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fsp license no. 43648
po box 64 buccleuch gauteng 2066 | hurlingham office park 59 woodlands drive block a suite 3 | cnr. republic road & william nicol drive hurlingham manor | T:0113052470 | www.tennant.co.za

tennant administration services

Taxation Laws Amendment Act, 2014 And Associated Legislative Developments

A. Taxation Laws Amendment Act, 2014

The Taxation Laws Amendment Act 2014 was passed into law on 22 of January 2015. This Act promulgated important tax changes long discussed in the Bill formats of this Act. All these tax changes will be effective as at 1 March 2015 and are set out below.

1. Retirement Benefit Accrual Date

Current position	Changes effective from 1 March 2015	Provisions of the Income Tax Act which will be amended from 1 March 2015
Lump sum benefits which are payable on members' retirement or death are deemed to accrue to members for tax purposes, on the earliest date on which: • An election is made • A transfer takes place • The date of death, or • The date retirement. Retirement is deemed to occur at 'normal retirement age', which is set out in the Fund's rules.	With effect from 1 March 2015, the date on which lump sum benefits payable to a member on retirement will no longer be dependent on a fund's normal retirement age. From 1 March 2015, lump sum retirement benefits will accrue on the date that the member elects to receive their lump sum retirement benefit, for tax purposes. As a result, retirement benefits will not necessarily be paid to members when they are required to retire at normal retirement date. This provision will enhance preservation of retirement benefits. Funds will need to apply to SARS for a tax directive on the retirement benefit, on the date the member makes their election. The lump sum benefit communicated to SARS must match the amount in the fund at the date of the member's chosen date of retirement.	**Definition of "retirement date"** This provides that a member's retirement date will be the date on which he or she elects to retire in terms of the rules of their fund. **Definition of "retirement interest"** This has been amended to be the member's share of fund determined in terms of the fund's rules on the date on which "he or she elects to retire". Paragraph 4(1) of the Second Schedule of the Income Income Tax Act ("the ITA") will be amended and subpara (d) 1 will be deleted.

2.Tax-Free Savings Accounts

Current position	Changes effective from 1 March 2015
Not implemented as of yet.	• Individuals will have a contribution limit of R30 000p.a in respect of investments in tax exempt savings accounts, with a lifetime contribution limit of R500 000 • The investment returns on these savings will not be subject to income or dividends tax • Individuals will be allowed to open multiple tax free savings accounts • Individuals can withdraw funds from the tax free savings accounts, although these withdrawals could affect the individual's lifetime limit • If individuals make contributions into their savings accounts which are over the annual or lifetime contribution limit in any year, additional income tax of 40% on the excess contributions, must be paid by the individual to SARS.

3. Disability And life policies	
Current position	**Changes effective from 1 March 2015**
• Taxation of premiums and payouts in respect of both lump sum (group life) and income replacement disability policies are not aligned • Premiums paid on lump sum disability policies are not tax deductible and payouts are tax-free • Premiums paid on income replacement benefits are tax deductible but monthly income benefit payments to employees are taxable in their hands	• In order to align the tax treatment, all disability and life policies will now be taxed in the same way • Premiums paid to both lump sum (group life) and income replacement disability policies will not be tax deductible, but pay-outs will be tax-free • If the policy is in the name of the employer and the premiums are taxable as a fringe benefit in the hands of employees, benefit payouts will be tax-free in the hands of employees

B. Information Letter 4 Of 2014 on the Taxation of Income Protection Policies from 1 March 2015

The Registrar of Long-term and Short-term Insurance issued Information letter 4/2014 to long-term and short-term insurers on 10 December 2014. This Information Letter set out the implications of the amendment to the Income Tax Act (the Act) effective from 1 March 2015, which impact on income protection policies and provides clarity on concerns raised with the Registrar.

In addition to drawing attention to the changes to income protection policies (which at the time were about to be) promulgated in the Taxation Laws Amendment Act, 2014, it further clarified the following:

- Insurers must communicate the tax changes to all policyholders before 1 March 2015
- All future marketing material relating to these policies must include these tax changes
- Commission will be clawed back if the sum assured is reduced. This could have an impact on the financial advice given by intermediaries. However, the Information Letter reminds intermediaries that they are bound by the FAIS General Code of Conduct and must act in accordance with the code at all times.

A. SARS Binding General Ruling 25 (“BGR25”) and The Taxation Laws Amendment Act, 2014: Taxation on Pensions and Lump Sums where service has been performed outside of South Africa (“SA”)

On 14 November 2014 the South African Revenue Service (“SARS”) issued Binding General Ruling 25 (“BGR25”). This clarifies the income tax exemptions which applies to fund benefits from a foreign source.

If a fund member performs services outside of SA, the source of the service will be considered to be outside of SA for the portion of their services performed outside of SA and will be exempt from tax in South Africa. Retirement funds are no longer required to be “foreign retirement funds” to obtain the exemption.

However, the Double Taxation Agreement with the country of the members' residence will control which country can levy the tax, whether or not the income is from a South African source.

Section 9(2)(i) of The Income Tax Act

Section 9(2)(i) of the Income Tax Act applies to non-SA residents. In the past it applied to pension income only. However, the Taxation Laws Amendment Act, 2014 provides that this will apply to lump sums too, in respect of that part of the member's service performed in SA. This change is effective from 1 March 2015.

Section 10(1)(gC)(ii) of The Income Tax Act: Clarification Of “Source Outside of SA”

The SARS has clarified that “source outside of the Republic” in section 10(1)(gC)(ii) of the Income Tax Act refers to where the services have been rendered. The portion of a pension which relates to services performed outside of SA, is exempt from income tax.

Effect on pensioners' tax assessments:

1. Future pensions: pensioners who are affected must approach SARS for directives every year, regarding their PAYE tax
2. Past tax assessments: affected pensioners should take advice on whether they should re-open tax assessments
3. Future tax assessments: if pensioners have not been assessed yet but PAYE has been withheld and paid to SARS, pensioners will need to claim refunds from SARS.