SOUTH AFRICAN REVENUE SERVICE

GUIDE ON THE TAXATION OF FOREIGNERS WORKING IN SOUTH AFRICA (2010/11)

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South African Revenue Service

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Guide on the Taxation of Foreigners working in South Africa

Foreword

The purpose of this guide is to inform foreigners working in South Africa about their normal tax commitments.

This guide does not attempt to reflect on every scenario that could possibly exist but does attempt to provide clarity on the majority of issues that are likely to arise in practice. Issues not specifically addressed may be taken up with the SARS National Contact Centre, or your nearest branch office.

This guide is not meant to deal with the precise technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. It is not a binding general ruling in terms of section 76P of the Income Tax Act 58 of 1962 (the Act). Should an advance tax ruling, that is, a binding general ruling, binding private ruling or binding class ruling be required, you may visit the SARS website for the application procedure.

Should you require additional information, you may –

- visit your local SARS branch office;
- visit the SARS website at www.sars.gov.za;
- contact your own tax advisors;
- if calling locally, contact the SARS National Contact Centre on 0800 00 7277; or
- if calling from abroad, contact the SARS National Call Centre on +27 11 602 2093 between the hours of 08h00 and 16h00, South African time.

Comments on this guide may be sent to **policycomments@sars.gov.za**.

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1. Introduction

The purpose of this guide is to inform individuals who are not South African residents (foreigners) about their normal tax commitments regarding income received by or accrued to them from a source within or deemed to be within South Africa. It deals mainly with employment income earned.

Normal tax in South Africa is governed by the provisions of the Income Tax Act 58 of 1962 (the Act). In terms of the income tax system in South Africa –

- the income received by or accrued to persons other than residents (i.e. non-residents or "**foreigners**") from a source within or deemed to be within South Africa is subject to normal tax in South Africa; and
- the worldwide income received by or accrued to South African residents ("**residents**") is subject to normal tax in South Africa.

Therefore, foreigners working in South Africa will be liable for normal tax on their income earned in South Africa.

Although this guide deals with income tax commitments, it is important to note that other requirements need to be met when a foreigner wishes to work in South Africa. A work permit, for example, will be required and is issued by the Department of Home Affairs. Further information regarding the various types of work permits is available on the Department of Home Affairs website **www.home-affairs.gov.za**.

2. Possibility of becoming a resident

As the tax status of a resident and a foreigner may differ, it is important for a foreign employee to determine his or her status. Two separate tests are applicable to determine whether or not a foreigner is a resident of South Africa for tax purposes, namely –

- the **"ordinarily resident"** test, where he or she is ordinarily resident in South Africa; or
- the **"physical presence"** test, where he or she is not at any time during the relevant year of assessment (tax year) ordinarily resident in South Africa, but he or she was physically present in South Africa for a specific period or periods.

The above tests are in line with international tax trends.

2.1 Ordinarily resident test

This is usually the first test to determine whether the foreigner is a resident of South Africa. The main aspect in this regard is to determine if his or her **permanent home**, to where he or she will normally return, is in South Africa. If so, he or she will be regarded as a resident for tax purposes.

For more information regarding the concept of **"ordinarily resident"** see Interpretation Note No. 3 *"Resident: Definition in relation to a natural person – ordinarily resident"* – 4 February 2002 available on the SARS website **www.sars.gov.za**.

2.2 Physical presence test

This test is **time-based** and is only applicable to an individual who has not been considered ordinarily resident in South Africa during the relevant tax year.

This test must be done annually to determine whether the foreigner is a resident for the tax year under consideration. The test consists of three requirements, that is, the foreigner must be physically present in South Africa for a period or periods exceeding –

- 91 days in aggregate during the relevant tax year under consideration;
- 91 days in aggregate during each of the five tax years preceding such tax year under consideration; and
- 915 days in aggregate during those five preceding tax years.

In terms of this test, the foreigner who is not ordinarily resident in South Africa only becomes a resident for normal tax purposes as from the first day of the relevant tax year if he or she is physically present in South Africa for the periods as set out above.

A day includes a part of a day, but does not include any day that the foreigner is in transit through South Africa between two places outside South Africa where he or she does not formally enter South Africa –

- through a port of entry as defined in the Immigration Act 13 of 2002 ("Immigration Act"); or
- at any other place as may be permitted by the Director-General of the Department of Home Affairs or the Minister of Home Affairs in terms of the Immigration Act.

A foreigner who became a resident as a result of the physical presence test and who is absent from South Africa for a continuous period of at least 330 full days after the day on which he or she ceased to be physically present in South Africa, will be deemed not to have been a resident as from the day on which he or she ceased to be physically present in South Africa, that is from the day following the day on which he or she left South Africa.

Note: A foreigner who is deemed to be exclusively a resident of another country for purposes of a tax treaty is excluded from the definition of "resident".

For more information regarding the physical presence test, see Interpretation Note No. 4 (Issue 3) *"Resident: Definition in relation to a natural person (physical presence test)"* – 8 February 2006, available on the SARS website.

3. Income received or accrued from employment

A foreigner is subject to normal tax on his or her income that is received by or accrued to him or her from a source within or deemed to be within South Africa. He or she will pay normal tax at the same rate as a resident and is generally entitled to the same deductions and rebates as a resident.

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

The tax position of a foreign employee may, however, be affected by an agreement for the avoidance of double taxation between South Africa and the government of the foreign country where the foreign employee is regarded as a resident for tax purposes.

4. Avoidance of double taxation

A foreigner who earns employment income from a source within or deemed to be within South Africa, and who is a resident of another country, may be liable for normal tax both in South Africa and in the country of residence.

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

The precise terms of these agreements may vary from country to country and it is, therefore, not possible to give details of each DTA here. The relevant DTAs are available on the SARS website.

