

# EXPATRIATE TAX SERVICES

COMPREHENSIVE TAX  
COMPLIANCE SOLUTIONS  
FOR SOUTH AFRICANS ABROAD



TAX COMPLIANCE  
DTA LEGAL ASSISTANCE  
FINANCIAL EMIGRATION

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# TAX COMPLIANCE

## SA EXPATRIATES: CHECK YOUR TAX AFFAIRS

Due to the mass amount of conflicting information regarding South African expatriate tax laws, many South Africans are finding themselves in deep waters with the South African Revenue Service (SARS). This having happened after receiving misinformation from some legal consultants, tax practitioners or even SARS officials themselves.

## COMMON MISCONCEPTIONS

A large majority of expatriates claim that their tax affairs in South Africa (SA) are in order and there is no need for concern. However, on further inspection it quickly becomes obvious that this is untrue as their tax submissions are in fact incorrect, which if not corrected, could lead to serious implications legally and with SARS. This is due to many expatriates believing that once they leave SA, they are no longer required to file tax returns in SA or do not need to declare their foreign sourced income.

Thus, many expatriates have been, incorrectly, only filling tax returns showing South African sourced income or zero/nil returns. This is not the case if you are a South African working abroad as you are legally required to submit tax returns to SARS every year, declare foreign earnings and then claim exemptions and/or rebates under the Income Tax Act, No. 58 of 1962 (ITA) or an applicable tax treaty. There are requirements that apply, and this relief is not automatically applied.

## IMPLICATIONS

As of June 2017, SA committed to join the Common Reporting Standard (CRS) which was developed in an effort to combat tax evasion.

This means that all your worldwide earnings are being shared with SARS from various banks and financial institutions globally. Therefore, should SARS cross reference what they are receiving from the CRS with your tax returns, and the two do not align, it will be considered a criminal offence and which could have further consequences.

We provide the following expatriate tax services to ensure your tax affairs are fully compliant and in line with South African expatriate tax law requirements from SARS.



Over 150 professionals at your command, including Tax Attorneys & CA's.



Applying sound tax strategy for complex tax returns to achieve full compliance and maximise tax saving.



Assisting with SARS objections & other specialised engagements.



Extensive knowledge of expatriate tax law; making us the preferred provider for South Africans living and working abroad.



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We have extensive knowledge of expatriate tax law; making us the preferred provider for South Africans working abroad.

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# PROTECTING YOUR FOREIGN INCOME FROM SOUTH AFRICAN TAX

South African expatriates should not only understand the new expatriate tax laws, which endanger their foreign sourced income, but should also act if they want to avoid its dire consequences.

The amendments to the ITA have been fully enacted and forms part of the Taxation Laws Amendment Bill of 2017. Despite this, many South African expatriates are still under the false impression that the law has not been formally amended and will thus not affect them. The new position:



*There shall be exempt from income tax – any form of foreign employment income – to the extent to which that income does not exceed R1,25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission fee, emolument or allowance, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic.*



The amendments require South African tax residents abroad to pay South African tax of up to 45% of their foreign employment income where it exceeds the threshold of R1,25 million.

Although the R1,25 million threshold may seem generous, foreign employment income includes allowances and fringe benefits paid to expatriates that cannot be considered as “earnings”.

The provision of housing, security and flights, among other things, are often part of the packages offered to South Africans to induce them to work in foreign locations. These benefits can quickly add up to the R1,25 million threshold, particularly with respect to expensive countries in which expatriates often live. When it comes to expatriate options, there are effectively two schools of thought, excluding the “head in the sand” approach.

These options are based on the intention of the South African expatriate to remain abroad permanently or temporarily.

## PERMANENT CESSATION OF SOUTH AFRICAN TAX RESIDENCY

The process that we call Financial Emigration is best fit for a South African tax resident working or living abroad with a permanent intention not to reside in SA.

## TEMPORARY CESSATION OF SOUTH AFRICAN TAX RESIDENCY

Applying the provisions of a Double Taxation Agreement is best fit for a South African tax resident working and living abroad for a limited duration and will be returning to reside in SA in the future.



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We have many years of experience across a number of different fields allowing us to offer expert advice across the board, while maintaining high levels of service excellence.

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# WHICH APPROACH IS BEST?

## FINANCIAL EMIGRATION VS DOUBLE TAXATION AGREEMENT

There is so much misinformation flying around the South African expatriate communities. First of all, there can never be a one size fits all approach. Financial Emigration (FE) requires certain criteria to be met before one can undergo the process.

