

## INTERPRETATION NOTE 96

DATE: 21 July 2017

**ACT : INCOME TAX ACT 58 OF 1962**  
**SECTION : SECTION 10(1)(o)(iA)**  
**SUBJECT : EXEMPTION FROM INCOME TAX: REMUNERATION DERIVED BY A PERSON AS AN OFFICER OR CREW MEMBER OF A SOUTH AFRICAN SHIP**

### *Preamble*

In this Note unless the context indicates otherwise –

- “**schedule**” means a schedule to the Act;
- “**SDL**” refers to the skills development levy under the Skills Development Levies Act 9 of 1999;
- “**section**” means a section of the Act;
- “**South African ship**” means a “South African ship” as defined in section 12Q(1), namely, a ship that is registered in the Republic in accordance with Part 1 of Chapter 4 of the Ship Registration Act, 1998.
- “**the Act**” means the Income Tax Act 58 of 1962;
- “**UIF**” refers to unemployment insurance fund contributions under the Unemployment Insurance Contributions Act 4 of 2002; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides and interpretation notes referred to in this Note are available on the SARS website at [www.sars.gov.za](http://www.sars.gov.za).

### **1. Purpose**

This Note provides guidance on the circumstances under which section 10(1)(o)(iA) exempts the remuneration, derived by a person as an officer or crew member of a South African ship, from normal tax.

### **2. Background**

Section 12Q was inserted into the Act on 1 April 2014 and applies to years of assessment commencing on or after that date. The amendment came about as part of a new tax regime that provides tax relief for South African shipping companies. The purpose of the amendments was to encourage ships to carry the South African flag by making South Africa more competitive internationally. Various exemptions from normal tax, capital gains tax, dividends tax as well as cross-border withholding tax on interest, were introduced.

Section 10(1)(o)(iA) was introduced simultaneously, to exempt any form of remuneration received by or accrued to any officer or crew member of a South African ship, which is mainly engaged in international shipping or fishing outside the Republic, regardless of the period or periods spent abroad. Amounts qualifying for exemption will not form part of remuneration, and would thus not be subject to the deduction or withholding of employees' tax.<sup>1</sup>

The issue of double taxation and the application of various double tax treaties are not discussed in this Note, since the application of double taxation varies from treaty to treaty.

### 3. The law

The relevant sections of the Act are quoted in **Annexure A**. A table displaying the comparisons between sections 10(1)(o)(i),<sup>2</sup> 10(1)(o)(iA) and 10(1)(o)(ii)<sup>3</sup> insofar as the application of an exemption from foreign employment services, is set out in **Annexure B**.

### 4. Section 10(1)(o)(iA) analysis

#### 4.1 Remuneration

Section 10(1)(o)(iA) exempts from normal tax any form of remuneration that is derived by a person as an officer or crew member of a South African ship. The remuneration that qualifies for exemption is wide, being any "remuneration" as defined in paragraph 1 of the Fourth Schedule.

The word "derived" is not defined in the Act. In *Port Elizabeth Municipality v Union Government (Minister of Railways and Harbours)*<sup>4</sup> Innes CJ said the following regarding the use of the word "derived" in the Cape Municipal Ordinance, 10 of 1912:

"The expression 'from which revenue is derived' does not present much difficulty. In *Commissioner of Taxes v Kirk* (1900 AC 588) the question arose whether certain income was 'derived from lands of the Crown held under lease,' and in the judgment of the Privy Council it was remarked that 'their Lordships attach no special meaning to the word "derived" which they treat as synonymous with arising or accruing.' To fall within the language of the proviso the revenue must flow or accrue directly from the building. The income of a trading business is not derived from the shop in which it is carried on, but from the sales there transacted. If, however, a charge were made for storing goods in the shop, the revenue thus accruing would be derived from the building – for it would flow directly from its use."

(Emphasis added.)

In context, this means that, in order for the exemption to apply, there must be a causal connection between the remuneration received and the person's role as an officer or crew member on the ship. Any remuneration derived outside the Republic

<sup>1</sup> As required by paragraph 2(1) of the Fourth Schedule.

