



Emigration and you

YOUR KEY TO THE TAX COMMUNITY

Most common errors

- Dictionary vs SARS vs international law
- 180 days?
- This is not a choice...

Gross Income Definition

- For a resident
 - Any amount (in cash or otherwise)
 - Received by/accrued to
 - In favour of such a resident
 - Excluding receipts or accruals of a capital nature
- For a non resident
 - Any amount (in cash or otherwise)
 - Received by/accrued to
 - In favour of such a resident
 - From a source within the Republic
 - Excluding receipts or accruals of a capital nature

Exemptions

- Salaries
 - Officers or crews of ships if in international waters and out the country for 183 days
 - Any employee for any employer if:
 - Out the country for 183 days or more
 - Continuous 60 day period
 - Capped at R1,25 million.
 - VERY strict application – please read Interpretation Note 16 in DETAIL!!
 - Eg: exemption must be apportioned to working days/total days abroad. Leave days not counted as work days

Practical impact if you can't break residency?

- Only R 1 million “tax free”
- Remainder included in RSA taxable income
- Get credit for foreign taxes paid.

	Resident		Non resident
	2021 - no FT	2021 - FT @ 20%	2021
Total salary	R 2 750 000,00	R 2 750 000,00	R 2 750 000,00
RSA gross income	R 2 750 000,00	R 2 750 000,00	R -
Exemption	R 1 250 000,00	R 1 250 000,00	R -
<i>Taxable income</i>	<i>R 1 500 000,00</i>	<i>R 1 500 000,00</i>	<i>R -</i>
Normal tax liability	R 517 974,00	R 517 974,00	R -
s6quat	R -	R 300 000,00	
Tax payable to SARS	R 517 974,00	R 217 974,00	R -
Tax payable to other		R 500 000,00	
Total tax paid	R 517 974,00	R 717 974,00	
Difference? R1,25m exempt			

Poll

- Owning a house in South Africa makes me tax resident by definition?
 - True
 - False

Residence

- Natural person
 - Ordinarily resident: Cohen and Kuttel (Interpretation Note 3)
 - The place I call home – that I return to from my wanderings
 - Physical presence test (Interpretation Note 4)
 - 91 days in current year and
 - 91 days each year in the past 5 years and
 - 915 days in the last 5 years

Residence – Income Tax

- Natural person
 - Ordinarily resident: *Some of the factors to be considered*
 - An intention to be ordinarily resident in the Republic
 - The natural person's most fixed and settled place of residence
 - The natural person's habitual abode, that is, the place where that person stays most often, and his or her present habits and mode of life
 - The place of business and personal interests of the natural person and his or her family
 - Employment and economic factors
 - The status of the individual in the Republic and in other countries, for example, whether he or she is an immigrant and what the work permit periods and conditions are
 - The location of the natural person's personal belongings
 - The natural person's nationality
 - Family and social relations (for example, schools, places of worship and sports or social clubs)
 - Political, cultural or other activities
 - That natural person's application for permanent residence or citizenship
 - Periods abroad, purpose and nature of visits
 - Frequency of and reasons for visits

In short?

- Residency test under local law:
 - Ordinarily resident
 - Physical presence ONLY if you are not ordinarily resident
- If resident in another jurisdiction
 - DTA overrides local law

So what do you need to consider?

- Which country are you in? Do you have a DTA?
- If yes - tie breaker rules
 - Where is a house (permanent residence) available?
 - If house is available in both, where is your “centre of vital interests”?
 - If centre of vital interests isn’t conclusive, then look at where a habitual abode is available
 - If habitual abode is in both or neither, then look at citizenship
 - If still not certain, by agreement between the revenue authorities
- If no – how badly do you want to break residency?

If you remember nothing else...

- Physical presence by itself does not determine RSA tax residency. Must be able to demonstrate intent.
- Think of either the brick wall or see saw analogy

If you remember nothing else

- 3 ways to break residency:
 - No longer be ordinarily resident
 - If you were only resident because of physical presence, when you no longer meet the days test
 - Application of DTA
- <https://www.sars.gov.za/individuals/cease-to-be-a-resident/>

What happens when my residency changes?

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Emigration and you 2024

Section 9H Deemed disposal

- Changing residency triggers a deemed disposal of all your assets at market value on day before you cease to be resident.
- You reacquire them at that same value on date of emigration.
- Your YOA ceases on date of emigration
- Does not apply to:
 - RSA immovable property
 - Any rights to s8C instruments
 - Any assets of a RSA permanent establishment

Key changes

- Interest exemption apportioned
- CGT annual exclusion apportioned

Scenario

A individual trades in his own name. The trading stock has a market value of R2 000 000 and a cost of R1 500 000. He also owns a farm with a base cost of R1 700 000 and a market value of R5 000 000. Rental income for lease of grazing land was earned as well. R50 000 while held in the hands of the farmer, R100 000 after he had emigrated. He earned foreign interest of R150 000 while still in the country and R200 000 after. He had foreign shares with a net foreign capital gain of GBP 8 000, effective translation rate is 16. He sold these post emigration for a gain of GBP 10 000.

Individual Tax return up to date of emigration Date of emigration

Normal Tax:

Trading Stock (opening stock)	R	1 500 000,00
Trading Stock (closing stock)	R	-
Foreign interest	R	150 000,00
Rental	R	50 000,00
Deemed sale	R	2 000 000,00
CGT inclusion	R	<u>35 200,00</u>
Taxable Income	R	<u>3 735 200,00</u>
Tax payable @ 45%	R	<u><u>1 680 840,00</u></u>

CGT:

Trading
Stock

Proceeds	R	-
Base Cost	R	<u>-</u>
	R	-

Land R - No disposal.

Shares R 128 000,00 Per para 43 can calculate the gain in FC and convert at spot
R 128 000,00

Total capital gains	R	128 000,00
Less exclusions	R	<u>40 000,00</u>
Net capital gain	R	<u>88 000,00</u>

40%

Tax Return post emigration

Normal Tax:

Emigration and you 2024

Once I've left?

- RSA tax consequences on RSA Source income only!
- RSA CGT only payable on sales of immovable property, even if its RSA source assets.
- Keep tax number – please inform SARS!!!!

Other common exemptions

- Section 10(1)(h)/10(1)(hA)
- Withholding taxes on interest/royalties
- Trust distributions

Currently accepted ways to notify SARS of change in residency

- RAV01
- <https://www.sars.gov.za/individuals/cease-to-be-a-resident/>

Disclaimer

- This seminar is presented for information purposes only and does not constitute tax advice. Please contact your tax practitioner for advice tailored to your specific circumstance.