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FINANCIAL EMIGRATION – THE NON-RESIDENT TAX RESIDENCY SAGA IN SOUTH AFRICA

Non-resident South Africans will have to face a changing tax structure come March 2020. Those living abroad may be forced to consider thinking about their tax residency and structuring their tax affairs accordingly. Confusion has arisen around the difference between financial emigration and becoming a non-resident for tax purposes. Many expats assume that either one, both or neither apply to them. Therefore, it is important to understand the difference.

In terms of having to be regarded as a non-resident for tax purposes, the individual's tax residency will change based on a conscious decision to change his/her ordinary country of residence but may also change based on the application of the rules of the Double Taxation Agreements between South Africa and another country.

The day before the individual makes a decision to be regarded as a non-resident for tax purposes, the individual is deemed to dispose of their worldwide assets at market value. This in turn triggers capital gains tax (also known as exit tax) that must be disclosed to SARS with the corresponding tax liability.

Should your tax residency be South Africa, you are required to declare your foreign earnings to the South African Revenue Services (SARS) and pay income tax on your worldwide income. As part of the disclosure to SARS, one would disclose the foreign tax paid in the foreign jurisdiction and you will receive the benefit of this tax paid. If your tax residency (by means of foreign emigration application) is assigned to an overseas country, you are declared a non-resident and only income that is sourced in South Africa will be taxed by SARS.

Financial emigration is the process of making a formal application with the South African Reserve Bank (SARB) in terms of exchange control regulations to become a non-resident of South Africa. This will not affect your South African citizenship and you will remain a South African citizen and can return to South Africa to live and work whenever you desire. This process further does not affect your ability to own property or assets in South Africa.

As part of your financial emigration, you are not required to transfer proceeds from disposal of assets, annuities, pension or provident funds to your overseas tax residency bank account. However, should you choose to do so, funds may be transferred using your foreign investment allowance. (R1million discretionary and up to R10 million with a foreign tax clearance application). The ever-changing and ongoing tax treatments may differ significantly between assets and so it is important to have correct tax advice before making any decisions.

Financial emigration does not exempt a person from paying tax in South Africa. One would still need to make submission to SARS on South African sourced based income.

Before considering the advantages and disadvantages of the financial emigration process, the main decision would be to determine whether you will be returning to South Africa on a permanent basis or not. As one is aware, intentions change all the time, so the intention must be at the time of deciding whether to proceed with the financial emigration process.

Advantages of financial emigration

- South Africa does not have Double Taxation Agreements (DTA's) signed with all countries and therefore these DTA's will only apply to expats living/working abroad. South African's whom have financial emigrated will not pay expatriate tax on income earned abroad and thus will have no effect on your South African tax liability.
- The process of financial emigration ensures that you are fully tax compliant and SARS has reviewed and confirmed your tax residency which cannot be amended by SARS later on with the same facts presented. You are however able to reverse this process without an adverse impact that SARS may tax you on those years you had been financially emigrated.
- A rare opportunity presents itself in that your retirement annuities can be obtained, transferred or left in South Africa without any early encashment tax penalties.

Disadvantages of financial emigration

- The status of your bank accounts held in your personal capacity will change from a resident account to a non-resident account. Also commonly known as a "blocked account" or "capital" account.
- You would not be permitted to hold any credit facilities in South Africa and thus these facilities would need to be settled before the financial emigration process is started.
- Once the financial emigration process is completed, expats must ensure they do not fall foul of the physical presence test entrenched in South African tax law.
- Financial emigration is not a simple process and may take up to 6(six) months to finalise but there are several complexities to be aware of in advance of taking any decisions to financially emigrate.

Please feel free to contact our offices on 011-479-9000 or hashilh@boake.co.za should you require assistance.

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