What is best? – Financial Emigration or Double Taxation Agreement

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When it comes to choosing financial emigration (FE) or a Double Taxation Agreement (DTA), expatriates must understand that there can never be a one size fits all approach. FE requires certain criteria to be met before one can undergo the process, while a DTA will only be suitable for certain individuals. Unfortunately, there is a lot of misinformation circulating in the South African expatriate community, perpetuated by service providers using scare tactics and promoting that which will benefit them over what is best for expats at large.

Therefore, it is cardinal that South Africans abroad, whatever their decision, should thoroughly get to know the tax law that currently affects them and will affect them more so once the tax law amendment becomes effective on 1 March 2020.

Advantages of Financial Emigration

• This process is arguably the simplest, cleanest and most compliant way of ceasing tax residency in South Africa. It is a formal process through the South African Revenue Service and the South African Reserve Bank.

• The main requirement is to have a permanent intention that you will not be returning to South Africa on a permanent basis. • It ensures that your taxes are fully compliant, and that SARS decides on your tax residency status which they cannot later reverse. You can come back to South Africa and reverse this process yourself without worrying that SARS may attempt to tax you on those years you had been financially emigrated.

Disadvantages of Financial Emigration

• Your South African bank account changes status from a resident account to a non-resident account, also commonly known as a “blocked asset” or “capital” account. This account is fully functional except that it no longer allows for internet banking transactions. This is done for security reasons and thus makes the account one of the safest accounts to be transacting with. Although safe, expats generally rely on being able to transact online.

• You are no longer permitted to hold a credit card in South Africa or have personal loans. Thus, these will need to be settled before the FE process.

• Once the FE process is completed, expats must ensure they do not fall foul of the physical presence test, which is entrenched in South African tax law. Thus, expats must limit their time in South Africa to less than 91 days a year to ensure they do not become tax residents of South Africa once again.

Advantages Double Taxation Agreement

• South Africa does not have DTA’s with all countries, so this will only apply to an expat that is living/working in a country that has concluded such an agreement with South Africa.

• You do not need to undergo any formal process in South Africa, it leaves an expat with the opportunity to make decisions on a whim if the expat ensures that it still fulfils the requirements of the DTA to be a non-tax resident in South Africa.

• DTA’s are also a less permanent solution, meaning that a person working abroad can apply for it and be fully exempt from paying taxes in South Africa on their foreign income. They will also not have to reverse any formal process if they do return to South Africa.

Disadvantages Double Taxation Agreement

• Applying for a DTA is a yearly process, which can become an administrative nightmare. • To prove you fit the bill in terms of a DTA, SARS often requires a tax residency certificate from the country you are paying taxes in. This may seem simple, however this is often not the case. For instance, in the UAE, obtaining such a certificate can mean taking two full days of your time to go through the process.

• Being a less permanent solution, DTA's are also therefore a riskier solution. Nothing is final when dealing with DTA's due to the yearly nature of the proof you need to provide. However, a way to solidify this is by obtaining a legal tax opinion confirming your non-residency in terms of the DTA.

What Is Best?

Each client is different, and their specific circumstances must be considered when choosing the best legal avenue to go down. Everyone will firstly need to see if they fit the requirements of the options available, and if they do, they will need to weigh up the pros and cons of each.

Either way, you can be protected, the new expatriate tax law does not have to be the straw that breaks the camel's back.