

CEASING SOUTH AFRICAN TAX RESIDENCY

A HOW-TO GUIDE FOR INDIVIDUALS

CO-AUTHORED BY



MARISCA DE BRUYN



MICHAEL BOOTH

CO-AUTHORS



MARISCA DE BRUYN

Director, Tax Advisor (TA) SA,
Emigration & Non-Resident Tax
Specialist, Mint Accounting



MICHAEL BOOTH

Associate Partner
The Heritage Partnership,
Partner Practice of St. James's Place



The
Heritage
Partnership
Partner Practice of St. James's Place
(Singapore) Private Limited

BACKGROUND ON WHY CEASING RESIDENCE IS IMPORTANT

Section 22 of The Tax Administration Act requires that a person must inform the South African Revenue Service (SARS) of any changes in their registered particulars within 21 business days. This includes physical address and tax residence status.

Emigrating from South Africa does not automatically make one a non-resident for tax purposes.

Emigrating without informing SARS means they are a South African tax resident living temporarily abroad.

As per the definition of Gross Income in the Income Tax Act, South African Tax Residents must declare their worldwide earnings to SARS and are liable for Capital Gains Tax (CGT) on their worldwide assets.

Non-Resident taxpayers need only declare their South African source-based income to SARS.

As of 1 March 2020, South Africans earning income abroad, and who meet the requirements of the Foreign Employment Income Exemption in terms of Section 10(1)(o)(ii)*, receive an exemption on the first R1,25 million of their foreign earnings. Excess earnings are then subject to income tax in South Africa.

South Africa has Double Tax Agreements (DTA) with most countries which allow for relief on taxes.

One such relief is Section 6quat, which allows for a tax credit between countries. If the excess income above R1,25 million was taxed in the foreign country, the tax paid can be used as a tax credit in South Africa. Depending on the tax rate paid in the foreign country, the taxpayer might still have a tax liability in South Africa.

***Section 10(1)(o)(ii) Requirements:**

- Must be in an employment relationship (not subcontractors or independent contractors);
- Must spend at least 183 days of which 60 days are consecutive, outside South Africa in a 12-month period.

Another relief in terms of the DTA is allowing exclusive taxing rights to one jurisdiction. To establish this relief, an individual must look at the specific Tax Treaty of their jurisdiction which will stipulate the specific rules of becoming an exclusive tax resident of that country.





SINGAPORE TAX TREATY RULES:

"RESIDENT IN SINGAPORE"

For an individual to be regarded as a tax resident, they have to satisfy at least one of the following tests:

QUANTITATIVE TEST

The individual is:

- Physically present in Singapore for at least 183 days in the calendar year preceding the year of assessment; or
- Exercises an employment in Singapore for at least 183 days in the calendar year preceding the year of assessment (excluding directors of a company)

QUALITATIVE TEST

The individual must reside in Singapore and that his absence from Singapore must be temporary and reasonable.



DOUBLE TAX AGREEMENT BETWEEN SINGAPORE AND SOUTH AFRICA:

Article 4 of the Double Tax Agreement between South Africa and Singapore provides for a tiebreaker in the event of uncertainty.

Where an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual;

if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has a habitual abode;

(c) if the individual has a habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national; and

(d) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.

SUMMARY OF WHY CEASING TO BE A TAX RESIDENT IS IMPORTANT:

- South Africans pay tax on their worldwide earnings which means if you emigrate without informing SARS, you must declare your foreign earnings to SARS and might be liable for tax on foreign income in South Africa.
- Risking a possible CGT payable on your worldwide assets in South Africa.
- Obligated in terms of the Tax Administration Act.

CHANGES THAT HAVE COME INTO PLAY AS OF MARCH 2021



Prior to this date, the process of emigrating from South Africa was called Financial Emigration which was phased out on 1 March 2021.

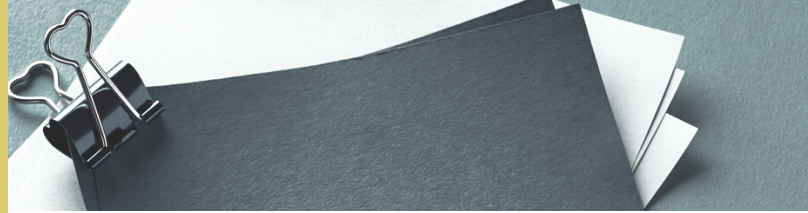
THE PROCESS INVOLVED:

- Reporting to the South African Reserve Bank;
- Applying for an emigration tax clearance certificate from SARS;
- Withdrawal of retirement annuities was available immediately;
- Closing all South African bank accounts and only having a blocked bank account;
- Deregistering tax numbers if there are no remaining South African assets or earnings.

