



# Taxation of international executives: South Africa



June 2023

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**01**

# **Overview and Introduction**

# 1 Overview and 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 subject to tax 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 and exempt amounts from gross income. Non-residents are taxable only on South African-sourced income and capital gains resulting from the disposal of immovable property in South Africa or any interest or right to immovable property in South Africa.

**02**

# **Income tax**

# 2 Income Tax

## 2.1 Residence

Broadly speaking, tax residence can be established through either physical presence or through being considered ordinarily resident in South Africa.

### Physical presence test

In terms of the physical presence test, where an individual is not ordinarily resident, they will be considered to be resident in South Africa if they are physically present in the Republic for a period exceeding 91 days during the current year of assessment as well as during each of the 5 preceding years of assessment, and they were physically present in the Republic for a period exceeding 915 days (or part-days) in aggregate during those preceding 5 years.

Where a person who became resident by virtue of physical presence in South Africa, is outside the Republic for a continuous period of 330 full days after ceasing to be physically present in the Republic, that person will be deemed not to have been resident from the day they ceased to be physically present in the Republic.

### Ordinarily resident

The concept of ordinarily resident is not defined in the Income Tax Act, No. 58 of 1962, as amended (the Act), and is widely held (from case law) to be the country/jurisdiction which an individual considers to be their real home, i.e. the place where their permanent place of abode is, where their belongings are stored, which they leave for temporary absences and to which they regularly return after such absences. If the taxpayer is habitually and normally resident here, apart from temporary or occasional absences of long or short duration or if they decide to settle permanently in South Africa, South Africa is recognized as being their real home and the individual will become a resident by virtue of ordinary residence immediately.

## 2.2 Types of taxable compensation

Generally speaking, most types of remuneration and benefits received by an employee for services rendered in South Africa constitute taxable income regardless of where paid; subject to certain exceptions.

Typical items of an expatriate compensation package set out below are fully taxable unless otherwise indicated.

### Reimbursements of foreign and/or home country/jurisdiction taxes

In most cases where the South African taxes are, by reason of tax equalization, the employer's responsibility, the compensation should be grossed-up for the tax liability. This gross-up must account for the full tax-on-tax effect of the employer paying the taxes.

Where the employer reimburses taxes paid by the employee, these taxes are treated as a taxable benefit.

### Home leave flights

All home leave flights are taxable. This does not apply to relocation flights or flights provided for travel in conjunction with business travel.

### Cost-of-living allowances

Cost-of-living allowances are fully taxable in South Africa.

## Accommodation

For purposes of determining the value of the taxable benefit relating to employer-provided accommodation, no rental value is placed on any accommodation provided by an employer to an employee while they are away from their usual place of residence outside of South Africa, provided:

- the employee was physically present in South Africa:
  - for a period of less than 90 days during that tax year; or
  - for a period not exceeding 2 years from their date of arrival for purposes of performing their employment duties.

The concession above is limited to 25,000 South African rand (ZAR) per month during which the accommodation was provided during the tax year, for up to 2 years. This provision will only apply if that employee was not present in South Africa for a period exceeding 90 days during the tax year immediately preceding the date of arrival in South Africa.

If the aforementioned conditions are not satisfied the accommodation provided to an employee by their employer is fully taxable in South Africa. The value of the taxable benefit will be, where the accommodation is obtained by the employer in terms of an arm's length rental agreement, the lower of the actual cost incurred by the company, less any consideration paid by the employee, or the result of a remuneration based formula. The application of the formula or the rental value is dependent on various factors and should be evaluated on a case-by-case basis.

Where the accommodation is owned by the employer, the remuneration-based formula must be used to determine the rental value.

The legislation does not provide for an apportionment where employees share accommodation. However, the Commissioner for SARS has discretion to reduce the rental of accommodation if, by reason of the situation, nature or condition of the accommodation or any other factor, the value determined in accordance with the legislation is not fair and reasonable.

## Benefits-in-kind

Benefits-in-kind generally form part of taxable compensation. Right of use of a company vehicle:

The monthly taxable value determined value (the cash cost including VAT) per month of each vehicle, where the vehicle is

- subject of a maintenance plan when the employer acquired the vehicle the taxable value is 3,25 percent of the determined value; or
- acquired by the employer under an operating lease, the taxable value is the cost incurred by the employer under the operating lease plus the cost of fuel.

