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tennant administration services

Continuance and postponement of certain elements of the 2015 Tax Administration Laws Amendment Act No. 23 of 2015 and Taxation Laws Amendment Act No 25 of 2015

The retirement reforms relating to tax harmonisation of retirement funds was signed into law in January 2016 to become effective on 1 March 2016 (also referred to as "T-day"). Following several weeks of debate with labour, Government has decided to delay the implementation of certain provisions to 2018.

It should be noted that the 2015 Taxation Laws Amendment Act (and the 2013 and 2014 Acts) provisions relating to retirement will come into force on 1 March 2016, except for the annuitisation implementation date and related provisions. The tax harmonisation reforms will therefore continue to be implemented as scheduled on 1 March 2016

The important changes in legislation that are to be implemented on 1 March 2016

- Retirement funds will be aligned, removing some of the differences between the different types of funds. Members of all approved funds (Pension, Provident and Retirement Annuity Funds) will be allowed a contribution deduction of 27.5% of the greater taxable income or remuneration, subject to a yearly maximum of R350 000.
- Employer contributions to retirement funds will be taxable as fringe benefits, with these contributions being deemed to be employee contributions for the purposes of claiming the deduction.
- The minimum annuitisation amount for retiring members will be increased from R75 000 to R247 500. Members who retire from approved retirement funds with "retirement interests" in the fund of less than R247 500, may take their entire balance in the fund in cash and will not have to annuitise any amount. Only If their "retirement interest" in the fund at retirement is above this minimum amount, can the member take a maximum of 1/3 of their "retirement interest" in cash and the balance of at least 2/3 of the remaining "retirement interest" will need to be used to purchase an annuity.

Changes in legislation that are to be postponed to 2018

- A major change initially aimed at implementation on 1 March 2016 related to "annuitisation" Provident fund members, like retirement annuity and pension fund members, would have been allowed to take up to 1/3 (one-third) of their retirement savings as cash and they would have had to use the rest (at least 2/3) of their accumulated retirement savings to buy a pension / annuity that pays them an income during retirement. This has now been postponed to 2018.

Annuitisation
The process of converting retirement savings into a stream of future income.

- Treasury has repeatedly stressed that "vested rights" will be protected – i.e. the new legislation will not apply to funds accumulated as well as invested returns thereon up to the date of change. These "vested rights" are not to form part of members' "retirement interest" (accumulated retirement savings) for the purposes of applying the annuitisation requirements that they will be subject to from the date of the change.

Vested rights
A right belonging so absolutely, completely, and unconditionally to a person that it cannot be taken away.

Other changes

- Changes around estate duty through the way tax is handled between retirement funds and estates.
  - o Included in the dutiable value of the estate for estate duty purposes: Contributions that were made on or after 1 March 2015 to a retirement fund that did not receive a tax deduction.
  - o Excluded from the dutiable value of the estate for estate duty purposes to avoid any potential double counting: Contributions that did not receive a tax deduction that have been included as part of any lump sum pay outs to the member, or that have been used to offset the tax liability for annuity payments.

These amendments came into effect on 1 January 2016 and apply to the estates of members who die on or after that date. The changes will only apply to contributions made on or after 1 March 2016.

- National Treasury is changing the definition of 'retirement annuity fund' to allow expatriates to withdraw a lump sum from their RA's if:
  - o The expatriate is no longer a tax resident and leaves South Africa, or
  - o The expatriate leaves South Africa at the end of their work visa

Implications for members of Pension and Provident funds

Pension Funds

- Pension fund members are already required to receive their benefits in the form of annuity payments and were therefore mostly unaffected by the changes coming into effect on 1 March 2016.
- Pension funds, Provident funds as well as Retirement Annuity funds will from 1 March 2016 all be subject to similar retirement and contribution rules with the exception of the annuitisation requirements for Provident funds having been postponed to 2018.

The 2015 Tax Administration Laws Amendment Act No. 23 of 2015 and Taxation Laws Amendment Act No 25 of 2015

- The minimum annuitisation amount for retiring members will be increased from R75 000 to R247 500 from 1 March 2016.
- This means that on pension and retirement annuity funds, if the total amount of your money in the fund upon retirement from the fund exceeds R247 500 you will be required to buy a pension. If your total fund benefits on retirement is less than R247 500 the full amount can be taken in cash.
- All fund contributions, including those made by the employer, will from 1 March 2016 be treated as if they were made by the member. Members however from 1 March 2016 qualify for a tax deduction of up to 27,5% of the greater of his taxable income or remuneration. This tax deduction is capped at R350 000 per annum. As such, the cap only applies to fund members earning over R1,272,727 annually.

Provident Funds

- Provident fund benefits accumulated by members, initially up to 1 March 2016 but extended now to 2018, plus investment growth thereon would have been treated in the same way as before. These savings are referred to as the member's "vested rights"These are completely unaffected by the new legislation.
- With the postponement, only Provident fund contributions made after 2018, plus investment growth thereon, will be subject to the new legislation.
- After 2018 all members of provident funds who are under age 55 and whose retirement savings, as reduced by their "vested right" amount, is more than R247 500, will be required to buy pensions / annuities using at least two-thirds of the amount after the "vested right" amount has been deducted. The pension / annuity thus received will provide the member with a regular (usually monthly) income after retirement.
- After 2018, if a member's accumulated retirement savings after the deduction of the "vested right" amount is to be more than R247 500 when they retire, they will be required to buy a pension with 2/3rds of this amount. Provident fund members will therefore still receive their "vested right" amount as a lump sum and in addition, the benefits accrued after 2018 of which up to 1/3 may then also be taken as a lump sum with at least 2/3rds to be used to provide the member with a pension / annuity.
- Members aged 55 years and older in 2018 will not be affected at all by the annuitisation requirements provided they remain on the same provident fund of which they were a member on in 2018 until retirement. Should a member, over the age of 55 in 2018, change funds after the effective date, then the contributions plus growth thereon made to the new fund after the changeover will be subject to the annuitisation requirement.
- What remains in place however under the new legislation is that all contributions to Provident funds (as with Pension funds), including those made by the employer, will be treated as if they were made by the member. Members will qualify for a tax deduction of up to 27,5% of the greater of his taxable income or remuneration. This deduction is capped at R350 000 and as such, will only apply to fund members earning over R1,272,727 annually.
- It should be noted that the 27,5% tax deduction limit applies to all contributions to all funds to which the member may belong i.e. pension, provident and retirement annuity funds.
- With the equalisation of tax treatment for all funds on 1 March 2016, Provident fund members will now also enjoy tax deductibility on their own contributions which means that their take-home pay should be higher. They will also be able to make bigger contributions.

Important notes:

- Employees over 55 years in 2018 should carefully consider their position before transferring to a Provident Fund;
- Fund Members will need continued proper communication that explains the upcoming changes, both now and in 2018;
- Members also need to be encouraged to make additional voluntary contributions, the benefit this holds and how to make these;
- Fund rules will have to be changed to accommodate the various contribution levels employers may wish to offer employees; HR and payroll systems will need to be adapted of to meet the new SARS requirements;
- It is important that members understand that government is not trying to nationalise member's retirement funds and that members should not withdraw their accumulated retirement savings from their retirement funds;
- The changes are being implemented to help members by simplifying the rules, to encourage members to save via retirement funds, and to assist members get an income after their retirement.