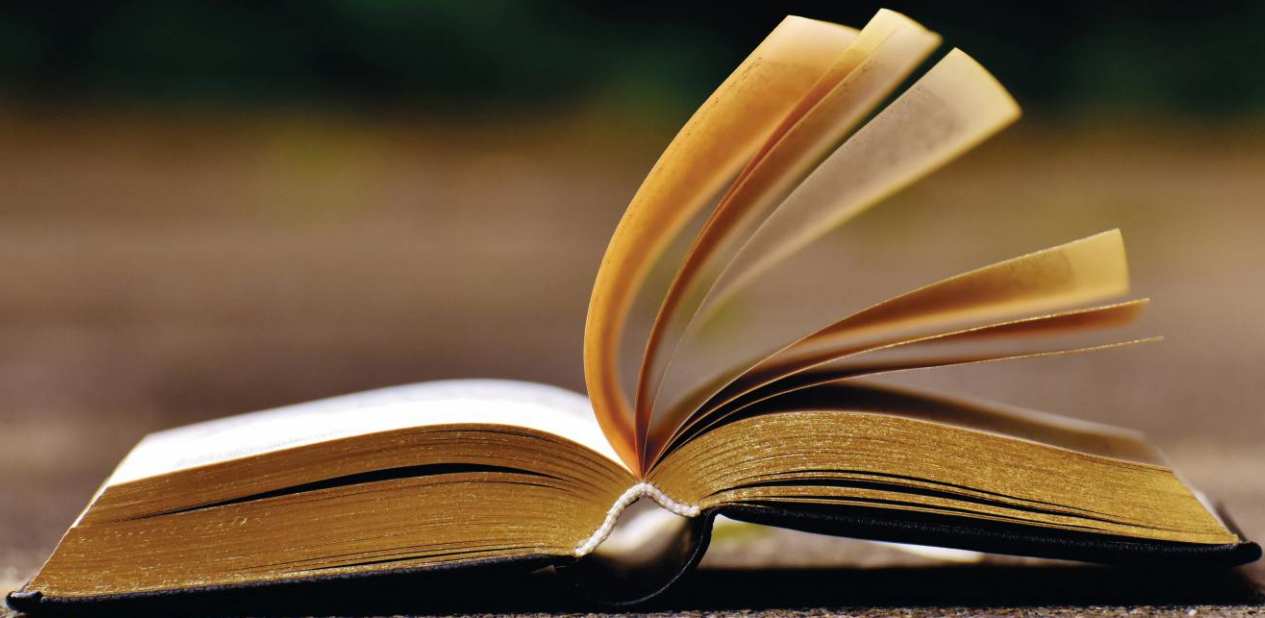




Expatriate Tax

Frequently Asked Questions



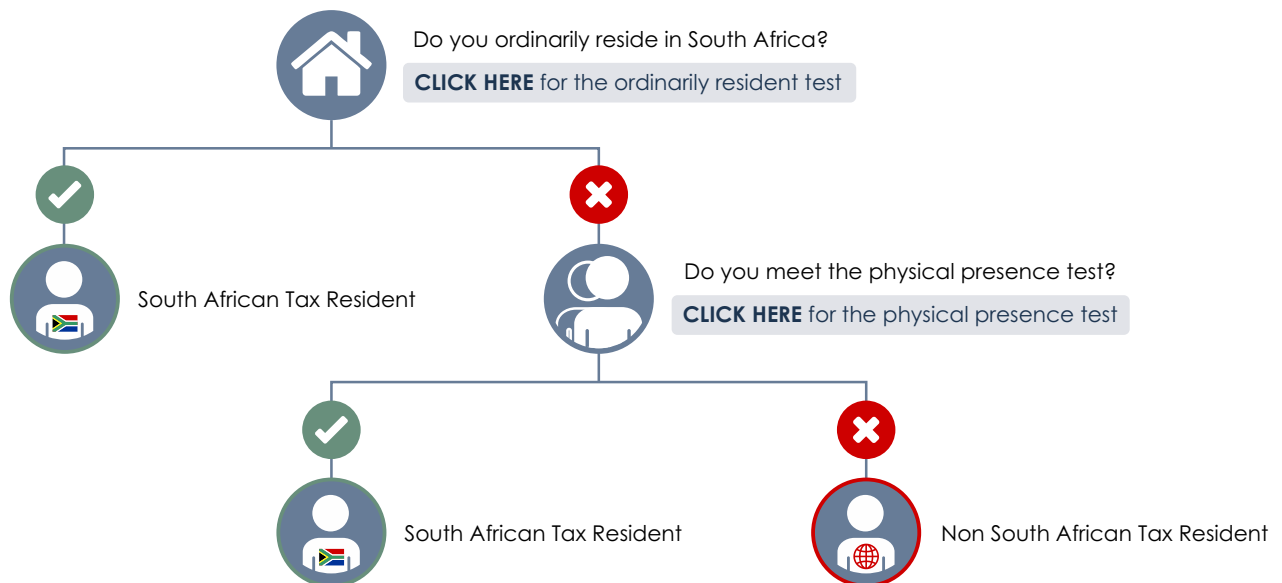
FAQs: Expat Tax

The Frequently Asked Questions (FAQs) issued by the South African Revenue Service (SARS) on 7 October 2019 have been compiled on the basis of questions that employees, employers and the public at large have about the implications of the amendment.

The FAQs were drafted purely to assist employees, employers and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects relating to the amendment.



To further assist you with the FAQ document, start with determining your South African Tax Residency status by making use of this simple and easy to use infographic.



Please note: Residency might be impacted by the Double Tax Agreement from another country which may result in changing your residency status.

The following questions are applicable to your South African Tax residency status:

Non South African Tax resident:

Questions: 19, 20 and 21

South African Tax resident:

Questions: Start with 3, then 1-15 and 22-46

INDEX


Click on the question below to take you to the answer

- Applicable to Non South African Tax Residents
- Applicable to South African Tax Residents

A. Requirements for foreign income exemption

● 1. What does the foreign employment income exemption mean?	6
● ● 2. What are the requirements to qualify for the exemption?	6
● ● 3. Who does the exemption apply to?	6
● 4. What type of income qualifies for the exemption under section 10(1)(o)(ii)?	7
● 5. What are the qualifying periods (that is, the "days test") that need to be met for purposes of section 10(1)(o)(ii)?	7
● 6. Does any of the requirements that applied before 1 March 2020 change going forward?	7
● 7. Who is excluded from the application of section 10(1)(o)(ii)?	7
● 8. If I meet all the requirements for section 10(1)(o)(ii), is all my foreign employment income exempt?	8
● 9. How should the taxable benefits received while rendering services outside South Africa be valued?	8