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

As a general guideline only, a foreigner may expect relief from the taxation of employment income in terms of the DTAs in the circumstances listed below:

4.1 Temporary employment in the private sector

The employment income of a foreigner will generally be subject to normal tax in South Africa if a DTA has been concluded with a foreign country. However, if all three of the following requirements are met, the income will not be subject to normal tax in South Africa:

- The foreigner is physically present in South Africa for a period or periods in aggregate **not** exceeding 183 days in any 12-month period (not necessarily a tax year).
- The remuneration is paid by, or on behalf of, an employer who is not a resident of South Africa.
- The remuneration is not borne by a **"permanent establishment"** that the employer has in South Africa.

A **"permanent establishment"** means, in essence, a fixed place of business through which the business of the employer is wholly or partly conducted.

Example 1 – Temporary employment in the private sector

Facts:

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

Result:

- South Africa has no right to tax the remuneration in terms of the DTA with the UK as the – foreigner is in South Africa for a period <u>not</u> exceeding 183 days in aggregate in any 12 month period; and
- remuneration is paid by an employer who is not a resident of South Africa; and

- remuneration is not borne by a permanent establishment which the employer has in South Africa.

4.2 Employees of foreign governments working in South Africa

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

- stationed in South Africa for the sole purpose of holding office in South Africa as an official of a foreign government; and
- not ***ordinarily*** resident in South Africa (note that the term "ordinarily resident" carries with it some kind of residential permanency).

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

In the event that the employee applies for and receives a permit for permanent residence in South Africa, the exemption no longer applies and liability for normal tax arises from the date of issue of such permit. This is due to residential permanency resulting in the employee being regarded as *ordinarily* resident. Furthermore, where a foreign government carries on business activities in South Africa, the remuneration payable to its employees could also be taxable in South Africa. The taxability of this income may be affected by a DTA.

Foreign employees who are not exempt from tax in the above circumstances must register as provisional taxpayers by visiting their nearest SARS branch office or by requesting registration documentation via the SARS National Contact Centre.

South African nationals who are employed by foreign diplomatic or consular missions in South Africa (that is, locally-recruited employees) are not exempt from normal tax on their remuneration.

5. Tax threshold

An employee who receives gross income in excess of a specific amount (threshold) in a tax year is liable for normal tax. This amount for the 2011 tax year is R57 000 if he or she is under the age of 65 and R88 528 if he or she is 65 years of age or older. Once these thresholds have been exceeded, the specific rates where the income is subjected to normal tax depend on the amount of taxable income received by or accrued to the employee. The rates of tax (generally referred to as 'marginal' or 'statutory' rates) are based on a sliding scale, meaning that the normal tax increases as the taxable income increases.

The final amount of normal tax payable by a taxpayer can only be calculated once the taxable income earned by him or her for the full tax year has been determined. This is normally only carried out after the end of the tax year, once his or her annual income tax return has been processed and an assessment has been issued.

5.1 Tax rates for individuals: 2010/11

TAXABLE INCOME			RATES OF TAX				
R		**R**	**R**				**R**
0	–	140 000			18%	of each R1	
140 001	–	221 000	25 200	+	25%	of the amount above	140 000
221 001	–	305 000	45 450	+	30%	of the amount above	221 000
305 001	–	431 000	70 650	+	35%	of the amount above	305 000
431 001	–	552 000	114 750	+	38%	of the amount above	431 000
552 001	–	and over	160 730	+	40%	of the amount above	552 000

Rebates	Primary rebate	R10 260
	Secondary rebate (persons of 65 years or older)	R5 675

6. Year of assessment (tax year)

A tax year in South Africa for a person (other than a company) covers a period of 12 months that begins on the first day of March of the one year and ends on the last day of February of the following year. The 2011 tax year commenced on 1 March 2010 and ended on 28 February 2011.

7. Registration as a taxpayer and submission of an income tax return

7.1 Registration

A person who becomes liable for income tax must register as a taxpayer at SARS within 60 days after becoming liable for tax.

A foreign employee who only received net remuneration (remuneration less pension fund contributions, retirement annuity fund contributions and in the case of a person aged 65 years or older, any contributions to a medical scheme) below R60 000 will generally be subject to a withholding tax known as “Standard Income Tax on Employees” (SITE) if his or her remuneration is paid or payable by a South African employer or a South African agent of a non-resident employer having authority to pay remuneration. A foreign employee who falls under this category is not required to register for income tax purposes. However, he or she may need to register for provisional tax purposes if his or her remuneration is paid or is payable by a non-resident employer. (See **13**).

A foreign employee, who is required to be registered for income tax purposes, but has not already done so, must complete an IT77 registration form, obtainable from any SARS branch office, by referring to the SARS National Contact Centre or by accessing the application form from the SARS website **www.sars.gov.za**.

7.2 Submission of an income tax return

An employee who is a foreigner must submit an income tax return (ITR12) if he or she receives income from a South African source that exceeds the annual tax threshold referred to in **5** above.

The tax season for the submission of income tax returns (ITR12) for the 2011 year of assessment opened on 1 July 2011**.** The deadline dates for the submission of ITR12 returns are as follows –

30 September 2011	Deadline for the **manual** submission of **individual tax returns**.
25 November 2011	Deadline for **branch and eFiling** submission of individual tax returns for **non-provisional taxpayers**.
31 January 2012	Deadline for **branch and eFiling** submission of individual tax returns for **provisional taxpayers**.

A foreign employee who is required to submit an annual income tax return must request the ITR12 return from SARS. This return can be tailored to meet that individual's specific tax needs. In this regard SARS will mail a Request for Income Tax Return (known as an ITRR) to the individual for completion, together with a quick guide on how to complete the request. Note that it will be important to ensure that all address particulars have been updated and that SARS has the very latest information, where applicable. The Request for Income Tax Return must be completed and returned to the local SARS office

SARS promotes the electronic submission of tax returns, as it allows for the quick generation and submission of tax returns, allows for easy payments and allows for interaction with SARS in a secure online environment. If a foreigner wishes to file electronically or make use of a tax practitioner to do so, the ITR12 return may be obtained from the SARS eFiling website **www.sarsefiling.co.za** and can be personalised to suit the individual's unique tax requirements. This is carried out by way of completing an online tax "wizard" that operates in a similar fashion to the ITRR. The tax return can also be requested by visiting any SARS branch office.

