momentum

Legal update

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Retirement benefit accrual

Summary

The Taxation Laws Amendment Act No.43 of 2014 that was published in Government Gazette No.38405 on 20 January 2015 inter alia changes the retirement accrual date for members of retirement funds.

From 1 March 2015 a member will be able to choose from which date he wants to receive his retirement benefit, if the rules of the fund allows him to do so.

Previous position

The Income Tax Act previously provided that the member's benefit accrues to him on the earliest of the date on which the member makes an election, his benefit is transferred to another fund, his retirement or his death. This meant that the member's retirement benefit accrued to him on the retirement date stipulated in the fund rules. The member was not allowed to preserve this benefit or postpone the date from which he wanted to receive it.

When a member reaches his retirement age, he can choose which portion of his retirement benefit he wants to receive in the form of a pension and which portion should be paid to him as a lump sum. (A member of a pension fund has to take at least two-thirds of his retirement benefit as a pension.) The pension benefit is taxed at the member's marginal tax rate. The lump sum is taxed on the retirement lump sum benefit table, and the fund has to deduct that from the lump sum benefit. Before the fund can apply for a tax directive on the lump sum, it has to know what that lump sum is. Where the member has not decided which portion of his benefit he wants to take as a lump sum, the fund is not in a position to apply for the directive and effectively then does not comply with its withholding obligations.

Position from 1 March 2015

The Income Tax Act has been amended to allow a member to elect on which date to receive his retirement benefit. To that end the definition of "retirement date" has been changed to now refer to the date on which the member *elects to retire* and in terms of the rules of the fund becomes entitled to his benefit. The definition of "retirement interest" has been amended to refer to the member's share of the value of a fund in terms of the rules of that fund on the date *on which he or she elects to retire*. This was previously based on the member's retirement date. The Second Schedule to the Income Tax Act has also been amended to delete "his or her retirement" as an event that triggers accrual.

The fund would apply to SARS for a tax directive on the date that the member makes his election, based on the amount of the lump sum benefit amount at the date of election.

The effect of this is that if a fund's rules allow for it, a member will be able to choose from when to receive his retirement benefit. The Explanatory Memorandum states as follows in this regard: "*Individuals may then* *extend their own date of retirement according to their own circumstances and when they would prefer to start receiving their pension benefits, enhancing preservation. However, the ability to extend the date of retirement is not a requirement and is wholly dependent on the rules of the fund."*

Unfortunately the definitions of "pension preservation fund" and "provident preservation fund" have not been amended to allow for transfers of retirement benefits into these funds. If a fund therefore wants to allow a member to postpone the date on which he should start getting his retirement benefit, preservation would have to be provided for inside the original retirement fund.

Impact on FundsAtWork

The rules of the FundsAtWork Umbrella Funds will be amended as soon as possible to allow for a member to postpone the date on which to start receiving his retirement benefit.

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