



# Legal Counsel

## Income Tax

Frequently Asked Questions

---

Foreign Employment Income Exemption



*South African Revenue Service*

An amendment to section 10(1)(o)(ii) of the Income Tax Act 1962 (the Act<sup>1</sup>) has been promulgated and will come into effect on 1 March 2020. The Frequently Asked Questions (FAQs) in this document 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 are 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. The FAQs are therefore not intended to be used as legal reference. You can find more information about some of the aspects discussed in this document in *Interpretation Note 16 – Exemption from income tax: Foreign Employment Income*.

The FAQs are also intended to solicit further questions regarding the amendment. The FAQs will therefore be updated periodically to address these questions, as well as any changes to the legislation. In light hereof, it is not envisaged that non-binding private opinions in relation to the amendment will be issued. Any questions that have not been addressed in the FAQs can be sent to **ForeignEmployment@sars.gov.za**, for consideration.

All other FAQs, forms, guides, interpretation notes, notices, and rulings referred to in these FAQs are available on the **SARS website**. Unless indicated otherwise, the latest issues of these documents should be consulted.

**Issued by: Legal Counsel**  
**SOUTH AFRICAN REVENUE SERVICE**  
Date of 1st issue : 7 October 2019

---

<sup>1</sup> All references to sections are to sections of the Act unless otherwise indicated.

Question	Answer
<b>Section 10(1)(o)(ii) requirements</b>	
1.	<p>What does the foreign employment income exemption mean?</p> <p>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.</p> <p>Before 1 March 2020, if the requirements regarding the exemption are met, all remuneration for services rendered outside South Africa is exempt.</p> <p>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.</p> <p>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.</p>
2.	<p>What are the requirements to qualify for the exemption?</p> <p>In order to qualify for the exemption, a taxpayer must –</p> <ul style="list-style-type: none"> <li>• be a tax resident of South Africa (refer to <b>Question 3</b>);</li> <li>• earn certain types of remuneration (refer to <b>Question 4</b>);</li> <li>• in respect of services rendered by way of <b>employment</b>;</li> <li>• outside South Africa;</li> <li>• during specified qualifying periods (refer to <b>Question 5</b>); and</li> <li>• not be subject to an exclusion (refer to <b>Question 7</b>).</li> </ul> <p>Refer to Interpretation Note 16.</p>
3.	<p>Who does the exemption apply to?</p> <p>The exemption only applies to a <b>tax resident</b> of South Africa who is an <b>employee</b> 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 <b>Questions 15 to 21</b>.</p> <p>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.</p>

## FAQs: Foreign Employment Income Exemption

4.	What type of income qualifies for the exemption under section 10(1)(o)(ii)?	<p>The following amounts fall within the scope of the exemption:</p> <ul style="list-style-type: none"><li>• Salary</li><li>• Taxable benefits</li><li>• Leave pay</li><li>• Wage</li><li>• Overtime pay</li><li>• Bonus</li><li>• Gratuity</li><li>• Commission</li><li>• Fee</li><li>• Emolument</li><li>• Allowance (including travel allowances, advances and reimbursements)</li><li>• Amounts derived from broad-based employee share plans</li><li>• Amounts received in respect of a share vesting</li></ul>
5.	What are the qualifying periods (that is, the “days test”) that need to be met for purposes of section 10(1)(o)(ii)?	<p>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.</p>
6.	Does any of the requirements that applied before 1 March 2020 change going forward?	<p><b>No</b>, 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.</p>
7.	Who is excluded from the application of section 10(1)(o)(ii)?	<p>The following categories of individuals are excluded from the exemption:</p> <ul style="list-style-type: none"><li>• A public office holder appointed or deemed to be appointed under an Act of Parliament</li><li>• Employees who are employed in the national, provincial or local sphere of government, certain constitutional institutions, national and provincial public entities and municipal entities</li><li>• Independent contractors and individuals who are self-employed also do not qualify for the exemption as such persons are not in an employment relationship</li></ul>

## FAQs: Foreign Employment Income Exemption

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 <b>Question 14</b> .
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 <b>Question 38</b> .
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?	<b>No</b> , 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 <b>Question 11</b> .
11.	If I receive a travel allowance and a <i>portion</i> 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.
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 <i>pro rata</i> 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:  $\text{Travel allowance/Total remuneration} \times \text{R1 000 000}$ $\text{R300 000/R1 500 000} \times \text{R1 000 000}$ $= \text{R200 000}$ of the travel allowance will be exempt from normal tax on assessment.  Thus, R100 000 will be included in taxable income.
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 <b>Question 5</b> on the “days” requirements applicable under section 10(1)(o)(ii).