A foreigner who earns remuneration of less than R120 000 a year, who has a single employer and who has no additional income to declare or deductions to claim, will not be required to submit an income tax return for the 2011 year of assessment.

7.3 Pre-populated return (requested manually via an ITRR)

Once a **Request for Income Tax Return** has been received, SARS will –

- customise the ITR12 according to the complexity of the foreign employee's tax affairs (that is, an income tax return will only contain the relevant fields for the completion of the return to suit his or her specific needs); and
- pre-populate the ITR12 with your personal information, as well as with the information contained in the foreign employee's IRP5 or IT3(a) certificate(s) (for example, employment income, pension fund contributions and tax deducted).

On receipt of the pre-populated tax return, the foreign employee must –

- verify the pre-populated information on the ITR12 against his or her IRP5/IT3(a) certificate(s);
- make changes to (or include) personal information that is new or may have changed;
- complete the remaining relevant fields (for example, additional income and deductions);
- request a revised tax return either *via* eFiling, by visiting your local SARS branch office or by contacting the SARS National Contact Centre on 0800 00 SARS (7277) if some of the pre-populated information on his or her tax return is incorrect or the return does not make provision for all the fields required; and
- submit the return:
    - ➢ manually to SARS, via mail or by placing the return in one of the designated drop boxes at the nearest branch office or designated drop-off area; or
    - ➢ electronically to SARS via the eFiling website..

Note:

(1) The tax return (if submitted manually) must be signed by the foreign employee. Failure to do so will result in your return being rendered outstanding, whereby penalties could accrue.

(2) To verify the pre-populated information in the return and to complete any remaining portions on the tax return, the foreign employee will require the following documentation:

- ➢ IRP5/IT3(a) certificate(s)
- ➢ Certificates he or she received for local interest income earned in South Africa
- ➢ Any other documentation relating to income received or accrued in South Africa, such as remuneration that may not have been pre-populated, trade income and investment income
- ➢ Details of medical expenses paid and medical scheme contributions made
- ➢ Any other documentation relating to the allowable deductions he or she wishes to claim

SARS requires that **ALL** relevant documents be retained for a period of five years from the date upon which the foreign employee's tax return was received by SARS and that it be produced should the foreign employee's tax return be subject to an inspection or audit.

You are advised to visit your local SARS branch office or to alternatively contact the SARS Contact Centre on 0800 00 7277 if you have requested an income tax return, but have not received it at least two months before the final closing date for submission.

8. Summary of different types of employment income

Generally, income from employment can be divided into salary, allowances and taxable benefits. These three broad categories are discussed below.

8.1 Salary

This includes cash remuneration such as salaries, wages, bonuses, overtime pay and leave pay.

8.2 Allowances

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

8.3 Taxable benefits

A taxable benefit that is not in cash, received by or accrued to an employee, is taxable if it is received by virtue of employment and can be valued in terms of the legislation contained in the Seventh Schedule to the Act.

Examples of taxable benefits include –

- the acquisition of an asset from the employer at a value that is less than market value;
- the use of an asset for private or domestic purposes either free of charge or for a consideration less than the value of such use;
- free or cheap services provided by the employer;
- free or cheap residential accommodation provided by the employer;
- free or cheap meals or refreshments or vouchers provided by the employer;
- subsidy paid by the employer in respect of interest or capital repayment;
- low interest or interest-free loans from the employer;
- the settlement of a debt on an employee's behalf by the employer;
- medical scheme contributions made by the employer; and
- medical and dental services incurred by the employer that is provided to the employee, his or her spouse, children, relatives and dependants.

For further information on taxable benefits see *AS-PAYE-05-G1 Guide for Employers* available on the SARS website.

9. Specific types of taxable benefits

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

9.1 Residential accommodation

Residential accommodation provided in South Africa to a foreign employee will be taxable in the hands of the foreign employee for the duration of his or her employment in South Africa. However, paragraph 9(7A) of the Seventh Schedule to the Act provides for an exclusion whereby no value is placed on the accommodation provided by the employer to the foreign employee while away from his or her usual place of residence outside South Africa –

- for a period ***not exceeding two years*** from the date of arrival of that foreign employee in South Africa, for the purposes of performing the duties of his or her employment; or
- if the accommodation is provided to that foreign employee during the tax year and that employee is physically present in South Africa for a period of ***less than 90 days*** in that year.

However, the above exclusions do not apply –

- if the foreign employee was present in South Africa for longer than 90 days during the tax year immediately preceding the date of arrival referred to above; or

to the extent that the cash equivalent of the value of the taxable benefit derived from the occupation of the residential accommodation exceeds an amount equal to R25 000 per month during which the benefit is granted. The residential accommodation supplied by the employer is valued at the greater of –

- the cost borne by the employer, less any amount paid by the employee; or
- by using the formula prescribed in paragraph 9(3) of the Seventh Schedule to the Act, which is based on a percentage of the foreign employee's remuneration, less any amount paid by such employee.

For purposes of paragraph 9(7A) and 9(7B), if such greater amount is less than R25 000, no value should be placed on the accommodation provided. To the extent that such greater amount is greater than R25 000, the excess is taxable.

Note: The market-related rental value of the accommodation may be taken into account for normal tax purposes where, by reason of the situation, nature or condition of the accommodation or any other factor, the market-related rental value of the accommodation is lower than the amount arrived at by way of the above formula. In such an instance, the employer must approach the local SARS office to confirm whether the market-related rental value may be used. An example is where the employer enters into an arm's-length lease agreement with an independent third party landlord. In such a case, the employer or employee may apply to SARS to use the rental payable by the employer as the value of the benefit.

