowances and taxable benefits that an employee will receive in the execution of the employment responsibilities in the foreign country (SARS, 2021a:3).

The *Remuneration*, referred to above, forms the basis of the calculation of the employees' tax to be calculated and withheld by the employer. The definition of remuneration in the 4th Schedule, states that remuneration includes any amount of income, paid or payable in cash or otherwise to any person. This will include a salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in respect of services rendered or not (*Income Tax Act No. 58 of 1962*, s.a.). Hence, all remuneration (worldwide remuneration) earned by an outbound expat (irrespective of where the services are rendered to the employer), is included in the employees' tax determination by the employer.

The ITA does not deal separately with employment taxation aspects of residents versus non-residents but rather addresses both (where differences exist) in the same provisions of the ITA. Whilst analysing the provisions in respect of employment income, only a few differences were noted and are accordingly discussed.

When determining this employee's tax burden that originates from the employment related income types listed above, the below analyses set forth how provisions related to travel, subsistence and housing allowances as well as the foreign remuneration exemption and the section 6quat

deduction, is applied differently to an outbound expat than to an inbound expat and should be considered by the employer in addition to normal salaries.

2.3.1.1 Allowances and reimbursements

Allowances are not specifically defined in the ITA – although it is referred to in certain other definitions, more specifically in “remuneration” as defined in paragraph 1 of the 4th Schedule. Accordingly, reference can be made to case law and the relevant Interpretation Notes. Interpretation Note 14 defines an “allowance” as an amount of money paid by the employer to an employee for business expenditure (SARS, 2021b). The value would be determined based on expected business expenditure to be incurred. Accordingly, an allowance would be directly linked to the execution of the employees’ responsibilities and would aid in that execution and not to enrich or remunerate an employee.

The specific provision related to allowances, can be found in section 8(1) of the ITA (s8(1)). This section requires that any amount received by or accrued to an employee by means of an allowance or advance in respect of execution of employment responsibilities, is included in taxable income, *excluding amounts exempted by section 10(1) of the ITA or that portion of the amount actually/deemed to be spent on the said business-related expenditure (such as travel, accommodation, meals and incidentals) (s8(1)(a)(i)) (the researcher’s emphasis)*. Accordingly, the exclusion of the actual or deemed amount spent on business expenditure is neither an exemption nor a deduction, but an exclusion (SARS, 2021b:5).

The three allowances included in terms of s8(1)(a)(i) are: travel allowances, subsistence allowances and allowances received by public officers (remuneration of public officers are excluded from this study). S8(1) further elaborates on how the portion of the allowance that would be deemed taxable (as it was not used or deemed to be utilised for business expenditure purposes) should be determined. The portion determined to have been spent on private use, is included in taxable income under the relevant sub section in s8(1) (SARS, 2021b:5).

2.3.1.1.1 Travel allowance

Whilst working abroad, a South African expat who receives a travel allowance as a part of their remuneration structure, would need to apply the rules as set out in s8(1) to determine what portion of the travel allowance received should be included in taxable income. S8(1)(a)(i) highlights this fact, stating that a taxpayer is required to include allowances or advances in taxable income, “*excluding any portion*” of such allowance or advance that is exempt under s10 or that has “been expended” by the taxpayer (SARS, 2021b:27).

However, where an outbound expat is on a short-term foreign assignment, business travel for purposes of calculating actual or deemed business cost incurred, includes travel between the client's premises (the employee's place of work) and the guest house where the expat resides (place of residence). This is because the employee's normal place of residence is exchanged for a temporary address mainly because of work obligations and will therefore be considered business travel, alternatively incidental if the employee does not use the vehicle for any other travel (SARS, 2013:18).

The portion of the above travel allowance that is not spent on business expenditure (actual or deemed) in terms of the above guidelines, is included in taxable income and will then probably qualify for exemption in terms of s10(1)(o)(ii), within the limits set in the exemption (SARS, 2020a:2). The discussion of the requirements of s10(1)(o)(ii) follows this section.

2.3.1.1.2 Subsistence allowance

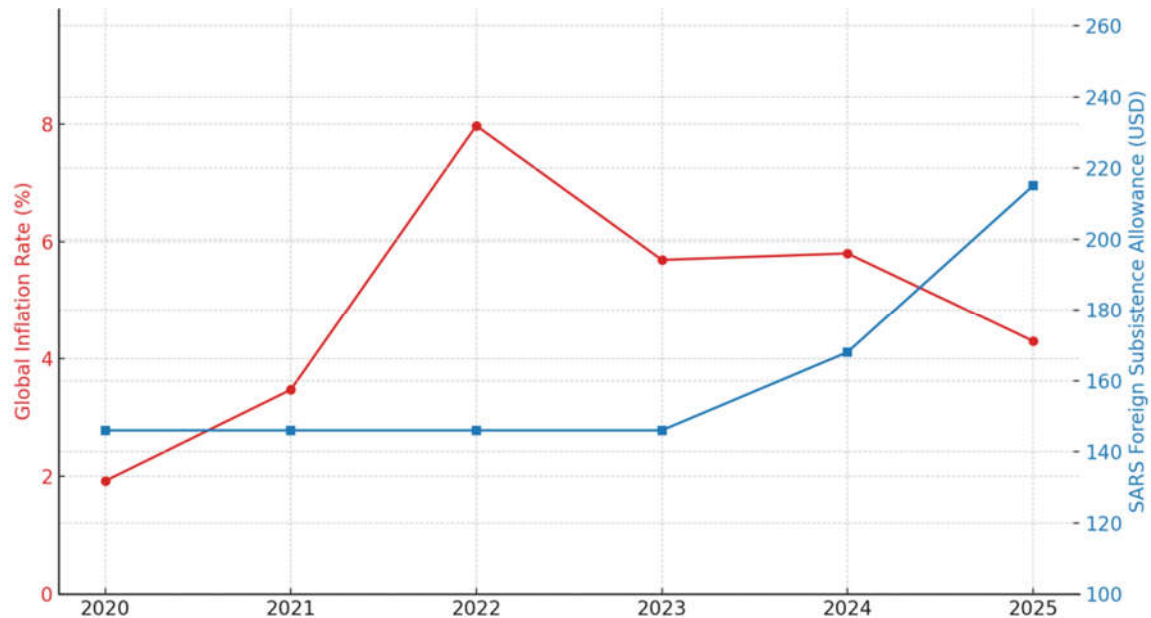
When sending an employee on an assignment away from the employee's normal place of residence for one or more nights, it is expected that the employee will incur additional expenditure in respect of accommodation, meals and other incidental costs, which would not have been required if not for the assignment. The case *ITC 1668* specifies that the obligation to spend time away from home must be because of his employment. These additional costs would be deemed to be business expenditure. The norm in such a case would be that the employer then provides the employee with a subsistence allowance in advance of such travel, as it is often the case that the employee will not be able to finance such business-related costs (s8(1)(a)(i)(bb)).

The two methods provided in s8(1)(c), being the actual and deemed method, establishes the basis of calculating the "business expenditure" that is to be excluded from taxable income (SARS, 2021b:7–10). An allowance received more than the business expenditure actually or deemed to be incurred, is included in taxable income in terms of s8(1)(a)(i) (SARS, 2021b:5). In the case where a portion of a subsistence allowance is included in taxable income, it will also become eligible to be exempt in terms of s10(1)(o)(ii). As stated in Chapter one above, cost-of-living might be higher in the country where the foreign assignment is and could result in the employee being out of pocket. In the case where the foreign subsistence allowance as determined by SARS, is insufficient to cover the actual costs incurred, and the employee would be able to claim a reimbursement, if allowed by his employer, the reimbursement more than the recommended daily allowance will be taxable (SARS, 2021b:6).

The local (South African) rate is updated almost annually, whilst the foreign subsistence allowance rate per day, was stagnant over the 2020 to 2022 period during which world inflation

was at its highest, as depicted in Figure 2-2 below. These foreign rates were only recently updated for the first time since 2020 (SARS, 2025a:37).

Figure 2-2: Global inflation (Macro Trends, 2025) vs SARS foreign subsistence allowance (SARS, 2020b).



As shown, the effect would be that if the employer provides an employee with a subsistence allowance in line with inflated costs, the allowance could exceed the deemed rate, of which the difference is included in taxable income, thereby leaving the taxpayer out of pocket. Where the expenditure exceeds the SARS rate and the employer elects to reimburse the employee in full, the excess will be included in taxable income (SARS, 2021b:6).

2.3.1.2 Taxable benefits

Taxable benefits are a form of remuneration paid or granted to employees in respect of their employment (paragraph 2 of the 7th Schedule). These benefits are included in gross income by paragraph (i) of the definition of gross income in s1(1) and as detailed in the 7th Schedule:

(T)he cash equivalent, as determined under the provisions of the Seventh Schedule, of the value during the year of assessment of any benefit or advantage granted in respect of employment (researcher's emphasis) or to the holder of any office, being a taxable benefit as defined in the said Schedule, and any amount required to be included in the taxpayer's income under section 8A."

