

TAX

New procedures when natural persons cease their SA tax residency

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Cease SA tax residency

The South African Revenue Service (“SARS”) recently issued guidance on its website on what the cessation of an individual’s South African tax residence entails. The guidance sets out new documentary requirements that must be met to evidence cessation of an individual’s South African tax residence. The guidance is applicable from the 2021 tax year onwards.

Brief background

Prior to the 2017 tax year, natural persons were not required to declare their current tax residence status or a change in their tax residence status to SARS in their annual tax returns.

From the 2017 tax year, natural persons have been required to indicate their tax residence status by marking with an “X” under the standard question “Mark with an ‘X’ if you ceased to be a resident of the RSA during this year of assessment” on the tax return, but they were not required to indicate the date on which they ceased to be tax resident in South Africa.

SARS’s guidance

Recent changes were made to tax return for the 2021 tax in terms of which taxpayers should now indicate, through the e-filing wizard, the date on which they ceased their South African tax residence. If an individual taxpayer has ceased to be tax resident in South Africa during the 2021 tax year, the individual must indicate this by marking with an “X” under the standard question “if you ceased to be a resident of the RSA during this year of assessment” and inserting the date field in which the individual ceased to be resident.

SARS has indicated that if this route is followed it will request the relevant supporting documents from the taxpayer to support the declaration made. The relevant information that will be requested by, and must be supplied to, SARS will depend on the basis on which the individual has ceased to be a tax resident.

Alternatively, individual taxpayers can inform SARS of a change in their tax residence status by submitting the “Declaration: Cease to be a Tax Resident” form via email at contactus@sars.gov.za. The taxpayer will be required to make certain declarations relating to the way in which the tax residence ceased, the date of cessation of tax residence and the new country of residence of the individual. This approach indicates that SARS would require a taxpayer to have acquired tax residence in another jurisdiction in order to recognise the cessation of South African tax residence.

Individual taxpayers can make use of the declaration form if they previously informed SARS that they have ceased their South African tax residence and require confirmation from SARS, or if they did not inform SARS that they have ceased their tax residence in a prior tax year and would like to place this on record with SARS. When the declaration is made via email, the declaration form must be submitted together with the relevant supporting documentation.

Cessation declarations

SARS now requires all taxpayers who are natural persons to comply with the new requirements to prove that they ceased their South African tax residence. The standard documentary requirements, to be submitted with all cessation declarations, are:

- the signed declaration indicating the basis on which the taxpayer qualifies;
- a letter of motivation setting out the facts and circumstances in detail to support the disclosure that the taxpayer has ceased to be a tax resident; and
- a copy of the taxpayer’s passport/travel diary.

In addition to the standard documentary requirements, SARS has published lists of specific additional information to be provided to SARS to evidence the basis on which the individual has ceased to be South African tax resident. These requirements differ depending on the basis on which the individual's tax residence ceased. SARS provides that the specific additional information that must be submitted and which it will take into account in determining whether a taxpayer has ceased to be a tax resident of South Africa include:

Basis that the individual ceased South African tax residence	Specific additional information to be provided to SARS
1. Cease to be ordinarily resident	• the type of visa on which the taxpayer has travelled to a foreign jurisdiction; • proof of permanent residence in such foreign jurisdiction (if applicable); • a certificate of tax residence from a foreign revenue authority or a letter from such authority that indicates that the taxpayer is regarded as a tax resident in that jurisdiction (if available); • details of any property that the taxpayer may still have available in South Africa and the purpose for which such property is being used; • details of any business interests (such as investment and employment interests) that the taxpayer may still have in South Africa; • details of the taxpayer’s family ties or interests (such as whether any family members are in South Africa and the reasons thereof); • details of the taxpayer’s social interests (such as gym contracts, recreational clubs and societies) and location of the taxpayer’s personal belongings; and • details of any return visits to South Africa, the frequency thereof and the reason for undertaking such visits.
2. Cease by way of the physical presence test	• the signed declaration indicating the basis on which the taxpayer qualifies; • a letter of motivation setting out the facts and circumstances in detail to support the disclosure that the taxpayer has ceased to be a tax resident; and • a copy of the taxpayer’s passport/travel diary.
3. Cease due to the application of Double Tax Agreement	• a certificate of tax residence from the foreign revenue authority where the taxpayer is treaty resident; or • a letter from the foreign revenue authority in the relevant treaty jurisdiction that indicates the taxpayer’s status as a tax resident in that jurisdiction.

Importantly, SARS confirms that it can decline a declaration of cessation of tax residency if the taxpayer does not meet the criteria to cease tax residence or if the taxpayer cannot provide SARS with the relevant or correct supporting information.

Remarks

It is evident that the cessation process does not involve a simple tick box exercise as SARS will now carefully scrutinise whether an individual correctly applied the relevant residence tests, and more importantly, whether the objective facts support the tax position taken by the taxpayer. It is therefore clear that in order to protect South Africa's tax base, SARS will no longer allow natural persons to leave the South African tax net without satisfying itself that the person has met the relevant legal requirements.

Consequently, taxpayers ceasing their South African tax residence should seek professional advice from a qualified tax practitioner to get an independent tax opinion which:

- correctly applies the residence tests;
- confirms that the taxpayer objectively meets the necessary requirements;
- verifies that the taxpayer has the relevant supporting documents that must be submitted to SARS; and
- establishes a reasonable cessation date.

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