Wealth Management

Emigration.

Understanding the tax implications.

December 2021

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We recommend that you obtain a formal tax opinion

While this guide explains the relevant terminology and processes of becoming a non-resident for South African tax purposes, each individual's situation will be different – depending on their worldwide assets and liabilities and the country to which they intend to emigrate. We therefore strongly recommend that you obtain a formal tax opinion setting out both the South African tax implications and the tax implications relevant to your new country of residence.

In this guide

01 Who is this for

Anyone who:

- is thinking about emigrating or working abroad with no intention to return to South Africa; or
- has already relocated to another country and obtained citizenship in the new country of residence.

It is important to determine whether you want to indeed emigrate or whether you want a plan B.

We touched on this distinction and what to consider when making your decision in our previous article, 'Understanding the financial consequences of emigrating'. Please note that the details relating to the exchange control and tax residency processes in this article have since been replaced with those of the processes explained in this guide, following legislative changes that came into effect on 1 March 2021.

02 Why it is important

Emigration is a complex process. If you have emigrated or are considering emigration, it's vital to take into account all implications from a South African tax and exchange control point of view, as determined by legislation, regulation and processes followed by the South African Revenue Service (SARS) and the South African Reserve Bank (SARB).

All new emigration-related applications from 1 March 2021 onwards will be processed by SARS based on a new dispensation of confirming that the taxpayer has ceased to be a resident for tax purposes. SARS will issue a Tax Compliance Status (TCS).

03 Defining emigration

The Oxford dictionary defines emigration as ‘the act of leaving one’s own country to settle permanently in another’. The term ‘emigration’ as was recognised by SARB was phased out effective 1 March 2021. There is no definition of ‘emigration’ in our tax law.

Effective from 1 March 2021 emigration is therefore determined by the cessation of South African tax residency following a SARS verification process. In other words, once SARS has verified you are no longer a tax resident you have ‘officially’ emigrated.

04 The starting point: Understanding the terminology

To understand the tax consequences of emigration fully and to put the right plans in place, it's important to understand the key terms that inform the process.

4.1 Citizenship versus residency

	Citizenship	Residency
How it is determined	By birth or by naturalisation (ie being accepted as a citizen of a country as a foreign national).	The place where someone lives, even if it's not permanent.
Ability to apply for a passport	Yes, you can freely travel in and out of the country.	No
Ability to vote and stand for public office	Yes	No
Possibility of dual citizenship or residency	Yes **Applying for dual citizenship** If you (as a South African citizen) want to obtain citizenship in another country voluntarily, you must obtain permission from Home Affairs to retain your South African citizenship before you start the foreign citizenship application process. If you don't, your South African citizenship will automatically be relinquished as soon as you acquire citizenship in the other country.	Yes (However, see section 4.2 for more details relating to the requirements for dual tax residency.)
Need to reside in the relevant country for a certain period	No	Yes, to retain permanent residency (with some exceptions).
Ability to work in the relevant country	Yes	Yes, but may be subject to certain restrictions such as work permits.
Residency status	You can retain your South African citizenship even if you cease to be a South African tax resident.	If you cease to be a South African tax resident, you will be treated as a 'resident' for exchange control purposes.

4.2 Tax residency versus exchange control residency

It is important to consider both the tax and exchange control implications that apply when you leave South Africa temporarily or permanently. The differences between these are explained in the table below.

	Tax residency	Exchange control residency
How residency is defined	Taxpayers are either resident or non-resident and the term 'emigrant' is irrelevant for tax purposes. To qualify as a South African tax resident, you must be either of the following: • **Ordinarily resident in South Africa** (subjective test) This means you regard South Africa as your permanent or real home, ie South Africa is the country to which you will naturally and as a matter of course return from wherever you may go. • **Physically present in South Africa,** subject to certain conditions, although you are not at any stage during the relevant tax year ordinarily resident in South Africa (objective or factual test). This requires that you were physically present in South Africa: a. for more than 91 days in total during that tax year; and b. for a period exceeding 91 days in total during each of the previous five tax years; and c. for a period exceeding 915 days in total during those previous five tax years. **Exception** If you are already working and living in another country, temporarily or permanently, and there is a Double Taxation Agreement in place between South Africa and that country, you may not be a South African tax resident based on that agreement – see more details below the table.	*Before 1 March 2021 this included a definition of 'emigrant', meaning 'a South African resident who is leaving or has left South Africa to take up permanent residence in any country outside the Common Monetary Area or CMA*'. This definition no longer applies.* There are various definitions: • **Non-resident** A person or legal entity whose normal place of residence, domicile or registration is outside the CMA*. • **Resident** A person or legal entity who has taken up permanent residence, is domiciled, or is registered in South Africa. • **Resident temporarily abroad** Any resident who has departed from South Africa to any country outside the CMA: a. with no intention of taking up residence in that country; or b. who has not been granted permanent residence in that country, excluding residents who are abroad on holiday or business travel. * The CMA consists of South Africa, Botswana, Lesotho, Eswatini and Namibia.

