



FINANCIAL 
EMIGRATION

MARCH
2022

BUDGET SPEECH 2022

UPDATE ON EXPATRIATE TAX

PRESENTED BY:
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AGENDA

1 2022 Budget Review

2 Tax Residency

3 Summary of Tax Principles

4 Latest Developments

5 Closing



THE SPEAKERS

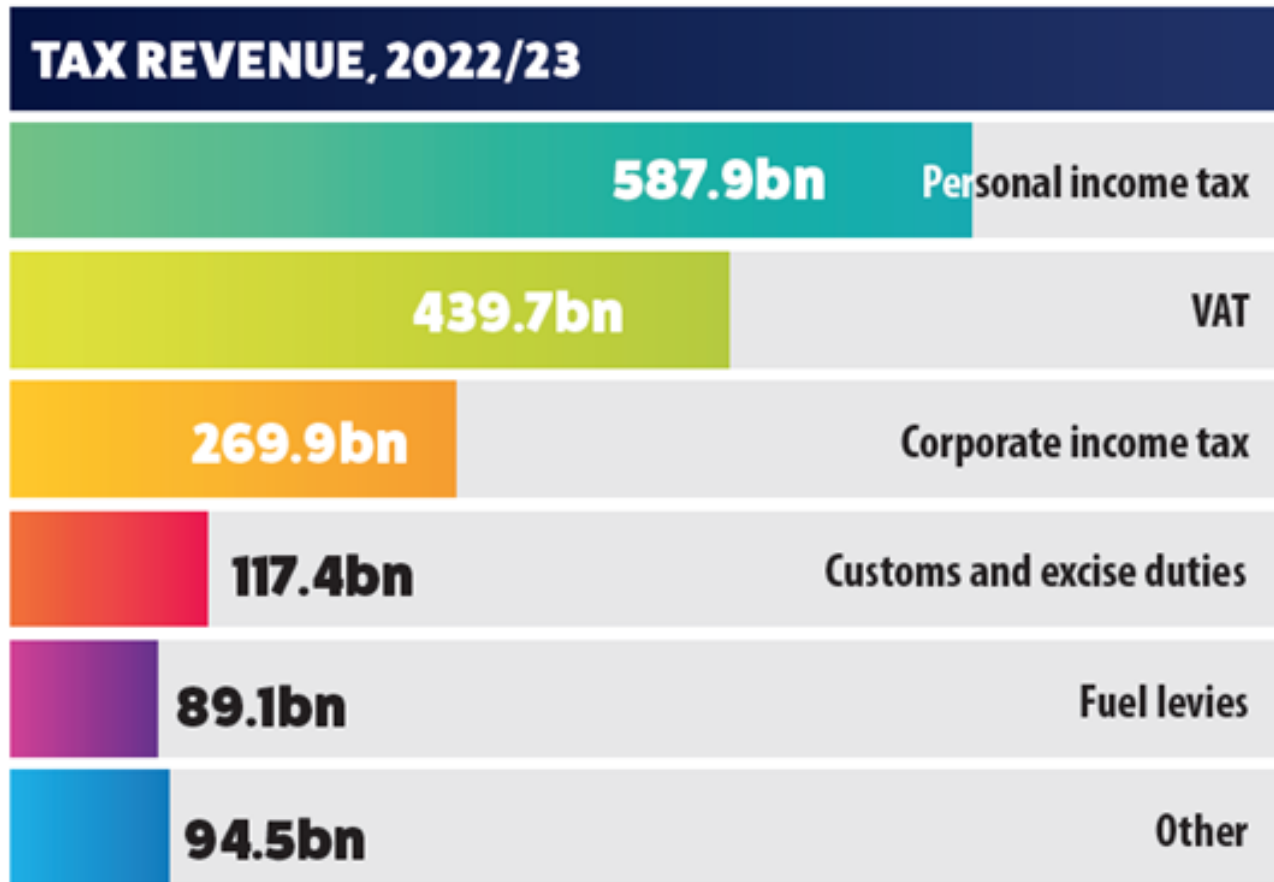
JERRY BOTHA

Managing Partner

Jerry is the Managing Partner of Tax Consulting South Africa and has over 25 years' experience in the field of taxation and remuneration. He holds his own FSCA License, is a Master Reward Practitioner and has served on the Executive of the South African Reward Association ("SARA") for more than a decade, Chairs the SARA Employee Benefit Committee, and is a Certified Payroll Practitioner and Tax Practitioner. He also authored the LexisNexis textbook on 'Expatriate Tax' which includes a component on international remuneration methodology, as well as advised many large South African and multi-national businesses on complex and / or best practice solutions concerning remuneration, benefits and taxation.

2022 BUDGET REVIEW | HIGHLIGHTS

- SARS still mostly interested in Personal Income Tax:



2022 BUDGET REVIEW | HIGHLIGHTS CONT.

- How did we get through Covid?