<sup>2</sup> See Interpretation Note 34 (Issue 2) dated 31 January 2017 "Exemption from Income Tax: Remuneration Derived by a Person as an Officer or Crew Member of a Ship" for a discussion on the operation of section 10(1)(o)(i).

<sup>3</sup> See Interpretation Note 16 (Issue 2) dated 31 January 2017 "Exemption from Income Tax: Foreign Employment Income" for a discussion on the operation of section 10(1)(o)(ii).

<sup>4</sup> 1918 AD 237.

other than as an officer or crew member of a ship, does not qualify for exemption under this provision.

The remuneration that is covered by the exemption relates to remuneration derived by a person during a year of assessment.<sup>5</sup>

#### **Example 1 – Exemption of remuneration earned during a year of assessment**

##### *Facts:*

B accepts a contract to render services on a South African ship, a cruise liner, which is mainly engaged in international shipping.<sup>6</sup> B left on 1 February 2015 aboard the cruise liner to the Caribbean Islands for three months. The cruise liner stopped at the port of San Juan, Puerto Rico and returned to the Republic on 30 April 2015. During this time, B derived remuneration of R35 000 per month. B also earned interest income of R50 000 for the 2016 year of assessment as a result of a capital sum invested in ABC Bank in South Africa. For the months of July and August 2015, B earned remuneration of R15 000 per month as the manager of a restaurant in South Africa.

##### *Result:*

B meets the requirements of section 10(1)(o)(iA)(aa). B is a crew member on a South African ship that is mainly engaged in international shipping (see below for a full discussion of all the requirements). The remuneration earned in respect of B's employment on the ship will be exempt from normal tax. During the 2015 year of assessment, B's remuneration of R35 000 (for the month of February 2015) will be exempt. During the 2016 year of assessment, B's remuneration of R70 000 (R35 000 per month for each of March and April 2015) is exempt.

The remuneration earned as a manager of the restaurant in South Africa does not qualify for the exemption, as it was not derived as an officer or crew member aboard a ship. The interest income earned in South Africa will also not qualify for exemption under section 10(1)(o)(iA), since it is not "remuneration" as defined in the Fourth Schedule.<sup>7</sup> Both amounts that do not qualify for exemption will thus be subject to normal tax.

## **4.2 Any person as an officer or crew member**

The person must be an officer or crew member aboard a ship. Income earned by passengers or business persons (for example, owners of concessionary shops or restaurants on a cruise ship) whilst aboard the ship will not qualify for the exemption under section 10(1)(o)(iA).

Independent contractors do not earn "remuneration" as defined in the Fourth Schedule<sup>8</sup> and do not qualify for the exemption. A person must therefore be an

<sup>5</sup> As defined in section 1(1).

<sup>6</sup> See 4.3.1 for a discussion on international shipping.

<sup>7</sup> It may qualify for the local interest exemption under section 10(1)(i).

<sup>8</sup> Amounts paid or payable to persons carrying on an independent trade are excluded from the definition of "remuneration" in paragraph 1 of the Fourth Schedule, under paragraph (ii) of the exclusions to that definition.

employee in order to qualify. A person cannot be an officer or crew member aboard a ship without also being an employee.<sup>9</sup>

### 4.3 Qualifying ships

#### 4.3.1 South African ship mainly engaged in international shipping

The exemption<sup>10</sup> applies if the ship is a South African ship and is mainly engaged in “international shipping” as defined in section 12Q(1).

Section 12Q(1) defines “international shipping” as “the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic.”

The words “international traffic” are not defined in the Act. They must therefore be given their ordinary meaning, taking into account the context in which they are found, the ordinary rules of grammar and syntax, and their ostensible purpose.<sup>11</sup>

In the context of section 12Q, the word “international” as an adjective means “existing or occurring between nations”<sup>12</sup> or “of, concerning, or involving two or more nations or nationalities.”,<sup>13</sup> whilst “traffic” means “the movement of ships, trains or aircraft”,<sup>14</sup> “the movement of vehicles, people etc., in a particular place or for a particular purpose: sea traffic”<sup>15</sup> or “[t]he passing to and fro of people, animals, vehicles and vessels along a transportation route.”.<sup>16</sup>

“International traffic” is therefore the movement of a ship between the Republic and a foreign nation, or between two foreign nations, or between ports in a foreign nation.

