



be informed

Legal update 3/2012

15 March 2012

Divorce Issues – Media statement by National Treasury

National Treasury issued a Media Statement on 13 March 2012 to give taxpayers and retirement funds clarity on the taxation of divorce orders. Government's policy is to promote the "clean-break" principle where each party to a divorce order should be taxed on the portion of the pension interest that they actually receive.

Tax regime applicable as from 1 March 2012

The following tax regime applies to all amounts assigned in terms of a divorce order (granted under s 7(8)(a) of the Divorce Act, 1979):

- a) If an amount becomes payable by a retirement fund to a non-member ex-spouse on or after 1 March 2012, the non-member ex spouse will be liable to pay the tax in respect of that amount. This ensures equal application of the "clean-break" principle regardless of the timing of the payment to the non-member ex-spouse.
- b) No tax will be paid on any amount that becomes payable on or after 1 March 2012 in terms of a divorce order that was issued before 13 September 2007. The principle will apply regardless of (i) the timing of the payment to the non-member ex-spouse, and (ii) whether the retirement fund from which the amount became payable has implemented the "clean-break" principle.

These changes will apply to all public and private sector funds.

Administrative considerations

The South African Revenue Service will provide tax directives as described below:

- a) The retirement fund or the administrator must apply for a tax directive in the name of the non-member ex-spouse where an amount becomes payable to the non-member ex-spouse on or after 1 March 2012.
- b) An amount that becomes payable to a non-member ex-spouse on or after 1 March 2012, in terms of a divorce order that was issued before 13 September 2007, will be free from tax.
- c) In the case of a public sector fund, the retirement fund or administrator must include the pre 1 March 1998 years of service of the member ex-spouse when applying for the tax directive in the name of the non-member ex spouse. In this way Formula C will apply to the pension interest.

Conditions for use

The information in this document is not professional advice. You rely on the contents of this note at your sole discretion
Momentum Group Ltd is not liable for any form of damage that may be caused by the use of this note
Momentum Group Ltd does not make any warranty about the contents of this note
Momentum Group Ltd Registration number 1904/002186/06
An authorised financial services and credit provider
Momentum Group Ltd is a wholly owned subsidiary of MMI Holdings Ltd

The amendments to legislation giving effect to these changes will be introduced in 2012 and when enacted, will have retrospective application as from 1 March 2012.

For further information on divorce matters, please refer to Legal Update 6/2011.

Prabashani Naidoo
Legal Specialist: Research
Momentum Employee Benefits - SMME Market