Table 2.1 Economic growth in selected countries

Region/country	2020	2021	2022	2023
Percentage	Actual	Estimate	Forecast	
World	-3.1	5.9	4.4	3.8
Advanced economies	-4.5	5.0	3.9	2.6
United States	-3.4	5.6	4.0	2.6
Euro area	-6.4	5.2	3.9	2.5
United Kingdom	-9.4	7.2	4.7	2.3
Japan	-4.5	1.6	3.3	1.8
Emerging and developing countries	-2.0	6.5	4.8	4.7
Brazil	-3.9	4.7	0.3	1.6
Russia	-2.7	4.5	2.8	2.1
India	-7.3	9.0	9.0	7.1
China	2.3	8.1	4.8	5.2
Sub-Saharan Africa	-1.7	4.0	3.7	4.0
Nigeria	-1.8	3.0	2.7	2.7
South Africa ¹	-6.4	4.8	2.1	1.6
World trade volumes	-8.2	9.3	6.0	4.9

1. National Treasury forecast

Source: IMF World Economic Outlook, January 2022

2022 BUDGET REVIEW | HIGHLIGHTS CONT.

- Are we stealing from tomorrow?

CONSOLIDATED GOVERNMENT EXPENDITURE BY FUNCTION, 2021/22-2024/25					
R billion	2021/22	2022/23	2023/24	2024/25	2021/22–2024/25
	Estimate	Medium-term estimates			Average growth
Learning and culture	421.4	441.5	446.0	458.0	2.8%
Health	256.2	259.0	247.6	257.5	0.2%
Social development	352.7	364.4	317.6	322.2	-3.0%
Community development	212.5	236.3	252.2	266.7	7.9%
Economic development	201.0	227.1	237.4	256.8	8.5%
Peace and security	218.4	220.7	217.0	226.6	1.2%
General public services	71.9	69.2	69.3	70.5	-0.7%
Payments for financial assets	74.6	27.2	24.7	25.0	
Allocated expenditure	1 808.7	1 845.5	1 811.8	1 883.3	1.4%
Debt-service costs	268.3	301.8	335.0	363.5	10.7%
Contingency reserve	–	10.0	5.0	5.0	
Unallocated reserve	–	–	25.0	30.0	
Consolidated expenditure	2 077.0	2 157.3	2 176.8	2 281.8	3.2%

2022 BUDGET REVIEW | HIGHLIGHTS

% CHANGE AND AVERAGE TAX RATES

Table C.1 Annual income tax payable and average tax rates, 2021/22 (taxpayers below 65)

Taxable income (R)	2020/21 rates (R)	Proposed 2021/22 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
85 000	342	–	-342	-100.0%	0.4%	0.0%
90 000	1 242	486	-756	-60.9%	1.4%	0.5%
100 000	3 042	2 286	-756	-24.9%	3.0%	2.3%
120 000	6 642	5 886	-756	-11.4%	5.5%	4.9%
150 000	12 042	11 286	-756	-6.3%	8.0%	7.5%
200 000	21 042	20 286	-756	-3.6%	10.5%	10.1%
250 000	33 570	31 990	-1 580	-4.7%	13.4%	12.8%
300 000	46 570	44 990	-1 580	-3.4%	15.5%	15.0%
400 000	76 490	74 100	-2 390	-3.1%	19.1%	18.5%
500 000	110 235	106 725	-3 510	-3.2%	22.0%	21.3%
750 000	205 313	200 817	-4 496	-2.2%	27.4%	26.8%
1 000 000	307 813	302 673	-5 140	-1.7%	30.8%	30.3%
1 500 000	512 813	507 673	-5 140	-1.0%	34.2%	33.8%
2 000 000	734 721	726 409	-8 312	-1.1%	36.7%	36.3%

Source: National Treasury

WHO LAYS THE EGGS

Table 4.5 Estimates of individuals and taxable income, 2021/22

Taxable bracket	Registered individuals		Taxable income		Income tax payable before relief		Income tax relief after proposals		Income tax payable after proposals		
	R thousand	Number	%	R billion	%	R billion	%	R billion	%	R billion	%
R0 - R80 ¹		7 183 913	–	256.2	–	–	–	–	–	–	–
R80 - R150		1 855 292	26.7	211.1	8.6	15.7	3.0	-1.3	9.4	14.5	2.8
R150 - R250		1 691 889	24.3	329.3	13.4	29.5	5.6	-1.8	13.4	27.7	5.4
R250 - R350		1 283 954	18.4	378.4	15.4	54.5	10.3	-2.3	16.8	52.2	10.1
R350 - R500		981 993	14.1	409.1	16.6	76.6	14.5	-2.6	19.5	74.0	14.3
R500 - R750		612 177	8.8	369.1	15.0	88.4	16.7	-2.4	18.1	86.0	16.7
R750 - R1 000		262 643	3.8	226.2	9.2	65.1	12.3	-1.3	10.0	63.8	12.4
R1 000 - R1 500		159 127	2.3	191.1	7.8	61.9	11.7	-0.8	6.1	61.0	11.8
R1 500 +		113 192	1.6	346.3	14.1	137.7	26.0	-0.9	6.6	136.8	26.5
Total		6 960 267	100.0	2 460.7	100.0	529.4	100.0	-13.4	100.0	516.0	100.0
Grand total		14 144 180		2 716.8		529.4		-13.4		516.0	

1. Registered individuals with taxable income below the income-tax threshold

Source: National Treasury

HIGH NET WORTH R50m – DISCLOSURE

Disclosure of wealth

Provisional taxpayers with business interests are required to declare their assets (based on their cost) and liabilities in their tax returns each year. To assist with the detection of non-compliance or fraud through the existence of unexplained wealth, it is proposed that all provisional taxpayers with assets above R50 million be required to declare specified assets and liabilities at market values in their 2023 tax returns. The additional information will also help in determining the levels and structure of wealth holdings as recommended by the Davis Tax Committee.