80 percent of the taxable benefit will be subject to PAYE on a monthly basis. The percentage is reduced to 20 percent if the employer is satisfied that at least 80 percent of the use of the motor vehicle for the tax year will be for business purposes.

The taxable value may be reduced on assessment of the employee's income tax return in accordance with the ratio of business kilometers travelled to total kilometers travelled.

Further relief is available for the cost of license, insurance, maintenance and fuel for private travel if the full cost thereof has been borne by the employee and the number of private kilometers travelled is substantiated by a logbook.

## Employer contributions to Medical Aid

Employer contributions to an approved South African medical aid fund, or to any fund which is registered under any similar provision contained in the laws of any other country/jurisdiction where the medical

scheme is registered, will be taxable. Employer contributions to a foreign medical scheme, which are not paid to a fund as described above, will be regarded as a taxable benefit where the employee acquires the right to have those contributions made by their employer in terms of their contractual arrangements. If the employee is a non-resident for South African tax purposes, these contributions will be taxable in South Africa to the extent that they are regarded as South African sourced income. Furthermore, any employee contributions, which the employer takes over, will be taxable.

With effect from the 2024 South African tax year, taxpayers under the age of 65 years may deduct from their tax liability a tax credit of ZAR364 per month for the first two beneficiaries and ZAR246 per month for each additional beneficiary, in respect of medical aid contributions made by themselves or their employer to an approved South African medical aid fund or any fund which is registered under any similar provision contained in the laws of any other country/jurisdiction where such medical scheme is registered.

Taxpayers under the age of 65 years may also deduct an additional tax credit (rebate) equal to 25% of the sum of:

- qualifying medical expenses; and
- an amount by which the contributions paid exceeds four times (4x) the medical tax credits for the year but limited to the amount which exceeds 7.5% of taxable income (excluding retirement lump sum and severance benefits).

Taxpayers 65 years and older and those with disabilities under the age of 65 years or with disabled dependents may deduct an additional tax credit (rebate) equal to 33.3% of the sum of:

- qualifying medical expenses; and
- an amount by which the contributions paid exceeds three times (3x) the medical tax credits for the year.

### **Tax services provided to employees**

A 2019 judgment by the South African Supreme Court of Appeal has found that tax services provided to expatriate employees constitute a taxable fringe benefit and should accordingly be taxed in the hands of the employee.

### **Intra-group statutory directors**

**Will a non-resident of South Africa who, as part of their employment within a group company, is also appointed as a statutory director (i.e. member of the Board of Directors in a group company situated in UK) trigger a personal tax liability in South Africa, even though no separate director's fee/remuneration is paid for their duties as a board member?**

Directors' fees derived by non-resident directors will be subject to tax in the country/jurisdiction where the head office of the company is situated, irrespective of the place where the director is a resident or where services were performed.

#### **a) Will the taxation be triggered irrespective of whether or not the board member is physically present at the board meetings in South Africa?**

Article 16 of the Convention provides that: "Directors' fees and other similar payments derived by a resident of a [Contracting](#) State in their capacity as a member of the board of directors of a company which is a resident of the other [Contracting](#) State may be taxed in that other State."

Taxing rights in respect of director's fees would be awarded to the country/jurisdiction in which the company is a tax resident irrespective of where the director is tax resident or where they render the relevant [services](#).



**b) Will the answer be different if the cost directly or indirectly is charged to/allocated to the company situated in South Africa (i.e. as a general management fee where the duties rendered as a board member is included)?**

An apportionment would be required to distinguish between directors' fees, which is the compensation paid to the director as a result of their capacity as a director and remuneration received for services rendered for the company in capacity other than a director. Directors' fees would be taxable in the country/jurisdiction in which the company is resident. Any other compensation received for duties performed by the director would be taxable in terms of the general source rules in South Africa with regards to services income which is that income will be regarded as derived from a South African source if the [services](#) to which the income relates are rendered in [South Africa](#).

We note that non-executive directors may, in addition to income tax, be liable to register and account for Value Added Tax on directors' fees received

**c) In the case that a tax liability is triggered, how will the taxable income be determined?**

The full value of the directors' fees for the performance of directors' duties at a South African company will be subject to tax.

