

Tax & Legislative Information Series...

**... de minimis - what does this
retirement fund term mean?**



Last updated – November 2024
By – R Nowicki

- Legal Meaning

De minimis is a legal principle which allows **matters of insufficient importance or small scale to be exempted** from a rule or requirement.

It's about something lacking significance or importance

de min·i·mis dē-'mi-nə-məs, dā-'mē-ni-mis. : lacking significance or importance : **so minor as to be disregarded compare substantial**. Note: An action may be dismissed if the claim or cause is considered de minimis.

- **Legal Meaning**

The de minimis principle, also known as the de minimis rule, is a legal principle that states that minor matters or things of little value or importance should not be considered by the law. The principle is used in a variety of contexts, including criminal law, hazardous materials, and **pension plans**:

The following is an example of a de minimus clause in a pension plan:

“If a member’s total retirement benefit at the time of exit (including resignation, retrenchment, or retirement) is equal to or less than R247,500, the fund may pay the entire benefit as a lump sum without requiring the member to purchase a compulsory annuity.”

In short – it’s something of such low value / importance that it warrants no consideration or effort being put into it !!

- **This significance of this in relation to retirement funds**

In the context of retirement funds **the de minimis value** is the **maximum amount** that can be in any of the funds in order for the full balance of the retirement savings to be withdrawn, at retirement. If the amount in the fund is greater than this de minimis value, then the normal rules regarding withdrawals from the fund applies.

This de minimis value is **currently set at R 247 500.00**, which means that if at retirement the savings in the fund is not more than this amount, the **entire amount in the retirement fund can be withdrawn**.

This rule **applies to any type of retirement vehicle** – i.e. RA's, Preservation Funds, Pension Funds and Provident Funds.

Remember that **at retirement only one third of all savings can be withdrawn** and the balance **has to be preserved** (i.e. used to purchase an annuity vehicle).

- **What are the tax implications ?**

At retirement the **general rules** are :

- **one third** of the funds can be withdrawn.
- the **remaining two thirds** must be used to purchase an annuity product.
- **tax on the one third** will be:
 - the **first R 550 000** will be **tax free**, as long as this tax break (or a portion of this tax break) has not been previously utilized as a result of a previous retrenchment payout for example.
 - **any amount paid out above this R 550 000 will be taxed** according to the **published tables** – i.e.:

Income	Rate of tax
R 550 001 to R 770 000	18% of the income above R 550 000
R 770 001 to R 1 155 000	R 39 600 + 27% of income above R 770 000
R 1 155 001 and above	R 143 550 + 36% of income above R 1 155 000

- **What are the tax implications ?**

However, if the full value of the savings in the retirement fund is **less than R 247 500** (i.e. the de minimis value) then this amount withdrawn **will be tax free**, simply because it falls within the R 550 000 exemption.

This tax provision enables retirees to avoid the requirement to invest the money into an annuity fund, given that the investment will be very small and thus probably not provide the level of growth as would be anticipated from a larger investment.

It also provides flexibility and access to the total amount in the fund.

- **What are the tax implications – on emigration ?**

Withdrawal **before** retirement age:

- as of March 2021 the concept of financial emigration changed and the process is now **substantially different**.
- SA tax residents now need to **prove non-residency for at least three consecutive years** in order to access their funds.
- this created much frustration for many who had planned to emigrate and use the proceeds of their retirement funds to establish themselves in their new country.
- this requirement of three years applies **irrespective of the amount** i.e. even if it's more than the de minimis value.

Withdrawal **at** retirement age:

- at retirement age (i.e. 55 or older depending) whilst still an SA tax resident the de minimis rule applies.
- where the value in the fund is **greater than R 247 500** then the one third (max withdrawal) / two third (annuity investment) rules apply as normal.

- **Transferring of funds outside SA**

On meeting the required criteria for reaching retirement age or meeting the non-residency requirements, and then withdrawing the funds:

- they **can be transferred** to a foreign bank account.
- **SA Reserve Bank approval** must first be obtained.
- if no longer a SA tax resident and the tax emigration process has been successfully completed the **funds can be transferred without restriction**. This is still subject to the standard exchange control regulations.

Where **dual citizenship** exists the de minimis principle still applies:

- the total amount of R 247 500 can be **taken as a lump sum**.
- the funds **can be transferred off-shore** as normal.

If moving abroad permanently:

- **before retirement age** – the three year non-tax residency applies.
- funds can be transferred – same SARB approval process / approval needs to be followed.

- **Timing**

Timing of withdrawals is very important as the **wrong timing could be expensive** from a tax perspective:

- where the **fund value is greater than the de minimis limit**, consideration regarding withdrawing at retirement age or once non-tax residency has been attained **is a must**:
 - **at retirement age** – tax is subject to the table i.e. the first **R 550 000 is free of tax**.
 - **after non-tax residency has been attained** – the funds will be subject to the **normal tax tables**.

- **Important Payroll Takeaways regarding the de minimise clause**

The de minimis clause allows small amounts to be exempt from standard rules. In payroll, this applies to retirement fund withdrawals where the total savings are R247,500 or less.

For amounts within this threshold, employees can withdraw the full balance as a lump sum at retirement. These withdrawals are tax-free under the R550,000 exemption, eliminating the need for mandatory annuity investments.

This simplifies payroll processing for smaller payouts while providing employees with greater flexibility and easier access to their retirement savings.



For further information visit us at

www.nowhr.co.za