● 10. If I receive a travel allowance that falls within the R1 million exemption, can my taxable income be reduced in respect of my business kilometres travelled?	8
● 11. If I receive a travel allowance and a portion of the allowance is exempt under section 10(1)(o)(ii), can my taxable income be reduced in respect of all my business kilometres travelled?	8
● 12. If I received remuneration in excess of R1 million, which includes a travel allowance, how will the R1 million exemption be attributed on assessment in respect of the travel allowance?	9
● 13. Is the R1 million exemption allowed in respect of each year of assessment or should it be apportioned if I did not work a full year of assessment outside South Africa?	9
● 14. Should my income be apportioned?	9
● 15. Does the change to section 10(1)(o)(ii) result in a new "expat tax" being levied?	9



B. Determining your tax residency

● 16. Who is a tax resident in South Africa?	10
● 17. Is tax residency based on citizenship?	10
● 18. How does financial emigration impact my tax residence?	10
● 19. Must I notify SARS if I cease to be a tax resident in South Africa?	10
● 20. How should I notify SARS if my tax residence status changes?	10
● 21. What are the tax implications if I cease to be a tax resident in South Africa?	11

C. Will you be liable for double tax?

● 22. Will the change to section 10(1)(o)(ii) result in a double tax scenario?	11
● 23. What remedies do I have to relieve the double taxation?	11
● 24. If there is no tax treaty applicable between South Africa and the host country, what legislation will be applied?	12
● 25. Should an employer that has a PAYE withholding obligation take the provisions of a tax treaty into account in relation to employees rendering services outside South Africa?	12
● 26. Will the tax treaty apply to the first R1 million of remuneration earned?	12
● 27. Will the tax treaty apply to the amount of remuneration exceeding R1 million?	12
● 28. Is the exemption under section 10(1)(o)(ii) dependent on the provisions of a tax treaty?	13

