Part 2: Unpacking South African tax obligations for non-resident living annuitants

South African legislation specifically prohibits the transfer of living annuities to other financial service providers abroad. Therefore, South Africans who permanently leave the country and cease to be resident taxpayers could find themselves liable for tax on income earned from living annuities registered in South Africa. In part 2 of our four-part Offshore advice chapter, Ebrahim Southgate, senior Tax specialist, unpacks some of the key tax considerations for non-resident living annuitants.

As discussed in part 1 of our chapter, there are tax implications when you leave South Africa permanently, and it is important that you inform the South African Revenue Service (SARS) and get your tax affairs in order. If you fail to inform SARS of your change in tax status, you may be taxed incorrectly. Non-residents are liable for tax on South African-sourced income. Below we explain why living annuities fall into this category and look at what you can do to make sure you are correctly taxed.

Why are non-residents subject to South African income tax?

An important distinction must be made between changing your tax residency, which is done through SARS, and changing your nationality or citizenship, which is done through the Department of Home Affairs. It is possible for an emigrant to have formally changed their nationality but still be considered a South African tax resident. Please refer to part 1 of this chapter to learn more about how to determine if you are a South African tax resident. As mentioned in part 1, South African tax residents are liable for tax in South Africa on *worldwide income*. Non-residents are only liable for tax in South Africa on what is considered *South African-sourced income*. This is important when it comes to understanding your tax liability as a living annuitant.

The "source" of income is driven by where the activities or combination of activities resulted in the income generation, not where it was received. The income-generating activity of a living annuity is the active management of the underlying portfolio. Therefore, the annuity income earned by non-residents on Allan Gray Living Annuity (AGLA) investments is considered South African-sourced income.

Can non-resident living annuitants apply for tax relief through a double taxation agreement?

Like South Africa, most countries impose tax on the worldwide income earned by a resident of that country as well as on income earned by non-residents on locally earned income. This inconsistency between residence and sourced-based tax can result in individuals being taxed twice on the same income. As discussed in part 1, double taxation agreements (DTAs) are agreements between the tax administrations of two countries that enable the administrations to eliminate or reduce this double taxation.

AGLA income earned by non-residents may be subject to tax in South Africa and their country of residence. To avoid this, you should apply for relief through a DTA directive from SARS. The extent of the tax relief depends on the specific DTA between South Africa and your country of residence.

Applying for and using a DTA directive

The DTA directive application process is described in detail on the SARS website. It requires an applicant to complete an "RST01" form that is submitted to SARS along with other required information. SARS is within its rights to reject an application if certain requirements of the application are not met.

Allan Gray, as the administrator of the fund, would need to receive your valid DTA directive prior to the annuity payment date in order to apply the reduced tax rate to your income. Effective 1 March 2023, a SARS DTA directive is valid for a period of three years.

Non-residents are still required to provide Allan Gray with a certificate of residence annually and confirm that their place of residence remains the same during the period for which the DTA directive is valid. If you change your residence to a tax jurisdiction other than the one for which the DTA directive was issued, the directive automatically becomes invalid from the date of the change.

Tax refunds

If you only provide Allan Gray with a valid DTA directive after you have received your annuity payments, or where you were unaware that you could apply for double tax relief and we have withheld tax at too high a rate, you may be eligible for a refund from SARS.

Are non-residents required to file a tax return with SARS?

Tax on annuity income is withheld by Allan Gray and paid over to SARS on behalf of living annuitants when the income is distributed. As Allan Gray does not have a full picture of your income, you may also be liable for additional tax when you submit your annual tax return. Tax submissions usually open from early July each year.

Non-residents may be exempt from filing a tax return with SARS if their living annuity is their only source of remuneration, their income from their living annuity does not exceed R500 000 for that year of assessment and their investment manager has correctly withheld employees' tax on their annuity payments.

Remember, Allan Gray is not privy to your personal tax records and therefore you will need to determine whether or not you are required to file a tax return. As discussed in part 1, we distribute tax certificates to all clients (where applicable), irrespective of their tax residency status.

South African estate duty implications for non-residents

Living annuities are not subject to South African estate duty on the annuitant's death regardless of whether the benefit was payable to the annuitant's estate or a nominated beneficiary. If the beneficiary is a non-resident and elects to have the policy paid out as a cash lump sum upon the death of the annuitant, the lump sum will be taxed in South Africa according to the retirement lump sum tax table. If the beneficiary does not opt for a lump sum, a new policy will be issued in the name of the beneficiary, and they will receive the annuity income from this policy. The tax implications of this annuity income in the hands of the new client would be the same as discussed above.

Consider getting advice

Navigating your tax obligations in South Africa can be a complicated and daunting task that is further exacerbated by not being physically present in the country. We recommend you enlist the services of a South African tax practitioner to act as your agent in the country and assist you in addressing complex matters such as determining your tax residence status, completing your tax returns and obtaining all necessary supporting information as required by SARS.

Commentary contributed by Ebrahim Southgate, Tax specialist, Allan Gray