Legal Report July 2018

Newsletter of Sanlam Employee Benefits: Legal

1. Draft Taxation Laws Amendment Bill ("TLAB")

National Treasury has published the draft Taxation Laws Amendment Bill, 2018 (TLAB) for comment. The TLAB includes the legislative amendments for the tax proposals that were announced in the 2018 Budget Review.

1.1 Annuitisation of retirement benefits from a provident fund

The media statement issued by National Treasury with regard to the TLAB contains the following information regarding annuitisation of retirement benefits from a provident fund:

"The draft TLAB does not contain amendments related to annuitisation for provident fund members. The legislation that is currently in effect states that from 1 March 2019 provident fund members may be required to purchase an annuity from contributions made to their provident fund after 1 March 2019. Provident fund members who are over the age of 55 on 1 March 2019 or who make additional contributions to their provident fund after 1 March 2019 that do not exceed R247 500 at the time of their retirement will not be affected in any way. The process of consultation within NEDLAC is taking longer than anticipated following the release of the paper on comprehensive social security on 25 November 2016. Government may introduce further legislative amendments related to the start-date of 1 March 2019 once the NEDLAC process is completed or provides any recommendation, expected to be no later than end-October."

1.2 Transfer of retirement benefit to preservation fund

Currently the only permissible transfer from a pension fund or provident fund to another retirement fund upon or after retirement is a transfer to a retirement annuity fund. With effect from 1 March 2019 a transfer of a retirement benefit to a pension preservation or provident preservation fund will also be allowed. The single allowable withdrawal applicable to preservation funds will however not apply to these transferred amounts.

1.3 Emigration

Currently a person who emigrates can terminate membership of his retirement annuity fund by making a full withdrawal of his/her benefit. From 1 March 2019 a member of a pension preservation fund or a provident preservation fund will also be able to access and withdraw the full value of their post-tax retirement benefits upon emigration. Such emigration must be recognised by the South African Reserve Bank for the purposes of exchange control.

1.4 Tax treatment of transfers of actuarial surplus between retirement funds

It is proposed that amendments be made to the Income Tax Act to allow for transfers of actuarial surplus as contemplated in section 15E(1) of the Pension Funds Act between or within retirements funds of the same employer not to create a taxable fringe benefit in the employee's hands, as is apparently currently the case. The proposed amendments will be deemed to have come into operation on 1 March 2017.

2. FSCA Commissioner appoints Divisional Executives

The Financial Sector Conduct Authority (FSCA) announced that some of the key executive FSCA positions have been filled. The following persons were appointed as operational Divisional Executives:

- Mrs Caroline da Silva, Divisional Executive: Regulatory Policy
- Mr Jurgen Boyd, Divisional Executive: Market Integrity
- Mr Marius du Toit, Divisional Executive: Specialist Support
- Mr Olano Makhubela, Divisional Executive: Retirement Funds.

3. Guidance Notice 3 of 2018: Cancellation of fund registration and termination of participation of employers in umbrella funds

The Guidance Notice states that the FSCA's systems for the cancellation of the registration of a fund are being finalised and will be implemented shortly. The termination of the participation of an employer in an umbrella fund continues to be subject to the process outlined in Information Circular PF 2 of 2017.

The Notice also states that where the FSCA has received an application for the cancellation of a fund's registration accompanied by the relevant documentation as set out in Information Circular PF 2 of 2017, the fund will not be required to submit statutory returns or to pay FSCA levies after the date of the submission.

4. Compulsory participation in Private Security Sector Provident Fund

In terms of a sectoral determination issued by the Minister of Labour in 2001 any employee who falls within the definition of eligible employee as contained in the rules of the Private Security Sector Provident Fund (PSSPF) must become a member of the PSSPF.

The attorneys for the PSSPF addressed a letter to all retirement fund administrators stating that "it has come to our attention that a few umbrella funds within the Republic, continue to house employers from the private security sector, in flagrant breach of the legislation and Rules".

The letter among others contains the following statements:

- "It is unlawful for employers in the private security industry to unilaterally decline/ cease participation in the PSSPF. If the employer has not been granted an exemption from the PSSPF, alternatively, is not wholly compliant with the rules of the PSSPF, it cannot be a participant in your fund, and accordingly you may be held liable for said employer's non- compliance, in terms of Section 37 of the Pension Funds Act, 24 of 1956."
- "Should you fail to attend to the above request, or respond to this letter, within 14 days from the date hereof, and it is subsequently discovered that you are administering benefits on behalf of non-compliant private security employers, our instructions are to join you to all civil and criminal proceedings against the non-compliant employer, which legal costs will be for your account, on scale as between Attorney and Own Client."
- "We have informed the Financial Services Conduct Authority of this compliance initiative, and we will be providing them with a list of all Section 13 B administrators who failed to co-operate in this exercise despite being in receipt of this correspondence."

5. Levies for financial institutions (including retirement funds)

The annual levies for financial institutions (including retirement funds) for the levy year 1 April 2018 to 31 March 2019 have been published.

5.1 Levy on retirement funds

(a) The levy on retirement funds (excluding a retirement annuity fund, pension preservation fund, provident preservation fund and a commercial umbrella fund) is an amount of:

- R1 206.28 plus an additional amount of R14.27 per fund member and in respect of every other person who receives regular periodic payments from the fund (excluding any member or such person whose benefit in the fund remained unclaimed and beneficiaries), or

- R2 764 018,

whichever total amount is the lesser.

(b) The levy in respect of a commercial umbrella fund, pension preservation fund and provident preservation fund is an amount of R1 206.28, plus an additional amount of R14.27 per member of such fund and in respect of every other person who receives regular periodic payments from such fund (excluding any member or such person whose benefit in the fund remained unclaimed and beneficiaries)."

5.2 Levy on fund administrators

The levy in respect of an administrator approved in terms of section 13B of the Pension Funds Act, is an amount of R7 700.31, plus an additional amount of R600.29 per retirement fund (as referred to in 5.1) under its administration and an amount of R0.73 per member and in respect of every other person who receives regular periodic payments from such fund, but excluding any member or such person whose benefit in the fund remained unclaimed, or a beneficiary in a beneficiary fund.

5.3 Levy for Pension Funds Adjudicator

The levy for the Pension Funds Adjudicator in respect of a retirement fund registered in terms of the Pension Funds Act, including a pension preservation fund, provident preservation fund, retirement annuity fund and commercial umbrella fund, is an amount of R6.05 per member of such fund and any other person who receives regular periodic payments from such fund, but excluding any member or such person, whose benefit in the fund remained unclaimed.

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