D. What do I report to SARS?

● 29. If I qualify for the exemption, do I have to submit an income tax return in South Africa?	13
● 30. If I am employed, only get paid by one employer and earn less than R1 million, do I have a normal tax liability in South Africa?	13
● 31. If I am employed and I earn more than R1 million remuneration, do I have a normal tax liability in South Africa? If so, how should my liability be settled?	13
● 32. What is the impact on me if I work in a tax haven?	14



E. How much tax am I going to pay?

- 33. How should the R1 million exemption be calculated to determine the PAYE withholding obligation? 14
 - 34. Does an employer have a choice to withhold PAYE from my foreign employment income? 15
 - 35. What is the impact of the exemption on SDL and UIF? 15
 - 36. Under which income source codes should the income be disclosed? 16
 - 37. If I have a South African employer and earn South African sourced income as well as foreign sourced income, should my income be disclosed on one or two IRP5 certificates? 16
 - 38. What foreign exchange rate should be used on a monthly basis if amounts paid from a foreign employer should be processed through the South African payroll? 16
 - 39. Should the amounts paid by the foreign employer, that is not required to be paid or processed by the South African employer, be taken into account to calculate the R1 million exemption? 17
 - 40. Does the foreign employer have a liability to withhold PAYE from the remuneration paid to a resident employee working outside South Africa? 17
 - 41. Does the South African employer have a responsibility to withhold PAYE from an amount paid by the foreign employer? 17
-

F. The role of my employer

- 42. If I am in a double tax position, is there any relief available through the payroll if my employer has a withholding obligation in South Africa? 18
- 43. Can my foreign employer, who does not have a withholding obligation in South Africa, apply for a directive to provide relief for my double tax situation when my income exceeds R1 million and I pay tax on that excess in South Africa as well as the foreign country I work in? 18
- 44. Can an employer automatically apply a potential foreign tax credit through the South African payroll? 18
- 45. Are there any circumstances under which the directive will not be considered? 18
- 46. Which tax rate will apply to the income that is in excess of the R1 million exemption? 19

A. Requirements for foreign income exemption

1. What does the foreign employment income exemption mean?

Section 10(1)(o)(ii) provides for an exemption for foreign employment income received for services rendered outside South Africa, provided the requirements are met.

Before 1 March 2020, if the requirements regarding the exemption are met, all remuneration for services rendered outside South Africa is exempt.

From 1 March 2020, if the requirements are met, the exemption is limited to R1 million. Any remuneration received in excess of R1 million will be subject to normal tax in South Africa, irrespective of whether tax is paid in another country.

The provisions of a tax treaty (if applicable) will apply to the portion of the remuneration over and above R1 million. Generally, under the provisions of a tax treaty, if an employee renders services in a foreign country for a period or periods exceeding 183 full days, both countries enjoy the right to tax the income. The country of source enjoys the first right to tax the employment income and the country of residence, in our case South Africa, will provide double tax relief in the form of a foreign tax credit to the extent that tax was paid in both countries, subject to limitations.


[Return to Index](#) 

2. What are the requirements to qualify for the exemption?

In order to qualify for the exemption, a taxpayer must –

- be a tax resident of South Africa; Refer to Question [3](#)
- earn certain types of remuneration; Refer to Question [4](#)
- in respect of services rendered by way of employment;
- outside South Africa;
- during specified qualifying periods; Refer to Question [5](#)
- not be subject to an exclusion. Refer to Question [7](#)

 Refer to Interpretation Note 16.

[Return to Index](#) 

3. Who does the exemption apply to?

The exemption only applies to a **tax resident** of South Africa who is an **employee** and renders employment services outside South Africa and is subject to tax on his or her worldwide income.

For more on tax residence refer to Question [15](#) to [21](#)

Continue on page [7](#)



The exemption does not apply to an individual who is a non-resident for tax purposes as foreign sourced income in relation to foreign services is not from a South African source and therefore not subject to tax in the hands of a non-resident in South Africa.

