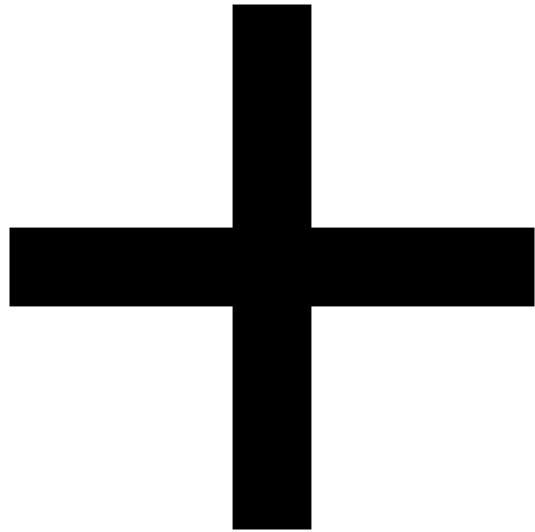


#RiPFinancialEmigration



is good to hear. The opinion about FE from MR. van Zyl is well known in his numerous posts on linkden and in the media(his claim of being the lone voice is however not many other service providers also have such similar opinions). The point in DTA is well taken especially for those in UAE - however the fact that the DTA's can easily be changed within a relatively short notice period is concerning to say the least.

2h Like Reply



#RIPFinancialEmigration



hugo van zyl

*cross-border tax
planning & consulting*

CA(SA) TEP MTP(SA)

Mobile: +27 82 55 44 831

Cape Town: +27 21 813 9775

London: +44 20 8133 3417

USA: +1 818 924 5001

Website: www.hugovanzyl.com | www.taxmigration.com

Skype: [hugo.van.zyl](https://www.skype.com/people/hugo.van.zyl)

Twitter: [@wegkaner](https://twitter.com/wegkaner)

hugo van zyl

*cross-border tax
planning & consulting*

#RIPFinancialEmigration

Email:

taxmigration@taxforum.co.za

taxforum@iafrica.com

Remit funds abroad availing to FCA:

www.currencyassist.com/capetown

Webpage:

www.taxmigration.com

Online diary and fee quote:

www.Calendly.com/taxforum

And if your client wish to do Formal Emigration

https://currencyassist.formstack.com/forms/hugo_client_info



IMPORTANT FACTS TO CONSIDER

SARS

1. Tax migrate to escape the ambit of IN16(2)
2. Pay the section 9H exit tax or ensure you show to SARS why there is no exit tax
3. Withholding tax
 - a. S35A CGT withholding tax on property sales
 - b. Interest from non-banks
 - c. DWT –apply treaty rate no longer 20%

SARB

- Foreign earned income
 - Use correct BOP Inward Code
- Loop
 - May not create or be the instance behind a loop[
 - Using a foreign trust created for your benefit or from the foreign earned income, is a loop
 - SA companies may enter into loop – max 40%
- SA Excon resident employer's foreign employees?
 - There is a PROBLEM!



◀ 2020 ▶ BUDGET

BUDGET SPEECH



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



2020

Budget Speech

Check against delivery

Tito Titus Mboweni

Minister of Finance

26 February 2020

In 2019, South Africa signed the African Continental Free Trade Agreement, which comes into effect on 1 July 2020. This agreement will open up new markets, promote regional integration and contribute to economic growth. Today we announce complementary measures to make it easier to do cross-border financial transactions, which will support trade and investment.

We want to encourage South Africans abroad to keep their ties with the country. We will raise the exempt amount for foreign remuneration to R1.25 million. We will phase out the administratively burdensome process of emigration through the South Africa Reserve Bank.



