



19 July 2021

To: The South African Revenue Service

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RE: GUIDANCE ON THE CESSATION OF SA TAX RESIDENCY

Dear Colleagues,

Kindly see below the submission SAIT would like to make to SARS to get some clarity on the submission of provisional and income tax returns pre-and post-cessation of tax residency.

Introduction

Qualifying taxpayers are required to submit income tax returns to SARS because they are either SA tax residents (taxable on world-wide income) or they receive income from a SA source.

Taxpayers are required to inform SARS through various channels of their cessation of SA tax residency.

The South African Institute of Taxation (SAIT) is requesting clarity from SARS regarding certain practical aspects concerning the obligation to submit income tax returns and provisional tax returns once taxpayers have ceased SA tax residency. This includes the submission of income tax returns as well as provisional tax returns pre-and post-cessation of SA tax residency.

It is our understanding that according to the current practice, pre- and post-cessation income is declared on the same income tax number. When taxpayers have declared that they ceased to be SA tax residents, the assessments for the applicable years of assessment are referred for manual intervention.

As far as a provisional taxpayer is concerned paragraph 21(1)b) of the Fourth Schedule to the Income Tax Act No 58 of 1962 (hereafter ITA) states that:
*"Subject to the provisions of subparagraph (2), provisional tax shall be paid by every provisional taxpayer (other than a company) in the following manner, namely—
(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year."*

The clarity being sought is based on the following four scenarios:



Scenario 1

A non-provisional taxpayer ceased SA tax residency on 30 September 2020

- The taxpayer ceased to be a SA tax resident on 30 September 2020.
- From 1 March 2020 to 30 September 2020 the taxpayer received both SA source and foreign income.
- The taxpayer did not receive any SA source income after ceasing residency on 30 September 2020.

When must the 2021 ITR12 income tax return be submitted and when is the exit tax, if applicable, payable to SARS?

Scenario 2.

A non-provisional taxpayer ceased SA tax residency on 30 September 2020

- The taxpayer ceased to be a SA tax resident on 30 September 2020.
- From 1 March 2020 to 30 September 2020 the taxpayer received both SA source and foreign income.
- After ceasing SA tax residency on 30 September 2020, the taxpayer continues to receive SA source income but is NOT a provisional taxpayer.

When must the 2021 ITR12 income tax return for both periods, pre-and post-cessation SA tax residency be submitted and when is the exit tax, if applicable, payable to SARS?

Scenario 3

A provisional taxpayer ceased SA tax residency on 30 September 2020

- The taxpayer ceased to be a SA tax resident on 30 September 2020.
- From 1 March 2020 to 30 September 2020 the taxpayer received both SA source and foreign income.
- The taxpayer did not receive any SA source income after ceasing residency.
- The first provisional tax return must have been submitted by 31 August 2020

When must the second 2021 provisional tax return and the 2021 ITR12 income tax return be submitted and when is the exit tax, if applicable, payable to SARS?

Scenario 4

A provisional taxpayer ceased SA tax residency on 30 September 2020

- The taxpayer ceased to be a SA tax resident on 30 September 2020.
- From 01 March 2020 to 30 September 2020 the taxpayer received both SA source and foreign income.
- The taxpayer continues after ceasing SA residency on 30 September 2020 to receive SA source income and continues to be a provisional taxpayer.
- The first provisional tax return must be submitted by 31 August 2020

When must the second 2021 provisional tax return and the 2021 ITR12 income tax return be submitted and when is the exit tax, if applicable, payable to SARS?

When and how must the provisional tax in respect of the post-cessation SA source income be declared and paid to SARS?



Section 66(13) of the ITA states that:

"The return for normal tax to be made by any person in respect of any year of assessment shall be a return—

a. in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of February: Provided that where—

(iii) a person ceases to be a resident; a return shall be made for the period commencing on the first day of that period and ending on the day preceding the date that the person ceases to be a resident"

From the provisions of the ITA, it is our understanding that where a taxpayer ceased to be a SA tax resident, the year of assessment is deemed to have ended on the day preceding the date the taxpayer ceases to be a SA resident. In all the scenarios above, the year of assessment would end on 30 September 2020. This is considered to be a "period assessment"

From SAIT's understanding, once the return is submitted, the return will be referred for manual intervention before the income tax assessment is finalised. It is during the manual intervention process where the SARS official will apportion the tax rebates in terms of Section 6 of the ITA.

Clarity requested regarding the income tax assessment

Considering that the ITA does not indicate that the post-cessation period would not be considered a period assessment, would the rebates be apportioned or not?

How would the interest exemption and CGT annual exclusion pre-and post-cessation be treated?

Yours faithfully,

SAIT

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