## **2.3 Tax-exempt income**

Prior to 1 March 2016, it was permitted for employers, instead of covering specified expenses, to pay a tax-free relocation allowance of up to one month's basic salary, to cover an employee's settling-in costs.

As from 1 March 2016, any such allowance would have to be treated as taxable. The employee would only be able to claim the exemption in respect of certain expenses (refer to the list hereunder), and only if proof of expenditure is available.

The following items of expenditure qualify:

- Bond registration and legal fees paid in respect of a new residence that has been purchased; Transfer duty paid in respect of the new residence;
- Cancellation fees paid for bond cancellation on previous residence; Agent's commission paid on sale of previous residence;
- New school uniforms; Replacement of curtains;
- Motor vehicle registration fees; and Telephone, water and electricity connections.

## **2.4 Expatriate concessions**

There are no special tax concessions for expatriates. However, assuming the foreign national is not a South African tax resident, non-South African-sourced employment income, investment income and capital gains (excluding gains derived from the disposal of immovable property held in South Africa or any interest in immovable property) will not be subject to tax.

## **2.5 Salary earned from working abroad**

To the extent that a non-resident individual renders services outside of South Africa, the remuneration attributable to the time worked abroad would not be taxable in South Africa, as it would not be sourced in South Africa. This apportionment will usually be done on the basis of days spent working inside and outside South Africa. It is however our recommendation that the requirement for the individual to render services abroad be detailed in a contract of employment – if subject to Audit, SARS will ask for the contract and expect to see this specifically stated in the contract.

With regards to resident individuals, prior to 1 March 2020 foreign sourced employment income could be exempted subject to certain conditions, namely that services were rendered abroad for more than 183 full days in any rolling 12-month period, including more than 60 continuous full days. From 1 March 2020, South African tax residents who spend more than 183 days outside the country/jurisdiction and more than 60 continuous days will be subject to South African taxation on foreign sourced employment income that exceeds R1.25 million. Relief can be provided by claiming foreign tax credits (in terms of section 6quat of the Income Tax Act) in respect of taxes paid in the foreign country/jurisdiction relating to the foreign employment income in excess of R1.25 million.

Please note that due to the COVID-19 pandemic and the restrictions on travel, the foreign remuneration exemption has been amended. The individual must be rendering services outside of South Africa for 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021.

We encourage South African residents working abroad to contact a tax advisor to discuss the options available to reduce the impact of the legislative changes.

## **2.6 Taxation of investment income and capital gains**

Non-residents are taxable on South African-sourced investment income and on capital gains derived in respect of immovable property held in South Africa or any interest in immovable property in South Africa. South African residents are generally fully taxable on worldwide income and capital gains.

With respect to rental income, deductions are allowed for interest, rates, taxes, levies and other related expenses.

In broad terms, taxable capital gains are computed by taking the disposal or deemed disposal proceeds and deducting the base cost of the asset. Forty percent of the gain will be included in taxable income and taxed at the individual's marginal tax rate (i.e. a top income tax rate of 45 percent would result in an effective rate of CGT of 18 percent). An annual exclusion of ZAR40,000 per year is available.

## **2.7 Tax**

The deadlines for submission of individual income tax returns for the 2023tax year are as follows:

- Electronic submission deadline for non-provisional taxpayers: between October and December 2023 (date to be confirmed by the Minister of Finance).
- Electronic submission deadline for provisional taxpayers: end of January 2024.

Please note the deadlines are still to be confirmed by the tax authorities.

SARS will assess the return and notify the taxpayer of any taxes outstanding or refund due. Tax is due by the date specified on the assessment, typically 30 days from the date on which the assessment is issued, for non-provisional taxpayers. Provisional taxpayers with assessed tax liabilities will be subject to interest and potential penalties.

Late submission of an income tax return will attract an administrative non-compliance penalty.

## **2.8 Relief for foreign taxes**

Foreign tax credit relief for South African tax residents is typically granted in terms of domestic provisions (section 6quat). Alternatively, relief can be granted in terms of a Double Taxation Agreement (DTA).