SARS COMMENTS

Progress at the South African Revenue Service

The rebuilding of SARS is evident in improved revenue collection and compliance trends. Over the past year, SARS has recruited an additional 490 staff across various levels and skills areas, and has invested R430 million in refreshing and modernising its ICT infrastructure. The dedicated new unit focused on high-wealth individuals is taking shape.

EMIGRATED EMPLOYEES – WARNING ON RETIREMENT IN RSA

Cross-border tax treatment of retirement funds

Consultation on last year's proposal regarding the tax treatment of retirement interest when changing tax residence showed that multiple tax treaties need to be revised to ensure South Africa retains taxing rights on payments from local retirement funds. Government intends to initiate these negotiations this year.

Tax

2022 BUDGET REVIEW | HIGHLIGHTS CONT.

- **Trifling changes targeted at expatriates:**

Apportioning the interest exemption and capital gains tax annual exclusion when an individual ceases to be tax resident

In 2012, section 9H(2)(b) of the Income Tax Act was clarified to provide that, when an individual ceases to be a South African tax resident, their year of assessment is deemed to have ended on the date immediately before the day their tax residency ceased. The section further provides that the individual's next succeeding year of assessment will start on the day on which tax residency is ceased. As a result, the individual has two years of assessment during the 12-month period, which means the individual may be able to double-up on certain exemptions or exclusions that are allowed per year of assessment. This goes against the policy rationale of the provisions of the act. To address this anomaly, government proposes that the legislation be changed to apportion the interest exemption and capital gains annual exclusion in such instances.

Tax

- **International audits**

Review of domestic legal framework to effect joint audits

Government proposes that the South African domestic legal framework, particularly the Tax Administration Act (2011), be amended to make provision for the full use of joint audits with other tax administrations in order to improve the effective exchange of information under international tax agreements.

Tax

Tax

TAX RESIDENCY RULES

Residents

- Tax on income from worldwide sources.
- Capital gains tax on the disposal of all assets (excl. personal use assets).

Non-Residents

- Taxed on South African source income only.
- Capital gains tax on fixed property located in South Africa /assets of permanent establishment.
- No other capital gains tax.
- No world-wide tax even on remittances.
- No donations tax and / or estate duty.

Tax

SARS FAQ

LEGAL COUNSEL | INCOME TAX

Frequently Asked Questions

Foreign Employment Income Exemption
(Section 10(1)(o)(ii) of the Income Tax Act, 1962)

Compliance matters

30.	If I qualify for the exemption, do I have to submit an income tax return in South Africa?	Yes , the Public Notice issued under section 25 of the Tax Administration Act, 2011 read with section 66 of the Act specifically provides that an individual working outside South Africa is required to submit an income tax return.
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BURDEN OF PROOF | CASE LAW EXAMPLES

In Bloch v SIR 1980 42 SATC 7 at 14, the court confirmed the onus on a taxpayer –
“discharged on the ordinary basis applied in civil cases, that is, on a balance of probabilities”.

The Special Court in ITC 43 held that – *“in the case of all things being equal we are bound to decide in favour of the Commissioner. Therefore, we are of opinion that the assessment must be confirmed.”*

(emphasis added)

Supreme Court Of Appeal | Law Considers “Objective” & Not “Subjective

Our courts’ view in this regard is perhaps best illustrated by a recent example of the approach adopted by the Supreme Court of Appeal in *Anglo Platinum Management Services (Pty) Ltd v Commissioner of SARS*.²⁸ Albeit in the context of salary sacrifice arrangements, the critical issue in this case was how the court should deal with the subjective statements of intention in relation to the salary sacrifice agreement between the employer and employee. In overturning the High Court decision on appeal, Cachalia JA noted that:²⁹

‘In this regard a court is not concerned with the subjective belief of the parties to the agreement – no matter how genuine this belief may be – but with whether the facts, objectively viewed, establish that this result was attained. It must thus consider the oral and documentary evidence to assess the probabilities. The taxpayer bears the burden of proving that the Commissioner’s decision to disallow its objection to the assessments was wrong. And where, as in this case, the taxpayer’s is the only oral evidence, it must be considered carefully in the light of the available documentary evidence before a court is able to conclude whether or not the taxpayer has discharged the onus.’

CAN YOU RELY ON SARS?

Marshall and Others NNO v SARS (CCT208/17) [2018] ZACC 11

The Constitutional Court drew the following conclusion in respect of the utilisation of SARS Interpretation Notes:

“Why should a unilateral practice of one part of the executive arm of government play a role in the determination of the reasonable meaning to be given to a statutory provision? It might conceivably be justified where the practice is evidence of an impartial application of a custom recognised by all concerned, but not where the practice is unilaterally established by one of the litigating parties. In those circumstances it is difficult to see what advantage evidence of the unilateral practice will have for the objective and independent interpretation by the courts of the meaning of legislation, in accordance with constitutionally compliant precepts. It is best avoided.”

