



Expat Tax Issues 2022 Series

June / July / **August**

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Expat Tax Issues - 2022

- Session 1: **14 June 2022 - completed**
 - Excon update including loop update involving SA Trusts
- Session 2: **14 July 2022 - completed**
 - Now that I am a tax non-resident how do I tax file
- Session 3: **11 August 2022**
 - Risks or pros & cons van tax number deregistration

Tax and Excon publications consulted

SARB

- AD Manual 25 April 2022
- 2022
 - Circ 16 of 2022 latest
- 2021
 - Circ 1 of 2021 – an **updated revision is expected** between record date and 14 June 2022

SARS

- Tax law amendments 2021
 - Where applicable we refer to draft changes for 2022, yet none of the TLAB suggestions were subject to public hearings

Moneyweb article

Following on from session 1, dealing with Excon changes and the comparison of the various resident and non-resident definitions, the following article was written by Amanda Visser and published in Moneyweb:

- <https://www.moneyweb.co.za/mymoney/moneyweb-tax/tax-emigration-definitions-of-resident-and-non-resident-are-misaligned/>
- <https://succeedblog.co.za/StrachanCrouse/2022/07/11/tax-emigration-definitions-of-resident-and-non-resident-are-misaligned/>

Acronyms

- AA Authorised Assets
- AD Authorised Dealer
- DTA Double Tax Agreement or treaty (Income Tax)
- Excon Exchange Control, however now FinSurv
- Emigrate Cease to be ta resident ito ITA
- FE Formal Emigration using MP336(b) process
- FinSurv SARB Financial Surveillance Department
- ITA Income tax Act, 1961 as amended 2021
- **Resident** **SARB resident**
- SARB South African Reserve Bank
- SARS South African Revenue Service
- Tax Resident ITA Act section 1(1) definition “resident”
- TRC or COR Tax Residency Certificate (Cert of Residence) – UK letter



Surprise Surprise

My client completed formal or financial emigration. Why must the tax file in SA?

- FE from a ceasing tax residency perspective is a joke! TEC at the time was not worth the paper!
- Tax filing obligation as per TAA does NOT provide the non-resident exemptions some promised their clients
 - See later slide TAA s25
- SARS official policy
 - Acquiring approval from the South African Reserve Bank to emigrate from a financial perspective is not connected to an individual's tax residence
 - <https://www.sars.gov.za/individuals/tax-during-all-life-stages-and-events/foreign-employment-income-exemption/>

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What is the impact of financial emigration on tax residence?

<https://www.sars.gov.za/individuals/tax-during-all-life-stages-and-events/foreign-employment-income-exemption/>

- Financial emigration is merely one factor that may be taken into account to determine whether or not an individual broke his or her tax residence.
- An individual's tax residence is not automatically broken when he or she financially emigrates.
- The deciding factor remains whether or not an individual breaks his or her ordinary residence.
 - HVZ comment: really, is that all? Treaty proviso to "resident" ITA section 1(1)
- **Suggested:** The deciding factor remains whether or not an individual breaks his or her resident status, be it no longer ordinarily resident or deemed to be treaty non-resident.

Why the urge to divorce SARS?

Perhaps

- Tax revolt
- Political revolt
- Aversion to funding so-called state capture
- TPG no expat tax petition group
- FE proponents over selling MP336(b) purpose

Real changes

- Excon changes – see circulars 8 and 10 of 2021
- Truly no longer ordinarily resident and no need for a link back to SA

Gifts – does this include trust distributions?

(xii) All assets that were previously blocked as per a specific directive that was given by the Financial Surveillance Department in terms of the provisions of Exchange Control Regulation 4(2), may be dealt with as follows:

AD Manual B2

- (a) In respect of income and capital distributions from inter vivos trusts, such distributions may be transferred abroad, subject to the TCS process being completed by the trustees of the trust. For any transfers above R10 million, the requirements of (vii) above will apply.
- (b) With regard to pre-inheritance gifts, such funds may be transferred abroad, subject to the TCS process being completed by the resident donor. For any transfers above R10 million, the requirements of (vii) above will apply.

Capital Distributions from a SA Trust?

Capital distributions from local testamentary trusts, due to **non-residents** may be remitted abroad, provided that the trustees resolution confirming the capital distribution and the Last Will and Testament confirming that the **beneficiary is entitled to such capital distribution**, have been viewed. Distributions as a result of the renunciation of a beneficiary's right to capital of a testamentary trust must be referred to the Financial Surveillance Department.

---oOo---

(B) Income due to non-residents and private individuals who cease to be residents for tax purposes in South Africa

(iv) Income from trusts

(a) Trusts created in terms of a Last Will and Testament

(aa) Authorised Dealers may allow the transfer of income.

(b) Inter vivos trusts

(aa) Authorised Dealers may allow the transfer of income.

