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South Africa and employee mobility: core tax rules for cross-border assignments – South Africa

South Africa taxes employment income through a residence and source framework that places emphasis on residence, the income source, employees' withholding tax and the treatment of equity-based compensation. For mobile employees and their employers, the most material issues are often not the personal income tax rate, but the interaction between local residence rules, treaty allocation (the double taxation agreement tiebreaker) rules, section 10(1)(o)(ii) of the Income Tax Act (colloquially referred to as the 'expat tax'), payroll compliance, foreign tax relief and permanent establishment risk.

1. Overview of the tax system

South Africa's individual income tax system is based on the Income Tax Act 58 of 1962 (the 'Act'), alongside the Tax Administration Act 28 of 2011 and administered, in practice, by the South African Revenue Service (SARS). In broad terms, South African tax residents are taxed on their worldwide receipts and accruals, while non-residents are taxed only on amounts from a South African source, subject to the detailed exemptions and deductions allowed in the legislation.¹ For the 2027 tax year, the personal income tax table remains progressive, with marginal rates from 18 per cent to 45 per cent and a primary rebate of R17,820.²

In order to carry out talent mobility analysis, the first question is always whether the employee is a South African 'resident' for tax purposes. A natural person is tax resident if he or she is 'ordinarily resident' in South Africa or meets the 'physical presence test', unless that person is deemed to be exclusively resident elsewhere under an applicable double taxation agreement (DTA).³ The SARS's Interpretation Notes 3 and 4 remain the principal administrative guides on these two domestic residence tests.⁴

The 'ordinarily resident' inquiry is a factual inquiry. In *Cohen v CIR* the court treated ordinary residence as the country to which a taxpayer would naturally and as a matter of course return to from their wanderings. The ruling in *CIR v Kuttel* confirmed that the enquiry must consider where the taxpayer has his/her usual or principal residence, ie, what may be described as their real home.⁵ By contrast, the 'physical presence test' is arithmetic: it asks whether the individual was physically present in South Africa for more than 91 days in the current year, more than 91 days in each of the five preceding years and more than 915 days in aggregate during those five preceding years, subject to the 330 full-day break rule.⁶ If all three questions are answered in the affirmative, then the taxpayer is considered to be a South African tax resident in year six.

We address each heading below under the two respective subheadings of 'South African tax residents abroad' and 'non-residents in South Africa', where applicable.

2. Taxation of employment income

Introduction

South African employment taxation starts with the statutory definition of 'gross income' read alongside the Fourth and Seventh Schedules to the Act. Salary, wages, bonuses, fees, gratuities and

¹ Income Tax Act 58 of 1962, s 1(1) definition of 'gross income'; Tax Administration Act 28 of 2011; SARS, Taxation in South Africa (2025), 26 August 2025 <https://www.sars.gov.za/legal-counsel/primary-legislation/> last accessed on 14 April 2026.

² SARS, 'Rates of Tax for Individuals'. <https://www.sars.gov.za/tax-rates/income-tax/rates-of-tax-for-individuals/> last accessed on 14 April 2026.

³ Income Tax Act 58 of 1962, s 1(1) definition of 'resident'; s 108 <https://www.sars.gov.za/wp-content/uploads/Ops/Guides/Legal-Pub-Guide-Gen01-Taxation-in-South-Africa.pdf> last accessed on 14 April 2026.

⁴ SARS Interpretation Note 3 (Issue 2), Resident: Definition in relation to a natural person – ordinarily resident, 20 June 2018 <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-03-Resident-definition-natural-person-ordinarily-resident.pdf> last accessed on 14 April 2026. SARS Interpretation Note 4 (Issue 5), Resident: Definition in relation to a natural person – physical presence test, 3 August 2018 <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-04-Resident-definition-natural-person-physical-presence.pdf> last accessed on 14 April 2026.

⁵ *Cohen v CIR* 1946 AD 174, 13 SATC 362; *CIR v Kuttel* 1992 (3) SA 242 (A), 54 SATC 298 <https://www.saflii.org/za/cases/ZASCA/1992/60.html> last accessed on 14 April 2026. See also SARS Interpretation Note 3 (Issue 2).