## 2.9 General tax credits

As mentioned above, with effect from the 2024 South African tax year, a taxpayer may deduct from their tax liability a tax credit of ZAR364 per month for the first two beneficiaries and R 246 for each additional beneficiary, in respect of medical aid contributions to qualifying medical aid schemes.

## 2.10 Sample tax calculation

This calculation assumes a married taxpayer non-resident in South Africa with two children whose 3- year assignment begins 1 March 2022 and ends 29 February 2024. The taxpayer's base salary is 100,000 US dollars (USD) and the calculation covers 3 years.

Type of income	2022 USD	2023 USD	2024 USD
Salary	100,000	100,000	100,000
Bonus	20,000	20,000	20,000
Cost-of-living allowance	10,000	10,000	10,000
Housing allowance (Cash)	12,000	12,000	12,000
Company car (see assumptions)	6,000	6,000	6,000
Moving expense reimbursement	20,000	0	0
Home leave	5,000	0	10,000
Education allowance	3,000	3,000	3,000
Interest income from South African sources	6,000	6,000	6,000

Exchange rate used for calculation: USD1.00 = ZAR18.00

### Other assumptions

- All earned income is attributable to local sources.
- Bonuses are paid at the end of each tax year and accrue evenly throughout the year.
- The company car is used for business and private purposes and the "determined value" for tax purposes is USD50,000 (including VAT). The company car has a maintenance plan.
- Assumes that the assignee does not maintain a logbook and mainly undertakes private travel using the company provided vehicle.
- The employee is non-resident throughout the assignment.
- Tax treaties and totalization agreements are ignored for the purpose of this calculation (no Totalization Agreements with South Africa exist in any case).

### Calculation of taxable income

Year ended	2022 ZAR	2023 ZAR	2024 ZAR
Days in South Africa during tax year	365	365	366
Earned income subject to income tax			
Salary	1800,000	1800,000	1800,000

Year ended	2022 ZAR	2023 ZAR	2024 ZAR
<b>Days in South Africa during tax year</b>	<b>365</b>	<b>365</b>	<b>366</b>
Bonus	360,000	360,000	360,000
Cost-of-living allowance	180,000	180,000	180,000
Housing allowance(cash)	216,000	216,000	216,000
Company car Taxable value	351,000	351,000	351,000
Moving expense reimbursement	0	0	0
Home leave	90,000	0	180,000
Education allowance	54,000	54,000	54,000
Total earned income	3,531,200	3,045,200	3,225,200
Other income (Local Interest)	108,000	108,000	108,000
Total income	2,837,250	2,747,250	2,927,250
Deductions (Local interest exemption)	(23,800)	(23,800)	(23,800)
Total taxable income	2,813,450	2,723,450	2,903,450

Year ended	2022 ZAR	2023 ZAR	2024 ZAR
<b>Days in South Africa during tax year</b>	<b>365</b>	<b>365</b>	<b>366</b>
Taxable income as above	3,135,200	3,045,200	3,225,200
South African tax thereon	1,252,963	1,205,312	1,278,179
Less:			
Domestic tax rebates (dependent spouse rebate)	(15,714)	(16,425)	(17,235)
Foreign tax credits (Maximum allowed equal to South Africa tax liability on foreign-sourced income).	0	0	0
Total South African tax	1,237,249	1,188,887	1,260,944

FOOTNOTES:

1 KPMG Services Proprietary Limited, a South African company with registration number 1999/012876/07 and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee.

**03**

**Special considerations  
for short term  
assignments**

# 3 Special considerations for short-term assignments

## 3.1 Residency rules

### Are there special residency considerations for short-term assignments?

There are no special residency considerations. The residency rules that would apply to an individual who is on a long-term assignment would also apply to an individual who is on a short-term assignment. However, it is unlikely that a short-term assignee would trigger tax residency in South Africa.

## 3.2 Payroll considerations

### Are there special payroll considerations for short-term assignments?

N/A

## 3.3 Taxable income

### What income will be taxed during short-term assignments?

Any income that is of a South African source. Employment income is generally treated as South African sourced compensation where the individual performs the services to earn that income while physically located in South Africa.

## 3.4 Additional considerations

### Are there any additional considerations that should be considered before initiating a short-term assignment in South Africa?