Example 2 – Taxable benefits: Residential accommodation

Facts:

P (a foreign resident) was sent by his employer to assist one of their branches in South Africa for a five-year term with effect from March 2010. He has never been to South Africa before. P earns R200 000 per month and the rental costs to the employer for the accommodation is R30 000 per month.

Question:

What are the tax implications for P?

Result:

Since P was not present in South Africa in the 2010 tax year, P will qualify for an exemption in the first two years up to a maximum of R25 000 per month.

Actual costs incurred: R30 000 per month.

Value as per formula: (R2 400 000 – R54 200) = R2 345 800 x 19/100 x 12/12 = R445 702 per year = R37 142 per month.

Thus, according to subparagraph 9(7B), R12 142 (R37 142 – R25 000) must be taxable on a monthly basis.

If we take the example used above where the employee earns an annual salary of R2 400 000 and the costs of his accommodation is R20 000 per month, the cash equivalent of the monthly taxable benefit is still R37 142 as per the formula and the excess of R25 000 is still taxable. An amount of R12 142 (R37 142 – R25 000) should be taxable.

9.2 Use of a motor vehicle

A foreign employee who is granted the use of a motor vehicle by his or her employer is deemed to have received a taxable benefit based on the **"determined value"** of the motor vehicle. The taxable benefit for the 2011 tax year is calculated at 2.5% per month of the determined value of the motor vehicle.

Determined value in broad terms means –

- where the employer is the owner of the motor vehicle, the original cost to the employer (excluding VAT);
- where the motor vehicle is held under a lease, it is the retail market value thereof the first time the employer obtained the right of use thereof; and.
- in any other case, the market value of the vehicle at the time the employer first obtained the motor vehicle or the right of use of the motor vehicle.

The taxable benefit of a second (or further) motor vehicle that is made available to the foreign employee or to his or her family, and that is not used primarily for business purposes, is calculated as follows:

- 2.5% per month on the value of the vehicle with the highest determined value; and
- 4% per month on the other vehicle(s).

Exclusions

No taxable benefit will arise in the hands of the foreign employee if –

(a)
- the vehicle is available and used by employees of the employer in general;
- the private use by the employee is infrequent or incidental to its business use; and
- the vehicle is not normally kept at or near the residence of the employee when it is not in use outside of business hours;

or

(b) • the employee is regularly required to use the vehicle for the performance of his or her duty outside his or her normal working hours; and

- the private use consists solely of travelling between his or her place of residence and his or her place of work, or the private use is infrequent or incidental to business use.

9.3 Personal use of business cellular phones and computers

A foreign employee is deemed to have received a taxable benefit if he or she is granted the right of use of an asset by his or her employer.

Exclusions

No value is placed on the private or domestic use if the asset consists of a cellular phone or computer that the employee uses **mainly** for the purposes of the employer's business. The term **"mainly"** has been interpreted to mean usage in excess of 50%.

9.4 Free or cheap services

Any service rendered to the foreign employee at a cost to the employer (whether by the employer or by some other person), where that service has been used by the employee for his or her private or domestic purposes and no consideration (compensation) has been given by the employee or the consideration is less than the value of such private or domestic use, will be deemed to be a taxable benefit. This would include, for example –

- the monthly subscription and call charges payable by an employer to a telecommunications service provider (but see the possible exclusion below); and

the cost of tax services rendered to the employee by a third party, at the employer's cost.

Exclusions

No value is placed on the private or domestic use of communication services (for example, access and call charges to a telecommunication service provider) which the foreign employee uses mainly for the purposes of the employer's business. For example, if the employer's cellular phone is used mainly for business purposes, the portion of the bill that relates to private use will not result in a taxable benefit in the hands of the foreign employee

9.5 Relocation costs

Payments by an employer to cover expenses such as –

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

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

The following expenses will be exempt in the hands of the foreign employee:

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

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

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

A foreign employee who may be required to sell personal assets upon his or her temporary relocation to South Africa and who is reimbursed by his or her employer for a loss suffered as a result of such sale will be liable for tax in South Africa on the amount so paid by his or her employer.

9.6 Home (domestic) security costs

Security costs incurred in respect of a person's private safety (including his or her family) at his or her home are not deductible for normal tax purposes as they are expenses of a private nature and are prohibited deductions against employment income. The payment of such costs by an employer would be fully taxable as a benefit in the hands of the foreign employee.

9.7 Employees' tax paid on behalf of an employee

Certain employers contractually agree to settle an employee's tax liability whilst that employee is on secondment in a foreign country. The objective is to ensure that the seconded employee remains tax-neutral and is in no worse position than if the secondment had not been accepted. This practice, that encourages employees to accept secondment assignments in foreign countries, is known as tax equalisation.

A taxable benefit arises if an employer pays part or all of the foreign employee's South African tax liability. Should the employer also choose to settle the normal tax on this benefit, a further taxable benefit will arise. This will continue on a recurring basis until a final normal tax liability is determined.

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

a)	Calculate the tax on the "tax-free" income.
b)	Multiply that tax by 100 ÷ (100 – marginal tax rate applicable to the employee).
c)	Add the tax to the "tax free" salary.
d)	If this total of salary plus tax falls within the same tax bracket as the "tax-free" salary, no further calculation is required. If it falls into a higher tax bracket, go to the next step.
e)	Calculate the tax on the total salary plus tax from step (c).
f)	Subtract the tax calculated in step (b).
g)	Perform the same calculation as step (b) on the result of step (f).
h)	Add the results of steps (b) and (g) to give the tax benefit payable by the employer.

Example 3 – Normal tax liability of a foreign employee

Facts:

Y (below the age of 65 years) is not a South African resident. For the 2010/11 tax year Y is employed by a South African company who bears the South African normal tax liability on taxable income of R120 000. The amount of net normal tax payable on R120 000 (after accounting for an annual rebate) is R11 340. The marginal tax rate is 18%. Is there any taxable benefit?