THE CHANGES INVOLVE:

- No more reporting to the South African Reserve Bank;
- Applications are done via SARS by informing SARS in various ways (discussed later on);
- Withdrawal of retirement annuities can only be done after being a non-resident for 3 consecutive years;
- Informing your bank that you are a non-resident;
- The bank opens a non-resident bank account with no transactional access.
- Single Discretionary allowance (SDA) of R1mil per individual not available to non-residents anymore;
- Foreign Investment tax clearance to be applied for any amounts to be sent abroad.

THE METHODS OF CEASING RESIDENCY



INCLUDING CHECKING THE BOX ON YOUR ITC-12

All emigrants must do the following:

CHANGE STATUS WITH SARS

Update all registered particulars with SARS to the foreign details as well as change the tax registration type to Non-Resident.

Inform SARS of the status change and provide specific supporting documents, including a tax residency certificate and proof of address from the country of residence.

SUBMIT IT12 TAX RETURN

The final tax return must be submitted.

The question must be ticked:
Mark with an "X" if you ceased to be a resident of RSA during any year of assessment.

Once this is ticked, the capital gains tax section will open and CGT must be declared in this tax return.

The assessment can take up to 90 business days to be finalised since a manual intervention takes place.

If CGT was not previously declared to SARS, a voluntary disclosure application must be submitted to SARS to request that they don't levy an understatement penalty.

EMIGRATION TAX CLEARANCE CERTIFICATE (EMI TCC) - IF APPLICABLE

The EMI TCC is applied for if the taxpayer has funds to send abroad as part of their emigration or qualifies to withdraw their retirement annuities. This process takes 21 business days for approval.

APPLY FOR "CEASE TO BE RESIDENT NOTIFICATION"

SARS has a formal "Declaration of Ceasing to be Resident" form that must be submitted with supporting documents including a tax residency certificate and proof of address from the country of residence.

If accepted, SARS will then issue a Notice of Non-resident status.

DEREGISTER TAX NUMBER - IF APPLICABLE

When an emigrant has no more South African assets or earnings, they can apply to deregister their tax number.

CONSEQUENCES OF CEASING TO BE A RESIDENT



The main consequence of ceasing tax-residence is that it triggers an Exit Tax in terms of Section 9H of the Income Tax Act.

On the date of ceasing to be a South African tax resident, a deemed disposal of the emigrant's worldwide assets occur, and Capital Gains Tax is payable.

The proceeds of the assets are the market value on the date of ceasing to be a tax resident.

The emigrant's date of ceasing to be a tax resident is the date they left South Africa. It is important to note this date is backdated to when the emigrant left South Africa, not the date of applying for their status change.

For this reason, if they have not declared their CGT when ceasing to be a resident, it is advisable to apply for a Voluntary Disclosure Program (VDP) to avoid underestimation penalties.

Interest will be payable on the late payment of this CGT.

Certain assets are excluded from CGT on the date of ceasing to be a resident, because non-residents pay CGT on these assets when they sell it in the future:

- Immovable property situated in South Africa;
- Shares in a permanent establishment in South Africa (with some exclusions);
- Certain Equity Instruments.

RETIREMENT ANNUITY WITHDRAWAL ON EMIGRATION VS MATURITY

South Africans who have been non-residents for 3 consecutive years, qualify to withdraw a full lump-sum from their Retirement Annuities.

The penalty for accessing this before maturity age (55) is being taxed at a higher rate known as the Withdrawal rate.