## FAQs: Foreign Employment Income Exemption

14.	Should my income be apportioned?	<b>Yes</b> , 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.
15.	Does the change to section 10(1)(o)(ii) result in a new “expat tax” being levied?	<b>No</b> , 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.
<b>Tax residence</b>		
16.	Who is a tax resident in South Africa?	<p>A person is a tax resident if he or she is ordinarily resident or becomes a resident by way of physical presence.</p> <p>For more details on the different tests to become a tax resident in South Africa, refer to the following Interpretation Notes:</p> <ul style="list-style-type: none"> <li>• Interpretation Note 3: Resident: Definition in relation to a natural person – ordinarily resident (IN 3)</li> <li>• Interpretation Note 4: Resident: Definition in relation to a natural person - physical presence test</li> </ul>
17.	Is tax residency based on citizenship?	<b>No</b> , 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.
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.
19.	Must I notify SARS if I cease to be a tax resident in South Africa?	<b>Yes.</b>
20.	How should I notify SARS if my tax residence status changes?	<p>SARS can be informed of a taxpayer’s intention to cease to be a resident through the wizard on the income 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.</p> <p>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).</p>

## FAQs: Foreign Employment Income Exemption

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.
<b>Double tax situation</b>		
22.	Will the change to section 10(1)(o)(ii) result in a double tax scenario?	<p>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.</p> <p>Generally, under the provisions of the relevant tax treaty, if an employee renders services in a foreign country <b>exceeding</b> 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.</p>
23.	What remedies do I have to relieve the double taxation?	<p>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 <i>Interpretation Note 18: Rebate or deduction for foreign taxes on income</i>.</p> <p>An employer may at his or her discretion, under paragraph 10 of the Fourth Schedule, apply for a directive 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 <b>Questions 42 to 46</b>.</p> <p>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.</p>
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.

## FAQs: Foreign Employment Income Exemption

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?	<p><b>Yes</b>, 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.</p> <p>Refer also to <b>Questions 33 to 41</b> that deal with various payroll issues.</p>
26.	Will the tax treaty apply to the first R1 million of remuneration earned?	<b>No</b> , 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.
27.	Will the tax treaty apply to the amount of remuneration exceeding R1 million?	<b>Yes</b> , the tax treaty will apply as the portion of the remuneration in excess of R1 million may be subject to double taxation.
28.	Is the exemption under section 10(1)(o)(ii) dependent on the provisions of a tax treaty?	<b>No</b> , 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.
<b>Compliance matters</b>		
29.	If I qualify for the exemption, do I have to submit an income tax return in South Africa?	<b>Yes</b> , 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.
30.	If I am employed, only get paid by one employer and earn <b>less than</b> R1 million, do I have a normal tax liability in South Africa?	<p><b>No</b>, 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.</p> <p>As noted in <b>Question 29</b>, the individual is still obliged to submit a tax return.</p>
31.	If I am employed and I earn <b>more than</b> R1 million remuneration, do I have a normal tax liability in South Africa? If so, how should my liability be settled?	<p>If you are employed by a local employer, PAYE will be deducted from your remuneration in excess of R1 million.</p> <p>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.</p> <p>Refer to Interpretation Note 1: Provisional Tax Estimates (IN 1) for more details on provisional tax.</p>



32.	What is the impact on me if I work in a tax haven?	<p>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.</p> <p>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.</p>
-----	--	--

**Payroll related issues**

33.	How should the R1 million exemption be calculated to determine the PAYE withholding obligation?	<p>The R1 million should be accumulated on a monthly basis in respect of <b>all</b> 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.</p> <p>The following example illustrates the cumulative basis on which the R1 million should be calculated.</p> <p>An employee goes on secondment to a foreign country on 1 March 2020 and receives the following monthly remuneration:</p> <p>Salary: R200 000          Travel allowance: R50 000          Accommodation benefit: R30 000</p> <table border="1" data-bbox="600 1249 1442 1727"> <thead> <tr> <th>Items</th> <th>March</th> <th>April</th> <th>May</th> <th>June</th> <th>July</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>R200 000</td> <td>R200 000</td> <td>R200 000</td> <td>R200 000</td> <td>R200 000</td> </tr> <tr> <td>Travel allowance</td> <td>R50 000</td> <td>R50 000</td> <td>R50 000</td> <td>R50 000</td> <td>R50 000</td> </tr> <tr> <td>Accommodation benefit</td> <td>R30 000</td> <td>R30 000</td> <td>R30 000</td> <td>R30 000</td> <td>R30 000</td> </tr> <tr> <td><b>Accumulated total</b></td> <td><b>R280 000</b></td> <td><b>R560 000</b></td> <td><b>R840 000</b></td> <td><b>R1 120 000</b></td> <td><b>R1 400 000</b></td> </tr> <tr> <td>Exempt</td> <td>R280 000</td> <td>R280 000</td> <td>R280 000</td> <td>R160 000</td> <td>R0</td> </tr> <tr> <td>Subject to normal tax</td> <td>R0</td> <td>R0</td> <td>R0</td> <td>R120 000</td> <td>R280 000</td> </tr> </tbody> </table> <p>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:</p> <p><u>Option 1</u></p> <ul style="list-style-type: none"> <li>• R160 000 salary</li> </ul>	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	<b>Accumulated total</b>	<b>R280 000</b>	<b>R560 000</b>	<b>R840 000</b>	<b>R1 120 000</b>	<b>R1 400 000</b>	Exempt	R280 000	R280 000	R280 000	R160 000	R0	Subject to normal tax	R0	R0	R0	R120 000	R280 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																																							
<b>Accumulated total</b>	<b>R280 000</b>	<b>R560 000</b>	<b>R840 000</b>	<b>R1 120 000</b>	<b>R1 400 000</b>																																							
Exempt	R280 000	R280 000	R280 000	R160 000	R0																																							
Subject to normal tax	R0	R0	R0	R120 000	R280 000																																							

