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## **LEGAL UPDATE FAW 11/2010: APPLICATION AND CANCELLATION OF TAX DIRECTIVES**

The Income Tax Act, No. 58 of 1962 requires Momentum to apply to SARS for tax directives before making payment of lump sum benefits to members.

In a letter sent by SARS to ASISA (Association for Savings & Investment SA), the practice is discussed where some fund administrators / insurers use the SARS electronic tax directive system as an "estimation system".

The practice seems to be that upon the request of a broker or client, the fund administrator/ insurer applies for a tax directive in order to advise the broker or client of tax payable should the client choose to commute the lump sum. This practice negatively impacts aggregation and hypothetical tax payable on future lump sum benefits as well.

SARS has indicated that where an application for a tax directive is made in order to estimate the member's tax liability, such estimation applications would be considered as indicating the accrual and payment of the lump sum benefit to the member.

SARS has stated that failure to stop this practice could lead to SARS considering removal of the cancellation function from fund administrators / insurers. SARS will only consider the cancellation of tax directives as legitimate where genuine errors have been made in the application process.

In line with this, members should be fully aware of the implications of their instructions upon withdrawal. Momentum will only cancel a tax directive in the event that an administrative error was made during the tax directive application process.

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