

Application of the three-year non-tax residency rule

In this short Q&A, we consider some of the more frequent questions we've received on the application of this rule. [Read more...](#)

Does the three-year non-tax residency rule also apply if a member of a retirement annuity fund (RA) becomes a taxpayer in one of the other Common Monetary Area (CMA) countries (i.e., Namibia, Lesotho, Eswatini)? In other words: can a Namibian tax resident who has a South African RA with Glacier commute the RA?

With effect from 1 March 2021, the Income Tax Act definition of 'retirement annuity fund' provides that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to the payment of a lump sum benefit if that member is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021.

SARS has also confirmed that with effect from 1 March 2022, exchange control concepts no longer play a role in applying the three-year rule and the test linked to tax residence does not refer to the CMA. This means that a "resident" as defined can only be an individual who is resident or present in the Republic of South Africa. RA members who are tax resident in another country, including a CMA country, for an uninterrupted period of three years or longer should be able to withdraw, provided the requirements are met and the necessary supporting documentation is provided to SARS. The commutation will be taxed according to the withdrawal tax table.

Can the three-year period for non-tax residency start before 1 March 2021?

Yes, if the taxpayer has evidence of the date they became non-resident in South Africa. The rule is that a taxpayer who is not a resident for an uninterrupted period of three years or longer ON (or after) 1 March 2021, will have access to the retirement benefit in an RA or preservation fund when they stop contributing. This means that if the taxpayer was already non-resident for three continuous years on 1 March 2021, they may as from this date request access to their retirement benefit in said fund.

Let's look at an example:

If the taxpayer became non-resident on 1 March 2020, this means they will be non-resident for an uninterrupted period of three years on 1 March 2023. After 1 March 2023 they will be able to request access to the retirement benefit (taxed on the withdrawal scale) if they no longer contribute to the fund.

Should this same member be older than 55 in the Glacier RA for example – will they be able to withdraw, or must they retire from the fund (where the normal annuitisation rules apply)? The answer depends on the fund rules under discussion. The Glacier RA will not force retirement after age 55 so the taxpayer can either access on the three-year rule and pay tax on the R25 000 withdrawal table OR retire and annuitise two-thirds.

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Glacier Financial Solutions (Pty) Ltd.

A member of the Sanlam Group
Private Bag X5 | Tyger Valley 7536 | Email client.services@glacier.co.za | Tel +27 21 917 9002 / 0860 452 364 | Fax +27 21 947 9210 |
Web www.glacier.co.za | Reg No 1999/025360/07
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Private Bag X8 | Tyger Valley 7536 | Tel +27 21 950 2600 | Fax +27 21 950 2126 | Web www.smmi.com |*Reg No 2002/030939/07
Licensed Discretionary Financial Services Provider, acting as Juristic Representative under the Glacier Financial Solutions FSP 770
Glacier International is a division of Sanlam Life Insurance Limited
Sanlam Life Insurance Ltd. | Email life@sanlam.co.za | Tel + 27 21 916 5000 / 0860 726 526 | Fax +27 21 947 9440
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