



DAVEY'S Locker



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Preservation funds

New regulations

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RF 1/2011

Definitions of 'pension preservation fund' and 'provident preservation fund' were inserted into s 1 of the Income Tax Act by the Taxation Laws Amendment Act 3 of 2008.

This tax legislation replaced Retirement Fund Notice RF 1/98 and its addenda in most respects. Effective as from 30 September 2010 (that is, retrospectively), SARS has fully withdrawn RF 1/98 and replaced it with RF 1/2011, which must thus be interpreted in the context of and in conjunction with the Income Tax Act's definitions. (As an aside, any research of retirement funds legislation and tax on such funds is always a 'Google-search' experience, since you have to read and interpret not one, convenient piece of legislation but the Income Tax Act, the Pensions Fund Act and subordinate legislation, including these RF notices.)

Benefit-splitting prohibition

Under the new RF notice, SARS has prescribed two additional requirements for the approval of pension preservation funds, which will require amendments to fund rules to be submitted to it for approval on or before 31 October 2011. (Although not expressly required, the same amendments are presumably required for provident preserva-

tion funds.) In essence, benefits transferred into or out of a preservation fund may not be paid or transferred in such a way that the benefit amount is split between more than one preservation fund or retirement annuity, nor any combination of these. (The only exception in an exit-transfer from a preservation fund arises in circumstances in which there were separate payments into the same fund.)

Withdrawal treatment

Paragraph (c) of the definition of a 'pension preservation fund' in s 1 of the Income Tax Act states that

not more than *one* amount...is allowed to be paid to the member *during the period of membership of the fund* (my emphasis).

RF 1/98 imposed far greater restrictions, in that, first, any amount encashed before transfer to a preservation fund was regarded as the one-off withdrawal, and, secondly, any s 37D (of the Pension Funds Act) deduction (loans, medical aid subscriptions and divorce awards) was also considered to be the one-off withdrawal.

With the withdrawal of RF 1/98, it follows that both restrictions no longer apply, while the Income Tax Act refers only to the period of actual membership of a preservation fund and not to any

earlier period. Thus, although the position remains that only one withdrawal is allowed from a preservation fund, my interpretation is that amounts withdrawn in the circumstances mentioned before transfer will also be permitted.

The tax treatment of such withdrawals remains ring-fenced under the prescribed withdrawal tax table, which taxes withdrawal benefits on a cumulative basis

as from 1 March 2009. In essence, R22 500 is tax free, with the balance of up to R600 000 being taxed at 18%, the next R300 000 at 27%, and thereafter at a flat 36%.

Bear in mind that a divorce award against a retirement fund is also taxed as a withdrawal benefit but the recipient spouse (the non-member spouse) bears the tax (89 *TSH* 2010).