As can be derived from the naming convention, these *benefits* are not necessarily in the form of a monetary value and therefore represents the “or otherwise” of the definition of gross income. As a result, an employer is required to determine what monetary value should be attached to benefits provided (by the employer or an associated entity) to the employee (or relative or related party), in respect of the employee’s services, to include it in the employee’s gross income (SARS, 2024:4).

The taxable benefits listed in the 7th Schedule apply to both inbound and outbound expatriates. The 7th Schedule describes the various taxable benefits that may arise in employment situations and how to determine the amounts to be included in taxable income. It was noted that paragraph 9 of the 7th Schedule includes a different application regarding residential accommodation in relation to an outbound expat and an inbound expat.

An outbound expat would normally require a place to stay in the foreign country in which the foreign assignment is accomplished. As a result, an employer would either a) provide accommodation; b) an allowance to cover such accommodation; or c) additional remuneration. Paragraph 2(d) of the 7th Schedule includes residential accommodation provided by an employer to an employee as a taxable benefit. However, in terms of paragraph 9(7) of the 7th Schedule, a zero value should be applied where the residential accommodation (one residence at a time) is provided away from the employee’s usual place of residence (SARS, 2024:12).

Therefore, the accommodation provided by the employer to the outbound expat in the foreign country would not be taxed, as long as the expat remains a tax resident of South Africa as defined above in paragraph 2.1 and that the accommodation provided is not considered the employee’s ordinary place of residence or a home away from home. As a result, the value of the accommodation provided does not increase the total taxable income of the outbound expat and does not affect the tax brackets utilised to tax the outbound expat in South Africa.

2.3.1.3 Exemptions

It is important to note that exemptions apply to amounts included in remuneration or gross income. Therefore, where an amount is exempt in terms of section 10 of the ITA, it highlights the fact that although the related item is included in gross income by the definition of gross income (s1(1) of the ITA), or a specific section, it is exempt from tax. Exemptions are allowed or implemented by Governments for specific reasons including, but not limited to:

- Interest exemptions to motivate investments and savings,
- Foreign remuneration exemption to prevent or decrease potential double taxation, and
- Welfare exemptions to provide relief and financing of non-profit organisations.

(Van Heerden *et al.*, 2025:78)

The only exemption that therefore directly impacts outbound expats, is the exemption to prevent or decrease double taxation in respect of foreign employment, which is the foreign remuneration exemption.

In the case where a South African employee renders services in a foreign country, it might result in a double tax situation, i.e. where the employee is taxed in South Africa on worldwide income, and liable for tax in the foreign country based on source. DTA's have been signed between various countries to prevent double taxation (SARS, 2022:4), and in South Africa an exemption is also available in the ITA in s10(1)(o)(ii). To qualify, the expat should render services:

- outside South Africa for a period exceeding 183 full days over a period of 12 months, and
- for a continuous period of 60 full days during that period of 12 months.

With this exemption, employees that triggered a foreign tax liability by working more than 183 days in the foreign country, of which 60 days were consecutive, will receive an exemption limited to R1.25m of such *foreign* remuneration earned, when completing their South African income tax returns (SARS, 2021a:1).

The limitation of the exemption was introduced from 1 March 2020, to prevent double non-taxation because there are countries that do not raise income tax in respect of employee earnings. In addition, s10(1)(o)(ii) does not exempt all forms of remuneration, but is limited to: salary, overtime pay, wages, leave pay, bonus, remuneration or stipend for services provided, commission, fee, or gratuity as well as items that are included in s1(1)'s definition of "gross income" (taxable benefits in paragraph (i)) and amounts mentioned in sections 8 (allowances), 8B, or 8C (SARS, 2021a). This exemption is only available to outbound expats, as inbound expats are not taxed on their foreign remuneration in South Africa.

In the case where an expat earns more than R1.25m foreign income, double taxation is likely to occur. In such a case, the expat is eligible to receive a deduction in terms of section 6quat of the ITA for taxes paid in the foreign country, but only the portion of tax raised in respect of the foreign remuneration not already exempted in terms of s10(1)(o)(ii) (i.e. the tax in respect of the foreign remuneration in excess of the R1.25m) (SARS, 2021a:8) (Refer to paragraph 2.7).

2.3.1.4 Section-Conclusion

Based on the above findings, where an outbound expat works in a country in which the cost-of-living exceeds the amount determined by SARS, the employee's taxable income will increase by

the difference between the cost incurred and the amount deemed reasonable by SARS. Consequently, where the foreign assignment extends over prolonged periods, this will impact the employee negatively as there is no additional prolonged benefit, whilst the s10(1)(o)(ii) exemption intends to only provide relief for double taxation incurred.

2.4 Deductions from taxable income

As alluded to in paragraph 2.3 above, taxable income is the value that remains of income after deducting allowable expenditure. The general rule (positive rule) used to determine what is “allowable expenditure” is contained in the general deduction formula in section 11(a) of the ITA. The general deduction formula states that expenditure actually incurred in the production of the income (that is not of a capital nature) may be deducted from that income, but that the income should be derived from carrying on a trade (section 11 of the ITA).

This section should however be read together with section 23 of the ITA (negative rule) which relates to deductions that are not allowed in determining taxable income (Van Heerden *et al.*, 2025:124). According to section 23(m) of the ITA, no deductions will be allowed from employment income except for:

- Pension-, retirement annuity- and provident fund contributions (section 11F),
- Certain legal costs (section 11(c)),
- Wear-and-tear (section 11(e)),
- Donations (to approved bodies),
- Home office expenditure (section 23(b)),
- Repayable amounts (employment payments earned but subsequently refunded – e.g. restraint of trade) (section 11 (nA) & (nB)), and
- Employment related bad debt (section 11(i) and section 11(j)) (SARS, 2025b).

The above-mentioned deductions in the ITA, are available to any employee that complies with the requirements attached to the specific deductions: for example, where an employee contributes to a pension-, provident-, or retirement fund, such an employee is eligible to deduct the lesser of:

- fund contributions paid or
- R350 000 or
- 27.5% of the greater of
 - remuneration or
 - taxable income or

- taxable income before section 11F and section 18A deductions, taxable capital gain included or
- Taxable income before section 11F and section 18A deductions, taxable capital gain excluded.

hence it cannot create a loss (section 11F(2) of the ITA).

By default, the exemption of foreign service income discussed in paragraph 2.3.1.3 above, results in a lower remuneration and taxable income and hence decreases the deduction available to an employee working abroad (at least to the point where such employee earns more than the exemption limit of R1.25m + R1.27m (R350 000 (limit of deduction) / 27.5%). This is because the exemption removes the foreign employment income from taxable income. In short, if the income is not included in taxable income, no deduction can be made in respect of it. Furthermore, section 6quat(1D)(a) states that section 11F contributions are deemed to have been incurred proportionately from foreign and local remuneration (in proportion to the weight of the various sources) (SARS, 2022:48).

When an employee retires, the retirement contributions not previously allowed as deductions from taxable income, are eligible to be deducted from the qualifying annuities payable to the retiree (section 10C(2) of the ITA). Paragraph 5 of the Second Schedule to the ITA provides that when a person retires the amount of the retirement income to be included in gross income of the person in terms of paragraph (e) of the definition of gross income in section 1, may be reduced by contributions (to any pension, provident- and retirement annuity fund) that were not previously allowed in terms of section 11F of the ITA.

Therefore, although a person would not be entitled to a monthly deduction in respect of retirement contributions made from foreign service income, the contributions will not be taxed upon retirement either. This not only increases the burden of proof on the taxpayer, but also increases the taxpayers' administrative liability, requiring record keeping up to five years in the case of a tax compliant taxpayer or indefinitely in the case of a non-compliant tax payer (where returns were not submitted on time), in order to prove those contributions were not previously allowed (SARS, 2025c).

This also raises a question of whether the remuneration funding these contributions mentioned above, were ever taxed. The following section further deals with the taxation imposed on outbound expats.

2.5 Foreign Taxation for South African Expats

A South African resident, whilst on secondment in a foreign country, might be obligated to pay taxation on *remuneration* earned in that country. To prevent or reduce double taxation, several double tax agreements (DTA's/treaties) have been established between South Africa and other foreign countries based on the OECD Model Tax Convention (SARS, 2015:43).

Article 4 of the OECD Model Tax Convention elaborates on the definition of a resident in that it states the person is deemed a resident (for OECD Model Tax Convention purposes) in the country in which that person is already liable for tax, based on residency (including domicile and place of management) (OECD, 2017:7). However, where a person employed by a South African resident employer (country of residence), and executes employee services in another country, the employee might also become liable for taxation in that other country (Article 15.1 of the OECD Model Tax Convention) (OECD, 2017:15). This could, therefore, result in double taxation.

