Ref #: 767513

FEEDBACK SUMMARY
SARS AND SARB EXCHANGE CONTROL CHANGES MEETING
[23 February 2021]

GENERAL

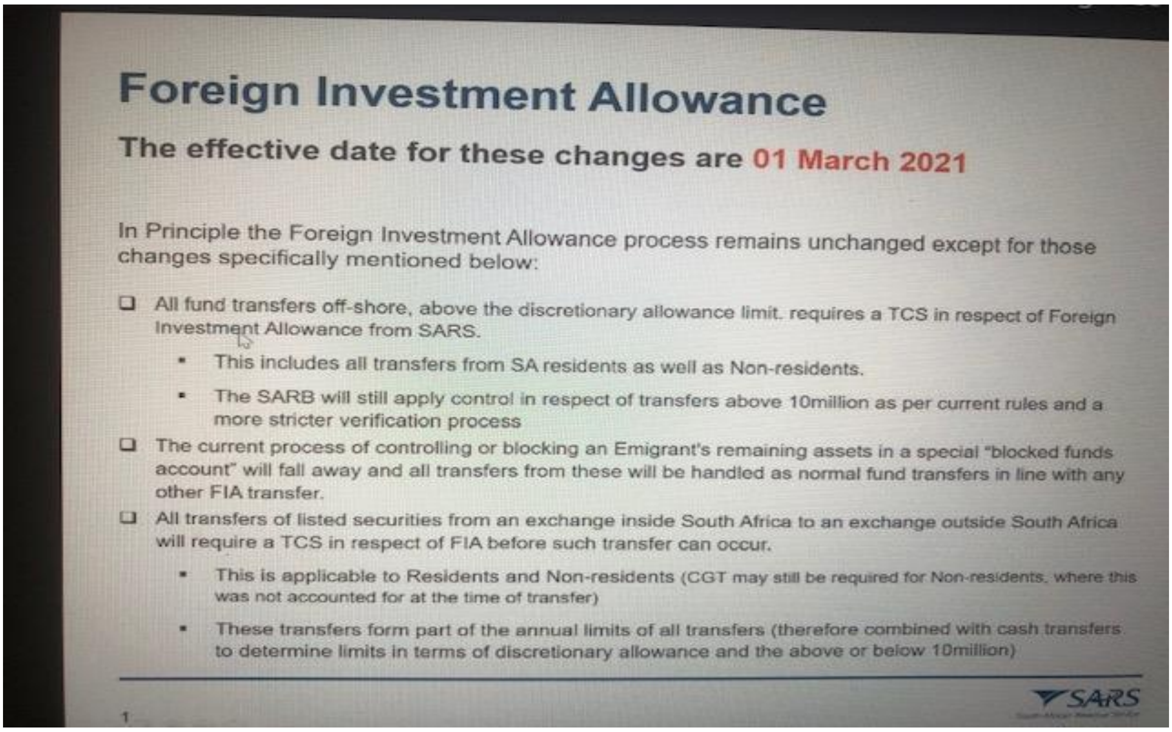
SAICA attends various discussions and meetings on behalf of members with National Treasury ("NT"), South African Revenue Service ("SARS") and other stakeholders (internal and external). These meetings represent an opportunity for them to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

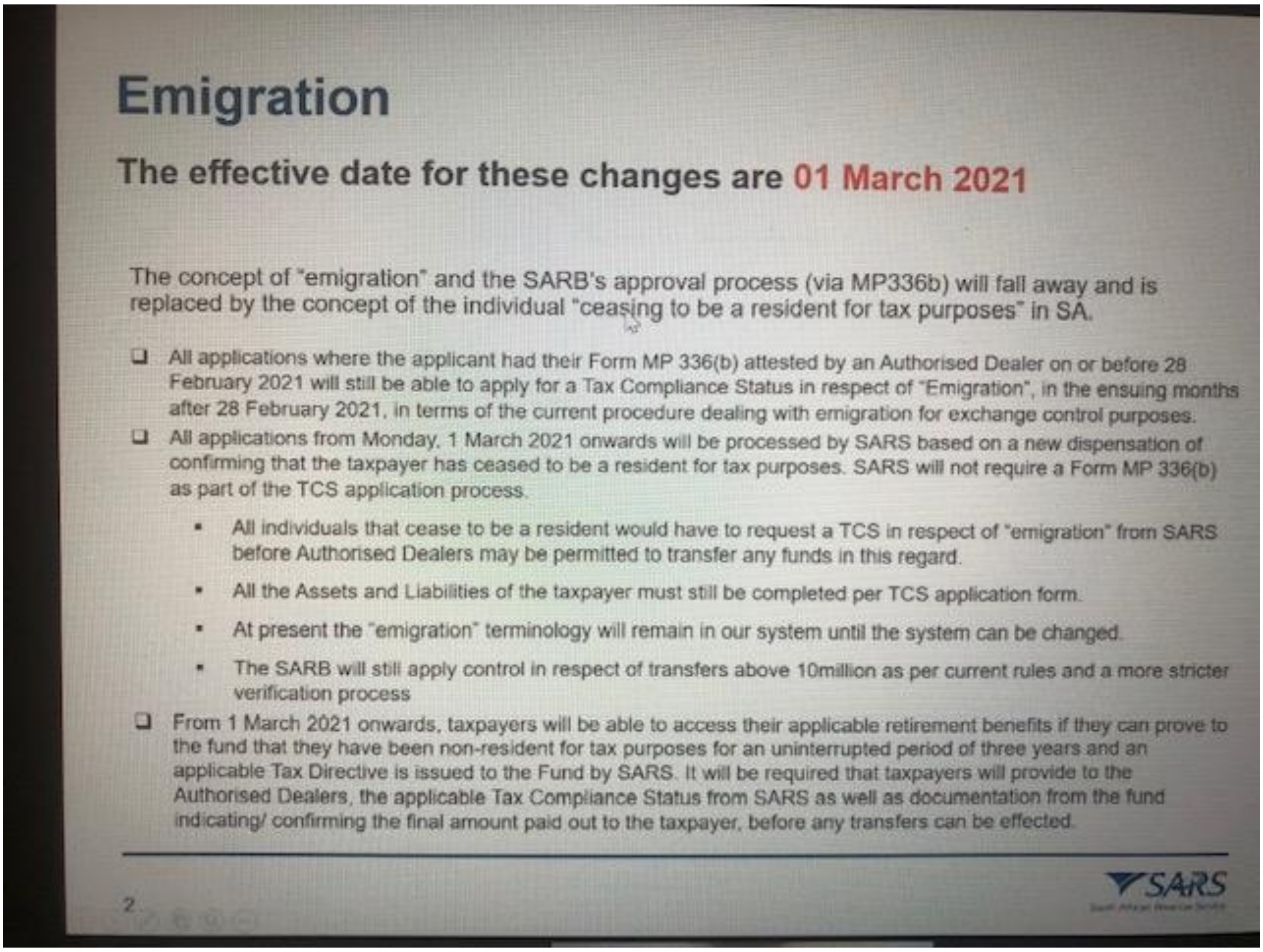
The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

