



EXPATRIATE TAX SERVICES

COMPREHENSIVE TAX
COMPLIANCE SOLUTIONS
FOR SOUTH AFRICANS ABROAD

tax CONSULTING
south africa

TAX COMPLIANCE
DTA LEGAL ASSISTANCE
FINANCIAL EMIGRATION

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TAX COMPLIANCE

SA EXPATRIATES: CHECK YOUR TAX AFFAIRS

Due to the mass amount of misinformation regarding South African expatriate tax laws, many South Africans are finding themselves in deep waters with SARS. This having happened after receiving false information from either tax practitioners or even SARS officials themselves.

COMMON MISCONCEPTIONS

A large majority of expats claim that their tax affairs in South Africa are in order and there is no need for concern.

However, on further inspection it quickly becomes obvious that this is untrue as their tax submissions are in fact incorrect. Which if not corrected could lead to serious implications legally and at SARS.

This is due to many expats believing that once they leave SA they are no longer required to file returns or do not need to declare their foreign income. Thus, many expats have been, incorrectly, only filling returns showing South African sourced income or zero returns.

This is not the case, if you are a South African working abroad you are legally required to submit tax returns to SARS every year and declare foreign earnings and then claim an exemption on the foreign earnings under section 10(1)(0) ii, should you meet the requirements thereof.

IMPLICATIONS THEREOF

As of June 2017, South Africa committed to join the Common Reporting Standard (CRS) this was created in an effort to combat tax evasion.

This means that all your global earnings are now being shared with SARS from various banks and financial institutions globally.

Therefore should SARS now cross references what they are receiving from the CRS with your tax returns, and the two do not align, it will be seen as a legal offence and there will be grave repercussions.

We provide the following expatriate tax services to ensure your tax returns are fully compliant and in line with South African Expat tax requirements from SARS.



24-hour turnaround time.



Over 100 professionals at your command, including Tax Attorneys and CA's.



Applying sound tax strategy for complex tax returns to achieve full compliance and maximise tax saving.



Assisting with SARS objections.



Extensive knowledge of expatriate tax law; making us the preferred provider for South Africans working abroad.



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We have extensive knowledge of expatriate tax law; making us the preferred provider for South Africans working abroad.

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PROTECTING YOUR FOREIGN INCOME FROM SOUTH AFRICAN TAX

South African expatriates should not only understand the new expatriate tax law, which endangers their foreign income, but should also act if they want to avoid its dire consequences.

The amendment to the Income Tax Act has been fully enacted and forms part of the Taxation Laws Amendment Bill of 2017. Despite this, many South African expatriates are under the false impression that the law has not been formally amended and will thus not affect them. The new law states:

“

There shall be exempt from normal tax – any form of remuneration – to the extent to which that remuneration does not exceed R1.25 million in respect of a year of assessment and is received by or accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic.

”

The amendment requires South African tax residents abroad to pay South African tax of up to 45% of their foreign employment income where it exceeds the threshold of R1.25 million.

Although the R1.25 million threshold may seem generous, employment income includes allowances and fringe benefits paid to expatriates that cannot be considered as “earnings”.

The provision of housing, security and flights, among other things, are often part of the packages offered to South Africans to induce them to work in foreign locations. These benefits can quickly add up to the R1.25 million threshold, particularly in the expensive countries in which expatriates often live.

When it comes to expatriate options, there are effectively two schools of thought, excluding the “head in the sand” approach. These options are based on the intention of the South African expatriate to remain abroad permanently or temporarily.

FINANCIAL EMIGRATION

Financial Emigration is best fit for a South African tax resident working or living abroad with a permanent intention not to return to South African in the near future or indefinitely.

DOUBLE TAXATION AGREEMENT

Applying a Double Taxation Agreement (DTA) best fits South African tax residents that are abroad for a limited duration to work and will be returning to South Africa in the near future.

The amended South African tax law is now in full effect as of 1 March 2020. Where you have international economic interests, your income may potentially be subject to tax both in South Africa as well as in the foreign country, resulting in double taxation. As the co-authors of LexisNexis' Expatriate Tax textbook, the first of its kind in South Africa, we have presented on the impact of the expat tax law change around the world.