Passenger ships that do not transport passengers from one port to another, such as cruise ships, do not qualify as operating in “international traffic” if they set sail from and return to a port in the Republic, even if part of the cruise may take place outside of South African waters.

The word “mainly” means a quantitative measure of more than 50%.<sup>17</sup> The ship must be engaged in international traffic, when compared to domestic conveyance, more than 50% of the time.

The transportation of passengers or goods must be for compensation otherwise the exemption will not apply. This means the ship should be a South African merchant ship, such as a cruise ship, passenger liner or cargo ship, which travels outside the

<sup>9</sup> This is confirmed by the provisions of the Merchant Shipping Act 57 of 1951. For more information on employees and independent contractors, see Interpretation Note 17 (Issue 3) dated 31 March 2010 “Employees’ Tax: Independent Contractors”.

<sup>10</sup> Under section 10(1)(o)(iA)(aa).

<sup>11</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

<sup>12</sup> Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

<sup>13</sup> Collins English Dictionary. 3rd ed. Glasgow: Harper Collins, 1991. Print.

<sup>14</sup> Concise Oxford English Dictionary. Edited by Catherine Soanes, Angus Stevenson. 11th ed. rev. New York: Oxford University Press, 2006.

<sup>15</sup> Collins English Dictionary. 3rd ed. Glasgow: Harper Collins, 1991. Print.

<sup>16</sup> Black’s Law Dictionary. Edited by Bryan A. Garner, 9th ed. Thomas Reuters, 2009 [Blacks].

<sup>17</sup> *Sekretaris van Binnelandse Inkomste v Lourens Erasmus (Eiendoms) Bpk* 1966 (4) SA 434 (A).

Republic (see 4.4). The mere domestic use of a South African ship *designed* for international voyages will not qualify as international shipping.

The requirement that the South African ship must be mainly engaged in the business of transportation means that, for example, the transportation of fish from a fishing ground to the port by a trawler will not constitute transportation “for compensation” because the trawler is in the business of fishing and not transportation. The provisions of subparagraph (*bb*) may, however, apply (see 4.3.2).

Officers or crew members employed on a ship, other than a South African ship that is engaged in the international transportation of passengers or goods for reward may still qualify for exemption of their earnings under section 10(1)(o)(i)(*aa*), provided the relevant requirements under that section are met.<sup>18</sup>

#### 4.3.2 South African ships mainly engaged in fishing

The exemption<sup>19</sup> applies if the South African ship is mainly engaged in fishing<sup>20</sup> outside the Republic. The exemption applies to any officer or crew member on the ship, and is not dependent on the activities conducted by the individual, but on the activity of the ship, being mainly fishing outside the Republic (see 4.4).

##### **Example 2 – Aboard a ship mainly engaged in fishing**

###### *Facts:*

J works as the chef aboard a South African registered ship mainly engaged in fishing outside the Republic. J left aboard the ship on 1 October 2015 and rendered services aboard the ship to 10 November 2015. J received remuneration of R30 000 for the contract.

###### *Result:*

J meets the requirements of section 10(1)(o)(iA)(*bb*). J is a crew member onboard a South African ship that is mainly engaged in fishing outside the Republic. There is no specific “days-test” for the exemption to apply. The remuneration of R30 000 earned for services rendered aboard the ship qualifies for the exemption from normal tax.

The word “mainly” has the same meaning as discussed in 4.3.1, being a quantitative measure of more than 50%. In the context of this part of the exemption, the ship must be engaged in fishing outside the Republic for more than 50% of the time.

<sup>18</sup> See Interpretation Note 34.

<sup>19</sup> Under section 10(1)(o)(iA)(*bb*).