RULES ON FOREIGN INCOME

- If you tax non-resident, only declare SA sourced and deemed SA source income to SARS
 - You must first ask: In a DTA or Treaty country?
- Not need to do formal emigration or financial (sic) emigration as it became known
- **If YES in treaty county - do the tie-breaker test**
- **If NO – sit down, take a deep breath and budget for expensive advice**
- It follows that to break or escape from the Expat Tax capped exemption one has to
 - be tax non-resident; of
 - If tax resident, taxpayers can escape Expat Tax Capped Exemption; if
 - You can claim treaty protections
 - **Crew onboard international ship or aircraft (UAE)**
 - Avail to other rules i.e. crew on board a passage ship
 - Not subject to R1.25m cap



TRUTHS & FICTION ABOUT FORMAL EMIGRATION

1. Formal Emigration is not mentioned in the SA ITA or SARB
 - It's formal emigration as per SARB
 - SARB will now terminate this process
2. SARB FinSurv definitions
 - Emigrant
 - means a South African Excon resident who is leaving or has left South Africa
 - to take up **permanent residence** or has been granted permanent residence in any country outside the CMA.
 - Blocked account now Emigrant capital account
 - means the account of an emigrant from the CMA,
 - which account holds the emigrant's remaining South African assets to which Formal Surveillance Department restrictions have been applied – so called blocked assets
 - **FE results in you being Excon non-resident yet SA ITA has its own test as per previous slide**



Cut ties?
TEC?
Own emphasis?
Lies, lies and more sales talk?

...ter from
- you will su
... as a non-resid

...s://lnkd.in/gDMsyY8

“Therefore, if one **financially emigrates** (taking into consideration the tax residency tests) that would then indicate that the taxpayer ceased to be a tax resident. We consider this matter closed now.”

Regards
The FEI Team

ESA

SARS ON FORMAL EMIGRATION

What is the impact of financial emigration on tax residence?

- ✓ Acquiring approval from the South African Reserve Bank **to emigrate from a financial perspective is not connected to an individual's tax residence.**
 - ✓ Financial emigration is merely one factor that may be taken into account to determine whether or not an individual broke his or her tax residence.
 - ✓ *An individual's tax residence is not automatically broken when he or she financially emigrates.*
 - ✓ The deciding factor remains whether or not an individual breaks his or her ordinary residence.

[Source: SARS FEIE page Sept 2019](#)

**Treaty
rules?
SARS
missing
some facts?**

SARS ON TAX MIGRATION

Breaking tax residence [#taxmigration]

- The determination of whether an individual breaks his or her tax residence is a factual enquiry on whether or not that person ceases to be ordinarily resident in South Africa.
 - An individual, who is resident by virtue of the physical presence test, ceases to be a resident when that person is physically outside the Republic for a continuous period of at least 330 full days.
- A deemed disposal for capital gains tax purposes takes place at the time when an individual breaks his or her tax residence.
- The individual will be deemed to dispose of his or her worldwide assets, excluding immovable property situated in South Africa.
- [Source: SARS FEIE page Sept 2019](#)

DTA –UAE BREAK FOR CREW/PILOTS



- Notwithstanding the preceding provisions of this Article,
- Remuneration
 - derived in respect of an employment e
 - exercised by a SA tax resident aboard a ship or aircraft
 - operated in international traffic by an enterprise of the UAE
 - shall be taxable only in the UAE

UAE/RSA & HK/RSA DTA Article 14 Clause 3

- Why was pilots made to formally emigrate?
 - Time for a class action for inappropriate advice without alluding crew to this option?



On ITR12 – claim the benefit – don't be silent
Use the option "Exempt income"
Other exempt Income
Exclusively taxed in treaty country

#RIPFinancialEmigration

Resident

- As defined in section 1 of the IT Act

Includes:

- Any natural person who is ordinarily resident in South Africa; **or**
- Any natural person who complies with the physical presence test; **and**
- Any person (other than a natural person) which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa, **but:**

Excludes:

- **Any person who is deemed to be exclusively a resident of another country**
 - for purposes of the application of any agreement entered into between the government of South Africa and that other country for the avoidance of double taxation.

Section 1(1)

... resident ...

