PSG Wealth

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PSG Wealth Employee Benefits
November 2018

Taxation Laws Amendment Bill 2018

The final Taxation Laws Amendment Bill 2018 (TLAB) has been presented to Parliament. The Bill still needs to proceed through the normal parliamentary process and will probably be promulgated towards the end of 2018.

The most pertinent amendments affecting retirement fund members are the following:

- The proposed annuitisation of retirement benefits under a provident fund and provident preservation fund be postponed from 1 March 2019 to 1 March 2021.
- From 1 March 2019:
    - preservation funds will allow members to make a full withdrawal on emigration.
    - the definition of retirement interest be changed to allow a member's deferred benefit to be transferred to a preservation fund or retirement annuity fund.
    - transfers to a pension preservation or provident preservation fund will be allowed on or after reaching normal retirement age, but before retirement date.
- Section 10C is amended to allow an exemption from tax of a compulsory annuity, where the annuitant has made contributions to a retirement fund which did not qualify for tax relief in the prior year of assessment This amendment is effective from 1 March 2016.
- From 1 March 2018:
    - The TLAB clarifies that the tax-free status of the pre-1 March 1998 amount will be retained on the next transfer to another private sector fund, but not to any subsequent transfers.
    - Medical tax credits should be proportionally allocated between taxpayers who made the payment of medical scheme contributions.

Annuitisation of provident funds - postponed to 1 March 2021

Implementation of the annuitisation of provident funds has been postponed several times for the detail to be resolved at NEDLAC. This is taking far longer than anticipated.

The TLAB again postpones the effective date for the annuitisation of provident funds to 1 March 2021. The postponement is to allow for negotiations with interested parties, including deliberations at the National Economic, Development and Labour Council (NEDLAC) to be finalised. The Minister must table a report in Parliament by 31 August 2020 on the results of the aforesaid deliberations.

Emigration benefit from a preservation fund - *e*ffective date 1 March 2019

Retirement annuity funds can pay a withdrawal benefit when a member:

- emigrates from South Africa - where the emigration is recognised by the South African Reserve Bank; and
- is an expatriate, and leaves South Africa at the expiry of the work visa that was granted in terms of the Immigration Act.

However members of preservation funds are restricted from accessing a withdrawal benefit when they emigrate from South Africa. This restriction does not matter when the member can still take their once off withdrawal from the preservation fund before retirement.

The definitions of "pension preservation fund" and "provident preservation fund" will be amended to allow members to withdraw their full lump sum benefit when they emigrate from South Africa and where the emigration is recognised by the South African Reserve Bank for the purposes of exchange control or on expiry of the work visa.

Definition of "retirement interest" - effective 1 March 2019

This is a technical correction to TLAB, which changes the definition of retirement interest, as follows:

'retirement interest' means a member's share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund on the date on which he or she elects to *retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity fund;''.*

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This allows for the transfer of a member's deferred benefit to a preservation fund or retirement annuity fund on or after reaching normal retirement age, but before the member's actual retirement date.

Tax treatment of transfers to preservation funds after reaching normal retirement age in terms of the rules of the fund but before retirement date - effective date 1 March 2019

Since 1 March 2015, a member's "retirement date" is triggered only when the member elects to retire from the fund. A member can defer their retirement date after reaching normal retirement age but before retirement date by:

- remaining a deferred member of the employer's pension or provident fund; or
- transferring from a pension or provident fund to a retirement annuity fund.

In terms of the amendment, the TLAB will allow transfers to a pension preservation or provident preservation fund on or after reaching normal retirement age, but before the member's actual retirement date.

The one withdrawal applicable to preservation funds before retirement date will not apply to amounts transferred:

- after reaching normal retirement age in terms of the fund rules; but
- before an election to retire.

Transfers from provident preservation funds into pension funds – 1 March 2018

The general rule is that a transfer of a benefit from one approved fund to another is an accrual event for tax purposes. However a deduction is allowed which results in the amount transferred being untaxed.

The only exceptions to this principle is where a pension fund or pension preservation fund benefit is transferred to a provident fund or provident preservation fund. The reason is that historically provident fund contributions were not tax deductible and provident fund retirement benefits are available as lump sums. Therefore, a transfer is taxable to discourage transfer.
However, a mistake exists in the current law. Where a person wants to transfer from a provident preservation fund into a new employer pension fund, no deduction is provided.

The TLAB proposes a change to allow for a tax-free transfer from a provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.

This also applies to a divorce award made to a non-member spouse which may be transferred to a fund chosen by the non-member spouse

Apportionment of medical tax credits - effective date 1 March 2018

Where medical scheme contributions are being proportionally shared by taxpayers (for example, children jointly contributing towards their parent's medical expenses under a medical scheme) an unintended anomaly in the Act currently allows each of the taxpayers who proportionally share the medical costs for a single individual to claim the full medical tax credit.

It is proposed that medical tax credits should be proportionally allocated between taxpayers who made the payment of medical scheme contributions.

The amendment will cater for instances where the person making the medical scheme contributions and the dependant are not in the same medical scheme.