<sup>20</sup> The terms “fishing” and “fish” are defined in the Marine Living Resources Act, 1998. As that statute, under section 3(1), regulates all fishing vessels and activities in the Republic, and under sections 3(2) and 10 also applies extraterritorially, those meanings will apply to the term “fishing” in section 10(1)(o)(iA).

#### 4.4 Outside the Republic

In order to qualify for the exemption, the South African ship must be “outside the Republic”. The term “Republic” is defined in section 1(1). The definition encompasses the landmass of South Africa as well as its territorial waters,<sup>21</sup> which is a belt of sea adjacent to the landmass but not exceeding 12 nautical miles (roughly 22,2 km) beyond the baselines<sup>22</sup> of the country.

In certain circumstances, the Republic may extend beyond the geographical limits of its landmass and territorial waters. The definition of “Republic” specifically includes those areas beyond the territorial sea which have been designated under international or domestic law as areas where South Africa may exercise sovereign rights in respect of the exploration or exploitation of natural resources. This definition is aligned with domestic law<sup>23</sup> and international law,<sup>24</sup> which provide for South Africa’s right to explore and exploit natural resources in the exclusive economic zone (EEZ)<sup>25</sup> and on the continental shelf.<sup>26</sup>

The EEZ extends to 200 nautical miles (roughly 370,6 km) from the baselines.<sup>27</sup> The continental shelf extends to the outer edge of the continental margin, or 200 nautical miles from the baselines, whichever is the greater.<sup>28</sup>

The effect of the extended meaning of “Republic”, as set out above, is that the term “outside the Republic” has differing application under items (aa) and (bb) of section 10(1)(o)(iA).

##### *Item (aa)*

Under item (aa), an officer or crew member aboard a South African ship mainly engaged in international shipping (that is transporting goods or passengers for reward), will be outside the Republic if that ship is **outside the territorial waters** of South Africa. The extended definition of the “Republic” does not apply, because the ship is not involved in the exploration or exploitation of natural resources.

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<sup>21</sup> Defined in section 4 of the Maritime Zones Act 15 of 1994 (MZA). This definition is aligned with what constitutes a state’s territorial sea under international law, specifically Article 2 and 3 of the United Nations Convention on the Law of the Sea (UNCLOS), signed by the Republic of South Africa on 5 December 1984 and ratified on 23 December 1997.

<sup>22</sup> Defined in section 2 of the MZA and Article 3 of UNCLOS.

<sup>23</sup> Section 7 of the MZA.

<sup>24</sup> Section 233 of the Constitution of the Republic of South Africa, 1996 provides that a court must prefer an interpretation of domestic legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

<sup>25</sup> Article 56(1)(a) of UNCLOS deals with a State’s “exclusive economic zone” and provides that a coastal State has “...sovereign rights for the purpose of exploring and exploiting...the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil...”

<sup>26</sup> Article 77(1) of UNCLOS provides that a “...coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.” In view of this provision, it is unnecessary to consider for purposes of this Note whether the continental shelf forms part of South Africa’s territory under customary international law.

<sup>27</sup> Section 7 of the MZA and Article 57 of UNCLOS.

<sup>28</sup> Section 8 of the MZA and Article 76(1) of UNCLOS.

*Item (bb)*

Fishing constitutes the exploitation of South Africa's living natural resources, and therefore an extended definition of the Republic will apply. For purposes of item (bb), resident officers or crew members aboard a South African ship mainly engaged in fishing are regarded as being outside the Republic when the ship is either beyond the EEZ or beyond the edge of the continental shelf of South Africa depending on the type of fishing that is done.

