

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 4—2016]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Income Tax Act, 1962, so as to correct certain provisions; to provide for a correction of the calculation of the amount of a deduction in determining taxable income; to amend the Taxation Laws Amendment Act, 2015, so as to amend certain provisions; to provide for the postponement of the commencement of certain provisions in respect of taxation of retirement benefits; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of

2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014 and section 3 of Act 25 of 2015

1. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition in subsection (1) in the definition of “pension fund” of the following proviso:

“: Provided that in respect of any fund contemplated in paragraph (a) or

(b)—

(a) the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and

(b) the rules of the fund provide—

(i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his or her employment on or after the date upon which—

(aa) the fund comes into operation; or

(bb) the employer becomes a participant in that fund;

(iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than 12 months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

(iv) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the employee is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:

(aa) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2018—

(i) any amount contributed to a provident fund of which that person is a member on 1 March 2018;

(ii) with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2018; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or

(bb) in any other case of a person who is a member of a provident fund—

(i) any amount contributed to a provident fund prior to 1 March 2018;

(ii) with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2018; and

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any

- amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;
- (v) that a partner is regarded as an employee of the partnership;
- (c) that the rules of the fund have been complied with;”;
- (b) by the substitution in subsection (1) in the definition of “pension preservation fund” for paragraph (e) of the proviso of the following paragraph:
 “(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:
- (a) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2018—
- (i) any amount contributed to a provident fund of which that person is a member on 1 March 2018;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or
- (b) in any other case of a person who is a member of a provident fund—
- (i) any amount contributed to a provident fund prior to 1 March 2018;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;”;
- (c) by the substitution in the definition of “provident fund” for paragraph (b) of the proviso of the following paragraph:
 “(b) that the rules of the fund provide—
- (i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;
- (ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his or her employment on or after the date upon which—
- (aa) the fund comes into operation; or
- (bb) the employer becomes a participant in that fund;
- (iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than 12 months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;
- (iv) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the employee is deceased: Provided that in determining the

- value of the retirement interest an amount calculated as follows must not be taken into account:
- (a) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2018—
 - (i) any amount contributed to a provident fund of which that person is a member on 1 March 2018;
 - (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
 - (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or
 - (b) in any other case of a person who is a member of a provident fund—
 - (i) any amount contributed to a provident fund prior to 1 March 2018;
 - (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
 - (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;
 - (v) that a partner is regarded as an employee of the partnership;
 - (c) that the rules of the fund have been complied with;";
 - (d) by the substitution in subsection (1) in the definition of "provident preservation fund" for paragraph (e) of the following paragraph:

"(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:

 - (i) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2018—
 - (aa) any amount contributed to a provident fund of which that person is a member on 1 March 2018;
 - (bb) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
 - (cc) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or
 - (ii) in any other case of a person who is a member of a provident fund—
 - (aa) any amount contributed to a provident fund prior to 1 March 2018;
 - (bb) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2018; and
 - (cc) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;"; and

- (e) by the substitution in subsection (1) in the definition of “retirement annuity fund” in paragraph (b) of the proviso for subparagraph (ii) of the following subparagraph:

“(ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account: 5

(aa) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2018— 10

(i) any amount contributed to a provident fund of which that person is a member on 1 March 2018;

(ii) with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2018; and 15

(iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or 20

(iv) in any other case of a person who is a member of a provident fund— 25

(aa) any amount contributed to a provident fund prior to 1 March 2018;

(bb) with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2018; and

(cc) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), 30

reduced by any amounts permitted in terms of any law to be deducted from the member’s individual account of the provident fund;”.

- (2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of 2011, section 271 of

Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012, section 27 of Act 31 of 2013, section 17 of Act 43 of 2014 and section 18 of Act 25 of 2015

2. (1) Section 11 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (iii) of the proviso to paragraph (k) of the following paragraph: 5

“(iii) any amount so contributed by an employer of the person for the benefit of the person must be deemed—
 (aa) to be equal to the amount of the cash equivalent of the value of the benefit contemplated in paragraph 2 (l) of the Seventh Schedule determined in accordance with paragraph 12D of that Schedule; and 10
 (bb) to have been contributed by the person; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016.

Amendment of section 3 of Act 25 of 2015

3. (1) Section 3 of the Taxation Laws Amendment Act, 2015 is hereby amended— 15

(a) by the deletion in subsection (1) of paragraphs (p), (t), (v), (z) and (zC);

(b) by the substitution for subsection (7) of the following subsection:

“(7) Paragraphs (k), (l), (o), (q), (r), (u), (w), (x) and (y) of subsection (1) come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.”; and

(c) by the deletion of subsection (8). 20

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 150 of Act 25 of 2015

4. (1) The following section is hereby substituted for section 150 of the Taxation Laws Amendment Act, 2015:

“**Amendment of section 16 of Act 43 of 2014** 25

150. (1) Section 16 of the Taxation Laws Amendment Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

‘(2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of amounts received on or after that date.’ 30

(2) Subsection (1) is deemed to have come into operation on 20 January 2015.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 159 of Act 25 of 2015

5. (1) The following section is hereby substituted for section 159 of the Taxation Laws Amendment Act, 2015: 35

“**Substitution of section 128 of Act 43 of 2014**

159. (1) The following section is hereby substituted for section 128 of the Taxation Laws Amendment Act, 2014:

‘**128.** (1) Section 113 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection: 40

‘(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2018 and applies in respect of contributions made on or after that date.’ 45

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Short title

6. This Act is called the Revenue Laws Amendment Act, 2016. 50

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