(c) In respect of the aforementioned, Authorised Dealers must require a TCS of good standing at least once a year on applications up to R10 million and a tax compliance status request – TCS FIA for above R10 million applications.



10_2021- Income from trusts & Co

Testamentary and inter Vivo trusts

- AD may allow the transfer of income **to any non-resident PERSON**
- <R10m – TCS Good standing
- >R10m FIA – trust or non-resident beneficiary? Trust can't do FIA **therefore trust beneficiaries keep your tax number**

The SARS computer says NO

- Irrespective of the SARB YES
- SARS says it must be a **natural person**

SARB and SARS in conflict?

Distribution of funds to non-resident trusts by resident trusts

8 April 2022 – It has been the practice of SARS not to approve the release of funds when resident Trusts make distributions to non-resident Trusts. Following numerous queries in this regard, SARS herewith re-iterates its stance on the matter and herewith confirms that it will not approve the release of funds vested and distributed to non-resident Trusts.

SARS is currently investigating other options related to the distribution of funds/amounts to non-residents and is in discussions in this regard. SARS takes note of the fact that the SARB has relaxed certain exchange control requirements but has decided, based on the risks involved, not to approve the release of funds to non-resident Trusts.

This does, however, not preclude a resident Trust from vesting amounts in non-resident individuals and to apply for the relevant approvals, as per the current approved practice.

8_2021- Post Emigration & Inactive

- Applications by private individuals who cease to be residents for tax purposes **and who are no longer active on the SARS registered database**; and
- receive an inheritance or life insurance policy (excluding lump sum benefits from pension preservation, provident preservation, retirement annuity funds and annuities from insurers)
 - **up to R10 million**,
- will not be required to apply to SARS for a Manual Letter of Compliance
- For applications above R10 million, applicants are required to obtain a **Manual Letter of Compliance** - Transfer of funds, from SARS.

Why the question: deregister me?

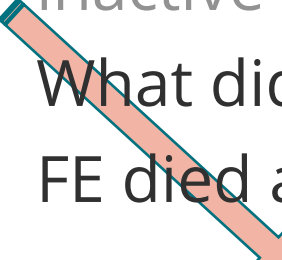
1. Main source: proponents of FE subtly promising formal emigration will the end of SARS relationship
 - i. FE was a banking process subject to tax good standing
 - ii. NOT subject to cessation of tax residency
 - a. Yes, the proponents of financial emigration fooled expats
 - iii. TAX PETITION GROUP (TPG) now expat tax petition group legally tax exempt in SA's Facebook page falsely created FE outcome expectation
 - a. At that stage he was advising without being SARS registered tax practitioner
2. SARS 2022 request to repeat the "tax emigration clearance" clearly confirms FE's tax emigration good standing was a joke, inadequate and neither "finally" terminated tax residency nor made it you an inactive taxpayer
3. Further Exchange Control (Excon) relaxation confirmed inactive taxpayers can take have their inheritances and trust distributions paid abroad, without the need to re-activate tax number (manual TEC)
4. Government failure triggered a tax revolt which appears to have subsided since TPG or now Expat TPG a tax free PBO had become less prominent leaving articles to be posted by their sponsors.



The source of the misconception

This topic is controversial, and an attempt was made to interdict the presenter by contradicting arguments in favour of undue tax number deregistration and promises to use formal emigration to make taxpayers inactive and without future tax obligations

What did they promise clients? FB Group as recent as 16 April 2021 yet FE died a certain death on 28 February 2021. REMAINS POSTED 8 AUG 22

 [https://www.facebook.com/TaxPetitionGroup/posts/1125479897954240?_cft__\[0\]=AZXY81y_cKkmj8bqbXR0GWEZ9TfsD8601uT3VkOTcjsxS2a_7zfa2Rwit5PAKXD8_3jWVoYwtFSnkmK-v4cmzwW6iFDYyaul7q3VI5lJv3lvmGSqbax64a4ehm3_fb7kweK2qD5knUWczrVKXtN4ldGTxsRz8Sz0tckZVujsACdIXxbpi_zkxDhuS4ocTte75fQ&_tn_=%2CO%2CP-R](https://www.facebook.com/TaxPetitionGroup/posts/1125479897954240?_cft__[0]=AZXY81y_cKkmj8bqbXR0GWEZ9TfsD8601uT3VkOTcjsxS2a_7zfa2Rwit5PAKXD8_3jWVoYwtFSnkmK-v4cmzwW6iFDYyaul7q3VI5lJv3lvmGSqbax64a4ehm3_fb7kweK2qD5knUWczrVKXtN4ldGTxsRz8Sz0tckZVujsACdIXxbpi_zkxDhuS4ocTte75fQ&_tn_=%2CO%2CP-R)

#FinancialEmigration remains the cleanest and only legal way to relocate abroad permanently without future tax obligations however, recent changes to **#ExpatriateTax** procedures and SARS' dramatically improved auditing capabilities making the exit process more stringent.



