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CHAMBER OF COMMERCE
SINGAPORE

BUDGET 2024 SUMMARY & CEASING SOUTH AFRICAN TAX RESIDENCY

A HOW-TO GUIDE FOR INDIVIDUALS

CO-AUTHORED BY

MARISCA DE BRUYN
Tax Advisor (SA)

MICHAEL BOOTH
Certified Financial Planner (SA)

CO-AUTHORS

MARISCA DE BRUYN

Director,
Tax Advisor (SA),
Emigration &
Non-Resident Tax Specialist,
Mint Accounting and Tax Advisory

MICHAEL BOOTH

Certified Financial Planner® (SA),
Offshore Specialist,
Associate Partner,
St. James's Place

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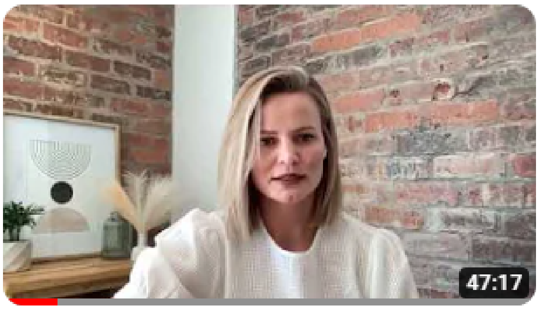

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SUMMARY OF 2024 BUDGET SPEECH:

- There have been no adjustments/relief made to the personal income tax tables, rebates, medical tax credits or retirement tax tables.
- **Two-pot retirement system will become effective from 1 September 2024:**

Vested Pot: Values as at 1 September 2024 are vested and the current rules apply.

Unvested Pot: Contributions and growth from 1 September 2024 is split into two pots with different levels of access:

i) **Savings Pot:** one-third goes to this pot and can be accessed every tax year at a minimum withdrawal of R2,000 and taxed at normal tax rates,

ii) **Retirement Pot:** two-thirds goes to this pot and can only be accessed at retirement as a living annuity.

Emigrants may still withdraw full value after 3 years

- **Anti-Avoidance Rules (Section 7C):**

Further amendments have been made to the anti-avoidance rules that affect SA tax residents in relation to low-interest or interest-free loans to trusts (or companies where more than 20% of the equity shares/voting rights are held by trusts) in order to effectively address the interaction between the trust anti-avoidance measures and transfer pricing rules where the arm's length interest rate is less than the official rate on these cross-border loan arrangements.

- **Foreign tax credits (Section 6quat)**

Section 6quat is to be amended to explicitly allow for a foreign tax credit against tax payable in SA on a capital gain for taxes payable in the relevant foreign jurisdiction on the disposal of an asset.

Recent Changes which affect Non-Residents:

- **Approved International Transfer process**
- **Two-pot Retirement System**
- **Changes to Foreign Tax Credits**
- **Income distributed by a SA Trust to a non-resident beneficiary, will be subject to tax in the hands of the Trust at 45%, and no longer in the hands of the non-resident beneficiary.**
- **Tax Free Savings and Retirement contributions limitations in the year of ceasing residency.**

Changes to the SARS Tax Clearance process

As of 24 April 2023, the South African Revenue Service (SARS) implemented changes to the tax clearance process for individual cross-border capital flows, specifically relating to foreign investment and emigration.

These are system enhancements for the purpose of aligning the various tax clearance processes. This new system redefines what it means to be tax compliant and is suitable for both South African residents and non-residents who are sending funds abroad.

Old Process:

TWO SEPARATE APPLICATION PROCESSES:

- Foreign Investment Tax Clearance
- Emigration Tax Clearance
- Value up to R10 million
- Special approval over R10 million

New Process:

ONE COMBINED APPLICATION PROCESS:

Approved International Transfer (AIT) system
Distinguishes between:

- Resident
- Non-Resident

- Value up to R10 million
- Special approval over R10 million

DIFFERENCE BETWEEN SUPPORTING DOCUMENTS:

✓ Relevant supporting documents to prove the source of funds.
✓ 3-Year statement of assets & liabilities for **local South African assets & liabilities only**.
✓ Values to be listed at market value only.

