Are you resident in South Africa for tax purposes

CHANG OF TAX SYSTEM The income tax system in South Africa changed from a source-based system of taxation to a residents-based basis of taxation with effect from years of assessment commencing on or after 1 January 2001.

The effect of this change in the tax system is that South African residents are but for certain exclusion and exemptions subject to income tax on a very world-wide income that is income derived within and outside South Africa.

Non-resident individuals will remain taxable on their South African actual or deemed source income. The normal source principles as determined and developed by our courts continue to be applicable and can therefore not be ignored.

WHEN ARE YOU RESIDENT IN SOUTH AFRICA FOR THE PURPOSE OF INCOME TAX?

Possibility of becoming a resident Two separate tests are applicable to determine whether or not a person is a resident of South Africa i.e. the ordinarily resident test and physical presence test.

Ordinarily resident test This is usually the first test to determine whether the individual is a resident of South Africa. The main aspect in this regard is to determine if a persons permanent home to which he/she will normally return is in South Africa. If so the individual will be a resident. (For more information regarding the concept of ordinarily resident see Interpretation Note 3 available on the SARS website.)

Physical presence test This test is time-based and is only applicable to an individual who has not been considered ordinary resident during the relevant year of assessment in
South Africa. It takes the form of a physical presence test. The physical presence test must be done annually in order to determine whether the individual concerned is a resident for the year of assessment under consideration. The test consists of three requirements i.e. the person must be physically present in South Africa for a period or periods exceeding 91 days in aggregate during the year of assessment under consideration; 91 days in aggregate during each of the three years of assessment preceding the year of assessment under consideration; and 549 days in aggregate during the three preceding years of assessment. In terms of the physical presence test a natural person who is not ordinarily resident in South Africa only becomes a South African resident for tax purposes in the fourth year of assessment if he/she is physically present in South Africa for the periods as set out above.

A natural person has to meet all three requirements before he/she becomes a resident of South Africa for tax purposes. Thus if one answers to any one of the above questions is no then for tax purposes one does not have a physical presence in South Africa. If however one has answered yes to all the other questions then one is deemed to be physically present during the 2002 tax year in the South Africa.

Thus resident foreigners are automatically taxed on their world-wide income. This is the reason for much opposition to the new tax system in South Africa which will not only discourage higher income foreigners but will also encourage wealthy South Africans to emigrate to more tax friendly jurisdictions.

**DOUBLE TAX TREATIES** When confronted with a situation when one wonders whether one is resident in South Africa for tax purposes it is important to know that the provisions of double tax treaties between South Africa and other countries normally override the provisions of the Income Tax Act. Therefore one must always refer to double tax agreements in order to
establish the correct residence status of an individual and a corporation for that matter.