

30 November 2010

**LEGAL UPDATE 15/2010: TAXATION LAWS AMENDMENT ACT NO. 7 OF 2010 –
IMPACT ON BENEFITSATWORK**

The long awaited Taxation Laws Amendment Act No. 7 of 2010 was promulgated in Government Gazette No. 33726 on 2 November 2010. The following amendments are of relevance to BenefitsAtWork.

Accrual of lump sum benefits

Paragraph 4 of the Second Schedule to the Income Tax Act (“the ITA”) stipulated when a lump sum withdrawal or resignation benefit would be deemed to have accrued. It provided that accrual would be the earlier of the date –

- on which the member elects to have the benefit paid to them;
- on which the benefit is transferred to another fund; or
- of the member’s death.

This paragraph has now been amended to include all lump sum benefits and provides that accrual in respect of any such benefit accruing on or after 1 March 2011 will be the earliest of the date –

- on which an election is made in respect of which the benefit becomes recoverable;
- on which any amount is deducted from the benefit in terms of section 37D(1)(a), (b) or (c) * of the Pension Funds Act;
- on which the benefit is transferred to another fund;
- of the member’s retirement; or
- of the member’s death.

* These sections deal with the following deductions:

- (a) housing loans / guarantees;
- (b) compensation payments to employers as a result of the member’s theft, dishonesty, fraud or misconduct; and
- (c) outstanding medical scheme subscriptions and insurance premiums.

This amendment makes it clear that the accrual date is the actual date on which the member signs the election form and not the date on which a fund pays a benefit according to the member’s election.

**Previous
paragraph 4**

**New
paragraph 4**

S37D(1)(a)-(c)

**Accrual date =
election date**

Preservation funds

The definitions of pension preservation funds and provident preservation funds have been amended to allow these funds to receive transfers as a result of the partial winding up of a fund. This means that if the employer terminates their participation in an umbrella fund, the member now has the option to transfer their benefit to either a pension preservation fund or a provident preservation fund. Alternatively, the member can elect to –

- have the benefit paid to them in cash, which will result in it being taxed immediately;
- transfer their benefit to an approved stand-alone fund established by the employer, if the employer did establish such a fund; or
- transfer their benefit to a retirement annuity fund, where the benefits are then “locked in” until age 55.

This amendment is deemed to have come into effect on 1 March 2008.

The deadline for tax approval of the “old generation” preservation funds has been extended from 30 September 2009 to 30 September 2010. The FundsAtWork Pension and Provident Preservation Funds have already been taxed approved.

Retrenchment

Paragraphs 2(1)(a) and 6(1) of the Second Schedule to the Income Tax Act have been amended to now allow for a tax-free transfer of a lump sum retrenchment benefit payable by a fund to another fund. The implication of this is that a member can take R300 000 of their retrenchment benefit payable by their pension or provident fund in cash and transfer the balance to another fund, tax-free.

Severance benefit

A new definition for severance benefit has been inserted into the Act. This relates to the payment of a lump sum benefit in respect of an employee over 55 years who loses their job –

- due to medical disability;
- their employer’s ceasing business; or
- due to retrenchment.

The intention was that the R30 000 retrenchment exemption be aggregated with the R300 000 tax free amount payable from a retirement fund upon retrenchment. However, this is not included in this Amendment Act and in fact the definition of *severance benefit* is not used anywhere else in the Amendment Act. Whether this is an oversight or deliberate is not clear.

Option to transfer to preservation fund upon “partial wind-up”

Deadline was extended to 20 September 2010

Split retrenchment benefit

New definition inserted

Intention

Divorce

Paragraph 2(1)(b)(iA) of the Second Schedule to the Income Tax Act has been amended to now only require a divorce order amount granted on or after 13 September 2007 accruing after 1 March 2009 to form part of a person's gross income, to be taxed in accordance with the withdrawal / resignation table. By implication, a divorce order amount granted *before* 13 September 2007 accruing after 1 March 2009 does *not* form part of a person's gross income.

This gives effect to the letter sent by SARS to ASISA on 4 November 2009, which referred to National Treasury's intention to exclude both the member and non-member spouse from taxation on a pre-13 September 2007 divorce order payment with an accrual date on or after 1 March 2009.

To put it simply, if a non-member spouse only now claims payment from a fund in respect of a divorce order granted before 13 September 2007, neither party will pay tax on that amount.

Post-retirement commutation (conversion) of annuities into lump sums

The Second Schedule to the Act has been amended with effect from 1 March 2011 to allow all commutations of retirement annuities to be treated similarly (whether commuted during the lifetime of the member or afterwards by a successor), provided the annuity flows directly from membership or past membership of the fund.

These commutations will now be taxable in accordance with the retirement tax table instead of the withdrawal table. The only difference is with regard to the application of the aggregation principle required by special retirement benefits: if commutation occurs during the lifetime of the member / upon the member's death, aggregation occurs in respect of the member; if commutation is during the successor's lifetime or upon the successor's death, aggregation occurs in respect of the successor.

No tax on divorce order granted before 13 Sept 07 if benefit accrues after 1 Mar 09

Commutation taxed on retirement table

Self standing (unapproved) insurance policies

Various amendments have been made to the Income Tax Act relating to key man insurance, deferred compensation and group life benefits. However, since there are some gray areas which are currently being clarified, this issue will be dealt with in a separate update / communication.

No clarity yet

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