⁶ Income Tax Act 58 of 1962, s 1(1) definition of 'resident'; SARS Interpretation Note 4 (Issue 5).

similar employment-linked cash receipts fall within a taxpayer's 'gross income' and are, therefore, taxable. The concept of 'gross income' derived from employment (or 'services rendered') is deliberately broad.⁷ For employee tax purposes, 'remuneration' in paragraph 1 of the Fourth Schedule is the key concept because it determines what must be subjected to employees' tax (PAYE), which is a withholding tax withheld and paid to the SARS by employers.⁸

Bonuses generally fall within the definition of remuneration and are treated as variable remuneration for withholding purposes, with PAYE generally triggered when the amount is actually paid.⁹ Allowances and advances are governed primarily by section 8(1) of the Act: travel and subsistence allowances are included in 'gross income' first and only then reduced, where the statutory requirements are met, by permitted deductions or deemed expenditure rules.¹⁰ Fringe benefits (employee benefits) are regulated through the Seventh Schedule to the Act. The most common mobility-related benefits are accommodation, employer-provided vehicles, low-interest loans, school fees and other employer-funded benefits that arise because an employee is stationed in or outside South Africa.¹¹

Share incentive schemes exist and are considered to be remuneration.¹²

The discussion below only applies to South African tax residents working abroad or non-residents who earn South African-source income.

South African tax residents abroad

As the South African tax resident is taxed on their worldwide income, all remuneration earned abroad will constitute 'gross income', as discussed.

South African tax residents working abroad must then consider the foreign employment income exemption in section 10(1)(o)(ii) of the Act. The exemption applies to:

- a South African tax resident who is an employee;
- renders services outside South Africa;
- is outside South Africa if, within any 12-month cycle, the employee spends more than 183 full days abroad; and
- that period includes one uninterrupted foreign absence of more than 60 full days.¹³

Share incentive schemes are also addressed in the exemption. The exemption no longer shields all qualifying foreign remuneration: since 1 March 2020, it is capped at R1.25, with the excess remaining taxable in South Africa, subject to credit relief in terms of section 6quat of the Act or

⁷ Income Tax Act 58 of 1962, s 1(1) definition of 'gross income', para (c).

⁸ Income Tax Act 58 of 1962, Fourth Schedule, para 1 definition of 'remuneration'.

⁹ Income Tax Act 58 of 1962, s 7B; SARS Guide for Employers in respect of Employees' Tax for 2025 <https://www.sars.gov.za/wp-content/uploads/PAYE-GEN-01-G19-Guide-for-Employers-iro-Employees-Tax-for-2025-External-Guide.pdf> last accessed on 14 April 2026; para 2 of the Fourth Schedule to the Income Tax Act.

¹⁰ Income Tax Act 58 of 1962, s 8(1); SARS Interpretation Note 14, Allowances, advances and reimbursements, 30 March 2021.

¹¹ Income Tax Act 58 of 1962, Seventh Schedule, especially paras 2 and 3.

¹² Income Tax Act 58 of 1962, ss 8B and 8C.

¹³ Income Tax Act 58 of 1962, s 10(1)(o)(ii); SARS, Foreign Employment Income Exemption webpage, updated 14 February 2025 <https://www.sars.gov.za/individuals/tax-during-all-life-stages-and-events/foreign-employment-income-exemption/> last accessed on 14 April 2026.

treaty relief where available.¹⁴ SARS Interpretation Note 16 is the most important current guide on how the exemption, apportionment and payroll consequences operate.¹⁵

Should a South African tax resident earn income from both South African and foreign service periods in one tax year, then the worldwide income falls within South Africa's tax net. To the extent that the taxpayer earned in excess of the exemption cap from the foreign employer (and met the requirements of section 10(1)(o)(ii)), then the relevant DTA would have to be consulted to consider whether the other country may have taxing rights. If in the affirmative, then there ought to be a credit available in South Africa for the foreign taxes already paid on the income received.