TPG quoted a more correct article

22 April 2022 the following was quoted on TPG Facebook page, linking to a thesouthafrican.com

We quote and admit this quote correctly partly contradicts the earlier quote, but failed truly clarify for to the lay men or ordinary expat:

The second option is that expatriates residing in a foreign region are exempt from South African tax on earnings up to R1.25 million, provided they are out of the country for 183 days or more during the year of assessment. However, they must be employed, and must still submit annual returns to SARS. People running businesses or deriving income from assets, like investments or rental properties, do not qualify.

The third option, and the most desirable for anyone [?] leaving permanently, is financial emigration. Following this route will free emigrants from any further tax obligation on their foreign earned income to South Africa. Yet, it is an incredibly complex process that requires professional assistance. ✓



Who should have a PIT

Taxpayer

A person or entity who is liable to pay tax.

Taxpayer Type: Non Provisional	Category: Individual
1 - NORMAL	
3 - VISITING ARTIST	
4 - NON-RESIDENT	
5 - MINING	
2 - PARLIAMENTARIAN	

Who is obliged to tax file?

- i. Unlike “TPG” Facebook suggestions, tax filing obligation is not linked tax registration status
 - ii. Their promise that FE would change or reduce or even remove an emigrant’s tax filing obligation, is a myth
1. Filing Obligation is annual determined TAA s25 2011
 - i. GG 46471 Notice 2130 dated 3 June 2022
 - a. [Notice 2130 \(sars.gov.za\)](https://sars.gov.za/notice/2130)
 2. ...I, Edward Christian Kieswetter, Commissioner[[: SARS], hereby require that **the persons specified** in the attached Schedule must submit returns for the 2022 year of assessment,..., within the periods...
 - i. The person must then register

2. Incidences of non-compliance subject to fixed amount penalty

2.1 Failure by a natural person to submit an income tax return as and when required under a tax Act, for years of assessment commencing on or after 1 March 2006, where that person has, with effect from 1 January 2022—

2.1.1 two or more outstanding income tax returns for years of assessment commencing on or after 1 March 2006 but ending on or before 29 February 2020; or

2.1.2 one or more outstanding income tax returns for years of assessment commencing on or after 1 March 2020.

GG 45540 Notice 1531 effective 1 January 2022

Admin Penalty – Voluntary 2020 and 2021 returns filed in early 2022 for non-provisional taxpayer wishing to obtain TCS Pin Letters

- 2.2 Failure by a natural person to submit an income tax return as and when required under the Income Tax Act, for years of assessment commencing on or after 1 March 2006, where that person has, with effect from 1 December 2022, one or more outstanding income tax returns.

Personal plea: Never listen to tax lobby groups

- Unless all the PBO's **directors are registered tax practitioners**; and
- Staff works under the supervision of the tax practitioners
- May National Treasury reconsider tax lobbying groups claiming Schedule 9 approved PBA activities, conducted by persons not duly TAA registered
- **Their word is advocacy not tax law**

Focusing on individuals

Every natural person who during the 2022 year of assessment—

- i. was a resident and carried on any trade (other than solely in his or her capacity as an employee); or
- ii. **was not a resident and carried** on any trade (other than solely in his or her capacity as an employee) in the Republic
 - a. Rent, Crypto Trading, share trading, interest
 - I. Every non-resident whose gross income during the 2022 year of assessment included interest from a source in the Republic
 - A. to which the provisions of section 10(1)(h) of the Income Tax Act
 - B. do not apply – **days test and no trade, ignores DTA**
 - II. ITR12 fails to provide for treaty position
- iii. If treaty exempt, declare gross claim deductions and then claim exemption at taxable income level

But DTA may allow SARS first taxing rights (WTI) or Full taxing rights if linked to trade or PE
- iv. Where unilateral or treaty exemption - gross income or income level exemption?
 - A. Gross e.g., certain pension benefits
 - B. Gross income from employment exercised in SA, non-resident employee and less than minimum stay per DTA

Focusing on individuals - 2

3. Every natural person who... was not a resident and had capital gains or capital losses from the disposal of an asset to which the Eighth Schedule to the Income Tax Act applies
 - a. s35A is not a final tax
 - b. When an amount is withheld from a non-resident seller of immovable property, it is expected that the non-resident should submit a return. If a year passes without submitting a return SARS may regard the amount received/payment as a sufficient basis to raise an assessment.
 - i. EXTERNAL GUIDE: AMOUNTS TO BE WITHHELD WHEN A NON-RESIDENT SELLS IMMOVABLE PROPERTY IN SA
 - ii. Source: Page 6 of 22

Focusing on individuals - 3

4. Every person that is issued an income tax return form or who is requested by the Commissioner in writing to furnish a return, irrespective of the amount of income or nature of receipts or accruals of the person; and
5. Every representative taxpayer of any person referred to above
 - i. Remember how quick TPG was to insist practitioner accept appoint ito FE (which was a bank process) accept representative taxpayer status in old IT21(a) and subsequent online TCR1
 - ii. This may come to haunt a few proponents of FE at all cost

ITR12 – 2022

Amounts Received / Accrued Considered **Non - Taxable**

Rands only, no cents (Excluding amounts received / accrued as a beneficiary of a trust(s), or deemed to have accrued in terms of s7)



R Amounts accrued to you as an exclusive deeme...

