Emigration: Q&A with Diane Seccombe, National Head of Taxation at Mazars Academy

Is there a difference between “emigration” and “financial emigration”?

- The dictionary meaning of “emigration” is the act of leaving a resident country or place of residence with the intent to settle elsewhere (to permanently leave one country, and permanently reside in another country).
- “Emigration” is not defined in the Income Tax Act (ITA). The ITA focuses on the concept of tax residence as defined in the term “resident”.
- In the context of the ITA definition of “resident”, an emigration (dictionary definition) could be used as proof that a taxpayer is no longer tax resident in South Africa (SA) as they no longer consider SA their principal or main home and the taxpayer is no longer ordinarily resident in SA.
- “Financial emigration” is the process whereby taxpayers change their status with the South African Reserve Bank (SARB) from resident to non-resident. The process is conducted purely for exchange control purposes. In terms of the ITA definition of “resident”, financial emigration would be *a* factor that SARS would consider in deciding where a taxpayer is resident for tax purposes *along* with other subjective factors. Financial emigration is not required to break tax residence.

- **I’m considering emigrating – what are the tax implications that I need to take into account?**

  The tax implications will be determined by the all the assets owned when the taxpayer emigrates and thereby breaks tax residence. The tax implications of future income flows from SA assets must be considered in SA and the country to which the taxpayer emigrated.

If I'm planning to emigrate and I buy a property in another country, will I be taxed on the rental income while still living in SA?

- As long as the taxpayer is tax resident in SA, the net rental income (after the deduction of qualifying expenses) will be taxed along with other taxable income in SA. Should the qualifying expenses exceed the foreign rental, the foreign rental loss may not be set off against SA taxable income.

If I emigrate to another country, will I still have any tax liabilities in SA?

- Subject to a double taxation agreement, amounts that are regarded as being from a South African source may give rise to a South African tax liability or be subject to South African withholding taxes.

I'm close to retirement and I want to retire in another country. What will happen to my financial assets in SA – Retirement Annuity, preservation fund and discretionary investments (endowment and share portfolio)?

- When an individual leaves SA to retire in another country they will most likely at that time break tax residence. The tax consequences of a capital gain in respect of the share portfolio and any other qualifying assets (in and outside SA, excluding immovable property in SA) will have to be considered. In respect of a qualifying endowment there will be no tax consequences at the time of ceasing to be tax resident. Until 1 March 2021, the tax consequences of monies in a retirement annuity or preservation fund will be determined by a decision to financially emigrate and a consequent withdrawal of monies from the funds versus a decision to elect to retire from the relevant fund at a later date.

I want to emigrate now – I don't want to wait until retirement. What will happen to my retirement annuity fund savings and preservation fund?

- Until 1 March 2021, the tax consequences of monies in a retirement annuity or preservation fund will be determined by a decision to financially emigrate and a consequent withdrawal of monies from the funds. Although a financial emigration will allow the fund member to access all monies in the relevant fund, the income tax consequences are punitive. Proposals are in place to phase out financial emigration as of 1 March 2021.

What will happen after 1 March 2021, should the process of financial emigration be phased out?

The first draft of the proposals suggest that an individual will have to prove they have been non-resident for tax purposes for at least three consecutive years before they can access monies in a retirement annuity fund before they elect to retire, as financial emigration currently entitles the fund member to do. Importantly the proposals are currently in draft form and as a result are subject to further changes.

What happens if I receive an inheritance in SA, after I've emigrated?

- An inheritance can be transferred out of SA using the foreign investment allowance of R10 million by all recipients over the age of 18. The transfer process is administratively a lot easier if the recipient has financially emigrated as it is regarded as non-resident by the SARB.

I want to emigrate. I've already retired and my retirement money is in a living annuity / life annuity / or combination thereof. How will I receive a monthly income and how will I be taxed?

- Annuity income can be transferred out of SA for exchange control purposes once the after-tax annuity amounts have been paid into a South African bank account. The annuity income is mostly sourced in SA for tax purposes. Subject to double taxation agreement relief, PAYE will be withheld from the annuity payments by the payor.

What is double-taxation and how do I avoid this?

- Double taxation is when two tax jurisdictions (countries) both tax the same amount. Double taxation can be avoided by way of a double taxation agreement where applicable or by obtaining a tax rebate in one jurisdiction for the tax paid in the other jurisdiction. In terms of the Income Tax Act, section 6*quat* is used to obtain a rebate in SA for qualifying foreign taxes paid where relevant.

I'm concerned about growth in the SA markets. I want to move as much of my money as I can offshore. What are the tax implications if I don't emigrate?

If a taxpayer does not emigrate and they remain tax resident, the movement of monies will require the relevant annual tax and exchange control clearances depending on the nature of the income and the amount. The taxpayer will build up an asset base offshore. The tax consequences of these assets will need to be considered should the taxpayer later break tax residence or at date of death. The income flows from these assets must be disclosed in SA for tax purposes and the relevant double taxation relief considered.