Result:

The amount of normal tax on taxable income and normal tax on the benefit which the employer must pay on behalf of Y will be determined as follows:

a) The amount of normal tax payable on R120 000 is R11 340

b) R11 340 x 100/100 – 18 (marginal rate applicable to employee) = R13 829

c) Add the tax to "tax free" salary: R120 000 + R13 829 = R133 829 (New total salary)

d) R133 829 falls within the same tax bracket (Below R140 000), thus no further calculations required.

Example 4 – Normal tax liability of a foreign employee

Facts:

Y (below the age of 65 years) is not a South African resident. For the 2010/11 tax year Y is employed by a South African company who bears the South African normal tax liability on taxable income of R290 000. Is there any taxable benefit?

Result:

a) The amount of net normal tax payable on R290 000 is R55 890

b) R55 890 x 100/100 – 30 (marginal rate applicable to employee) = R79 843

c) Add the tax to the "tax free" salary: R290 000 + R79 843 = R369 843 (New total salary)

d) R369 843 falls within a higher tax bracket (above R305 000), so progress to the next step.

e) Tax on salary as calculated in (c) above R369 843 = R83 085

f) Subtract tax calculated in (b) above R83 085 – R79 843 = R3 242

g) Perform same calculation as in step (b) on the result of step (f). R3 242 x 100/100 – 35 (marginal rate applicable to employee) = R4 988

h) Add the results of step (b) and (g) to provide the taxable benefit payable by the employer: R79 843 + R4 988 = R84 831

Total taxable income is R290 000 + R84 831 = R374 831. Tax is R84 831, effectively leaving the employee with an amount of R290 000 which is "tax free".

10. Tax deductions that foreign employees may claim

10.1 Pension fund contributions

A foreign employee's contributions to a foreign pension fund during his or her period of employment in South Africa will generally not qualify as a deduction for purposes of calculating his or her South African normal tax liability. Certain DTAs provide exceptions to this rule.

Only contributions (limited to 7.5% of pensionable salary) made to a South African-approved pension fund will be taken into account in determining the allowable pension deduction.

10.2 Retirement annuity fund contributions

A foreign employee's contributions made to a South African-approved retirement annuity fund will be taken into account as a deduction.

The deduction is limited to the greater of –

- 15% of non-pensionable salary income (excluding any retirement lump sum benefit and retirement lump sum withdrawal benefit) less deductions or assessed loss admissible against such income; or
- R3 500 less current pension fund contributions allowed as a deduction; or
- R1 750.

10.3 Medical expenses

Persons below the age of 65 years

A foreign employee who is below the age of 65 years may claim the following expenses as a deduction:

a) Any contribution to a registered medical scheme in respect of him or herself, his or her spouse and any dependant, as long as it does not exceed –

   (i) R670 per month in respect of him or herself; or

   (ii) R1 340 per month in respect of him or herself and one dependant; or

   (iii) R1 340 per month in respect of him or herself and one dependant, plus R410 per month for every additional dependant thereafter.

and

b) The total of –

   (i) any contributions made by the foreign employee to a registered medical scheme in respect of himself, his spouse and dependant which has not been allowed as a deduction under (a) above; and

   (ii) actual qualifying medical expenses (including physical impairment expenses) paid by him and not recoverable from the medical scheme in respect of himself, his spouse, qualifying children and any dependant admitted as a dependant in terms of his medical scheme or fund at the time such expenses were paid; and

   (iii) actual qualifying medical expenses (including physical impairment expenses) paid by him and not recoverable from the medical scheme in respect of himself, his spouse, qualifying children and any dependant admitted as a dependant in terms of his medical scheme or fund at the time such expenses were paid; and

as exceeds 7.5% of the foreign employee's taxable income before allowing any deduction under (b) above (that is, 7.5% of taxable income after allowing (a) above).

Handicapped persons

A foreign employee, his or her spouse or his or her child who falls within the ambit of the definition of a person with a **"disability"** as defined in section 18(3) of the Act (see below), will be allowed to deduct all contributions to a registered medical scheme, qualifying medical expense and physical disability expenses necessarily incurred and paid.

For the purposes of section 18, "disability" means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation -

a) has lasted or has prognosis of lasting more than one year; and

b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

Persons aged 65 years or older

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

For more information refer to the *Tax Guide on the Deduction of medical, physical impairment and disability expenses (Issue 3)* available on the SARS website.

10.4 Repayable benefits

Should a foreign employee be required to repay to the employer any amount that was previously included in his or her taxable income, the amount repaid can be claimed as a deduction in the tax year in which it is repaid. A deduction is only claimable on assessment. For example, if a foreign employee is paid remuneration of R10 000 in year 1 and for some reason he or she is required to pay back the full amount to the employer in year 2, a deduction of R10 000 can be claimed on assessment in year 2.

10.5 Other allowable deductions

The following include other allowable deductions:

- Legal expenses under certain (in practice very limited) qualifying circumstances.
- Wear and tear in respect of certain assets purchased by the employee, such as a computer required for purposes of employment.
- Home office expenses relating to rental, repairs and expenses incurred in relation to a dwelling house or domestic premises under certain qualifying circumstances.
- Insurance policy premiums against the loss of income as a result of illness, injury, disability or unemployment, provided the amounts payable under the policy will constitute income.
- Bad and doubtful debts incurred in respect of employment. For example, salary income taxed in the previous tax year that was never paid. The outstanding salary

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

- Donations to approved bodies carrying on certain public benefit activities as set out in Part II of the Ninth Schedule to the Act. The deduction is limited to 10% of the foreign employee's taxable income as calculated before allowing donations and medical expenses. A deduction may only be allowed if the claim is supported by a receipt (typically a section 18A certificate) issued by the approved body.

Note: A foreign employee cannot claim deductions for private or domestic expenses.

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

South African employers must deduct employees' tax from their employees' income. In the case of a foreign employer who is not a resident of South Africa, employees' tax should be deducted by an agent (or representative) who has the authority to pay such remuneration.

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

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

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

A South African employer or "representative employer" is obliged to issue an employees' tax certificate (IRP5) to each employee to whom employment income has been paid or has become due, and where employees' tax has been deducted.

