Sanlam

Legal Report February 2019

Insurance | Financial Planning | Retirement | Investments | Wealth

Newsletter of Sanlam Employee Benefits: Legal

1. 2019 National Budget

The 2019 National Budget did not introduce significant changes to the retirement fund industry. Below are some of the proposals that are relevant to the employee benefits industry:

1.1 Retirement reform

The Finance Minister confirmed that government, business, labour and civil society have engaged extensively on the first draft of the comprehensive social security paper through the National Economic Development and Labour Council (NEDLAC). The process should come to a close in 2019, after which the paper will be revised and released for broader public consultation. NEDLAC is also engaging on retirement reform issues related to provident fund annuitisation, which has been postponed to 2021.

1.2 Tax exemption relating to annuities from a provident or provident preservation fund

Once a member of a fund retires and receives an annuity upon retirement, any contributions to the fund that did not qualify for a deduction when determining the member's taxable income are tax-exempt and taken into account when calculating tax on any lump sum benefit or annuity payments.

This exemption currently does not apply to annuities received from a provident fund or provident preservation fund. To encourage annuitisation, National Treasury proposed that this exemption be extended to members of provident funds and provident preservation funds who receive annuities. The exemption would apply for contributions made after 1 March 2016.

1.3 Reviewing the tax treatment of surviving spouses' pensions

Upon the death of a member of certain retirement funds (especially defined benefit funds), the surviving spouse may be entitled to receive a monthly spouse's pension from the fund. These spouse's pension payments are subject to income tax (PAYE).

If the spouse also receives a salary or other income, this is added to the spouse's pension to determine his or her correct tax liability on assessment. As a result, the spouse could possibly have a tax liability that exceeds the employees' tax withheld by the employer and retirement fund, since the aggregation of income could push the spouse into a higher tax bracket. Often such spouse does not foresee the additional tax liability and may possibly not be able to settle the liability. The 2019 Budget Review therefore proposes that:

- Surviving spouses are provided with effective communication relating to tax and financial issues

- The monthly spouse's pension be subject to PAYE withholding at a specified flat rate, to be announced
- Tax rebates should not be taken into account in the calculation of spouse's pensions.

The industry awaits more details from National Treasury as to how these proposals will be implemented.

2. Default Regulations notices

All funds that are subject to the requirements of regulations 37, 38 and 39 of the Pension Funds Act ("Default Regulations") must comply therewith with effect from 1 March 2019. During February 2019 the FSCA released two notices relating to the Default Regulations:

2.1 PFA Notice 1/2019: Exemption from Default Regulations

Funds that have applied for cancellation of its registration (in terms of section 27(1) of the Pension Funds Act) before 1 March 2019 have been exempted from the provisions of the Default Regulations. This is on condition that the funds do not have any members, assets, liabilities and any litigation pending, and have their registration cancelled by 1 March 2021.

2.2 PFA Notice No. 2/ 2019: Living annuities

Regulation 39(3)(a) in terms of the Pension Funds Act requires that the drawdown levels of a living annuity that forms part of a fund's annuity strategy must be compliant with a prescribed standard.

Since such standard will not be finalised by 1 March 2019, trustees of funds that intend to include a living annuity as part of their annuity strategy must (until such time as the drawdown levels are prescribed in the proposed standard) exercise their fiduciary duties in determining drawdown rates, taking into account the nature of the fund and circumstances of its membership. The drawdown levels may in any event not exceed those prescribed in terms of the Income Tax Act. The minimum and maximum levels in terms of the Act are respectively 2,5% and 17,5% of the annual capital value. It should be noted that it is expected that the proposed standard would prescribe maximum drawdown levels that are much lower than 17,5% and which are determined in bands by age and gender.

3. PFA Exemption Notice 1/2019: Trustee election

In terms of the Pension Funds Act the FSCA may grant an exemption from the requirement that fund members must have the right to elect at least 50% of the trustees. The Financial Sector Regulation Act requires that where such an exemption is granted, the exemption must be published. The names of five funds that have recently been granted exemption have been published.

4. CMS Circular 4 of 2019

The Council for Medical Schemes confirmed that the Minister of Health has, with effect from 1 January 2019, increased the maximum amount that may be paid to brokers by medical schemes in respect of the introduction of a member to a medical scheme and the provision of ongoing service or advice to the member, to:

(a) R94.77, plus VAT per month, or such other monthly amount as the Minister shall determine annually in the Government Gazette, taking into consideration the rate of normal inflation; or

(b) 3% plus VAT of the contributions payable in respect of the member,

whichever is the lesser.

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