WHAT IS A CRIMINAL OFFENCE | SECTION 234 (2)

(2) Any person who wilfully or negligently fails to—

- (a) register or notify SARS of a change in registered particulars as required in Chapter 3;
- (b) appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 249;
- (c) register as a tax practitioner as required under section 240;
- (d) submit a return or document to SARS or issue a document to a person as required under a tax Act;
- (e) retain records as required under a tax Act;
- (f) furnish, produce or make available any information, document or thing, excluding information requested under section 46 (8), as and when required under this Act;
- (g) attend and give evidence, as and when required under this Act;
- (h) comply with a directive or instruction issued by SARS to the person under a tax Act;
- (i) disclose to SARS any material facts which should have been disclosed under a tax Act or to notify SARS of anything which the person is required to so notify SARS of under a tax Act;
- (j) comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections; or
- (k) in the event where that person becomes liable to make a payment for withholding any tax, deduct or withhold or pay to SARS the amount of tax, as and when required under a tax Act,

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

Tax

Criminal offences relating to evasion of tax

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235. (1) A person who with intent to evade or to assist another person to evade tax or to obtain an undue refund under a tax Act—

- (a) makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;
- (b) gives a false answer, whether orally or in writing, to a request for information made under this Act;
- (c) prepares, maintains or authorises the preparation or maintenance of false books of account or other records or falsifies or authorises the falsification of books of account or other records;
- (d) makes use of, or authorises the use of, fraud or contrivance; or
- (e) makes any false statement for the purposes of obtaining any refund of or exemption from tax,

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is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding five years.

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(2) Any person who makes a statement in the manner referred to in subsection (1) must, unless the person proves that there is a reasonable possibility that he or she was ignorant of the falsity of the statement and that the ignorance was not due to negligence on his or her part, be regarded as guilty of the offence referred to subsection (1).

(3) A senior SARS official may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence contemplated in subsection (1).

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SUMMARY OF PRINCIPLES

- Onus of proof on taxpayer, balance of probabilities;
- Objective evidence carries weight with tax court;
- SARS view is best ignored in understanding law; and
- Negligence can now constitute a criminal offence.

Our practice's approach is proactively aimed at what happens in tax court, which invariably happens during a SARS audit.

TAX RESIDENCY RULES

Residents

- Tax on income from worldwide sources.
- Capital gains tax on the disposal of all assets (excl. personal use assets).

Non-Residents

- Taxed on South African source income only.
- Capital gains tax on fixed property located in South Africa /assets of permanent establishment.
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Tax

SARS FAQ

LEGAL COUNSEL | INCOME TAX

Frequently Asked Questions

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30.	If I qualify for the exemption, do I have to submit an income tax return in South Africa?	Yes , the Public Notice issued under section 25 of the Tax Administration Act, 2011 read with section 66 of the Act specifically provides that an individual working outside South Africa is required to submit an income tax return.
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'EXIT TAX' | SECTION 9H OF THE INCOME TAX ACT

In the event of a cessation of tax residence, **deemed disposal** rules will take effect in order to prevent tax avoidance. Where a natural or legal person is not resident in the Republic, **a liability in respect of CGT** (Capital Gains Tax) will arise where a CGT event (a disposal or a deemed disposal) occurs.

Items included in the exit tax are inter alia:

- Foreign fixed property;
- Shares;
- Unit trusts and other similar investments; and
- Trusts – depending on how they are set up and what is contained in them.

Items excluded from the exit tax are inter alia:

- South African fixed property in your own name;
- Retirement funds such as pension, provident, retirement annuity; and
- Cash.

LATEST DEVELOPMENTS | RESIDENCY CERTIFICATES

- Obtaining a tax residency certificate remains critical – for DTA purposes and to request confirmation of non-residency in SA:

Tax Residence Certificate For Natural Person

Submission Date : 04 December 2020 Certificate Number : [REDACTED]

Name of Authorization: [REDACTED]

Nationality : **South Africa**

Passport Number : [REDACTED]

Visa Number : [REDACTED]


Pursuant to Agreement for the Avoidance of Double Taxation signed between the Government of United Arab Emirates and the Government of **South Africa** on 23 November 2015, the UAE Federal Tax Authority Certifies that [REDACTED] is resident of the United Arab Emirates.

The Tax Residency Certificate Covers the period from **01 March 2020** to **28 February 2021**

This certificate is electronically certified without stamp and signature from Federal Tax Authority in United Arab Emirates on [REDACTED]

LATEST DEVELOPMENTS | NON-RESIDENCY CERTIFICATES

- In 2021, for the first time, SARS started to issue certificate confirming that the taxpayer ceased residency:



South African Revenue Service

Update Tax Residency Status to Non-Resident

NOTICE OF NON-RESIDENT TAX STATUS

Enquiries should be addressed to SARS

Contact Details:

Contact Centre Tel: 0800 00 7277
SARS website: www.sars.gov.za

Details

Taxpayer Reference No.: [redacted] Always quote this reference number when contacting SARS

Case No.: [redacted]

Issue Date: 2021-09-10

Dear Taxpayer

NOTICE OF NON-RESIDENT TAX STATUS

The South African Revenue Service (SARS) confirms that the following taxpayer is a non-resident:

ID Number: [redacted]
Reference No.: [redacted]
Date from which the taxpayer became a Non-Resident: [redacted]

Kindly notify SARS of any change to your status or any registered particulars within 21 business days of such change.

Sincerely

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

LATEST DEVELOPMENTS | NON-RESIDENCY CERTIFICATES

- The request comes with a stringent verification process.
- What happens if SARS declines the application?
- SARS verification example:

Dear Taxpayer

REQUEST FOR RELEVANT SUPPORTING DOCUMENTS

This is to acknowledge your request to update your tax residency status to non-resident. In order for SARS to verify your change in status, please submit the following relevant supporting documents:

Standard requirements

- The signed declaration indicating the basis on which you qualify (you can download the form from the SARS website, www.sars.gov.za)
- A letter of motivation setting out the facts and circumstances in detail to support the disclosure that you have ceased to be a tax resident.
- A copy of your passport/travel diary.