Fortunately, Article 15.2 of the OECD Model Tax Convention, alleviates the pressure by introducing a maximum presence period when an expat is present in the foreign country for less than 183 days in any 12-month period. In that context, the remuneration is paid by a non-resident and should that remuneration not be borne by a permanent establishment of the employer in the foreign country, the expat will only be taxed in the country of residence (being South Africa) (OECD, 2017:15).

However, if the expat's presence exceeds the condition of 183 days in the foreign country, the foreign country is eligible to raise income tax on the remuneration of said expat due to the work done in that foreign country. A South African expat would then potentially become eligible for a s10(1)(o)(ii) exemption in South Africa in respect of the foreign remuneration earned as discussed above in paragraph 2.3.1.3. That is to qualify, the expat should render services:

- outside South Africa for a period exceeding 183 full days over a period of 12 months, and
- for a continuous period of 60 full days during that period of 12 months.

If the expat meets these requirements, the first R1.25m of the remuneration earned in the foreign country is exempt from taxation in South Africa. In the case where an expat earns more than R1.25m foreign income, double taxation is likely to occur. In such a case, the expat is eligible to receive a section 6quat of the ITA deduction for taxes paid in the foreign country, but this only applies to the portion of tax raised in respect of the foreign remuneration not already exempted in terms of s10(1)(o)(ii) (i.e. the tax in respect of the foreign remuneration in excess of the R1.25m) (SARS, 2021a:8).

2.6 Responsibility for Discharging tax liability

The increase in global mobility and the associated broadening of the tax income stream of SARS, inadvertently results in a burden for SARS to enforce and collect the relevant taxes. Consequently, SARS places the obligation to manage the additional burden and facilitate the collection of taxes on the employer who is required to withhold employees' tax and pay that to SARS in respect of employment related payments. Paragraph 2(1) of the 4th Schedule requires both a resident employer and a non-resident employer "that conducts business through a permanent establishment in the Republic", to withhold employees' tax (Pay-as-you-earn - PAYE) as calculated in terms of paragraph 9, 10 or 11 of the same Schedule, and pay these amounts over to the Commissioner (SARS, 2025a:14).

The requirement above to withhold PAYE, does not apply to non-resident employers that do not conduct business in South Africa. In the case of outbound expats, this requirement would, therefore, only apply to resident employers or in the case where the outbound expat is employed by a permanent establishment (PE) of the non-resident in South Africa (but being seconded abroad whilst remaining in the employ of the PE) (SARS, 2023:26).

The amount of tax to be withheld from payments made to outbound expats, employed by South African resident employers should be calculated using the total of local and foreign services income (worldwide income) (definition of gross income in s1(1)). Employers may consider applying the s10(1)(o)(ii) foreign employment exemption when calculating the amount of employees' tax of a South African resident (outbound expat) that is due to SARS if they are satisfied that the requirements of s10(1)(o)(ii) are met (SARS, 2020c:9).

Where an outbound expat employee is employed by a non-resident employer (with no South African PE) in the foreign country, the expat not only remains responsible to declare the foreign income in the annual tax return, but is also required to register as a provisional taxpayer and submit bi-annual returns and relevant payments to SARS (paragraph (a)(i) of the definition of provisional taxpayer in paragraph 1 of the 4th Schedule).

To summarise; it is, therefore, concluded that when an outbound expat receives employment income from either a South African resident employer or a permanent establishment of a non-resident employer, the employer will withhold PAYE. In the case where an outbound expat is not employed by any of the aforementioned employers, the responsibility remains with the expat to discharge the tax liability to SARS directly as the taxpayer remains responsible for his/her tax obligations.

2.7 Deductions from Taxation Payable

As noted in paragraph 2.1 above, the worldwide income of residents is taxed in South Africa which may result in double taxation where a) the foreign income earned is subject to tax in the country where it was earned and b) if in excess of the R1.25m exemption allowed (refer to paragraph 2.3.1.3 above). In terms of *s6quat* of the ITA, residents are eligible to deduct foreign taxes paid on foreign remuneration in the source country, from their tax obligation in South Africa (SARS, 2022:5). The deduction is, however, limited to the lesser of the conditions below:

- The proportion of foreign tax paid *on the foreign remuneration included in the resident's South African taxable income*, or
- The proportion of the tax calculated in South Africa *on the foreign remuneration included in taxable income*.

As a result, a South African resident will not incur double taxation because a) either the remuneration is partially exempt of South African tax, or b) it is tax paid in respect of the foreign remuneration included in the resident's South African taxable income allowed as a deduction that would then incur on the foreign remuneration which is not exempt in South Africa.

Therefore, outbound expats are eligible to receive a deduction against tax payable in South Africa, only for taxed paid abroad in respect of employment income, but it is limited to what would have been payable in South Africa.

2.8 Chapter Conclusion

In this chapter, the secondary objective, as identified in paragraph 1.3.2(a), is addressed. Therefore, the South African tax legislation in respect of outbound expat taxation is analysed by evaluating taxation based on residency vs physical presence and the potential relief through DTAs regarding income from sources outside South Africa. Employment-related income components are evaluated to establish whether working abroad would have different tax implications for outbound expats when compared to South African taxation of inbound expats working in South Africa.

The findings above reveal that where an outbound expat works in a country where the cost of living exceeds the amount determined by SARS, the employee's taxable income will increase by a) the difference between the cost incurred by the employer in favour of the employee and b) the amount deemed reasonable by SARS, thereby ultimately increasing tax payable without potential in-pocket benefits. Where the foreign assignment extends over long periods, the employee will be impacted negatively as there is no additional prolonged benefit since a) the *s10(1)(o)(ii)*

exemption only provides relief for double taxation incurred and b) *s6quat* may only apply to taxation levied in the foreign country that overlaps that being levied in South Africa (no relief in respect of taxation incurred in excess of that which would be levied in South Africa).

In the following chapter, the South African tax implications on inbound expats will be evaluated.

3 ANALYSIS OF THE SOUTH AFRICAN TAX LEGISLATION FOR INBOUND EXPATS

3.1 Introduction

The second, secondary objective addressed in this study is the South African tax legislation in respect of inbound expats (identified in paragraph 1.3.2(b)). As stated in paragraph 1.1.1, an inbound expat is a foreign national working in South Africa (BDO, 2019). According to Mosupye (2013:1), one of the reasons why foreign nationals work in South Africa is due to the lack of local specific, scarce or critical skills in South Africa. This is an increasing trend as South African skilled employees continue to emigrate. The South African tax obligations of such inbound expats that differ from outbound expats are addressed below.

3.2 Tax basis

Like outbound expats, the tax basis of an inbound expat is also included in the definition of gross income in s1(1) which refers to “any person other than a resident”. It reads as follows:

“gross income, in relation to any year or period of assessment, means –

- (a) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or*
- (b) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic, (researcher’s emphasis) during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued...”*

Non-residents are, therefore, only taxed on their income from a South African source, but in the same manner and scale as residents, except for certain exclusions which are available to *inbound* expats only. This is discussed in section 3.3 below (Mazwi, 2018:22; Mosupye, 2013:7). If these expats are not considered to be residents for tax purposes, they will only be taxable on their South African sourced income.

As with outbound expats, it is, therefore, important to establish the residency of an inbound expat to establish what the inbound expat is taxed on in South Africa. A natural person (as discussed in section 2.2 above), is considered to be a resident provided that the person:

- Is ordinarily resident in South Africa (paragraph (a)(i) of the definition of "resident" in s1(1)) or

- Meets the physical presence test (paragraph (a)(ii) of the definition of "resident" in s1(1)) and
- Is not exclusively considered to be a resident of another country in terms of a tax treaty or DTA (du Plessis, 2019:22).

3.2.1 Ordinary Residency Review of Inbound Expats

Foreign nationals do not necessarily become residents of South Africa based on their employment only (du Plessis, 2019:22), similarly, an uninterrupted physical presence would not be a requirement to be deemed an ordinary resident. In the case *Soldier v COT* (1943 SR 130) it was held that temporary or casual settlement in a country (as is in the case of an inbound expat) is insufficient for a person to be classified as an ordinary resident, whilst a degree of continuity or permanence (in spite of accidental or temporary absences) will contribute to a person being regarded as ordinarily resident (SARS, 2015:2). According to the case *Levene v Inland Revenue Commissioner* (1928), where a person ordinarily or in the regular course of life, chose to *live* in a particular country with a degree of permanence, the person is deemed to be an ordinary resident in that country (SARS, 2015:2).

Therefore, as long as an inbound expat's presence in South Africa is considered to be temporary and without a degree of permanence and where such potential residency classification is not challenged by the DTA between South Africa and the expat's origin country, such said expat will not be deemed to be an ordinary resident in South Africa (SARS, 2015).

