

FAQs

Financial Emigration



INN 8

WHAT FORMS NEED TO BE COMPLETED FOR THE MANUAL APPLICATION TO THE SOUTH AFRICAN REVENUE SERVICES (SARS) FOR PAYMENT OF INHERITANCES TO SOUTH AFRICANS NO LONGER IN SOUTH AFRICA (SA)?

Assuming the beneficiary was born in SA and no longer has a green bar-coded SA identity book and so cannot make use of the allowances, a manual application to SARS is required that should be made through a tax practitioner for now. The application will require proof that the beneficiary is no longer a resident in SA and the supporting documents will include the will, liquidation and distribution account, and death certificate. A specialist firm can assist with these types of payments.

WHAT ARE THE 'REPORTING REQUIREMENTS' WHEN A HIGH-NET-WORTH INDIVIDUAL TAKES MORE THAN R11 MILLION OFFSHORE ON A SPECIAL APPLICATION?

The reporting requirements would be laid out in the approval from the South African Reserve Bank (SARB) and be specific to the individual. In general, they include where the funds are invested, the country, product, annual return, and any repatriation of income back to SA. This is reported annually on anniversary via an authorised dealer. There is an option to swap back R10 million per annum and apply for tax clearance to slowly reduce this reporting requirement.

WHAT IF YOU EMIGRATED, WITH NO PROPERTY IN SA, FAMILY AND ALL ASSETS OVERSEAS, BUT KEPT YOUR SOUTH AFRICAN RESIDENCY?

It is possible to have emigrated but remained a South African citizen. SARB and Home Affairs are separate entities. This is longer relevant or an issue as foreign emigration is no longer an option.

WHAT HAPPENS TO THE PERSON WHO LEFT SA YEARS AGO AND WHO NO LONGER HAS A VALID TAX NUMBER?

If this person wishes to encash their retirement annuity (RA), they will need to register for tax. The tax directive, at the very least, will require a tax number to reference the tax deducted to.

WHAT IS THE PROCESS FOR PEOPLE EMIGRATING WITH UP TO R1 MILLION?

This is a simple process as these clients can make use of the R1 million single discretionary allowance.

WHEN EARNING FOREIGN INCOME ABROAD, HOW CAN THE EARNINGS BE RETAINED ABROAD? CURRENTLY SARB HAS A RULE THAT THE FUNDS SHOULD COME BACK WITHIN 30 DAYS.

Correct, these funds should be repatriated within 30 days. If the client wishes to retain these funds offshore, they should then make use of the investment allowances to remit the funds back out of SA.

THE THREE-YEAR RULE: DOES IT START ON 1 MARCH 2021 OR, IF YOU HAVE BEEN OUT OF THE COUNTRY FOR TWO YEARS, WILL IT BE ONLY ONE YEAR?

You must prove three years' non-tax residency so it can be back dated to when you can prove you became a tax resident in another country. It does not start 1 March 2021.

FOR AN INDIVIDUAL WHO HAS BEEN OUT THE COUNTRY FOR A CONTINUOUS PERIOD IN EXCESS OF THREE YEARS PRIOR TO 1 MARCH 2021, BUT HAS NOT ADVISED SARS THEY WERE NO LONGER TAX RESIDENT, WHEN WILL THE THREE YEARS COMMENCE?

FROM THE TIME THEY LEFT SA OR FROM THE TIME THEY ADVISE SARS THEY ARE NO LONGER TAX RESIDENT?

From the time they left.

IT MUST BE BENEFICIAL TO WAIT UNTIL AGE 55 AND TAKE RETIREMENT WITH A LARGER TAX-FREE AMOUNT AND CLEAN IT OUT OVER SIX YEARS AT 17.5 % ANNUALLY?

It can certainly be beneficial and is very much a function of the client's age (how close they are to 55), the value of the RA, and their appetite for the "risk" of leaving their funds in SA while they live in another country.

