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DRAFT TAXATION LAWS AMENDMENT BILL, 2017

The Taxation Laws Amendment Bill 2017 ('the TLAB') has been released for public comment. The purpose of the TLAB is to give effect to the tax changes announced in the 2017 National Budget. Comments on the TLAB are due in August 2017.

POSTPONEMENT OF ANNUITISATION REQUIREMENTS FOR PROVIDENT FUNDS TO 1 MARCH 2019

In 2015, amendments were made to the Income Tax Act (ITA), regarding the tax treatment of provident funds. The aim is to promote the preservation of the retirement fund interest on retirement. In February 2016, the annuitisation requirements for provident funds were postponed for two years until 1 March 2018.

The postponement was done in order to provide sufficient time for the Minister of Finance to consult with interested parties. The Minister was asked to report back to Parliament on the outcome of the consultations by no later than 31 August 2017.

Yet again it is proposed that the implementation of these provisions be postponed for another year from 1 March 2018 to 1 March 2019 and to only apply in respect of the years of assessment commencing on or after that date.

TRANSFERRING RETIREMENT FUND BENEFITS AFTER REACHING NORMAL RETIREMENT AGE

Currently, on reaching normal retirement age in terms of the rules of the fund, members can elect when to retire. The date on which the lump sum benefit accrues to members (for tax purposes) is the date on which members elect to retire and receive the payment of their benefit from the fund. It is not on the normal retirement age. This change came into effect when paragraph 4 of the Second Schedule was amended with effect from 1 March 2015. Members could not however transfer their benefit to another retirement fund after passing the normal retirement age.

It is proposed that from 1 March 2018, changes be made to the ITA to allow retiring members to transfer their benefits into a retirement annuity fund, post retiring from employment and from the occupational fund. Transfers to preservation funds are not currently included in the proposal.

TAX EXEMPT STATUS OF PRE MARCH 1998 BUILD-UP IN PUBLIC SECTOR FUNDS.

The Second Schedule of the ITA determines the amounts to be included in gross income for lump sum amounts arising from public sector funds. This is done according to the prescribed formula.

It also allows for the tax free withdrawal of pre-March 1998 benefits:

- when they are withdrawn from a public sector fund, and
- when they are withdrawn from the fund to which they were transferred, that is, the pre –March 1998 benefits that were transferred from the public sector fund to a private sector fund.

However where employers decide to merge or consolidate with other employers thereby forming new funds, the exemption applying to pre- March 1998 benefits falls away.

It is proposed that from 1 March 2018 changes be made to the Second Schedule to allow for the exemption, in respect of pre-March 1998 benefits, to apply in cases where one additional transfer to a different fund occurs (of benefits originally coming out of a public sector fund).

REMOVING THE 12-MONTH LIMITATION ON JOINING A NEWLY ESTABLISHED PENSION OR PROVIDENT FUND

The current 12-month limit to join a newly established pension or provident fund is restrictive. The consequence of the current 12-month limit may be that employees who initially opted out of joining

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a newly-established workplace fund will be prevented from joining the fund at a later date, creating an unwanted barrier to saving and forcing such employees to use a retail product which were, historically, more expensive and restrictive.

To encourage employees to contribute towards their retirement and remove practical difficulties, it is proposed that from 1 March 2018, the current limit of a 12-month period be removed so that employees are allowed to join a newly established pension or provident fund at any time, subject to the rules of the fund.

DEDUCTION IN RESPECT OF CONTRIBUTIONS TO RETIREMENT FUNDS

The tax deductibility of contributions to retirement funds was harmonised across all retirement funds through the replacement of section 11(k) from 1 March 2016. The same deduction now apply to both employer and employee contributions to pension funds, provident funds and retirement annuity funds.

But the inclusion of the deduction in section 11(k) has created technical complications. The opening proviso states that deductions under section 11 relate to taxable income derived from the carrying on of a trade. However, not all allowable contributions to retirement funds relate only to income generated from the carrying on of a trade. Before 1 March 2016 the ITA contained specific exemption for retirement annuity funds under 1(n)(i)(ff), to accommodate contributions to retirement annuity funds against certain type of income that did not relate to income generated from carrying on a trade .

Section 11(k) is clarified by the proposed amendments that will be deemed to have come into effect on 1 March 2016.

REPEAL OF THE FOREIGN INCOME EMPLOYMENT EXEMPTION-SECTION 10(1)(O)(II) OF THE ITA

As from 1 March 2001 South Africa moved to a residence-based system of taxation (previously source-based). This means that South African tax residents are subject to tax on their worldwide income. The section 10(1)(o) of the Act exemption was extended to include South African residents who are rendering services outside South Africa for a period which, in aggregate, exceeds 183 full calendar days during any period of 12 months commencing or ending during a year of assessment.

South Africa has concluded double taxation agreements ("DTA") with many countries. The main purpose of a DTA is to eliminate double taxation of the same income, by allocating taxing rights between the source state and the residence state. When the section 10(1)(o)(ii) exemption was introduced in 2001, the main purpose of this exemption was to prevent double taxation of the same employment income between South Africa and the foreign country.

The current exemption creates opportunities for double non-taxation in cases where the foreign country does not impose income tax on the employment income; alternatively the taxes on employment income are imposed at a reduced rate.

It is proposed that the current section 10(1)(o)(ii) exemption be repealed from 1 March. This will result in all South African tax residents being subject to tax on foreign employment income earned in respect of services rendered outside South Africa with relief from foreign taxes paid on the income under a different section of the ITA.