In cases whereby South Africa has a Double Tax Agreement with the other country/jurisdiction in question, one would need to structure the short time assignment, in a way that would ensure that the individual would be able to meet the requirements of the Double Tax Agreement relief, that is intended for short term assignments, if possible.

**04**

# **Other taxes and levies**

# 4 Other taxes and levies

## 4.1 Social security levies

South Africa does not have a social security system, per se. However, similar taxes do apply, such as Unemployment Insurance Fund Contributions, Skills Development Levies, Compensation for Occupational Injuries and Diseases Levies, and so on. Certain of these do not apply to expatriates in certain instances. No totalization agreements have been entered into.

## 4.2 Wealth taxes

South Africa does not impose wealth tax. However, estate duty and donations tax are levied in relation to deceased estates and donations made to non-qualifying persons or institutions, for residents.

## 4.3 Foreign Financial Assets

**Is there a requirement to declare/report offshore assets (e.g. foreign financial accounts, securities) to the country/jurisdiction's fiscal or banking authorities?**

There is a requirement for provisional taxpayers to declare all assets in their annual tax returns – both local and foreign. There is no separate foreign financial asset reporting requirement.



**05**

# **Immigration**

# 5 Immigration

**Following is an overview of the concept of South Africa's immigration system for skilled labor.**

(E.g. which steps are required, authorities involved, in-country/jurisdiction and foreign consular processes, review/draft flow chart illustrating the process)

In terms of the South African Immigration Act 13 of 2002, "The Act" any foreign national employed in South Africa must be in possession of a work visa authorizing them to work for their respective employer.

Foreign nationals recruited from abroad must apply for their work visa through the South African Consular offices abroad and await the outcome of their visa applications prior to departing for South Africa. They are not allowed to travel on a Visitors or Tourist visa and apply for a long-term work visa within South Africa.

Foreign nationals who are in possession of a long-term South African work visa are permitted to apply for change of conditions or status within South Africa and be issued with new visas. However, this is not applicable for holders of Intra-Company Transfer work visas.

There are various types of work visas which foreign nationals can apply for in order to work legally in South Africa. This would be dependent of the type of employment arrangement, whether the foreign national will be seconded to work in South Africa on an international assignment or whether they will be offered a local employment contract.

Foreign nationals who are employed abroad and assigned to work on an international assignment at a branch/subsidiary or affiliate company in South Africa may apply for an Intra- Company Transfer work visa. The assigned employee must have been employed by the company abroad for not less than 6 months and the employee will be required to transfer skills to South African citizens or permanent residence holders. Intra-Company Transfer work visas are issued for a maximum period of 4 years and not renewable beyond this period.

Foreign nationals who are offered local employment by the South African entity can either apply for a Critical skills work visa or General Work visa. In June 2014, the Department of Home Affairs published the critical skills list. This list has since been revised by the Department of Higher Education and Training, as well as the Department of Home Affairs. On the 02 February 2022, the Department of Home Affairs published the new Critical skills list which outlined the new skills and /or qualifications which are now deemed to be critical in South Africa.

Foreign nationals who fall within the occupational categories listed on the critical skills list are eligible to apply for the work visa.

Critical skills work visas are issued for a maximum period of 5 years and the work visa is renewable. Previously, the Department of Home Affairs would issue 12 months critical skills work visa to qualifying foreign nationals, in order to seek employment within this period. Once, the foreign national has secured employment, the Department of Home Affairs would extend the work visa for an additional period of 4 years.

With the implementation of the new critical skills list, the Department of Home Affairs will no longer issue critical skills work visa for a period of 12 months to foreign nationals who have not secured employment nor received an offer of employment. The provisions under the new critical skill list requires applicants to be in possession of an offer of employment when applying for a critical skills work visa application. The employer must be verifiable and in good standing with the Department of Employment and Labour for an application to be processed by the Department of Home Affairs as well as to ensure that the work visa is granted the full 5-year period

Foreign nationals who qualify to apply for a Critical skills work visa will be required to obtain an evaluation of their foreign qualifications by the South African Qualifications Authority (SAQA) and to register with a professional body, council or board recognized by SAQA.