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

Example 5 – Employees' tax deduction

Facts:

Y is not a South African resident (foreigner) and is employed by a foreign company to render services to its branch in South Africa for a period of two years. The branch pays Y a monthly salary. What are the employees' tax implications?

Result:

The South African branch must deduct employees’ tax on remuneration paid or payable to Y, and provide him with an IRP5 tax certificate.

12. UIF obligations of the South African employer or “representative employer”

In terms of the Unemployment Insurance Contributions Act 4 of 2002, a foreign employee and his or her employer, is exempt from contributing to UIF if –

- that employee has entered South Africa for the purpose of carrying out a contract of service, apprenticeship or learnership within South Africa; and
- upon the termination of the contract, the employer is required to repatriate the employee or the employee is required to leave South Africa –
  - in terms of the law;
  - in terms of the contract of service, apprenticeship or learnership (as the case may be); or
  - in terms of any agreement or undertaking.

Where the above requirements are not met, both the employer or “representative employer” and the foreign employee will have an obligation to make Unemployment Insurance Fund (UIF) contributions.

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

A foreign employee who is taxable on employment income in South Africa, but who is being remunerated by a foreign employer who does not have an agent having the authority to pay remuneration in South Africa, must pay provisional tax. He or she must also complete an IT 77 form to register as a taxpayer (see **7**).

Provisional tax is not a separate tax. Provisional tax payments are advance payments against a taxpayer’s estimated final tax liability for the year. These payments are usually payable if a foreign employee earns taxable income that is not subject to employee’s tax, for example, rental or interest income, or if there is no South African employer.

Two provisional tax payments are required:

- The first provisional tax payment, due on or before the last day of August each year.
- The second provisional tax payment, due on or before the last day of February of each year.

An optional third payment may be made after the end of the tax year (but before the end of September of that year) to prevent the accrual of interest on underpayment of provisional tax.

In certain circumstances, additional taxes, penalties and interest are levied if a provisional taxpayer –

- underestimates the provisional tax liability;

- pays provisional tax late; or
- fails to submit a provisional tax return.

For more details on these charges, please refer to the *AS-IT-PT-01-G1 Provisional Tax – External Reference Guide (with Annexures)* available on the SARS website www.sars.gov.za.

14. Summary of other possible taxable income

14.1 Interest income

The Act makes specific provision for the exemption of certain types of interest received by or accrued to any person who is a foreigner. In terms of this exemption, the full amount of the interest is exempt from tax. This exemption is not applicable, in the case of a foreigner, if he or she was –

- physically present in South Africa for longer than 183 days in aggregate during that the tax year; or
- at any time during the tax year carrying on a business through a permanent establishment in South Africa.

14.2 Dividends

In terms of the Income Tax Act, dividends received by or accrued to foreigners from a source within South Africa (resident companies) are exempt from tax. Dividends from collective investment schemes are also exempt in the hands of foreigners in the circumstances described in **14.1**.

14.3 Rental income

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

14.4 Royalties

In the case of foreigners, "know-how" payments received by or accrued to them for the use, or right of use, of intellectual property or the grant of the permission to use such property in South Africa, are subject to a withholding tax of 12% (or a rate determined in a relevant agreement for the avoidance of double taxation) of such amount, provided that the 12% withholding tax will not be applicable if such amount is effectively connected with a permanent establishment of him or her in South Africa.

14.5 Capital gains tax ("CGT")

CGT is not a separate tax, but forms part of the income tax system and is a tax on the disposal of capital assets. CGT is only applicable on the disposal or deemed disposal of an asset on or after 1 October 2001.

Non-residents are liable to pay CGT on the taxable capital gain made on the disposal of the following assets:

- Immovable property situated in South Africa (that is, land and buildings) that does not constitute trading stock.
- Any right or interest in immovable property in South Africa (that is a long-term lease);
- Shares in a company where 80% or more of the market value of its net assets comprise immovable property in South Africa, and the non-resident holds directly or indirectly 20% or more of the shares in the company.
- Assets of a permanent establishment (that is, a branch of a foreign company) situated in South Africa.

The taxpayer need not register separately for CGT if registered for income tax. However, if a taxpayer is not registered for income tax purposes, for example, as a result of being a non-resident and receiving no taxable income in South Africa, and an asset is disposed of in South Africa resulting in a taxable capital gain or an assessed capital loss, then the taxpayer must submit an income tax return.

A **capital gain** in respect of the disposal of an asset during a year of assessment equals an amount by which the proceeds received or accrued in respect of the disposal exceed the base cost of the asset.

A **capital loss** in respect of the disposal of an asset during a year of assessment equals an amount by which the base cost of the asset exceeds the proceeds received or accrued in respect of the disposal.

Natural persons and special trusts are entitled to an annual exclusion of R17 500 of capital gains or losses during a year of assessment. In the case where a natural person passed away, the annual exclusion of R17 500 is increased to R120 000 for the year of assessment.

In the case of natural persons and special trusts, only 25% of the net capital gain is included in taxable income when calculating the tax payable. For companies, close corporations and trusts, 50% of the net capital gain is included in taxable income.

Roll over relief or deferral is available where the asset is either disposed of involuntarily and is replaced or is disposed of in order to acquire another similar business asset that qualifies for a capital allowance.

14.6 Withholding of amounts from payments to non-resident sellers of immovable property

With effect from 1 September 2007, a purchaser of immovable property (which has been disposed of for R2 million or more) is obliged to withhold the amounts set out below from the purchase price payable, if the seller of the property is not resident in South Africa:

- 5% of the amount payable, if the non-resident seller is a natural person, or
- 7.5% of the amount payable, if the non-resident seller is a company, or
- 10% of the amount payable, if the non-resident seller is a trust.

The withholding obligation applies to any immovable property situated in South Africa which is owned by a person who is not resident in South Africa. The non-resident seller may apply for a tax directive that no amount (or a reduced amount) be withheld if certain conditions are met. The local SARS branch office should be approached with details of the transaction, should a tax directive be required.

