



Ceasing SA tax residence and the latest challenges with remitting funds abroad

Expats and wealth planning

**SAIT Webinar
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YOUR KEY TO THE TAX COMMUNITY

YOUR HOSTS TODAY

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2. SALT's submissions to SARS:
 - CESSATION OF SOUTH AFRICAN (SA) TAX RESIDENCY AND RELATED MATTERS - [23 November 2022](#)
 - CESSATION OF SOUTH AFRICAN TAX RESIDENCY - [3 August 2022](#)
3. Current inconsistencies in treatment and workarounds
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The current environment: SARS, SARB and the banks

Identified risks on fund transfers cross-border

- SARB (exchange control and its legacy)
 - Capital flow monitoring (national interest but applies cross-border)
 - Anti-money laundering (aka “AML” - international)
- Authorised Dealers
 - AML
 - Anti-terrorism
 - People of Influence (PI) & Politically Exposed People (PEPS)
- SARS (tax risk & drawn into other risk management & approval procedures)
- SA financial institutions (e.g. fund managers, long-term insurers)
- Other parties (e.g. foreign financial institution / reportable institution – FATCA & CRS & foreign jurisdictions)

Triggers to vet the status of the individual and/or the transaction(s)?

SA national

What is required?

- Certificate of Good Standing
- Source of Funds

When is it required?

- Applying for certain visas
- Remitting funds abroad (under certain circumstances – SARS & SARB)
- Opening a foreign bank account
- Taxpayer emigrates

SARB /
AD

SARS

Triggers to vet the status of the individual and/or the transaction(s)?



SARB /
AD

Foreigner

Opening non-resident bank account with an AD (with or without SA ID)

- SA ID = resident account unless new SARS letter of emigration (TCS PIN) or SARB letter of formal emigration
 - Children listed on MP336(b) – now major (no individual confirmation)
 - Belated zero emigration, with no tax clearance (remains non-compliant with SARS)
- Temporary migrant & new immigrant opening bank account (retiree visa, employment, diplomatic visa)
 - Passport & employment letter (e.g. secondment)
 - SARB – undertaking not to make foreign assets available to SA resident
 - Retiree visa – provide proof of foreign income

Triggers to vet the status of the individual and/or the transaction(s)?

SARB /
AD

Foreigner

With previous ties to SA – wants to open SA bank account

- Foreign National seeking consent to bank in SA as a local (why is this important?)
- No SA ID but For example, born in SA, has typical SA name and surname (e.g. Botha, Buthelezi)
 - Children listed on MP336(b) – now major – e.g. exited on foreign passport (no individual confirmation)
 - Deemed resident by the AD (because the individual is constitutionally entitled to an ID)

Triggers to vet the status of the individual and/or the transaction(s)?

Other parties

SARB / AD

Foreigner

When **must** a foreigner open an SA bank account?

- Receiving SA source of income – e.g. rental income, living annuity, lump sum
- Purchasing property in South Africa – Any owner of a title deed or a part owner of a title deed property or sectional title property must register for tax (see more under “Tips”)
- Immigrate to SA to work or live
- When employed by certain SA employers
- *Receiving income from an SA trust (may elect to)*
- *Receives income from an SA deceased estate (may elect to)*

SAIT's submissions to SARS

Cessation of South African tax residency & related processes

- CESSATION OF SOUTH AFRICAN (SA) TAX RESIDENCY AND RELATED MATTERS - [23 November 2022](#)
- CESSATION OF SOUTH AFRICAN TAX RESIDENCY - [3 August 2022](#)

Other parties

SARS

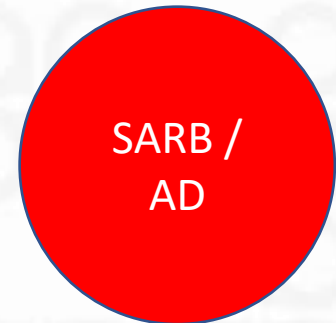
SARB /
AD

Current inconsistencies in treatment and workarounds

Case: Individual tax immigrated and receives annuity income from SA

Facts

- The SA national tax immigrated – that is, the individual is now a non-resident for SA tax purposes
- The individual received SA source annuity income from retirement fund or an insurance company (needs to open a bank account)
- Need to upload SARS letter of emigration or TCS immigration PIN.



Case: Individual tax immigrated and receives annuity income from SA

A dark blue circle containing the white text "SARS".

