



SOUTH AFRICAN REVENUE SERVICE

INCOME TAX INTERPRETATION NOTE NO. 4

DATE: 4 FEBRUARY 2002

ACT : INCOME TAX ACT, 1962 (“the Act”)
SECTION : SECTION 1
SUBJECT : RESIDENT: DEFINITION IN RELATION TO A NATURAL PERSON – PHYSICAL PRESENCE TEST

1. Background

If a natural person is not ordinarily resident in the Republic of South Africa (“the Republic”), the physical presence test is applied to determine whether he/she is resident in the Republic for purposes of the Act.

This note focuses solely on the physical presence test. For more information on the concept of ordinarily residence, see Interpretation Note No. 3 dated 4 February 2002.

Where a natural person is resident both in the Republic and in a foreign country for income tax purposes, any agreement for the avoidance of double taxation that has been concluded with that country must be considered when determining the taxability of income in the Republic and that country.

It is also important to note that in a case where a natural person could be said to be a resident of more than one country, for example the Republic and another country, the tie breaker rules in the Agreement between the Republic and the other country must be applied to determine the country of residence.

2. The Law and Application

2.1 Time rule

The term “**resident**” is defined in section 1 of the Act. Paragraph (a)(ii) of this definition is only applicable to a natural person who was not ordinarily resident in the Republic at any time during the relevant year of assessment.

The physically present test, also known as the day test or time rule, is based on the number of days during which a natural person is physically present in the Republic. The purpose of the presence is irrelevant. A day is counted irrespective of the purpose or nature of the visit or presence in the Republic.

The application of the physical presence test must be done annually and consists of three requirements. These are that the person must be physically present in the Republic for a period or periods exceeding:

- i) 91 days in aggregate during the year of assessment under consideration;
- ii) 91 days in aggregate during each of the three years of assessment preceding the year of assessment under consideration; and
- iii) 549 days in aggregate during the three preceding years of assessment.

A natural person has to meet all three requirements before he/she becomes a resident (refer to the attached diagram). A natural person's year of assessment starts on 1 March and ends on the last day of February in the subsequent year.

It is important to note that a day includes a part of a day. [Refer to paragraph (A) of the proviso to the definition of “resident”.] Thus both the day of arrival and departure are included in the count. A day begins at 00:00. Therefore, a person who arrives in the Republic at

23:55 would be regarded to be present in the Republic for a full day. The effect of the definition is that a person who is not ordinarily resident in the Republic can, in terms of the physical presence test, only become a resident in the Republic in the fourth year of assessment after having been physically present in the Republic for the first time.

Please note: A natural person, who is ordinarily resident, spending time outside the Republic and has the intention of returning to the Republic as his/her permanent home, is regarded to be a resident, regardless of the period of time spent outside the Republic.

2.2 Date on which a natural person becomes a resident

A natural person, who became a resident by virtue of the physical presence test, will become a resident as from the first day of the year of assessment during which he/she met all three requirements referred to in paragraph 2.1 above. In these circumstances a natural person will be taxable in the Republic on worldwide income (i.e. income derived within and outside the Republic) received by or accrued to him/her (excluding certain income that is exempt) as from the first day of that year of assessment.

2.3 Date on which a natural person ceases to be a resident

A natural person, who is a resident by virtue of the physical presence test, ceases to be a resident if he/she is physically outside the Republic for a continuous period of at least 330 full days. The continuous period commences the day after the day on which he/she physically left the Republic. The person ceases to be a resident as from the day immediately after the day on which he/she left the Republic for a continuous period of at least 330 full days. [Refer to paragraph (B) of the proviso to the definition of “resident”.]

3. Further explanation of the definition of resident is illustrated by way of the following examples:

Example A

Ms. Z is a citizen of Argentina and employed by a South African company, who also has a branch in Argentina. She never visited the Republic before 29 June 1998 and is not ordinarily resident in the Republic. Ms. Z was physically present in the relevant countries for the following periods:

Year of assessment

1999:

01/03/1998 to 28/06/1998 in Argentina	[120 days]
29/06/1998 to 28/02/1999 in the Republic	[245 days]

2000:

01/03/1999 to 21/05/1999 in the Republic	[82 days]
22/05/1999 to 19/02/2000 in Argentina	[274 days]
20/02/2000 to 29/02/2000 in the Republic	[10 days]

2001:

01/03/2000 to 30/06/2000 in Argentina	[122 days]
01/07/2000 to 28/02/2001 in the Republic	[243 days]

2002:

01/03/2001 to 1/06/2001 in the Republic	[93 days]
02/06/2001 to 31/07/2001 in Argentina	[60 days]
01/08/2001 to 30/11/2001 in the Republic	[122 days]
01/12/2001 to 28/02/2002 in Argentina	[90 days]

2003:

01/03/2002 to 31/10/2002 in Argentina	[245 days]
01/11/2002 to 30/11/2002 in the Republic	[30 days]
01/12/2002 to 28/02/2003 in Argentina	[90 days]

- a) Determine whether Ms. Z is regarded as a resident in respect of the 2002 year of assessment (without taking into consideration the information regarding the 2003 year of assessment).
- b) Determine the date from which Ms. Z is regarded to be a resident.
- c) Determine the date from which Ms. Z is deemed to have ceased to be a resident.
- d) Determine whether Ms. Z is regarded as a resident in respect of the 2003 year of assessment.

