

EXTERNAL GUIDE

TAX DIRECTIVE: EMIGRATION AND CESSATION OF VISAS

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1 PURPOSE

- The purpose of this guide is to provide basic information relating to the tax directive applications for emigration withdrawals and withdrawals due to the expiry of a visa.

2 SCOPE

- This guide is applicable to retirement fund lump sum withdrawal benefits payable from retirement annuity funds **before** the member's retirement. **From 1 March 2019 this guide is also applicable to retirement fund lump sum withdrawal benefits payable from preservation funds before the member's retirement date.**
- The target audience is:
 - Retirement annuity fund administrators;
 - Retirement annuity fund trustees;
 - Insurers,
 - **Preservation fund administrators, and**
 - **Preservation fund trustees.**

3 BACKGROUND

- Before 1 March 2008, retirement annuity fund members who had emigrated from the Republic and were no longer tax resident in SA, had to wait until they reached their retirement age in order to access their benefits.
- The definition of 'retirement annuity fund' in section 1(1) of the Income Tax Act No.58 of 1962, as amended ('the Act') was amended with effect from 1 March 2008, to allow a member who discontinues his/her contributions before his/her retirement date to be entitled to the payment of a lump sum benefit where that member emigrated from the Republic. Only members whose emigration was recognised by the South African Reserve Bank for purposes of exchange control could withdraw the discontinued contributions as a lump sum.
- With effect from 1 March 2016 the definition of 'retirement annuity fund' was amended to allow non-residents who were employed in South Africa on a contractual basis, for a certain period of time, and who contributed to a 'retirement annuity fund', to withdraw their lump sum benefit from a retirement annuity fund at the expiry of the various listed visas.
- The withdrawal of the discontinued contributions is regarded as a lump sum benefit as contemplated in paragraph 2(1)(b)(ii) of the Second Schedule to the Act and remains taxable as a withdrawal benefit.
- **The definitions of 'pension preservation fund' and 'provident preservation fund' were amended with effect from 1 March 2019 to allow members who have already made use of the once-off withdrawal prior to retirement, to withdraw the full benefit before reaching normal retirement age. Members of a preservation fund, who have emigrated from the Republic (and that emigration is recognised by the South African Reserve Bank for purposes of exchange control) or on expiry of a work or visitor's visa, can withdraw their benefit in a preservation fund.**
- Employees' tax reflected on the tax directive is determined on the taxable portion of the lump sum payable after the allowable deductions, in terms of the Second Schedule to the Act, have been taken into account.

- The provisions of paragraphs 2(1) and 9(3) of the Fourth Schedule to the Act require that, before a lump sum benefit can be paid out, a fund administrator, trustees or insurers apply for a tax directive from SARS.

4 GOVERNING LEGISLATION

- Paragraph (b)(x)(dd) of the definition of 'retirement annuity fund' in section 1(1) to the Act.
- The definition of 'lump sum benefit' in paragraph 1 of the Second Schedule to the Act.
- Paragraph (c)(ii) and (iii) of the definition of 'pension preservation fund' in section 1(1) of the Act.
- Paragraph (c)(ii) and (iii) of the definition of 'provident preservation fund' in section 1(1) of the Act.
- Paragraph 2(1)(b)(ii) of the Second Schedule to the Act.
- Paragraphs 2(1) and 9(3) of the Fourth Schedule to the Act.

4.1 RELEVANT PROVISIONS FROM THE ABOVE ACT

- In terms of paragraph (b)(x)(dd) of the definition of 'retirement annuity fund' in section 1(1) of the Act a member who discontinues his/her contributions to a retirement annuity fund, and his/her emigration is recognised by the South African Reserve Bank for the purposes of exchange control, can withdraw his/her retirement annuity fund benefit prior to his/her retirement or at the expiry of the visa that was issued in terms of paragraph (b) or (i) of the definition of 'visa' in section 1 of the Immigration Act, No 13 of 2002.
- Paragraphs (c)(ii) and (iii) of the definitions of 'pension preservation fund' and 'provident preservation fund' in section 1(1) of the Act makes provision for the members of pension preservation funds to be entitled to withdraw their full lump sum benefits when they emigrate from South Africa and such emigration is recognised by the South African for the purposes of exchange control or upon repatriation on expiry of a work or visitor's visa.
- The provisions of paragraphs 2(1) and 9(3) of the Fourth Schedule to the Act require that a fund administrators, trustees or insurers apply for a tax directive from SARS before a lump sum benefit can be paid out.

