

Countdown to enforcement of amended SA expat tax law

By [Claudia Aires Apicella](#)

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The announcement by National Treasury and Sars in 2017 that the tax exemption on South African expatriates is set to change, has resulted in the lifestyle of many South Africans, who are employed by companies abroad, to rapidly change from a South African tax liability point of view.



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The legislative amendment, which will come into effect on 1 March 2020, states that South African tax residents abroad will be required to pay tax to South Africa of up to 45% of their foreign employment income, where it exceeds the R1m threshold.

With the commencement of the new law fast approaching, Sars has begun prosecuting taxpayers that are non-compliant and, in some cases, has the option to imprison the offender up to a period of two years.

This is in terms of the Tax Administration Act and with the help of the now fully active Common Reporting Standard (CRS).

Sars amendments already implemented in preparation of the foreign income tax law change come March 2020 are as follows:

- Sars Interpretation Note 16 (Issue 2) – released February 2017 – Section 10(1)(o) test
- Sars Interpretation Note 3 (Issue 3) – released 20 June 2018 - Ordinarily Resident test
- Sars Interpretation Note 4 (Issue 5) – released 03 August 2017 – Physical Presence

Sars concerned about expatriate non-compliance

National Treasury and Sars has put forward in Parliament, that researched numbers on expatriate tax submissions revealed that the majority of South African passport holders and permanent residents have simply left without formalising their affairs with Sars or the South African Reserve Bank.

This has prompted not only a law change, but also a stated Sars tax audit focus on those expatriates who have left and

simply decided to ignore their taxes.

While some did not consider it necessary to submit tax returns in South Africa, others submitted zero tax returns to Sars.

In some cases, individuals even indicated that they were unemployed on their tax returns while earning expatriate salaries.

While many expatriates hope that Sars will drag their feet, the 2017/18 South African tax return already included targeted questions dealing with expatriate tax status.

The questions may appear innocent enough, but we have seen this trigger an automatic verification or audit process. Where the question is marked false, this is a criminal offense, thus creating an even more serious problem.



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No more hidden offshore accounts

Sars has committed itself to complete its implementation of the Organisation for Economic Corporation and Development's (OECD) Common Reporting Standard (CRS) by end of December 2017.

This means there will no longer be offshore hidden money, as the world has followed the United States' lead in forcing disclosure by financial institutions of any account owned, or otherwise connected to, South African residents or citizens.

SA citizens or residents who do offshore banking will be reported to Sars, this will be an audit trigger where your Sars profile is not correct.

The solution

To avoid criminal prosecution, South Africans working abroad can opt for financial emigration, this is a formal process with the South African Reserve Bank (SARB) to change one's tax status from "resident" to "non-resident".

Financial emigration provides legal certainty on non-residency status for tax and exchange control purposes, as well as holding certain financial planning benefits such as the one of the few ways of cashing out your retirement annuity.

When one emigrates financially they cease to be a South African tax resident and will not be liable to pay any South African tax on their worldwide income.

They will however be required to declare any South African sourced income which may be taxable, such as rental income.

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