

**Leveraged Legal
Products**

Personal Income Tax

Office
Head Office

Enquiries
Gary Edwards

Date
25 April 2022



South African Revenue Service

Dr Sharon Smulders
SAICA

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Dear Dr Smulders

EMPLOYEES' TAX: IRP3(s) DIRECTIVES

Your letter dated 22 November 2021, with reference #771743, refers.

SARS's responses to certain of the issues raised is set out below. Note that SARS has not responded to each and every paragraph in the letter, only to the substantive submissions and requests.

References in this letter to the Guide refers to the "Completion Guide for IRP3(a) and IRP3(s) Forms External Guide IT-AE-41-G01 (revision 5)" and to the Form refers to the "IRP3(s) – Application for a Tax Directive: Section 8A or 8C amount"; and references to the Fourth Schedule are to the Fourth Schedule to the Income Tax Act 58 of 1962.

Re paragraph 6 & 7: SARS is in the process of reconsidering this change. The request to be informed timeously is noted.

Re paragraph 12: The Guide will be updated to clarify that the effective date for using only workdays is 1 March 2017.

Re paragraph 14: It is not feasible to create forms that cater for both workdays and calendar days. The Guide is clear in paragraph 3.4.6 that for the "workdays" fields on the Form, where "*working days are not available the calendar days can be used.*"

Re paragraph 17: The submission is that it is not clear from the Guide that the R1.25 million exemption cap only applies from the 2021 year of assessment. However, the Guide states the following in paragraph 3.4.7:

"How much of the exemption (after 1 March 2020) was used during each year of assessment up to date of vesting?"

- *Pre 1 March 2020 the exemption must be null if the year of assessment is before 2021 year of assessment.*
- *The exemption cannot be more than R1.25 million from 1 March 2020."*

It is unclear what additional clarity is required, as it is considered that this clarifies the issue. Alternatively, kindly specify the exact issue that is unclear from this wording.

Re paragraph 18 – 25: The request for a workshop to discuss these issues is noted. Prior to conducting a workshop, suggested solutions should be provided to the concerns raised, which will enable SARS to evaluate proposals in terms of systems capacity and other constraints.

Re paragraph 23: The interpretive issue here is unclear. If more detail and argument is provided, the matter can be more fully investigated.

Re paragraph 26 – 27: The risk attaching to not obtaining information such as an employee's workdays or the portion of the exemption already utilised by an employee, is that, as recognised in paragraph 27, the employer will be liable for penalties and interest. The obligation imposed on an employer by paragraph 2(1) of the Fourth Schedule to deduct or withhold employees' tax, is necessarily an obligation to deduct *the correct amount* of employees' tax.

Although the administrative burden that an employer may experience in certain circumstances is recognised, employers should rather err on the side of caution in cases of uncertainty. Where an employer is uncertain whether an employee was working in or outside of South Africa (SA) in a specified period and the employee fails to provide such information timeously, employers should complete the Form to reflect only workdays outside of SA of which the employer is certain, and possibly over-deduct employees' tax. Similarly, if an employee fails to provide details of the exemption previously claimed, it would be prudent for the employer in the absence of information timeously provided by the employee, to rather presume that the full exemption has been utilised, and over-deduct employees' tax, to avoid the risk of penalties and interest. Although it may be cumbersome, it should also not be overlooked that tax directives issued may be cancelled and corrected at a later stage when more detailed information becomes available.

In the alternative, if SAICA has any suggestions that may (within the scope of the law and taking into account SARS's obligations under law to collect the correct amount of taxes due) ameliorate this issue, please provide them to us for consideration.

Re paragraph 30 – 32: If this concern has been understood correctly, the issue relates to the Form requiring both workday and calendar day calculations. This is however necessary. The calendar days are required to determine whether the qualifying tests for exemption (colloquially, the 183-and 60-day tests) are met. The workdays are required for apportionment, both for days in SA and outside SA, and for allocating the total gain over the "sourcing period". It is thus not clear which data in the form is not used by SARS, all the fields are utilised.

Re paragraph 34: The request for a workshop to discuss these issues is noted. Prior to conducting a workshop, suggested solutions should be provided to the concerns raised, which will enable SARS to evaluate proposals in terms of systems capacity and other constraints.

Re paragraph 35: Noted, this will be considered.

Re paragraph 36 – 39: This would require a legislative amendment, and is noted.

Re paragraph 40: SARS is unable to commit to engagements prior to each modernisation or update change being effected, as the process is fluid. However, SARS does welcome continuous engagements as suggested, and we are amenable to meet.

Re paragraph 42: Please provide details of this case. Kindly also confirm whether this was a once-off incident, or is continuous, and if continuous, please provide further examples.

Re paragraph 43: It is unclear how "SARS appears to believe" the statement suggested. SARS's view as to the correct interpretation of the exemption provision is contained in Interpretation Note 16 (Issue 4) "*Exemption from Income Tax: Foreign Employment Income*" and is contrary to the statement made. Whilst it is to be expected that cases where SARS does not apply its own interpretive policy are few and far between and are most likely instances of mistake or misunderstanding, where this is not the case, the Tax Administration Act 28 of 2011 does provide various remedies to taxpayers and employers.

Re paragraph 44: The request for a workshop to discuss these issues is noted. Prior to conducting a workshop, suggested solutions should be provided to the concerns raised, which will enable SARS to evaluate proposals in terms of systems capacity and other constraints.

In conclusion, it is recorded that SAICA's observations and participation in developing SARS's processes are appreciated. The proposal of conducting a workshop is a welcome one. Once the suggestions requested have been received and properly considered, SARS would be happy to participate in any workshop so arranged.

Should you have any enquiries regarding this letter, please contact Gary Edwards at the contact details provided.

Sincerely



GARY EDWARDS
MANAGER

for **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**