IMPORTANT NOTE:

- The new process changes is applicable to the tax clearance application only.
- No changes have been made to the allowances allowed to be sent abroad per calendar year:
  - Single discretionary allowance of R1 million -available to SA tax residents only.
  - Foreign Investment - R10 million.
  - Special Approval - over R10 million .

✓ No changes.
✓ 3-year statement of assets & liabilities for **WORLDWIDE assets & liabilities split between local and foreign assets.**
✓ Value listed at market value and additionally cost price to be included.

✓ **Additional Questions:**
- Are you a beneficiary of a local or foreign Trust?
- Have you made loans to a local or foreign Trust?
- Do you have direct or indirect shareholding in any local or foreign legal entity of 20% or more?

✓ **Application by a non-resident:**
- Proof of ceasing tax residency with SARS.
- Capital gains tax calculation in terms of exit tax.

"Two Pot" Retirement System

Two-pot retirement system will become effective from 1 September 2024:

- **Vested Pot:** Values as at 1 September 2024 are vested and same rules apply

  i) Seed capital may be transferred to the savings pot from this vested pot to the value of 10% of the fund balance up to a maximum of R30 000

- **Unvested Pot:** Contributions and growth from 1 September 2024 is split into two pots with different levels of access:

  i) **Savings Pot:** one-third goes to this pot and can be accessed once in a tax year at a minimum withdrawal of R2,000 and taxed at normal tax rates,

  ii) **Retirement Pot:** two-thirds goes to this pot and can only be accessed at retirement a compulsory Living Annuity.

Provident Fund Annuitisation

1 March 2020

1 March 2021

More changes coming in 2025…

VESTED RIGHTS APPLY

Your savings balance on 1 March 2021 and future growth on that balance will **not be affected** and you can take it out in full when you retire.

You will not be affected by annuitisation.

Under 55

55 and over

ANNUITISATION APPLIES, NO VESTED RIGHTS

You can only take 1/3rd of your retirement savings and you must buy a pension with the remaining 2/3rd.

Unless the total benefit is R247 500 or less

If you transfer your savings to another fund, all new contributions and interest accumulated in the new fund are subject to annuitisation rules.

Unless the total benefit is R247 500 or less

NON-RESIDENT WITHDRAWALS REMAIN UNCHANGED

Non-Residents who meet the requirements of the 3 year rule remain unchanged. A full withdrawal is allowed

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BACKGROUND ON WHY CEASING RESIDENCE IS IMPORTANT

Section 22 of The Tax Administration Act requires that a person must inform the South African Revenue Service (SARS) of any changes in their registered particulars within 21 business days. This includes physical address and tax residence status.

Emigrating from South Africa does not automatically make one a non-resident for tax purposes.

Emigrating without informing SARS means they are a South African tax resident living temporarily abroad.

As per the definition of Gross Income in the Income Tax Act, South African Tax Residents must declare their worldwide earnings to SARS and are liable for Capital Gains Tax (CGT) on their worldwide assets.

Non-Resident taxpayers need only declare their South African source-based income to SARS.

As of 1 March 2020, South Africans earning income abroad, and who meet the requirements of the Foreign Employment Income Exemption in terms of Section 10(1)(o)(ii)*, receive an exemption on the first R1,25 million of their foreign earnings. Excess earnings are then subject to income tax in South Africa.

South Africa has Double Tax Agreements (DTA) with most countries which allow for relief on taxes.

One such relief is Section 6quat, which allows for a tax credit between countries. If the excess income above R1,25 million was taxed in the foreign country, the tax paid can be used as a tax credit in South Africa. Depending on the tax rate paid in the foreign country, the taxpayer might still have a tax liability in South Africa.

***Section 10(1)(o)(ii) Requirements:**

- **Only available to South African tax residents;**
- **Must be in an employment relationship (not subcontractors or independent contractors);**
- **Must spend at least 183 days of which 60 days are consecutive, outside South Africa in a 12-month period.**

Another relief in terms of the DTA is allowing exclusive taxing rights to one jurisdiction. To establish this relief, an individual must look at the specific Tax Treaty of their jurisdiction which will stipulate the specific rules of becoming an exclusive tax resident of that country.