3.2.2 Physical presence

Whilst an inbound expat may fail to be deemed to be an ordinary resident based on the above criteria, physical presence can still result in the expat being deemed a resident for income tax purposes. Physical presence, as with outbound expats, is determined on the number of days spent in South Africa per tax year over a period of six years and it is applicable from the first day of the year of assessment that the physical presence test is met (SARS, 2015:3).

Refer to Figure 2-1: Physical presence test for the flow diagram of the Physical presence test. The diagram summarises how an individual (applicable to both inbound and outbound expats) is deemed physically present when the person is physically present in South Africa for a period or periods longer than 91 days in total during the year of assessment, 91 days in total during each of the preceding five years before the year of assessment; and 915 days in total during those five preceding years of assessment (SARS, 2018a:2).

In the case where a foreign national is deemed a resident in terms of the physical presence test, such residency status will only be terminated 330 days after finally leaving South Africa, in which case, according to Note 4, the said person, will become a non-resident again (SARS, 2018a:6).

3.2.3 Double taxation agreement residency test

Where an inbound expat is considered to be a resident of both countries (in light of either the ordinary residency or physical presence test above), paragraph 4 of the DTA between the two contracting states will provide clarity on which country would be taxing the individual as a resident (tiebreaker provision) (Mohan, 2016; du Plessis, 2019).

In Article 4 of the OECD Model Tax Convention, residency is also determined based on “domicile and/or residence”, as described above. The OECD Model Tax Convention however, also include “or any other criterion of a similar nature”. Residency in terms of this model, is not determined based on tax liability stemming from source-based income or capital (OECD, 2017:7).

3.2.4 Determination of source

When it has therefore been established that an inbound expat is indeed a non-resident for income tax purposes, and that the expat will therefore only be taxed on South African sourced income, it is important to determine the source of income. Receipts or accruals in respect of services rendered to or on behalf of an employer is included by section 9(2)(h) of the ITA, as an amount deemed to be received from a source within South Africa where the employer is:

- *“in the national, provincial or local government of South Africa,*
- *is a constitutional institution listed in Schedule 1 to the Public Finance Management Act,*
- *a public entity listed in Schedule 2 or 3 to that Act, or*
- *a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).”*

In the case *CIR v Lever Brothers & Unilever Limited* (1946), it was submitted that the origin or source of the income should be determined to be the originating cause. That is, what gave rise to the employment income. In the case of employment – the cause of employment income, is the services rendered. Therefore, the place where the service is rendered, is the source of the income (Mazwi, 2018:25; Mosupye, 2013:10).

Whether an inbound expat works for a foreign or South African employer, services rendered whilst in South Africa, is therefore considered to be sourced from South Africa and therefore taxable in South Africa. However, where a South African employer employs non-residents on assignments

in a foreign country, the source is considered not to be South African as the service is rendered outside South Africa, unless the foreign assignment is incidental to the assignment period in South Africa (SARS, 2015:10).

3.2.5 Section Conclusion

Therefore, inbound expats should evaluate whether they are ordinarily resident or physically present in respect of a tax year. If such evaluation yields a negative conclusion, such inbound expat will only be taxed on income sourced from a South African source and not worldwide income.

In addition to determining whether an inbound expat should be taxed on worldwide income or source income, it should also be established what should be included in the taxable income of the expat, as discussed below.

3.3 Taxable income

The definition of gross income further elaborates on items specifically included in gross income (whether it is of a capital nature or not) (ITA), such as paragraph (c) of the definition of gross income in s1(1) that includes any amount received or accrued in respect of services. Since this research relates to inbound expat employees, only employment income is discussed below.

There are certain provisions in the ITA, where additional conditions apply to inbound expats only. As mentioned in paragraph 2.3.1 above, the ITA does not deal separately with employment taxation aspects of residents versus non-residents but rather addresses both (where differences exist) in the same provisions of the ITA by adding a paragraph to elaborate on such differences. Whilst analysing the provisions (and schedules) in respect of employment income, only a few differences were noted and will be discussed. These provisions relate to residential accommodation, use of a company vehicle and pension fund income.

3.3.1 Residential accommodation

Paragraph 2(d) read together with paragraph 9 of the 7th Schedule, states that residential accommodation provided by an employer to an employee, is included in the gross income of the employee (by paragraph (i) of the definition of gross income) based on a) the determined value or actual rental expense incurred (whichever is lesser) and (b) reduced by any amount paid by the employee in respect of the accommodation. In terms of paragraph 9(7), accommodation provided by the employer to an employee, away from his/her ordinary place of residence, would bear a zero value. It is, therefore, imperative to determine whether the accommodation provided would be considered the employee's ordinary place of residence or a home away from home.

There is a fine line between relocating to be close to a new work location (manner of permanence) as opposed to a temporary settlement for the duration of a specific assignment.

According to the case *Cohen v Commissioner for Inland Revenue* (1945) a person is deemed to be *ordinarily resident* in the country to which he would normally return after his wanderings (in this case: the foreign assignment) (Tindall *et al.*, 1945). Schreiner JA cited in the case *Commissioner for Inland Revenue v Kuttel* (1992) that a person is an “ordinary resident” where his “usual or principal residence is”. If it is, therefore, established that an expat is not an ordinary resident in South Africa, based on the case law and above criteria (refer to paragraph 3.2.1 above), it can be established on the same grounds that the expat’s ordinary residence is not the accommodation provided by the employer and therefore paragraph 9(7) can be applied, for at least as long as there is not a manner of permanence associated to it.

In *Income Tax Case No. 11253* (2006:14-15), Wagley J stated that SARS could not “randomly” decide for which period the zero valuation in terms of paragraph 9(7) should be applied, but that it should be documented in legislation (2006:14–15). Paragraph 9(7A)’s inclusion in 2008 introduced a time limit to the enjoyment of the “tax-free” residential benefit provided by an employer to its foreign employees/inbound expats.

The amount included in taxable income of an inbound expat, will in terms of paragraph 9(7A) of the 7th Schedule, therefore bear a zero value only to the extent that:

- the period over which the benefit is provided does not exceed two years (and the employee was not in South Africa for more than 90 days during the year preceding the commencement of the two-year period), or
- where the inbound expat employee was in South Africa for not more than 90 days in the relevant year of assessment; and
- to the extent that the calculated benefit per month does not exceed R25 000 (SARS, 2024:12).

Where the calculated benefit exceeds R25 000, the excess is included in taxable income (par9(7A) of the 7th Schedule) as will the value of the residential accommodation provided to the inbound expat employee, beyond this first two years (SARS, 2015:12). This is the case for inbound expat employees, as long as residency or physical presence is not triggered (refer to paragraphs 3.2.1 and 3.2.2 above).

Therefore, unlike outbound expats for whom there is no time limit applied on the provision of work-related residential accommodation, inbound expats may only enjoy such benefit for a maximum

of two years and only to the extent that the accommodation is less than or equal to R25 000 per month (which translates to less than R1 000 per night).

3.3.2 Use of motor vehicle

Unlike residents, inbound expats would not normally acquire a vehicle whilst on an assignment in a foreign country. Accordingly, great reliance would be placed on either a vehicle provided by the South African employer or a relevant allowance to enable non-work-related travels (such as commuting to and from the place of work). Where an employer provides a motor vehicle to an inbound expat, the private use of the vehicle is a taxable benefit, unless such private use is incidental to the business use (paragraph 2(b) and paragraph 7 of the 7th Schedule).

Private use includes travel between the employee's ordinary place of residence to his place of work. The valuation of the benefit is calculated in the same manner as for resident employees (SARS, 2015:14).

However, whilst on a short-term foreign assignment, the employee's place of work and place of residence is exchanged for a temporary address and could result in the travel between the place where the employee stays and the place of work, the use of a vehicle is to be considered as business travel if the employee does not use the vehicle for any other travel purposes (SARS, 2013:18).

Therefore, if the inbound expat does not use the vehicle for recreational purposes, the benefit would not be deemed taxable. This, however, also applies to outbound expats whilst they are working abroad, and similar rules apply.

3.3.3 Pension and annuities

Income received during retirement by a former inbound expat (ex-expat) in the form of a lump sum, annuity or pension from a) provident-, b) preservation- or c) pension funds (basically any retirement income), is taxable in South Africa to the extent that it was accrued in respect of services rendered in South Africa, irrespective of where the "ex-expat" is enjoying the retirement income globally (section 9(2)(i) of the ITA). In addition to this, according to the case *Commissioner for Inland Revenue Appellant v Lever Bros and Another* (1946), retirement income received from a contract entered into in South Africa will also be taxable in South Africa, as the place of concluding the contract is considered to be the source, (subject to the provisions of any DTAs) in relation to the amounts received.

Hence, when referring to the *ITA only* the treatment seems no different to what would apply to normal employment related income earned from a source in the RSA.

3.3.4 Section Conclusion

From the above it can be deduced that in terms of the ITA, only a residential accommodation benefit is taxed differently in the hands of an inbound expat than in the hands of an outbound expat.

