

EXTERNAL GUIDE

COMPLETION GUIDE FOR IRP3(q) DIRECTIVES

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1 PURPOSE

- This guide in its design, development, implementation and review phases is guided and underpinned by the SARS values, code of conduct and the applicable legislation. Should any aspect of this guide be in conflict with the applicable legislation the legislation will take precedence.
- The purpose of this guide is to assist employers with the completion of the 'IRP3(q) - Request for a Directive – Variation in the Deduction / Withholding of Employees' Tax' a directive application form under paragraph 10 of the Fourth Schedule to the Income Tax Act, 1962 (the Act).
- This guide specifically applies to employers who have employees who are tax resident in SA rendering employment services in a foreign country and the employees:
 - do not qualify for the exemption under section 10(1)(o)(ii) and end up in a double tax position in respect of the taxes paid in the foreign country and the tax paid in South Africa on the same amount; or
 - qualify for the exemption under section 10(1)(o)(ii) and earn remuneration in excess of the R1.25 million exemption.
- The employer can request that **the Commissioner enter into an agreement with the employer to vary the method to withhold or deduct employees' tax on a monthly basis. This method would generally entail that** the potential foreign tax payable must be taken into account on a monthly basis when calculating the employees' tax liability. The final **Foreign Tax Credit (FTC)** under section 6quat of the Act can only be granted on assessment when the employee submits the income tax return and provide proof of the tax payable in the foreign country where services were rendered.
- Only the IRP3(q) - *Request for a Directive – Variation in the Deduction / Withholding of Employees' Tax* application form will be addressed in this guide.
- This guide **excludes** to the following tax directive applications:
 - Application for a Tax Directive: Gratuities [IRP3(a)].
 - Application for a Tax Directive: Section 8A or 8C amount [IRP3(s)].
 - Application for Tax Directive: Fixed percentage [IRP3(b)].
 - Application for Tax Directive: Fixed Amount [IRP3(c)].
 - Application for Tax Directive: Fixed percentage -Freelance Artist [IRP3(pa)].
 - Application for lump sum benefits payable by Fund administrators or Insurers.
 - **Application for Directive: Provision for Doubtful Debt [IRP3(f)].**

2 GENERAL INFORMATION

2.1 WHO CAN COMPLETE AND SUBMIT A DIRECTIVE APPLICATION FORM?

- In terms of paragraph 2(1) of the Fourth Schedule to the Act the employer has to withhold employees' tax from any amount payable to the employee, unless the Commissioner has granted authority to do otherwise.
- Circumstances arise where an employee is required to render employment services in a foreign country. In many instances the foreign country where services are rendered has a shared taxing right on services rendered in that country. The employee becomes subject to tax in the foreign country and a double tax situation arises where the employee does not qualify for the exemption under section 10(1)(o)(ii) or the

remuneration earned exceeds the R1.25 million exemption provided for under section 10(1)(o)(ii). This can cause hardship for the employee who has to pay tax in the foreign country and the SA employer has to deduct employees' tax.

- An employer or tax practitioner, acting on behalf of the employer, can submit a directive application under paragraph 10 of the Fourth Schedule to the Act requesting SARS to vary the basis to deduct or withhold employees' tax by taking into account the potential FTC on a monthly basis when calculating the employees' tax liability. The tax practitioner should attach the Power of Attorney with the application.
- The purpose of the directive is to agree on a varied basis to withhold or deduct employees' tax and to alleviate financial hardship due to the double tax suffered by the employees because the remuneration in respect of employment services rendered outside South Africa is taxed by both the foreign sourced country and South Africa as the resident country. Where the provisions of section 10(1)(o)(ii) apply, only R1.25 million will be exempt and the application for a directive will apply to the portion of the remuneration that exceeds R1.25 million.
- A foreign employer who has a representative employer in South Africa may have an obligation to withhold employees' tax. If so, the representative employer can also submit an IRP3(q) directive application form to vary the basis to deduct or withhold employees' tax on a monthly basis.
- A foreign employer with no representative employer in South Africa will not have an obligation to withhold employees' tax and therefore no directive under paragraph 10 of the Fourth Schedule will be issued to such employer. Such employees must be registered for provisional tax.
- An application for a directive will not be considered if the following circumstances are applicable to an employee:
 - The employee is below the tax threshold;
 - The employee's remuneration is exempt (less than R1.25 million); or
 - The employee is not taxed in the foreign country.
- A directive will NOT be issued retrospectively in respect of a previous year of assessment.

