



## Tax consequences to emigrate from South Africa

Between 20 000 and 25 000 South Africans emigrate from the country every year and the trend is increasing. This article briefly discusses some of the tax implications that should be considered when a person emigrates from South Africa.

An estimated 20 000 to 25 000 South Africans emigrate from the country every year. The current trend is that this number is increasing. The reasons, circumstances and manner in which South Africans emigrate vary for each individual or family. Factors such as a lack of employment opportunities and economic difficulty, however, often form part of the motivation.

When a person emigrates from South Africa, this is likely to have tax implications for them. This article briefly discusses some of these considerations.

### Importance of tax residence status

An individual's tax residence status determines how they are taxed in South Africa. South African residents are taxed on their income earned anywhere in the world, with some exemptions, for example, certain foreign remuneration. On the other hand, a person who is not a South African tax resident is only subject to tax in South Africa on South African-sourced income. A person's tax residence status also affects their obligation to file tax returns in South Africa and their ability to withdraw amounts from retirement funds.

### Cease to be a South African tax resident

An individual (natural person) is a South African tax resident in South Africa if they are ordinarily resident in South Africa. If they are not ordinarily resident during a tax year, they may also be a South African tax resident on the basis of their presence in the country.

This resident definition is, however, subject to double tax agreements (DTAs) that South Africa has concluded. If a person is considered to be a resident of both South Africa and another country with which South Africa concluded a DTA, and the DTA determines that the person is exclusively considered a tax resident of the other country, the person is not considered to be a South African tax resident.

Persons who emigrate from South Africa generally cease being tax residents on the basis of:

- (a) no longer being ordinarily resident in South Africa, or
- (b) by reason of a DTA.

The facts and circumstances around each person or family's emigration determine which of these triggers applies and the specific date when it applies. This often requires a detailed assessment of the facts and circumstances around the emigration, the tax law of the country to which the person immigrated and the DTA, if any, between that country and South Africa.

### Tax consequences if cease to be tax resident

If a person ceases to be a South African tax resident, they must inform SARS (through the RAV01 form). The person must specify the date on which they ceased being a resident. The person should submit a declaration to SARS stating the basis on which they ceased being a resident. SARS requires a detailed motivation letter to support the declaration as well as a copy of the person's passport and travel diary.

The tax implications of ceasing to be a resident include being liable for tax (often capital gains tax) as if the person had disposed of all their assets, except certain assets that remain in the South African tax net, at their market values on the day before ceasing to be a resident. The person should include this tax liability in their tax returns (including provisional tax if so registered).

If a person with interests in companies or trusts emigrates, this could have implications for the entity going forward: for example, the residence status of the entity and tax implications for future distributions by the entity. This, however, depends on many factors that are beyond the scope of this short article. Persons with such interests would be wise to obtain advice.

