

# The Income Tax Act and Non-Residents

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## General Exam Technique:

1. Determine whether a taxpayer is a resident <Apply Case Law as per Gross Income Notes>
2. Assess whether section 9 applies < As discussed below>
3. Assess whether Case Law applies. (where section 9 is not applicable)
4. Determine the withholding tax implications based on assessments in 2 and 3.
5. If withholding tax is applicable assess whether a double tax agreement is in place to **reduce** or **exempt** the income.
6. Calculate / conclude on whether withholding tax is applicable.

## Case Law:

Two Primary Questions are asked in applying case law:

1. What is the originating cause of the income?
2. Where is this originating cause located?

## Section 9 Source Income:

Dividend income <s9(2)(a)>

1. Indicator: Source of Company Declaring the Dividend.
2. Application: SA Company therefore SA Dividend.

Interest income <s9(20(b))> (NB -**Do Not** apply caselaw to interest.)

1. Indicators:
  - Residence of person paying the interest, or
  - the place where the funds obtained are being used / applied.
2. Application:
  - An SA resident incurring interest on borrowings from a non-resident makes that interest SA Source if the borrowings are used in SA - Therefore the non-resident **will** be taxed on the interest.
  - An SA resident incurring interest on borrowings from a non-resident, but who uses the borrowings for their **permanent establishment outside SA** does not create SA source income - Therefore the non-resident will **not** be taxed on the interest.

### Rental Income: <Caselaw>

#### 1. Indicators:

- Nature of the property let.
- Nature of the lessor's business
- Duration of the lease
- Keynote 1: Where the **emphasis** is on the property let the source is considered to be where the property is located. (Usually in the case of immovable property)
- Keynote 2: Where the **emphasis** is on the business and not the property the source is considered to be where the business is (usually in the case of moveable property).

#### 2. Application:

- Rental received from the renting of property (house) is considered to be received from the location where the property is situated.
- Rental received from car rentals is considered to be received from where the main business is located.
- Keynote 3: It is **not** a one shoe fits all scenario; careful consideration is required.

### Disposals of assets: <s92)(j),(k),(J)>

#### 1. Indicators:

- Nature of the asset.

#### 2. Application:

- Immovable property in RSA = SA Source.
- A right/ interest to/in immovable property in RSA = SA Source
- Moveable assets are SA source if they are **not** connected to a permanent establishment outside SA **and** the proceeds on sale is not taxed in the foreign country.
- Non-residents disposing of movable assets **connected** to a **permanent** establishment in SA = SA source.

### Services Rendered: <Caselaw>

#### 1. Indicators: Originating cause of the income.

#### 2. Application: If services are rendered in SA which results in the dominant cause for the income, then its SA Source.

## Retirement fund: <s9(2)(i)>

### 1. Indicators:

- Consider where the services giving rise to such funds were rendered.

### 2. Application:

- If pension was accumulated due to services rendered in SA, then the income from the fund is SA Source.

## **Change in Residence:**

- When a natural person ceases to be a resident a deemed disposal at market value of all assets takes place.
- An asset excludes:
  1. Immovable property in RSA.
  2. Any asset attributable to a permanent establishment in RSA after the person ceases to be a resident.
  3. Section 8B qualifying equity shares granted to the person less than 5 years before ceasing to be a resident.
  4. Unvested section 8C instruments.
  5. Any right to acquire any marketable security as provided for in section 8A.
- Tax implications:
  - CGT arises on the difference between the **market value** and the **base cost**.
  - The new **base cost** is considered to be the **market value** on date residency is ceased.
  - The end of the YoA = the date **before** the person ceases to be a resident.  
The new YOA = the day the person ceases to be a resident.

## **Withholding Taxes:**

### 1. Interest Rules:

- Interest accruing to a natural person who is **not** present in SA for > 183 days during 12 months **before** the interest accrued and the debt is not connected to a permanent establishment in SA is exempt.
- Rate = 15% (unless reduced by a DTA)
- Interest paid from the SA government, listed debt, or any SA Bank is **exempt**.

### 2. Immovable property: Rate = 7.5% (natural person), 10% (Company), 15% (trust)