Tax system and exchange controls	South Africa has a residence-based tax system. This means the following: • **Tax residents** are taxed on their worldwide income and capital gains, irrespective of where their income was earned or gains were realised, and the worldwide dutiable estates of individuals who are tax resident in terms of the ordinarily residence test will be subject to estate duty, subject to certain exclusions. • **Non-residents** are taxed on their South African-sourced income and capital gains (on immovable property interests and any assets effectively connected with their permanent establishment in South Africa of such non-resident), and estate duty applies in respect of their South African assets.	South African exchange control residents are subject to exchange controls and the limits and restrictions contained in these controls.
Legal framework	Governed by the Currency and Exchange Control Act No. 9 of 1933, exchange control regulations; and the Currency and Exchanges Manual for Authorised Dealers.	Governed by the Currency and Exchange Control Act No. 9 of 1933, exchange control regulations, and the Currency and Exchanges Manual for Authorised Dealers.
Administered by	SARS South African Revenue Service	South African Reserve Bank

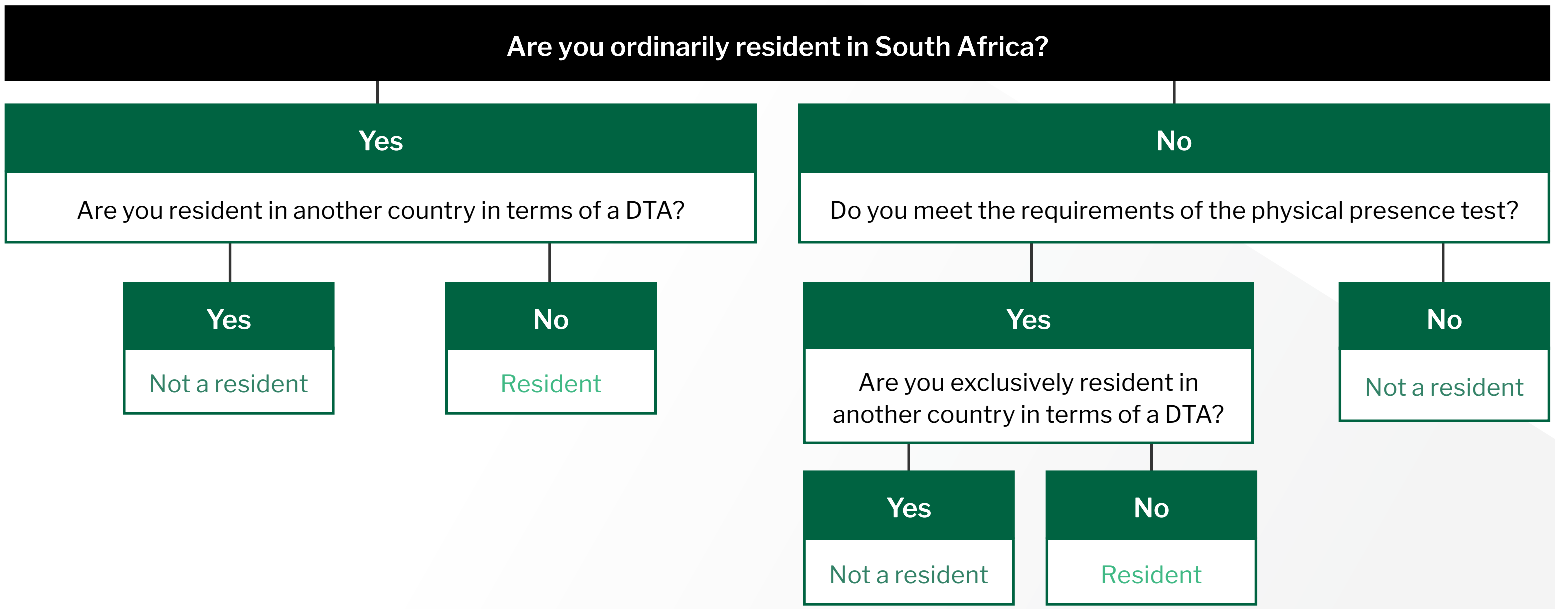
The tie-breaker test: When you cannot be a South African tax resident

