

New tax law doesn't put your passport at risk

By [Jonty Leon](#)

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The tax law amendment designed to compel expatriates to pay tax is going ahead, causing many citizens living abroad to consider the legal formalities of terminating their South African tax and exchange control residency.



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Under the new law, which will come into effect on 1 March 2020, the first R1m of foreign remuneration will be exempt from tax in South Africa if an individual is outside of the republic for more than 183 days, as well as for a continuous period of longer than 60 days during a 12-month period.

However, the exemption threshold should reduce the impact of the amendment for lower- to middle-class South African tax residents who earn remuneration abroad. The exemption also means it is unlikely that South African tax residents in high-income-tax countries will have to pay any additional top-up payments to the South African Revenue Service (Sars).

The financial emigration process does not impact South African citizenship status, as this is purely a compliance formality from a Sars and South African Reserve Bank perspective.

Passport status does not impact tax status

Sars is aware of the differences between laws falling under the Department of Home Affairs and the Income Tax Act, and released a statement noting that "...the change is not related to citizenship and should not lead to South Africans giving up their passports, as its application rests solely on tax residency. Individuals who give up their passports may find they are still tax resident in South Africa and may still be liable for South African tax."

Simply put, giving up your passport does not release you from your obligations to pay tax to Sars. Conversely, doing financial emigration which confirms you are not liable for tax on your world-wide income, does not impact your South African passport status.

When can you lose citizenship?

In terms of the South African Citizenship Act No. 88 of 1995 where a South African citizen makes an application to obtain citizenship of another country, once obtained, you automatically lose your South African citizenship. The question on many

expatriate's lips is how this is possible, when we know you are constitutionally guaranteed of South African citizenship by right of birth?

To give effect to your entrenched right, the Citizenship Act makes provision for "dual citizenship". Section 6(2) of this Act states: "Any person referred to in subsection (1) may, prior to his or her loss of South African citizenship in terms of this section, apply to the Minister to retain his or her South African citizenship, and the Minister may, if he or she deems it fit, order such retention."

This application must be done before you have obtained your second citizenship and, in our view, cannot be legally declined where application is correctly done.

Where you have missed this deadline, you have technically given up your South African passport. However, I have consulted with Marisa Jacobs, immigration specialist at Xpatweb, who has pointed out that the loss of South African citizenship is not always equally enforced.

There may be many South Africans who hold two citizenships and have never applied, neither had any issues with renewing their South African passport. Jacobs further mentioned that the prudent approach, where you have obtained a second citizenship, but have missed the opportunity to proactively apply for dual citizenship, is a special process which can be followed to get this still ratified with Home Affairs.

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