

3 August 2022

**To: South African Revenue Service (SARS)**

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**RE: CESSATION OF SOUTH AFRICAN TAX RESIDENCY**

**1. Background**

- 1.1. In 2021, a taxpayer could inform SARS of the cessation of their South African tax residency through the following two procedures:
  - **ITR12 income tax return:** Ticking the appropriate box in the tax return wizard and providing the date of cessation of tax residence.
  - **RAV01:** Completing the Registration, Amendments and Verification Form (RAV01) on eFiling by capturing the date of cessation of tax residence in the Income Tax Liability Details section.
- 1.2. In both instances, the SARS system would be triggered to request the taxpayer to submit a declaration form and supporting documents to substantiate the cessation of South African tax residency. The required supporting documents would depend on the basis on which the taxpayer ceased South African tax residency.
- 1.3. From 2022, the option to report the cessation of South African tax residency on a ITR12 income tax return has been removed. As a result, a taxpayer can now only report a cessation of tax residence to SARS through the submission of an updated RAV01 form.
- 1.4. It appears that for Filing Season 2022, the decision was taken to remove the ability for taxpayers to indicate a cessation of tax residence via the ITR12. Instead, the tick box and date of cessation of tax residence field are greyed out and unavailable where the taxpayer has not informed SARS of a change in tax residence.
- 1.5. Similarly, where a change in tax residence has been reported, and where SARS has accepted and processed the cessation declaration and supporting evidence, the tick box and date of cessation of tax residence field should be prepopulated with the information at SARS' disposal.



## **2. Challenges**

### **2.1. Filing Season 2022 challenge: Tax returns erroneously not pre-populated**

2.1.1. In various cases brought to SAIT's attention, the ITR12 income tax return has not been pre-populated with the information regarding the taxpayer's cessation of tax residence, despite the fact that SARS has processed the cessation declaration and supporting evidence. This is important for a taxpayer who still receives South African sourced income.

2.1.2. The taxpayer cannot submit the tax return without correcting the tax residence information. However, other than going through the same reporting process, there does not appear to be workaround.

### **2.2. Perpetual Filing Season challenge: Reporting process and pre-population**

2.2.1. From a timing perspective, there will annually be instances where a previously SA tax resident, now non-resident, reports that fact to SARS just before or during Filing Season. It is not clear how long it would take for the tax return to be updated after SARS has processed the cessation of residency information.

2.2.2. Again, the taxpayer cannot submit the tax return without correcting the tax residence information.

## **3. Requests**

### **3.1. Filing Season 2022 challenge: Tax returns erroneously not pre-populated**

3.1.1. Considering the fundamental difference in tax treatment for a tax resident versus a non-resident, it appears necessary to enable a taxpayer to correct any incorrect information on a tax return. Especially if SARS has already processed the cessation declaration and supporting evidence.

3.1.2. This matter has been discussed with SARS National, and the suggestion has been made that the ITR12 be 'refreshed' for the correct information to be pre-populated. However, we understand that the 'refresh' function will only pull in newly reported third-party rather than the bio, and demographical details of the RAV01 form. However, if this is indeed a solution, we would be grateful for confirmation.

3.1.3. Should the solution not lie with 'refreshing' the return, we request an alternative workaround that will allow the taxpayer to submit a correct tax return within the Filing Season deadlines.



### 3.2. Perpetual Filing Season challenge: Reporting process and pre-population

3.2.1. Section 23 of the Tax Administration Act, No. 28 of 2011 (the TAA) requires a taxpayer to inform SARS of any changes listed in the section. The section does not refer to a change in tax residence and as far as we are aware, SARS has not published a public notice requiring a taxpayer to inform SARS of such an event.

3.2.2. From a practical point of view, the SARS website is silent about time frames, and only states the following:

*“When must a declaration be made?  
When an individual ceases to be a tax resident, SARS must be informed.”*

3.2.3. Until there is a legislative requirement for a taxpayer to inform SARS at a specific point in time that they ceased SA tax residence, there will perpetually be a timing issue between the reporting of the cessation, and the pre-population of the information in the taxpayer's ITR12.

3.2.4. It is anticipated that:

- Some taxpayers' ITR12 returns would have to be corrected during any given Filing Season; and
- Some taxpayers would have to delay their submission of the ITR12 to wait for the SARS process on the determination of tax residency to run its course.

3.2.5. We request that SARS provide guidance for taxpayers encountering the scenarios set out in 3.2.4. above. We have provided an example in the Annexures attached.

## 4. **Consistency**

4.1.1. There appear to be a lack of consistency in SARS' processes. Although this may be explained at the hand of a change in process, we would like to bring the following scenarios to SARS' attention:

- There are instances where a taxpayer ceased residence in the 2019 tax year, and this was indicated in the 2019 ITR12. SARS did not recognise the cessation of residence, and only after the taxpayer updated the RAV01 and submitted the relevant documents, did SARS issue the non-residence letter. For this taxpayer, the 2022 ITR 12 reflects the correct date of ceasing residence.
- For another taxpayer that also ceased residence in the 2021 tax year (indicated in the SARS ITR12), SARS automatically updated the RAV01, without receiving any supporting documents and the 2022 ITR12 reflects as ceasing residence with the correct date.



4.1.2. Unfortunately, unlike in the cases discussed under point 3., we do not have permission to share the taxpayer details for the cases discussed under this point.

Please let us know if you require any further information.

We look forward to hearing from you.

Yours faithfully,

**SAIT Tax Technical**

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