Non-residents in South Africa

Source is an important concept. Non-residents are taxed on South African-source employment income only, and the common law source cases still matter because there is no single comprehensive statutory source rule for private sector employment income. The classic principle, associated with *CIR v Lever Brothers & Unilever Ltd* and reflected in later SARS guidance, is that source is determined by the 'originating cause' of the income. In an employment setting, that generally points to the place where the employee renders the services.¹⁶ As a result, a non-resident physically working in South Africa will usually have South African-source employment income for the days worked in the country, even if paid offshore by a foreign employer.¹⁷

Where income is in relation to both South African and foreign service periods in one tax year, the practical analysis conducted should track the source to which the income relates. SARS's Interpretation Note 16 expressly deals with apportionment in this context. The crux of the apportionment looks at where the services were physically rendered, as already mentioned.

Payroll compliance is not merely administrative. Paragraph 2(1) of the Fourth Schedule requires PAYE withholding by 'employers' (as defined) that are paying 'remuneration' (as defined). This obligation also extends to a foreign employer that carries out business in South Africa through a permanent establishment (PE).¹⁸ In practice, this matters most when dealing with inbound assignments, secondments and dual-employment arrangements. If the employer has a South African payroll obligation, the failure to withhold employees' tax can create direct exposure to tax, penalties and interest under the Fourth Schedule and the Tax Administration Act for both the foreign employer and the employee.¹⁹

Employees and employers must also remember the non-income-tax charges that sit alongside PAYE. The Unemployment Insurance Contributions Act requires contributions by the employer and employee, while the Skills Development Levies Act generally imposes a one per cent levy on

¹⁴ Income Tax Act 58 of 1962, s 10(1)(o)(ii); SARS Interpretation Note 16 (Issue 4) <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-16-Exemption-Foreign-Employment-Income.pdf> last accessed on 14 April 2026.

¹⁵ SARS Interpretation Note 16 (Issue 4); SARS FAQs: Foreign Employment Income Exemption.

¹⁶ SARS Interpretation Note 16 (Issue 4), Exemption from Income Tax: Foreign Employment Income, 28 June 2021.

¹⁷ *CIR v Lever Brothers & Unilever Ltd* 1946 AD 441; see also SARS, Taxation in South Africa (2025), and SARS Interpretation Note 139, 22 August 2025, for the principle that income from services rendered is generally sourced where the services are rendered.

¹⁸ Income Tax Act 58 of 1962, Fourth Schedule, para 2(1).

¹⁹ Income Tax Act 58 of 1962, Fourth Schedule; Tax Administration Act 28 of 2011, especially ss 157 and 187; SARS Guide for Employers in respect of Employers' Tax for 2025.

the employer's leviable amount, subject to statutory exemptions.²⁰ These aspects are often overlooked during mobility planning, particularly where a foreign employer assumes that South African payroll questions begin and end with PAYE.

Once it has been established that the employment income is sourced from South Africa, the applicable DTA must be considered to see whether South Africa has taxing rights in terms of the said DTA. The employment-income article in South African treaties usually follows Article 15 of the Organisation for Economic Co-operation and Development's (OECD) model: employment income is taxable in the employee's state of residence unless the employment is exercised in the other state, in which case the host state may also impose tax. The familiar short-term assignment exemption normally applies only if all three conditions are satisfied: the employee is present in the host state for no more than the treaty threshold period, the remuneration is paid by or on behalf of a non-resident employer and the remuneration is not borne by a PE in the host state.²¹

3. PE risks

Talent mobility also creates an international tax risk. Even if the employee's personal tax position is correctly analysed, the foreign employer may still create a South African PE, exposing part of the enterprise's profits to South African tax. The domestic definition of 'permanent establishment' in section 1 of the Act cross-refers to the meaning given in Article 5 of the OECD model, but the definition is always DTA specific given that South Africa's DTAs are not uniform.²²

The first general PE risk is the dependent agent PE. Under the OECD model, exposure is not limited to formal signatory authority. It can also arise where a person in South Africa regularly drives contract outcomes and the foreign enterprise ordinarily completes those contracts without meaningful change.²³ In practical mobility terms, it would be difficult to say that a South Africa-based employee is an agent, given their employment status.