IF A CLIENT IS ALREADY 55+, WANTS TO EMIGRATE AND HAS AN RA OF R10 MILLION, IS ENCASHING THE RA AND PAYING TAX ABOVE R500 000 BETTER? OR SHOULD THEY RATHER MATURE THE RA, CONVERT IT TO A LIFE ANNUITY (LA) AND TRANSFER THE ANNUAL INCOME TO FOREIGN CURRENCY, THUS SAVING THE HIGH TAX, OVER SEVEN OR EIGHT YEARS AS REG 28 IS NO LONGER RELEVANT?

There is no absolute answer to this. As the client has already reached retirement age they can benefit from more favourable tax tables should they choose to retire. However, they would then only have access to a third, plus max 17.5% of the balance pretty much at the outset and then draw down the balance over several years. On the other end, they could get access to all at more punitive tax rates, but bearing in mind they'd now have to wait three years minimum as it seems from the questions they have not emigrated yet.

WE ONLY TALK ABOUT THE RA. DOES THIS THREE-YEAR RULE APPLY TO PENSION, PROVIDENT AND PRESERVATION FUNDS?

It applies to preservation as well as RAs. Pensions and provident funds could be encashed at any time (on leaving employment) and the client will incur the withdrawal tax amounts and can send funds offshore using their investment allowances. The tax is deducted and the funds can be transferred overseas using the available R1 million and R10 million foreign investment allowances.

I UNDERSTAND THAT THE THREE-YEAR RULE IS APPLICABLE TO CASHING IN AN RA - WILL THAT ALSO APPLY TO A PERSON OLDER THAN 55 WHO IS LIVING OVERSEAS AND RETIRING FROM THE RA (TAKING ONE-THIRD CASH, REST INTO LIVING ANNUITY)?

In this example, the person retires from their RA, transfers the one third cash using their R1 million single discretionary allowance [SDA] or R10 million foreign investment allowance [FIA]. The income from the living annuity can then be transferred each year using the SDA or the Excon rule, which allows pension and annuity income to be transferred over and above the allowances. The three-year rule doesn't affect them, it only affects pre-retirement withdrawals.

IN TERMS OF THE THREE-YEAR CONSECUTIVE NON-SA TAX RESIDENT RULE, DOES THIS RENDER THE OLD PRESENCE TEST FOR THE PREVIOUS FIVE TAX YEARS NULL AND VOID?

OR DOES THE INDIVIDUAL HAVE TO BE NON-RESIDENT FOR TAX PURPOSES TWO YEARS PRIOR PLUS THE THREE YEARS CONSECUTIVE?

It's advisable to seek tax advice on this question as it can become quite technical in terms of the physical presence test, but it does not render the old presence test null and void at all.

SURELY A PASSPORT SHOWS HOW LONG YOU HAVE BEEN OUT OF SA?

It could well be one of the requirements assuming it has been stamped. Sometimes a person is on a South African passport with a specific visa e.g., a green card.

WILL RULES BE DIFFERENT IF A CLIENT HAS DUAL CITIZENSHIP?

No.

WITH THE TAX TREATMENT OF THIS PROCESS SEEMING TO BE MORE STRINGENT WITH A FOCUS ON TAX RESIDENCY ONLY, DOES THIS POSSIBLY MAKE IT MORE ONEROUS TO OVERCOME THE BURDEN OF PROVING NON-RESIDENT STATUS?

Let's not confuse SARS' requirements around being compliant and the encashment requirements, which is where the three-year requirement comes in. The applicant must demonstrate to the RA investment company that they have been non-tax resident for a three-year consecutive period.

CAN YOU TAX EMIGRATE WITH R15 MILLION AND THEN TAKE R10 MILLION OUT IN TAX YEAR ONE, AND THE REMAINING R5 MILLION THE FOLLOWING TAX YEAR? OR IS THERE A REQUIREMENT TO TAKE THE FULL R15 MILLION OUT AS ONE BECOME NON-TAX RESIDENT (AND THEREFORE BE SUBJECT TO INCREASED DUE DILIGENCE)?

