

EXPATRIATE TAX COMPLIANCE **AND TAX RESIDENCY**



**FINANCIAL
EMIGRATION** 

Confirmed Process to Cease Tax Residency with SARS

 **CEASE TAX
RESIDENCY**

A DIVISION OF TAX CONSULTING SA

A SNAPSHOT OF THE PROCESS

01

Once we receive your details we will conduct an assessment of your tax compliance profile with SARS.

02

We will send the findings of your tax compliance status to you as well as a comprehensive quotation of our services to assist you in completing the process of your financial emigration to include any tax work needed (if and where applicable).

03

We will handle everything from start to finish with no input from you besides the initial paperwork that is required at this point. We will send you the necessary forms to complete including a list of documentation required.

04

We will confirm with SARS that you have met the criteria of your tax residency tests. This will be actioned by our inhouse tax attorneys.

05

We will furnish SARS with an "exit tax" calculation on worldwide assets, in terms of section 9H of the Income Tax Act.

06

We will apply for an Emigration Tax Compliance PIN, with supporting documentation to prove non – resident status.

07

We will issue you with the Emigration Tax Compliance PIN once issued by SARS and will advise on all future tax planning actions.

08

All banking institution/s that you are affiliated with are notified of your tax residency status change. Thereon the relevant bank account/s will be converted and designated as Non-Resident. Upon status name change (depending on the banking institution) your banking facilities will also change, and certain restrictions will apply.

09

Exclusive offering with Investec on a non-resident Forex account which would offer you wholesale exchange rates. Emigration TCS PINs allows non-residents to remit all funds cleared by SARS under Foreign Capital Allowance (FCA) for the year.

10

Financial Emigration also provides the rare opportunity to encash your retirement annuity without any early encashment penalties. Thus, you are able to obtain those funds and transfer them abroad, or if you prefer you can leave such policies as they are in South Africa. Please note in order to fully encash your RA, the FE process will need to be completed and you will need to be tax non-resident for 3 years to encash your policy in full.

EXPATRIATE TAX COMPLIANCE



South African Expatriates: Check Your Tax Affairs

Due to the mass amount of misinformation regarding South African expatriate tax laws, many South Africans are finding themselves in deep waters with SARS. This having happened after receiving false information from either tax practitioners or even SARS officials themselves.



Common Misconceptions

A large majority of expats claim that their tax affairs in South Africa are in order and there is no need for concern. However, on further inspection it quickly becomes obvious that this is untrue as their tax submissions are in fact incorrect. Which if not corrected could lead to serious implications legally and at SARS.

This is due to many expats believing that once they leave SA they are no longer required to file returns or do not need to declare their foreign income. Thus, many expats have been, incorrectly, only filling returns showing South African sourced income or zero returns.

This is not the case, if you are a South African working abroad you are legally required to submit tax returns to SARS every year and declare foreign earnings and then claim an exemption on the foreign earnings under section 10(1)(o)(ii), should you meet the requirements thereof.



Implications Thereof

As of June 2017, South Africa committed to join the Common Reporting Standard (CRS) this was created in an effort to combat tax evasion.

This means that all your global earnings and assets are now being shared with SARS from various banks and financial institutions globally. Therefore should SARS now cross reference what they are receiving from the CRS with your tax returns, and the two do not align, it will be seen as a legal offence and there will be grave repercussions.

SOUTH AFRICAN EXPATRIATE TAX LAW


South African expatriates should not only understand the new expatriate tax law, which endangers their foreign income, but should also act if they want to avoid its dire consequences. The amendment to the Income Tax Act has been fully enacted and forms part of the Taxation Laws Amendment Bill of 2017. Despite this, many South African expatriates are under the false impression that the law has not been formally amended and will thus not affect them.

The new law states:

There shall be exempt from normal tax any form of remuneration – to the extent to which that remuneration does not exceed R1.25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic.

The amendment requires South African tax residents abroad to pay South African tax of up to 45% of their foreign employment income where it exceeds the threshold of R1.25 million. Although the R1.25 million threshold may seem generous, employment income includes allowances and fringe benefits paid to expatriates. that cannot be considered as “earnings”. The provision of housing, security and flights, among other things, are often part of the packages offered to South Africans to induce them to work in foreign locations. These benefits can quickly add up to the R1.25 million threshold, particularly in the expensive countries in which expatriates often live.