14.7 Business income

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

15. Tax obligations on leaving South Africa

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

16. Value-Added Tax (VAT)

16.1 Introduction

Value-added tax (VAT) is an indirect tax levied in terms of the VAT Act. VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor’s enterprise. A vendor is a person who is registered, or required to register for VAT. The South African VAT is a destination based tax, this means that only the consumption of goods and services in South Africa is taxed. VAT is therefore paid on the supply of goods or services in South Africa as well as on the importation of goods into South Africa. As VAT is levied on an inclusive basis, it has to be included in all of a vendor’s product prices on display in a store or in any price lists, advertisements or quotations.

16.2 Rates of tax

VAT is presently levied at the standard rate of 14% on most supplies and importations, but there is a limited range of goods and services that are either exempt, or that are subject to tax at the zero rate (for example, exports and certain basic foodstuffs are taxed at 0%). Certain goods are also exempt from VAT on importation and the importation of services is only subject to VAT where the importer is not a vendor, or where the services are imported for private or exempt purposes.

16.3 Foreigners working in South Africa

VAT borne by foreigners whilst working in South Africa may be refunded by the VAT Refund Administrator (VRA) if the tax was incurred on **goods** that were purchased and physically removed by the foreigner within a period of 90 days from the date of departure from South Africa. No refund will apply in respect of any goods or services that have been consumed whilst in South Africa, or if the goods were purchased outside of the 90-day period before departure. The foreigner claiming such a refund must be in possession of valid tax invoices relating to the goods and the goods must be available for inspection upon exiting South Africa. An administration fee of 1.5% of the VAT-inclusive amount of the claim, subject to a minimum of R10 and a maximum of R250, is levied by the VRA for processing the refund.

A VAT refund by the VRA will, therefore, only be considered where **all** of the following requirements are met:

- The purchaser must be a **qualifying purchaser** (that is, a tourist, non-resident, foreign enterprise or a departing foreign diplomat).
- The goods must be **exported within 90 days** from the date of the tax invoice.
- The VAT inclusive total of all **purchases exported at one time must exceed the minimum of R250.**
- The request for a refund, together with the relevant documentation, must be **received by the VRA within three months of date of export**.
- The goods **must be exported through one of the 43 designated commercial ports** by the qualifying purchaser or the qualifying purchaser's cartage contractor.

Where the qualifying purchaser exports the goods, the goods must first be declared to a SARS Customs official at that exit point, before approaching the VRA for a refund. Where the goods are not kept as hand luggage, the tax invoice must be endorsed by the SARS Customs official and be presented to the VRA for a refund, or handed in to a SARS Customs official before departure from the RSA. If the goods are exported via a designated commercial port where the VRA is not present, the qualifying purchaser must apply in writing to the VRA for a refund. This also applies in the case where the qualifying purchaser's cartage contractor exports the goods.

The **documentary requirements** in these circumstances are –

- the original tax invoice;
- a copy of the qualifying purchaser's passport, or in the case of a foreign enterprise, a copy of the trading license, as well as the letter of authorisation and a copy of the authorised person's passport;
- a copy of the invoice issued to the qualifying purchaser by his cartage contractor (where applicable); and
- proof that the qualifying purchaser declared the importation of the goods for customs purposes in the export country.

Where the tax invoice has been endorsed at a designated commercial port where the VRA is not present, the following **additional documentation** must be submitted:

- A copy of the export documentation prescribed under the Customs and Excise Act, bearing an original RSA Customs and Excise endorsement; and
- A copy of the relevant transport documentation indicating that the goods were transported to an export country, for example an airway bill for an export by air or a bill of lading for an export by sea.

For more information, refer to the VRA pamphlet available from all of South Africa's International Airports or the VRA's website **www.taxrefunds.co.za**.

Contact details for the VRA's Head Office are as follows:

Postal address	E-mail addresses	
The VAT Refund Administrator	General	:*info@taxrefunds.co.za*
PO Box 107	Botswana	:*botswana@taxrefunds.co.za*
OR Tambo (Johannesburg) International	Swaziland	:*swaziland@taxrefunds.co.za*
Airport	Namibia	:*namibia@taxrefunds.co.za*
South Africa	Other countries	:*generalqueries@taxrefunds.co.za*
1627		
	Website	:*www.taxrefunds.co.za*
Physical address	**Telephone**	: + 27 87 310 0200
Plot 206/1 High Road	**Facsimile**	: + 27 86 503 9530
Pomona, Kempton Park		

For more information on exports in general, refer to Chapter 10 of the *VAT 404: Guide for Vendors* on the SARS website.

Relief from VAT incurred in the Republic is also granted to certain persons who are accredited with diplomatic status if the expenses meet certain requirements. Typically, these would be expenses incurred for official diplomatic purposes. The relief is granted in the form of a periodic refund and is effected by way of registration for VAT and the submission of returns on which the refundable amount for the period is indicated. This procedure applies to Diplomatic Missions, Consular Posts, international organisations accredited to the RSA Government, Heads of State, Special Envoys & Transferred representatives.

For more details about the refund procedure, refer to *AS-VAT-02 - Quick Reference Guide on Diplomatic Refunds.*

17. Customs duty

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

Customs duty includes anti-dumping and countervailing duties and is levied respectively on goods considered to be dumped in South Africa or on subsidised imported goods. These goods are the subject of trade and industry investigations into pricing and export incentives in the country of origin, and the rate imposed will depend on the result of the investigations.

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

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

17.1 Importation of household effects by immigrants

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

17.2 Motor vehicles

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

17.3 Motor vehicles imported on a temporary basis

Motor vehicles used in South Africa by foreign tourists may be imported under rebate of duty and exempt from VAT for a period within six months from the date of entry or within such further period as the Commissioner may in exceptional circumstances allow (However, it may be subject to a provisional payment being made to Customs to secure the VAT on importation either in part or in full.) After the aforementioned period the motor vehicles must be re-exported.