R Exempt Local Dividends

R Inheritances

R Donations

R Exempt Foreign Dividends

R Foreign Pension

Description Relating to Other

R Other



Who need not file ITR12

1. Individual single source income R500k and below
 - a. AND PAYE was deducted; and provided
 - b. NO amount was received or accrued in respect of services rendered outside the Republic.
 - i. Who told expats their salary exemption extended to a tax filing exemption
 - ii. FE proponents and Expat Tax Lobbyist have a lot to answers
2. Dividends and the natural person was a non-resident throughout the 2022 year of assessment; and
3. Amounts received or accrued from a tax-free investment to a resident or non-resident, and it was their only SA sourced income
 - a. Expect questioned to death if one of your income streams
4. SARS may agree that a person, who is required to submit a return in the manner prescribed may submit the return in an alternative manner. See non-residents property sellers with no SA tax number

Inactive taxpayers in the past

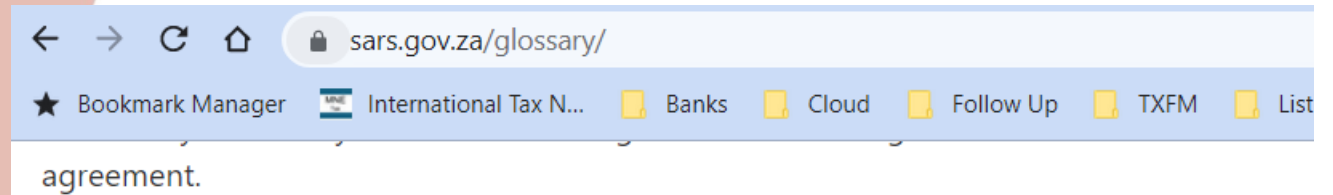
1. Foreigners selling SA immovable property made subject to Section 35A withholding tax (CGT) without the need to have a SA tax number
 - i. More recently we see they are given tax numbers as the CGT withholding is. 3rd provisional tax payment i.e., is subject to refund should the seller file a tax return
 - ii. Inactive property owner may have to tax register so depending on the extent of the capital gain. Consult the Annual Notice to furnish returns issued by SARS to determine whether you need to register.

Section 35A – CGT withholding tax

1. The amount withheld from any payment to the seller is an advance payment in respect of the seller's liability for normal tax for the year of assessment during which the property is disposed of by the seller.
2. □ If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of the amount under subsection (4) is a sufficient basis for an assessment in terms of section 95 of the Tax Administration Act.

Non-resident

- NO ITA definition
- SARS glossary to be consulted



Taxpayer

A person or entity who is liable to pay tax.

Resident

As defined in section 1 of the IT Act– Includes: Any natural person who is ordinarily resident in South Africa; or Any natural person who complies with the physical presence test; and Any person (other than a natural person) which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa, but: Excludes any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the government of South Africa and that other country for the avoidance of double taxation.

Non Resident

Any person who falls outside the definition of "resident" in section 1 of the Income Tax Act

Tax and Non-Residents

- South Africa has a residence-based tax system, which means residents are, subject to certain exclusions, taxed on their worldwide income, irrespective of where their income was earned.
- By contrast, non-residents are taxed on their income from a South African source.
- Since tax systems differ from country to country, there is a chance that a particular amount could be taxed twice.
 - This possibility of double taxation is, however, often alleviated by tax relief contained in various [Double Taxation Agreements \(DTAs\)](#).
 - Under the provisions of the DTA, the non-resident's remuneration earned in South Africa may not be subject to normal tax in South Africa where specific requirements are met.
 - In the alternative claim tax credit for foreign tax paid, using unilateral or treaty benefits
- Obligation to file is based on gross income, provisional tax liability is based on taxable income

25 April 2022 – Circular 16 of 2022



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Loops – Circular 1 of 2021 overdue update

No change since first part of the 3-session series

Exchange Control Circular No. 14-2022

Exchange Control Circular No. 15-2022

Exchange Control Circular No. 16-2022

2021



Past ITR12 cessation of residence

1. Some cases 2022 pre-populated correctly
2. RAV01 liability correctly shows non-resident
 - Foreign Individual did not update
3. 2022 filed showing pre-populated data re exit date
 - IT34 – no verification
 - Within 24 hours they send a request for information
 - See next slide
4. SARS duplicating system
 - On assessment request for supporting documents; yet
 - Ignores the TCR1 or TCS Pin TEC process
5. Who should be doing TEC and who should update RAV01

2022 prepopulated -reversed the NR status?

