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Transfers to and from foreign funds

Rules of the Funds

The Rules of the FundsAtWork Umbrella Funds and FundsAtWork Preservation Funds provide for transfers to and from Southern African Development Community (SADC) countries. The following countries are members of the SADC: Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

Will the transfer be subject to section 14 of the Pension Funds Act?

Condition 6 of the Financial Services Board Directive PF No. 6 sets out the requirements that must be met in order for the Registrar of Pension Funds ("the Registrar") to consider a transfer to or from a foreign fund. It includes the following:

- For a transfer from a South African registered pension fund to a similarly registered fund in Namibia, the transferor fund must ensure that any conditions laid down by the South African Revenue Service ("SARS") are complied with before submitting a section 14 application to the Registrar.

- All other transfers between a South African registered pension fund and any other foreign fund must first be acknowledged by SARS and such acknowledgement must accompany the section 14 application.

- The South African registered pension fund must ensure that the following documents are submitted to the Registrar as part of the section 14 application:
  (i) the fully completed forms as specified in the Directive;
  (ii) SARS acknowledgement, if applicable; and
  (iii) proof of the registration of the foreign fund in the other country.

Will the transfer be exempt from income tax?
SARS General Note 2 deals with transfers from South African Pension and Provident Funds to Namibian Retirement Funds. It provides that a transfer from an approved fund (approved by SARS for income tax purposes) to a non-approved fund is *not exempt* from income tax and the full transfer value must be included in paragraph (e) of the definition of "*gross income*" in section 1 of the Income Tax Act.

<u>Transfers to a SADC country</u>
Although the General Note specifically refers to transfers to Namibian funds, the same principle can be applied for transfers *to* other SADC countries funds. This means that the full transfer value would first have to be taxed before it is transferred to a fund in an SADC country.

Non-residents: The transfer value could however be subject to the provisions of section 9(2)(*i*) of the Income Tax Act. Non-residents are only taxed on income derived from sources within SA or deemed to be within SA. If the service related to the transfer value was *not* rendered in SA, the transfer value will *not* be seen as SA sourced income and will *not* be subject to SA tax. If services are rendered in SA <u>and</u> out of SA, the allocation will be based on the actual time spent in SA and the other country.

<u>Transfers from a SADC country</u>
SARS have confirmed that similarly, for any transfer *from* a SADC country's retirement fund to a South African retirement fund, the full transfer value would first have to be taxed in that country before it is transferred to the South African retirement fund.

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