

31 August 2020

**Attention:** National Treasury

**Submission to National Treasury / SARS – 31 August 2020.**

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The South African Institute of Professional Accountants (SAIPA) is a leading accounting institute representing Professional Accountants (SA) in commerce and industry, academia and the public sector.

Herewith our comments:

**1) WITHDRAWING RETIREMENT FUNDS UPON EMIGRATION**

With regards to the proposed amendment for withdrawing retirement funds upon emigration, SAIPA generally support the shift from “financial immigration” to a change in tax residency.

However, the proposed amendment in relation to lump sum benefits regarding the various fund definitions, a new test is to be inserted which makes provision for a member to make a withdrawal when the member has ceased to be a South African tax resident and has remained non-tax resident for a consecutive period of at least three years.

While the three-year test has some logic to it, this will effectively force a person that has emigrated to wait three years before having full access to the funds. Often these funds are required for establishment in the other country.

Also, the funds, when considering the impact of exchange rates, will likely significantly devalue over the three years. This is evident when comparing the various exchange rates, for example:

	<b>EURO</b>	<b>UK Pound</b>	<b>US Dollar</b>
Feb 2018	14,6112	16,5361	11,8220
Feb 2019	15,8354	17,9409	13,7956
Feb 2020	16,3845	19,4722	15,0153
31 Aug 2020	19,82	22,21	16,62

Why would a person need to wait three years to access the funds if their centre/place of vital interest is the other country?

The tie breaker provisions of many double tax treaties, as well as residency application in many other countries rely heavily on the test of where the person's centre/place of vital interest is.

### **SAIPA Recommendations**

SAIPA proposes that the legislative amendment should have an immediate right to withdraw funds when South Africa is no longer the country of vital interest, and in all other cases the three-test should be applied.

## **2) ADDRESSING THE CIRCUMVENTION OF ANTI-AVOIDANCE RULES FOR TRUSTS**

Whilst SAIPA understand National Treasury's position on this matter, that is, subscription price of preference shares used will be deemed to be a loan advance, SAIPA holds the view that term 'preference' shares is broadly applied; there are circumstances when 'preferences' shares are applied to enhance the equity of a company.

### **Comments:**

In practice, it will be interesting to view how the proposed amendments will play itself out.

If there are specific circumstances that applies to a taxpayer in relation to preferences shares, the taxpayer is at liberty to table an advanced ruling.

## **3) CLARIFYING THE VAT TREATMENT OF IRRECOVERABLE DEBTS**

National Treasury proposal that the output tax be calculated by applying the tax fraction to the unpaid amount is a point of clarification. In practice, that is how SAIPA interpreted the legislation - section 23 of the VAT Act.

### **SAIPA Recommendations**

SAIPA recommends that this proposal be implemented retrospectively and not with effect from 1 April 2021.

#### **4) Criminal offences relating to non-compliance with the Tax Administration Act**

Currently it is an accepted principle in South African law that in order to secure a conviction in respect of a criminal offence, fault on the part of the accused – either in the form of intent or negligence – must be demonstrated.

This is further reinforced by the former Constitutional Court Justice, Dikgang Moseneke (Sunday Times, Insight Justice, page 14 August 30, 2020) that the notion of fairness in criminal cases give content to fair trial whereby every person – accused and victims – should be afforded a fair hearing by application of the law and before an independent court or tribunal.

Hence SARS attempts to broaden the scope of ‘criminal’ offences in relation to a tax offence, is problematic given the fact that courts are already burdened with excessive cases and the high cost of litigation.

#### **SAIPA Recommendations**

SAIPA holds the view that such tax offences can adequately be dealt with under the existing tax provisions, such as administrative non-compliance penalties (s210 of the TA Act) and the understatement penalties (s 222 of the TA Act).

SAIPA is of the view that it is not National Treasury intention to declare a person a ‘criminal’ for not updating the SARS platforms with their latest contact details. Based on the above fact SAIPA requests the removal of this proposal or National Treasury must provide a compelling reason for introducing this proposal.

End of submission: