
SOUTH AFRICAN REVENUE SERVICE

**GUIDE
ON THE
TAXATION OF
FOREIGNERS WORKING
IN SOUTH AFRICA
(2007/08)**

Another helpful guide brought to you by the
South African Revenue Service



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. If it does not address a specific issue, it must be taken up with the SARS 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 Part IA of Chapter III of the Income Tax Act, No. 58 of 1962 (the Act).

Should you require additional information, you may –

- contact your local South African Revenue Service (SARS) branch;
- visit SARS website at www.sars.gov.za;
- contact your own tax advisors;
- if calling locally, contact the SARS National Call Centre on 0860 12 12 18; or
- if calling from abroad, contact the SARS National Call Centre on +27 11 602 2093.

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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 Act. In terms of the income tax system in South Africa –

- the income received by or accrued a persons other than a residents (foreigners) from a source within or deemed to be within South Africa is subject to normal tax in South Africa; and
- the world-wide 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 wish 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 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 an employee to determine his/her status. Two separate tests are applicable to determine whether or not a foreigner is a resident of South Africa, namely –

- the “ordinarily resident” test, in which case he or she is ordinary resident in South Africa; or
- the “physical presence” test, in which case he or she is not at any time during the relevant year of assessment ordinarily resident in South Africa, but he or she was physically present in South Africa for a specific period or periods.

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 which he or she will normally return, is in South Africa. If so, he or she will be a resident.

For more information regarding the concept of “ordinarily resident” see Interpretation Note No. 3 – 4 February 2002 which is available on the SARS website.

2.2 Physical presence test

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

This test must be done annually in order to determine whether the foreigner is a resident for the year of assessment 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 year of assessment under consideration;
- 91 days in aggregate during each of the five years of assessment preceding such year of assessment under consideration; and
- 915 days in aggregate during those five preceding years of assessment.

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 sixth year of assessment 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, No. 13 of 2002 (the Immigration Act); or
- at any other place in the case of a person authorised by the Director-General of the Department of Home Affairs or the Minister of Home Affairs in terms of the Immigration Act.

Where the foreigner who became a resident as a result of the physical presence test is absent from South Africa for a continuous period of at least 330 days after the day on which he or she ceased to be physically present in South Africa, he or she will be regarded as being not 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 the relevant tax treaty is excluded from the definition of resident.

For more information regarding the physical presence test see Interpretation Note No. 4 (issue 3) – 8 February 2006 which is 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 the income from employment should be taxed in the country where the services are actually rendered, irrespective of the place where the contract is entered into or where the remuneration is paid. South African legislation and case law support this principle. In other words, a foreign employee working in South Africa is liable for 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 in which the foreign employee resides.

4. AVOIDANCE OF DOUBLE TAXATION

Where a foreigner earns employment income from a source within or deemed to be within South Africa and he or she is a resident of another country, normal tax may be payable in both South Africa and the country of residence.

The South African Government has, therefore, entered into agreements for the avoidance of double taxation (commonly referred to as double taxation agreements (DTAs)) with a number of other countries in order 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.

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

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

4.1 Temporary employment in the private sector

Where a DTA has been concluded with a foreign country, the employment income of a foreigner will generally be subject to normal tax in South Africa. 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 physical present in South Africa for a period or periods in aggregate not exceeding 183 days in any 12-month period (not necessarily a year of assessment);
- the remuneration is paid by, or on behalf of, an employer who is not a resident of South Africa; and
- the remuneration is not borne by a “permanent establishment” that the employer has in South Africa. A “permanent establishment” means in essence a fixed place of business through which the business of the employer is wholly or partly conducted.

Example 1

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 (SA) for a period of five months. Remuneration is paid by the UK company which does not have a permanent establishment in SA.

SA 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 not exceeding 183 days in aggregate in any 12 months;
- 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 employee is –

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

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

Where 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 the permit for permanent residence. Furthermore, where a foreign government carries on business activities in South Africa, the remuneration payable to its employees could also be taxable in South Africa. The taxability of this income may be affected by a DTA.

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

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.

4.3 Directors' fees

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

5. TAX THRESHOLD

Every individual who receives gross income in excess of a specific amount in a year of assessment is liable for normal tax. This amount for the 2008 year of assessment is R43 000 if he or she is under the age of 65 years or R69 000 if he or she is 65 years of age or older. Once these thresholds have been exceeded the specific rates at which the income is subjected to normal tax depend on the amount of taxable income received or accrued.

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 year of assessment has been determined. This is normally only done after the end of the year of assessment once his or her income tax return has been processed and an assessment is issued.