Return to Question: [2](#) | Return to Index

4. What type of income qualifies for the exemption under section 10(1)(o)(ii)?

The following amounts fall within the scope of the exemption:

- Salary
- Taxable benefits
- Leave pay
- Wage
- Overtime pay
- Bonus
- Gratuity
- Commission
- Fee
- Emolument
- Allowance (including travel allowances, advances and reimbursements)
- Amounts derived from broad-based employee share plans
- Amounts received in respect of a share vesting

Return to Question: [2](#) | Return to Index

5. What are the qualifying periods (that is, the “days test”) that need to be met for purposes of section 10(1)(o)(ii)?

An employee who is a tax resident in South Africa must be outside South Africa for a period or periods exceeding 183 full days (in aggregate) during any 12-month period, and a continuous period exceeding 60 full days during that 12-month period.

Return to Question: [2](#) [13](#) | Return to Index

6. Does any of the requirements that applied before 1 March 2020 change going forward?

No, the requirements to qualify for the exemption remain the same. The only change that is effective from 1 March 2020 is that the exemption is now limited to a maximum of R1 million. The full amount of your remuneration is no longer exempt if it exceeds R1 million.

Return to Index

7. Who is excluded from the application of section 10(1)(o)(ii)?

The following categories of individuals are excluded from the exemption:

- A public office holder appointed or deemed to be appointed under an Act of Parliament

Continue on page [8](#)



- Employees who are employed in the national, provincial or local sphere of government, certain constitutional institutions, national and provincial public entities and municipal entities
- Independent contractors and individuals who are self-employed also do not qualify for the exemption as such persons are not in an employment relationship

Return to Question: [2](#) | Return to Index 

8. If I meet all the requirements for section 10(1)(o)(ii), is all my foreign employment income exempt?

The answer depends on the amount of remuneration you earn for the services rendered outside South Africa. If the amount of your remuneration is R1 million or less, the full amount will be exempt from normal tax in South Africa. If the amount of your remuneration is more than R1 million, only R1 million will be exempt and any excess above R1 million will be subject to normal tax in South Africa.

Also refer to Question [14](#)

Return to Index 

9. How should the taxable benefits received while rendering services outside South Africa be valued?

The provisions of the Seventh Schedule are applicable to the relevant taxable benefit provided. The cash equivalent of the value of the taxable benefit as calculated under the Seventh Schedule will be applicable.

If paid in a foreign currency, the amount should be converted using the average exchange rate.

Refer to Question [38](#)

Return to Index 

10. If I receive a travel allowance that falls within the R1 million exemption, can my taxable income be reduced in respect of my business kilometres travelled?

No, if the amount earned was exempt, the amount is not included in "taxable income". As there is no inclusion in taxable income there is nothing that can be reduced as a result of the business kilometres travelled that relates to the exempt amount.

Also refer to Question [11](#)

Return to Index 

11. If I receive a travel allowance and a portion of the allowance is exempt under section 10(1)(o)(ii), can my taxable income be reduced in respect of all my business kilometres travelled?

Your taxable income can only be reduced in respect of business kilometres travelled during the period when the allowance was included in taxable income.

Return to Question: [10](#) | Return to Index 



12. If I received remuneration in excess of R1 million, which includes a travel allowance, how will the R1 million exemption be attributed on assessment in respect of the travel allowance?

The R1 million exemption must be apportioned on a pro rata basis between the travel allowance and the total remuneration. For example, an employee receives total remuneration of R1,5 million which includes a travel allowance of R300 000. The exempt portion of the travel allowance is calculated as follows:

Travel allowance/Total remuneration × R1 000 000

R300 000/R1 500 000 × R1 000 000

= R200 000 of the travel allowance will be exempt from normal tax on assessment.

Thus, R100 000 will be included in taxable income.

[Return to Index](#)

13. Is the R1 million exemption allowed in respect of each year of assessment or should it be apportioned if I did not work a full year of assessment outside South Africa?

The R1 million exemption is available in respect of each year of assessment. This will apply even if you rendered services for only part of the year of assessment, provided the “days” requirements are met.

Refer to Question [5](#) on the “days” requirements applicable under section 10(1)(o)(ii).

