

## EXTERNAL GUIDE

# TAX DIRECTIVE: EMIGRATION, CEASE TO BE RESIDENT AND EXPIRY OF VISAS

## REVISION HISTORY TABLE

Date	Version	Description
03-05-2019	8	The definitions of 'pension preservation fund' and 'provident preservation fund' were amended to allow the withdraw of their benefits from a preservation fund before retirement.
26-04-2021	9	The definitions of 'provident fund' and 'provident preservation fund' were amended for the annuitisation of benefits on retirement.
22-07-2022	10	The additional requirements for the 'Emigration withdrawal' tax directive applications were added.

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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 (SARB) 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 the member elected to retire. Members of a preservation fund, who have emigrated from the Republic (and that emigration is recognised by SARB for purposes of exchange control) or on expiry of a work or visitor's visa, can withdraw their benefit in a preservation fund.
  - The reason 'Cessation of South African Residence' should be used from 1 March 2021, however if the taxpayer who was in the process of emigrating and has submitted the MP336(b) to the Authorised dealer (bank) on or before 1 March 2021 the reason 'emigration withdrawal' can be used. The reason

'emigration withdrawal' may only be used for those in the process of formally emigrating and may only be used for emigrations accepted by SARB on or before 28 February 2022.

- The definitions of 'pension preservation fund', 'provident preservation fund' and 'retirement annuity fund' were amended with effect from 1 March 2021 to allow members who have ceased to be resident for an uninterrupted period of three years or longer to withdraw the full benefit before the member elects to retire from that fund, even if the member ceased to be resident before 1 March 2021.
  - From 1 March 2021 a member of a 'pension preservation fund' and a 'provident preservation fund' who has ceased to be a resident for an uninterrupted period of three years or longer and who has previously accessed the once off withdrawal in that preservation fund may also withdraw the full benefit before the member elects to retire from that fund.
  - From 1 March 2021, a member of a 'retirement annuity fund' who has ceased to be a resident for an uninterrupted period of three years or longer on or after 1 March 2021 and who has stopped contributing to a retirement annuity fund can before the member elects to retire from that fund, withdraw the full benefit.
- 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) of the definition of 'pension preservation fund' in section 1(1) of the Act.
- Paragraph (c)(ii) 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 SARB 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) 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 SARB for the purposes of exchange control or upon repatriation on expiry of a work or visitor's visa or the member

has ceased to be a resident for an uninterrupted period of three years or longer on or after 1 March 2021.

- 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 SARB for purposes of exchange control.
- From 1 March 2019 to 28 February 2021 members of a preservation fund who have emigrated from the Republic and that emigration was recognised by SARB for purposes of exchange control, can withdraw their benefits from a preservation fund.
  - The Emigration Withdrawal reason may only be used after 1 March 2021 for those in the process of formally emigrating and the emigration is accepted by SARB by 28 February 2022.
- 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 **or** trustee must complete **the Form C and, the preservation fund administrator or trustee must complete the Form B on eFiling** and attach the following necessary supporting documentation:
  - A letter from the Authorised dealer to confirm that the emigration was recognised by SARB for purposes of exchange control;
    - **The date on the letter must be before 1 March 2022.**
  - A copy of the Tax Clearance Certificate (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 **issued by SARS** cannot be provided.
  - **A copy of the stamped and signed MP336(b) by an Authorised dealer / SARB, the date of which must be before 1 March 2021;** 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 or a ‘*Visa / Permit Compliance and Cancellation of Visa*’ letter from Home Affairs that is issued or obtained in terms of paragraph (c)(ii)(bb)(A) of the definition of “pension preservation fund” / “provident preservation fund” in section 1(1) of the Act will be treated the same as the expiry of a work visa. 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.

## 5.3 CEASED TO BE RESIDENT WITHDRAWAL

- The definitions of ‘pension preservation fund’ and ‘provident preservation fund’ and ‘retirement annuity fund’ were amended with effect from 1 March 2021 to allow members, who have ceased to be resident for an uninterrupted period of three years or longer from 1 March 2021, to withdraw the full benefit before reaching normal retirement age.
- From 1 March 2021 a member of a ‘pension preservation fund’ and a ‘provident preservation fund’ who has ceased to be a resident for an uninterrupted period of three years or longer and who has previously accessed the once off withdrawal in that preservation fund may also withdraw the full benefit before the member elects to retire from that fund.
- From 1 March 2021, a member of a ‘retirement annuity fund’ who has ceased to be a resident for an uninterrupted period of three years or longer on or after 1 March 2021 and who has stopped contributing to a retirement annuity fund can before the member elects to retire from that fund, withdraw the full benefit.
- The Fund administrator must submit the tax directive application through eFiling on Form B or Form C and the following documents must be attached:
  - Certificate of residence not older than **12** months issued by the Tax Authority of the country of residence.
  - Documentation confirming cessation of residence:
    - The fund administrator must ensure that the member was not a resident for an uninterrupted period of three years or longer from date of ceased to be a resident.
    - The documents that may be accepted by the Fund for this purpose are passports indicating the entry in and out of SA, assessments issued by the country of residence, etc.

- The taxpayer must inform SARS as soon as he / she ceased to be an SA resident. SARS system will be updated with the information. If the member did not inform SARS the application will be rejected.

## 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](http://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.
- Where the taxpayer has not informed SARS that they have ceased to be a resident. **The RAV01 can be completed on eFiling or by making an appointment with a virtual agent through eBooking on SARS website.**
- **If a copy of the MP336(b) is not provided and / or the date stamp on the MP336(b) is after 1 March 2021.**
- **The letter from the Authorised dealers does not indicate the emigration is recognised for purposes of the exchange control and / or the date on the letter is after 1 March 2022.**
- **The tax reference number is not active on the SARS system. If the taxpayer is not registered or no TRN is on the SARS system because the taxpayer left the country before 2000 and the TRN was deactivated, the tax directive application form can be submitted without a TRN.**
- **The visa has not yet expired.**
- **The above is applicable to taxpayers emigrating, ceased to be resident and / or for 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

<b>DTA</b>	Double Taxation Agreement
<b>RA</b>	Retirement Annuity
<b>SA</b>	South Africa
<b>SARB</b>	South African Reserve Bank
<b>SARS</b>	South African Revenue Service
<b>TCC</b>	Tax Clearance Certificate
<b>TCS</b>	Tax Compliance Status
<b>TRN</b>	<b>Tax reference number</b>

## 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](http://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).