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- **Example cont.**

Specific requirements

In addition to the aforementioned information, also supply the following as applicable:

Qualifying basis 1: Cease to be ordinarily resident

- The type of visa on which you have gone to the foreign country.
- Where you have already taken up permanent residence in the foreign country, submit proof thereof.
- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates that you are regarded as a tax resident in that country (If available).
- Details of any property that you may still have available in South Africa (Indicate the purpose that such property is being used for)
- Details of any business interest (e.g. investment and employment) that you may still have in South Africa.
- Details of your family. Indicate whether any family members are in South Africa and the reason thereof.
- Details of your social interests (e.g. gym contract, recreational clubs and societies) and location of your personal belongings.
- Details of any return visits to South Africa, the frequency thereof and the reason for undertaking such visits.

LATEST DEVELOPMENTS | NON-RESIDENCY CERTIFICATES

- **Example cont.**

Qualifying basis 2: Cease by way of the physical presence test

- Only the standard requirements must be supplied

Qualifying basis 3: Cease due to application of Double Tax Agreement (DTA)

- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates your status as a tax resident in that country.

DOUBLE TAX AGREEMENTS (“DTA”)

Internationally agreed legislation between South Africa and another country.

The DTA is used to cease one’s tax residency with SA

- Not every jurisdiction has a DTA in place with South Africa, so only if one has been set up is the opportunity there to make use of it.
- The DTA is used in the instances where individuals who have **the intention to return** to South Africa.
- Importantly, one must meet the requirements of the DTA to ensure that they can apply it to exempt their foreign earned income from South Africa.
- This process must be done on an **annual** basis, whereby one must declare their foreign income in SA and claim exemption.
- SARS is likely to then place the taxpayer under verification or audit whereby the taxpayer must prove non-residency according to the **tie breaker test**, in Article 4 of the DTA.
- Deemed disposal CGT.

DOUBLE TAX AGREEMENTS (“DTA”)

- 1.9 Whether the process of establishing whether a taxpayer is deemed to be exclusively tax resident of another country (in terms of a double taxation agreement between South Africa and another country) is an annual, and therefore not a once-off, process; and
-

MYTH vs REALITY | WHY OPT TO APPLY THE DTA

"resident" means any—

- (a) natural person who is—
 - (i) ordinarily resident in the Republic; or
 - (ii) not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic—

but does not include 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 governments of the Republic and that other country for the avoidance of double taxation: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident: Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—

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CRITICAL IMPORTANCE | ARTICLE 4 - TIE-BREAKER TEST

2. Where by reason of the provisions of paragraph 1 of this Article 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 individual has a centre of vital interests 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 an habitual abode;
- (c) if the individual has an 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;
- (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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FINANCIAL EMIGRATION | WHAT IS IT ?

Financial Emigration has been recognized and confirmed by SARS as a process in which one can cease their tax residency in South Africa, should one have a **permanent intention** to reside outside of South Africa on a permanent basis.

- **Once off** process.
- **Backdated** financial emigration.
- Spouses **both need to cease tax residency**- conflict of intent;
- Keep all **assets in South Africa** after financial emigration.
- Able to financially emigrate **without** being a permanent resident or citizen of another country.
- By Financially Emigrating you are **not cutting** ties with SARS, you do continue to submit returns to SARS to **declare your local** earned income.
- De-registration of your SA tax number is not automatically done.
 - Only once you dispose of all your assets such as bank accounts, properties, trusts, shares and policies, then you can **deregister for tax in its entirety and not need to submit any tax returns.**

POST-FINANCIAL EMIGRATION | NEW BANKING PROCESS

Final Remittance And Non-resident Banking Status Change

Once your FE application is completed, the banking institution/s that you are affiliated with are notified of your tax residency status change. Thereon the relevant bank account/s associated, will change status name, **the account/s will be converted and designated as Non-Resident**. Upon status name change (depending on the banking institution) your **banking facilities will also change**, and **certain restrictions will apply**. Once you have completed your FE, **you will be issued with an Emigration Tax Clearance Status Pin (ETCS Pin)**.

- This will allow you to **remit up to R10million for a year from SA**.
- And may be used to **withdraw your RA** if you are 3 years non-resident.

Exchange Control Outward Remittances

- New requirement of a **SARS Tax Compliance Status (TCS PIN)** for every capital transfer a Non-Resident/Non-Tax Resident makes to offshore.
- The Financial Surveillance Department (FinSurv) released an Exchange Control Circular (No. 8/2021) last year which shed more light on this change:
 - **previously the provision has been that individuals who formally emigrate were allowed to transfer up to R10 million, or R20 million for a family unit, without the requirement for a TCS PIN.**
 - **Going forward, a TCS PIN would be required from cent 1.**

3-YEAR “LOCK-UP” ON PENSION FUNDS | WITH EFFECT FROM 1 MARCH 2021

Retirement Funds in South Africa:

- Pension Preservation Fund;
- Provident Preservation Fund; and
- Retirement Annuity Fund.