5.1 Tax rates for individuals: 2007/08

Taxable income (R)	Rates of tax (R)
1 – 112 500	18% of each R1
112 501 – 180 000	20 250 + 25% of the amount above 112 500
180 001 – 250 000	37 125 + 30% of the amount above 180 000
250 001 – 350 000	58 125 + 35% of the amount above 250 000
350 001 – 450 000	93 125 + 38% of the amount above 350 000
450 001 and above	131 125 + 40% of the amount above 450 000

Rebates (Individuals only)	2007/08
Primary	R7 740
Secondary - Age 65 years or older	R4 680

Tax thresholds	2006/07
Below the age of 65 years	R43 000
Age 65 years or older	R69 000

6. YEAR OF ASSESSMENT

A year of assessment in South Africa with regard to a person (other than companies) covers a period of 12 months that commences on 1 March of the one year and ends on the last day of February of the following year. The 2008 year of assessment commenced on 1 March 2007 and ended on 29 February 2008.

7. REGISTRATION AS A TAXPAYER AND SUBMITTING OF AN INCOME TAX RETURN

An employee who is a foreigner must register as a taxpayer if he or she receives –

- employment income from a South African source that exceeds the annual equivalent (R60 000 per year or the equivalent thereof) for the 2008 year of assessment, or
- employment income from a South African source (whether his or her employment income or the equivalent thereof exceeds R60 000 or not) and other income from a South African source, for example, interest in excess of the amount which is exempt from normal tax or rental income.

He or she must complete and submit an income tax return if he or she is required to submit a return.

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 the R60 000 threshold 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. He or she who falls under this category is not required to register. However, he or she may need to register for provisional tax purposes if his or her remuneration is paid or payable by a non-resident employer. See **12** below.

Any individual who has to complete an income tax return must register for income tax by completing an IT77 form. The individual must register within 60 days after he or she becomes liable for normal tax. The IT77 form can be obtained from a SARS branch office or from the SARS website.

An income tax return (for those required to submit a return) must be submitted within a stipulated time. If he or she is unable to render his or her income tax return within the prescribed period, he or she must apply for an extension at his or her local SARS office. Online applications for extensions can also be made on the SARS website.

8. SUMMARY OF DIFFERENT TYPES OF EMPLOYMENT INCOME

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

8.1 Salary

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

8.2 Allowances

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

8.3 Taxable benefits

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

Examples of taxable benefits include the following –

- 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 voucher entitling to such meals or refreshment provided by the employer;
- subsidy paid by the employer in respect of the amount 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 and which is provided to the employer.

For further information see *EMP 10 Guidelines for Employers* which is 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

If a foreign employee has been provided with residential accommodation in South Africa, the benefit will be taxable in the hands of that employee for the duration of his or her employment in South Africa. However, there is an exclusion to this rule contained in paragraph 9(7) of the Seventh Schedule to the Act, which effectively provides that no value must be placed on the accommodation provided by the employer to the employee where the employee is away from his or her usual place of residence for the purposes of performing his or her duties of employment. Please note that the Minister of Finance, in his 2007/8 Budget Speech, stated that the tax legislation will be amended with regards to the residential accommodation benefit.

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

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

Example 2

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

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

$$[(R100\ 000 - R43\ 000) \times 17\% \times 1/12] - R500$$
$$= R307.50 \text{ per month}$$

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

9.2 Use of a motor vehicle

If a foreign employee is granted the use of a motor vehicle by his or her employer, he or she is deemed to have received a benefit based on the "determined value" of the motor vehicle. From 1 March 2006, the benefit 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;
- where the motor vehicle is held under a lease, it is the retail market value thereof at the first time the employer obtained the right of use thereof; 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.

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

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

Exclusions

No taxable benefit will arise if –

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

9.3 Relocation costs

Payments by an employer to cover expenses such as –

- the transfer of a foreign employee on taking up employment;

- the transfer from one place of employment to another; or
- the termination of employment,

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

The following expenses will be exempt:

- 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, water and electricity connection. To simplify administration, it will be acceptable and treated as tax-free if an amount equal to one month's basic salary is paid to the employee to cover settling-in costs.
- The cost of renting temporary residential accommodation for the 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.

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

9.4 Home (domestic) security costs

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

9.5 Employees' tax paid on behalf of an employee

Where the employer pays part or all of the employee's South African employees' tax liability on his or her behalf, a taxable benefit will arise. 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 which is as follows:

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

Example 3

Y (below the age 65 years) is not a South African resident. For the 2007/08 year of assessment 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 normal tax payable on R120 000 is R14 385. The marginal tax rate is 25%.

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:

$$\begin{aligned} & R14\,385 \times 100 / (100 - 25) \\ & = R19\,180 \end{aligned}$$

In other words, the normal tax amounts to R14 385 (normal tax on taxable income) + R4 795 (normal tax on benefit) = R19 180.