Likewise, applying the provisions of a Double Taxation Agreement (DTA) will only be suitable for certain individuals.

Before going into the advantages and disadvantages of both, it must be noted that South Africans abroad, whatever their decision, should absolutely get to know the expatriate tax laws that currently affect them.

### FINANCIAL EMIGRATION ADVANTAGES

Undergoing this process is arguably the simplest, cleanest and most compliant way of ceasing tax residency in SA. It is a formal process through SARS, which has been endorsed as the “right” way to go about it by the South African parliament. The main requirement to be able to undergo this process is to have a permanent intention that you will not be returning to reside in SA. Intentions can change, so merely the intention must be had when deciding to proceed with the FE process.

- FE ensures that your taxes are fully compliant, and that SARS makes a decision on your tax residency status which cannot later be reversed on the same facts by SARS itself. This means that once you have ceased tax residency, SARS cannot then change its mind and start raising taxes on your foreign sourced income.
- You, however, have all the power and can come back to SA and reverse this process, without jeopardising the tax position in respect of the years that you were abroad.
- Another very important point to note is that through the FE process, you are able to backdate the effective date of your non-residency with SARS to the date you actually left SA. Often South Africans have been abroad for many years without formalising their non-residency status in SA, so being able to backdate this can be extremely useful in lowering any capital gains tax liability that could arise. Once the FE process has been completed, South African expatriate tax law on your income earned abroad no longer has any effect on you and thus creates no South African tax liability on your foreign income whatsoever.
- FE also provides the rare opportunity to encash your retirement annuity (RA) without any early encashment penalties. Thus, you are able to obtain those funds and transfer them abroad, or if you prefer, you can leave such policies as they are in SA. Please keep in mind that in order to fully encash your RA, the FE process will need to be completed and you will need to be tax non-resident in SA for at least 3 years to encash your policy in full.

## FINANCIAL EMIGRATION DISADVANTAGES

- Unlike the advantages of FE, the disadvantages are far and few between. The first is that of your bank account that you may hold in SA – it changes status from a resident account to a non-resident Rand account, also previously known as a “blocked asset” or “capital” account.
- The other previous names for this account often alarmed people into thinking that the bank freezes/ blocks the account and you were unable to transact. This is a fallacy as the account is fully functional except for a hurdle, which is easily overcome. This hurdle is that the account no longer allows for internet banking transactions to abroad, this is done for security reasons and thus makes the account one of the safest accounts to be transacting with. Although safe, expats generally rely on being able to transact online, this now can be done for local transactions.
- This is not as big an issue as one might think. Once your account is changed into a non-resident account, you are able to choose the method of corresponding with your bank, which generally is telephonically or by email – of course this will take some getting used to, but it does work and with some ease. Having your own private banker can make this even easier but is definitely not a requirement. You are able to still have all your debit orders and make payments as you please, it just all goes through the bank’s Exchange Control department.
- Another disadvantage is that you are no longer permitted to hold a credit card in South Africa, or have personal loans (a mortgage bond and vehicle finance is allowed). Thus, these will need to be settled before the FE process. Where not possible to settle once off, you will be required to provide a written undertaking confirming how you intend to continue paying off your liability until the amount has been expunged.
- Lastly, once the FE process is completed, expatriates must ensure they do not fall foul of the so-called “physical presence test”, which is entrenched in South African tax law. Thus, expatriates must limit their time in SA to less than 91 days per tax year to ensure they do not become tax residents of SA once again. This is not really a disadvantage as if you were spending so much time in SA it would be logical and fair to be paying taxes in SA.



## DTA ADVANTAGES

Undergoing this process is somewhat more complicated than FE and is generally used for those expatriates living and working abroad, but intend to return to SA within a few years.

- Firstly, an expatriate can only claim relief from double taxation if a DTA is available between SA and their chosen foreign host country. Fortunately, many countries, especially the main South African expatriates destinations, do have DTA's with SA including, Australia, Germany, Ghana, Ireland, Netherlands, Saudi Arabia, the United Arab Emirates (UAE), the United Kingdom (UK), and the United States of America (USA).
- The main advantage of applying a DTA is that its a less permanent solution compared to the FE process, meaning that a person living and working abroad can apply the DTA and be fully exempt from paying taxes in SA on their foreign income and will not have to reverse any formal process if they do return to SA.
- If you have not financially emigrated, and SARS comes knocking, the DTA may be your saving grace in holding off SARS from taxing your foreign sourced income. Ensuring that you comply with the DTA, if you choose this route, is of utmost importance if you want it to protect you.

