
In this edition, we consider how legislation is changing the rules for members of funds that emigrate. Amended legislation will become effective on 1 March 2021 (the Taxation Laws Amendment Act, 2020) that will affect how members of preservation funds and retirement annuity funds access benefits when they leave South Africa.

# Retirement funds and emigration - recent changes

## The old rules

Before the recent change to legislation, if a member of a retirement annuity fund completed so-called 'financial emigration' the member could then withdraw from a retirement annuity fund before the age of 55, pay the tax and take the money with them as part of the emigration process. This was advantageous because generally speaking, members of retirement funds (other than in limited circumstances) could only access their benefits from the age of 55.

**What is 'financial emigration'?**

Generally, this is where a South African citizen changes their residence status from 'resident' to 'non-resident' with the South African Reserve Bank for exchange control purposes. It is a lengthy and complicated process. More precisely, it is an administrative process through the South African Reserve Bank to cease being a South African exchange control resident.

## The new rules

It is important to distinguish between being a tax resident on the one hand and being an exchange control resident on the other. These two types of residency can be independent of each other. In the 2020 National Budget, Government, as part of the modernising of the foreign exchange control system, announced the phasing-out of the concept of financial emigration and specified that emigration is not automatically a factor that results in cessation of tax residency.

If a member wants access to their retirement annuity fund benefits, under the amended legislation, it will be tax residency that will determine whether they get access to these benefits. That is, under the amended legislation, from 1 March 2021, *a member will only be able to access their retirement annuity fund benefits once they have ceased to be resident for tax purposes and has been a non-resident for tax purposes for three consecutive years following 28 February 2021*.

If a person has been overseas for a while and, thus, has been a non-tax resident for three years already, then they will not have to emigrate for exchange control purposes and may access their retirement annuity fund benefits now.

How the amended legislation will work in practice is yet to be seen, as we wait to see how the practical tests will be applied and what documentary evidence will be required. It is envisaged that stricter verification procedures will be put in place.

## Transitional arrangements

If a South African finalises their financial emigration or has submitted a full application to the South African Reserve Bank, before 1 March 2021, then they may still take their retirement annuity fund benefits under the old rules and will then not have to wait the three year period.

## Preservation funds

The permitted once-off withdrawal from preservation funds remains unchanged and may be taken prior to normal retirement date and after the payment of tax. Thus, members of preservation funds may continue to use this mechanism to obtain access to their preservation fund benefits as a cash lump sum. The remainder of preservation fund benefits are then locked in until retirement.

Preservation funds will be subject to the same amended legislation. Under the amended legislation, from 1 March 2021, a member will only be able to access their preservation fund benefits once the member has ceased to be resident for tax purposes and has been a non-resident for tax purposes for a period of three consecutive years following 28 February 2021.

The same transitional arrangements will apply to preservation funds.

## Pension and Provident Funds unaffected

Pension and Provident funds remain unaffected by the amended legislation referred to above, as a member who leaves employment always has the option to take benefits as a cash lump sum (after paying the tax) and use their foreign exchange allowances to move the money out of South Africa.

It may be, however, that more members choose to transfer their benefits to their new employer's fund, as opposed to a preservation fund, because of the amended legislation.

## Most affected members

South Africans planning to leave the country and who are members of retirement annuity funds are the most affected by the amended legislation because of the fact that preservation funds members could still access their benefits if they take a once off withdrawal (if they have not taken such a withdrawal already).

## Please obtain financial advice

Members who are thinking of leaving South Africa should obtain financial advice as there are many more factors to be considered than only the new legislation and the three year rule. The complexities are many and their own circumstances will determine the best course of action.