10. TAX DEDUCTIONS THAT FOREIGN EMPLOYEES MAY CLAIM

10.1 Pension fund contributions

Contributions to a foreign pension fund by a foreign employee during his 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.

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

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; or
- R3 500 less pension fund contributions; or
- R1 750

10.3 Medical expenses

Persons below the age of 65 years

If you are below the age of 65 years you may claim the following expenses as a deduction:

- (a) Any contribution to a registered medical scheme in respect of yourself, your spouse and any dependant, as long as it does not exceed –
- (i) R530 in respect of yourself; or
 - (ii) R1 060 in respect of yourself and one dependent; or
 - (iii) R1 060 in respect of yourself and first dependent, plus R320 for every additional dependent thereafter.

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

(b) The total of –

- any contributions to a registered medical scheme which have not been allowed as a deduction above and also have not been treated as a tax-free benefit;
- any qualifying medical expenses (including physical disability expenses); and
- contributions by the employer to the medical scheme taxed as a taxable benefit, exceeding 7.5% of your taxable income before allowing any deduction under (b) above (that is, 7.5% of taxable income after allowing (a) above).

Note: The contributions by the employer that exceed the exempt amounts in (i), (ii) or (iii) above, as the case may be, will be taxed as a taxable benefit in your hands.

Handicapped persons

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

For the purposes of section 18 a handicapped person means –

- a blind person as contemplated in the Blind Persons Act, 1968 (Act No. 26 of 1968);
- a deaf person, being a person whose hearing is impaired to such an extent that he cannot use it as a primary means of communication;
- a person who as a result of a permanent disability requires a wheelchair, calliper or crutch to assist him to move from one place to another;
- a person who requires an artificial limb; or
- a person who suffers from a mental illness as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002).]

Persons aged 65 years or older

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

For more information refer to the *Tax Guide on the Deduction of Medical Expenses* available on the SARS website

10.4 Other allowable deductions

- Legal expenses under certain (in practice very limited) qualifying circumstances.
- Wear and tear in respect of certain assets purchases by the employee such as a computer required for purposes of employment.
- Home office expenses which relate 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 year of assessment that was never paid. The outstanding salary may be claimed as a bad debt if proof is submitted that the employer will not be able to pay it.
- Donations to approved bodies carrying on certain public benefit activities as set out in Part II of the Ninth Schedule to the Act. The deduction is limited to 10% of your taxable income as calculated before allowing donations and medical expenses. A deduction may only be allowed if the claim is supported by a receipt issued by the approved body.

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

11. EMPLOYEES' TAX OBLIGATIONS OF THE SOUTH AFRICAN EMPLOYER OR "REPRESENTATIVE EMPLOYER"

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

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

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

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

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

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

Example 4

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.

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

12. FOREIGN EMPLOYEE RENDERING SERVICES IN SOUTH AFRICA AND REMUNERATED BY A NON-RESIDENT EMPLOYER

Where a foreign employee is taxable on employment income in South Africa, but he or she is being remunerated by a foreign employer who does not have an agent having the authority to pay remuneration in SA, he or she must register for provisional tax purposes. He or she must also complete an IT77 form to register as a taxpayer (see 7 above).

12.1 Provisional tax

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

Every provisional taxpayer must apply at the local SARS office for registration as a provisional taxpayer within 30 days after the date on which he or she qualifies as a provisional taxpayer. See *IRP12 Guidelines for Provisional Tax* available on the SARS website for more information.

13. SUMMARY OF OTHER POSSIBLE TAXABLE INCOME

13.1 Interest income

The Act makes specific provision for the exemption of interest received by or accrued to any person who is 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 a period exceeding 183 days in aggregate during that the of assessment; or
- at any time during the year of assessment carried on a business through a permanent establishment in South Africa.

13.2 Dividends

In terms of the Act, dividends received by or accrued to 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 **13.1** above.

13.3 Rental income

The source of rental income is generally regarded to be where the property is utilised on a day-to-day basis. Foreigners will, therefore, be subject to normal tax on rental income, which 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.

13.4 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.

13.5 Capital gains tax (CGT)

Foreigners will be taxed on capital gains made from the disposal of the following assets:

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

The first R15 000 of any capital gain made by an individual in a year of assessment is excluded from CGT and 25% of the balance is included in taxable income.

13.6 Business income

Business income received by or accrued to a 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.

14. TAX OBLIGATIONS ON LEAVING SOUTH AFRICA

Before a foreign employee 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 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.