[Return to Index](#)

14. Should my income be apportioned?

Yes, if you rendered services inside and outside of South Africa, the income received should be apportioned and only the income received in respect of work days outside South Africa during which services were rendered, will be exempt. From 1 March 2020, the exemption is limited to R1 million.

[Return to Question: 8](#) | [Return to Index](#)

15. Does the change to section 10(1)(o)(ii) result in a new “expat tax” being levied?

No, there is no new “expat tax” introduced. The only effect of the change relating to section 10(1)(o)(ii) is that the exemption is limited to R1 million. If the R1 million is exceeded, such excess is subject to normal tax according to a taxpayer’s marginal rate of tax.

[Return to Question: 3](#) | [Return to Index](#)





B. Determining your tax residency

16. Who is a tax resident in South Africa?

A person is a tax resident if he or she is ordinarily resident or becomes a resident by way of physical presence.

For more details on the different tests to become a tax resident in South Africa, refer to the following Interpretation Notes:

-  Interpretation Note 3: Resident: Definition in relation to a natural person – ordinarily resident (IN 3)
-  Interpretation Note 4: Resident: Definition in relation to a natural person – physical presence test

Return to Question: [3](#) | Return to Index 

17. Is tax residency based on citizenship?

No, citizenship is one of the indicators that may point to someone being ordinarily resident, but that is not conclusive. Various factors may play a role and must be taken into account to determine whether a person is ordinarily resident in South Africa.

-  Refer to IN 3 for more detail in this regard.

Return to Question: [3](#) | Return to Index 

18. How does financial emigration impact my tax residence?

Acquiring approval from the South African Reserve Bank to emigrate from a financial perspective is not connected to an individual's tax residence. Financial emigration is merely one factor that may be taken into account to determine whether or not an individual broke his or her tax residence. An individual's tax residence is not automatically broken when he or she financially emigrates. The deciding factor remains whether or not an individual ceased to be ordinarily resident in the Republic.

Return to Question: [3](#) | Return to Index 

19. Must I notify SARS if I cease to be a tax resident in South Africa?

Yes.

Return to Question: [3](#) | Return to Index 

20. How should I notify SARS if my tax residence status changes?

SARS can be informed of a taxpayer's intention to cease to be a resident through the wizard on the income

Continue on page [11](#)



tax return where the taxpayer is asked whether he or she "ceased to be a tax resident". When a taxpayer ceased to be a tax resident it should be indicated on the income tax return together with the date on which it occurred.

Alternatively, SARS can be notified when an application is made for a tax clearance certificate via eFiling when emigrating from South Africa (that is, not on the income tax return).

Return to Question: **3** | Return to Index

21. What are the tax implications if I cease to be a tax resident in South Africa?

A deemed disposal for capital gains tax purposes takes place at the time when an individual ceases to be a tax resident. The individual will be deemed to have disposed of his or her worldwide assets, excluding immovable property situated in South Africa.

Return to Question: **3** | Return to Index

C. Will you be liable for double tax?

22. Will the change to section 10(1)(o)(ii) result in a double tax scenario?

If an individual earns employment income in excess of R1 million and the tax treaty between South Africa and the foreign country, if any, does not provide a sole taxing right to one country, both countries will have a right to tax the income. The portion of the income in excess of R1 million may end up being double taxed.

Generally, under the provisions of the relevant tax treaty, if an employee renders services in a foreign country **exceeding** 183 days, both countries enjoy the right to tax the income. The country of source enjoys the first right to tax the employment income and the country of residence, in our case South Africa, will provide double tax relief in the form of a foreign tax credit to the extent that double tax arises, subject to limitations.

Return to Index

23. What remedies do I have to relieve the double taxation?

Section 6quat is the mechanism under South Africa's domestic law to claim relief from double tax where the amount received for services rendered outside South Africa is subject to tax in South Africa and in the foreign country. This credit may be claimed on assessment through an individual's income tax return, provided certain requirements are met.

For more detailed information on the provisions of section 6quat, refer to *Interpretation Note 18: Rebate or deduction for foreign taxes on income*.

Continue on page **12**



from SARS to take into account the potential foreign credit to determine the employees' tax (PAYE) liability on a monthly basis. The employer will be able to apply for such a directive through a dedicated channel that will be made available to the public by SARS.