The difference between the taxation of inbound and outbound expats are, however, not limited to what and how income is taxed, but also how SARS recovers the taxation. This key factor is considered below, since if no formal mechanism is in place to recover or withhold taxation from inbound expats, the gap between the taxation of inbound and outbound expats will be greater due to potential non-compliance by inbound expats not discharging their tax liability to SARS.

3.4 Responsibility for Discharging Tax Liability

In the case where an inbound expat is employed by a South African resident employer, the employer is required to withhold employees' tax from his/her South African sourced income and pay it to SARS monthly in the same manner as with resident employees (except for differences noted in this study). Where a foreign employer employs an inbound expat, without a PE in South Africa, either an agent or such inbound expat would bear the responsibility to discharge the tax liability to SARS. The inbound expat is required to register as taxpayer with SARS, more specifically also as a provisional taxpayer, and then declare and pay the required taxes to SARS (SARS, 2015).

Paragraph 2(1) of the 4th Schedule was recently amended (based on the Tax Administration Laws Amendment Bill of 2023) to require a non-resident employer "that conducts business through a permanent establishment in the Republic", to also register as an employer with SARS, withhold PAYE and pay these amounts over to the Commissioner (SARS, 2025a:14). Not all non-resident employers have permanent establishments in South Africa, but when the presence of one or more employees in the Republic over a period of 12 months, is equal to or exceeds 183 days, a permanent establishment may be triggered as in the case of some DTAs between South Africa and certain other countries: for example, Canada, Zimbabwe, Namibia (SARS, 1999:5). In such a case, the presence of the employee for an extended period results in the requirement for the non-resident employer to register in South Africa as an employer for PAYE purposes, and to withhold relevant employee's taxes for payment to SARS.

The OECD Model Tax Convention included this as a standard paragraph (paragraph 14) pre-2010. It was, however, deleted. The UN model tax convention, which is used by several African countries as their baseline DTA model, still includes this aspect of permanent abode in paragraph 14 (Department of Economic and Social Affairs, 2017).

Therefore, unlike the case with outbound expats, where the employee becomes responsible to ensure that the tax liability is discharged to SARS, the responsibility in respect of taxation on South African sourced income of an inbound expat is more probable to be centralised with the employer, whether a resident or non-resident.

3.5 Conclusion

In this chapter, the South African tax legislation, in respect of inbound expat taxation is analysed (addressing the secondary objective as identified in paragraph 1.3.2(b)) by evaluating taxation based on residency versus physical presence, compared to the residency test prescribed by the DTAs and source determination.

In terms of the above findings, inbound expats are taxed in South Africa only on income sourced in South Africa which, when compared to outbound expats taxed on worldwide income, represents a lower tax bracket in cases where income generated from the South African source is not the sole income of the expat. The inbound expats also only receive a limited residential accommodation “exemption” (limited to two years and R25 000 per month) as opposed to outbound expats for whom no limit applies.

In the following chapter a comparison is made of the South African tax legislation in respect of inbound and outbound expats and evaluated against the OECD Tax Convention as a norm.

4 SOUTH AFRICAN TAX LEGISLATION FOR EXPATS AND EVALUATION AGAINST THE OECD MODEL TAX CONVENTION

4.1 Introduction

The purpose of this study is to analyse and compare the taxation of inbound and outbound expats based on South African tax legislation against the OECD Model Tax Convention as a norm. This is to determine whether the two regimes can be aligned to reduce potential inequalities between the two.

In this chapter the secondary objective (identified in paragraph 1.3.2(c)) is addressed as a comparison to the OECD Model Tax Convention. This is to provide overriding principles which are to be complied with despite the prescribed treatment of the ITA, which may then result in additional differences between the two regimes.

The comparison below helps to identify these potential differences.

4.2 Comparison

The key differences identified between inbound and outbound expats in the South African context in Chapters two and three, are listed below in Table 4-1.

Table 4-1: Outbound vs Inbound comparison of Key Differences

Key difference	Outbound expat	Inbound expat
Residency	Normally a resident of South Africa and therefore taxable on world-wide income.	Normally evaluated to be a non-resident and therefore only taxable in South Africa on South African sourced income subject to DTA application.
Residential allowance	In terms of paragraph 9(7) of the 7th Schedule, a zero value should be applied where the residential accommodation (one residence at a time) is provided away from the employee's usual place of residence	In terms of paragraph 9(7A) of the 7th Schedule, a zero value is only applied to the extent that: - the period over which the benefit is provided does not exceed two years (and the employee was not in South Africa for more than 90 days during the year preceding the commencement of the two-year period), or

Key difference	Outbound expat	Inbound expat
		- where the inbound expat employee was in South Africa for not more than 90 days in the relevant year of assessment; and - to the extent that the calculated benefit per month does not exceed R25 000
S10(1)(o)(ii) exemption	May claim a s10(1)(o)(ii) exemption in respect of remuneration received for foreign services, subject to a R1,25 million limitation.	S10(1)(o)(ii) exemption is only available to South African tax residents.
S6quat deduction	Residents are eligible to deduct foreign taxes paid on foreign remuneration in the source country under the s6quat deduction	6quat deduction is only available to South African tax residents.

Source: Author's compilation

From the above comparison in Table 4-1 above, it may be deduced that there are very few differences between the South African tax legislation for inbound versus outbound expats. The key difference relates to residency and the resultant tax treatment. As mentioned above, the application of tax treaties may result in further differences, those differences as well as the basis of the treaties in the OECD Model Tax Convention will be discussed below.

4.3 The OECD Model Tax Convention

The purpose of the OECD Model Tax Convention is considered to set the standard against which differences can be measured and resolved (OECD, 2017; Taekema, 2018:2). The OECD Model Tax Convention is adopted by OECD member countries and observers (Krause, 2015), the International Monetary fund (Nakayama, 2011) and the World Bank (Cebreiro-Gómez *et al.*, 2021), to name a few. Therefore, it provides both a local standard to measure against, as well as an internationally accepted standard.

The OECD Model Tax Convention covers both natural and juridical persons but more specifically the residents of the nations' that are contracting in terms of the tax conventions (OECD, 2017:6). The OECD Model Tax Convention comprises the following areas and sets the standard to govern the relationships in this respect:

- Chapter I: Extent (persons and taxes covered),

- Chapter II: Definitions (general, resident, permanent establishments),
- Chapter III: Taxation of income: immovable property, business profits, international shipping and air transport, associated enterprises, dividends, interest, royalties, capital gains, income from employment, directors' fees, entertainers and sports persons, pensions, government services, students, other income,
- Chapter IV: Taxation of capital,
- Chapter V: Elimination of double tax: Exemption, credit, and
- Chapter VI: Special provisions (OECD, 2017)

The taxation of inbound and outbound expats in South Africa, as discussed in Chapter Two and Chapter Three above can be evaluated against the standard of the OECD Model Tax Convention as set out below. Accordingly, the terms of residency, employment income (including pension fund contributions), exemptions and tax credits will be evaluated below by firstly providing the prescription in the OECD Model Tax Convention as a comparison to the provisions of the ITA.

4.3.1 Residency

As stated in paragraph 4.2 above, residency is the key factor when establishing the difference in the taxation of inbound and outbound expats. Residency ultimately determines where a taxpayer will be primarily liable for tax and more specifically to South Africa, to what extent the taxpayer may be taxed under the ITA (read together with the relevant DTA's). Accordingly, residency will be evaluated first.

The definition of a resident in article 4 in Chapter II of the OECD Model Tax Convention determines that a person is considered to be a resident of the state in which he/she is *liable to pay tax* to its tax authority based on his/her "*domicile*" or residence, and in the case of judiciary persons, the place of management. This excludes the obligation to pay tax merely due to the source being in that specific state (OECD, 2017:6).

According to the definition of gross income, read together with the definition of a resident (s1(1)), an expat would be taxable in South Africa on world-wide income, if that expat is considered to be a resident in South Africa (refer to paragraph 2.2). Whilst the ITA determines, as discussed above, that an expat is a resident if he/she is an ordinary resident, physically present or exclusively considered to be a resident of another country in terms of a tax treaty, which is normally based on the OECD Model Tax Convention (OECD, 2017:6).

The term "ordinarily resident" in respect of the South African ITA, relies on case law for interpretation whilst the OECD Model Tax Convention specifically refers to "*domicile*", which according to the Merriam-Webster online dictionary, means "a person's fixed, permanent, and

principal home for legal purposes". Unfortunately, due to global mobility people can "live" in more than one country, but do not necessarily consider more than one, a "permanent home".

