



Taxation Laws Amendment Act, 2018

The Taxation Laws Amendment Act No. 23 of 2018 (the "Act") was promulgated on 17 January 2019.

There are some changes pertaining to retirement funds, set out in the last version of the Taxation Laws Amendment Bill, 2018 which have been included verbatim in the promulgated Act (see your previous publication on this). However, there are a number of new provisions. All provisions in the Act pertaining to retirement funds have been summarised in this publication.

A. Provident Fund Benefits' Annuitisation

The matter of annuitisation of provident fund benefits relating to fund contributions received by provident funds after an effective date to be set by the authorities, has been postponed once again.

The new effective date is now set for 1 March 2021, with a report on this matter to be tabled by the Minister of Finance on 31 August 2020.

B. Changes Effective 1 March 2019

1. Tax Treatment of Transfers to Pension and Provident Preservation Funds After Reaching Normal Retirement Age

Previous Status Quo

- ❑ From 1 March 2015, "retirement date" is triggered only when members elect their retirement date
- ❑ In 2017, changes were made to the Income Tax Act, to allow fund members to transfer their benefits to a retirement annuity fund after they elect their retirement date
- ❑ If their fund rules permit, after normal retirement date, members were able to choose to:
 - Remain on their retirement fund as a deferred retiree; or
 - Transfer their retirement benefit from their fund, to a retirement annuity fund
- ❑ Until 1 March 2019, members could only transfer their withdrawal benefits to preservation funds before reaching normal retirement age.

Amendment Effective 1 March 2019

- ❑ From 1 March 2019, members will be entitled to transfer their post-retirement benefit to preservation funds
- ❑ Such post-retirement members will not be entitled to the one pre-retirement withdrawal available to pre-retirement members.

Comment:

The implication of this seems to be that only members who retire on or after 1 March 2019 will be entitled to transfer their post-retirement benefits to preservation funds. Members retiring before 1 March 2019 can only transfer their post-retirement benefit to a retirement annuity fund.

2. Emigration Benefits from Preservation Funds

Previous Status Quo

If members who were emigrating from South Africa had already taken their one withdrawal from their preservation fund, their remaining benefits were locked into that preservation fund when they emigrated from South Africa.

Emigrating members may already withdraw their full values from retirement annuity funds.

Amendment Effective 1 March 2019

- ❑ Members who emigrate from South Africa (and where the emigration is recognised by the South African Reserve Bank for the purposes of exchange control or are repatriated when their work or visitor visa expires), will be entitled to withdraw their full lump sums from preservation funds
- ❑ This will apply even if such members had previously taken their one pre-retirement withdrawal from their preservation fund
- ❑ The implications of this seems to be that members who have formally emigrated before 1 March 2019, will be able to withdraw their full lump sum benefits from preservation funds from 1 March 2019 onwards.

3. Pension Preservation Funds and Divorce Orders

With effect from 1 March 2019, the definition of “pension preservation fund” has been amended to allow for such funds to receive divorce order payments from provident funds and preservation provident funds, tax free.

4. Contributions made by Employers to Retirement Annuity Funds

With effect from 1 March 2019, it has been clarified that contributions paid by an employer on behalf of the employee to a retirement annuity fund, should qualify for a tax deduction. The Act further allows for such contributions to be deducted from the member’s remuneration, monthly.

C. Retrospective Corrections

1. Correction of Post-Retirement Annuity Tax Exemption: 1 March 2016

Previous Status Quo

Section 10C of the Income Tax Act allows an exemption from tax in respect of a compulsory annuity, where the annuitant (pensioner) has made contributions to a retirement fund which did not qualify for tax relief. The wording of this provision has created controversy. The specific wording of this provision currently states that this tax exemption applies in respect of "any year of assessment".

Amendment Effective 1 March 2016

The word "any" implied that after-tax lump sums contributed in the current tax year could be offset against post-retirement annuity income in the same year. This section now clarifies that the failure to qualify for a deduction must have occurred in a prior year of assessment.

2. Tax Treatment of Actuarial Surplus Between Retirement Funds: 1 March 2017

Previous Status Quo

Employer contributions to retirement funds are a taxable fringe benefit. Transfer of contributions and actuarial surplus from one employer retirement fund into another employer retirement fund were also a taxable fringe benefit in the hands of employees.

Amendment Effective 1 March 2017

Retrospectively with effect from 1 March 2017, the following will not be subject to fringe benefits tax:

- Transfers from one employer surplus account to the employer surplus account in another fund, for the same employer
- Pensions or pension increases to compensate members for the loss of employer provided post-retirement medical aid benefits
- Benefit improvements to all members or a category of members.

3. Transfers from Provident Preservation Funds to Pension Funds: 1 March 2018

Previous Status Quo

When benefits are transferred from one fund to another, this creates a tax accrual event. However a tax deduction is provided which results in the transferred amount being untaxed (except for transfers from pension to provident funds).

Amendment Effective 1 March 2018

There was a mistake in law with no deduction being provided for transfers from provident preservation funds into members' new employers' pension funds. Therefore, from 1 March 2018, transfers from provident preservation funds into any pension funds (including pension preservation funds) are tax free.

4. Deduction for Contributions to Retirement Funds must be Proportionately Incurred between SA and Foreign Sources: 1 March 2018

Any retirement fund contribution deductions and charitable donations deductions must be proportionately allocated in relation to the taxable income from sources within and outside the Republic, before these deductions are taken into account. These provisions are retrospectively effective from 1 March 2018.

5. Updated Contribution Certificates: 1 March 2018

The Act has been retrospectively amended from 1 March 2018 to provide that updated contribution certificates must be supplied by a fund, where:

- The fund made an error in calculating the fund member category factor, or
- Where an employee's fund member category changed during the year.

The corrected contribution certificates must be supplied to the employer within one month after the date that the error was discovered (or should reasonably have been discovered) or after the date on which the change becomes effective.

6. FSCA Powers to Approve Rules for Tax Purposes: 1 April 2018

Previously, the Income Tax Act allowed the Commissioner for the South African Revenue Service to delegate the function to approve rules and amendments for tax purposes, to the Executive Officer of the Financial Services Board. The Financial Sector Regulation Act came into effect on 1 April 2018, creating the Financial Sector Conduct Authority ("FSCA"). As such, the above provision is amended retrospectively to 1 April 2018, to allow for the same powers to be delegated to the FSCA.