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.
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.

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