

Clarifying the three-year rule for retirement benefits on emigration

The announced changes to accessing retirement benefits (pension preservation funds, provident preservation funds and retirement annuity funds) on emigration is causing much confusion in the marketplace. The concept of emigration and the South African Revenue Services (Sars) approval process (via MP336b) will fall away from 1 March 2021 and is replaced with the concept of an individual ceasing to be a resident for tax purposes in South Africa



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Sars will be making system changes from 27 February 2021 to 5 March 2021 so taxpayers should note that not all the changes may be operational as of 1 March 2021, says Dr Sharon Smulders, South African Institute of Chartered Accountants (Saica) project director for tax advocacy.

Applications before 1 March 2021

All applicants where the applicant had their Form MP336(b) attested (signed and stamped) by an authorised dealer on or before 28 February 2021 will still be able to apply for a tax compliance status (TCS) in respect of emigration in the ensuing months after 28 February 2021, in terms of the current procedures dealing with emigration for exchange control purposes. However, before the funds can be transferred to the person, the South African Reserve Bank (Sarb) must have approved the application before 1 March 2022.

As this process is time sensitive, Sars is aware of the TCS backlog and is working on resolving this as soon as possible.

Applications on/after 1 March 2021

All applications from Monday, 1 March 2021 onwards, will be processed by Sars based on the new dispensation of confirming that the taxpayer has ceased to be resident for tax purposes. SARS will not require a Form MP336(3b) as part of the TCS process below:

All individuals that cease to be a resident would have to request a TCS in respect of emigration from Sars before the authorised dealer may be permitted to transfer any funds.

All asset and liabilities of the taxpayer must still be completed per the TCS application form.

The Sarb will still apply control in respect of transfers above R10m as per the current rules and a stricter verification process will be followed.

Persons must prove to the fund that he/she has ceased being a tax resident for tax purposes for an uninterrupted period of three years and a tax directive must be issued to the Fund by Sars. The onus of proof is on the person and the fund must satisfy itself of this proof. The revenue service will provide guidance on what is considered sufficient proof in due course.

Taxpayers must provide the authorised dealer with the TCS as well as documentation from the fund indicating/confirming the final amount paid out to the taxpayer before any transfers can be effected.

At the annexure C meetings held in December 2020, National Treasury clarified that the three-year period starts from when the person ceases to be a resident either before or after 1 March 2021. Saica affirms that as our understanding of what the law says and what was intended by the legislator.

Some confusion seems to exist in the market as to whether the legislation expressly confirms this point regarding the three-year rule and whether this period commences from 1 March 2021 or potentially 1 March 2018 when it states:

“ is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021. ”

Saica is of the view that it does.

Currently the IBIR-006 tax directive interface specification document states the following for applications made on/after 1 March 2021:

- Where the reasons for a directive is cessation of SA residence (eFiling submissions only)
 - The date accrual is prior to 01/03/2021
 - The date of cessation of SA residence is prior to 01/03/2021

- The answer to any of the following questions is not yet Yes
 - Certificate of residence
 - Document confirming cessation of residence

Saica makes the following observations in this regard:

- Regarding the first requirement – certificate of residence – Sars has noted the concern that not all jurisdictions issue these certificates. Sars is open to suggestions on how to deal with this matter.
- Regarding the second requirement – Document confirming cessation of residence – Sars noted that currently the ITR12 only has a declaration in the tax return that the person is no longer a resident. Sars will be updating

- the ITR12 in due course but there is currently no such document issued by Sars
- The Sarb will also issue a circular clarifying the process for the remittance of pensions above and below R1m and R10m respectively to persons outside the country. The SarbEmigration Manual will also be updated by 1 March 2021.

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