The SA Income Tax Act defines a resident. If a person is not a resident as defined, he or she will be a 'person other than a resident'. **[non-resident]**

In the Income Tax Act, unless the context otherwise indicates 'resident' means any (a) natural person who is:

ordinarily resident in the Republic;

or not at any time during the relevant year of assessment ordinarily resident in the Republic,

if that person was physically present in the Republic for a period or periods exceeding 91 or 915 days

- 330 exit rules, only applies to the physically present taxpayer

but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation

If there is a treaty country involved, one must then read the double tax agreement as it often amends and overrides the domestic law

- UAE treaty does not refer to a person paying tax on sourced income only

#RIPFinancialEmigration



Under the proposed new system, natural persons (emigrants and South African private individuals) will be treated identically, subject to capital flow management measures.

The aim is to level the playing field between South African private individuals and emigrants, subject to tax obligations being met.

Individuals who transfer more than R10 million offshore will be subjected to a more stringent verification process. Such transfers will also trigger a risk management test that will include certification of tax status and the source of funds, and assurance that the individual complies with anti-money laundering and counter-financing of terror requirements prescribed in the Financial Intelligence Centre Act, 2001.

Under the proposed new system, natural persons (emigrants and South African private individuals) will be treated identically, subject to capital flow management measures.

The aim is to level the playing field between South African private individuals and emigrants, subject to tax obligations being met.

#RIPFinancialEmigration

Tax and exchange control treatment of individuals

Following reforms to the income tax treatment of South African tax residents who receive remuneration outside the country, government proposes to remove the exchange control treatment for individuals, while strengthening the tax treatment. The intention is to allow individuals who work abroad more flexibility, provided funds are legitimately sourced and the individual is in good standing with the South African Revenue Service. Individuals who transfer more than R10 million offshore will be subjected to a more stringent verification process. Such transfers will also trigger a risk management test that will include certification of tax status and the source of funds, and assurance that the individual complies with anti-money laundering and countering terror financing requirements prescribed in the Financial Intelligence Centre Act (2001). This will be phased in by 1 March 2021.

#RIPFinancialEmigration

Under the new system, natural person emigrants and natural person residents will be treated identically. Additional restrictions on emigrants – such as the restrictions on emigrants being allowed to invest, and the requirement to only operate blocked accounts, have bank accounts and borrow in South Africa – have been repealed. The concept of emigration as recognised by the Reserve Bank will be phased out, to be replaced by a verification process based on the requirements above. Tax residency for individuals will continue to be determined by the ordinarily resident and physically present tests as set out in the Income Tax Act (1962). Under existing international standards, South Africa participates in the automatic sharing of information between tax authorities on individuals' financial accounts and investments. These cooperative practices will remain in place to ensure that South African tax residents who have offshore income and investments pay the appropriate level of tax.

#RIPFinancialEmigration



Unclaimed benefits

Retirement funds and the Guardian's Fund are sometimes unable to trace beneficiaries, resulting in the money remaining unclaimed. The money is invested in government bonds and other instruments. These investments are being considered in the mobilisation of funding for infrastructure. Government will introduce legislation later this year to centralise such funds and establish a central registry of all members of retirement funds.

Retirement fund reform

Government and the National Economic Development and Labour Council have agreed to proceed with retirement reform related to the harmonisation of all retirement benefits, including provident funds. Government will take steps to ensure the development of annuity products more suitable for the low-income market. Further reforms will include improving oversight and governance of commercial umbrella funds, fund consolidation and auto-enrolment.

THE MISCONCEPTION

There is a perception that a person 'ceases to be a resident' if he or she works in a foreign country or once Formal emigration was done

That's ~~Not~~ not true!

What is true is that just about everyone ignores the double tax agreements when the resident status of the taxpayer is an issue.

Malta vs UK vs UAE

Judge Allie in Income Tax Case 14218 said:

“... the respondent himself (that is of course SARS) pleaded that the appellant (the taxpayer) was a United States national and tax resident, yet it failed to have regard to the provisions of the DTA which clearly establish the appellant as being exclusively resident in the United States ...”

THE MISCONCEPTION

- What is true is that just about everyone ignores the double tax agreements when the resident status of the taxpayer is an issue. **Malta** DTA requires a taxpayer must be paying tax on worldwide basis i.e. investor visa holders does not always qualify as Malta tax resident which results in the treaty benefits being denied
- **MALTA PR: can formally emigrate but can't be deemed tax resident**

Paragraph 1 of Article 4 of the Agreement shall be deleted and replaced by the following paragraph:

- “1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of that person’s domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.”