## DTA DISADVANTAGES

- Applying a DTA to your situation is a yearly process, which means that every year you will need to "convince" SARS that you are a non-resident in SA for tax purposes in terms of the specific and relevant DTA. This is a disadvantage because it can become an administrative nightmare and having to prove to SARS you are non-resident on a yearly basis may be a battle.
- Furthermore, to prove you fit the bill in terms of a DTA, SARS often requires a tax residency certificate to be submitted to them from the country you are paying taxes in. This may seem simple enough, however this is often not the case. For instance, in the UAE, obtaining such a certificate can mean taking two full days of your time to go through the process, or finding a service provider that will do this for you, and there can also be very stringent requirements in a country to obtain such a certificate.
- Even more worrying is that certain countries do not have a formal process in place to obtain or even supply such a certificate of tax residence. In certain countries service providers are charging a hefty fee and you will need to obtain this certificate every year. Thus, the costs in the long run could be far higher than that of FE process.

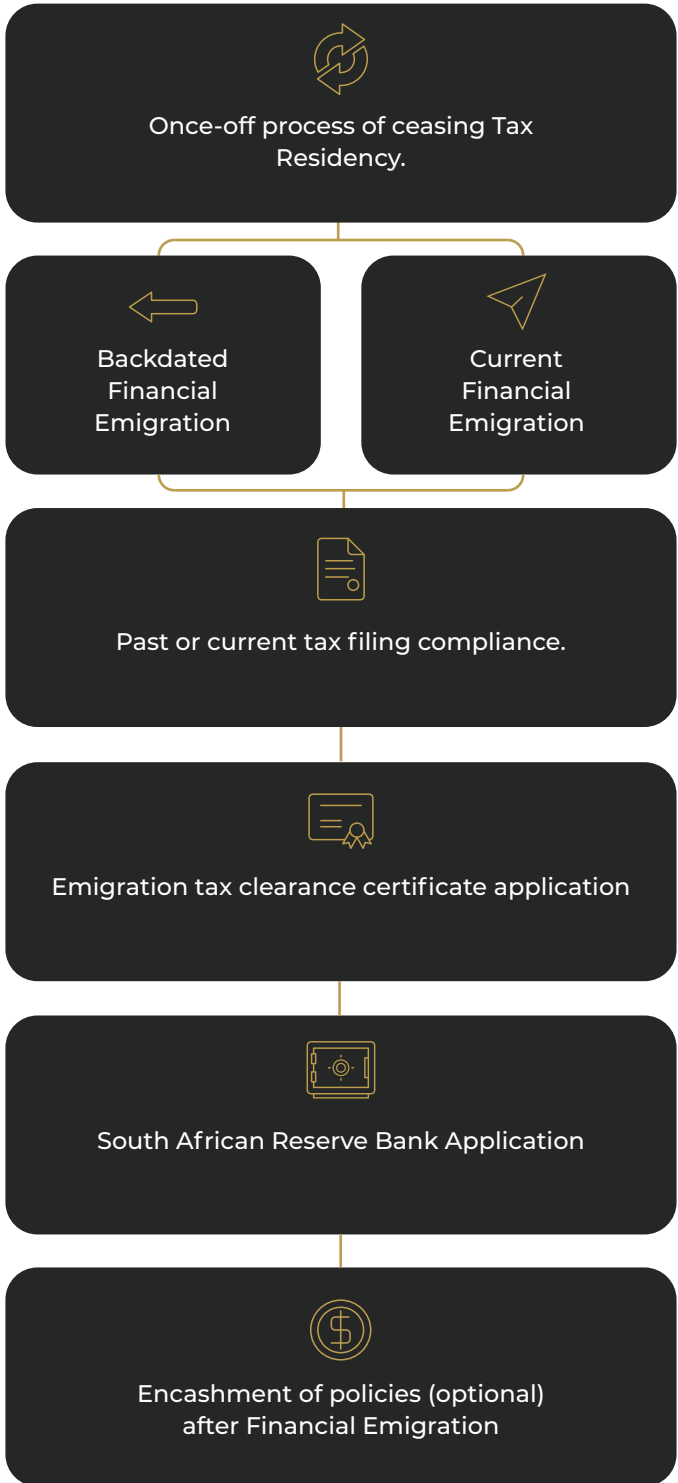
FINANCIAL EMIGRATION



DOUBLE TAXATION AGREEMENT

Financial Emigration Assistance for South Africans employed permanently abroad.

Double Taxation Agreement application and legal assistance for South Africans temporarily abroad.



## OUR TEAM



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