Foreign nationals who do not fall within the ambit of the Critical skills list categories and wish to take up local employment in South Africa can apply for a General work visa. The process entails obtaining a labor recommendation from the Department of labor and the prospective South African employer will be required to demonstrate that a diligent search was conducted to source suitable South African or Permanent Resident candidates with qualifications or skills and experience equivalent to those of the foreign national.

General work visas are issued for a maximum period of 5 years and are renewable within South Africa.

Despite the stringent immigration requirements, foreign nationals should still be afforded an opportunity to compete for employment and apply for available jobs. However, labor requirements prescribe that South Africans and permanent residents are given preference. Where a foreign national is considered there should be clear evidence that the applicant has the required experience or qualifications that other South African candidates do not have applying for similar positions.

Employment of illegal foreigner nationals is prohibited and may result in the employers being arrested and imprisoned or fined.

## 5.1 International Business Travel/Short-Term Assignments

**Describe (a) which nationalities may enter South Africa as non-visa national, (b) which activities they may perform and (c) the maximum length of stay.**

**The following citizen who is a holder of a national passport of the following countries/jurisdictions are not required to hold a visa in respect of purposes for which a port of entry visa may be issued for an intended stay of 90 days or less.**

African Union Laissez Passer, Andorra, Angola (ordinary passports 90 days per annum visits not to exceed 30 days), Argentina, Australia, Austria, Belgium, Botswana, Brazil, Canada, Chile, Czech Republic; Denmark, Ecuador, Finland, France, Germany (except in diplomatic staff due to assume duty at the Embassy and Consulates of Germany in SA), Greece, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Liechtenstein, Luxemburg, Kenya ( 90 days per annum); Madagascar (90 days per annum), Malta, Mali, Monaco, Namibia (only ordinary passport holders 90 days per annum), Netherlands, Norway, New Zealand, Panama, Paraguay, Portugal, Qatar, Russian Federation, San Marino, Sao Tome and Principe, Saudi Arabia, Seychelles (90 days per annum), Singapore, Spain, St Vincent & the Grenadines, Sweden, Switzerland, Tanzania (90 days per annum), Trinidad & Tobago (only ordinary passport holders), Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland (only ordinary passport holders), British Islands Bailiwick of Guernsey and Jersey, Isle of Man.

British Overseas Territories namely: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena and Dependencies (Ascension Island, Gough Island and Tristan da Cunha), Pitcairn, Henderson, Duke and One Islands, the Sovereign Base Areas of Cyprus South Georgia and South Sandwich Islands and the Turks and Caicos Island. United States of America (only diplomatic and ordinary passport holders. However, diplomatic passport holders who are due to assume duty at the Embassy and Consulates of the USA in South Africa, require visas for accreditation purposes); Uruguay, Venezuela, Zambia (90 days per annum), Zimbabwe

**The following citizen who is a holder of a national passport of the following countries/jurisdictions are not required to hold a visa in respect of purposes for which a port of entry visa may be issued for an intended stay of 30 days or less.**

Antigua and Barbuda, Bahamas (only ordinary passport holders), Barbados, Belize, Benin, Bolivia, Cape Verde, Costa Rica, Cyprus (only ordinary passport holders), Gabon, Guyana, Hong Kong (SAR) [only with regard to holders of Hong Kong British National Overseas passports and Hong Kong Special Administrative Region passports], Hungary (only ordinary passport holders), Jordan, Kingdom of Eswatini, Lesotho, Macau (SAR) [only with regard to holders of Macau Special Administrative Region passports (MSAR)], Malaysia, Malawi, Maldives, Mauritius, Mozambique (only ordinary passport holders), Peru, Poland (only ordinary passport holders), Seychelles, South Korea, Thailand (only ordinary passport holders), Turkey.

The following activities are permissible to be conducted in South Africa for visa-exempted nationals.

- Holiday.
- Attending business meetings.
- Attending conferences, seminars or sports events.
- A person, who is the spouse or dependent child of the holder of a valid visitor's visa, study visa, treaty visa, business visa, medical treatment visa, relative's visa, work visa, retired person visa or exchange visa.
- Studies not exceeding 3 months.
- Medical treatment not exceeding 3 months Academic sabbaticals not exceeding 3 months.
- Voluntary or charitable activities not exceeding 3 months (applicants must be over the age of 18).
- Research not exceeding 3 months.