MATURITY

Taxable Income (R)	Rate of Tax (R)
1 - 500 000	0% of taxable income
500 001 - 700 000	18% of taxable income above 500 000
700 001 - 1 050 000	36 000 + 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000

- First R500 000 is tax-free (taxed at 0%)
- The balance is taxed at 18%-36%
- You may withdraw the full lumpsum if the value is below R247 500
- If the value exceeds this amount, only one-third may be withdrawn as a lump-sum, with the balance being required to be invested into a living annuity
- Normal income tax is then payable on the living annuity payments
- Annual tax returns must be submitted to SARS to declare the income received
- If the living annuity is taxed in the recipient's foreign jurisdiction of residence, a tax directive can be applied for and the annuity provider will be informed not to deduct tax

RETIREMENT ANNUITY WITHDRAWAL ON EMIGRATION VS MATURITY

EMIGRATION

Taxable Income (R)	Rate of Tax (R)
1 - 25 000	0%
25 001 - 660 000	18% of taxable income above 25 000
660 001 - 990 000	114 300 + 27% of taxable income above 660 000
990 001 and above	203 400 + 36% of taxable income above 990 000

- First R25 000 is tax-free
- Balance taxed at 18% to 36%
- May withdraw full lump-sum
- This is the final tax payable on Retirement Annuity

When I cease South African tax residency, do I lose my citizenship or permanent residency?

No, SARS and the Department of Home Affairs are not linked on this process. Only your South African tax residency is changed. You remain a South African Citizen and retain your passport.

Can I keep my South African Bank accounts?

No, a non-resident bank account is opened. You don't have transactional access to this account. It's best to open a bank account via a FX intermediary who gives personalised service. You instruct them if you need transactions on your account or request statements, etc.

What if I will receive an inheritance in the future?

Currently the rules are that if the inheritance is below R10 million, a bank can send the inheritance abroad without approval from SARS. If the inheritance is above R10million, the transacting bank will require a Letter of Compliance from SARS. The emigrant does not need to have an active tax number in SA.

What if I receive future distributions from a Trust?

Distributions from a Trust could be taxable in the hands of the beneficiary depending on the decision taken by the Trustees. The beneficiary must declare the distribution in their tax return. Therefore, if you are a beneficiary of a Trust, and are a non-resident taxpayer, do not deregister your tax number.

What if I return to South Africa before 5 years have elapsed?

In the past this used to be called a failed emigration, this has been phased out with Financial Emigration. If you return to SA, you must inform SARS that you are a tax resident and change your registered particulars. If your tax number was deregistered, you must apply for reactivation of your same tax number.

Must I sell all my assets when emigrating/ceasing residence?

No, you may retain your SA assets as a non-resident. You will be liable for tax in SA on the proceeds on these assets when sold. You must keep your SA tax number active for this reason. Also note that you may pay CGT on the deemed sale of the asset.

What if there is not a Double Tax Agreement (DTA) between my country of residence and South Africa?

You need to assess your tax residency status using the Ordinarily Residence Test* and Physical Presence Test**, as well as the actions taken when emigrating from South Africa, such as:

- Did you sell all your SA assets?
- Has your entire family emigrated?
- Do you have remaining ties in SA?
- What are your intentions in the new country of residence? (How is this supported with evidence)
- Where is your centre of vital interests stronger?

*Ordinarily residence test:

This is not defined in the Income Tax Act but is described as the place you will return to after your wanderings.

**Physical presence test:

To become a tax resident of South Africa, you must be physically present in South Africa for a period(s), exceeding:

- 91 days minimum during the tax year under consideration;
- 91 days minimum during each year of the five tax years preceding the tax year under consideration; and
- 915 days in aggregate during the above five preceding tax years.

If you do not meet all three requirements, you will be considered a non-resident for tax purposes.



SOUTH AFRICAN CHAMBER OF COMMERCE SINGAPORE

www.sacham.sg

CONTACT INFORMATION

MARISCA DE BRUYN

**Director of Mint Accounting
Mint Accounting**

Email: marisca@mintaccounting.co.za

www.mintaccounting.co.za/

As registered tax practitioners, Mint Accounting is authorised and qualified to handle all SARS requirements. This includes submitting VAT, PAYE, SDL, UIF, EMP501 reconciliations, income tax and provisional tax.

Mint Accounting is a member of the South African Institute of Tax Professionals and South African Institute of Business Accountants.

MICHAEL BOOTH

**Associate Partner
The Heritage Partnership,
Partner Practice of St. James's Place**

Email: michael.booth@sjpp.asia

theheritagepartnership.asia/

Michael specialises in helping South Africans in Singapore navigate the financial planning landscape and opportunities that are available to them as global citizens.