A common misconception we see among South African expats is that they believe they are “automatically tax-exempt” just because there is a double taxation treaty in place between the two countries. This is completely wrong and there are various factors that need to be considered, and objectively proven, and you are still required by law to file a tax return and “claim” exemption under treaty relief.

To correctly apply treaty relief on your foreign earned income, you will need to consider which country will actually have the right to tax your income. This is achieved through a measured approach, known as the tie-breaker test, and takes into consideration various factors such as if you have a tax residency certificate, where you have a permanent home, where your centre of vital interests are, i.e. where your family and economic ties are, as well as where your habitual abode is, to name a few.

Our team of astute tax attorneys are well equipped to assist you through the process to ensure your taxing rights do not fall within South Africa.



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We have many years of experience across a number of different fields allowing us to offer expert advice across the board, while maintaining high levels of service excellence.

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WHAT'S BEST? - FINANCIAL EMIGRATION VS DOUBLE TAXATION AGREEMENT

There is so much misinformation flying around the South African expatriate community at the moment. Service providers perpetuate this using scare tactics and promoting what will benefit them and their bottom line over what is best for expats at large. First of all, there can never be a one size fits all approach. Financial Emigration ("FE") requires certain criteria to be met before one can undergo the process.

Likewise, using a Double Taxation Agreement ("DTA") will only be suitable for certain individuals. Before going into the advantages and disadvantages of both, it must be noted that South Africans abroad whatever their decision should absolutely get to know the tax law that currently affects them and will affect them more now that it is in full effect as of 1 March 2020.

FINANCIAL EMIGRATION ADVANTAGES

Undergoing this process is arguably the simplest, cleanest and most compliant way of ceasing tax residency in South Africa. It is a formal process through the South African Revenue Service and the South African Reserve Bank, which has been endorsed as the "right" way to go about it by the South African parliament. Before going into the advantages of the FE process, the main requirement to be able to undergo this process is to have a permanent intention that you will not be returning to South Africa on a permanent basis. Intentions change all the time, so the intention must merely be this when deciding to proceed with FE. The advantages of FE are:

- Ensures that your taxes are fully compliant, and that SARS makes a decision on your tax residency status which cannot later be reversed on the same facts by SARS itself. This means that once you have financially emigrated SARS cannot then change its mind and start raising taxes on your foreign income.

You, however, have all the power and can come back to South Africa and reverse this process yourself without the adverse impact of worrying that SARS may attempt to tax you on those years you had financially emigrated.

- Another very important point to note is that you are able to **backdate your financial emigration**, under certain circumstances, to the date you actually left South Africa. Often South Africans have been abroad for many years without formalising their emigration, and being able to backdate FE can be extremely useful in lowering any capital gains tax liability that could arise. Once the FE process has been completed, South African expatriate tax law on your income earned abroad no longer has any effect on you and thus creates no South African tax liability on your foreign income whatsoever.

- FE also provides the rare opportunity to **encash your retirement annuity** without any early encashment penalties. Thus, you are able to obtain those funds and transfer them abroad, or if you prefer you can leave such policies as they are in South Africa.

- In terms of the cost of Financial Emigration, this is inexpensive relative to the potential tax saving come March 2020 and compared to that of applying a DTA."

— FINANCIAL EMIGRATION DISADVANTAGES

- Unlike the advantages of FE, the disadvantages are far and few between. The first is that of your bank account that you may hold in South Africa – it changes status from a resident account to a non-resident account, also commonly known as a “blocked asset” or “capital” account.

The other names for this account often alarm people into thinking that the bank freezes/blocks the account and you are unable to transact. This is a fallacy as the account is fully functional except for a hurdle, which is easily overcome. This hurdle is that the account no longer allows for internet banking transactions, this is done for security reasons and thus makes the account one of the safest accounts to be transacting with. Although safe, expats generally rely on being able to transact online.