5 OPERATIONAL REQUIREMENTS

5.1 EMIGRATION WITHDRAWAL

- The definition of 'retirement annuity fund' makes provision for a member who discontinues his / her contributions prior to his / her retirement date to be entitled to the payment of a lump sum benefit where that member has emigrated from the Republic **and** that emigration is recognised by South African Reserve Bank for purposes of exchange control.
- From 1 March 2019 members of a preservation fund who have emigrated from the Republic and that emigration was recognised by the South African Reserve Bank for purposes of exchange control, can withdraw their benefits from a preservation fund.
- A member can only withdraw his or her benefit on emigration if he or she has not yet elected to retire.
- Employees' tax reflected on the tax directive is determined on the taxable portion of the lump sum benefit payable after the allowable deductions in terms of the Second Schedule to the Act were taken into account.

- The retirement annuity fund administrator, trustee or insurer must complete a manual Form C, **a preservation fund administrators or trustees must complete a manual Form B** and attach the following necessary supporting documentation:
 - A letter from the Authorised dealer to confirm that the emigration was recognised by the South African Reserve Bank for purposes of exchange control;
 - A copy of the TCC in respect of emigrations issued by SARS; or
 - **A copy of the 'Tax Compliance Status - Pin issued'; or**
 - An affidavit indicating the reason a TCC cannot be provided; and
 - The member's certificate of residence obtained from the relevant **Tax Authority** of the country in which the member **resides**.

NOTE: Only a certificate of residence issued by the **Tax Authority** of the country in which the member resides in accordance with the Double Taxation Agreement (DTA) between SA and the country of residence will be accepted. If there is **no** DTA in place the member must still obtain a certificate of residence from the relevant Tax Authority **or an immigration and citizenship certificate**.

- An immigration and citizenship certificate **can only be** accepted if there is no DTA in place between the Republic of South Africa and the new country of residence, or if the country has no taxation system. If there is a DTA in place, the immigration and/or citizenship document cannot be accepted. In that case the Tax Authority must confirm residence for tax purposes.

5.2 WITHDRAWAL DUE TO EXPIRY OF VISA (LEAVE SOUTH AFRICA AT THE END OF A VISA)

- With effect from 1 March 2016 the definition of 'retirement annuity fund' was amended to allow a member who discontinues his/her contributions prior to his/her retirement date to be entitled to the payment of a lump sum benefit at the expiry of the visa that was issued in terms of paragraph (b) or (i) of the definition of 'visa' in section 1 of the Immigration Act, No 13 of 2002.
- The retirement annuity fund administrators, trustees or insurer must complete a manual Form C, **preservation fund administrators or trustees must complete a manual Form B** and attach the following supporting documents for submission to SARS:
 - A copy of the Certificate of residence obtained from the relevant **Tax Authority** of the country in which the member **resides** or is employed;
 - A copy of the passport indicating an exit from South Africa;
 - A copy of the Visa indicating the expiry date and the applicable paragraph in the definition of "Visa" in section 1 of the Immigration Act in terms of which the visa was issued. **Please attach the copy to the directive application.**

NOTE: Only on the expiry of the visa can the member apply for the withdrawal. If the visa has not yet expired the application cannot be processed.

6 WHEN WILL A TAX DIRECTIVE APPLICATION BE REJECTED

A tax directive will be rejected in the following instances:

- Where the supporting documents were not attached to the manual Form C **or Form B** application form.
 - Refer to the '*Guide to Complete the Tax Directive Application Forms*' on SARS website www.sars.gov.za to ensure that the correct supporting documents are attached.

- Where the latest / most recent Income Tax Return (ITR12) immediately prior to departure was not submitted and assessed.
- Applicable to taxpayers emigrating and expiry of a visa.

7 CROSS REFERENCES

DOCUMENT TITLE	APPLICABILITY
Guide to Complete the Tax Directive Application Forms - External Guide	All

8 DEFINITIONS AND ACRONYMS

DTA	Double Taxation Agreement
RA	Retirement Annuity
SA	South Africa
SARS	South African Revenue Service
TCC	Tax Clearance Certificate
TCS	Tax Clearance Status

DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest SARS branch
- Contact your own registered tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 7277
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).