



Legal Services

FINANCIAL SERVICES



## ON THE SCALES 4 OF 2019

# Taxation Laws Amendment Act, 2018, signed into law

The President has signed the Taxation Laws Amendment Act 2018 (“the TLAA”) and it is now law.

This Act primarily provides clarity on certain technical issues and gives legislative effect to the tax proposal announced by the Minister of Finance in his annual National Budget Speech delivered in February 2018.

As a reminder, we covered the provisions of the TLAA when it was still a Bill in On the Scales 24 of 2018.

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### Summary

- Annuitisation of provident funds postponed to 1 March 2021.
- Preservation fund will allow members to withdraw their full lump sum benefit when they emigrate from South Africa - 1 March 2019.
- Change to the definition of retirement interest to allow a member’s deferred benefit to transfer to a preservation fund or retirement annuity fund - 1 March 2019.
- Surplus transfers or transfers within or between retirement funds of the same employer will not create a taxable fringe benefit for the employee/member – 1 March 2017.
- Section 10C allows 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 - 1 March 2016.
- Allows transfers to a pension preservation or provident preservation fund on or after reaching normal retirement age, but before retirement date - 1 March 2019.

- Allows 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 – 1 March 2018.
- 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 further transfers – 1 March 2018.
- Medical tax credits should be proportionally allocated between taxpayers who made the payment of medical scheme contributions – 1 March 2018.
- Deductions for contributions to funds must be proportionately incurred between SA and foreign sources – 1 March 2018

### **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 TLAA again postpones the effective date for the annuitisation of provident funds to 1 March 2021. The postponement is to allow for negotiations at Nedlac to be finalised.

The Minister of Finance must table a report in Parliament by 31 August 2020 on the result of the NEDLAC deliberations.

*Comment: the way the legislation has been drafted will need to be revisited as there are technical revisions which need attention. Industry bodies intend to consult with National Treasury and make submissions to ensure that the drafted law correctly reflects the policy intention.*

### **Emigration benefit from a preservation fund - effective 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
- who is an expatriate, 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 SA. This 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” has been 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, which results in a change to 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;*”.

This facilitates the transfer of a member’s deferred benefit to a preservation fund or retirement annuity fund.

*Comment: retirement interest cannot currently be transferred to another pension or provident fund - not to be confused with the right to transfer a paid up benefit before it becomes a deferred retirement benefit. However, there is merit in this being allowed in certain situations which is being proposed by industry bodies in submissions to National Treasury.*

#### **Tax treatment of actuarial surplus between funds - effective date 1 March 2017**

Contributions by an employer to a fund for the benefit of an employee, is a taxable fringe benefit. Also any contributions made by a retirement fund of an employer into another fund of the same employer is a taxable fringe benefit in the hands of employees/members. There is currently no carve-out for transfers of actuarial surpluses.

To address these unintended anomalies, change has been made to the law so that surplus transfers or transfers within or between retirements funds of the same employer or retirement funds in which the employer participates will not create a taxable fringe benefit for the employee/member.

This applies to surplus under the following sections of the Pension Funds Act:

- Section 15E(1)(b) - supplement medical scheme contributions after retirement
- Section 15E(1)(d) - improvement of benefits payable to members
- Section 15E(1)(e) - transfer of all or part of the employer surplus account to an employer surplus account in another fund.

#### **Section 10C - effective date 1 March 2016**

Section 10C allows 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:

- when they were contributed to the fund; or
- under the Second Schedule as a lump sum on exit from a fund; or
- under section 10C in respect of ANY year of assessment.

There have been differences of interpretation on the way this section should be applied. The word “ANY” created the impression that an after tax lump sum contributed in the current tax year could be set off against annuity income in the same year.

The section has been clarified to reflect that the failure to qualify for a deduction must have occurred in a PRIOR year of assessment.

**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, “retirement date” is triggered only when an election to retire is made by the member of the fund. A member can defer retirement date after reaching normal retirement age but before retirement date by:

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

The TLAA now allows transfers to a pension preservation or provident preservation fund on or after reaching normal retirement age, but before 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 are 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 law. Where a person wants to transfer from a provident preservation fund into a new employer pension fund, no deduction is provided.

The TLAA now allows for a 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.

### **Transfers from public sector funds to private sector fund – 1 March 2018**

Until 1 March 2018, a transfer of the pre-1 March 1998 amount from a public sector fund to a private sector fund was tax-free. However, further transfers from the private sector fund to another private sector fund caused the member to lose the tax-free status of the pre-1 March 1998 amount.

From 1 March 2018, the Act was amended to allow the tax-free status of the pre-1 March 1998 amount to be retained on the next transfer to another private sector fund, but not to any further transfers.

The way in which the legislation was drafted is ambiguous in that it potentially contemplates more than the next transfer.

The TLAA has been amended to clarify that it applies only to a direct transfer from the private sector fund.

### **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.

The TLAA now provides that medical tax credits should be proportionally allocated between taxpayers who made the payment of medical scheme contributions.

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

**Deduction for contributions to funds must be proportionately incurred between SA and foreign sources – 1 March 2018**

Any allowable deductions contemplated in sections 11F (27.5% retirement fund deduction) and section 18A (charitable donations) must be deemed to have been incurred proportionately in respect of taxable income derived from sources within and outside South Africa.

The deduction must be allocated in relation to the taxable income from sources within and outside South Africa before taking into account any deduction in terms of those sections.

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*If you need more information, please contact your consultant.*

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