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Emigration and your clients' assets, what you need to know when they will move abroad.

There are many pitfalls when it comes to your clients' assets once they have emigrated. We look at what you need to know about South African exchange control law.

So, you have made the big decision to leave South Africa and cease your South African tax residency with SARS. You are probably wondering what happens now when it comes to the assets you wish to take with you and the ones you decide to leave behind.

The answer is not so straightforward and it's important to be aware of the different implications for your assets and the need to ensure that they are fully compliant with the different requirements.

Upon emigration, SARS does not always allow the remittance of all South African assets in the initial Emigration Tax compliance status (TCS), also previously known as a tax clearance certificate.

Once an individual has ceased tax residency, the treatment of the remittance of funds from South Africa is guided by the nature of the funds i.e., are they regarded as capital or income funds.

The source of the funds is also important and refers to the origin of the funds. For example, a property will be regarded as the source of funds, and it can generate both income and capital. The sale of the property is regarded as capital and the rental that it generates will be regarded as income.

Remittance of capital-related funds

Capital remittances are subject to exchange control allowances, namely a R1 million travel allowance in the same calendar year that an individual ceases to be tax resident, or a R10 million annual allowance per individual over 18 years.

Upon emigration and ceasing of tax residency in South Africa, SARS issues a TCS in respect of emigration, which may allow the individual to remit capital funds out of South Africa. As mentioned above, SARS does not always allow the remittance of all assets since not all assets are liquid. The assets that are left behind and not remitted as part of the initial clearance are called "emigrant remaining assets". Should you wish to remit the sale proceeds of any of these remaining assets, you will need to provide the authorised dealer with another TCS from SARS in respect of the foreign investment allowance.

Cashing out of retirement and pension products is only allowed to be carried out by authorised dealers if the individual has remained a non-tax resident for at least three consecutive years.

Other than cash remittances, the Reserve Bank also allows for the externalization of listed and unlisted shares in lieu of the R10 million foreign capital allowance. This means that once an individual has ceased tax residency, the local shares they hold may be classified as a non-resident asset and the proceeds at sale will be freely remittable offshore, with no requirement to obtain another TCS from SARS or any Reserve bank approvals. The dividends from those shares may also flow directly offshore.

For example, if an individual externalizes local shares upon emigration that are valued at R1 000 and these shares grow to a value of R5 million when they are eventually sold, the proceeds may be remitted offshore without the requirement of a TCS. Due diligence must be followed, however, to make sure the valuation is accurate.

The Reserve Bank has also introduced a dispensation that allows a private individual who has ceased South African tax residency and has a total remaining cash balance not exceeding R100 000, to remit the funds abroad, on a once-off basis, without reference to SARS.

Remittance of income-related funds

Any income generated from your clients' remaining assets once they have emigrated are freely remittable offshore, with the requirement that the authorised dealer verifies their tax compliancy once a year via the TCS of "good standing". Examples of income are property rentals, income dividends, annuities from policies, interest earned on cash or loan accounts, salaries earned in South Africa from an unrelated party and income distributions from trusts.

The remittance of income is not subject to allowances as is the case with capital. However, income distributions from South African inter vivos trusts of over R10 million require a TCS in respect of the foreign investment allowance and a further application to the Reserve Bank for approval.

For example, if you receive a R20 million income dividend from shares that you hold in your personal capacity, those funds are remittable with an annual verification of a TCS in respect of good standing, whereas if you receive a R20 million income distribution from a trust which emanates from a dividend, you would have to go through a stringent SARS process to obtain a TCS in respect of the foreign investment allowance, while Reserve Bank approval will also be required.

Remittance of inheritance

Inheritance received in South Africa is freely remittable abroad, provided the estate of the resident has been finalized. There is no requirement for you to provide a TCS from SARS, irrespective of the amount being received.

However, the scenario is a bit different if you are not registered on the SARS database any longer. If this is the case, you will be allowed to remit the inheritance proceeds if the value received is under R10million. If the inheritance amount is over R10 million, you will have to apply for a manual letter of compliance – transfer of funds from SARS.

The manual letter of compliance can only be used if you are no longer registered on the SARS database and wish to remit:

- an inheritance or life insurance policy (excluding lump sum benefits from pension preservation, provident preservation, retirement annuity funds and annuities from insurers) above the value of R10 million; or
- a distribution from a South African trust as a beneficiary, irrespective of the amount.

While the above processes can be complex, if you work closely with your financial advisor and your business, you can avoid any nasty surprises when it comes to accessing your assets after emigration.