

## FINANCIAL EMIGRATION & CEASING TAX RESIDENCY

In the 2020 Budget, National Treasury announced that the exchange control position is to be phased out as of 1 March 2021 and it would be replaced by a verification process in which they claim would be to allow individuals who work abroad more flexibility.

### UNDERSTANDING THE PROCESS

It is important to understand that Financial Emigration is the formal process in which one can be noted as a non-resident for tax and exchange control purposes in South Africa. The process at the South African Revenue Services ("SARS") ensures that one has met all requirements under the Income Tax Act No.58 of 1962 to ensure that one is a non-resident in accordance with South Africa's tax residency tests and the South African Reserve Bank ("SARB") process ensures compliance with all exchange control regulations for non-residency. While exchange control regulations are being phased out the tax portion of financial emigration remains intact and in line with SA tax residency tests.

### WHAT'S CHANGED/CHANGING?

With the new proposed system, from a SARB perspective, it is mentioned that residents and non-residents would be treated in the same way for purposes of engaging in cross border transactions. Furthermore, restrictions imposed on non-residents relating to wanting to make investments in South Africa and requiring them to operate on blocked accounts and borrow money in South Africa, would be repealed.

In spite of this, it is worthy to note that as an individual, whether resident or non-resident, who transfers more than R10 million offshore will be subject to a more stringent verification process. Such transfers will result in:



Certification of tax status and the source of funds.



Assurance that individuals comply with anti-money laundering and counteracting terrorism financing requirements prescribed in the Financial Intelligence Centre Act (2001).



Risk management test.

While all this is being put into place, the SARS step of financial emigration in determining non-residency will still be in accordance with the ordinarily resident and physical presence tests. However, it is important to consider that National Treasury specifically mentioned that the tax treatment of individuals will be strengthened, following the new regime requiring South African expats to pay tax on their foreign employment income insofar as it exceeds R1,25 million.

### ENCOURAGEMENT OR A TRAP?

What the process of strengthening the tax treatment of individuals entails, is unknown at this point. The same goes for the verification process that is to be introduced insofar as the SARB process is concerned. It is without doubt that National Treasury have realised that the amendment to the foreign employment income exemption has resulted in a number of South African expats formally ceasing their tax residency by way of financial emigration. Therefore, it is important for individuals (more so South Africans working abroad) to understand that the introduction of the new system to be implemented is all part of a plan by the Government to "encourage" all South Africans working abroad to maintain their ties to the country.

### ACT NOW OR FOREVER HOLD YOUR PEACE

Due to the uncertainty relating to the new regime, it is difficult to predict whether this encouragement will result in an involuntary retention of tax status owing the described strengthened treatment of tax of individuals and the stringent verification process to be introduced. Therefore, all South Africans who are working and living abroad and have no intention to return to South Africa on a permanent or long term basis, are urged to formalise their non-tax residency before the implementation of the new system on 1 March 2021 to avoid being caught in the stringent process to be followed.

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