AllanGray

GrayIssue
15 August 2023 **Issue 273**

Part 1: Understanding your tax obligations on leaving South Africa

In part 1 of this four-part Offshore advice chapter, Carla Rossouw, head of Tax, untangles the tax complexities you may encounter when you end your tax residency and answers some frequently asked questions regarding your obligations.

How do you determine whether you are a South African tax resident?

There are legal parameters that determine whether or not you are a South African tax resident. You are classified as a South African tax resident if you are "ordinarily resident" in South Africa. According to case law, you are ordinarily resident in South Africa if South Africa is the country which you will, naturally and as a matter of course, return to after your wanderings – in other words, if it is your "real home".

You can remain ordinarily resident for tax purposes even if you leave the country for a substantial period, if you intend to eventually return to South Africa after your travels. Your intention is a subjective matter, and if you claim to be ordinarily resident, all your relevant actions and circumstances must support this claim.

The South African Revenue Service (SARS) takes various factors into account to determine whether or not you are a resident for tax purposes. These include:

- Your place of business and personal interests
- Your most fixed and settled place of residence
- Family and social relationships, schools, places of worship, social clubs
- Your habitual abode, i.e. the place where you stay most often, measured over time

If you are not ordinarily resident in South Africa, you will still be considered a South African tax resident during a particular tax year, and liable for tax, if you had been in South Africa for more than 91 days in that tax year, and each of the preceding five tax years, or if you had been in South Africa for a total of more than 915 days in the preceding five tax years. This is referred to as the "physical presence" test.

Unravelling your tax liability

South African tax residents are liable for tax in South Africa on *worldwide income*. Non-residents are only liable for tax in South Africa on what is considered *South African-sourced income*.

The Common Reporting Standard (CRS) is a regime developed by the Organisation for Economic Co-operation and Development to facilitate and standardise the exchange of information about residents' assets and income between numerous jurisdictions, primarily for tax purposes. This regime enables tax authorities, including SARS, to share information with each other. When due process is followed, this should ensure that you are taxed fairly.

However, if you fail to inform SARS of your change in tax status, SARS is within its right to continue to recognise you as a tax resident and tax you on all income (local and foreign) in South Africa. This may lead to the same income being taxed twice, i.e. in South Africa as well as in your new country of residence.

Non-South African residents do not pay capital gains tax (CGT) on unit trust proceeds in South Africa; instead, the taxation of these gains is governed by the investor's country of tax residence. It is your responsibility to declare any capital gains or investment income to your relevant tax authority.

As far as taxes within discretionary unit trust investments are concerned, your investment manager administers withholding taxes on investment returns such as dividends and interest at a tax rate of 20% and 15% respectively, or at a lower rate if the double taxation agreement (DTA) between South Africa and your country of tax residence provides for this. A DTA is an agreement between the tax administrations of two countries to avoid or alleviate double taxation of the same income by the two countries.

Proceeds from South African retirement funds, living annuities and endowments are generally taxable in South Africa, but you would need to refer to the applicable DTA between South Africa and your new country of tax residence to determine which country has the taxing rights in each instance. Living annuity income, for example, may be exempt from pay-as-you-earn (PAYE) tax in South Africa if you are a tax resident in a country such as the United Kingdom or Australia whose DTA with South Africa provides for this (and in this instance, you would need to apply for a tax directive from SARS to provide to your annuity provider). Please refer to part 2 for more information on tax implications for non-resident living annuitants.

What happens if you plan to leave South Africa permanently?

The standard procedure for individuals wanting to permanently leave South Africa and cease being a South African resident for tax purposes is to inform SARS – a process often referred to as "tax emigration" – by following these steps:

1. Complete the "Registration, Amendments and Verification form" (RAV01) on SARS eFiling. Make sure you capture the correct date on which you ceased to be a tax resident under the "Income Tax Liability Details" section. The RAV01 must be updated prior to the submission of your annual tax return to avoid the tax return being selected for manual intervention by SARS.

2. Look out for a letter from SARS in response to this form and submit the supporting documents that SARS requests, which will include the "Declaration of Ceasing to be a Tax Resident".
3. Refer to the "Cease to be a Resident" page on the SARS website for more information.

When you break your tax residency, SARS considers you to have disposed of your worldwide assets, excluding immovable property in South Africa, and therefore to be liable for CGT at the prevailing rates. At present, worldwide assets used for this calculation include discretionary unit trust investments but not retirement fund savings. This is often referred to as an "exit tax" and is regarded as SARS's way of ensuring it still gets its slice of the "tax pie" – tax it would have received had you remained a South African tax resident.

It is important to understand the risks and tax implications in terms of double taxation (as discussed above), the risks in terms of access to retirement savings (as discussed below) and the penalties. For example, if there are any taxes due to SARS as a result of your change in tax residency which were not declared and paid at the time, SARS may impose administrative penalties and interest.

SARS has also recently introduced certain changes to the information they require for international fund transfers – they may require more information in some circumstances.

The decisions you make on exit can have an impact in the future. For example, if you wish to access your retirement annuity funds after leaving South Africa, you will need to provide proof that you have been a tax resident in another country for three consecutive years and if the SARS system still recognises you as a South African tax resident, access to your retirement annuity funds will be denied.

Can non-South African residents invest in South African investment products?

Some investors may worry that a change in residency may impact their ability to invest locally, but this is not the case. Both South African and non-South African residents can invest in most South African investment products, including those of Allan Gray.

Allan Gray offers access to a wide range of global fund managers via the Allan Gray Offshore Investment Platform, which offers competitive pricing by international standards and the ability to have your investment paid into a foreign bank account. (A small number of the global managers may impose country-specific restrictions – i.e. residents of certain countries may not be able to invest in some funds on our offshore platform.)

Why does Allan Gray still issue tax certificates to non-South African resident investors?

Allan Gray products were designed with South African tax residents in mind, accounting for South Africa's legislative, regulatory and tax rules. Allan Gray is required to report these values to SARS for all clients, which also enables SARS to share this information with other tax authorities in keeping with the Foreign Account Tax Compliance Act (FATCA) and CRS requirements. In complying with SARS requirements and to assist clients with their filing obligations in both South Africa and elsewhere, Allan Gray distributes tax certificates to all clients (where applicable), irrespective of their tax residency status.

Keep your tax affairs in order

Much like filing your own taxes via the SARS eFiling system, letting the authorities know that you are changing your tax residency status is a relatively simple process you can do yourself via eFiling – particularly if your taxes are straightforward. However, managing your tax affairs across jurisdictions can become complex.

If you require guidance on the tax implications of your investments in your country of tax residence or further advice on how to proceed to become a non-resident for tax purposes, you should seek the assistance of an independent financial adviser or registered tax practitioner.

Commentary contributed by Carla Rossouw, head of Tax, Allan Gray