BUSINESS LAW & TAX

TAXING FUTURE

Packing for Perth can be a taxing matter

People who want to emigrate often make the mistake of putting Sars on the back burner

Mohammed Mayet
Tax Partner at PKF Octagon

The challenges of a looming economic recession in the UK, raging wildfires in Portugal, a freezing Canadian winter and a politically divided US may be reason enough to press pause on emigration decisions for some.

Many SA taxpayers also tend to return.

However, many South Africans contemplating the big step despite these global risks are simply becoming fed up with the local perils of load-shedding, increasing water outages, violence, political instability and a dwindling rand. For others, it is the allure of a higher salary or more exciting job opportunities and career growth.

But when you are planning or deciding to move abroad for whatever reason, it is critical to consider the hidden complications of emigrating that are not always spoken about.

Recent tax legislative changes in SA have made it more complex on the one hand to get the stamp of approval from the SA Revenue Service (Sars) and the Reserve Bank while, on the other hand, also offering guidance on what steps must to be taken to enjoy a seamless journey onwards.

Mohammed Mayet.

It is often forgotten that SA itself hosts the largest number of immigrants on the African continent. According to official estimates, the country is home to about 2.9-million immigrants, mainly from Africa and Asia. That is one side of the story, but new job opportunities and those simply looking for greener pastures are still leading to high rates of departures. Estimates are that 611,500 white South Africans have left the country over the past 35 years, though recent numbers show fewer left in 2021 than expected, with Covid-19 a likely reason.

When the decision is made to go, however, prospective emigrants often prioritise the sale or renting of their homes, sale of assets such as cars and finding good schools, jobs or business opportunities abroad while leaving their tax affairs on the back burner. This could lead to unpleasant surprises down the line, such as being liable for taxes you were not even aware of or having difficulty with conducting your everyday financial and business affairs offshore.

What is clear is that emigration needs to be managed to avoid pitfalls of entering new and unknown territory. Prospective emigrants should invest in getting their tax affairs straightened out for this reason. In the early planning stages of leaving home soil, consider the following:

- If you remain a tax resident of SA, you will need to declare your income to Sars and make sure you get the benefit of SA's double taxation treaties with certain countries;
- If circumstances demand that you change your tax residency to your new home, you will have to apply for tax clearance from Sars and pay an exit tax charge on leaving home soil;
- SA introduced an exit tax in 2021 which implies emigrants can no longer leave the country to establish themselves abroad without paying a potentially handsome sum of capital gains tax on their worldwide immovable assets.

> NOT EVERYONE HAS A GRIP OF THEIR TAX MATTERS, WITH WORK, FAMILY AND OTHER INTERESTS COMPETING FOR THEIR TIME

Think about the fact that recent changes to the local tax laws mean emigrants won't be able to immediately access their retirement funds to set up a business or buy a property abroad.

Unknown to some, it is not always ideal to move your tax residency when you emigrate or work abroad. When someone ceases to be an SA tax resident, it comes with risks due to the fact that SA has a residency-based tax system. This has specific tax consequences for the assets of the taxpayer in SA and potentially also overseas.

The residence-based tax system means residents are, subject to certain exclusions, taxed on their worldwide income, irrespective of where their income was earned. By contrast, nonresidents are taxed on their income from an SA source. Since tax systems differ from country to country, there is a chance that a particular amount could be taxed twice. This possibility of double taxation is, however, often alleviated by tax relief contained in various double taxation agreements (DTAs).

Standard financial emigration (now no longer possible after recent tax changes on March 1 2021) would include ceasing to be a tax resident in SA and taking up tax residency in a new jurisdiction. It was essentially the way in which someone ensured they moved and then aligned their funds with the tax jurisdiction.

Remember Sars will also conduct residency tests, such as the societies you intend belonging to, and consider true intentions. You will need an emigration tax clearance certificate after proving your nonresidency status. You then have the new exit taxes mentioned above and retirement fund access will be restricted for a period of three years. This would mean you can only get your hands on your money after three years. It is envisaged that the implementation date will be postponed from March 1 2023 to March 1 2024.

In some cases it would be preferable to retain tax residency in SA while still achieving all your offshore goals, for instance through dual citizenship or investment, or intracompany transfers. The key is to ensure that a clear plan is in place so that your goals are achieved. This is still possible as long as a clear understanding of the tax consequences is achieved and all options to achieve the best outcomes explored.

It is critical to also know the relevant provisions of any double tax treaty which may apply.

Not everyone constantly has a firm grip of their tax matters, with work, family and other interests competing for their time. For some, tax is furthest from the mind when they are going through big life changes. But if you fall into this category, you may have to change your habits as not having tax clearance or an updated tax status could limit your activities in your new land.

It is important to distinguish between tax residency and financial emigration. While tax residency determines where you are liable to pay tax, financial emigration implies that you move all your money and investments overseas to effectively hedge your finances against the volatile rand.

Financial emigration is a challenging exercise and it requires a good amount of administration as well as technical and legal knowhow to achieve. Prospective emigrants often contact cross-border tax specialists to help make this a smooth journey.

Ins and outs of two-pot retirement savings

Mohammed Mayet
PKF Octagon

The recent medium-term budget policy statement provided some important updates on the tax treatment of retirement funds.

National Treasury and the SA Revenue Service (Sars) have introduced a two-pot system as far as accessing retirement funds is concerned. This will be enhanced by a third pot. All registered retirement funds in SA will have to amend and get their fund rules approved by March 1 2024.

In summary the three-pot system entails:

- Savings pot;
- Withdrawal from the savings pot;
- Retirement savings and money in the vested pot, which will remain off limits until retirement.

Taking public comments into account, Treasury proposes to clarify and amend the draft bill on broader policy issues as follows:

- Members must contribute one-third to the savings pot and do not have the ability to contribute less.
- The 12-month period in which one withdrawal will be allowed will be a rolling 12 months.
- The minimum withdrawal amount of R2,000 per rolling 12-month period is a gross amount.

PUBLIC SECTOR

Members exiting a fund with less than R2,000 in the savings pot will be allowed to withdraw that sum or request for it to be transferred into their retirement pot.

The R165,000 de minimis rule will apply on a cumulative basis to amounts that are subject to annuitisation, ie full withdrawal is possible if the total of (i) two-thirds of the vested pot value; and (ii) value in the retirement pot is less than R165,000.

There will be more consultation with the public sector defined-benefit funds stakeholders to explore how the new regime will affect these funds and their members, given that members' benefits are based on a defined formula without reference to contributions and investment performance.

Section 37D of the Pension Funds Act (relating to deductions for pension-backed housing loans, divorce settlements, etc) will have to be amended to cater for the two-pot system and to provide that such deductions must be made from the vested and retirement pots.

The two-pot system will be mandatory for all retirement funds, though Treasury is still considering a request to exempt certain legacy retirement annuity funds.

> THE 12-MONTH PERIOD IN WHICH ONE WITHDRAWAL WILL BE ALLOWED WILL BE A ROLLING 12 MONTHS

The scope and nature of charges levied on transfers from another fund and fund values will be clarified, as the draft bill provided for costs to be deducted from contributions, and fund values arising from transfers from another fund have no contributions by members.

In the event of a member's retrenchment, the government will allow limited income-based withdrawals, subject to conditions, from the retirement pot.