18. Excise duty

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

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

As liability for excise duty is based on consumption within the borders od South Africa relief from excise duty, in the form of full rebates, is granted where excisable products are exported.

19. Estate duty

A foreigner’s estate is only subject to estate duty to the extent that it consists of certain property of the deceased in South Africa. Property is defined in the Estate Duty Act 45 of 1955 and includes deemed property (for example, life insurance policies and payments from pension funds). The Estate Duty Act, unlike the Act, does not have a definition for the word “resident” and only refers to persons who are “ordinarily resident” or “not ordinarily resident”. It therefore follows that any foreigner who is not ordinarily resident in South Africa, but who became a resident of South Africa in terms of the physical presence test for income tax purposes, is still regarded as a foreigner for estate duty purposes due to the fact that such person is not ordinarily resident in South Africa.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. One such deduction is the value of property in the estate that accrues to the surviving spouse of the deceased. The net value of the estate is then reduced by R3.5 million to arrive at the dutiable amount of the estate, unless the deceased person was the spouse of a previously deceased person, in which case the unused portion of the previously deceased spouse's R3,5 million is available for deduction in the estate of the recently deceased. The rate of estate duty is 20% of the dutiable amount of the estate.

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

20. Transfer duty

Transfer duty is payable in respect of the acquisition of any "property" as defined in the Transfer Duty Act. 40 of 1949. It is payable by the person who has acquired the property, or the person in whose favour, or for whose benefit, any interest in, or restriction upon the use or disposal of property has been renounced. The duty is payable within six months of the date of acquisition of the property and is based on the amount of the consideration payable. This will usually be the purchase price reflected in the agreement, but may also include any other amounts which are paid by the purchaser to third persons for the benefit of the seller. Transfer duty must be paid on the fair market value of the property where no consideration is payable.

The definition of "property" was amended with effect from 13 December 2002 to include shares, members' interest and contingent rights in certain circumstances. The amendment was introduced to counter the avoidance of transfer duty by placing residential property in companies, close corporations and discretionary trusts and the selling of the shares, members' interest and contingent rights instead of the property.

Transfer duty was calculated at the following rates from 1 March 2006 to 22 February 2011:

Person	**Purchase price / Fair market value***	**Rate**
Natural person	On the 1st R500 000	0%
	On the amount that exceeds R500 000 but not R1 000 000	5%
	On the amount in excess of R1 000 000	8%
Person other than a natural person	On the full consideration or fair market value	8%

The fair market value is usually the purchase price (consideration). However, where there is no purchase price, transfer duty is payable on the fair market value.

The current tax rates effective from 23 February 2011 are as follows:

Person	**Purchase price / Fair market value***	**Rate**
All persons	On the 1st R600 000	0%
	On the amount that exceeds R600 000 but not R1 000 000	3%
	On the amount that exceeds R1 000 000 but not R1 500 000	5%
	On the amount that exceeds R1 500 000	8%

The new rates apply to all persons. No distinction is made between natural persons and legal persons as was the case before 23 February 2011.

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty to the extent that the supply is subject to VAT. Therefore the payment of VAT normally takes precedence over the payment of transfer duty where the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor. Where the seller is not a vendor for VAT purposes, transfer duty is payable by the purchaser at the rate as set out in the abovementioned table.

21. Securities transfer tax

Securities transfer tax (STT) is payable at a rate of 0,25% on the higher of the consideration paid or market value on the transfer of all shares in companies incorporated in South Africa as well as foreign companies listed on the South African stock exchange. It is also payable on the transfer of a member's interest in a close corporation.

In the case where securities are transferred, the STT is payable by the transferee (purchaser). Where the securities are cancelled or redeemed, STT is payable by the company or close corporation cancelling or redeeming the shares.

22. Air passenger tax

From 1 October 2009 to date a tax of –

- R80 per passenger is imposed on all passengers departing to Botswana, Lesotho, Namibia and Swaziland; and
- R150 per passenger is imposed on all passengers departing to other international destinations.

23. Carbon emissions tax

From 1 September 2010 to date a tax of R75 per g/km for each g/km above 120g/km on new passenger vehicles will be levied.

24. Conclusion

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

Annexure – Example of how normal tax payable is calculated

A foreign employee who is under 65 years of age was employed in South Africa for the period 1 March 2010 to 28 February 2011 (that is, the 2011 tax year). Employees' tax was deducted as follows:

	R
SITE	540
PAYE	13 575
Provisional tax payments for the tax year	5 250
TOTAL TAX PAID	**19 365**

He received the following income:

Pensionable Salary	220 000
Overtime	8 000
Bonus	10 000
Interest from South African Banks	22 300
Dividends from South African companies	1 200
Dividends from foreign companies	4 000
Net rental from a fixed property situated in South Africa	20 000
TOTAL INCOME RECEIVED	**285 500**

Calculation of taxable income:

Total Receipts		285 500
Less:	Capital Amounts:	
	Foreign dividends (source not South African)	(4 000)
GROSS INCOME		**281 500**
Less:	Exempt income:	
	Dividends from South African companies	(1 200)
	Interest from South African Banks (limited to R22 300	(22 300)
INCOME		**258 000**
Less: Deductions:		
	NIL	
TAXABLE INCOME		**258 000**

The normal tax payable on taxable income of R258 000 is calculated by applying the tax rates for the tax year ending 28 February 2011 (see table in 5.1). The taxable income of R258 000 falls within the bracket of R221 001 - R305 000 in the table.

The tax on the first R221 000 is		45 450
Add:	Tax on the balance of amount R37 000 (R258 000 – R221 000) = 30% x R37 000	11 100
Normal tax		56 550
Less: Primary rebate		(10 260)
Net normal tax		**46 290**
Less:	Employees' tax SITE	(540)
	PAYE	(13 575)
	Provisional tax paid	(5 250)
NORMAL TAX DUE BY THE EMPLOYEE ON ASSESSMENT		**26 925**