



# What is your South African tax residence status?

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Many South Africans who leave the country permanently or temporarily have questions about their South African tax residence status. SARS recently published guidance on their website in this regard. This guidance also introduces a requirement to declare to SARS when a person ceases to be resident, including the basis on which they did so. This article considers when a person is a South African tax resident and the implications if a person ceases to be a resident.

Many South Africans leave the country. Some do so permanently, while others temporarily work and gain experience abroad. These persons often grapple with the question whether they are still considered to be South African tax residents.

SARS recently added guidance on the topic of ceasing to be a resident on their website. This article briefly considers some of the relevant underlying principles highlighted by this guidance.

#### **When is a person a South African resident?**

Tax residence is something different from citizenship or other forms of residence statuses that a person may have. An individual (natural person) is considered to be a South African resident for income tax purposes if: he/she ordinarily resides in South Africa, or if he/she is not ordinarily resident in South Africa, meets certain physical presence thresholds.

##### *Place of ordinary residence*

The courts have described the essence of this requirement as the country of where a person has his/her most fixed or settled residence. This would be country to which he would naturally and as a matter of course return from his wanderings, as contrasted with other lands it might be called his usual or principal residence and it would be described more aptly than other countries as his real home. It is an inherently factual question to determine a person's place of ordinary residence. SARS published Interpretation Note 3 that provides further guidance.

##### *Physical presence test*

The physical presence test may deem a person who is not ordinarily resident in South Africa to be a resident if he/she was physically present in South Africa for more

than 91 days a tax year and the preceding 5 tax years and in excess of 915 in aggregate during those 5 years. Residence on this basis is however broken by a continued absence of at least 330 days.

##### *Impact of tax treaties*

If a person is considered to be exclusively resident in another country in terms of a tax treaty, that person is not considered to be a resident for South African tax purposes. This requires that one consider the tie-breaker provisions of the relevant treaty. Many of these tie-breakers also require a factual analysis.

#### **What are the implications if you ceased being a resident?**

When a natural person transitions from being a resident to being a non-resident, he/she is deemed to have disposed of their assets, except certain assets that remain taxable in South Africa, at their market value. This often results in a significant CGT liability, especially for persons who hold valuable asset such as shares in companies.

SARS requires that a person who ceases to be resident declare this SARS of this fact by declaration. This declaration requires that the taxpayer supply SARS with information about the basis to conclude that he/she is no longer resident in South Africa

A person who is no longer a resident of South Africa is only liable for income tax on South African sourced income (as opposed to worldwide income). Similarly, they are only liable for capital gains tax (CGT) when they dispose certain South African assets. The requirements to file tax returns in South Africa differ between persons who are residents and those who are not.



TaxBot.co.za offers instant guidance on various South African tax matters. The Bots include ones that can guide you through some of the matters discussed in this article, including residence status and the requirement to file a tax return in South Africa.

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