

Legal update

No. 4 of 2016 • January 2016

Provident fund post-retirement alignment

This Legal Update must be read together with [Legal Update 4 of 2014](#), issued on 17 January 2014, with the substitution of the date 1 March 2015 with 1 March 2016. It must also be read together with [Legal Update 3 of 2016](#), which looks at the impact of the changes to retirement fund contributions on members and employers.

A. The Amendment Act

The Taxation Laws Amendment Act No. 25 of 2015 that was published in Government Gazette No. 39588 on 8 January 2016 confirms the changes to the tax treatment of contributions and the alignment of the annuitisation requirements between retirement funds with effect from 1 March 2016. This Legal Update looks at the impact of the alignment of the annuitisation requirements between pension, provident and retirement annuity funds.

B. Summary

1. Transfers between retirement funds

From	To
Any: Pension fund Pension preservation fund Provident fund Provident preservation fund	Any: Pension fund Pension preservation fund Provident fund Provident preservation fund Retirement annuity fund
Retirement annuity fund	Retirement annuity fund

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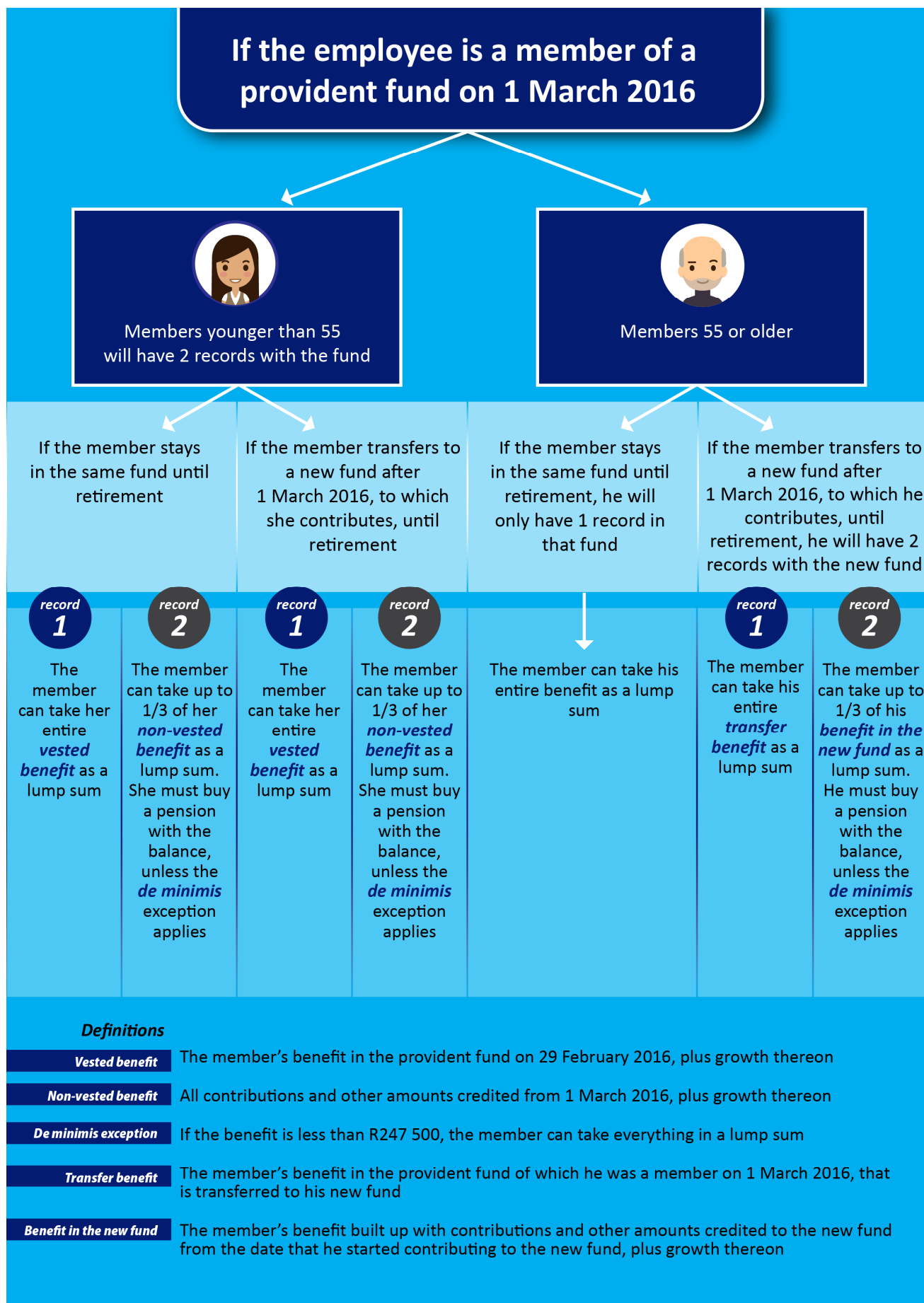
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2. Fund alignment – retirement



C. Impact on the member

1. Provident fund members who are younger than 55 on 1 March 2016

- The provident fund will create two records for this member. Record 1 will contain his benefit as at 29 February 2016, plus subsequent growth on that (referred to as his “vested benefit”), while record 2 will contain his contributions from 1 March 2016 and the subsequent growth on that (referred to as his “non-vested benefit”).
- The member will still be able to take his vested benefit in a lump sum when he retires. This protection of vested rights will apply even if he transfers to another fund. For instance, if he transfers to a pension fund in 2017, his provident fund will transfer these two records to the pension fund, which in turn will then also have to maintain these two separate records. If he then retires from that pension fund, he will still be able to take his vested benefit in a lump sum.
- If the member’s new benefit is less than R247 500 at retirement, he can also take that amount in a lump sum. If it is R247 500 or more, he has to buy an annuity with at least two-thirds of his non-vested benefit.