There is an instance where you cannot be a South African tax resident following either of the two tests described in the table above. This applies when you are deemed an exclusive resident of another country in terms of the so-called ‘tie-breaker’ test contained in the DTA between South Africa and the other country.

The tie-breaker test typically involves the following sequence of questions relating to South Africa and the other country:

1. In which country is your permanent home? (This can be owned or rented, and it can also be a boat or caravan.)
2. If your permanent home is in neither or is in both countries, with which country do you have the closest personal and economic relations? This is determined by a factual enquiry into your lifestyle and personal relationships and is known as the ‘centre of vital interests’.
3. If the centre of vital interests is in neither or is in both countries, in which country do you have a habitual abode? This is determined by where you spend the most of your time over a reasonable period.
4. If habitual abode is in both countries or in neither of them, of which country are you a national* or citizen?
5. Finally, if you are a national or citizen of both countries or of neither of them, the authorities of the respective countries will settle the question by mutual agreement.

Tax residency and tie-breaker test combined – how tax residency is determined:



* The nationality of a person indicates their place or country of birth while the citizenship of a person shows that the individual is registered as a citizen by the government of the respective country.

05 Becoming a non-resident for tax purposes and the impact of this

If you are a South African tax resident, you can leave South Africa with the intention of permanently settling in another country with or without intending to sever your South African tax residency.

5.1 When are you no longer a South African tax resident?

Your South African tax residency will cease if either of the following applies:

A		B
You have the **intention and take the necessary steps** (see below) to sever your tax residency.	OR	There is a **DTA** in place between South Africa and the other country and the **tie-breaker test** indicates that you are in fact an **exclusive resident in that country**.

The process that will apply if you no longer wish to be a tax resident (point A above)

You must prove that you are no longer ordinarily resident in South Africa	**This requires that you provide proof that:** • you have an intention to become ordinarily resident in another country; and • you are taking or have taken the necessary steps to realise this intention.
SARS will then evaluate your ordinary residence status	**To do this, SARS will consider several factors to establish the purpose, nature and intention of your absence from South Africa, including:** • most fixed and settled place of residence; • place of business and personal interest; • your status in the country (eg immigrant), work permit periods and conditions, etc; • location of your personal belongings; • period abroad; and • purpose and nature of visits.
Depending on the result, you may have to remain outside of South Africa for a certain amount of time	**No longer ordinarily resident in South Africa according to SARS** You have to spend less than 91 days in total in South Africa in the following tax year (ie you must not be 'physically present'). **Still a South African tax resident in terms of the physical presence test** You must remain outside of South Africa for a continuous period of at least 330 full days after the day on which you left South Africa to break tax residence.

5.2 What happens when your tax residency ceases?

5.2.1 Impact on your capital gains tax (CGT) liability

Ceasing of tax residency triggers a deemed disposal of your worldwide capital assets (excluding South African immovable property) for CGT purposes:

- If, at the time of ceasing to be a South African tax resident, you own capital assets, the resulting tax cost may be material.
- If you don't own capital assets at the time, the tax will be immaterial.

5.2.2 Impact on your tax administration and returns

This procedure will apply regardless of whether you will be transferring any money abroad at the time that you cease to be a tax resident.