15. VALUE-ADDED TAX (VAT)

15.1 Rates of tax

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

15.2 Tourists

VAT borne by foreign tourists may be refunded by the VAT Refund Administrator (VRA) upon their departure from South Africa. The foreign tourist must be in possession of a VAT invoice and have the goods available for inspection upon his or her departure from 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.

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

Country	Telephone number
South Africa	
OR Tambo (Johannesburg) International Airport North side office	011 390 1655
OR Tambo (Johannesburg) International Airport South side office	011 390 2545
Sandton	011 784 7399
Cape Town Airport	021 934 8675
Cape Town Waterfront	021 421 1612
VRA Head Office	011 394 1117
Beitbridge	015 530 0113
Lebombo	013 793 8178
NAMIBIA	
Violsdrift	027 761 8002
Nakop	054 571 0011
Windhoek Regional Office	092 64 612 30773
SWAZILAND	
Golela	034 435 1014
Mananga	013 793 8442
Oshoek	017 882 0024
Mahamba	017 826 4611
Jeppes Reef	013 781 0530
Mbabane Regional Office	092 68 404 7193
BOTSWANA	
Gaborone Regional Office	092 67 3170 892
Groblersburg – Customs	014 767 1019
Skilpadshek - Customs	018 364 1469
Ramatlabamba - Customs	018 393 0240
Kopfontein	018 365 9021

16. CUSTOMS DUTY

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

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

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

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

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

16.1 Importation of household effects by immigrants

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

16.2 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.

16.3 Motor vehicles imported on a temporary basis

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

17. EXCISE DUTY

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

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

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

18. ESTATE DUTY

The estate of a foreigner 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 and includes deemed property (for example, life insurance policies, payments from pension funds etc). The Estate Duty Act, unlike the Act, does not have a definition of the word "resident" and only refers to persons who are "ordinarily resident" or "not ordinarily resident". It therefore follows that any 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 R3.5million to arrive at the dutiable amount of the estate. 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 the following countries: Botswana, Lesotho, Swaziland, the United Kingdom, the United States of America and Zimbabwe.



19. TRANSFER DUTY

Transfer duty is levied on the consideration payable for the acquisition of fixed property.

Transfer duty is calculated as follows where the property is acquired by a foreigner who is an individual:

	2007/08
Purchase consideration	Rate
On the first R500 000 of purchase consideration	0%
On the amount that exceeds R500 000 but not R1 000 000	5%
On the amount that exceeds R1 000 000	R25 000 plus 8% on the value above R1 000 000

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

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

20. STAMP DUTY

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

21. AIR PASSENGER TAX

From 1 August 2005 to date a tax of –

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

22. CONCLUSION

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

EXAMPLE OF HOW YOUR NORMAL TAX PAYABLE IS CALCULATED

A foreign employee who is under 65 years was employed in South Africa for the period 1 March 2007 to 29 February 2008 (that is, the 2008 year of assessment). The employee contributed R9 000 to a South African pension fund during the tax year. Employees' tax was deducted as follows:

	<u>R</u>
SITE	3 060
PAYE	13 575
Provisional tax payments for the year of assessment	<u>5 250</u>
TOTAL TAX PAID	<u>22 885</u>

He received the following income:

Salary	120 000
Overtime	8 000
Bonus	10 000
Interest from South African Banks	19 000
Dividends from South African companies	1 200
Dividends from foreign companies	3 000
Net rental from a property situated in South Africa	<u>20 000</u>
TOTAL INCOME RECEIVED	<u>181 200</u>

Calculation of taxable income:

Total income received	181 200
Less: Foreign dividends (Not from a South African source)	<u>(3 000)</u>
GROSS INCOME	<u>178 200</u>

Less: Exempt income:

Dividends from South African companies	(1 200)
Interest from South African Banks (limited to R18 000)	<u>(18 000)</u>
INCOME	<u>159 000</u>

Less: Deductions:

Pension fund contributions	<u>(9 000)</u>
TAXABLE INCOME	<u>150 000</u>

The normal tax payable on the taxable income of R150 000 is calculated by applying the tax rates for the year of assessment ending 29 February 2008 (see table in 5.1 above). The taxable income of R150 000 falls within the bracket of R112 500 - R180 000 in the table.

The tax on the first R112 500 is	20 250
Add: Tax on the amount R37 500 (R150 000 - R112 500)	
25% x R37 500	<u>9 375</u>
Normal tax	29 625
Less: Primary rebate	<u>(7 740)</u>
Net normal tax	<u>21 885</u>
Less: Employees' tax	(3 060)
SITE	
PAYE	(13 575)
Provisional tax paid	<u>(5 250)</u>
<u>NORMAL TAX PAYABLE ON ASSESSMENT</u>	<u>R NIL</u>