Further to this, a common misconception is that if an individual earns below R1,25 million per year that they are under the "threshold" and therefore exempt from tax.

However, the truth is that if you live in a country where the tax treaty deems you to be an exclusive tax resident of that country you are obliged to inform SARS of this fact. The Tax Treaty overrides all other tax rules.

SINGAPORE TAX TREATY RULES:

“RESIDENT IN SINGAPORE"

For an individual to be regarded as a tax resident, they have to satisfy at least one of the following tests:

QUANTITATIVE TEST

The individual is:

- Physically present in Singapore for at least 183 days in the calendar year preceding the year of assessment; or
- Exercises an employment in Singapore for at least 183 days in the calendar year preceding the year of assessment (excluding directors of a company)

QUALITATIVE TEST

The individual must reside in Singapore and that his absence from Singapore must be temporary and reasonable.

DOUBLE TAX AGREEMENT BETWEEN SINGAPORE AND SOUTH AFRICA:

Article 4 of the Double Tax Agreement between South Africa and Singapore provides for a tiebreaker in the event of uncertainty.

Where an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual;

if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the State in which the centre of vital interests is situated cannot be determined, or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident only of the State in which the individual has a habitual abode;

(c) if the individual has a habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national; and

(d) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.

SUMMARY OF WHY CEASING TO BE A TAX RESIDENT IS IMPORTANT:

- South Africans pay tax on their worldwide earnings which means if you emigrate without informing SARS, you must declare your foreign earnings to SARS and might be liable for tax on foreign income in South Africa.
- Risking a possible CGT payable on your worldwide assets in South Africa.
- Obligated in terms of the Tax Administration Act.

CHANGES TO EMIGRATION THAT HAVE COME INTO PLAY AS OF MARCH 2021

Prior to this date, the process of emigrating from South Africa was called Financial Emigration which was phased out on 1 March 2021.

THE PROCESS INVOLVED:

- Reporting to the South African Reserve Bank;
- Applying for an emigration tax clearance certificate from SARS;
- Withdrawal of retirement annuities was available immediately;
- Closing all South African bank accounts and only having a blocked bank account;
- Deregistering tax numbers if there are no remaining South African assets or earnings.

THE CHANGES INVOLVE:

- No more reporting to the South African Reserve Bank;
- Applications are done via SARS by informing SARS in various ways (discussed later on);
- Withdrawal of retirement annuities can only be done after being a non-resident for 3 consecutive years;
- Informing your bank that you are a non-resident;
- The bank opens a non-resident bank account with limited transactional access.
- Single Discretionary allowance (SDA) of R1mil per individual falls away when the emigrant receives their SARS Notice of Non-Resident Letter.
- Approved International Transfer must be obtained to send any amounts abroad up to R10mil. For amounts over R10mil. special approval must be obtained. This is then valid for 12 months.

THE METHODS OF CEASING RESIDENCY

All emigrants must do the following:

YOU CANNOT TICK THE BOX ON YOUR ITC-12 ANYMORE!

1

CHANGE STATUS WITH SARS

Update all registered particulars with SARS to the foreign details as well as change the tax registration type to Non-Resident.

As you can no longer tick the box declaring that you have ceased tax residence, you must inform SARS of the status change and provide specific supporting documents, including a tax residency certificate and proof of address from the country of residence.

SARS will then automatically indicate your tax status on your ITR12.

It is important to inform SARS of your change in status well in advance of tax season to ensure that your ITR12 accurately reflects your tax status.

2

CEASE TAX RESIDENCY: UPDATE YOUR REGISTERED DETAILS WITH SARS AND APPLY FOR "CEASE TO BE RESIDENT NOTIFICATION"

SARS has a formal "Declaration of Ceasing to be Resident" form that must be submitted with supporting documents including a tax residency certificate and proof of address from the country of residence.

If accepted, SARS will then issue a Notice of Non-resident status.

