

## Addendum A to RF 1/98 (Preservation Funds)

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#### Funds for the preservation of the Retirement Interests of Employees

The purpose of this addendum is to clarify an apparent contradiction between paragraph 3.2 and paragraph 5 of the South African Revenue Service Practice Note RF 1/98. The paragraphs read as follows:

*" 3.2 The amount paid into a preservation fund*

*A member of an employer fund in respect of which a translocation benefit becomes available from that fund may, if the rules of the employer fund so provide, have a portion of the translocation benefit paid into an approved retirement annuity fund by way of a direct payment as contemplated by the provisions of paragraph 6 of the Second Schedule to the Income Tax Act. The negative effect on symbol "N" as explained in paragraph 7 below should be noted.*

*The remaining portion of the translocation benefit or, if no amount is paid into a retirement annuity fund, the gross translocation benefit value of a member who opts to translocate must be paid into the preservation fund. "*

and

*" 5. Withdrawal benefits from the preservation fund*

*No more than one withdrawal benefit may be paid by the preservation fund.*

*The rules of the preservation fund should provide for the payment of a withdrawal benefit at a fixed or ascertainable future date as contemplated in paragraph 4(1) of the Second Schedule to the Income Tax Act where the benefit is not paid on the date of withdrawal from the employer fund. If a withdrawal benefit or balance of a withdrawal benefit is retained in the preservation fund beyond the fixed or ascertainable future date it must be made paid-up and no further withdrawals may be permitted.*

*Any amount deducted from the translocation benefit (excluding a transfer to a retirement annuity fund as envisaged above), including deductions in terms of section 37D of the Pension Funds Act, is regarded as the member's first and final withdrawal benefit from the preservation fund. As uncertainty in this regard existed the South African Revenue Service may be approached by the trustees of a preservation fund for a ruling in cases where, prior to 1 December 1997, only a portion of the translocation benefits was paid into the preservation fund and where the trustees can prove that a member was not informed accordingly. "*

The underlined words in the aforementioned quotations seem to indicate that a translocation benefit may in all circumstances be reduced prior to the translocation to a preservation fund. This was not the intention. A translocation benefit may only be reduced prior to translocation if the provisions of section 37D of the Pension Funds Act caused the deduction or if an amount was transferred to a retirement annuity fund on the basis envisaged by paragraph 3.2 of RF1/98. If this section caused no deduction or if no amount was transferred to a retirement annuity fund the gross translocation benefit must be transferred to the preservation fund.

It effectively means that a translocation to a preservation fund will not be possible in circumstances where the translocation benefit has been reduced by means other than the provisions of section 37D or a transfer to a retirement annuity fund. Trustees of preservation funds must ensure that measures are in place to detect whether reductions by such other means have taken place and to reject translocations of benefits which have been so reduced.

It should be noted that the application of section 7(8) of the Divorce Act would not affect a member's ability to translocate to a preservation fund. It would, however, prohibit the payment of a withdrawal benefit from the preservation fund.

This clarification will be effective from 1 May 2000 and retirement fund trustees must ensure that the rules comply with these measures.

Trustees of preservation funds are also reminded of their duty to comply with the provisions of paragraph 5 of RF1/98 relating to the amount available to a member for withdrawal purposes. Measures must be in place to

ensure that a deduction prior to translocation (i.e. a deduction effected by means of the provisions of section 37D or by a transfer to a retirement annuity fund) is detected and recorded in the records of the preservation fund.

ISSUED BY THE SOUTH AFRICAN REVENUE SERVICE

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