



DAVEY'S
Locker



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Retirement fund contributions

The new 27,5% base

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It is old news that, as from 1 March 2015, tax deductible contributions by a member to retirement funds (pension, provident and retirement annuities) are increased to a maximum of 27,5% a tax year, as opposed to the previous 15% (retirement annuities) and 7,5% (pension funds).

Less well known is the base of income upon which the 27,5% is calculated.

Previously, there was a convoluted definition of income from 'retirement funding employment' for the pension-contribution base and, by a process of elimination from this definition, non-retirement funding employment income was the retirement-annuity-contribution base.

The new legislation (s 11(k) of the Income Tax Act) refers to the base as the greater of 'remuneration' and 'taxable income'.

'Remuneration' is easy to

ascertain, since it is already defined for PAYE purposes in the Fourth Schedule to the act. In essence, it means all income from employment; both a salary and the value of fringe benefits.

Less clear, according to the various conflicting articles and newsletters I have read, is the meaning of 'taxable income' against which the 27,5% contribution is to be calculated.

One view, having regard to the introductory phrase of s 11, is that the taxable income must be from derived from 'trade', which thus excludes taxable interest, thereby reducing the base. If this is correct, those with high interest income might have been better off under the old 15% retirement annuity regime, since this included all income, as well as interest, with minor exceptions affecting taxpayers who were not members of a pension or provident fund.

The *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2013*, released on 24 October 2013, in dealing with the revised s 11(k), merely refers to taxable income, without stipulating that this must be derived from trade. *Prima facie*, then, taxable interest income is included as part of the base.

In my view, one must have regard to the definition of 'taxable income' in s 1(1), which clearly does not limit itself to income from trade. Thus I support the broader-base approach, to the effect that the 27,5% contribution may be calculated against, amongst other things, taxable interest income.

I understand from informal discussions that SARS will adopt the broader-base approach, and, if necessary, the legislation will be clarified.