- Emails from colleagues

Dear [REDACTED]

Thank you for your time today.

We have submitted your 2022 income tax return, please see attached your tax assessment for your records as well as your latest statement of account.

Since our Zoom session, SARS also released the attached letter requesting all the supporting documents again.

As suggested by Hugo, I tried to get a screen print of your RSA non resident tax status, however the latest submission appears to have un-done the Non-Residency status that we all saw clearly on the Efiling screen. You are now reflected again as an Individual for tax status.

Hugo - should I submit the supporting documentation again as requested in the letter, or just change the RAV01 ?

Kind Regards

SARS outdated Webpage

21 Feb 2022 Update confirms the ITR12 options yet

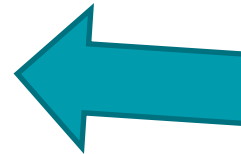
- See next slide

Update on Cease to be a Resident

21 February 2022 – An additional channel was added on eFiling to assist clients who want to inform SARS when they ceased to be a tax resident of South Africa.

The taxpayer must inform SARS by way of one of the following two channels:

- If a taxpayer ceased to be a tax resident of South Africa, the taxpayer can now inform SARS through the Registration, Amendments And Verification Form (RAV01) on [eFiling](#) by capturing the date on which the taxpayer ceased to be a tax resident. The form can be obtained on [eFiling](#) or [SARS branch by making appointment](#). A case will be created whereby the taxpayer will receive a letter from SARS to submit supporting documents.
- Alternatively, the taxpayer can inform SARS by capturing the date on the ITR12 tax return.



TAX BITES



- **2022 Tax returns fail to recognise the date a taxpayer cease SA tax residency:** Some 2022 tax returns do not indicate that a taxpayer ceased tax residency even though the information was reported to SARS. SAIT is requesting a workaround to address this challenge.
- **Changes in tax directive process affecting retirement fund emigration withdrawals:** The rejection is due to an erroneous validations built into the system. The validation has subsequently been removed.
- **Interest rates on outstanding taxes and interest rates payable on certain refunds of tax:** The SARS interest rates at which interest-free or low interest loans are subject to income tax, have been updated due to the changes in the SARB rates.

- SARS webpage 8 July 2022 update
 - If a taxpayer ceased to be a tax resident of South Africa, the taxpayer should inform SARS through the Registration, Amendments And Verification Form (RAV01) on eFiling by capturing the date on which the taxpayer ceased to be a tax resident under the Income Tax Liability Details section.
- *“To apply for the SARS’ non-resident tax status confirmation letter, a taxpayer must have already completed the **financial emigration**(sic) process through SARS and have been issued with a TCS PIN. SARS will then issue the letter to provide documentation that extends beyond the validity period of the TCS PIN.”*

Confucius Rules – foreign national/individual

My Registration Details



Registration Amendments And Verification form

Applicant Details – Individual

Nature of Entity *

FOREIGN INDIVIDUAL

Definition to used?

- TAA - nope
- ITA - nope
- EXCON MANUAL – MAYBE

Can't be a taxpayer unless SA sourced income

Foreign nationals mean natural persons from countries outside the CMA who are temporarily resident in South Africa, excluding those on holiday or business visits.

Standard Questions

Is this declaration made by a Tax Practitioner?

Y N

Mark with an "X" if you are a foreign national and not a RSA tax resident.

X

Taxpayer ceased to be a tax resident of the RSA

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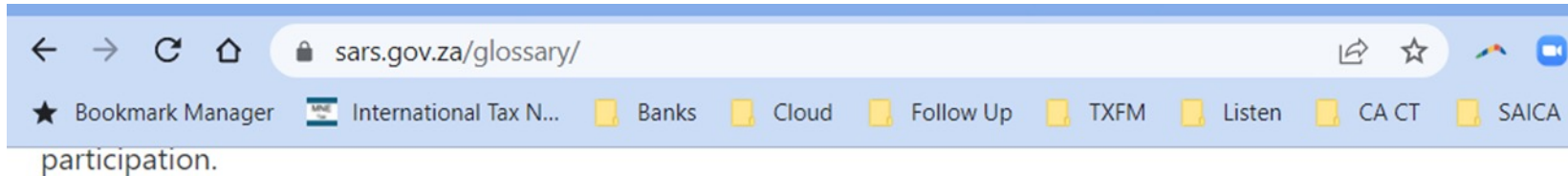
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Confucius Rules – foreign national/individual

Definition to used?