**FAQs: Foreign Employment Income Exemption**

		<p><u>Option 2</u></p> <ul style="list-style-type: none"> <li>• R50 000 travel allowance</li> <li>• R30 000 accommodation benefit</li> <li>• R80 000 salary</li> </ul> <p><u>Option 3</u></p> <ul style="list-style-type: none"> <li>• R110 000 salary</li> <li>• R50 000 travel allowance</li> </ul>
34.	Does an employer have a choice to withhold PAYE from my foreign employment income?	<p>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.</p> <p>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.</p>
35.	What is the impact of the exemption on SDL and UIF?	<p>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.</p> <p>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.</p>
36.	Under which income source codes should the income be disclosed?	<p>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.</p> <p>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.</p>

**FAQs: Foreign Employment Income Exemption**

		<p>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.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• <b>Code 3601</b> – Salary earned in South Africa (if applicable), subject to normal tax.</li> <li>• <b>Code 3651</b> – Salary earned outside of South Africa that is less than R1 million and exempt under section 10(1)(o)(ii) with <u>no</u> PAYE.</li> <li>• <b>Code 3651</b> – Salary earned outside of South Africa that exceeds R1 million, with PAYE.</li> </ul> <p>The above principle will apply in the same way to all relevant remuneration items.</p>
37.	<p>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?</p>	<p>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.</p> <p>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.</p>
38.	<p>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?</p>	<p>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.</p>
39.	<p>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?</p>	<p><b>Yes</b>, 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.</p>

**FAQs: Foreign Employment Income Exemption**

40.	Does the foreign employer have a liability to withhold PAYE from the remuneration paid to a resident employee working outside South Africa?	<p>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 <b>in excess</b> of R1 million. The remuneration not qualifying for the exemption will also be subject to SDL and UIF.</p> <p>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. .</p>
41.	Does the South African employer have a responsibility to withhold PAYE from an amount paid by the foreign employer?	<p>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.</p>
<p><b>Directive under paragraph 10 of the Fourth Schedule (hereinafter referred to as “directive”)</b></p>		
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?	<p><b>Yes</b>, an employer may apply for a directive to vary the basis on which PAYE is withheld monthly in South Africa.</p> <p>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.</p>
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?	<p>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.</p> <p>A section 6quat credit will have to be claimed on assessment.</p>
44.	Can an employer automatically apply a potential foreign tax credit through the South African payroll?	<p><b>No</b>, any possible relief should be applied for by the employer by way of a directive.</p>

## FAQs: Foreign Employment Income Exemption

45.	Are there any circumstances under which the directive will not be considered?	<p>An application for a directive will not be considered if the following circumstances are applicable to an employee:</p> <ul style="list-style-type: none"><li>• The employee is below the tax threshold</li><li>• The employee's remuneration is exempt (less than R1 million)</li><li>• The employee is not taxed in the foreign country</li></ul>
46.	Which tax rate will apply to the income that is in excess of the R1 million exemption?	<p>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.</p> <p>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.</p> <ul style="list-style-type: none"><li>• R1 000 000 will be exempt</li><li>• R500 000 is subject to normal tax and calculated as follows:<ul style="list-style-type: none"><li>= R100 263 + [(R500 000 - R423 300) × 36%]</li><li>= R100 263 + R27 612</li><li>= R127 875</li><li>= less the primary rebate of R14 220</li><li>= <b>R113 655</b></li></ul></li></ul>