Relating to the CGT event on deemed disposal of your capital assets	You must include the deemed disposal of your capital assets for CGT purposes in your annual income tax return (ITR12) and, where applicable, ensure you meet the provisional tax obligations. **A capital gain (on its own) cannot make an individual or a trust a provisional taxpayer.** Since a taxable capital gain is included directly in taxable income, it does not constitute income as defined in the Income Tax Act. 58 of 1962. A capital gain (on its own) therefore cannot make an individual or a trust a provisional taxpayer.
General	• You must complete a **SARS TCR01 Emigration Application**, fully disclosing all your South African assets and liabilities. Your application will be declined if any amounts are incorrect or if you omit any assets*. • SARS will then issue a **tax compliance status (TCS)** verification to confirm you are no longer a tax resident. • In the relevant year of assessment during which you ceased to be a South African tax resident, you must **disclose this on your annual income tax return** in the following field: 'Mark with an 'X' if you ceased to be a resident of South Africa during this year of assessment'. ***Important points relating to your application** • You must submit the following with your application: – If you are a **first-time emigrant:** a statement of assets and liabilities for the previous three tax years, disclosing all investments, loan accounts and distributions from local and foreign companies, trusts, etc. – If you **emigrated without formalising** your emigration with the South African Reserve Bank (SARB) or have **emigrated a very long time ago** and **no longer have any assets or liabilities** in South Africa: a nil statement of assets and liabilities for the previous three tax years. • If your application is **submitted by a person other than you**, the submission should include a Power of Attorney. • The **date of disposal for the CGT** calculation on the 'deemed disposal of assets' (where applicable) will be the day before you cease to be a resident, for listed and unlisted investments as well as other assets (eg Kruger coins). For supporting documents required for emigration click here. For the detailed guide on the SARS process, click here.

5.2.3 Impact on your retirement benefits

The proposal relating to a deemed withdrawal from a retirement fund by anyone ceasing to be a tax resident has been withdrawn.

The proposal contained in the 2021 Draft Taxation Laws Amendment Bill (TLAB) to introduce a deemed withdrawal from a retirement fund and application of interest (applied to the notional tax due on the deemed withdrawal amount) on anyone ceasing to be a tax resident has been withdrawn. Further amendments will be considered in the next legislative cycle to address the complexities that were raised by the public comments. This is a positive development for now.

Accessing your retirement savings – be aware of the three-year waiting period (applicable from 1 March 2021)

If you have:

- a provident or pension preservation fund from which you have made a withdrawal before (ie the fund is now 'restricted'); or
- a retirement annuity fund

you must be a non-resident for an uninterrupted period of three years or longer before you can access your retirement savings.

What you would need to do from a tax administration point of view

The onus will be on you to:

- notify SARS that you are no longer a tax resident; and to
- obtain a valuation from your retirement fund on the day before you cease to be a tax resident.

In the case of a retirement annuity or a 'restricted' provident/pension preservation fund (ie one withdrawal has already taken place), you will also have to prove (at the time of retirement or withdrawal) that you have been a tax non-resident for an uninterrupted period of three years (by, for example, providing proof of being a tax resident in another jurisdiction).

5.2.4 Impact on foreign capital allowances (via the applicable exchange control regulations)

The process of controlling or blocking an emigrant's remaining assets no longer applies to applications submitted from 1 March 2021.

The process of controlling or blocking an emigrant's remaining assets in a special 'blocked funds account' applies only to emigration applications approved **on or before 28 February** 2021 [ie MP 336(b) forms that were stamped and signed by an authorised dealer on or before 28 February 2021]. All transfers from these accounts will be handled as normal transfers in line with foreign capital allowances. However, for all new emigrations from 1 March 2021 this process has fallen away and no longer applies.

Transfer of foreign capital allowances and retirement benefits abroad

Once an authorised dealer can confirm you have received TCS from SARS and are no longer a tax resident, they can facilitate the transfer of the following allowances abroad.

Up to R1 million per year	Single discretionary allowance (SDA) of up to R1 million per calendar year without the requirement to obtain approval from SARS.
Up to R10 million per year	Foreign capital allowance (FCA) of up to R10 million per calendar year, subject to obtaining TCS from SARS (which will require details of your personal assets and liabilities, proof of availability of the funds, and proof of the source of funds.
More than R11 million	Investments of more than R11 million (combined value of both allowances above) will be subject to a more stringent verification process by SARS and you will have to apply for approval from the Financial Surveillance Department (FSD). Before approving these transfers, SARS and the FSD will verify your tax status and the source of funds, and you will be assessed in terms of the anti-money laundering and countering terror financing requirements as prescribed in the Financial Intelligence Centre Act No. 38 of 2001.
Lump sum benefits from 'restricted' retirement preservation or annuity funds	See point 5.2.3 above. Payment of lump sum benefits on the withdrawal of the benefits from a 'restricted' retirement preservation fund (ie one withdrawal has already taken place) or retirement annuity fund will be allowed only if you have remained a non-tax resident for at least three consecutive years.

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