- TAA – nope; ITA - nope
- SARS became their own policy maker defining terminology
- AND they do not keep to won buzz words
- EXCON MANUAL – MAYBE



Foreign National

An individual who is a citizen of any country other than South Africa.

Foreign Person

Includes individuals, companies, etc.



Confucius Rules – where is the guidance

Foreign National

An individual who is a citizen of any country other than South Africa.

Foreign Person

Includes individuals, companies, etc.

Above: glossary guidance
Below: taxpayer options

INDIVIDUAL

FOREIGN INDIVIDUAL



SARS registration – Active or inactive

Taxpayer

1. Tax or tax non-resident
2. Active or inactive
3. Tax on SA source
 - Interest +183 days or non-bank
 - Immovable property
 - LA or retirement fund
 - Life insurance
4. Local trust beneficiary
 - rental income

Tax Resident

1. Default resident
2. Inactive or Active
3. Tax on worldwide income and CGT on all global assets unless unilateral exemption
4. Foreign and local trust distributions

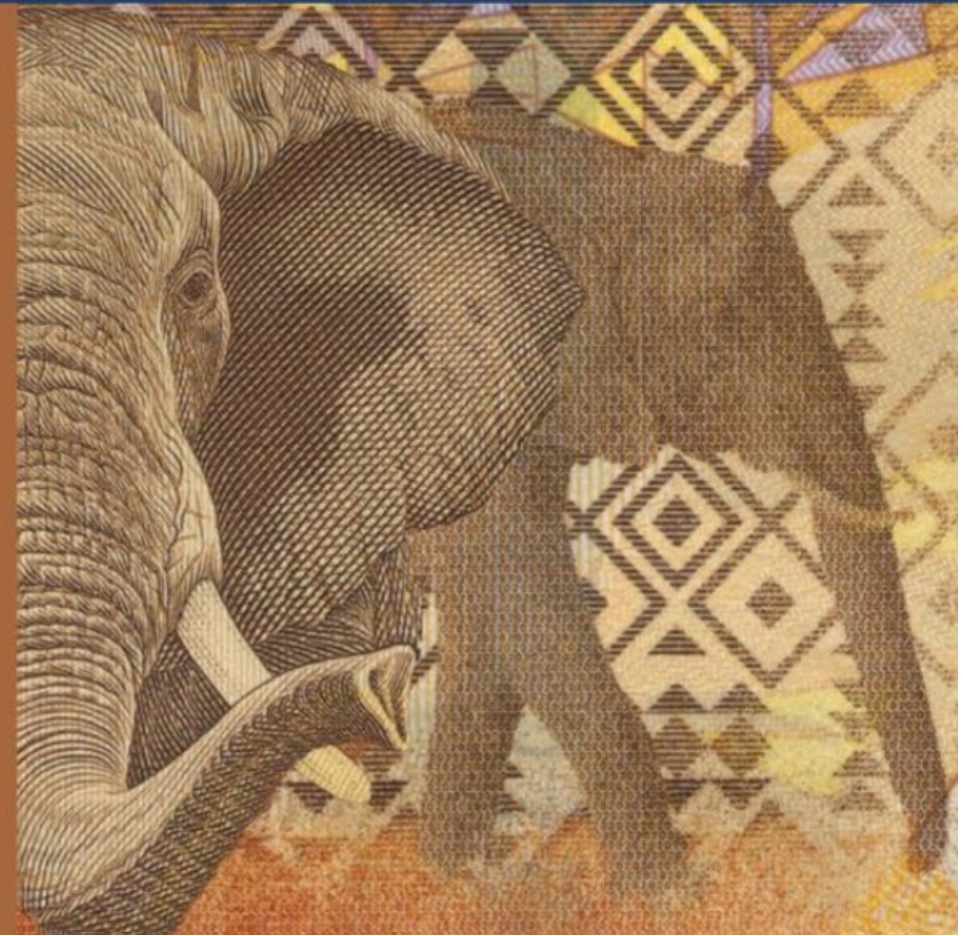


Inactive taxpayer – PROS and Cons

- No longer only a SARS issue – we need to consider new SARB rules
- Need a tax number for AD to do SDA R1m
 - Not per AD manual but per bank policy
 - Do they check old numbers or the validity of a number – NO
- Life policy, FICA at banks = so many other tax number trigger points
- To import personal assets & furniture back into SA free of CGT
- Deceased estate
 - EDA section 25
 - Ordinarily no longer resident and no immovable property
- SA Trust tax returns – beneficiary reporting

Currency and Exchanges guidelines for individuals

2022-04-25



1.46

2022-04-25

16-2022

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SARB disclaimer

The Currency and Exchanges guidelines for individuals (guidelines) are issued to assist individuals and other interested parties by providing a general understanding of the exchange control system in the Republic of South Africa. **It does not have any statutory force, nor does it replace or supersede the Exchange Control Regulations** (Regulations) promulgated in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933) or any permission, exemption or condition granted or attached to certain transactions in terms of the Regulations.

