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Page: 21

FINANCIAL EMIGRATION

# Wanted: tax-saving route

## READER QUESTION: WILL I BE LIABLE FOR COMPANY CAPITAL GAINS TAX?

### What happens if I buy property in Mauritius?

I fully own Company A, which owns shares in Company B. Company B went through a funding round and I'm selling some shares belonging to Company A. I've paid capital gains tax (CGT) on the share sale from company A (22.4%). If I financially emigrate to Mauritius by purchasing a property, am I still liable for CGT for my Company A shares? If so, is there a tax-saving route to financial emigration?

**Brenthurst Wealth Managing Director Brian Butchart answers:**
Financial or formal emigration means an SA resident decides they'll no longer be resident in SA and intends leaving the country permanently, mainly to access and transfer all SA funds and assets abroad.

**TAX TENTACLES. Sars' physical presence test is based on the amount of time a person spends in SA during the year of assessment (tax year) and the preceding tax years.** Picture: Shutterstock

### One foot out of the door

Financial or formal emigration may also be to alleviate potential tax liability of SA tax residents who work abroad, earn over R1 million a year and have no intention of returning to SA (Income Tax Act amendment, effective March 1, 2020).

As to the ordinarily resident definition, Sars' Interpretation Note 3, issued June 2018 states: "Generally, if a natural person emigrates from the Republic to another country, that person ceases to be a resident of the Republic from the date that person emigrates."

The physical presence test is thus applied in the following tax year, to determine if they're still a resident for tax purposes. If they're absent from SA for 330 days over the two tax years, they're no longer an SA tax resident. The effective date is the date of emigration.

From that date, worldwide income is no longer subject to income tax in SA – only income from an SA source is still subject to tax here – subject to provisions of any double taxation agreement between SA and the new country.

### CGT liability

When SA resident taxpayers become non-resident for tax purposes (but don't meet ordinarily resident/physical presence tests) they may become liable for CGT. For anyone approved as a non-resident, the Act treats the move as a deemed disposal of all assets.

When someone's no longer a tax resident, it's deemed that all assets are disposed of the day before residency ceases. It's treated as if those assets are disposed of at market value on that day, then bought again at market value.

Whether the asset's physically sold or not is irrelevant, as a deemed sale for the calculation of capital gains is assumed on the date of emigration.

The only exception is immovable property, which won't be included in the deemed disposal provision, as non-residents are still liable for CGT when selling property anyway.

Therefore, if you're buying property in Mauritius for Mauritian residency and your intention is to officially emigrate and make Mauritius your new tax residence, you'll be liable for CGT on all discretionary assets in SA except immovable property – including shares in Company A.

Considering the CGT implications, it's a good idea to calculate the total estimated capital gain across all discretionary assets and/or any tax liabilities of any retirement assets, if you'll withdraw these from SA.

Before making any final decisions, consult a tax specialist.

– *Moneyweb*