

South Africa - Information on residency for tax purposes

Section I – Criteria for Individuals to be considered a tax resident

Under South African law a resident is defined by the Income Tax Act, 1962, as either an individual who meets the physical presence test or an individual who is ordinarily resident in South Africa under South African common law.

Ordinarily resident: A person will be considered to be ordinarily resident in South Africa, if South Africa is the country to which that person will naturally and as a matter of course return to after his or her wanderings. It could be described as that person's usual or principal residence, or his or her real home.

Any natural person who is not ordinarily resident (common law concept) in South Africa at any time during the year of assessment but meets all three requirements of the physical presence test, will be treated as being a resident.

To meet the requirements of the physical presence test that person must be physically present in South Africa for a period or periods exceeding –

- 91 days in total during the year of assessment under consideration, as well as
- 91 days in total during each of the five years of assessment preceding the year of assessment; and
- 915 days in total during those five preceding years of assessment.

An individual who fails to meet any one of these three requirements will not satisfy the physical presence test.

If the person is not ordinarily resident, does not meet the requirements of the physical presence test or is deemed to be exclusively a resident of another country under an agreement for the avoidance of double taxation, that person will be seen as a non-resident.

Where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident.

Section II – Criteria for Entities to be considered a tax resident

Under paragraph (b) of the definition of resident in section 1 of the Income Tax Act, 1962, “**resident**” means any person (other than an individual) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic, but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation.

The following two provisos apply:

Where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident:

In determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—

- (a) constitutes—
 - (i) a financial service as defined in section 1 of the Financial Advisory and Intermediary Services Act of 2002 (Act 37 of 2002); or
 - (ii) any service that is incidental to a financial service contemplated in subparagraph (i) where the incidental service is in respect of a financial product that is exempted from the provisions of that Act, as contemplated in section 1(2) of that Act; and

(b) is carried on by a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002, in terms of a licence issued to that financial service provider under section 8 of that Act.




Section III – Entity types that are as a rule not considered tax residents

In contrast with a trust, a partnership is not considered to be a person for income tax purposes and is treated as fiscally transparent.

Section IV – Contact point for further information

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