For fishing of "living organisms belonging to sedentary species"<sup>29</sup> the Republic will extend **up to the edge of the continental shelf of South Africa**.<sup>30</sup> For all other types of fishing, the Republic does not extend **beyond the EEZ**.<sup>31</sup>

Officers or crew members not employed for the exploitation of natural resources may still qualify for the exemption of their earnings under section 10(1)(o)(ii), provided the requirements of that section are met.<sup>32</sup>

**Example 3 – Outside the Republic***Facts:*

P is employed by a local company, XYZ, as an engineer aboard a South African ship that is mainly engaged in fishing. The ship left Durban harbour on 1 June 2015 and conducted its fishing activities between 15 and 20 nautical miles from the baselines, just beyond the territorial waters of South Africa, after which it returned to Durban harbour on 15 December 2015. P was paid a salary of R250 000 for services rendered aboard the ship.

*Result:*

P will not qualify for the exemption under section 10(1)(o)(iA)(bb) as the ship was not mainly engaged in fishing outside the Republic. For a ship to be mainly engaged in fishing outside the Republic, it must be outside the EEZ or continental shelf, as appropriate.

P may still qualify for the exemption under section 10(1)(o)(ii), provided the requirements of that section are met.<sup>32</sup>

**4.5 Days test and apportionment**

There is no "days test" requirement under section 10(1)(o)(iA), whereby exemption will only be granted if the officer or crew member spends a certain amount of time outside the Republic. The test is simply whether the ship is mainly engaged in the activity outside of the Republic, and the employee derives remuneration from services rendered aboard that ship. If that is the case, all such remuneration derived by that employee will be exempt under section 10(1)(o)(iA), irrespective of how many

<sup>29</sup> "Sedentary species" are defined in Article 77(4) of UNCLOS to be "*organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil*".

<sup>30</sup> Under Articles 68 and 77(4) of UNCLOS, the rules applicable to the continental shelf apply to sedentary species.

<sup>31</sup> Articles 56(1)(a) of UNCLOS.

<sup>32</sup> See Interpretation Note 16 for more information. Refer also to **Annexure B**.

days the employee was outside the Republic. No apportionment will therefore be necessary – even if a portion of the services are rendered in the Republic.

## 5. Employees' tax, UIF and SDL

The potential for an exemption under section 10(1)(o)(iA) does not automatically waive the obligation of an employer to deduct or withhold employees' tax under the Fourth Schedule. An employer that is satisfied that the provisions of section 10(1)(o)(iA) will apply in a particular case may, however, elect not to deduct or withhold employees' tax. In the case where the employee does not qualify for exemption and the employer has elected not to deduct or withhold employees' tax, the employer will be held liable for the employees' tax not deducted as well as the concomitant penalties and interest.

Each remuneration item qualifying for the section 10(1)(o)(iA) exemption must be disclosed under the relevant foreign service income source code on the employees' tax certificate (IRP5). Foreign salary income must, for example, be disclosed under code 3651, bonus payments under code 3655 and medical aid contributions under code 3860. *Code 3652 may not be used for any remuneration item that may qualify for exemption under section 10(1)(o)(iA).*<sup>33</sup>

An employer that has deducted or withheld employees' tax **may not refund the employees' tax to an employee**<sup>34</sup> where it subsequently transpires that the remuneration qualifies for exemption under section 10(1)(o)(iA). The employee must claim the exemption on assessment. Supporting documentation in the form of, for example, a passport, an employment contract and confirmation of the ship's location, may be requested to substantiate the exemption claimed on assessment.

Any amount that is exempt under section 10(1)(o)(iA) no longer constitutes "remuneration" as defined in paragraph 1 of the Fourth Schedule.<sup>35</sup> These amounts are not subject to the deduction of UIF or SDL. Any remuneration that remains taxable in South Africa will still be subject to the payment or withholding of levies or contributions under these statutes.

The exemption under section 10(1)(o)(iA) only applies to remuneration which is received by or accrues to a South African resident employee during the year of assessment for services rendered on a South African ship.

## 5 Conclusion

The remuneration of officers or crew members of a South African ship mainly engaged in "international shipping" as defined in section 12Q(1), or a South African ship mainly engaged in fishing outside the Republic, is exempt from taxation.

In certain circumstances, the remuneration of officers or crew members may not qualify for the exemption in section 10(1)(o)(iA). It may, however, be possible that the

<sup>33</sup> For details of the correct IRP5 disclosure, see *Guide for Codes Applicable to Employees' Tax Certificates 2016*.