More applicable to talent mobility is that some South African treaties, particularly those closer to the United Nations model, include service PE provisions that can be triggered merely by furnishing services in the source state for a sufficient period through employees or other personnel.²⁴ This is because of the risk of establishing a fixed-place PE. A foreign enterprise may have a PE if it carries on business through a fixed place in South Africa, such as an office, branch or other sufficiently fixed location.²⁵ The OECD's 2025 update to the Commentary on Article 5 is especially relevant for modern mobility arrangements because it clarifies when an individual's home may, and may not, constitute a place of business of the enterprise. That update does not

²⁰ Unemployment Insurance Contributions Act 4 of 2002; Skills Development Levies Act 9 of 1999; SARS Budget Tax Guide 2026.

²¹ Income Tax Act 58 of 1962, s 108; OECD Model Tax Convention on Income and on Capital (Full Version), Article 15 https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-full-version_9a5b369e-en.html last accessed on 14 April 2026; SARS Double Taxation Agreements & Protocols database <https://www.sars.gov.za/legal-counsel/international-treaties-agreements/double-taxation-agreements-protocols/> last accessed on 14 April 2026.

²² Income Tax Act 58 of 1962, s 1(1) definition of 'permanent establishment'; OECD Model Tax Convention, Article 5; SARS Double Taxation Agreements & Protocols database.

²³ OECD Model Tax Convention, Article 5(5).

²⁴ United Nations Model Double Taxation Convention between Developed and Developing Countries (2021), Article 5 <https://desapublications.un.org/publications/united-nations-model-double-taxation-convention-between-developed-and-developing-0> last accessed on 14 April 2026; SARS Double Taxation Agreements & Protocols database.

²⁵ OECD Model Tax Convention, Article 5(1) and 5(2).

rewrite the legal test set out in older treaties, but it is a strong signal that remote and hybrid work arrangements require closer PE analysis than many employers previously assumed.²⁶

Accordingly, mobility planning should never assume that the OECD fixed-place and dependent agent tests are the only relevant treaty gateways. The treaty text for the specific jurisdiction must be checked via the SARS's treaty database.²⁷

4. Foreign tax relief, exit tax and reporting

South African tax residents abroad

Where South African residents are taxed abroad on their employment income that is also taxable in South Africa, section 6quat of the Act may provide relief by way of a rebate or deduction for qualifying foreign taxes. The relief is technical and limited: the foreign tax must be proved to be payable, must relate to amounts included in the individual's taxable income and is subject to statutory limitation rules.²⁸ SARS Interpretation Note 18 is the most useful current guide because it explains both the threshold conditions and the ordering of the limitation mechanics.²⁹

Exit tax is another mobility pressure point for South African tax residents. If a person ceases to be a South African tax resident, section 9H of the Act generally deems that person to have disposed of their worldwide assets at market value immediately before the cessation of their residence, subject to important exclusions.³⁰ The core practical consequence of the application of an exit tax is that once tax residence is ceased, the taxpayer moves from worldwide taxation to source-based taxation in South Africa, but the transition may trigger what is deemed to be a capital gains tax disposal in South Africa.³¹

The timing of the exit tax is deliberate. In *Commissioner for SARS v Tradehold Ltd*, the taxpayer succeeded because the deemed disposal then operated at a moment when treaty protection had already attached. The legislation was subsequently amended so that the deemed disposal is treated as occurring on the day before tax residence ends, while the taxpayer is still resident for domestic purposes.³² For mobile individuals, that amendment closed off what had become the most obvious treaty-based planning point.