(ii) a member shall, prior to his or her retirement date, be entitled to the payment of a lump sum benefit contemplated in paragraph 2 (1) (b) (ii) of the Second Schedule where a member—

(aa) (A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or

(B) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or

[Sub-para. (aa) substituted by s. 2 (1) (i) of Act No. 23 of 2020 with effect from 1 March, 2021.]

National Treasury proposes new exit tax

- The 2021 TLAB introduced a proposal to tax retirement interests upon cessation of residency.
- Similar to existing exit tax – aimed at preventing a loss to the fiscus where a DTA prevents SARS from taxing retirement interests.
- The proposal is the latest aimed at the same group of taxpayers affected by a series of legislative amendments in the expat space.

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Tax Consulting teams up with Expat Petition Group (EPG)

- TCSA invited members of the EPG to share how the proposal under section 9HC will affect the taxation of their retirement interests and their retirement planning. The survey indicated:
 - More than 75% of participants still have retirement interests in SA;
 - 88% of participants will be impacted negatively; and
 - Almost 65% stated it will materially change their retirement planning.
- TCSA as technical advisor made written submissions on behalf of the EPG opposing the proposal.

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Highlights of EPG Submission

- TCSA took EPG's plight to Parliament where our arguments were presented to the Standing Committee on Finance:
 - The proposal again targets the expat community and may result in more South Africans leaving the tax net
 - The proposal overrides South Africa's treaty obligations
 - The proposal will result in double taxation
 - Contravention of the Income Tax Act and Vienna Convention
 - Section 9HC distorts taxation of retirement interests

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National Treasury withdraws proposal

- Pursuant to opposing submissions National Treasury withdrew the proposal:

“Following the extensive public participatory deliberations with members of the public in Parliament and through public participatory initiatives hosted by National Treasury on the 2021 Draft Tax Bills, the proposed amendments regarding the introduction of section 9HC will be withdrawn from the 2021 Draft TLAB. In order to address the complexities that were raised through the comment cycle as well as the issue of treaty override, Government proposes starting the process of entering into the renegotiation of the affected tax treaties.”

- The withdrawal marks another importantly victory for the EPG and taxpayers that may otherwise be impacted by it.
- **Word of caution** – this is a concern for National Treasury and SARS and we are likely to see a new proposal on the table this year – confirmed in the 2022 Budget Review

LEGISLATIVE CHANGES | TIMELINE

2017

- proposal tabled to remove foreign employment exemption – following petition by EPG and TCSA, Government introduces R1 million limit and amendment postponed to 1 March 2020.

2020

- In the 2020 Budget Speech it was announced that the limitation of R1 million will be increased to R1,25 million. The change in the Financial Emigration process also announced.
- The R1,25 limitation on the foreign employment exemption takes effect on 1 March 2020.
- Draft Taxation Laws Amendment Bill introduces new FE process where 3-year lock-up is imposed. The amendment is enacted despite opposition.

2021

- New process for FE takes effect on 1 March 2021.
- Government proposes new exit – proposal withdrawn following opposition from EPG and TCSA.
- Days required requirement under foreign employment exemption relaxed temporarily.

- **Reminder**

- One of the key features of the new FE process is a stringent audit by the SARS auditors and potentially by the dedicated SARS Foreign Employment team.
- These audits focus on residency status and taxpayer's assets to ensure correct disclosure for purposes of the exit tax – objective evidence of cessation of residency is critical.
- Following a legislative amendment, effective 1 March 2021, SARS' prosecution powers have been enhanced and taxpayers are held to a higher level of accountability – element of intent is no longer required for criminal liability.
- In practice we have seen more onerous audits in general.

Tax

LATEST DEVELOPMENTS | ENHANCED ENFORCEMENT AND AUDITS

• Example

Dear Taxpayer

TAX COMPLIANCE STATUS - ADDITIONAL RELEVANT MATERIAL

The South African Revenue Service (SARS) previously sent you a letter dated, 2021-03-02 requesting you to submit relevant material in order to process your tax compliance status (TCS) application with reference number [REDACTED] in respect of Emigration.

According to the records of SARS not all requested relevant material were submitted and therefore, we request that you submit the following outstanding relevant material, in order for SARS to finalise your application:

- Detailed statement of assets and liabilities for the previous three tax years (this should include disclosure of all investments, loan accounts and distributions from local and foreign companies, trusts, etc.)
- Details of any Trust in which you have an interest in or are a beneficiary
- Details of all shareholdings
- Detailed calculations of CGT on deemed disposal of assets (Section 9(H))
- We have noted on the ITR12 return submitted that the taxpayer has Foreign assets of [REDACTED], however on the Statements submitted with the TCR01 there are no foreign assets declared on the Statement of Assets and Liabilities provided. Would you kindly provide us with the detailed taxpayers Statement of Assets and Liabilities?
- The taxpayer sold at least 3 properties in 2016 to [REDACTED], and there was no CGT declared. Would you kindly confirm if CGT was declared if any and in which tax period?
- Would you kindly explain the liquidity of the Debtors amount of [REDACTED]. Please note if not liquid they cannot be transferred.
- The taxpayer declared only the [REDACTED] account balance in the statement of assets and liabilities, however we have noted that the taxpayer has other bank accounts with [REDACTED]. Would you kindly provide us with the taxpayer's detailed statements of assets and liabilities?