2. Provident fund members who are 55 or older on 1 March 2016

- **As long as that member stays in the same fund**, the provident fund will not have to create two records for this member. The one-third restriction will not apply to this member. He will still be able to take his full retirement benefit in a lump sum.
- **If this member transfers from the provident fund of which he was a member on 1 March 2016 to another contributing fund**, the new fund will have to maintain two separate records for him. Record 1 will contain the benefit that was transferred from the provident fund of which he was a member on 1 March 2016, plus the subsequent growth on that (his “vested benefit”), and record 2 will contain the contributions made to the new fund after 1 March 2016 (his “non-vested benefit”). The member will still be able to take his vested benefit in a lump sum when he retires.

This protection of vested rights will apply even if he transfers to another fund. For instance, if he transfers to a provident fund two years after his transfer to a pension fund, the pension fund will transfer these two records to the provident fund, which in turn will then also have to maintain these two separate records. If he then retires from that provident fund, he will still be able to take his vested benefit in a lump sum. If the member’s non-vested benefit is less than R247 500 at retirement, he can also take that amount in a lump sum. If his non-vested benefit is R247 500 or more, he has to buy an annuity with at least two-thirds of his non-vested benefit. The member remains entitled to take his vested benefit in cash.

- **If this member’s employer**, for example, terminates its participation in a freestanding provident fund and **transfers to an umbrella provident fund** with effect from 1 January 2016, but the section 14 transfer is only approved by the Registrar of Pension Funds after 1 March 2016, the member’s benefit in the transferring fund and his contributions in the new fund from 1 January 2016 will still qualify as his vested benefit. This is because he will still be a member of the transferring fund on 1 March 2016 because his transfer benefit is still in that fund on 1 March 2016, and at the same time, he will also be a member of the fund that he started making contributions to from 1 March 2016.
- **If this member transfers to a preservation fund**, the preservation fund will only have one record for him and he will be able to take his full benefit at retirement in a lump sum.

3. All members

- The Taxation Laws Amendment Act did not change the position of members that resign. If the member resigns after 1 March 2016, he can still take the full benefit in a lump sum.

- The *de minimis* amount for pension and retirement annuity funds has increased from R75 000 to R247 500. If the member's total benefit in a pension fund or retirement annuity fund and the non-vested benefit in his provident fund is less than R247 500 at retirement, the member can take that benefit in a lump sum. If it is R247 500 or more, the one-third restriction will apply, which means that the member will have to buy an annuity. The increased *de minimis* means that fewer low-income members will be affected.
- A member will be able to transfer between a pension and provident fund and *vice versa* without incurring any tax liability. Transfers between all occupational retirement funds (pension, pension preservation, provident and provident preservation funds) and transfers from any occupational fund to a retirement annuity fund will be tax-free. A member in a retirement annuity fund will still only be able to transfer to another retirement annuity fund.
- When completing forms relating to switching between investment portfolios, members should clearly indicate to which record the switch relates. A member can, for instance, have different investment strategies for their two records relating to their vested and non-vested benefits, respectively.

D. Impact on the employer

- The Taxation Laws Amendment Act No. 25 of 2015 as it reads now specifically states that “any amount *contributed* to a provident fund prior to 1 March 2016” forms part of the vested benefit of a member younger than 55 on 1 March 2016. This means that if the employer pays the February 2016 contributions for this member to the fund after 1 March 2016, those contributions will not form part of the member's vested benefit. It also applies to arrear contributions for this member that have not been paid by 1 March 2016. If for instance an employer has not paid contributions for September 2015 for this member, and only does so after 1 March 2016, those contributions will not form part of the member's vested benefits. To ensure that those contributions do form part of this member's vested benefit, the employer must make sure that all contributions and arrear contributions are paid up to date before 1 March 2016.
- For instance, if the same members participate in both schemes, it means the *de minimis*-rule will apply to the benefits of those members in both funds. The member will be able to apply that rule on both his pension fund retirement benefit and his provident fund retirement benefit. For example, if the member has a retirement benefit of R200 000 in his pension fund and also R200 000 in his provident fund, he will be able to take both those retirement benefits in a lump sum, since they are each under the *de minimis* amount of R247 500. If the employer chooses to consolidate the two schemes into one, the same member will then have a retirement benefit of R400 000 in one fund only, instead of in two different funds, and since that is higher than the *de minimis* limit of R247 500, he will have to buy an annuity with at least two-thirds of that benefit.
- If the employer has weighed up all the pros and cons and still decides to consolidate the two schemes after 1 March 2016, he should consider transferring the pension fund members to the provident fund if there are members 55 and older in the provident fund. In that case, the members transferred from the pension fund will not be worse off, as their contributions and benefits will be treated the same as they were in the pension fund, and the vested rights of the members 55 and older in the provident fund will be protected, as they will remain in the same fund they were members of on 1 March 2016.

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