3

SUBMIT IT12 TAX RETURN

The final tax return must then be submitted.

The assessment can take up to 90 business days to be finalised since a manual intervention takes place.

If CGT was not previously declared to SARS, a Voluntary Disclosure Application (VDA) must be submitted to SARS to request that they don't levy an understatement penalty.

THE METHODS OF CEASING RESIDENCY

All emigrants must do the following:

4

SEND FUNDS ABROAD: APPROVED INTERNATIONAL TRANSFER – IF APPLICABLE

The Single Discretionary allowance (SDA) of R1mil per individual falls away when the emigrant receives their SARS Notice of Non-Resident Letter.

An Approved International Transfer must be obtained to send any amounts abroad up to R10mil. For amounts over R10mil. special approval must be obtained. This process takes a minimum of 21 business days for approval.

5

QUALIFY TO WITHDRAW RETIREMENT ANNUITIES:

To qualify to withdraw your retirement annuities, you must have been out of South Africa for 3 consecutive years.

If you qualify to withdraw your retirement annuities, proceed to apply for the withdrawal of retirement annuities with the fund houses. The process takes 4 - 6 weeks. A non-resident Bank account will need to be opened in South Africa for the retirement annuity to be paid out.

If the you do not yet qualify for the withdrawal of your retirement annuities, it is important to submit tax returns during this waiting period to keep your status compliant as SARS has levied admin penalties on expats who still have active tax numbers. It becomes an admin burden to dispute your status if you do not submit returns. The most cost effective way is to submit a zero return to stay compliant.