Solution:

a) Determination of residence of Ms. Z in respect of the 2002 year of assessment

First requirement:

Number of days, in aggregate, physically present in the Republic during the current year of assessment.

$$2002 = 215 \text{ days} \quad [\text{more than } 91 \text{ days}]$$

Second requirement:

Number of days, in aggregate, physically present in the Republic during each of the three years of assessment preceding the current year of assessment.

$$1999 = 245 \text{ days} \quad [\text{more than } 91 \text{ days}]$$

$$2000 = 92 \text{ days} \quad [\text{more than } 91 \text{ days}]$$

$$2001 = 243 \text{ days} \quad [\text{more than } 91 \text{ days}]$$

Third requirement:

Number of days, in aggregate, physically present in the Republic during the three preceding years of assessment:

$$245 + 92 + 243 = 580 \text{ days} \quad [\text{more than } 549 \text{ days}]$$

As all three requirements have been met, Ms. Z is a resident of the Republic, notwithstanding the fact that she is not ordinarily resident in the Republic.

b) Determination of the date from which Ms. Z became a resident

Due to the physical presence test, she became a resident as from the first day of the 2002 year of assessment, that is from 1 March 2001 and is taxable on her worldwide income received or accrued (excluding certain income that is exempt) for the full year of assessment.

c) Determination of the date from which Ms. Z is deemed to have ceased to be a resident

Ms. Z is physically outside the Republic for a continuous period of 335 days (1 December 2001 to 31 October 2002) which is more than 330 full days. After the continuous period of 330 full days that she was physically outside the Republic, she is deemed not to be a resident from the beginning of the 330 day period, that is 1 December 2001, the day following the day of her departure.

If an assessment has been issued to include worldwide income for the full year, a revised assessment must be issued in order to exclude income, accrued on or after 1 December 2001, that is not from a source within or deemed to be within the Republic. The revised assessment can only be issued once proof of the actual period of physical absence has been obtained. Reduced assessments will also be subject to the three-year prescription period contained in section 102 of the Act. The 2002 assessment will therefore reflect the following —

- i) taxable worldwide income for the period 1 March 2001 to 30 November 2001 during which period she was a resident; and
- ii) taxable income from a source within or deemed to be within the Republic for the period 1 December 2001 to 28 February 2002

during which period she was not a resident. She ceased to be a resident on 1 December 2001.

d) Determination of residence of Ms. Z in respect of the 2003 year of assessment

First requirement:

Number of days, in aggregate, physically present in the Republic during the current year of assessment.

2003 = 30 days [less than 91 days]

Due to the fact that she was physically present in the Republic for less than 91 days during the 2003 year of assessment, she does not comply with the first test.

It is not necessary to consider the **second and third requirements**, as the first requirement was not met. She is therefore not a resident, in which case she is only liable for tax in the Republic on her taxable income from a source within or deemed to be within the Republic.

Example B:

Use the same information as in Example A, except for the 2003 year of assessment for which the information is as follows:

01/03/2002 to 31/10/2002 in Argentina	[245 days]
01/11/2002 to 28/02/2003 in the Republic	[120 days]

Solution:

Determination of residence of Ms. Z in respect of the 2003 year of assessment

First requirement:

Number of days, in aggregate, physically present in the Republic during the current year of assessment.

2003 = 120 days [more than 91 days]

Second requirement:

Number of days, in aggregate, physically present in the Republic during each of the three years of assessment, preceding the current year of assessment.

2000	=	92 days	[more than 91 days]
2001	=	243 days	[more than 91 days]
2002	=	215 days	[more than 91 days]

Third requirement:

Number of days, in aggregate, physically present in the Republic during the three preceding years of assessment:

$$92 + 243 + 215 = 550 \text{ days} \quad [\text{more than 549 days}]$$

As all three requirements are met Ms. Z is regarded to be a resident for the full year of assessment, i.e. from 1 March 2002 to 28 February 2003. She would, therefore, only have ceased to be a resident from 1 December 2001 to 28 February 2002.

PHYSICAL PRESENCE TEST