Where uncertainty or potential double tax opportunity still exists when determining an expat's country of residence, the OECD Model Tax Convention provides a tie-breaker clause (OECD, 2017:6) that includes similar criteria as case law to determine whether a person is ordinarily resident in terms of the ITA, as follows:

Table 4-2: OECD Model Tax Convention vs ITA case law to determine residency

OECD Model Tax Convention	ITA case law
• The state where his permanent home, personal and economic relations are closer • The state where he has habitual abode • Nationality • Mutual agreement	• <i>Commissioner for Inland Revenue v Kuttel</i> (1992) - the centre of interest • <i>Cohen v Commissioner for Inland Revenue</i> (1945) - the country to which a person normally returns after his wanderings (Mosupye, 2013:7).

Source: Author's compilation

From the above Table 4-2 it can be established that the OECD Model Tax Convention provides some criteria to establish residency like case law used in South Africa, but it also provides other criteria as an opportunity for relevant countries to agree on where a taxpayer should be considered a tax resident, in case all else fails.

Firstly, application of the physical presence test (included in the definition of a resident in s1(1) of the ITA), may result in an inbound expat being found a resident based on physical presence in South Africa. At this point, the DTA between the expat's origin country and South Africa would be sought to conclude on residency. If the expat's permanent home is still in his country of origin, South Africa would not be allowed to tax the expat on his world-wide income, but only on his income sourced from South Africa (OECD, 2017:6) to the extent allowed by the DTA.

Therefore, like the ITA, the OECD Model Tax Convention allocates tax preference to the country in which the person is resident and, therefore, the country which is the expat's residence country may then tax the expat on his/her world-wide income. After establishing which country retains primary taxing rights, it does not void the other contracting state from taxing income of the taxpayer. Therefore, it follows that the income, and its source should also be measured against the OECD Model Tax Convention and ITA.

The evaluation below will specifically focus on employment related income, based on the nature of this study.

4.3.2 Income from employment

The purpose of this study on the difference in the taxation of inbound and outbound expats mainly caused by global mobility. Accordingly, the key focus area relates to income from employment. (Paragraph 1 of Article 14 of the OECD Model Tax Convention) confirms that income from employment, including salaries, wages and other employment related payments, will be taxable in the *resident's country* only, unless the services are rendered outside the resident country, in which case the income may be taxed in the country where the services are rendered (OECD, 2017:15). To this point the taxation methodology prescribed by the OECD Model Tax Convention is aligned to that of the ITA.

Paragraph 2 however provides that in a case where:

- the period over which the services are rendered does not exceed in total 183 days in a 12-month cycle, and
- remuneration is not paid by an employer that is a resident of the state where the services are rendered, and
- the remuneration is not paid by a permanent establishment of the employer in that country,

In this case, it is only then that the resident country may raise the tax on world-wide income (OECD, 2017:15).

Where an inbound expat therefore renders services in South Africa for a period not exceeding 183 days in a 12-month cycle, is not paid by a South African employer or a permanent establishment of his employer in South Africa, not only does the expat not meet the requirements to be classified as a resident and taxed on world-wide income in South Africa, but South Africa will then also not be eligible to tax the inbound expat on the South African sourced income. This is also true where an outbound expat does not work for a period greater than 183 days in a foreign country, with whom South Africa has a DTA based on the OECD Model Tax Convention, which includes this article. In such instance the s10(1)(o)(ii) exemption is not applicable, which requires the expat to work abroad for more than 183 days, and not necessary as no double tax would have arisen, and the person will only be taxed in South Africa.

4.3.3 Pensions

Whilst actively working, an expat would have contributed towards retirement by means of pension fund contributions from employment income. When such an expat retires, the norm would then be to return “home” (to the country of residence) and receive income from the pension funds to which he/she previously contributed. These pension fund receipts are included in gross income in terms of the definition of gross income in s1(1) of the ITA and the contributions deductible in terms of section 11F(2) of the ITA.

In the case of a retiring outbound expat (being a resident of South Africa), worldwide pension fund income will be included in taxable income in South Africa, whilst in the case of a retiring inbound expat (non-resident) only income from South African pension funds would be included in income tax in South Africa (refer paragraph 3.3.3 and section 9(2)(i) of the ITA).

As noted above, an employee would be granted a deduction in respect of pension fund contributions from taxable income in South Africa. Such deductions are, however, only in respect of South African registered pension funds (s11F(2)(a) of the ITA). Therefore, where an outbound expat contributed to a foreign pension fund, whilst working abroad, the contributions were not deductible. The ITA, therefore, allows pension fund income received, in respect of foreign services rendered, to be exempt in terms of section 10(1)(gC)(ii) of the ITA, as the contributions were never allowed as a deduction against taxable income in the years of contribution (SARS, 2018b:2). This exemption would also prevent double taxation as the income was taxed when it was earned as worldwide income, and since no deduction was allowed against it, it would be taxed in future when received as income.

Article 18 of the OECD Model Tax Convention assigns taxation rights in respect of pensions and similar remuneration, to the *resident country* unless the pension is paid from a government fund, in which case it would be taxable in the source country (OECD, 2017:16). This article would not affect pension-payments received by retiring South African outbound expats, as they would be taxed on world-wide income in South Africa as residents (in terms of the definition of gross income read together with the definition of a resident in s1(1) of the ITA, which is also supported by the OECD Model Tax Convention).

The result of Article 18 of the OECD Model Convention, would be that pension fund income of a retiring inbound expat, sourced from South Africa, would not be taxable in South Africa (as originally determined from section 9(2)(i) of the ITA), whilst section 11F(2) of the ITA, allows for a deduction in respect of pension fund contributions made to a South African registered pension fund against employment income. This is because section 11F(2) of the ITA refers to a “person”

and not just a resident (ITA). South Africa, therefore, basically forfeits its taxing rights on pension payments by South African registered funds to non-residents by allowing the deduction despite not being allowed to tax the income from the pension fund at retirement (ITA).

It is clear from the above analyses, that outbound expats will be taxed on their world-wide pension fund income in South Africa upon retirement (or at the time it was earned, depending on where the services were rendered), whilst inbound expats will not be taxed on any pension fund income received from South Africa pension funds, after receiving a deduction against taxable income when contributions were made, irrespective of whether it was sourced from South Africa or not.

4.3.4 Exemptions

As explained in section 2.3.1.3, exemptions in tax legislation are designed to achieve specific objectives. Within the OECD Model Tax Convention, exemptions serve as a mechanism to prevent double taxation. According to Article 23A of the OECD Model Tax Convention, when taxing rights are allocated to the source country, the resident country must exempt that income from taxation (OECD, 2017:18). In practice, this often applies to the employment income where the OECD Model Tax Convention allocates taxing rights to the country of residence in the case where the service is rendered in a country other than the resident country for a period less than 183 days, as described in paragraph 4.3.2 (OECD, 2017:15).

Nevertheless, situations may still arise where income is subject to taxation in both countries, despite the exemptions provided under the ITA and the OECD Model Tax Convention. To address such cases, an additional mechanism exists to prevent or alleviate double taxation, namely the granting of foreign tax credits, which will be discussed next.

4.3.5 Tax credit

When legislation does not adequately prevent or eliminate double taxation of certain income, taxpayers may be granted tax credits for taxes already paid on that income. Article 23B of the OECD Model Tax Convention prescribes that where a resident has been taxed by the source country, the resident country should allow a deduction of the tax amount already paid in the source country, from the tax payable in the resident country (OECD, 2017:20).

In South Africa, this is primarily achieved through s6quat of the ITA, which permits taxpayers to offset taxes already paid in a foreign tax jurisdiction against their South African tax liability on the same income. This mechanism ensures that income taxed abroad is not subject to full taxation again in South Africa, thereby aligning with international tax principles and promoting fairness within the tax system.

4.4 Chapter Conclusion

This chapter addresses the secondary research objective (as identified in paragraph 1.3.2(c)) which is to make a comparison between South African tax legislation for both inbound and outbound expat taxation to evaluate against the OECD Model Tax Convention as norm.

The OECD Model Tax Convention introduces an additional distinction to the disparities in the taxation of residential accommodation between inbound and outbound expats. An inbound expats' pension fund income is not taxed in South Africa, as would ordinarily be required by the ITA, but rather in the expat's country of residence like the OECD Model Tax Convention. When this reallocation of taxing rights for inbound expats is considered alongside the s11F(2) deduction (available to both inbound and outbound expats), it gives rise to a theoretical asymmetry in the South African tax regime.

This reflects a potential inequity in the treatment of inbound and outbound expats in terms of the tension between domestic legislation and the allocation of taxing rights under international tax conventions.

The following chapter provides the summary of the findings and the conclusion to the study.

5 CONCLUSION

5.1 Introduction

5.1.1 Objective

The purpose of this study is to analyse and compare the taxation for inbound and outbound expats based on South African tax legislation by using the OECD Model Tax Convention as a standard. This will determine whether the two regimes can be aligned to reduce unjustifiable differences or potential inequalities between the two. Differences could result in a presumed unjustifiable or unequal tax imposition - which could then lead to a decrease in the willingness to comply. The secondary objectives were a) to analyse the South African taxation in respect of outbound expats; then b) analyse the South African taxation in respect of inbound expats; and then c) to compare the findings from the analyses of South African taxation of expats to the OECD Model Tax Convention as a standard.