There are many reasons why South African tax residents undertake to cease tax residency through the financial emigration process. The main reason is this being a legal requirement and part of the “formalities” which a South African must undertake when permanently moving abroad. There has historically been many South Africans who moved permanently abroad and that have not undertaken the correct tax and exchange control formalities and this is one of the focus areas mentioned on 19 August 2017 in Parliament’s Standing Committee of Finance on which audits will be done and compliance enforced.

A large, stylized orange quotation mark graphic, consisting of two thick, curved strokes, positioned centrally above the main text block.A background image of a sailboat on the ocean at sunset. The boat's white hull and rigging are visible on the left, and its sails are partially visible. The sea is dark blue with white foam from the boat's wake. The sky is a mix of orange, yellow, and blue, indicating the time is dusk or dawn. The overall image has a semi-transparent dark overlay to make the text stand out.

Overall the whole Financial Emigration process was made very easy by all the very professional staff.

HOW TO CEASE YOUR TAX RESIDENCY

In South Africa, to determine whether you are a tax resident or not, one needs to identify whether they meet the requirements of the two tax residency tests set out in the Income Tax Act. Importantly, to be considered a non-resident for tax purposes, one must ensure they do not meet the requirements of BOTH tests. If the requirements of either one of the tests is met, you will be considered a tax resident of SA.

Ordinarily Resident Test

The first test is the Ordinarily Resident test. This test is less straight forward and leaves room for interpretation, and thus requires objective evidence to prove ones intention. Simply put, one needs to prove that their intention is to live outside of SA and without having an intention to return to SA as ones home base, or place where they would “return from their wanderings”. This test is more difficult as there are subjective views that need to be proven. This is where financial emigration becomes imperative, as this is a very strong objective factor which shows the intention of leaving SA on a permanent basis. Unless specifically noted with SARS, one’s tax residency status would remain as a tax resident of SA. This means that you would be liable for tax on worldwide income and assets. One needs to formally note themselves as a non-resident and follow the correct exit procedure or face potential unexpected taxes or penalties. Formalisation means that one can have certainty about their status and filing position and can ensure future compliance.

Physical Presence Test

The second test is the Physical Presence test, which considers how much time a person physically spends in South Africa, the test has 3 requirements which must be fully met for a person to be considered a tax resident under this test:

- Spends more than 91 days in SA in current assessment;
- Spends more than 91 days in SA in each of the previous years of assessment; and
- Spends more than 915 days in SA in aggregate over the 5 year period.

Furthermore, in our case law, specifically, Marshall and Others NNO v SARS (CCT208/17) [2018] ZACC 11 it was held that –

In those circumstances it is difficult to see what advantage evidence of the unilateral practice will have for the objective and independent interpretation by the courts of the meaning of legislation, in accordance with constitutionally compliant precepts. It is best avoided. To simply, the Constitutional Court decided that the views of SARS to interpret legislation best to be avoided.

DEEMED CAPITAL GAINS TAX

EXIT TAX

When one ceases tax residency of South Africa, there is an “exit tax” payable on upon such date of cessation of residency. This tax is payable on certain worldwide assets and is calculated on the same basis that normal Capital Gains Tax would be calculated. This is an imperative step to be taken when ceasing residency, and which most people do not know of. People are of the opinion that they are a non-resident, but have not paid their exit tax, and thus have not met all the requirements to claim residency has been ceased. This often leaves people in a non-compliant position which can attract penalties or can leave the door open for SARS to argue that you have yet to cease residency.

Items included in the exit tax are inter alia:

- Foreign fixed property;
- Shares;
- Unit trusts and other similar investments;
- Trusts – depending on how they are set up and what is contained in them.

Items excluded from the exit tax are inter alia:

- South African fixed property in your own name;
- Retirement funds such as pension, provident retirement annuity;
- Cash; and
- Personal use assets.

Backdating date of cessation of residency

An important aspect of financial emigration is the ability to backdate the application to show your date of cessation of residency, to a point where you had initially exited SA, if you met the requirements to be a non-resident at the time. This is important as it also allows you to backdate the exit tax values and use the values as at the time of exit, which can often reduce the liability substantially.

