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Edition 74: May 2017

DASHBOARD

Taxation Laws Amendment Act, 2016 and Tax Administration Laws Amendment Act, 2016

The Taxation Laws Amendment Act 2016 ('the TLAA') and the Tax Administration Laws Amendment Act 2016 ('the TALAA') were signed into law on 19 January 2017. This publication summarises those parts of these acts which pertain to retirement funds.

A. Taxation Administration Laws Amendment Act, 2016

Tax on transfer between funds: effective 1 March 2017

Previously:
Paragraph 9(3)(b) of the Fourth Schedule of the Income Tax Act previously stated that funds were exempt from having to apply for tax on payment of Section 14 transfers. The exception to this was when benefits were transferred from pension (or preservation pension funds) to provident (or preservation provident funds).

From 1 March 2017:
The above provision has been deleted with effect from 1 March 2017. This means that the abovementioned exemption falls away. Therefore tax must be applied for and paid whenever Section 14 transfers take place between all approved funds, from 1 March 2017, onwards.

This is an administratively burdensome process for retirement funds. It furthermore presents problems when members' identity documents or tax numbers are not available (for example, when benefits are transferred from pension or provident funds, to unclaimed benefits funds). The industry is seeking clarity from the SARS regarding the implications of this for retirement funds, as well as less administratively burdensome and problematic solutions to this matter.

B. Taxation Laws Amendment Act, 2016

Changes effective 1 March 2016

Rollover of pension and retirement annuity fund contributions

Before 1 March 2016, retirement annuity contributions which were above the allowable deductible amounts for the tax year, could be rolled over to the following tax year. Pension fund contributions that were above the limit were not allowed to be rolled over to the following year. However, on retirement these amounts could be taken tax-free

The Act provides that excess contributions to both pension and retirement annuity funds before 1 March 2016 can be rolled over and deducted in the following tax year, from 1 March 2016 onwards

Provident funds' excess contributions have been excluded from this. Industry has requested that National Treasury remove this exclusion. However, National Treasury has rejected this and has undertaken to revisit this, once provident fund annuitisation comes into effect.

2 Clarifying source rules for retirement annuity funds

- Payments from pension and provident funds are deemed to be from a source outside South Africa, if the amounts received are for services provided outside South Africa
- The Act clarifies that the above rule does not apply to any benefits payable by retirement annuity funds
- This will apply to all tax assessment years, on or after 1 March 2016.

3 Withdrawal from a retirement annuity fund on emigration

- Previously, the provision that emigrants from South Africa could take withdrawal benefits from their retirement annuity funds, was inadvertently extended to any SA resident who became a non-resident (without officially emigrating)
- The Act retrospectively clarifies that from 1 March 2016, this will only apply to former residents who officially emigrate and not to residents who become non-residents.

Changes effective 26 October 2016

4 Provident fund members retiring before age 55

- Previously, lump sums from provident funds paid to members who retired before the age of 55 were taxed as withdrawal benefits, unless the SARS Commissioner directed otherwise
- The Act provides that from 26 October 2016, funds must make applications to the Commissioner for permission to tax benefits paid to provident fund members as retirement benefits as opposed to withdrawal benefits, in respect of members who wish to retire before age 55
- Trustees could consider issuing a blanket resolution, authorising the administrator to make the above applications to the Commissioner, for all affected members.

Changes effective on both 1 March 2016 and 1 March 2017

5 Changes to the defined benefit formula

Changes effective 1 March 2016:

- From 1 March 2016, employer contributions to retirement funds attract fringe benefit tax, for employees

A formula is used to calculate the taxable fringe benefit for employer contributions which have defined benefit components. There were problematic interpretations of the definition of "remuneration" for the purposes of this formula, creating a tax loophole

Paragraph 12D of the Seventh Schedule has been amended and the Act now clarifies that any contribution made on or after 1 March 2016 is deemed to be a benefit in the hands of the employee, for fringe benefit tax purposes

The legislation has not dealt with the use of surplus from an employer surplus account for the benefit of members. Clarity on this has been requested from industry.

Changes effective 1 March 2017:
It was confirmed in the 2016 National Budget that "pensionable salary" and not "remuneration" should be used by employer's payroll departments, when calculating the value of the aforementioned fringe benefit. The Act clarified that pensionable salary must be used, from 1 March 2017.

Changes effective 1 March 2017

6 Retirement fund deduction against passive income

From 1 March 2016, the Income Tax Act allowed a deduction in respect of fund contributions, of 27.5% of remuneration or taxable income, capped at R350 000, for "carrying on a trade"

The legislation unintentionally excluded passive income, which affected members of retirement annuity funds

"Passive income" is defined in the Income Tax Act as earnings from rental property, limited partnership or other enterprises in which the tax payer is not materially involved. Passive income includes capital gains for calculating the 27.5% contribution tax deduction, but the actual deduction is limited to all taxable income, excluding capital gains

To correct this, the Act provides that deductions for contributions to all retirement funds can be set off ag
ainst passive income, with effect from 1 March 2017.

7 Disallowing foreign exemptions from funds in South Africa

Previously, SA tax residents who were employed outside of South Africa, could receive tax free retirement benefits which they earned while outside SA

With effect from 1 March 2017, the exemption in section 10(1)(gC) will only apply to:

- Existing pensions and annuities paid from 1 March 2017; and
- All new pensions, annuities or lump sums payable from foreign retirement funds into local retirement funds.