

CONDITIONS FOR PRESERVATION FUNDS

SOUTH AFRICAN REVENUE SERVICE (SARS) RETIREMENT FUND PRACTICE NOTE RF 1/2012

Withdrawal of Note

This Retirement Fund Practice Note (RF 1/2012) replaces Retirement Fund Practice Note RF 1/2011, with effect from the date of the publication of this Note.

Purpose

The purpose of this Note is to –

- confirm two additional conditions for the approval of rules of pension preservation funds for purposes of the Income Tax Act No 58 of 1962 (the Act). These conditions are prescribed under the discretionary power granted to the Commissioner for the South African Revenue Service in terms of the definition of a “pension preservation fund” in section 1(1) of the Act;
- clarify the member’s position with regard to access to benefits before transferring to a preservation fund; and
- explain the implications of transferring from a preservation fund to a retirement annuity fund.

Conditions

The additional conditions are the following:

1. Benefits paid or transferred into a pension preservation fund

Amounts or unclaimed benefits referred to in paragraph (b) of the definition of a “pension preservation fund” derived from a pension fund or pension preservation fund may not be paid or transferred in such a way that it is split between more than one pension preservation fund.

2. Benefits paid or transferred from a pension preservation fund

Amounts or unclaimed benefits referred to in paragraph (b) of the definition of “pension preservation fund” derived from a pension preservation fund may only be paid or transferred to:

- one pension fund;
- one pension preservation fund;
- one retirement annuity fund;
- a combination of one pension preservation fund and one retirement annuity fund.

- a combination of one pension fund and one pension preservation fund and; or
- a combination of one pension fund and one retirement annuity fund.

This condition applies to each payment or transfer from the pension preservation fund.

Translocation of benefits

A member exiting their former occupational fund can access a portion of their benefit in cash before transferring to the pension preservation fund or provident preservation fund.

Such a transfer is tax-neutral and does not preclude the member from accessing a further once-off withdrawal benefit in the pension preservation fund or provident preservation fund.

Transfer from a preservation fund to a retirement annuity fund

The definitions of “pension preservation fund” and “provident preservation fund” currently provide that a benefit that is transferred from any preservation fund to a retirement annuity fund will be regarded as the member’s once-off withdrawal. The transfer of the benefit from the preservation fund to the retirement annuity fund is not prohibited in terms of the definitions. The transfer from a preservation fund to a retirement annuity fund will be allowed as a deduction in terms of paragraph 6 of the Second Schedule to the Act when calculating the lump sum and is accordingly still a tax neutral event.

The proposed amendment to paragraph (c) of both the definitions of “pension preservation fund” and “provident preservation fund” means that the member will be able to transfer such an amount to a retirement annuity fund without it being regarded as the member’s once-off withdrawal.

It should be noted that if an amount is transferred before the promulgation of the Taxation Laws Amendment Bill of 2012, the transfer will be tax-neutral. However there is a risk that the benefit might be regarded as the member’s once-off withdrawal if the legislation is not promulgated with retrospective effect.

Rules that require amendments

The trustees of a preservation fund must ensure that the rules of the fund comply with the additional conditions imposed by this Note, failing which the approved status of the fund will no longer be effective.

Rules that require amendments to comply with the aforementioned conditions must be submitted for approval before or on 28 February 2013.

Issued by

**Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE**

1 November 2012