

GMS Flash Alert

2021-199 | July 14, 2021



South Africa - New Process for Evidencing Breaking Tax Residency

On 3 June 2021, the South African Revenue Service (SARS) published details on its website regarding standard and specific documentation required to evidence that a taxpayer has ceased South African tax residence.¹ As the South African tax year for natural persons is 1 March – 28/29 February, this will be applicable for tax returns filed for the year ended 28 February 2021.

WHY THIS MATTERS

Employers and their globally-mobile employees need to be aware of the change in administrative process and new procedures for individuals changing their tax residence status. Previously all that affected taxpayers had to do was to declare the change in tax residence status on the relevant annual income tax return. Now there are new requirements to prove the change in residence status.

Context

South Africa has had exchange controls in place for many years, to restrict the outflow of funds. Emigration was, as a result, a process administered by the South African Reserve Bank (SARB). SARB has now handed the baton to SARS.

Prior to 1 March 2021:

- A natural person could cease to be tax resident and pay his or her exit tax (if applicable) without any automatic vetting process being undertaken by SARS (this would only happen if the person was subject to audit for that tax year); and
- A natural person who was an Exchange Control resident of South Africa could undertake a formal process of emigration via SARB. This was a document-intensive process. It should be noted that persons who are not Exchange Control resident may freely remit funds in and out of South Africa without SARB approvals.

From 1 March 2021:

The SARB process of emigration was replaced by a SARS process, thus shifting the document-intensive process from SARB to SARS;

- Under the new framework, natural person emigrants and natural person residents will be treated the same and are subject to the same calendar year allowance limitations; and
- Non-tax resident taxpayers will be able to transfer certain retirement benefits abroad if they can prove that they have been non-resident for tax purposes for an uninterrupted period of three tax years. The three-year period of non-tax residence does not apply to a person who concluded a SARB emigration process prior to 1 March 2021.

Basis of Taxation in South Africa

South Africa operates on a residence basis of taxation in terms of which South African residents are subject to tax on their worldwide income (subject to certain exemptions) and worldwide capital gains. A non-resident is only liable for tax in South Africa on income derived from a source within South Africa and capital gains arising from the disposal of immovable property or any interest or right to immovable property situated in South Africa.

Tax Residence Tests

- A natural person will be considered tax resident in one of two ways:
 - by being considered “ordinarily resident” in South Africa (typically persons born and raised in South Africa)²; or
 - by meeting the requirements of the physical presence test (PPT).³ PPT typically applies to inbound foreign nationals who work in South Africa for a period of time and who have not decided to make South Africa their permanent and settled home (this would indicate that they would be “ordinarily resident”). For PPT to apply, the natural person must be physically present in South Africa, as follows:
 - for more than 91 days in the current tax year;
 - more than 91 days in each of the five (5) preceding tax years; **and**
 - for more than 915 days over those five (5) preceding tax years.
 - Only after all three requirements have been met, will the natural person be considered to be tax resident, from the commencement of the 6th tax year.
- Any person who is exclusively tax resident of another tax jurisdiction for purposes of the application of any agreement entered into between the governments of South Africa and that country for the avoidance of double taxation, i.e., a double taxation agreement (DTA), will not be regarded as a South African tax resident.
- The South African residence tests must be applied annually.

How to Declare Change in Tax Residence

- Prior to the 2017 tax year, taxpayers were not required to report their current or change in tax residence status to SARS in their Individual Annual Income Tax Return (ITR12).

- From the 2017 tax year, taxpayers have been required to indicate their tax residence status on the ITR12, but not the date on which it changed.
- Recent changes were made to the ITR12 for the 2020/2021 tax year and taxpayers can now indicate the date on which they ceased to be a tax resident of South Africa. SARS has indicated that these returns will be referred for manual intervention by SARS upon submission. SARS will request supporting documents from the taxpayer to support the declaration made.
- Alternatively, taxpayers can inform SARS of a change in their South African tax residence status by submitting the “Declaration of Cease to be a Tax Resident” to a dedicated SARS mailbox. When the declaration is made via email, the declaration form must be submitted together with the relevant supporting documentation. Taxpayers may wish to make the declaration via email in situations when they previously informed SARS that they ceased to be a tax resident and would like confirmation from SARS, **or** if they did not inform SARS that they ceased to be tax resident in a prior tax year and would like to place this on record with SARS.

All taxpayers are required to comply with the new requirements imposed by SARS. This will require taxpayers to now prove that they ceased their South African tax residence status. The “Declaration of ceasing to be a tax resident” can now be declined by SARS if one of the following conditions apply:

- The taxpayer does not meet the criteria for ceasing to be tax resident; or
- The taxpayer cannot provide SARS with the relevant materials or the correct relevant materials as requested.

What Documentation Should Be Provided?

Standard Requirements (To Be Submitted with All Declarations)

- The signed declaration indicating the basis on which the taxpayer qualifies.
- A letter of motivation setting out the facts and circumstances in detail to support the disclosure that the taxpayer has ceased to be a tax resident.
- A copy of the taxpayer’s passport/travel diary.

Additional Specific Requirements

In addition to the standard requirements, SARS has published lists of specific additional information to be provided to SARS, to indicate the basis on which the taxpayer ceased to be a tax resident. These requirements differ, based on which type of residence a person currently holds (ordinarily resident or PPT resident), and taking into account the basis on which residence is being broken (whether a DTA is being relied upon or not).

KPMG NOTE

- Taxpayers will need to assess whether they qualify as breaking tax residence or not – this assessment needs to be done taking all facts and circumstances into account, and in most cases, with reference to their tax residence position in the other country.
- Taxpayers will need to complete the declaration form and the letter of motivation for an individual taxpayer and/or family unit setting out the facts and circumstances in detail to support the disclosure that the individual has ceased to be a tax resident as well as collation of the relevant supporting documentation. This can be

submitted by way of the taxpayer's ITR12 or via the SARS mailbox in situations where a taxpayer previously informed SARS that he or she ceased to be a tax resident and would like confirmation from SARS, or if the taxpayer did not inform SARS that he or she ceased to be tax resident in a prior tax year and would like to place this on record with SARS.

- Taxpayers may need assistance with the TCR01 Tax Clearance application to SARS for emigration for an individual or family unit. When a family unit will be emigrating, in certain circumstances a TCR01 will be required by both spouses and will need to be submitted with the relevant supporting documents for each individual.
 - Taxpayers may also need assistance with a Voluntary Disclosure Programme (VDP) Application to SARS when an incorrect disclosure in relation to a taxpayer's tax residence was made previously, which resulted in a tax default (e.g., underpaid capital gains tax in the year of breaking residence) and taxes due to SARS.
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FOOTNOTES:

- 1 SARS [Cease to be a Resident](#).
- 2 SARS Interpretation Note 3.
- 3 SARS Interpretation Note 4.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in South Africa:



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