

Legal Report August 2018

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Newsletter of Sanlam Employee Benefits: Legal

1. Reduction in the period within which to submit quarterly asset allocation reports

During August last year the Financial Surveillance Department of the South African Reserve Bank (FinSurv) notified the industry that the current three month reporting period to submit quarterly asset allocation reports (QAARs) will be reduced to two months after the respective quarter end.

In a letter dated 22 August 2018 FinSurv advised that the shorter submission period in respect of QAARs (two months after quarter end instead of three months) applies with effect from 30 September 2018. The letter is addressed to all investment managers, collective investment scheme management companies, linked and non-linked insurance companies, retirement funds and their administrators and other stakeholders. The QAARs for the third quarter of this year must, for example, be based on the September 2018 quarter end data and be submitted to FinSurv by no later than 30 November 2018.

In view of the above, the period within which managing institutions that manage assets on behalf of institutional investors (e.g. retirement funds) must report the asset allocation to originating institutions as at the end of each quarter has also been reduced - from 30 days to 15 days. This information is necessary to enable the originating institution to "look-through" to the underlying assets in compiling its quarterly reports.

In terms of Exchange Control Circular No. 13/2018 issued on 20 August 2018 the "Currency and Exchanges Manual for Authorised Dealers" and the "Currency and Exchanges Guidelines for Business Entities" have been amended accordingly.

The amended manual and guidelines may be accessed on www.reservebank.co.za by following the links: Home > Regulation and supervision > Financial surveillance and exchange controls > Currency and exchanges documents.

2. Binding Class Ruling: BCR 065: Post-retirement medical aid benefits

This Binding Class Ruling (BCR) was published by SARS on 14 August 2018 for general information. According to the BCR it “does not constitute a practice generally prevailing” and is binding only as between SARS and the person(s) who applied for the ruling and the “class members”. The class members referred to in the BCR are the affected members of a particular defined contribution provident fund. Their employer was one of the applicants for the ruling.

The members of the relevant fund are entitled to a post-retirement medical aid lump sum benefit on retirement (including ill-health retirement) or death. The issue submitted to SARS for a ruling is the allocation of an amount from the employer surplus account in the fund to the fund credit of each affected member, in lieu of the benefit that would have been payable by the employer as at retirement (or death). Therefore, in return for a certain amount allocated to each member’s fund credit, the affected member will give up his or her right to claim the benefit from his/her employer.

SARS ruled that the intra-fund allocation of an amount from the employer surplus account to a member’s fund credit will trigger a taxable fringe benefit for the members.

However an amendment proposed in the draft Taxation Laws Amendment Bill, 2018 that was issued for comment recently may possibly change the tax position set out in the BCR.

The draft Bill proposes that amendments be made to the Income Tax Act with effect from 1 March 2017 to the effect that the application of actuarial surplus for the purpose as contemplated in section 15E(1)(b) of the Pension Funds Act will not create a taxable fringe benefit in the employee’s hands. The purpose referred to in section 15E(1)(b) is “*payment of pensions, or an increase in pensions in course of payment, so as to compensate members for the loss of any subsidy from the employer of their medical costs after retirement*”.

It is submitted that if the intention is to change the tax position as set out in the BCR, then it is questionable if the proposed amendment to the Income Tax Act will address the situation where the surplus is applied to improve the benefits of active members in lieu of the employer’s post-retirement medical aid obligations towards them.

Retirement funds or other clients requiring more information should not hesitate to contact their consultant.