Refer to Question [42](#) to [46](#)

Even when a directive is issued to the employer that allows the employer to take into account a potential foreign tax credit on the payroll for PAYE purposes, the employee is still required to submit an income tax return in which the actual foreign tax credit under section 6quat has to be claimed.

[Return to Index](#)

24. If there is no tax treaty applicable between South Africa and the host country, what legislation will be applied?

The domestic tax legislation of each country will be applied independently of each other. The employee will be able to claim a section 6quat credit on assessment in respect of any double tax that arose, subject to certain requirements.

[Return to Index](#)

25. Should an employer that has a PAYE withholding obligation take the provisions of a tax treaty into account in relation to employees rendering services outside South Africa?

Yes, it is important to take the treaty into account to be able to determine which country has a right to tax the income. This will determine whether or not an employee has a normal tax liability in South Africa in which case the employer is obliged to withhold PAYE.

Refer to Question [33](#) to [41](#) that deal with various payroll issues.

[Return to Index](#)

26. Will the tax treaty apply to the first R1 million of remuneration earned?

No, the tax treaty will not apply as there will be no double taxation due to the fact that the R1 million is exempt from normal tax in South Africa.

[Return to Index](#)

27. Will the tax treaty apply to the amount of remuneration exceeding R1 million?


Yes, the tax treaty will apply as the portion of the remuneration in excess of R1 million may be subject to double taxation.

[Return to Index](#)



28. Is the exemption under section 10(1)(o)(ii) dependent on the provisions of a tax treaty?

No, the R1 million is exempt under domestic law and not under a tax treaty. The exemption is therefore not dependent on the application of a tax treaty and applies irrespective of whether there is a tax treaty or not.

[Return to Index](#) 

D. What do I report to SARS?

29. If I qualify for the exemption, do I have to submit an income tax return in South Africa?

Yes, the Public Notice issued under section 25 of the Tax Administration Act, 2011 read with section 66 of the Act specifically provides that an individual working outside South Africa is required to submit an income tax return.

[Return to Question: 30](#) | [Return to Index](#) 

30. If I am employed, only get paid by one employer and earn less than R1 million, do I have a normal tax liability in South Africa?

No, provided you only receive employment income and no other income from a source inside or outside South Africa that may be subject to normal tax.

As noted in Question [29](#), the individual is still obliged to submit a tax return.

[Return to Index](#) 

31. If I am employed and I earn more than R1 million remuneration, do I have a normal tax liability in South Africa? If so, how should my liability be settled?

If you are employed by a local employer, PAYE will be deducted from your remuneration in excess of R1 million.

If you are employed by a foreign employer that has no representative employer in South Africa, no PAYE will be withheld from your remuneration in excess of R1 million. You will have to settle your tax liability by way of provisional tax in respect of all your taxable income.

 Refer to Interpretation Note 1: Provisional Tax Estimates (IN 1) for more details on provisional tax.

[Return to Index](#) 



32. What is the impact on me if I work in a tax haven?

The exemption under section 10(1)(o)(ii) will apply in respect of remuneration earned up to R1 million. Any income in excess of R1 million will become subject to normal tax in South Africa.

If remuneration in excess of R1 million is received there will not be a double tax situation as the foreign country (that is, the tax haven) does not tax your income. Since there will be no double taxation, no section 6quat credit can be claimed at the end of the year of assessment and therefore there will be no credit that can be applied for under paragraph 10 of the Fourth Schedule for payroll purposes.

[Return to Index](#)

E. How much tax am I going to pay?

33. How should the R1 million exemption be calculated to determine the PAYE withholding obligation?

The R1 million should be accumulated on a monthly basis in respect of all qualifying remuneration items. As soon as the R1 million limit is reached, the income in excess of R1 million becomes subject to normal tax. The R1 million cannot be smoothed or averaged over the year of assessment. It must be calculated by adding up all remuneration items received from the beginning of the year of assessment or applicable start date of an assignment until the R1 million limitation is reached.

The following example illustrates the cumulative basis on which the R1 million should be calculated.