THE MISCONCEPTION

What is true is that just about everyone ignores the double tax agreements when the resident status of the taxpayer is an issue. **UAE** DTA requires a taxpayer must be paying tax on worldwide basis i.e. investor visa holders does not always qualify as Malta tax resident which results in the treaty benefits being denied

**UAE: Normally can't formally emigrate; CAN tax emigrate from SA
Tax Domiciled Certificate will be issued by UAE**

www.mof.gov.ae/en - Entry/Exit report, Ejari & EID – deemed tax domiciled (TDC issued)

- (b) in the United Arab Emirates:
 - (i) any individual who, under the laws of the United Arab Emirates is considered a resident thereof by reason of that individual's domicile, residence, place of management or any other criterion of a similar nature;

#TPG on DTA rules

preventing the repeal?

- **5 years vs Forever**
 - DTA guarantee vs. FE undertaking
 - No failed status nor any penalties
 - SA has no history of cancelling DTA's
 - FE MP 336(b) undertaking
 - Consequence
 - **Failed Emigrant**
 - Tax resident in the country you will return to at the end of all your journeys
 - TPG is a tax exempt PBO
 - Not registered as tax practitioner
 - Front for proponent of FE?
 - for what reason?

NO ADMIN WILL NOT DELETE IT AS IT
contravenes non of the group rules
😊. Also nice that finally the efforts
of TPG in preventing the repeal of
article 10 is acknowledged by a
CA. Also admitting that "tax
migration" is a buzz word/sales pitch
is good to hear. The opinion about FE
from MR. van Zyl is well known in his
numerous posts on linkden and in
the media(his claim of being the
lone voice is however not many other
service providers also have such
similar opinions). The point in DTA is
well taken especially for those in UAE
- however the fact that the DTA's can
easily be changed within a relatively
short notice period is concerning to

Where is the “repeal” legislation ?

It is a change to quantum of the exemption

15. Does the change to section 10(1)(o)(ii) result in a new “expat tax” being levied?

No, there is no new “expat tax” introduced. The only effect of the change relating to section 10(1)(o)(ii) is that the exemption is limited to R1 million. If the R1 million is exceeded, such excess is subject to normal tax according to a taxpayer’s marginal rate of tax.

DTA – SOUTH AFRICA AND UAE

- UAE law: "Resident Person" in the United Arab Emirates means:
 - An Individual:
 - a) Any United Arab Emirates National **or**
 - b) An individual who is a resident in United Arab Emirates with:
 - i. a valid Emirates ID **and**
 - ii. a valid Residency Visa.
- This Agreement shall remain in force indefinitely but either of the Contracting States **may terminate this Agreement**, through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting **five years** after the year in which this Agreement entered into force **2023**

Must be working
not just property
owner





UAE TRC REQUIREMENTS

APPLICATION FEES OF CIRCA AED 2,000 + AED 3 THROUGH THE E-DIRHAM CARD

1. Valid Passport which includes an UAE Residence Visa currently valid and valid for the application period;
2. Certified tenancy contract for property in the UAE (duly stamped by the property regulator) for the application period, in your name;
3. Certified bank account statements in your name from a local UAE bank account, for a period of 6 months or the application period;
4. A valid source of income certificate/salary certificate issued by an UAE employer covering the application period; and
5. Emirate ID & GDRF Report (entry exit report)
 - An Immigration Report of Residency demonstrating that you have spent at least 180 days of the application period in the U.A.E.



TAX RESIDENT IN BOTH COUNTRIES

Where an individual is a resident of **both SA and the UAE** then that individual's status shall be determined as follows:

- deemed to be a resident only of the State in which **a permanent home** is available; then
- deemed to be a resident only of the State with which the individual's personal and economic relations are closer (**centre of vital interests**);
- deemed to be a resident only of the State in which the individual has an **habitual abode**;
- if the individual has an habitual abode in both – deemed the State of which the individual is **a national**;
- if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by **mutual agreement**.

