



## South Africa

### Introduction

The South African tax system is residence-based. In terms of the residence basis of taxation, any person who is considered to be a South African tax resident will be taxed on worldwide income and capital gains. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income.

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### Key messages

Extended business travelers with no intention to remain permanently who are present in South Africa for less than six years are taxable on their South African-sourced income only by virtue of the true source of their income. Advice should be sought regarding proof of intention where presence is in excess of five years or localization takes place.

## Income tax

### Liability for income tax

A person's liability for South African tax is determined by residence status. A person can be a resident or a nonresident for South African tax purposes.

A resident of South Africa generally refers to an individual who is "ordinarily resident" in South Africa (i.e., South Africa is the person's true home) or a "physically present resident" who spends more than 91 days in total in each of the current and previous five tax years and more than 915 days in total during the previous five tax years (the days need not be consecutive).

A nonresident of South Africa is generally someone who spends less than 91 days in total in each of the current and previous five tax years in South Africa.

The general rule is that a person who is a resident of South Africa is assessable on that person's worldwide income. Nonresidents are generally assessable on income derived directly or indirectly from sources in South Africa. Extended business travelers are likely to be considered nonresident of South Africa for tax purposes unless they remain in South Africa for more than five years or make South Africa their true home.

### Definition of source

Employment income is generally treated as South African – sourced compensation where the individual performs the services while physically located in South Africa.

### Tax trigger points

In South Africa there is a threshold that exempts the employee from the requirement to file and pay tax. The tax-free threshold is currently (tax year March 1, 2011 to February 28, 2012) 59,750 South African rand (ZAR) for those below the age of 65; ZAR93,150 for those aged 65 to 74; and ZAR104,261 for those 75 and older. These amounts are subject to change from year to year.

### Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income, South African bank interest, and taxable gains from the sale or deemed sale of South African immovable property.

### Tax rates

Net taxable income is taxed at graduated rates ranging from 18 percent to 40 percent. Nonresidents are subject to the same tax rates as residents. The maximum tax rate is currently 40 percent on income earned.

## Social security

### Liability for social security

South Africa does not have a social security system as such. Similar taxes, however, do apply, such as unemployment insurance fund contributions, skills development levies, compensation for occupational injuries and diseases levies, etc. Certain of these do not apply to expatriates in certain instances. South Africa has not entered into any totalization agreements.

## Compliance obligations

### Employee compliance obligations

Taxpayers must submit their annual tax returns by a specific date each year. This date is publicized and the South African Revenue Service (SARS) runs filing campaigns to encourage people to meet the deadline. Tax returns must be filed by nonresidents who derive taxable South African – sourced income that is above the tax threshold. Individuals claiming relief from tax in terms of a double taxation agreement also are required to submit tax returns to claim such relief. Without submission and assessment of a tax return, a short-term business traveler is not guaranteed such relief.

### Employer reporting and withholding requirements

Withholdings from employment income are covered under the Pay-As-You-Earn (PAYE) system. If an individual is taxable on employment income, a South African resident employer or representative employer has a PAYE withholding requirement. The employer will deduct employees' tax monthly.

## Other

### Work permit/visa requirements

A visa must be applied for before the individual enters South Africa. The type of visa required will depend on the purpose of the individual's entry into South Africa. Some work permits may be applied for once the individual is already in South Africa. Business/holiday visas often do not cover short-term business travelers.

### Double taxation treaties

South Africa has a broad network of double taxation treaties. Subject to certain conditions, relief from South African tax will apply where the individual is tax resident, for treaty purposes, in the other state and is in South Africa for less than 183 days in the period defined in the relevant double taxation agreement. If paid in South Africa or costs are recharged to a South African entity, however, this relief will usually not apply.

### Permanent establishment implications

There is the potential that a permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has, as well as the overall period of the project itself and the type of work being conducted.

### Indirect taxes

The principal source of indirect taxation revenue in South Africa is value-added tax (VAT). If a subsidiary or branch of a foreign-owned company sells goods or provides services, it must register as a vendor with SARS and charge and pay VAT.

The standard rate of VAT is 14 percent. Exports, certain foodstuffs, and other supplies are zero-rated, and certain supplies are exempt (primarily certain financial services, residential accommodation, and public transport).

### **Transfer pricing**

South Africa has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

### **Local data privacy requirements**

South Africa currently has no data privacy laws, although these will be introduced in time.

### **Exchange control**

Exchange control regulations restrict the inflow and outflow of capital in South Africa. All foreign exchange transactions are subject to the exchange control regulations. The controls are administered by the South African Reserve Bank through its agents. Agents, also known as authorized dealers, are situated in every South African bank. Every time money is transferred from overseas into South Africa or from South Africa into another country, those funds have to be declared with the Reserve Bank.

Under exchange control regulations, there are no limitations as to how much money can be brought into South Africa,

but there are limitations on the amount of money that can be transferred out of South Africa. South African exchange control resident individuals are currently, for example, able to transfer up to ZAR4 million annually out of the country and invest it overseas. Additional allowances are available for traveling and other defined activities.

For all non-South Africans, exchange control status is vital in deciding if there will be limitations on transferring money out of South Africa that was brought in previously. The exchange control status is independent of the tax status in South Africa. Different definitions apply. Individuals should know their status for exchange control purposes and the legal implications of their status. It can have significant implications in terms of what the individual may or may not be allowed to do and should be carefully managed at the outset so the individual does not encounter unnecessary problems down the line.

### **Nondeductible costs for assignees**

Nondeductible costs for assignees include contributions by an employer to non-South African pension funds, retirement funds, and provident funds.

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