In section 5.2 below, the criteria identified in the analyses are listed with a conclusion on each.

5.1.2 Methodology

A qualitative, comparative literature study is conducted by analysing the ITA, DTAs, case law and the OECD Model Tax Convention.

5.2 Evaluation criteria

The differences identified in the treatment of the taxation of the inbound and outbound expats in this study are presented below in terms of a) the disparities in the tax basis, b) taxable income; and c) the deductions and exemptions.

5.2.1 Differences in Tax basis

Whilst outbound expats are taxed in South Africa on their worldwide income, inbound expats are taxed in South Africa only on their South African sourced income. Accordingly, the determination of residency is key in establishing the tax basis of both inbound and outbound expats.

Based on the findings in Chapters Two and Three above, the differences between the taxation of inbound vs outbound expatriates are mainly based on the manner of permanence associated with the period spent outside the resident country. The longer the period, the more “additional” tax liability is incurred. In the case of an inbound expat, housing allowance provided beyond two years (in respect of subsidising accommodation whilst working in his/her non-resident country), will be taxed in South Africa whilst the outbound expat’s housing allowance would bear a zero value.

This determination of a residence is considered important by both the OECD Model Tax Convention as well as the ITA. However, the determining factors differ slightly. Whilst the ITA requires the world-wide income of outbound expats and the source-based income of inbound expats to be taxed in South Africa, the OECD Model Tax Convention does allocate some taxing rights differently (pension funds to be taxed by the resident country and foreign employment income over a period less than 183 days to be taxed by the resident country). Therefore, it is critical to ensure compliance with both the ITA and DTAs when determining the taxing rights of expats.

5.2.2 Taxable income

The only variance identified between the taxable income of an inbound vs outbound expat, is the application of paragraph 9(7A) and (7B) of the 7th Schedule of the ITA, in which the inbound expats may only enjoy a residential accommodation benefit for a maximum of two years and only to the extent that the accommodation is less than, or equal to R25 000 per month (which translates to less than R1 000 per night).

The disparity identified in respect of the increase in taxable income due to higher living costs whilst on foreign assignments, mainly applies to outbound expats. Although the difference is not defined as taxable income, it does create a quantitative variance and results in an increase in tax liability without real financial advantage.

5.2.3 Deductions and exemptions

The deductions and exemptions available to outbound expats are mainly to prevent double taxation. Therefore, they only provide relief to the extent that similar taxes were raised rather than whether the tax rates exceed that of South Africa that then results in lower tax brackets being applied in South Africa. However, due to the tax bracket application in South Africa, the outbound expat (being taxed on world-wide income) would still be taxed in totality at a higher nominal tax rate in South Africa than an inbound expat, who will only be taxed on South African sourced income (and only if the taxing right is not assigned to the resident country by the OECD Model Tax Convention/DTA).

In addition to benefitting from a lower tax bracket application, inbound expats are also eligible to receive a section 11F deduction for pension fund contributions of which the income upon retirement will not be taxable in South Africa, which ultimately erodes the tax base.

5.3 Recommendations

Owing to the findings of this study, it is recommended that SARS should consider a revision of section 11F(2) by changing the wording from a “person” to a “resident” who qualifies for the deduction.

This change would reduce the potential tax base erosion of a non-resident who would not be taxed in South Africa on the receipts from the retirement benefits, but who would have qualified for the deductions whilst earning income in South African while contributing to the fund.

5.4 Recommendations for further studies

Further investigation is recommended on areas where the OECD Model Tax Convention assigns taxing rights to the country of residence as opposed to the source country (as is the standard), for example, pension fund payments. To eliminate tax base erosion, further research in revising the allowance of the deductions to a “person” (as stated in sec11F(2)) should also be reconsidered to read “resident” and not “person”.

5.5 Final Conclusion

Whilst South African tax legislation attempts to balance fairness by means of exemptions and deductions, notable differences remain between the treatment of inbound and outbound expats. These differences are primarily due to residency status and the application of DTAs. Although some alignment with the OECD Model Tax Convention exists, full harmonisation is limited. The study concludes that the current system is functionally justified but may benefit from further refinement to enhance fairness and tax compliance.

REFERENCES

- Africa, L. 2021. *A critical analysis of the recent change to the unilateral foreign employment income tax exemption in South Africa and its cross-border interaction*. Cape Town: University of Cape Town. (Thesis - MCom). <http://hdl.handle.net/11427/35485>
- Alharahsheh, H.H. & Pius, A. 2020. A review of key paradigms: positivism vs interpretivism. *Global Academic Journal of Humanities and Social Sciences*, 2(3):39-43.
- Atkinson, T. 2020. Expat employees and the payroll nightmare. *TAXtalk*. 2020(82):9–12.
- BDO. 2019. *Tax considerations for non-residents with remote employees in South Africa - BDO*. <https://www.bdo.co.za/en-za/insights/2024/advisory/tax-considerations-for-non-residents-with-remote-employees-in-south-africa> Date of access: 21 Mar. 2025.
- Bowen, G. 2009. Document Analysis as a Qualitative Research Method. *Qualitative Research Journal*, 9:27-40.
- BusinessTech. 2019. South Africa's big expat tax – these are your options. *BusinessTech*. (February, 25). <https://businesstech.co.za/news/wealth/301694/south-africas-big-expat-tax-here-are-your-options/> Date of access: 16 Jun. 2022.
- Cebreiro-Gómez, A., Clavey, C., Estevão, M., Leigh-Pemberton, J. & Stewart, B. 2022. *Digital services tax: country practice and technical challenges*. <http://documents.worldbank.org/curated/en/099725001112228984> Date of access: 06 Feb. 2025.
- Cloyne, J. & Hürtgen, P. 2016. The macroeconomic effects of monetary policy: A new measure for the United Kingdom. *American Economic Journal: Macroeconomics*, 8(4):75-102.
- Cohen v Commissioner of Inland Revenue* 1945 13 SATC 362-373 (AD).
- Commissioner for Inland Revenue Appellant v Lever Bros and Another Respondents* 1946 14 SATC 441 (AD).
- Commissioner for Inland Revenue v Kuttel* 1992 2 All SA 151 (A).
- Creswell, J. 2007. *Qualitative inquiry and research design: Choosing among five approaches*. 2nd ed. Sage Publications, Inc. <https://revistapsicologia.org/public/formato/cuali2.pdf> Date of access: 25 Feb. 2023.

Department of Economic and Social Affairs. 2017. *United Nations Model Double Taxation Convention between Developed and Developing Countries*. 2017 update. New York: United Nations Publications.

Donne, J. 2008. *The poems of John Donne. Vol. 2, Religion poems, wedding celebrations, verse epistles to patronesses, commemorations and anniversaries*. R. Robbins, ed. Harlow, England: Longman.

Dr Seuss. 1990. *Oh, the places you'll go!* 1st ed. New York: Random house.

<https://archive.org/details/oh-the-places-youll-go/page/n3/mode/2up> Date of access: 26 Feb. 2023.

Du Plessis, A. 2019. *A review of the residency definition for natural persons in the South African income tax regime*. Potchefstroom: North-West University. (Mini-dissertation – MCom).

<http://hdl.handle.net/10394/32998>

Ernst & Young. 2012. 2053. Expatriates hypothetical tax. *Integritax*. (April).

https://www.saica.co.za/integritax/2012/2053.Expatriates_hypothetical_tax.htm Date of access: 27 Mar. 2023.

Ferreira, M. 2020. *Expat tax: will it contribute to tax evasion by South African expats working abroad?* Pretoria: University of Pretoria. <http://hdl.handle.net/2263/80437>

Healy, M. & Perry, C. 2000. Comprehensive criteria to judge validity and reliability of qualitative research within the realism paradigm. *Qualitative Market Research: An International Journal*, 3(3):118-126.

Hutchinson, T. & Duncan, N. 2012. Defining and Describing What We Do: Doctrinal Legal Research. *Deakin Law Review*. 17:83–119.

Income Tax Act No. 58 of 1962. 1962.

Income Tax Case No. 1523. 54 SATC 194.

Income Tax Case No. 1668. 61 SATC 444.

Income Tax Case No. 11253. 2006.

International Monetary Fund. 2023. *World Economic Outlook (April 2023) - Unemployment rate*.

<https://www.imf.org/external/datamapper/LUR@WEO/OEMDC/ADVEC/WEOWORLD> Date of access: 28 Apr. 2023.

Jahan, S., Alrajawy, I., Ali, S.A. & Martin, P. 2021. Analysing the impact of globalisation on business performance: Case of UAE food industry. *International Journal for Quality Research*, 15(2):665-678.