Final Remittance and Non-Resident Banking

Once your FE application is completed, the banking institution/s that you are affiliated with are notified of your tax residency status change. Thereon the relevant bank account/s associated, will change status name, the account/s will be converted and designated as Non-Resident. This status change is actioned automatically by your banking institution. Upon status name change (depending on the banking institution) your banking facilities will also change.

Exclusive Banking Solution

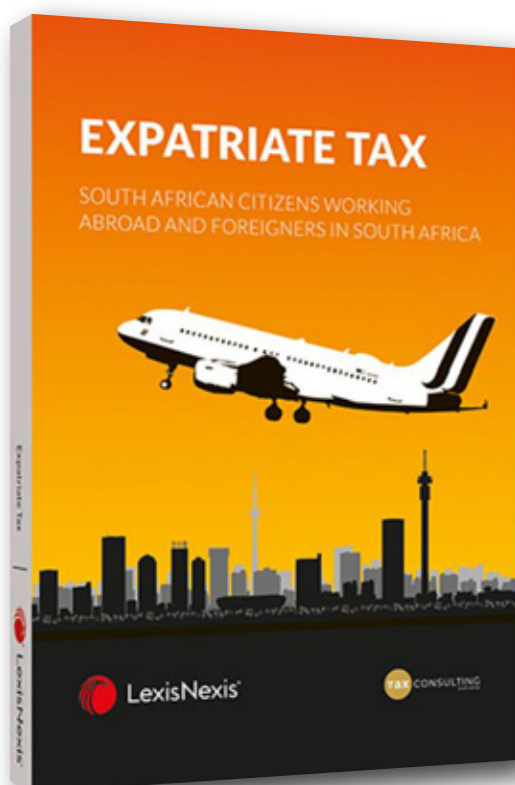
Our teams work closely with Investec to provide a solution for our clients to open an international facility that allows you to transfer your funds abroad. This is an attractive solution for many as it offers better rates than the main Banks as well as ensuring proactive compliance on your funds transfer with the SARB.

Foreign Investment Allowance (FIA)

SARB published new legislation as of 1st March 2021 indicating that a transfer of any amount by an emigrant will require a Tax Compliance Status (TCS) Pin for Foreign Investment Allowance (FIA). This applicable for all remittances post TCS pin for emigration from cent 1.

LEXISNEXIS EXPATRIATE TAX TEXTBOOK 2ND EDITION

Since the publication of the first edition in 2019, there have been significant changes that specifically impact on expatriates. These include changes to the taxation of income earned by a South African taxpayer from employment outside of South Africa; and the new process for those who wish to withdraw retirement funds when they cease their South African tax residency. There are also a number of important new legislative amendments and tax cases that have been included. This publication is of immense benefit to individuals affected by these taxes, their employers, as well as those who advise them. There is no other dedicated work on this subject.



DM DAVIS – Emeritus Judge President, Competition Appeal Court had this to say about the new edition:

“In summary, the second edition of this carefully considered book (which not only deals with all the various tax implications of immigration/emigration but the taxation of residents working offshore) remains an invaluable guide to an increasingly complex set of tax challenges. Given these changes, it is an even more significant addition to our body of tax literature and will remain essential reading for anyone advising his or her client with regard to the tax consequences of migration and non-resident accruals.”



Financial Emigration

Financial Emigration Assistance for South Africans employed permanently abroad.

Double Taxation Agreement

A DTA application and legal assistance for South Africans temporarily abroad.

Once-off process of ceasing
Tax Residency

Backdated
Financial
Emigration

Current
Financial
Emigration

Past or current tax filing compliance

Send exit tax calculations to SARS

Emigration tax clearance status pin

Final remittance + non resident
banking status change

Exclusive Forex
Banking Solutions
with Investec

Assistance with
transfers in relation to
Foreign Investment
Allowance

Encashment of policies (optional)
after Financial Emigration

Annual process to prove an individual is
more of a tax resident in another country
that has a DTA with South Africa

Expatriate's current country of residence
needs to have a DTA with South Africa

Application of Tax Residency certificate
by expatriate in foreign country

Send exit tax calculations to SARS

Legal opinion issued by our tax attorneys
to client supporting the tie breaker
test based on DTA

Onus of proof from client to be
submitted to SARS yearly

No foreign income tax applicable



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