TAX RESIDENT IN BOTH COUNTRIES

UAE WON THE TIE-BREAKER

WHAT NOW?

CEASE TO BE TAX RESIDENT

[TAX EMIGRATE #TAXMIGRATION]

EXIT tax is the consequence

THE SEQUENCE IS:

Tax emigration – an outcome

Exit Tax – the consequence

FE – an option



Notify SARS either using RAV in the year you exit
ITR12 iro exit year & PAY your s9H exit tax; or
VDP or FE process and pay exit tax + penalties + interest

#RIPFinancialEmigration use RAV

- Where the taxpayer is leaving the country and immigrate to another country, select “Code 4, Emigrant” under Taxpayer Classification to change the Income Tax registration status. Do not capture the passport number if the Identity number is entered.
- Capture the Date of Departure in the format “CCYYMMDD”

"Tax Type" Demographics		CEDEM01
Reference Number	<input type="text"/>	Product Status:XX
		Deactivate <input type="checkbox"/>
Income Tax Liability Details		LBLEDT01
Taxpayer Sub-Category	<input type="text"/>	Initial Year of Liability (CCYY) <input type="text"/>
Taxpayer Classification	<input type="text"/>	Date of Departure (CCYYMMDD) <input type="text"/>

Taxpayer Classification		Ok	Cancel
Taxpayer Type: Non Provisional		Category: Individual	
Sub Category		Classification	
Code	Description	Code	Description
1	NORMAL		
3	VISITING ARTIST		
4	EMIGRANT		
5	MINING		
2	PARLIAMENTARIAN		

The Bridge to Cross – EXIT TAX

- Section 9H – the tax exit charge
- #Expatriation vs. #ExitTax
 - Always vs. #Once Off
- Deemed disposal
 - Joe SA Tax Resident to Joe UAE Tax resident
 - The exit hurdle to tax utopia with no CGT and no death tax
- Excluded
 - SA immovable property that is not shares in Property Rich Entity
 - Included is the shares deemed to be Immovable Property
 - PE assets, personal assets & retirement funds
 - Included is foreign funds & 2nd hand policies



OVER THE BRIDGE RAINBOW

- Once tax non-resident
 - Source based tax – no #Tax2020 exposure
 - Donations tax
 - Estate Duty – no absolute certainty?
 - CGT on immovable property only
 - 80% unilateral rule yet some treaties has 50% value rule
 - SA Trust
 - Anti-avoidance rules
- Update SARS
 - RAV & ITR12
 - VDP or NoO



IN CONCLUSION:

You only need FE for RA encashments and loops for now, it will change soon!!

You probably should not have paid for financial emigration as a tax solution!

Does one have a claim against the FE promoters & advisers?



What is the true deadline date?

>R2.5m taxable foreign earned income = 31 August 2020

31 January 2021 = ITR12 for 2020 deadline

< R2.5m = 28 February 2021

R1.25m

32.	If I am employed and I earn more than R1-million remuneration, do I have a normal tax liability in South Africa? If so, how should my liability be settled?	If you are employed by a local employer, PAYE will be deducted from your remuneration in excess of R1 million. If you are employed by a foreign employer that has no representative employer in South Africa, no PAYE will be withheld from your remuneration in excess of R1 million. You will have to settle your tax liability by way of provisional tax in respect of all your taxable income. Refer to Interpretation Note 1: Provisional Tax Estimates (IN 1) for more details on provisional tax.
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hugo van zyl /

*cross-border tax
planning & consulting*

CA(SA) TEP MTP(SA)

Mobile: +27 82 55 44 831

Cape Town: +27 21 813 9775

London: +44 20 8133 3417

USA: +1 818 924 5001

Website: www.hugovanzyl.com | www.taxmigration.com

Skype: [hugo.van.zyl](https://www.skype.com/people/hugo.van.zyl)

Twitter: [@wegkaner](https://twitter.com/wegkaner)

taxforum@iafrica.com

THANK YOU

#RIPFinancialEmigration – the end is near!

Long lives DTA's & **#TaxMigration**