Tax Administration Laws Amendment Act No. 13 of 2017

Summary

The Tax Administration Laws Amendment Act No. 13 of 2017 (the Amendment Act) was promulgated in Government Gazette No. 41341 on 18 December 2017.

The following changes are relevant for the retirement fund industry:

1. Retirement funds do not have to submit tax returns for dividends.
2. An employer must apply the tax deductible limit for contributions to a retirement fund by applying the annual limits on a monthly basis.

These changes are discussed in more detail below.

1. Retirement funds not required to submit tax returns for dividends

The Tax Administration Laws Amendment Act No 16 of 2016 amended section 64K of the Income Tax Act to provide that no return is required for a dividend from a tax free investment. The reason for that is that a tax free investment is a tax exempt savings vehicle.

A pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund and a beneficiary fund is also a tax exempt savings vehicle. Accordingly, the Amendment Act amended section 64K to extend to those funds as well. This means that these funds are now also not required to submit a return for dividend withholding tax purposes.

2. Income Tax Act, 1962: Amendment of Paragraph 2 of Fourth Schedule

From 1 March 2016, a member is entitled to deduct up to 27,5% of the higher of his remuneration and his taxable income, subject to a cap of R350 000 per year, for both his and his employer's contributions. Paragraph 2(4) of the Fourth Schedule to the Income Tax provides that the employer must take these deductions into account when it calculates the amount that must be deducted or withheld from remuneration by way of employees' tax. This means that the deductions are applied every time that the employer pays the member. Refer to Legal Updates 3-2014 , 3-2016 and 2-2018 for more information about retirement fund contributions.

Where the contributions for a specific tax year are over the cap, the amount in excess of the cap must be carried over to the next tax year. The Amendment Act amends paragraph 2(4) of the Fourth Schedule to the Income Tax Act by adding a proviso that stipulated that where the cap applies, the employer must apportion the cap on a monthly basis and only apply it for the number of months the employer pays the contributions to the retirement funds. The implication of this is that the employer would not apply the cap for the full year if contributions to such funds were only made for part of the year, but will have to apply 1/12th of such cap to the monthly contributions.

Hettie Joubert

Manager: Retirement Fund & Product Governance
Momentum Investments: Product Solutions