This is not as big an issue as one might think. Once your account is changed into a non-resident account, you are assigned a relationship manager which works very much like that of a personal banker. You are able to choose the method of corresponding with this person, which generally is telephonically or by email – of course this will take some getting used to, but it does work and with some ease. Having your own private banker can make this even easier, but is definitely not a requirement. You are able to still have all your debit orders and make payments as you please, it just all goes through the relationship manager.

- Another disadvantage is that you are no longer permitted to hold a credit card in South Africa, or have personal loans (a mortgage bond and vehicle finance is allowed). Thus, these will need to be settled before the FE process.
- Lastly, once the FE process is completed, expats must ensure they do not fall foul of the physical presence test, which is entrenched in South African tax law. Thus, expats must limit their time in South Africa to less than 91 days a year to ensure they do not become tax residents of South Africa once again. This is not really a disadvantage as if you were spending so much time in South Africa it would be logical and fair to be paying taxes in South Africa.

+ DTA ADVANTAGES

Undergoing this process is somewhat more complicated than FE and is generally used for those expats who are on short term work contracts and intend to return to South Africa within a few years.

- Firstly, South Africa does not have DTA's with all countries, so this will only apply to an expat that is living/working in a country that has concluded such an agreement with South Africa. Fortunately, many countries, especially the main South African expat destinations, do have DTA's with South Africa.
- DTA's are also a less permanent solution, meaning that a person working abroad can apply the DTA and be **fully exempt from paying taxes in South Africa** on their foreign income and will not have to reverse any formal process if they do return to South Africa.

The advantage of applying a DTA is that you **do not need to undergo any formal process in South Africa**, it leaves an expat with the opportunity to make decisions on a whim as long as the expat ensures that it still fulfils the requirements of the DTA to be a non-tax resident in South Africa.

If you have not financially emigrated, and SARS comes knocking, the DTA may be your saving grace in holding off SARS from taxing your foreign income. Ensuring that you comply with the DTA, if you choose this route, is of utmost importance if you want it to protect you.

- DTA DISADVANTAGES

- Applying a DTA to your situation is a **yearly process**, which means that every year you will need to "convince" SARS that you are a non-tax resident of South Africa in terms of the specific and relevant DTA. This is a disadvantage because it can become an administrative nightmare and having to prove to SARS you are non-resident on a yearly basis may be a battle.
- DTA's are specific on the requirements one needs to meet to be considered a tax resident of a country other than South Africa. You therefore need to ensure that you take careful notice of those requirements and ensure that you meet them year to year.
- Furthermore, to prove you fit the bill in terms of a DTA, SARS often **requires a tax residency certificate** to be submitted to them from the country you are paying taxes in. This may seem simple enough, however this is often not the case.

Often South African's abroad fall in a grey area being arguably tax resident in both South Africa and the country they have emigrated to, which the DTA attempts to make the final decision on. However, falling into this grey area means that it could make it far more complicated to prove to SARS that you are a non-tax resident of South Africa.

For instance, in the UAE, obtaining such a certificate can mean taking two full days of your time to go through the process, or finding a service provider that will do this for you, and there can also be very stringent requirements in a country to obtain such a certificate.

DTA's being a less permanent solution are also therefore a riskier solution. Nothing is final when dealing with DTA's due to the yearly nature of the proof you need to provide. However, a way to solidify this is by obtaining a legal tax opinion confirming your non-residency in terms of the DTA. Having such a document protects you from SARS and can be used to support your non-residency year to year.

Even more worrying is that certain countries don't have a formal process in place to obtain or even supply such a certificate. In certain countries service providers are charging a hefty fee and you will need to obtain this certificate every year. Thus, the costs in the long run could be far higher than that of financial emigration.