An employee goes on secondment to a foreign country on 1 March 2020 and receives the following monthly remuneration:

Salary: R200 000

Travel allowance: R50 000

Accommodation benefit: R30 000

Items	March	April	May	June	July
Salary	R200 000	R200 000	R200 000	R200 000	R200 000
Travel allowance	R50 000	R50 000	R50 000	R50 000	R50 000
Accommodation benefit	R30 000	R30 000	R30 000	R30 000	R30 000
Accumulated total	R280 000	R560 000	R840 000	R1 120 000	R1 400 000
Exempt	R280 000	R280 000	R280 000	R160 000	R0
Subject to normal tax	R0	R0	R0	R120 000	R280 000

Continue on page **15**



It is accepted that in the month of June, in which the R1 million limitation will be exceeded, the employer, from a payroll perspective, can follow various different options to make up the R1 million exemption in that month, for example:

Option 1

- R160 000 salary

Option 2

- R50 000 travel allowance
- R30 000 accommodation benefit
- R80 000 salary

Option 3

- R110 000 salary
- R50 000 travel allowance

Return to Question: [25](#) | Return to Index 

34. Does an employer have a choice to withhold PAYE from my foreign employment income?

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

An employer that has deducted or withheld PAYE where it subsequently transpires that the remuneration qualifies for exemption under section 10(1)(o)(ii) may not refund over-deducted PAYE to an employee. The employee must claim a refund on assessment. Supporting documentation in the form of, for example, a travel schedule, a passport and an employment contract, may be requested from the employee to substantiate the exemption claimed on assessment.

Return to Question: [25](#) | Return to Index 

35. What is the impact of the exemption on SDL and UIF?

Any amount that is exempt under section 10(1)(o)(ii) no longer constitutes "remuneration" as defined in paragraph 1 of the Fourth Schedule. The reason for this is that "remuneration" is defined to mean "...any amount of income...". "Income" as defined in section 1(1) excludes exempt income.

These exempt amounts are not subject to the deduction of UIF or SDL as they do not constitute "remuneration". Only the remuneration that remains taxable in South Africa will be subject to the deduction or withholding of levies or contributions under these statutes.

Return to Question: [25](#) | Return to Index 



36. Under which income source codes should the income be disclosed?

For employees' tax certificate (IRP5 certificate) purposes, each remuneration item in respect of foreign service income must be disclosed under the relevant foreign income source code. For example, foreign sourced salary income must 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)(ii) as there are specific foreign income source codes for each item that should be used. If an employer discloses any foreign sourced income under code 3652, the exemption under section 10(1)(o)(ii) will not be applied on assessment.

An employer that is satisfied that the exemption under section 10(1)(o)(ii) applies, should disclose the salary income in the following way: To the extent that the remuneration is exempt, it must be disclosed under the foreign income source code indicating the amount from which no employees' tax was withheld and if the remuneration exceeds R1 million and becomes subject to normal tax, the excess remuneration should be disclosed as a separate line item under the same foreign source code indicating the amount from which PAYE was withheld.

For example:

- **Code 3601** – Salary earned in South Africa (if applicable), subject to normal tax.
- **Code 3651** – Salary earned outside of South Africa that is less than R1 million and exempt under section 10(1)(o)(ii) with **no** PAYE.
- **Code 3651** – Salary earned outside of South Africa that exceeds R1 million, with PAYE.

The above principle will apply in the same way to all relevant remuneration items.

Return to Question: [25](#) | Return to Index

37. If I have a South African employer and earn South African sourced income as well as foreign sourced income, should my income be disclosed on one or two IRP5 certificates?

SARS prefers a single certificate, where possible, but where separate certificates are issued, the PAYE, SDL and UIF liabilities must be calculated on the total amount that is subject to PAYE, SDL and UIF.

If one IRP5 certificate is used, the employer must ensure the correct IRP5 source codes are used in respect of the South African and foreign sourced income. If two IRP5 certificates are used, one related to the South African sourced income and one related to the foreign sourced income, the employer must ensure the correct amount of PAYE, SDL and UIF is calculated and withheld on the combined income from the two IRP5 certificates.

Return to Question: [25](#) | Return to Index

38. What foreign exchange rate should be used on a monthly basis if amounts paid from a foreign employer should be processed through the South African payroll?

The average exchange rate is catered for under section 25D(3). From a practical point of view it would mean the average exchange rate applicable from payroll date to payroll date.