2.2 WHERE TO OBTAIN AND HOW TO SUBMIT A DIRECTIVE APPLICATION FORM TO VARY THE METHOD TO DETERMINE THE MONTHLY EMPLOYEES' TAX LIABILITY?

The employer, tax practitioner or representative employer can obtain the IRP3(q) directive application form on the SARS website www.sars.gov.za. Application forms can only be submitted through eFiling.

- If an employer is not registered as an eFiler, please log on to www.sarsefiling.co.za to register and refer to the guide: 'How to Register, Manage Users and Change User Password on eFiling'. Once the employer is registered as an organisation on eFiling the tax directive applications can be submitted through eFiling.

3 GUIDANCE HOW TO COMPLETE THE DIRECTIVE APPLICATION FORM

- All the fields on the directive application form must be completed to avoid the rejection of the IRP3(q) directive application form.

3.1 PARTICULARS OF EMPLOYER

Particulars of Employer	
PAYE Ref. No.	<input type="text"/>
Employer Name	<input type="text"/>
Contact Details:	
First Name(s)	<input type="text"/>
Surname	<input type="text"/>
Email Address	<input type="text"/>
Bus Tel No.	<input type="text"/>
Cell No.	<input type="text"/>

3.1.1 Employer's PAYE number

- The Employers Pay-As-You-Earn (PAYE) number is mandatory.
- This reference number starts with a 7 and consists of 10 numbers. This is the PAYE reference number issued by SARS when the employer registers for PAYE.

3.1.2 Employer Name:

- This field is mandatory. Enter the same employer name that was recorded on the PAYE registration form.

3.1.3 Contact person detail:

- These fields are mandatory.
 - Provide the name of the person to be contacted when additional information regarding the IRP3(q) directive application form is required.
- **Contact person's telephone number:**
 - Provide the telephone number of the person to be contacted where additional information regarding the IRP3(q) directive application form is required.
- **The employer's e-mail address:**
 - It is a mandatory field and must contain an "@" sign and a domain.
 - This address will be used to send request for any additional information required to make an informed decision in the method to use to deduct / withhold employees' tax on the remuneration of employees **who** render services in a foreign country.
- **The employer's business address and postal code:**
 - Provide the employer's business and postal address.

3.2 PARTICULARS OF EMPLOYEE

Particulars of Employee									
How many employees does this application relate to? <input type="text"/>									
Employee Details #x									
Taxpayer Ref. No. <input type="text"/>									
First Name(s) <input type="text"/>									
Surname <input type="text"/>									
ID No. <input type="text"/>									
Other ID / Passport No. <input type="text"/>									
Date of Birth <input type="text"/>									
Is the employee a South African tax resident? Y <input type="checkbox"/> N <input type="checkbox"/>									
Commencement Date of Foreign Assignment <input type="text"/>									
Expected end Date of Foreign Assignment <input type="text"/>									

- **How many employees does this application relate to?**
 - Indicate the number of employees included in the application to enable the eFiling to open the containers to be completed.
 - Only include details of employees who are tax residents in SA.

NOTE: If an employee's information on the application form differs from the information on SARS record, the application will be rejected.

3.2.1 Employee Detail

- **Taxpayers Reference Number:**
- This reference number represents the income tax reference number. This number is allocated by SARS to the taxpayer when registering for income tax purposes.
 - The income tax reference number can only start with and 0, 1, 2 or 3 and must have 10 digits.
 - This number is also printed on the IRP5/IT3(a) by the employer.
- **First name(s):** This is a mandatory field.
 - Enter the employee's name(s). Use the name(s) as contained in the identity document or passport.
 - Do not use nicknames.
 - The names must correspond with the information on SARS's records.
- **Surname:** This is a mandatory field.
- **Identity number:**
 - This is a mandatory field.
 - The Identity number(ID number) must correspond with the latest issued identity document or identity card issued by the South African Department of Home Affairs.
- **Other Identification:**
 - The "*Other Identification*" field must only be completed where the taxpayer does not have a South African ID number.
 - If the taxpayer is registered for Income Tax, the other identification number must match the other identification number that the taxpayer has used to register for Income Tax with SARS.