Reporting is also critical. The SARS now requires formal updating of an individual's tax residence status through the RAV01 process on e-Filing, supported by documentary proof, and recent filing-season changes continue to distinguish resident, non-resident and cessation-year returns more

²⁶ OECD, The 2025 Update to the OECD Model Tax Convention, published 18 November 2025 https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/11/the-2025-update-to-the-oecd-model-tax-convention_c7031e1b/5798080f-en.pdf last accessed on 14 April 2026.

²⁷ SARS Double Taxation Agreements & Protocols database.

²⁸ Income Tax Act 58 of 1962, s 6quat.

²⁹ SARS Interpretation Note 18, Rebate and deduction for foreign taxes on income, 9 December 2022 <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/Legal-IN-18-Rebate-and-deduction-for-foreign-taxes-on-income.pdf> last accessed on 14 April 2026.

³⁰ Income Tax Act 58 of 1962, s 9H; SARS CGT Legislation webpage, updated 13 December 2024 <https://www.sars.gov.za/types-of-tax/capital-gains-tax/cgt-legislation/> last accessed on 14 April 2026.

³¹ SARS, Cease to be an SA Tax Resident and Reinstatement of SA Tax Resident webpage <https://www.sars.gov.za/individuals/cease-to-be-an-sa-tax-resident-and-reinstatement-of-sa-tax-resident/> last accessed on 14 April 2026.

³² *Commissioner for the South African Revenue Service v Tradehold Ltd* [2012] ZASCA 61 <https://www.saflii.org/za/cases/ZASCA/2012/61.html> last accessed on 14 April 2026; Income Tax Act 58 of 1962, s 9H; SARS CGT Legislation webpage.

explicitly than before.³³ In mobility matters, technical tax analysis and procedural tax compliance need to be treated as one workstream.

Non-residents in South Africa

If a relevant DTA is concluded between South Africa and the resident country, it is more likely than not that the non-resident will have a credit available to them in his/her resident country for the South African tax paid. Each DTA would have to be considered in this context.

5. Key takeaways

For employees, the main South African risks are residence misclassification, unexpected source-based taxation on South African workdays (ie, days physically spent working in South Africa), incomplete relief for double taxation once the section 10(1)(o)(ii) cap is exceeded and underestimation of the section 9H exit charge.³⁴

For employers, the most significant risks are PAYE non-compliance, the incorrect treatment of equity compensation and a failure to recognise that the physical presence of staff in South Africa may create a PE for the enterprise.³⁵

The practical sequence is, therefore, critical. First, determine the domestic residence. Then, test the treaty residence under the tiebreaker, if a DTA applies. Next, analyse the source, payroll withholding, the possible application of section 10(1)(o)(ii) and any section 6quat relief. Finally, assess whether the employee's presence or activities create a fixed-place or service PE for the employer.³⁶

In short, South African talent mobility advice is strongest when it avoids treating 'expatriate tax' as a narrow payroll exercise. The real work lies in integrating residence, the income source, treaty allocation, payroll, equity taxation, foreign tax relief and PE risk into one coherent framework. That integrated approach is also the best safeguard against the practical problem that dominates most cross-border assignments: a structure that looks compliant in one jurisdiction but creates unexpected tax exposure in another.³⁷

³³ SARS, Cease to be an SA Tax Resident and Reinstatement of SA Tax Resident webpage; SARS, Changes for 2025 Filing Season, 26 June 2025; SARS, Updated Guides for 2025 Filing Season, 28 June 2025.

³⁴ Income Tax Act 58 of 1962, ss 10(1)(o)(ii), 6quat and 9H.

³⁵ Income Tax Act 58 of 1962, Fourth Schedule, para 2(1); ss 8B and 8C; OECD Model Tax Convention, Article 5.

³⁶ Income Tax Act 58 of 1962, s 108, s 10(1)(o)(ii), s 6quat and Fourth Schedule; OECD Model Tax Convention, Articles 5 and 15.

³⁷ Income Tax Act 58 of 1962; SARS Interpretation Notes 3, 4, 16, 18 and 55 <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-55-Taxation-Directors-Employees-Vesting-Equity-Instruments.pdf> last accessed on 14 April 2026; OECD Model Tax Convention; SARS treaty database.