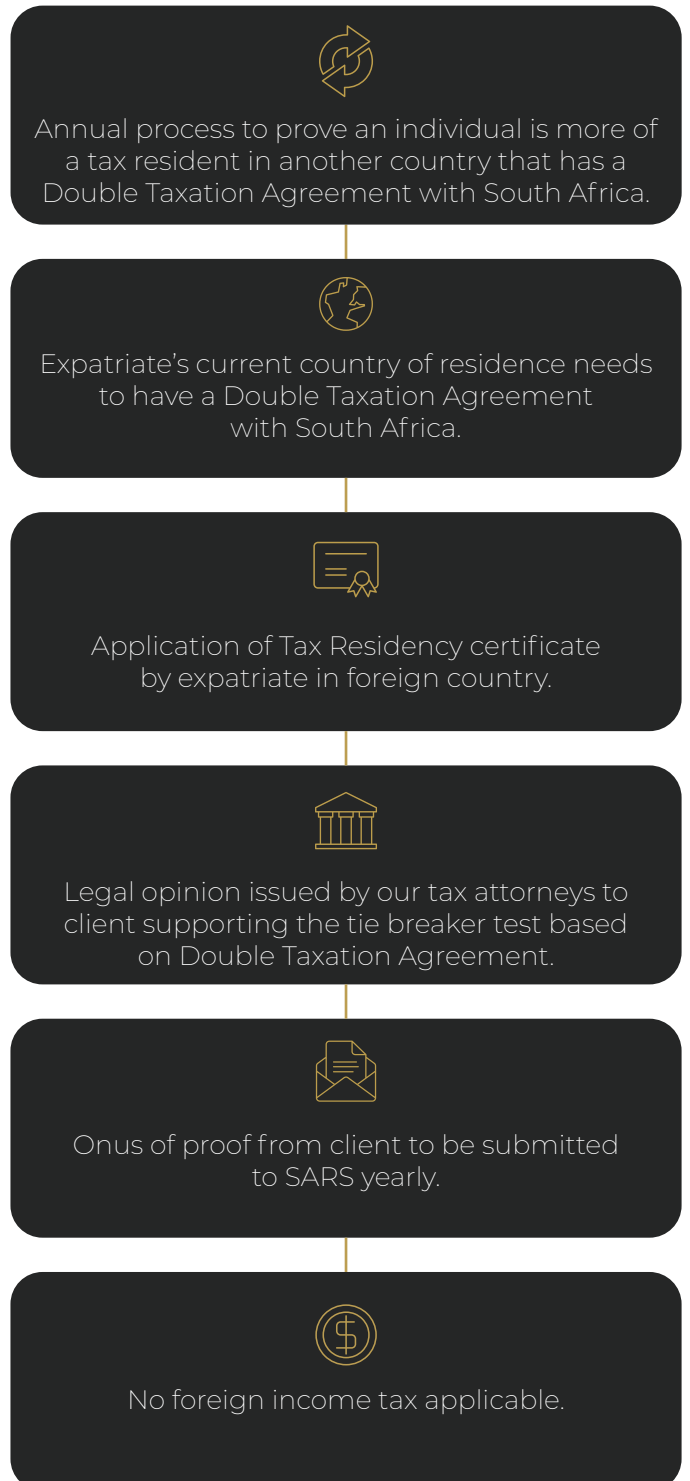
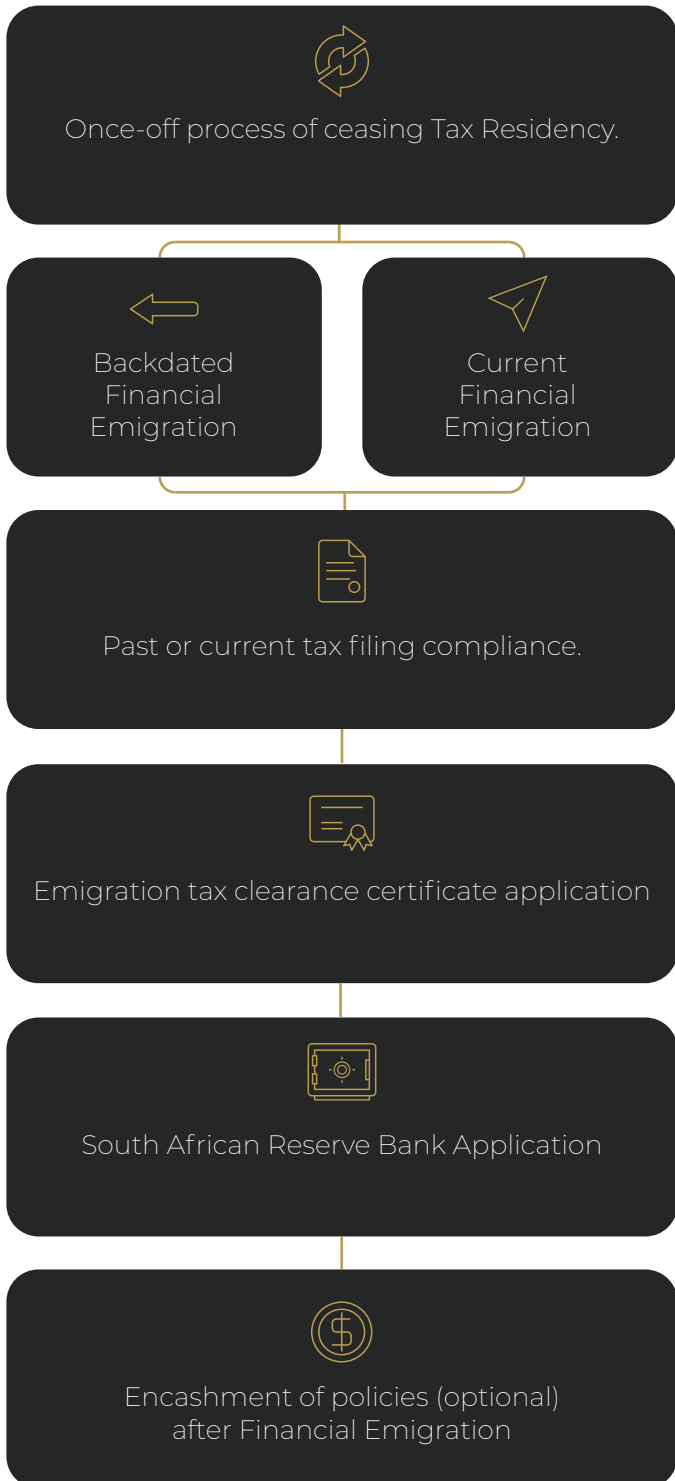
FINANCIAL EMIGRATION

