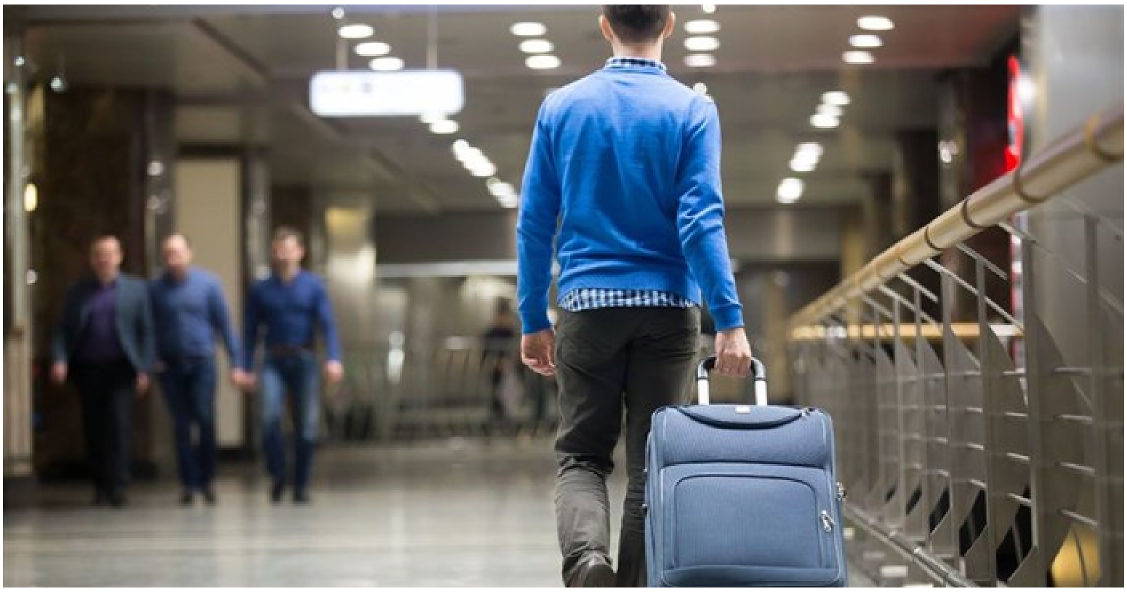
New tax law sees increase in financial emigration

The government's planned changes to the tax law for South Africans working abroad - either permanently or on a long-term contracts - has brought financial emigration into sharp focus.



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Financial emigration is a formal process with the South African Reserve Bank (SARB) to change your tax status from "resident" to "non-resident" for exchange control purposes, and does not require giving up citizenship, selling property or cancelling bonds and financial products.

"This is a SARB legal requirement as well as a South African Revenue Service (Sars) requirement to confirm non-residency," says Claudia Aires Apicella, financial emigration specialist at Tax Consulting.

It is based on the question whether South Africa is still a person's usual or principle residence compared to another country. The reason most people financially emigrate is to give legal certainty to their non-residency status for tax and exchange control purposes. It also holds certain financial planning benefits -such as being one of the few ways of cashing out your retirement annuity.

Tax non-compliance

South African tax residents living abroad are required to declare their worldwide income to Sars. However, many have left the country without submitting correct tax returns, or going through the formal financial emigration process.

“These expatriates are at risk and the very clear message from National Treasury and Sars is that they must get their affairs in order.” Apicella explains that when a citizen is working overseas they are still classified as a South African tax resident, and are subject to South African tax laws.

However, when they emigrate financially they cease to be a tax resident and will not be liable to pay any South African tax on their worldwide income. They will however be required to declare any South African sourced income which may be taxable, such as rental income. Also, there is a deemed disposal for capital gains tax purpose on certain property when you emigrate, but after that you are exempt from capital gains tax and estate duty in South Africa. This deemed disposal for capital gains tax is very often also misunderstood, as this only applies to certain assets and not to fixed property.

Increased financial emigration

The proposed change to the taxation of foreign income earned by South African tax residents has brought about a significant increase in financial emigration applications, says Aires.

South Africans will be required to pay tax on their offshore salaries and benefits should they earn more than R1m per annum. “National Treasury confirmed in Parliament on 14 September 2017 that the proposed change, forcing South African expatriates to start paying tax, will proceed and take effect in March 2020. Many high earning expatriates do not only emigrate now to have personal certainty on their tax status, but they also feel the R1m exemption is not enough taken their high cost of living.”

The process

Apicella says the process has two key regulatory components namely the change of the person’s Reserve Bank status to non-resident for exchange control purposes and obtaining a Sars tax clearance.

She says the more complex part of the process is getting an emigration tax clearance certificate. This is where Sars formally acknowledges the individual as non-resident.

When applying for the tax clearance certificate it may show that there are tax returns outstanding when there has been non-compliance in prior years.

The outstanding returns will have to be brought up to date before SARS will issue the required certificate. Especially where you retrospectively financially emigrate, you must ensure there is alignment between your tax position and fiscal status.