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LEGAL UPDATE FAW 19/2009: FUND-TO-FUND TRANSFERS - INCOME TAX ACT

The Income Tax Act No. 58 of 1962, as amended by the Taxation Laws Amendment Act No. 17 of 2009, allows for the following transfers:

FROM	TO
Pension Fund	Pension Fund
	Pension Preservation Fund
	Provident Fund
	Retirement Annuity Fund
Pension Preservation Fund	Pension Fund
	Pension Preservation Fund
Provident Fund	Pension Fund
	Provident Fund
	Provident Preservation Fund
	Retirement Annuity Fund
Provident Preservation Fund	Provident Fund
	Provident Preservation Fund
Retirement Annuity Fund	Retirement Annuity Fund

On withdrawal from an employer's retirement fund, if so allowed by the rules of such retirement fund, members are faced with the decision of either taking the benefit in cash, or transfer the withdrawal benefit as set out above. In determining whether the benefit should be transferred to another fund, the tax consequences of such transfer have to be considered.

The Second Schedule to the Income Tax Act has been amended to now provide that all fund-to-fund transfers are to be included in the gross income of a member. By implication, all these transfers will be taxable. However, paragraph 6 lists all the transfers that will qualify as deductions. Whilst both a transfer from a pension fund to a provident fund and from a provident fund to a pension fund would be included in a member's gross income, a transfer from a provident fund to a pension fund qualifies as a deduction under paragraph 6, whilst a transfer from a pension fund to a provident fund does not. The latter will therefore be fully taxable.

A transfer from one fund to the other will only be a tax-free movement if the benefits are being transferred to the same or a higher level of restrictiveness. A member may for example transfer from a pension fund (and a pension preservation fund) to other pension funds (and pension preservation funds) as well as to retirement annuity funds. Benefits may also be transferred from a provident fund (and a provident preservation fund) to any other form of retirement fund.

Paragraph 6 of the Income Tax Act lists the following as deductions in the case of divorce order payments and fund-to-fund transfers:

FROM	TO
Pension Fund	Pension Fund
	Pension Preservation Fund
	Retirement Annuity Fund
Pension Preservation Fund	Pension Fund
	Pension Preservation Fund
Provident Fund	Pension Fund
	Provident Fund
	Provident Preservation Fund
	Retirement Annuity Fund
Provident Preservation Fund	Provident Fund
	Provident Preservation Fund
Retirement Annuity Fund	Retirement Annuity Fund

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