Edition 77: September 2017

**Draft Taxation Laws Amendment Bill, 2017**

The latest proposed taxation law amendments in the Taxation Laws Amendment Bill, 2017 have been released for public comment. This publication summarises those aspects of this Bill that are most pertinent to occupational retirement funds.

**I:\NMG\Prop\br2.jpg**

1. **Correction to be effective as at 1 March 2016**

**Deduction in respect of contributions to retirement funds**

* With effect from 1 March 2016, member contributions to all funds were increased to 27.5% (in terms of section 11(k) of the Income Tax Act), in respect of taxable income derived from the carrying on of a trade
* A technical complication has emerged, in that not all allowable contributions to retirement funds relate only to income generated from the carrying on of a trade
* Before 1 March 2016 the Income Tax Act specifically stated that contributions to retirement annuity funds related to income that was not generated from carrying on of a trade
* As a result, an anomaly has arisen which has resulted in assessed losses arising from contributions to retirement funds that are above the allowable limit, when taxable capital gains are a part of the higher limit
* To remedy this, it is proposed that a new section 11F be inserted to effect this deduction, and new limiting criteria for the allowable deduction are being proposed, to avoid circumstances where member contributions can result in an assessed loss for taxpayers
* The proposed amendments will be deemed to have come into effect on 1 March 2016.

**I:\NMG\Prop\br2.jpg**

1. **Proposals effective 1 March 2018**
2. **Transferring retirement fund benefits after reaching normal retirement age:**

* At present, retiring members can elect when their retirement benefits accrue, depending on the provision of their fund’s rules
* Effective from 1 March 2015, the date on which retirement benefits accrue to members for tax purposes, is the date on which members elect to receive payment of their benefit from the fund, rather than their normal retirement date
* It is proposed that from 1 March 2018, retiring members be allowed to transfer their benefits into a retirement annuity fund, when retiring from their funds
* Transfers to preservation funds are not currently included in this proposal.

1. **12-month limit on joining a newly established pension or provident fund to be removed**

* Currently when a fund is established, employees have a 12-month period to choose to join such fund, even though they are currently employed
* To encourage employees to contribute towards their retirement and remove practical difficulties, it is proposed that from 1 March 2018, the current limit of a 12 month period be removed
* Should this proposal be implemented, employees will be permitted to join a newly established fund at any time, subject to their fund’s rules.

1. **I:\NMG\Prop\br2.jpgPostponement of provident fund annuitisation to 1 March 2019**

**C. Proposals effective 1 March 2019**

* In 2015, the Income Tax Act was amended to allow for that portion of provident fund retirement benefits accruing after implementation date, to be annuitised
* In February 2016, the annuitisation requirements for provident funds were postponed for two years until 1 March 2018. This was undertaken so that the Minister of Finance could consult with interested parties including the National Economic Development and Labour Council (“NEDLAC”) on this provision, after the publication of a comprehensive policy document on Social Security
* The Minister of Finance was required to report back to parliament on the outcome of these consultations, by no later than 31 August 2017
* Discussions on the comprehensive paper on social security are still underway in NEDLAC
* It is proposed that the implementation of the provisions on the annuitisation of provident fund retirement benefits be postponed for 1 year, from 1 March 2018 to 1 March 2019
* These provisions are furthermore proposed to apply in respect of the years of assessment, commencing on or after that date.

1. **Repeal of the foreign income employment exemption**

* From 1 March 2001, South Africa moved to a residence based system of taxation, meaning that South African tax residents are subject to tax on their worldwide income
* Section 10(1)(o) of the Income Tax Act provided an exemption to South African residents who are performing services outside South Africa for a period which exceeds 183 full calendar days in aggregate, during any period of 12 months commencing or ending during a year of assessment
* When the section 10(1)(o)(ii) exemption was introduced in 2001, the main purpose of this exemption was to prevent double taxation of the same employment income between South Africa and the foreign country
* However, the current exemption creates opportunities for double non-taxation in cases where the foreign country does not impose income tax on the employment income, or where taxes on employment income are imposed at a reduced rate
* It is proposed that the aforementioned exemption be repealed from 1 March 2019 and will apply to all years of assessment on or after that date
* This repeal will result in all South African tax residents being subject to tax on foreign employment income earned in respect of services rendered outside South Africa, with relief from foreign taxes paid on the income, under a different section of the Income Tax Act.

**Reminder: King IV Code on Corporate Governance**

The King IV Report on Corporate Governance for South Africa 2016 (“King IV”) was published in November 2016 and replaced King III, from 1 April 2017. There are no major differences between the draft and final versions of King IV. King IV is effective for funds’ financial years on or after 1 April 2017.

King IV contains a retirement funds supplement. This supplement sets out corporate governance principles which trustees must attempt to apply, in line with King IV’s approach of “apply and explain”. Please refer to your 2016 industry publication for the specific requirements of King IV, as they pertain to retirement funds. As it is not law, where there is a conflict between King IV and legislation, legislation will prevail. If trustees are not able to implement any of the King IV principles pertaining to retirement funds, they will need explain to members which principles in King IV they have not applied and explain the reasons for this.

**FSB’s Unclaimed Benefits Search Engine**

The FSB established an unclaimed benefits search engine, which affords former members of funds with an opportunity to locate their benefits, should they have left these unpaid in former employers’ funds. Funds must ensure that all their unclaimed benefits are uploaded onto this site and ensure that these unclaimed benefits listings are updated. This search engine can be found on:

<https://www.fsb.co.za/Departments/retirementFund/searches>.

The FSB has established a process for former members, in respect of this unclaimed benefits search engine. This can be found on:

<https://www.fsb.co.za/Departments/retirementFund/Documents/UNCLAIMED%20BENEFITS%20DATA%20SEARCHES.pdf>

**FSB’s Unclaimed Benefits Search Engine**

The FSB established an unclaimed benefits search engine, which affords funds’ former members with an opportunity to locate their benefits, should they have left these unpaid in former employer’s funds. Funds must ensure that all their unclaimed benefits are uploaded onto this site and ensure that these unclaimed benefits listings are updated. This search engine can be found on:

<https://www.fsb.co.za/Departments/retirementFund/searches>.

The FSB has established a process for former members, in respect of this unclaimed benefits search engine. This can be found on:

<https://www.fsb.co.za/Departments/retirementFund/Documents/UNCLAIMED%20BENEFITS%20DATA%20SEARCHES.pdf>

