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Ons verw / Our ref: DMR/Julie
U verw / Your ref:

9 May 2008

GFSL9

FOR ATTENTION: The Secretary to Parliament
C/o Mr Bradley Viljoen
Committee Section
Parliament of the RSA
Cape Town
Fax: (021) 403-8204

Pages 1 + 1

Dear Sir

Comments on General Financial Services Laws Amendment Bill, 2008

We wish to take this opportunity to comment on the above-mentioned bill.

I am an attorney specialising in pensions law and wish to point out that one of the proposed provisions would be extremely prejudicial to certain retirement fund members. This is section 14 of the Bill and in particular the proposed new section 37D(4)(d) of the Pension Funds Act which provides as follows:

"(d) Any portion of the pension interest assigned to the non-member spouse in terms of a decree of a divorce or decree for the dissolution of a customary marriage granted prior to 13 September 2007 are for purposes of any law other than the Income Tax Act, 1962, including, but not limited to section 7(8)(a) of the Divorce Act, 1979, deemed to have accrued to the member on the 13 September 2007 and must be paid or transferred in accordance with sub sections (a) and (b)".

From a divorced fund member's perspective, the proposed retrospective application of section 37D(4) to divorce orders granted before 13 September 2007 can be highly inequitable especially where the legal position that applied before 13 September 2007 was duly taken into account for purposes of the divorce settlement. The parties, on the advice of their legal representatives, could for example have taken into account that the amount allocated to the non-member spouse will only be paid when benefits accrue to the fund-member (e.g. on retirement that was contemplated in, say, 5 year's time). They could then have agreed that, in order to compensate for the lack of interest on the allocated amount, the non-member spouse be granted another asset or that a greater percentage of the pension interest be granted to the non-member spouse.

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However, if the proposed section 37D(4) should become law, then despite any previous arrangement between divorcing parties the amount allocated will immediately be deducted from the member's benefit, as well as tax thereon and the tax on such tax. The gross amount allocated in the divorce order will then have to be paid to the non-member spouse immediately or transferred to a fund of his/her choice (and not 5 years later, as anticipated).

The prejudicial effect thereof on the member can be illustrated by the following example:

A member was divorced before 13 September 2007 and in order to compensate for the lack of interest on the amount of pension interest allocated to the non-member spouse, the divorce settlement agreement allocated 60% of the total pension interest of R100 000 to the non-member spouse. It was contemplated that this would be paid on the member's retirement which was expected to be in 5 year's time.

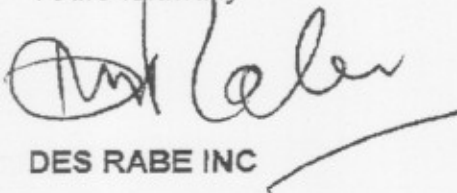
However if the proposed section 37D(4)(d) should be enacted, the position would be as follows (it is assumed that the member's average rate of tax is 30 %):

Total pension interest	=	R100 000
Amount allocated to spouse (60%)	=	R 60 000
Tax on R 60 000 @ 30%	=	R 18 000
Total tax (incl. tax on tax)	=	R 18 000 x $\frac{100}{100-30}$
	=	R 25 714

The member's benefit will therefore be reduced by R 85 714 and, of the original pension interest of R100 000, the member will retain only R 14 286!

It will be ironic if the Pension Funds Act, which should protect fund members, were to be amended to prejudice those members that had arranged their affairs (and agreed to divorce settlements) based on the law as it stood at the time of the divorce. Such amendment would also conflict with the Rule of Law and I therefore appeal to Parliament to scrap the proposed section 37D(4)(d).

Yours faithfully



DES RABE INC

Per: D M Rabe