VS

DOUBLE TAXATION AGREEMENT

Financial Emigration Assistance for South Africans employed permanently abroad.

Double Taxation Agreement application and legal assistance for South Africans temporarily abroad.



OUR TEAM



CLAUDIA AIRES
HEAD OF EXPATRIATE TAX SERVICES



JONTY LEON
LEGAL MANAGER - EXPATRIATE TAX SERVICES



LOVEMORE NDLOVU
SARS AND SOUTH AFRICAN RESERVE BANK SPECIALIST



MELANIE BROWNE
FINANCIAL EMIGRATION PROCESS SPECIALIST



NICOLAS BOTHA
FINANCIAL EMIGRATION & TAX DIAGNOSTIC SPECIALIST



ROGER AIRES
FINANCIAL EMIGRATION ASSISTANT



THABANG MAEKANA
FINANCIAL EMIGRATION & APOSTILLING SPECIALIST



MANDINE JEFFERY
ADMIN ASSISTANT



REABETSWE MOLOI
ATTORNEY



ALEX MAHUNDLA
FINANCIAL EMIGRATION PROCESS ASSISTANT



KURHULA CHAUKE
TAX CONSULTANT



LOURE' BOSCH
ADMIN ASSISTANT / RECEPTIONIST



VICTORIA LANCEFIELD
EXPATRIATE TAX SPECIALIST

CONTACT US



CONTACT DETAILS

Telephone

Claudia: +27 82 332 4079
Jonty: +27 76 512 9108

E-mail

Claudia:
claudia@taxconsulting.co.za
claudia@financialemigration.co.za

Jonty:
jonty@taxconsulting.co.za
jonty@financialemigration.co.za

Postal

PO BOX 35046
Northcliff, 2115

Web

www.taxconsulting.co.za
www.financialemigration.co.za



PHYSICAL ADDRESS

Johannesburg (Head Office)

Wrigley Field Building
The Campus
57 Sloane Street
Bryanston
2021

George (Administration)

Beacon Place
First Floor
125 Meade street
George
6530