Return to Questions: [9](#) [25](#) | Return to Index



39. Should the amounts paid by the foreign employer, that is not required to be paid or processed by the South African employer, be taken into account to calculate the R1 million exemption?

Yes, for the determination of the R1 million exemption, the remuneration items provided by both the local and foreign employer must be taken into account. The R1 million exemption has to be determined with reference to all income received by the employee for the services rendered abroad irrespective of which employer (local or foreign) is making the payment.

Return to Question: [25](#) | Return to Index

40. Does the foreign employer have a liability to withhold PAYE from the remuneration paid to a resident employee working outside South Africa?

The answer depends on whether or not the foreign employer has a representative employer in South Africa. If there is a representative employer in South Africa, such employer will have an obligation, subject to the provisions of a tax treaty, to withhold PAYE in South Africa on the remuneration **in excess** of R1 million. The remuneration not qualifying for the exemption will also be subject to SDL and UIF.

If there is no representative employer in South Africa, the foreign employer does not have any obligation to withhold PAYE. Such employee will be required to register as a provisional taxpayer and settle any tax liability in South Africa by way of provisional tax payments.

Refer to IN 1 for more details on provisional tax.

Return to Question: [25](#) | Return to Index

41. Does the South African employer have a responsibility to withhold PAYE from an amount paid by the foreign employer?

The obligation to withhold PAYE is determined by who is "liable" to pay the remuneration. The South African employer will only be liable to withhold PAYE if that employer pays or is liable to pay remuneration. If the South African employer acts as the representative employer of the foreign employer in South Africa, it will be required to withhold PAYE on behalf of the foreign employer.

Return to Question: [25](#) | Return to Index



F. The role of my employer

42. If I am in a double tax position, is there any relief available through the payroll if my employer has a withholding obligation in South Africa?

Yes, an employer may apply for a directive to vary the basis on which PAYE is withheld monthly in South Africa.

This is not the actual granting of the section 6quat credit. The potential foreign tax credit is taken into account to determine the PAYE that has to be withheld for payroll purposes. The section 6quat credit will only be granted on assessment, provided the necessary requirements are met.

Return to Question: [23](#) | Return to Index

43. Can my foreign employer, who does not have a withholding obligation in South Africa, apply for a directive to provide relief for my double tax situation when my income exceeds R1 million and I pay tax on that excess in South Africa as well as the foreign country I work in?

The application for a directive can only be made if the employer has an obligation to withhold PAYE. In the case of a foreign employer who has no PAYE withholding obligation, there would be no need to vary the basis on which PAYE is withheld as no PAYE is withheld in the first place.

A section 6quat credit will have to be claimed on assessment.

Return to Question: [23](#) | Return to Index

44. Can an employer automatically apply a potential foreign tax credit through the South African payroll?

No, any possible relief should be applied for by the employer by way of a directive.

Return to Question: [23](#) | Return to Index

45. Are there any circumstances under which the directive will not be considered?

An application for a directive will not be considered if the following circumstances are applicable to an employee:

- The employee is below the tax threshold
- The employee's remuneration is exempt (less than R1 million)
- The employee is not taxed in the foreign country

Return to Question: [23](#) | Return to Index



46. Which tax rate will apply to the income that is in excess of the R1 million exemption?

The income in excess of R1 million will be taxed at the normal tax rate up to 45%, whichever is applicable to the excess portion of the income.

For example, an individual (below 65 years of age) earns foreign employment income of R1,5 million.

Based on the tax rates applicable to the 2020 year of assessment, the normal tax liability is calculated below.

- R1 000 000 will be exempt
- R500 000 is subject to normal tax and calculated as follows:
 - = R100 263 + [(R500 000 - R423 300) × 36%]
 - = R100 263 + R27 612
 - = R127 875
 - = less the primary rebate of R14 220
 - = R113 655

Return to Question: [23](#) | Return to Index

FinGlobal provides premier financial emigration services and tax emigration advice to South Africans worldwide.

Contact us today to find out how we can make your financial emigration easier for you and your family.

Contact  FinGlobal

For more information regarding foreign employment income SARS has set up a correspondence address:

ForeignEmployment@sars.gov.za