Application – outcome required: Upload SARS letter of emigration or TCS immigration PIN

- SARS definition – treaty non-resident or ordinarily no longer resident
 - SARB – if SARS so acknowledges
 - Previously SARB relied on formal ‘individual undertaking’, and not on a tax treaty.
 - Previously could not financially emigrate to Namibia – can now.
- Some countries – no treaty, so only ordinarily not resident (whole host of information etc. lifestyle.)
- SARS considers passport stamp (not significant) – intention but not the ability (e.g. did not have another passport yet, or permanent residency – golden visa)
- With treaty – e.g. Namibia. SARS accepts because Namibia give Tax Residency Certificate.
- With treaty, but country does not want to give a Tax Residency Certificate – (UAE, China)

Case: Individual tax immigrated and receives annuity income from SA



SARS

Workarounds

- Proof of tax registration and filing, employer letter
- USA – takes 3 years (no green card) to become a tax resident and you should have filed – but can elect to file as a local
- Intention & long-term residency ability: Indefinite leave to remain
- Lessening of SA financial footprint (history of FIA applications, cashing out any SA fund monies)

Case: Foreigner – belated zero emigration

Facts – Taxpayer assumed the tax directive issued to fund was final

- Trigger: (1) gets a living annuity, (2) wants to purchase property in SA, (3) gets an inheritance, or (4) wants to open a foreign bank account: Need a TCS PIN & maybe FIA
- The SA national had a belated zero immigration (financial immigration – 5 years outside of SA; only assets retirement and life insurance: No bank account and did not require TCS at the time)
- Registered, active, but non-compliant (suspense code): Cashed RAs – got an IRP5 but did not submit a return.

SARS

Other parties

SARB / AD

Case: Foreigner – belated zero emigration

SARS

Application

- R250 – R8000 administrative penalty based on estimated taxable income: Has to update and file.
- But – SARS erroneously used the lump sum instead of only the marginal rate income

Workaround

- Request to wave penalties - reason, no requirement to submit returns
- SARS must send a notice to file – if the actual notice does not apply, SARS must specify and did not



TIPS

TIPS

Foreign individual receives a living annuity

- Living annuity: Can remit according to SARB – but in SARB manual for the AD, must get a certificate of good standing once a year. Might also be tax obligations (depends on the treaty) – must do RST01 every year. E.g. Australia.
- If TCS PIN – currently an annual process but would ideally process once with SARS (even with annual declaration) & exempt below threshold transfers

TIPS

Foreign individual wants to purchase property in SA

- First open a bank account (vetted source of funds)
- Any owner of a title deed or a part owner of a title deed property or sectional title property must register for tax: Below is an example found in most current buy and sell agreements -

18. WARRANTY BY PURCHASER

18.1 *The Purchaser, by his signature hereto, warrants that his tax affairs with the South African Revenue Services (SARS) are in order and up to date or, in the event of that not being the case, that agreement has been reached and that the necessary arrangements have been made with SARS in respect thereof.*

18.2 *In the event that the Purchaser is not in possession of an Income Tax Registration number issued by SARS, the Purchaser undertakes to immediately on request of the Conveyancers, complete the necessary documents and supply the required documentation to enable the Conveyancers Seller's to obtain an Income Tax Registration number on the Purchaser's behalf from SARS.*

TIPS

Foreign individual receives an inheritance

- Inheritance: Executor needs letter from SARS approved immigration. Needs TCS PIN. Manual application – declined.
- Do not open an SA bank account. If SA bank account, then must follow the TCS process.
- Obtain copy of will, L&D, cash recon statement, proof of estate duty paid, & the deceased estate TCS good standing (source of funds cleared)
- Insist executor pays to foreign bank account – no prohibition in the case of inheritance.
- If SA ID no. and >R10 million, must get SARB approval & SARS confirmation of inactive status.

TIPS

Foreign individual is a beneficiary of an SA trust

- First R10 million calendar year income can leave on TCS good standing of the trust, if paid directly abroad
- If paid to SA bank account, then tax emigration status to be proved, or FIA in years after tax emigration was placed on record
- Income in excess of R10 million and asset distributions subject to SARB approval (requires that the CGT has been paid at trust level)

Foreign individual receives SA source rental income

- Taxable in SA and individual must file a tax return

Foreign individual receives interest from trust

- Withholding tax at source, no tax filing required

TIPS

Individual wants to gain access to eFiling

- In certain instances, an individual's tax reference number with SARS
- 80% with POA reactivate but 20% of cases SARS wants to meet the individual to enable reactivation
- If very old – or tax number has been reallocated, then mismatch. Then a virtual conference. Normally biometric. Then new taxpayer number.

Questions and Answers



Thank you