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tennant administration services

Section 14 transfers and tax directives

Information Circular 5 of 2016

The Registrar of Pension Funds ("the Registrar") has clarified which transfers are regarded as a transfer of business in terms of Section 14 of the Pension Funds Act ('the Act') and which transfers need a tax directive.

A tax directive is needed where a member voluntarily elects on an individual basis to transfer his or her benefit from one fund to another or any transfer from a pension fund to a provident fund under section 14(1) of the Act.

Background

Directive 6 deals with Section 14 transfers. It became effective on 1 January 2012 and explains what requirements apply for different types of transfers. It specifies what types of transactions must follow the Section 14(1) process, as Section 14(8) process or where no Section 14 is required.

At the moment Section 14(1) transfers do not require a tax directive; however a tax directive is needed for Section 14(8) transfers. The Taxation Laws Administration Act proposes making it compulsory for both Section 14(1) and Section 14(8) transfers to require a tax directive for every transferring member.

When was Directive 6 issued and what does it say?

Trustees are reminded that Directive 6 was issued by the Registrar on 28 December 2011 and deals with Section 14 transfers. Directive 6 sets outs the conditions imposed by the Registrar for different types of transfers. This Directive was effective 1 January 2012; therefore all transfers from that date had to be done in line with Directive 6.

When must a Section 14 transfer process be followed?

The Act says that no transfer of assets and liabilities between registered funds or from one registered fund to a non-registered fund shall be of effect unless it is approved by the Registrar.

A Section 14 is required where it is a compulsory transfer and members are not entitled to receive their fund benefits.

How does a Section 14(1) transfer differ from a Section 14(8) transfer?

Section 14(1) transfers

First and foremost, a Section 14(1) transfer needs the Registrar's approval.

Buying an annuity policy in the pensioner's name, agterskot adjustments, fund to fund transfers of business (full transfers), transfers resulting from a Section 197 sale of business where the benefits in the fund are being transferred to the new employer's fund and transfers from one retirement annuity fund to another retirement annuity fund (if one or both funds are not valuation exempt) – are Section 14(1) transfers.

Section 14 (8) transfers

In contrast to a Section 14(1) transfer, a Section 14(8) transfer does not require the Registrar's approval.

Section 14 transfers and tax directives

Transfers where both funds are valuation exempt, transfers between beneficiary funds, transfers between funds where one fund is neither registered nor required to be registered and the other is valuation exempt – are Section 14(8) transfers.

In terms of Directive 6, transfers on or after 1 January 2012, were granted an exemption from Section 14(1) for the following types of transfers - transfers of unclaimed benefits from registered funds to unclaimed benefit funds, transfers between unclaimed benefit funds, transfers between retirement annuity funds, transfers between preservation funds (provided they follow the Section 14(8) process).

In order to comply with the requirements of Section 14(8) transfers, the trustees must ensure that the transfer is communicated to affected members and any objections are dealt with, that they keep proper records relating to the transfer, that the transfer takes place within 180 days of the effective date of transfer and that the transfer includes fund return between effective date and the transfer of the assets.

Transfer of pension interest on divorce to a non-member spouse, members who leave service (for example resignation or retrenchment) and elect to move their benefit to another fund, on liquidation of a fund and the members electing to move their benefits to another fund instead of taking cash, where the fund rules allow a retiring member to buy an annuity from an insurer, where the fund rules allow a beneficiary to buy an annuity from an insurer on the death of a member - are not seen as a transfer of business and therefore Section 14 does not apply to them.

What about Tax?

Currently the Income Tax Act exempts funds and their administrators from having to apply for a tax directive for all members being transferred between retirement funds in terms of Section 14(1) of the Act.

An exception to this is a Section 14(1) transfer from a pension fund to a provident fund and a transfer from a pension preservation fund to a provident preservation fund. These require that a tax directive be applied for.

However, SARS have requested funds and administrators to obtain a tax directive for Section 14(8) transfers as well.

The Tax Administration Laws Amendment Bill of 2016 (TALAB) proposes to remove the exemption from having to get a tax directive. This means that funds and administrators will have to apply for a tax directive for every member in all Section 14 transfers (including both Section 14(1) and 14(8) transfers) when the TALAB becomes law.

This will prove to an administrative burden and applying for tax directives for every single member in a Section 14 transfer will increase overall costs.