LATEST DEVELOPMENTS | ENHANCED ENFORCEMENT AND AUDITS

● Example

South African Revenue Service

P/Bag X15
Alberton
1450

Tel: 0800 00 SARS (7277)
www.sars.gov.za

Dear [REDACTED]

REQUEST FOR OUTSTANDING INFORMATION

Unfortunately we are unable to complete your request which we received on [REDACTED] as we require additional information from you in order to proceed with this case.

You are kindly requested to submit the information listed below to SARS in order for us to complete your request

- **Submit 12 months bank statement ; Highlight all income with description and Reconcile with your declaration made to SARS**
- **Submit a copy of your tax clearance application and approval for immigration**
- **Submit a copy of your residency certificate**
- **Property [REDACTED] has not been sold ; Intention ? with the property**
- **Date of departure DEPARTURE from OR Tambo International Airport on [REDACTED]**

NB: Please make sure you attach this letter to the information you provide as it contains a unique barcode and your case number [REDACTED] which will allow us to link it to your case.

This information may be:

Emailed to : contactus@sars.gov.za
Posted to the address indicated above
Dropped off at your nearest SARS branch

You have 21 business days from the date of this letter to comply in order to enable SARS to finalise the verification. It is a criminal offence to wilfully and without just cause fail to provide the relevant material.

Should you require any further information or assistance, please contact the SARS Contact Centre on 0800 00 SARS (7277). Please remember to have your ID number and tax reference number on hand when you call so that we can assist you promptly.

Sincerely

ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE



LATEST DEVELOPMENTS | ENHANCED ENFORCEMENT AND AUDITS

• Example

Dear Taxpayer

REQUEST FOR INFORMATION - OFFSHORE HOLDINGS 2015 - 2019

The purpose of this letter is to inform you that SARS has received information through the Automatic Exchange of Information with 87 jurisdictions regarding South African taxpayers having offshore holdings. It is our intention to initiate a review of your affairs regarding this information.

However, in the interest of administrative justice, SARS seeks to engage you first. To enable SARS to consider the implications of this information in more detail, you are therefore requested under the provisions of section 46(1) of the Tax Administration Act (Act No 28 of 2011, as amended) to provide the following relevant material:

1. Confirmation that you have offshore holdings;
2. Details of these offshore holdings for each year 2015 -2019, specify for each asset held, for each year:
 - 2.1. Where these funds are held (jurisdiction and institution)
 - 2.2. Intermediaries that facilitated this investment for you
 - 2.3. Nature of the investment
 - 2.4. Source of the funds that have been invested ie. How did you derive these monies? Where a loan is applicable, please provide details thereof including lender, capital amounts, interest applicable, repayment terms and guarantees given
 - 2.5. Capital amount invested and movements thereon
 - 2.6. Income earned on this investment (interest, dividends)
 - 2.7. Where you have changed your holdings on this account during the period, please provide details thereof (dates, amounts involved and how the holding has changed)
 - 2.8. What tax obligations have been discharged with regards to this holding eg. Declaration of foreign income, capital gains paid etc
 - 2.9. Where you have not complied with disclosure of this holding in your SA return, please explain why this did not occur

If it is your intention to submit an application under the South African Revenue Service Voluntary Disclosure Programme (VDP) during the next 21 working days from the date of this letter, please indicate this in your response. In this case, the information requested above can be delivered as part of the VDP application. Please visit <http://www.sars.gov.za/Legal/VDP/Pages/default.aspx> for more information on the VDP process.

Further, please note that failure to provide requested information to SARS may constitute a criminal offence in terms of S234 and penalties may apply.

Please respond to this request for information within 21 working days from the date of this letter. Your response



LATEST DEVELOPMENTS | REVENUE COLLECTION BY PENALTIES

- **Example**

1.4 Understatement Penalty:

Having considered the facts of the case, The Commissioner intends to impose an understatement penalty of 100% on the proposed adjustment as the taxpayer was grossly negligent for not ensuring that a full and complete declaration of the substantial income amounts earned by him was made to SARS. Therefore, the behaviour applicable to the taxpayer is that of "gross negligence". No higher penalty will be considered as the conduct of the taxpayer will be regarded as a "standard case".

ANNEXURE A

Summary Of Findings

Summary of Findings				
Tax Period(s)	Provision of Income Tax Act No. 58 of 1962 (IT Act)	Brief description of proposed adjustment	Adjustment amount	Understatement penalty
202000	Section 1 - definitions of "gross income" and "taxable income"	Income under declared	10664950.0	100.0
202000	Section 1 - paragraph (c) of the definition of "gross income"	Income not declared	85125.0	25.0
Total			10750075.0	125.0



10 FEB 2022

LATEST DEVELOPMENTS | CRIMINAL SANCTIONS

- Example

J175 (B1/810713)


REPUBLIC OF SOUTH AFRICA

Summons No. [REDACTED]

ORIGINAL: To be returned to the Clerk of the Court

Case No. / 2021

SUMMONS IN CRIMINAL CASE

Magistrate's Court

District [REDACTED]	Regional division		
Held at [REDACTED]	Court D	Date of trial [REDACTED]	2021

To any **POLICE OFFICER** or **OTHER PERSON** empowered to serve a summons in criminal proceedings:

You are hereby commanded in the name of the State to serve the copy of this summons on the person(s) (hereinafter referred to as accused) of whom particulars appear hereunder as to summons him/her/them to appear in court and to remain in attendance in connection with the charge(s) of which the particulars is/are mentioned hereunder. Report to this Court what you have done thereon.