Don't confuse tax emigration with allowances. If you tax emigrate you are simply telling SARS you are no longer a tax resident. You can still be entitled to the allowances each year, but then it would be important to keep your tax profile active and up to date by submitting zero returns (assuming no SA-sourced income). If you had R15 million and were leaving SA, I would ask the question, are you married to a South African, as you could use their allowance. A client's intentions often determine the best strategy.

IS THE R500 000 TAX TABLE NOT IF YOU CONVERT TO INVESTMENT-LINKED LIVING ANNUITY (ILLA)?

IF YOU WANT TO TAKE THE WHOLE AMOUNT OUT, THEN IS IT STILL NOT THE R25 000 TABLE EVEN IF YOU ARE OVER 55?

There are two tax tables that apply here – a pre-retirement withdrawal tax table, and a retirement tax table. If you are over 55 and you retire from the fund, i.e., elect to take a third and purchase an annuity with the balance, then first R500 000 is tax free, according to the retirement tax table. However, if you do a pre-withdrawal from the fund the withdrawal tax tables will apply, where only the first R25 000 is tax free. You can do a pre-retirement withdrawal before or after the age of 55.

WHAT IF YOU ARE STILL A SOUTH AFRICAN TAX RESIDENT, BUT HAVE ALSO BEEN A TAX RESIDENT OF THE UK FOR MORE THAN THREE YEARS?

You may require tax advice to determine the implications of any double tax agreements (DTAs). You will have one primary tax residence on your worldwide income.

IF A CLIENT IS PLANNING ON MOVING TO THE UK, WOULD IT BE ADVISABLE TO MOVE AS MUCH OF THE ASSETS OUT PRIOR TO LEAVING, MAKING USE OF THE R10 MILLION ALLOWANCE, AS OPPOSED TO FIRST MOVING, THEN BECOMING A UK TAX RESIDENT, AND THEN MOVING THE ASSETS? OR DOESN'T IT REALLY MAKE A DIFFERENCE?

This might not have tax implications, but the client's objectives and the nature of the assets that are being liquidated will ultimately affect the answer.

IF A CLIENT WORKED ABROAD ON A FIXED TERM CONTRACT FOR ONE YEAR AT A TIME AND EARNED UNDER R1.2 MILLION PER YEAR IN DOLLARS, AND THE SALARY WAS PAID MONTHLY INTO THEIR SA BANK ACCOUNT, HOW DOES THE LAW AFFECT THEM?

DO THEY HAVE TO DECLARE THIS PRIOR TO 01 MARCH 2021? THEY ARE NOW BACK IN SA AND NOT EMPLOYED.

This is a tax issue not an emigration issue and it is advisable to seek tax advice.

A CLIENT LEFT SOUTH AFRICA IN 1995, HE RETAINED AN RA IN SOUTH AFRICA WITH A VALUE OF R1.5 MILLION. HE HAS BEEN PAYING TAXES IN A FOREIGN JURISDICTION.

1. Does this client have to choose a tax non-resident date?
2. Will submission of South African tax returns affect the client's ability to choose when they became a tax resident?

The client will need to obtain tax clearance from SARS to be allowed to remit the funds and they will have to demonstrate the tax residence in their new country of residence for a consecutive three-year period in order for the investment company to encash. If the client no longer has a tax profile with SARS yet still has an RA and wishes to encash, they will more than likely need the assistance of a tax consultant with getting a profile and submitting tax clearance.

HOW DO YOU KEEP YOUR TAX RECORDS UP TO DATE IF YOU ARE NON-TAX RESIDENT DURING THE THREE YEARS? DO YOU STILL NEED TO DO A TAX RETURN FOR THOSE THREE YEARS EVEN THOUGH YOU ARE NOT A TAX RESIDENT?

