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| **To:** | Standing Committee on Finance |
| **From:** | Tashia Jithoo |
| **Date:** | 2 March 2016 |
| **Re:** | Comments on the Revenue Laws Amendment Bill |

M e m o r a n d u m

1. The following are some comments and issues of clarity on the Revenue Laws Amendment Bill (RLAB) and issues relation to the Taxation Laws Amendment Bill for consideration by the Standing Committee on Finance:
   1. National Treasury had indicated in its statement on 16 February 2016 that with annuitisation being postponed, it would look at a*”formula that will allow a technically appropriate way to allow the tax deduction to provident fund members for two years”*. This does not appear to be part of the RLAB. It is assumed that if this is going to go ahead, then that tax deduction rate will be included in the RLAB as it will have an implication for employers effecting the relevant tax deductions for provident fund members. A maximum tax deduction rate for provident fund members, within the aggregated tax deduction cap (of 27.5% of the higher of Remuneration or Taxable Income, subject to the cap of R350 000), will also have an implication for how employers design remuneration packages to ensure tax efficiency for their employees, so clarity on this would be welcome.

* 1. **Calculation of fringe benefits**
     1. In Annexure C (p158) of the Budget Review it is acknowledged that para 12D of the Seventh Schedule of the Income Tax Act currently makes provision for actual employer and employee contributions and “excludes contributions of behalf of the employer and employee, for eg by the retirement fund”. It is then proposed in Annexure C that to avoid prejudice to the employee there be a proposed amendment that this rather refer to all contributions made for the employee’s benefit.

* + 1. When drafting this clause it is important to bear in mind that contributions can be made for the benefit of the employees from various sources and the wording of the clause should be general enough to accommodate the same. For example, it could come from the employer surplus account held by the fund (which houses surplus to be used in terms of s15E of the Pension Funds Act of 1956). It could also come from policies of insurance held by the employer for the benefit of its employees which offer “premium waivers” and/or payments which are specifically intended to supplement or top up the contributions paid by the member/employee and employer to the fund. This could be, for example, in circumstances where the employee has been disabled and is still in the period of ‘temporary’ disability.
  1. **Increase in the de minis amounts from R75 000 to R247 000**
     1. Specific amendments are needed to clarify that the increase to the *de minimis* amount (from R75 000 to R247 500) is to come into effect on 1 March 2016 (as has been indicated is the intention). Currently it seems that reference to the increased *de minimis* amount is contained in the definitions of pension fund, provident fund and retirement annuity fund. This is also where the annuitisation provisions where included. The effective date of commencement of these specific changes was postponed to 1 March 2018. It is assumed that provisions relating to the increase in the *de minimis* amount will be specifically and clearly included in the RLAB (as a separate provision if needs be) with a commencement date of 1 March 2018.
  2. **Vested rights for provident fund members – mandatory transfer**
     1. There has been a concern that if a member with vested rights ie (who is age 55 or older on T day ) moves to and begins contributing to a new provident fund, he or she will lose their annuitisation exemption in relation to future contributions. Annexure C of the Budget Review (at p159) states that it is proposed that *“forced transfers (through the closure of a retirement fund” will not affect the member’s ability to make further contributions, which can be taken as a lump sum.”*
     2. It is submitted that ‘forced transfers’ do not only happen in the context of a closure of a fund. There could be case where the business of the employer is sold and transferred as a going concern in terms of section 197 of the Labour Relations Act. Employees aged 55 or older could also then be required (ie compulsorily by operation of law) to transfer employment to the new employer. If both the old and new employers are participating in an umbrella fund, it may be possible for the employee to remain in the fund. However, if they both do not participate in the same fund, and the employees are required to transfer to the new employer’s fund, this would be a forced transfer – but not on account of a fund closure.
     3. As such, it is submitted that the wording of this clause be wide enough to capture all forced transfers and not just those that happen on account of a closure of a fund.
  3. **Deductions from the Pre T-Day money and Post T-day pot of money**
     1. It is appreciated that with anuitisation postponed until 1 March 2018, this may not be an urgent issue. However, it could assist give guidance to the industry as to how they design systems to track deductions from the two pots of money.
     2. Annexure C of the Budget Review documents (at p158) specifically deals with divorce deductions under the heading *Vested rights for provident fund members – divorce order settlements.*  It stated that *“in order to allocate this vested right fairly in the case of a divorce, it is proposed that the withdrawal of retirement benefits arising from the divorce order settlements be proportionally attributed as a reduction against both the vested right and non-vested right portions of the retirement savings”.*
     3. There is no concern with the principle of a proportionate deduction from both the vested and non-vested portions of the retirement savings. However, it is not clear why the comments in Annexure C are limited only to divorce deductions. Section 37D of the Pension Funds Act permits a range of deductions, such as:
        1. deductions iro housing loans or guarantee repayments (in respect of housing loans granted by the fund or housing guarantees granted using the retirement saving as security);
        2. deductions iro compensation to the employer for damages caused by the employee/member by reason of theft, dishonesty, fraud or misconduct by the employee/member;
        3. deductions in respect of maintenance payments owed by the member ito the Maintenance Act;
        4. medical aid premiums or insurance premiums (payable to a Long-Term Insurer) owed by the member (such deduction made with at the request of and with the agreement of the member);
        5. other deductions specifically permitted by the Registrar of Pension Funds.
     4. It is submitted that the same regime as is intended apply to divorce deductions (proportionately from both the vested and non-vested amounts) also apply to these other deductions. It is submitted that such an approach is also supported by the fact that section 37D refers to deductions from the “benefit” and this must be the benefit as a whole. The fact that there are two pots of money held separately (ie the vested portion and the non-vested portion) does not make it two benefits. The two pots of money collectively are “the benefit”. It should be noted that this may not, however, be appropriate for the deduction of tax (which is also a deduction specifically in s37D of the Pension Funds Act) as it is not clear whether the vested portion (which is paid as a lump sum) will be taxed differently to the non-vested portion (which is paid as an annuity). Clarity on this will be appreciated.
  4. **One withdrawal from Preservation Funds** 
     1. There is no indication specifically given in relation to the one withdrawal which a member is permitted from a preservation fund as to whether this is also to be effected proportionately in the same manner as deductions are effected. It is submitted that the same regime as is intended apply to divorce deductions (proportionately from both the vested and non-vested amounts) also apply to the one withdrawal from a preservation fund.

Thank you for considering these comments.

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