Name [REDACTED] - Accused 2			
Address [REDACTED]			
Gender	[REDACTED]	Occupation	[REDACTED]
Age	[REDACTED]	Id No.	[REDACTED]

COMPARISON | FINANCIAL EMIGRATION VS DTA

Financial emigration (“FE”) vs DTA exemption

- FE once-off process, bank account status change and can withdraw retirement annuity, provided with a TCS PIN.
- DTA every year process including obtaining residency certificate, SARS challenge per tie-breaker test bank account remains unchanged, no retirement annuity withdrawal.

Where is it the same?

CGT deemed disposal for both, no world-wide income (source income only and RSA fixed property CGT), can own assets, including properties, send money home, return one day, have holiday in South Africa, keep passport, keep policies and medical aid etc.

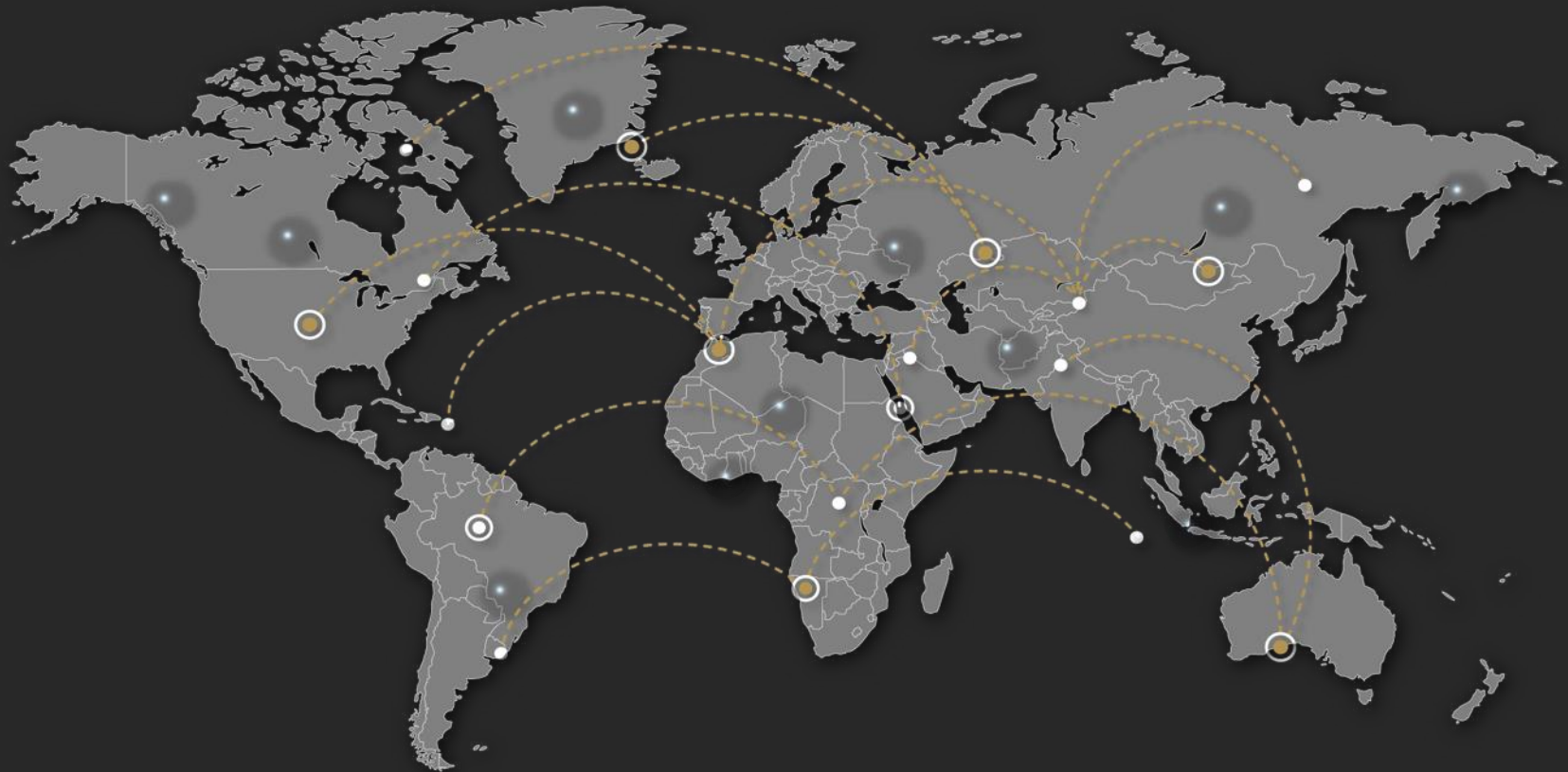
Tax

Tax

OUR GLOBAL FOOTPRINT



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“

Judge Dennis M Davis, Chairman Davis Tax Committee, is quoted saying:

“In summary, the second edition of this carefully considered book (which not only deals with all the various tax implications of immigration/emigration but the taxation of residents working offshore) remains an invaluable guide to an increasingly complex set of tax challenges. Given these changes, it is an even more significant addition to our body of tax literature and will remain essential reading for anyone advising his or her client with regard to the tax consequences of migration and non-resident accruals.”



HOSTED BY:





FINANCIAL 
EMIGRATION

THANK YOU

JERRY BOTHA

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