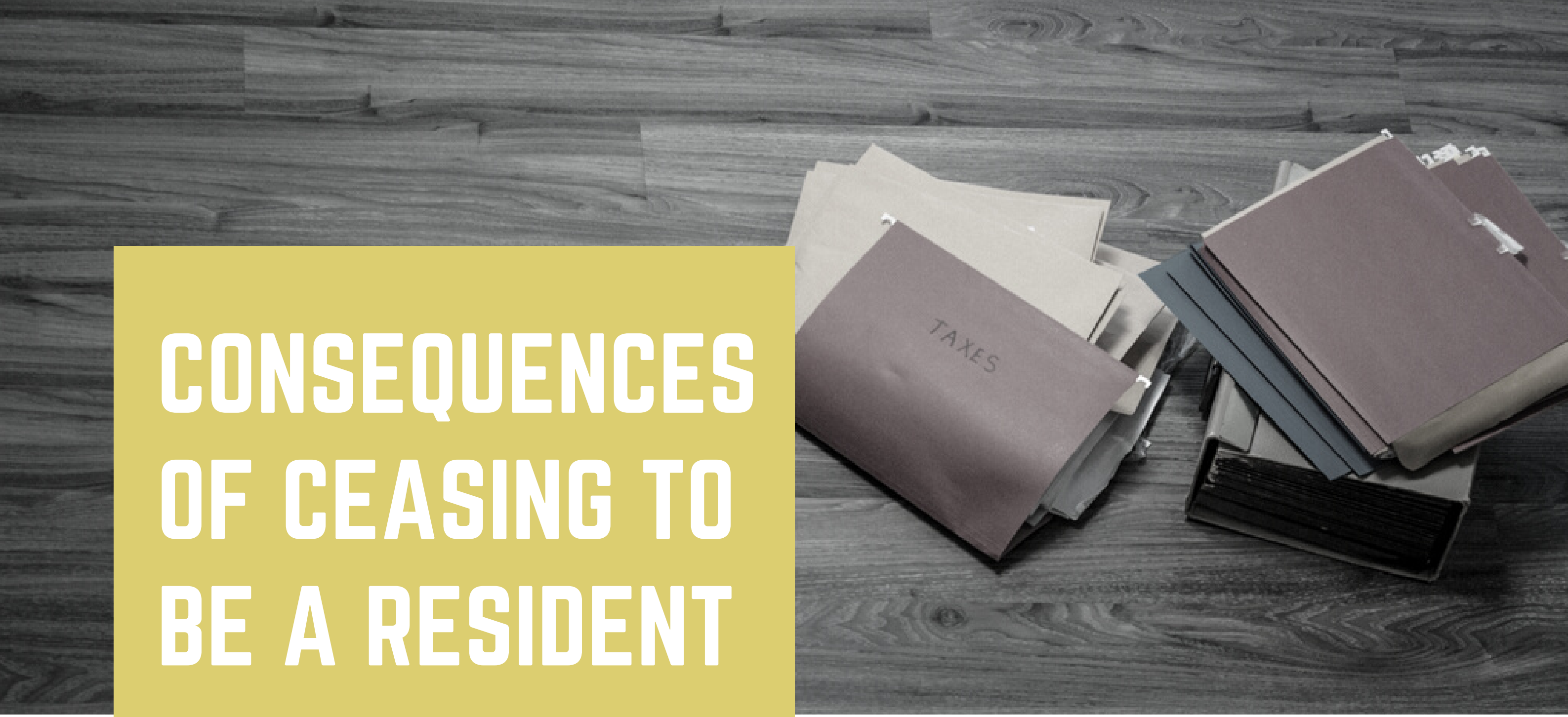
6

DEREGISTER TAX NUMBER – IF APPLICABLE

When an emigrant has no more South African assets or earnings, they can apply to deregister their tax number.

Steps 1 - 5 can take up to 4 months

The entire process up to deregistration can take up to 18 months



CONSEQUENCES OF CEASING TO BE A RESIDENT

The main consequence is of ceasing tax-residence is that it triggers an Exit Tax in terms of Section 9H of the Income Tax Act.

On the date of ceasing to be a South African tax resident, a deemed disposal of the emigrant's worldwide assets occur, and Capital Gains Tax is payable.

The proceeds of the assets are the market value on the date of ceasing to be a tax resident.

The emigrant's date of ceasing to be a tax resident is the date they left South Africa.
It is important to note this date is backdated to when the emigrant left South Africa, not the date of applying for their status change.

For this reason, if they have not declared their CGT when ceasing to be a resident, it is advisable to apply for a Voluntary Disclosure Program (VDP) to avoid underestimation penalties.

Interest will be payable on the late payment of this CGT.

If you are a beneficiary of a trust and might receive future capital distributions; it is important to do tax planning around this prior to ceasing tax residency.

S7(8) of the Income Tax Act allows for an anti-avoidance rule where a distribution to a non-resident is not taxable in the hands of the non-resident but in the trust's capacity. This results in the CGT of 18% in the hands of the individual increasing to 36%!

Certain assets are excluded from CGT on the date of ceasing to be a resident, because non-residents pay CGT on these assets when they sell it in the future:

- **Immovable property situated in South Africa;**
- **Interest in a South African Discretionary Trust with no vested rights.**
- **Certain Employment Equity Instruments.**

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RETIREMENT ANNUITY WITHDRAWAL ON EMIGRATION VS MATURITY

South Africans who have been non-residents for 3 consecutive years, qualify to withdraw a full lump-sum from their Retirement Annuities.

The penalty for accessing this before maturity age (55) is being taxed at a higher rate known as the Withdrawal rate.

MATURITY

Taxable Income (R)	Rate of Tax (R)
1 - 550 000	0% of taxable income
550 001 - 770 000	18% of taxable income above 550 000
770 001 - 1 155 000	39 600 + 27% of taxable income above 770 000
1 155 001 and above	143 550 + 36% of taxable income above 1 155 000

- First R550 000 is tax-free (taxed at 0%)
- The balance is taxed at 18%-36%
- You may withdraw the full lumpsum if the value is below R247 500
- If the value exceeds this amount, only one-third may be withdrawn as a lump-sum, with the balance being required to be invested into a living annuity
- Normal income tax is then payable on the living annuity payments
- Annual tax returns must be submitted to SARS to declare the income received
- If the living annuity is taxed in the recipient's foreign jurisdiction of residence, a tax directive can be applied for and the South African annuity provider will be informed not to deduct tax

RETIREMENT ANNUITY WITHDRAWAL ON EMIGRATION VS MATURITY

EMIGRATION

Taxable Income (R)	Rate of Tax (R)
1 - 27 500	0%
27 501 - 726 000	18% of taxable income above 27 500
726 001 - 1 089 000	125 730 + 27% of taxable income above 726 000
1 089 001 and above	223 740 + 36% of taxable income above 1 089 000

- First R27 500 is tax-free
- Balance taxed at 18% to 36%
- May withdraw full lump-sum
- This is the final tax payable on Retirement Annuity

FAQ

When I cease South African tax residency, do I lose my citizenship or permanent residency?