Until we get further clarity from SARS on the process for obtaining tax directives, keep your tax record active and up to date even if that means filing nil returns. The alternative is to update your records once you are ready to make that early withdrawal.

IS IT POSSIBLE TO UNBLOCK A BLOCKED RAND ACCOUNT FOR A CLIENT WHO EMIGRATED MANY YEARS AGO AND REMIT FUNDS FREELY WITHIN THE LIMITS?

Although this question requires more clarity, this should affect very few people as most would have extracted their funds via the blocked Rand account. Even if they do still have funds, these will have obtained tax clearance and SARB approval so can freely flow - there should be no need to "unblock". The old rules will continue to apply to those people that they were applied to while new rules will apply going forward to applicants from 1 March 2021.

IF YOU TAX EMIGRATE AND DON'T TAKE YOUR REG 28 PRODUCTS WITH YOU BUT WAIT FOR RETIREMENT, WHAT IS THE DEEMED CAPITAL GAINS TAX (CGT) EVENT AND INTEREST DUE THAT SARS WILL WANT?

This is only a proposed change for now so we will all have to follow the progress of this proposal and the eventual outcome and implications that come with it, but it will very much be a tax matter. If this proposal goes ahead, this will not be deemed capital gains, but rather a deemed pre-retirement withdrawal, taxed according to the retirement funds withdrawal tax tables.

IF YOU ARE WORKING IN A TAX-FREE COUNTRY, HOW ARE YOU TAXED IN SA?

This would require tax advice specific to the individual's circumstances.

WHAT IF YOU WERE STUCK IN SA FOR MORE THAN SEVEN MONTHS (DUE TO COVID-RELATED BORDER CLOSURES) AND EARNED A SALARY FROM ANOTHER COUNTRY WHILE IN SA. DOES THIS INFLUENCE YOUR THREE YEARS AS A TAX RESIDENT TIME FRAME?

It might unless you have been registered for tax in your new country and are paying tax in your new country. Seek tax advice for clarity.

HAVING LEFT 19 YEARS AGO AND ONLY HAVING RAs IN SA, IN ORDER TO GET TAX CLEARANCE, A CLIENT REQUIRES REGISTERING FOR EFILING. MY RECOLLECTION IS THAT THE EARLIEST DATE YOU CAN SAY WHEN YOU LEFT RSA IS 2 YEARS AGO.

No, that's not correct. If the client left 19 years ago, they should be able to demonstrate they have been a tax resident elsewhere for three consecutive years. Remember, as per questions above, that is a separate exercise to obtaining tax clearance on tax compliance status with SARS.

WHAT ABOUT PEOPLE WHO OWN CHARITIES/NGOs IN SA BUT ARE NOW LIVING ABROAD AND RUNNING THEIR CHARITY STILL, IN SA?

I would suggest they get tax advice in terms of the income they receive from the charity. DTAs will have to be considered.

HOW DO THE NEW PROCESSES AND RESTRICTIONS COMPARE TO OTHER COUNTRIES, I.E., USA, CANADA, AUSTRALIA, AND THE UK?

None of these countries have exchange control and funds can flow freely into and out of these countries.

IF A CLIENT HAS BEEN LIVING ABROAD FOR TWO YEARS AND PASSES ON, WHEN WILL HIS BENEFICIARIES BE ABLE TO RECEIVE THE FUNDS IN HIS RA?

One would expect that the rules of the RA would stipulate this, whereby the trustees determine who gets the death benefit from the RA. One would assume the proceeds can be paid away immediately. The interesting part would be if the beneficiary is overseas as they may be required to be tax compliant in SA to receive these funds and it will also be a function of whether they have an SA ID book in order to open a bank account and potentially make use of the investment allowances.

DO YOU ENVISAGE ANY POTENTIAL CHANGES TO LEGISLATION TO ALLOW THE COMMUTATION OF LIVING ANNUITIES ON EMIGRATION?

No. You have purchased an annuity income which provides a regular income.