FEEDBACK SUMMARY

SARS welcomed the RCBs and other stakeholders to the meeting and provided feedback on the proposed changes to the exchange control process both from a SARS and SARB perspective. The issued discussed are documented below.

A. PRESENTATION BY SARS





1. **Timing of changes**

SARS apologised for the late changes but stated that the system developments could only take place once the legislation was passed earlier this year. SARS stated that it will be making system changes from 27 February 2021 – 5 March 2021 so taxpayers should note that not all the changes may be operational as at 1 March 2021.

SARS is also in discussions with the FIC on these matters and will also be engaging with the FSCA on the implications for the exchanges (JSE etc) and the matters pertaining to them.

2. **Applications before 1 March 2021**

The law states as follows (proviso to the definition of ''pension preservation fund'', "provident preservation fund" and "retirement annuity fund"):

"*is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022*".

To clarify this, it was stated in the meeting that these applications will follow the old process where a MP336b will need to be completed and 'attested by' the authorized dealer (AD). 'Attested by' the AD means that the form must be stamped and signed by the AD.

So basically for the old regime to apply two criteria need to be met:

1) The application must have been made and stamped by the AD by 28 Feb 2021;
2) Before the funds can be transferred to the person, however, the SARB must have approved the application before 1 March 2022.

SARS is aware of the TCS backlog and is working on resolving this as soon as possible.

3. Applications on/after 1 March 2021

For these applications, the person must prove that he/she has ceased being a tax resident for an uninterrupted period of 3 years. The onus of proof is on the person and the fund must satisfy itself of this proof. SARS did not answer the question "What would the impact be on the Fund if SARS views the proof as insufficient?".

Currently the IBIR-006 Tax Directive Interface Specification document states the following for applications made on/after 1 March 2021:

- Where the reason for a directive is 'Cessation of SA Residence' (eFiling submissions only)
  - The date of accrual is prior to 01/03/2021
  - The date of Cessation of SA Residence is prior to 01/03/2021
  - The answer to any of the following questions is not "Yes"
    - Certificate of residence
    - Document confirming cessation of residence

With regard to the first requirement – "Certificate of residence" – SARS has noted the concern that not all jurisdictions issue these certificates. SARS is open to suggestions on how to deal with this matter.

One suggestion was that the tax certificates (or evidence of submitting foreign tax returns for 3 years) from the foreign jurisdiction could satisfy this requirement, but this would not cater for all situations such as pensioners that were not required to be registered with the foreign tax authority due to the tax thresholds in those countries. Mention was also made that the person could be required to prove by some other means that they have lived in the foreign country. Requiring the person to provide a declaration to the funds/AD that they have ceased to be a resident and that they are not intending to return to South Africa was also mentioned as a possible option.

With regard to the second requirement – "Document confirming cessation of residence" – SARS noted that currently the ITR12 only has a declaration in the tax return that the person is no longer a resident. SARS will be updating the ITR12 in due course but there is currently no such document issued by SARS.

4. Other matters discussed

The implications and document requirements for life policies for those that have left South Africa but have kept their policies were also discussed. SARS does not require that these persons provide their green IDs but when the payouts are made the requirement for a tax number was discussed. These requirements will be discussed further within SARS.

The remittance of South African pensions to persons outside the country was also discussed. The SARB will issue a circular in this regard clarifying the process for amounts above and below R1m and R10m respectively. The SARB Emigration Manual will also be updated by 1 March 2021.

The use of the R1m allowance by a non-resident will still be discussed between SARS and the SARB, but it will more likely be a TCS dependent process.

5. Conclusion

SARS is trying to ensure that the processes going forward are simple to administer so that they do not restrict the flow of capital in and out of the country. SARS and the SARB are open to any suggestions that may assist in this regard. Please send any suggestions and questions that you may have to: sharons@saica.co.za.