No, SARS and the Department of Home Affairs are not linked on this process. Only your South African tax residency is changed. You remain a South African Citizen and retain your passport.

Can I keep my South African Bank accounts?

No, a non-resident bank account is opened. The traditional South African banks provide transactional access so you can still transact within South Africa. However, it is advisable to open a bank account with an intermediary to assist with doing foreign exchange transactions due to the lower commission fees and preferential exchange rates.

What if I receive future distributions from a Trust?

With the amendments coming into force this year, distributions from trusts to non-resident beneficiaries are taxed in the hands of the Trust (at an effective rate of 45%) instead of the hands of the beneficiary (at an effective rate of 18%-45%). Distributions can still be made to non-residents, the distribution will just be taxed within the Trust.

What if I return to South Africa before 5 years have elapsed?

In the past this used to be called a failed emigration, this has been phased out with Financial Emigration. If you return to SA, you must inform SARS that you are a tax resident and change your registered particulars. If your tax number was deregistered, you must apply for reactivation of your same tax number.

Must I sell all my assets when emigrating/ceasing residence?

No, you may retain your SA assets as a non-resident. You will be liable for tax in SA on the proceeds on these assets when sold. You must keep your SA tax number active for this reason. Also note that you may pay CGT on the deemed sale of the asset.

What if there is not a Double Tax Agreement (DTA) between my country of residence and South Africa?

You need to assess your tax residency status using the Ordinarily Residence Test* and Physical Presence Test**, as well as the actions taken when emigrating from South Africa, such as:

- Did you sell all your SA assets?
- Has your entire family emigrated?
- Do you have remaining ties in SA?
- What are your intentions in the new country of residence? (How is this supported with evidence)
- Where is your centre of vital interests stronger?

*Ordinarily residence test:
This is not defined in the Income Tax Act but is described as the place you will return to after your wanderings.

**Physical presence test:
To become a tax resident of South Africa, you must be physically present in South Africa for a period(s), exceeding:
- 91 days minimum during the tax year under consideration;
- 91 days minimum during each year of the five tax years preceding the tax year under consideration; and
- 915 days in aggregate during the above five preceding tax years.

If you do not meet all three requirements, you will be considered a non-resident for tax purposes.

What if I will receive an inheritance in the future?

It is important to cease tax residency if an emigrant will receive future inheritance.

If an emigrant can prove to The SARB that they have ceased tax residency by providing the SARS Notice of Non-resident Letter or a Notice of Deregistration from tax, they will be allowed to externalise their inheritance.

If you were never registered for tax in South Africa, the inheritance can be sent out as follow:

- Below R10mil, no approval needed.
- Above R10mil, the bank will need a manual Letter of Compliance from SARS. No need to register a tax number.

Disclaimer: Please note that this is as of 20th of March 2024. These rules are constantly evolving and changing.

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www.sacham.sg

CONTACT INFORMATION

MARISCA DE BRUYN, TA (SA)

Director,
Mint Accounting and Tax Advisory

Email: marisca@mintaccounting.co.za

www.mintaccounting.co.za/

As registered tax practitioners, Mint is authorised and qualified to handle all SARS requirements.

Mint specialises in non-resident and international tax. View their full range of services on their website.

Mint is a member of the South African Institute of Tax Professionals and South African Institute of Business Accountants.

MICHAEL BOOTH

Certified Financial Planner® (SA),
Associate Partner,
St. James's Place

Email: michael.booth@sjpp.asia

www.sjp.asia

Michael specialises in helping South Africans in Singapore navigate the financial planning landscape and opportunities that are available to them as global citizens.