Excon Manual

Immigrants mean natural persons who immigrated from countries outside the CMA with the firm intention of taking up or who have taken up permanent residence in South Africa.

Non-resident means a person (i.e. a natural person or legal entity) whose normal place of residence, domicile or registration is outside the CMA.

Resident means any person (i.e. a natural person or legal entity) who has taken up permanent residence, is domiciled or is registered in South Africa.

Resident temporarily abroad means any resident who has departed from South Africa to any country outside the CMA with no intention of taking up permanent residence in another country, but excluding those residents who are abroad on holiday or business travel.

ITA – section 1

- Physical presence test
- Ordinarily resident
- Double Tax Agreements override local law

Excon Manual

3. South African resident individuals

The foreign exchange restrictions on South African resident individuals have been liberalised with the intention of reducing the administrative burden for individuals undertaking foreign exchange transactions.

Individuals are permitted to conduct a foreign currency account with an Authorised Dealer and/or a foreign bank account for the following purposes:

- (a) for travel as authorised (see section 3.3 (h));
- (b) foreign investment (see sections 3.1 and 3.6);
- (c) legitimate foreign earned income (see section 3.6.4); and
- (d) foreign inheritance (see section 3.10).

Residents temporarily abroad

1. Pensioner or recipient of a living annuity
 - Residents temporarily abroad may further receive pension and retirement annuity income, but no other foreign currency may be availed of without the specific approval of the Financial Surveillance Department.
2. Excon resident may not advance R1m SDA to a person on a foreign business trip, yet borrower must at least be a resident temporarily abroad
 - If borrower is tax non-resident, the SA resident lender may need to attribute foreign persons taxable income to his or her SA taxable income – s7(8)
 - Interest or low interest loans – also consider s7C, s31 and s7(8)

Post-tax emigration assets

1. Previously: remaining blocked funds
 - No remaining assets post cessation of tax residency
 - TCS Pin FIA in most cases
 - See exceptions later
2. Never-ending demand for TCS Pin letter
3. Ongoing theme in AD Manual
 - “subject a TCS application or TCS Pin Good standing letter
 - E.g., as of 13-month following TCS pin for TEC

Formal or financial emigration?

- 4. **Private individuals who cease to be residents for tax purposes in South Africa**
 - 4.1 The concept of emigration as recognised by the Financial Surveillance Department has now been phased out with effect from 2021-03-01.
 - 4.2 The distinction between South African resident assets and non-resident assets remains extant.
 - 4.3 Authorised Dealers may allow the transfer of assets abroad, provided a private individual:
 - (a) has ceased to be a resident for tax purposes in South Africa;
 - (b) has obtained a TCS in respect of “emigration” from SARS; and
 - (c) is tax compliant upon verification of the TCS.

Formal or financial emigration?

- 4.9 Any requests for further transfers of remaining assets will be subject to a TCS application in respect of Foreign Investment Allowance (FIA) irrespective of the date of emigration, i.e. prior or after 2021-03-01.
- 4.10 The externalisation of listed and unlisted domestic securities by individuals who cease to be residents for tax purposes will be treated similar to cash, which will form part of the foreign capital allowance and is also subject to the TCS process at SARS.

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Exceptions

1. Trust distributions
2. Donations from resident
3. Inheritances
 - A. Up to R10m
 - B. Above R10m

FE rules – R20m transfer per couple per year was removed.





- 4.12 All assets that were previously blocked as per a specific directive that was given by the Financial Surveillance Department in terms of the provisions of Exchange Control Regulation 4(2), may be dealt with as follows:
- (a) In respect of income and capital distributions from inter vivos trusts, such distributions may be transferred abroad, subject to the TCS process being completed by the trustees of the trust. For any transfers above R10 million, the requirements of (vii) above will apply.
 - (b) With regard to pre-inheritance gifts, such funds may be transferred abroad, subject to the TCS process being completed by the resident donor. For any transfers above R10 million, the requirements of (4.7) above will apply.

Inheritance – best be inactive

- 4.13 Applications by private individuals who cease to be residents for tax purposes and who are no longer active on the SARS registered database and receive an inheritance or life insurance policy (excluding lump sum benefits from pension preservation, provident preservation, retirement annuity funds and annuities from insurers) up to R10 million, will not be required to apply to SARS for a Manual Letter of Compliance - Transfer of funds. For applications above R10 million, applicants are required to obtain a Manual Letter of Compliance - Transfer of funds, from SARS.