**Describe (a) the regulatory framework for business traveler being visa nationals (especially the applicable visa type), (b) which activities they may perform under this visa type and the (c) maximum length of stay.**

Citizens from non-visa exempted countries/jurisdictions are required to apply for a business visa prior to travelling to South Africa. An application for the visa must be submitted through the South African Consular or Embassies abroad either in the travelers' country/jurisdiction of origin or where they hold residence.

Business travelers are permitted to conduct business activities in South Africa and maximum length of stay will be determined by the issuing authority. In most cases, the maximum period which may be granted by the South African Consular offices is 90 days.

**Outline the process for obtaining the visa type(s) named above and describe (a) the required documents (including any legalization or translation requirements), (b) process steps, (c) processing time and (d) location of application.**

- Copy of passport
- 2x passport size photographs
- Duly completed DHA-84 Application form
- Invitation letter from the host company in South Africa Proof of accommodation/hotel reservation
- Flight itinerary
- Proof of sufficient funds by means of 3 months' bank stamped statements Application fee equivalent to 425.00 South African rand (ZAR)

In some countries/jurisdictions, visa applications are submitted directly to the South African Consular abroad and an appointment may be required for the submission of the visa application. In other countries/jurisdictions, the South African Consular utilizes the services of the Visa Facilitation Services (VFS Global) for submission of visa application and collection of visa outcomes. An appointment with the VFS office may also be required for submission of visa application.

The processing time of business visa applications is usually between 5 -10 working days and visa application must be submitted in person either in the travelers' country/jurisdiction of origin or where they hold residence.

### **Are there any visa waiver programs or specific visa categories for technical support staff on short-term assignments?**

Yes, the South African immigration law does allow technical staff on short-term assignment to conduct work related activities. Irrespective of the traveler's nationality or visa exemption, the staff member will be required to apply for a Section 11(2) Visitors Visa with an authorization to conduct work related activities in South Africa and the application must be submitted through the South African Consular offices abroad in person.

A section 11(2) visa cannot be used as a casual work visa for on-going regular work activities. The purpose of a Section 11(2) visa is issued for urgent need or immediate short-term work of limited duration which cannot be met by an application for a work visa. The visa is usually issued for a period of 3 months and may be extended for a further period of 3 months within South Africa. The South African Consular offices usually processes the visa applications between 5 -10 working days.

## **5.2 Long-Term Assignments**

### **What are the main work permit categories for long-term assignments to South Africa? In this context outline whether a local employment contract is required for the specific permit type.**

Intra-Company Transfer work visas" ICT" (No local employment contract required). An ICT is issued when an employee of a company abroad is transferred to a branch, subsidiary or affiliate company in South Africa.

ICT work visas may be issued for up to 4 years and not renewable beyond this period. The employee must be employed by the company abroad for not less than 6 months and the employee remains employed by the company abroad

The South African company will be required to develop a plan to transfer skills to South African citizens or permanent residents. Furthermore, the company will be required to undertake to ensure that the employee's passports remains valid for the duration of the assignment, ensure compliance with the South African Immigration Act and its regulations, the employee is employed in a specific position for which the visa has been issued and to reimburse the department of Home Affairs of any costs incurred in relation to the deportation of the ICT holder and their dependent family.

Provide a general process overview to obtain a work and residence permit for long- term assignments (including processing times and maximum validation of the permit).

- 2x passport size photographs
- Copy of passport (bio-page)
- Duly completed DHA-1738 Application form
- Motivation letter from company abroad confirming the employee shall be transferred to a branch, subsidiary or an affiliate of that company in South Africa
- The South African branch, subsidiary or an affiliate confirming the acceptance of the transferred employee and specifying the occupation and capacity in which they shall be employed;
- An employment contract with the company abroad which must be valid for a period not less than 6 months
- Medical certificate
- Police clearance certificate/s from all countries/jurisdictions where the applicant has resided for longer than 12 months, since attaining the age of 18 years for the past 5 years
- Skills transfer plan

- Proof of accommodation in South Africa
- Proof of sufficient funds by means of 3 months' bank statements Proof of flight itinerary
- Payment of application fee equivalent to ZAR1,520.00

Intra-Company Transfer work visa applications must be submitted abroad through the South African Consular offices abroad in person, prior to departing for the long-term assignment in South Africa.