Krause, F.A. 2015. *A comparative study of double tax agreements in a Southern African context*. Pretoria: University of Pretoria. (Thesis – MCom). <http://hdl.handle.net/2263/52988>

Macro Trends. 2025. *World Inflation Rate 1981-2025*. <https://www.macrotrends.net/global-metrics/countries/WLD/world/inflation-rate-cpi> Date of access: 25 May 2025.

Madden, C. & Vally, Z. 2020. Expatriate benefits and their tax implications. *TAXtalk*. 2020(82):34–37. <https://hdl.handle.net/10520/EJC-1f07a92fce> PDF Date of access: 18 May 2022.

Mahomed, K. 2019. South Africans working abroad: the current dilemma and the tax implications. *Tax Professional*. 2019(34):9–11.

Mazwi, Z. 2018. *The income tax provisions that are applicable to foreign employees temporarily working in South Africa*. Johannesburg: University of the Witwatersrand. (Thesis - MCom).

Merriam-Webster Inc. 2019. *Merriam-Webster*. <https://www.merriam-webster.com/dictionary/expat> Date of access: 14 Jul. 2025.

Mohan, S. 2016. *Managing inbound and outbound payrolls - from a tax perspective*. Presentation delivered at the South African Payroll Association Conference, Johannesburg. <https://www.sapayroll.co.za/Portals/2/Documents/events/2016/Conference%20Presentations/Managing%20Inbound%20and%20Outbound%20Payrolls%20-%20Shohana%20Mohan.pdf> Date of access: 02 May 2022.

Moon, K. & Blackman, D. 2014. A guide to understanding social science research for natural scientists. *Conservation Biology*, 28(5):1167–1177.

Mosupye, S. 2013. *Expatriate tax in Africa: The taxation of inbound expatriates working In Botswana, Namibia, Nigeria and South Africa*. Pretoria: University of Pretoria. <http://hdl.handle.net/2263/41218>

Nakayama, K. 2011. *Designing and Drafting a Domestic Law to Implement a Tax Treaty*. International Monetary Fund, Fiscal Affairs Dept. <https://login.proxy.bib.uottawa.ca/login?url=http://elibrary.imf.org/view/IMF005/11667->

[9781475510195/11667-9781475510195/11667-9781475510195.xml](https://www.visualcapitalist.com/mapped-unemployment-forecasts-by-country-in-2023/). Date of access: 22 May 2022.

Neufeld, D. 2023. *Mapped: Unemployment Forecasts, by Country in 2023*. Visual capitalist. <https://www.visualcapitalist.com/mapped-unemployment-forecasts-by-country-in-2023/> Date of access: 15 Apr. 2023.

Numbeo. 2023. *Cost of Living Index by Country 2023*. Numbeo. https://www.numbeo.com/cost-of-living/rankings_by_country.jsp Date of access: 07 Jun. 2023.

OECD. 2005. *Tax policies vary widely from country to country*. <https://www.oecd.org/general/taxpoliciesvarywidelyfromcountrytocountryoecdstudysshows.htm> Date of access: 12 Feb. 2023.

OECD. 2017. *Model Tax Convention on Income and on Capital*. *Model Tax Convention on Income and on Capital*. https://www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-full-version_9a5b369e-en Date of access: 11 Jun. 2023.

OECD. 2022. South Africa projection note OECD Economic Outlook. *OECD Economic outlook*. 2022(2):206–208. <https://issuu.com/oecd.publishing/docs/south-africa-oecd-economic-outlook-projection-note> Date of access: 28 Apr. 2023.

Pippin, S. 2020. Tax systems across the world: A comparison. *International Business Blog* (Nevada). 21 July. <https://www.unr.edu/business/international/blog/tax-systems> Date of access: 12 Feb. 2023.

Sanders, S.L. 2020. *The tax implications for expatriates following the amendment of the Income Tax Act*. <http://repository.nwu.ac.za/handle/10394/36775> Date of access: 02 May 2022.

SARS. 1999. Double tax agreement between South Africa and Namibia. (Notice 228). *Government Gazette*, 19780, 19 Feb.

SARS. 2013. Interpretation note: no. 72 Right of use of motor vehicle. www.sars.gov.za; Date of access: 01 May. 2025

SARS. 2015. *Income tax guide on the taxation of foreigners working in South Africa (2014/15)*. www.sars.gov.za; Date of access: 19 Feb. 2023.

SARS. 2018a. *Interpretation Note 4 (Issue 5) Act: Income Tax Act 58 of 1962 section: Section 1(1) subject: Resident: definition in relation to a natural person - physical presence test*. www.sars.gov.za. Date of access: 18 Jun. 2022.

SARS. 2018b. *Interpretation note 104: Exemption - Foreign pensions and transfers*. www.sars.gov.za; Date of access: 31 May. 2025.

SARS. 2020a. *Frequently Asked Questions Foreign Employment Income Exemption (Section 10(1)(o)(ii) of the Income Tax Act, 1962)*. www.sars.gov.za; Date of access: 15 Apr. 2022.

SARS. 2020b. *Subsistence allowance foreign travel*. <https://www.sars.gov.za/wp-content/uploads/Docs/PAYE/Tables/2020/PAYE-GEN-01-G03-A02-Subsistence-Allowance-Foreign-Travel-External-Annexure.pdf> Date of access: 18 Jun. 2022.

SARS. 2020c. *Frequently Asked Questions foreign employment income exemption (Section 10(1)(o)(ii) of the Income Tax Act, 1962)*. <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-IT-G29-PIT-FAQs-Foreign-Employment-Income-Exemption.pdf> Date of access: 07 May 2022.

SARS. 2021a. *Interpretation Note 16 (Issue 4) Act: Income tax act 58 of 1962 section: section10(1)(o)(ii) subject: Exemption from income tax: Foreign Employment income Preamble*. www.sars.gov.za. Date of access: 05 Jun. 2023.

SARS. 2021b. *Interpretation Note 14 (Issue 5) Act: Income tax act 58 of 1962: section8(1)(a); 8(1)(b) and 8(1)(c) and paragraph 1 of the Fourth Schedule: Allowance, advances and reimbursements*. www.sars.gov.za.

SARS. 2022. *Interpretation Note 18 (Issue 5): Rebate and deduction for foreign taxes on income*. www.sars.gov.za.

SARS. 2023. *Tax Administration Laws Amendment Act 18 of 2023*. www.gpwonline.co.za.

SARS. 2024. *Guide for employers in respect of fringe benefits external guide*. www.sars.gov.za; Date of access: 22 Mar. 2024

SARS. 2025a. *Individual deductions*. <https://www.sars.gov.za/individuals/i-need-help-with-my-tax/your-tax-questions-answered/individual-deductions/> Date of access: 31 May 2025.

SARS. 2025b. *Guide for employers in respect of employee's tax (2025)*. www.sars.gov.za; Date of access: 01 May. 2025

SARS. 2025c. *Record keeping South African Revenue Service*. <https://www.sars.gov.za/client-segments/record-keeping/> Date of access: 04 Oct. 2025.

Saunders, M., Lewis, P. & Thornhill, A. 2019. *Understanding Research Philosophy and Approaches to Theory Development. Research Methods for Business Students*.

Schussler, M. & Fraser, L. 2021. *SA needs expansion in remittances from our own people working abroad*. (BusinessDay, 13 November). <https://www.businessday.co.za/bd/opinion/2021-11-13-sa-needs-expansion-in-remittances-from-our-own-people-working-abroad/> Date of access: 31 Mar. 2025.

Sebashe, K., Erasmus, H.L. & Erasmus, M.M. 2021. A case study review and reasonability assessment of the foreign employment income tax exemption threshold in section 10(1)(o)(ii) of the Income Tax Act. *South African Journal of Accounting Research*, (March, 25):1-22.

Streefkerk, R. 2019. *Qualitative vs. Quantitative Research | Differences, Examples & Methods*. Scribbr. <https://www.scribbr.com/methodology/qualitative-quantitative-research/> Date of access: 24 Apr. 2023.

Taekema, S. 2018. Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice. *Law and Method*, 2018(2):1-17.

Uddin, M.N. & Hamiduzzaman, M. 2011. The Philosophy of Science in Social Research. *The Journal of International Social Research*, 2(6):654–664.

Van Heerden, L., Stiglingh, M., Koekemoer, A., Wilcocks, J.S. & van der Zwan, P. 2025. Silke: South African Income Tax. In: *Silke: South African Income Tax*.

Vaquero, N.Á. 2013. Five Models of Legal Science. *Open Edition Journals*, (19):53–81.

Van Hoecke, M. 2015. Methodology of Comparative Legal Research. *Law and Method*. (12):135.

Van Rooy, N. 2021. The tax implications of the amendment of section 10(1)(o)(ii) of the Income Tax Act 58 of 1962. Tshwane: University of Pretoria.
<https://repository.up.ac.za/handle/2263/83550> Date of access: 04 Mar. 2023.