

CEASING SOUTH AFRICAN TAX RESIDENCY

Ordinary Residence - Pre-Consultation Guide

This guide provides a high-level overview of ceasing South African tax residency on the basis of ordinary residence and the matters we will discuss during your consultation. It is general information only and does not determine your tax residency status.

1. South African tax residency

South Africa generally taxes residents on worldwide income, subject to applicable exemptions and relief. A person who is not a South African tax resident is generally taxed only on certain South African-source income and certain South African assets.

For an individual who was previously ordinarily resident in South Africa, the key question is whether South Africa remains that person's real, settled or principal home.

2. What does "ordinarily resident" mean?

Ordinary residence is determined from the person's overall facts and circumstances. It is not decided by one factor in isolation.

It is not determined solely by citizenship, holding a South African passport, working abroad, the number of days spent outside South Africa, obtaining a foreign visa or residence permit, or becoming tax resident in another country.

3. When can ordinary residence cease?

A person may cease to be ordinarily resident where their circumstances show that South Africa is no longer their real or principal home. Intention is relevant, but it must be supported by the person's actual circumstances and conduct.

There is no single requirement or checklist that automatically produces a non-resident outcome. The circumstances need to be considered together.

4. What we will discuss in the consultation

The consultation is designed to understand your circumstances and assess whether they support cessation of South African tax residency on the ordinary residence basis. We will generally discuss:

- When and why [the reasons] you left South Africa;
- Where you currently live and work;
- Your personal, family and living arrangements;
- Your ongoing connections with South Africa;
- Your travel to and from South Africa; and
- Your longer-term intentions regarding South Africa and your current country of residence.

5. Determining the effective date

Where it is established that a person has ceased to be ordinarily resident, it is also necessary to determine the date on which South African tax residency ceased.

The effective date is important because it determines when the person's South African tax treatment changes. It is not necessarily the date the person first left South Africa, started foreign employment, obtained a foreign visa or became tax resident elsewhere.

6. Tax consequences

Ceasing South African tax residency can have important tax consequences. Depending on the circumstances, these may include:

- A change from taxation on worldwide income to taxation primarily on certain South African-source income;
- Capital gains tax consequences at the date residency ceases;
- Changes to the way future South African income tax returns are completed; and
- Continuing South African tax obligations in respect of certain South African income or assets.

A potential deemed disposal of certain assets for capital gains tax purposes is one of the matters that should be considered before the non-residency position is finalised.

7. SARS disclosure process

Where the facts support that South African tax residency has ceased, the change in residency status must be appropriately disclosed to SARS. The basis for the position should be supported by information and documentation relevant to the individual's circumstances.

The exact supporting information required differs from person to person. Following the consultation, we can advise on the appropriate process and the information required to support the submission.

8. What the consultation aims to establish

- Whether your circumstances support ceasing South African tax residency on the ordinary residence basis;
- The appropriate effective date, where applicable;
- Whether there are material South African tax consequences;
- Whether any historical South African tax compliance requires attention; and
- The recommended way forward with SARS.

IMPORTANT NOTE

Moving abroad does not automatically result in a person ceasing to be a South African tax resident. Likewise, retaining assets, investments or other connections with South Africa does not necessarily mean that a person remains tax resident. The position depends on the individual's overall facts and circumstances.

Professional SARS compliance support for South Africans living and working abroad.
Andrew van Schoor AGA(SA) | Certified Tax Practitioner - SAICA PR0117834
andrew@taxcellentconsulting.co.za | +27 (0) 81 779-2067