Inheritance

1. Do not open a new SA bank account
2. Executors can transfer directly to the foreign bank account
3. No current inactive verification process
 - Do send a manual request
 - If below R10m they reject, above R10m they will issue once questions answered

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TCS Pin Good Standing: forever and a day

- 4.16 In terms of the TCS system, a TCS PIN letter will be issued to the South African residents who cease to be residents for tax purposes that will contain the tax number. Authorised Dealers must use the TCS PIN to verify the applicant's tax compliance status via SARS eFiling prior to effecting any transfers. Authorised Dealers must ensure that the amount to be transferred does not exceed the amount approved by SARS. Authorised Dealers should note that the TCS PIN can expire and should the Authorised Dealers find that the TCS PIN has indeed expired, the Authorised Dealers must request that the taxpayer must submit a new TCS application to SARS to be issued with a TCS PIN.



4.17 Income due to private individuals who ceased to be residents for tax purposes in South Africa may be transferred offshore, provided the Authorised Dealers ensure that the amounts to be transferred are legitimately due to private individuals who ceased to be residents for tax purposes in South Africa, ensure that suitable arrangements are made to meet all local liabilities and verify a TCS of good standing at least once a year to confirm that the private individual who ceased to be resident for tax purposes in South Africa is tax compliant in respect of the transfer of income referred below. With regard to (g) and (h) below, a TCS of good standing is required at least once a year on applications up to R10 million and a tax compliance status request – TCS FIA is required for above R10 million applications.

Post-tax emigration

- right to income transfers below R10m; but
- above R10m treat as asset transfer

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How to request your Tax Compliance Status



[How to Access My Compliance Profile](#)

[How to request your Tax Compliance Status](#)

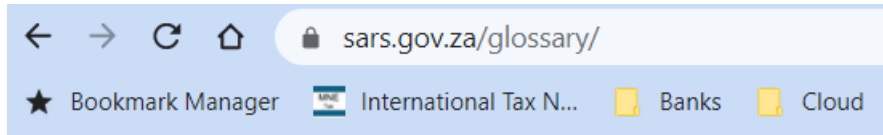
[How to verify Tax Compliance Status](#)

[Supporting Documents for Emigration](#)

- **5 February 2021** – You can now [request your Tax Compliance Status here](#).

Note: Alternatively you can request a **Tax Compliance Status (TCS)** for a specific purpose (e.g. Tender) online via [eFiling](#).

How to request your Tax Compliance Status via eFiling



TCS

Telephone Configuration System



Post Emigration - Own Tax Events 1/3

1. Tax on SA sourced income – default declares gross claim deduction on the exemption. Tax filing obligation is based on gross, yet provisional tax stats are based on taxable value. Do not get confused by two sets of rules
 - A. Unilateral exemption i.e., interest
 - B. Treaty exemption or limited taxing rights
2. CGT immovable property including shares in a property-rich company
 - A. Base cost of shares is the section 9H value for exit tax yet the historical base cost for title deed
 - B. Immovable property sales subject to CGT withholding tax where the proceeds (not gain) exceeds R2m per sale per person i.e., R4m proceeds for in-community couples or jointly own residential homes – was s9H exempt assets

Post Emigration - Own Tax Events 2/3

3. SA trade and rental income

- Airbnb, Long-term or short-term rental
- PE establishment including PE assets excluded from s9E exit tax

4. Interest from SA source

- Withholding tax on interest (WTI) – default 15% on non-banks
 - No WTI on bank interest yet can be taxed if in SA more than 183 days
- Treaty override

5. LA and pension – default is taxed in SA

- Subject to tax treaty restriction and SARS process (TST01) process

Post Emigration – Own Tax Events 3/3

6. Income transfers per calendar year

- First R10m only TCS good standing
- Above R10m TCS Pin FIA
 - For both you need an active tax number

7. Exceptions

- Trust distributions to a tax non-resident – active and inactive non-resident taxpayers
 - Trust must obtain TCS Pin
 - Note SARS blocks trust to foreign trust
- Inheritances and life policy proceeds provided one is inactive

Other PROS and CONS

PRO

1. Risk of admin penalty
2. Inactive does not equate to no tax number
3. No eFile profile – SARS notices?
4. CRS self declaration in foreign country

CONS

1. No Notice from SARS, but the collapse of HPO made this a moot point
2. Re-open of bank account and tax number for LOA pay-out, life cover or retirement funds
3. SA Trust tax filing – no PIT

Tax and Excon Facts

- National Treasury and Parliament
 - SARS Public Notices up to 31 July 2022
- ITA and TAA
 - As 31 July 2022
- SARB
 - Excon Circular 16 of 2022
 - Circ 1 of 2021 – loops remain to be unchanged
 - AD Manual – end April 2022

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Thank you to the Tax Faculty

- Executive Dean
- CPD Team
- Technical Team
- Support Teams
 - Including Christian Heuer

Thank you for the journey

The End – Questions

Practitioner Library & Technical Resource Centre

Please submit your technical queries online -
TaxFind: Ask an Expert

Go to: https://taxfaculty.ac.za/support_tickets/create



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Questions?

Thank you! Wegkaner@gmail.com



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