<sup>34</sup> Paragraph 29 of the Fourth Schedule.

<sup>35</sup> The term "remuneration" is defined to mean "...any amount of income..." (Emphasis added.) "Income" as defined in section 1(1) excludes exempt income.



remuneration of these officers or crew members qualify for the exemption under section 10(1)(o)(i) or 10(1)(o)(ii).

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## Annexure A – The law

### Definition of “Republic” in section 1(1)

“**Republic**” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

### Section 10(1)(o)(iA)

any form of remuneration—

- (iA) as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a South African ship as defined in section 12Q(1) mainly engaged—
  - (aa) in international shipping as defined in section 12Q(1); or
  - (bb) in fishing outside the Republic; or

### Section 12Q(1)

For the purposes of this section—

“**international shipping**” means the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic;”

“**South African ship**” means a ship which is registered in the Republic in accordance with Part 1 of Chapter 4 of the Ship Registration Act, 1998 (Act No. 58 of 1998).

### Definition of “remuneration” in paragraph 1 of the Fourth Schedule to the Act

“**remuneration**” means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including—

- (a) any amount referred to in paragraph (a),(c),(cA),(cB),(d),(e),(eA) or (f) of the definition of “gross income” in section 1 of this Act;
- (b) any amount required to be included in such person’s gross income under paragraph (i) of that definition, excluding an amount described in paragraph 7 of the Seventh Schedule;
- (bA) any allowance or advance, which must be included in the taxable income of that person in terms of section 8(1)(a)(i), other than—
  - (i) an allowance in respect of which paragraph (c) or (cA) applies; or
  - (ii) an allowance or advance paid or granted to that person in respect of accommodation, meals or other incidental costs while that person is by reason of the duties of his or her office obliged to spend at least one night away from his or her usual place of residence in the Republic: Provided that where—
    - (aa) such an allowance or advance was paid or granted to a person during any month in respect of a night away from his or her usual place of residence; and

(bb) that person has not by the last day of the following month either spent the night away from his or her usual place of residence or refunded that allowance or advance to his or her employer,

that allowance or advance is deemed not to have been paid or granted to that person during that first-mentioned month in respect of accommodation, meals or other incidental costs, but is deemed to be an amount which has become payable to that person in that following month in respect of services rendered by that person;

- (c) 50 per cent of the amount of any allowance referred to in section 8(1)(d) granted to the holder of a public office contemplated in section 8(1)(e);
- (cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii): Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;
- (cB) 80 per cent of the amount of the taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of such amount must be included;
- (d) any gain determined in terms of section 8B, which must be included in that person's income under that section;
- (e) any gain determined in terms of section 8C which is required to be included in the income of that person;
- (f) any amount deemed to be income accrued to that person in terms of section 7(11),

but not including—

- (i) . . .
- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d), (e) or (f) of the definition of "employee") in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall not be deemed to carry on a trade independently as aforesaid if the services are required to be performed mainly at the premises of the person by whom such amount is paid or payable or of the person to whom such services were or are to be rendered and the person who rendered or will render the services is subject to the control or supervision of any other person as to the manner in which his or her duties are performed or to be performed or as to his hours of work: Provided further that a person will be deemed to be carrying on a trade independently as aforesaid if he throughout the year of assessment employs three or more employees who are on a full time basis engaged in the business of such person of rendering any such service, other than any employee who is a connected person in relation to such person;
- (iii) any pension or additional pension under the Aged Persons Act, 1967 (Act No. 81 of 1967), or the Blind Persons Act, 1968 (Act No. 26 of 1968), any disability grant or additional or supplementary allowance under the Disability Grants Act, 1968 (Act No. 27 of 1968), or any grant or contribution under the provisions of section 89 of the Children's Act, 1960 (Act No. 33 of 1960);

- (iv) . . .
- (v) . . .
- (vi) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;
- (vii) . . .
- (viii) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;

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

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

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