- **Date of birth:**
 - This is a mandatory field.
 - The date of birth must correspond with the first six digits of the ID number where the ID number is provided.
- **Is the employee a South African tax resident?**
 - If the employee is not a tax resident **the applicant** should not include the employee's detail in the request.
- **Commencement Date of Foreign Assignment**
 - This **represents** the **employment commencement** date **on** the employment contract and will not necessarily be the first day of the year of assessment.
 - This date is relevant for purposes of determining when a double tax scenario may arise.
- **Expected end Date of Foreign Assignment**
 - This date will be determined based on the circumstances and provisions of the employment contract.
 - This will indicate whether section 10(1)(o)(ii) may apply as well as the provisions of the DTA.

Employee Details #x continued			
Foreign country where services are rendered (if applicable)	<input type="text"/>	Is section 10(1)(o)(ii) applicable to the taxpayer? Y <input type="checkbox"/> N <input type="checkbox"/>	Indicate the South African effective tax rate: <input type="text"/> %
		If yes, will the R1.25 million exemption be exceeded? Y <input type="checkbox"/> N <input type="checkbox"/>	Indicate the foreign effective tax rate: <input type="text"/> %

- **Foreign country where services are rendered (if applicable)**
 - Enter the relevant foreign country name.
- **Is section 10(1)(o)(ii) applicable to the taxpayer?**
 - **This is a Mandatory field. Select 'Yes' or 'No'.**
 - This answer will be determined by the facts. For more details on the application of section 10(1)(o)(ii), please refer to Interpretation Note 16.
- **If yes, will the R1.25 million exemption be exceeded?**
 - **This is a Mandatory field. Select 'Yes' or 'No'.**
 - Only indicate if the gross remuneration of the employee exceeds **the exemption applicable to that year.**

NOTE: The application form must be accompanied by a letter. The letter should clearly indicate if the employer is going to apply section 10(1)(o)(ii) through the payroll or not.

- **Indicate the South African effective tax rate**
 - This field is mandatory.
 - Provide the effective rate applicable to the employee's remuneration.
- **Indicate the foreign effective tax rate:**
 - This field is mandatory.
 - Provide the foreign effective rate applicable to the employee's remuneration.

3.2.2 Additional Details of Application

Additional Details of Application

Mark the applicable reason for the directive application: Paragraph 10, 4th Schedule taking into account a potential foreign tax credit:

Was a similar directive issued for the abovementioned employer for the previous year of assessment? Y N

Provide a summary of the proposed method in terms of this directive application:

Please note: A detailed letter must be submitted with this application form, setting out the details of the basis and reasoning for the request sought to vary the employees' tax withholding taking into account a potential foreign tax credit.

Notes

- A directive will be issued upon agreement with the Employer for an indefinite period unless a change in the facts and circumstances occur, where after a new application must be made.
- Directives are not transferable.

- **Was a similar directive as to the one requested above issued for the abovementioned employer for the previous year of assessment?**
 - Indicate if a directive was issued previously to take the potential FTC into account when deducting / withholding employees' tax.
- **Provide a summary of the proposed method in terms of this directive application:**
 - The summary entails the method as proposed in the detailed application letter that has to accompany the application form.

Please note: A detailed application letter must be submitted with this application form, setting out the details of the basis and reasoning for the request sought to vary the employees' tax withholding taking into account a potential foreign tax credit. A sample calculation of how the method will be applied on the payroll should also be provided.

4 WHEN WILL A DIRECTIVE APPLICATION BE REJECTED

- A directive application will be rejected in the following instances:
 - The incorrect directive application form was completed. The IRP3(q) – '*Request for a Directive – Variation in Deduction / Withholding of Employees' Tax*' must be completed.
 - If the application form is incomplete. All the fields must be completed and the **declaration must be completed.**
 - Where the supporting documents were not attached to the IRP3(q) application form.
 - A detailed submission setting out the proposed method and the reasoning to use such method as a basis to calculate the monthly employees' tax liability:
 - Power of Attorney was not attached where a tax practitioner applies for the directive on behalf of the employer.
 - **If a direct application form is made retrospectively for a previous year of assessment.**

5 CROSS REFERENCES

DOCUMENT TITLE	APPLICABILITY
Interpretation Note 16 – Exemption from income tax: Foreign employment income	All
FAQ on foreign employment income (Section 10(1)(o)(ii) of the Income Tax Act, 1962)	All

6 DEFINITIONS AND ACRONYMS

DTA	Double Tax Agreement
FTC	Foreign Tax Credit
ID	Identity
PAYE	Pay As You Earn
SA	South Africa
SARS	South African Revenue Service

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).