The South African Consular offices usually takes between 8-12 weeks to process the work visa application.

**Is there a minimum salary requirement to obtain a long-term work and residence permit for assignments? Can allowances be taken into account for the salary?**

There is no minimum salary requirement to obtain an Intra-Company Transfer work visa.

**Is there a fast-track process which could expedite the visa/ work permit?**

No, there is no fast-tracking process for expediting of work visa applications.

**At what stage is the employee permitted to start working when applying for a long-term work and residence permit (assignees/ local hire)?**

The employee can only start working once the work visa has been issued by the South African authorities.

**Can a short-term permit/ business visa be transferred to a long-term permit in South Africa?**

No, holders of short-term visas or business visas are not allowed to apply for long term work visas within South Africa.

**Is it possible to renew work and residence permits?**

Instances where the ICT work visa has been granted for less than 4 years, an application for a renewal of the work visa can be submitted within South Africa, to request the remaining period of the ICT work visa.

**Is there a quota or system or a labor market test in place?**

There are no quota systems or a labor market test in place. However, the Department of Labor requires employers to test the local market by advertising the prospective job positions in national newspapers for local employment.

## 5.3 General Immigration Related Questions

**Would it be possible to bring family members to South Africa?**

Yes, holders of valid temporary residence visas are allowed to bring family members to accompany them in South Africa and they are required to apply for their visas before departing to South Africa.

**Is it possible to obtain a permanent residence permit?**

Yes, there are numerous ways in which a foreign national can obtain permanent residency in South Africa.

- General work visa – Holders of general work visa can apply for permanent residency after 5 years of continuous employment and must have been offered permanent employment.
- Critical Skills work visa – Holders of Critical skills work visa can apply for permanent residency immediately after obtaining the work visa and must be in possession of a permanent employment contract.
- Marriage – Being a spouse of a citizen or permanent resident for 5 years.
- Relative visa – a relative of a citizen or permanent resident within the first step of kinship

- An Own business visa – Holders of Business Visa who have established their own business or invested in it or in an established business and have met the prescribed minimum financial or capital contribution to be part of the intended book value and can apply immediately after obtaining the visa.
- Refugee status
- Retired person – Has the right to pension or irrevocable annuity or retirement account which will give the foreign national a prescribed minimum payment for the rest of their life
- Financial independent person – Has the prescribed minimum net worth and has paid a prescribed amount to the Director General

#### **What if circumstances change after the Work and Residence application process (e.g. change of employment or personal situation, including job title, job role or salary)?**

Any change in employment or personal situation will subject the employer to notify the Department of Home Affairs. In cases where there is a change in employment, a new work visa must be obtained citing the new employer's details.

#### **How long can a permit holder leave South Africa without their permit becoming invalid?**

Visas are affixed to an expiry period and the visa would be declared invalid upon the expiry date.

#### **Must immigration permissions be cancelled by the end of the assignment/employment?**

Yes, as part of the obligation of the employer, it is imperative that a work visa is cancelled at the end of the employee's assignment or employment.

#### **Are there any penalties for individuals and/or companies in place for non-compliance with immigration law?**

Yes, there are penalties for companies which are found to have contravened the Immigration Act and individuals who have overstayed on their visas are declared undesirable and restricted from entering the Republic.

## **5.4 Other Important Items**

List any other important items to note, or common obstacles faced, in South Africa when it comes to the immigration processes.

It is imperative that individuals apply for their police clearance certificates from countries/jurisdictions where they have resided for longer than 12 months for the past 5 years on all work visa applications.

The Department of Home Affairs and Labor are becoming stricter on employment of foreign nationals and companies are required to ensure that they have developed a skills transfer plan for the upskilling of South African Citizens or Permanent Residents, which will be monitored to ensure compliance.

The Minister of Employment and Labour have published the Draft National Labour Migration Policy (Draft Policy) and Employment Services Amendment Bill (Bill) for public comment. The intension of the Bill is to strictly regulate the employment of foreign nationals in South Africa by imposing duties on an employer employing foreign nationals and employers found to be in contravention of the Act may be liable to a fine.

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