4. Taxation Laws Amendment Bill, 2021

The Draft Taxation Laws Amendment Bill, 2021 was published for comment earlier in the year. After taking into account the comments received, the final Taxation Laws Amendment Bill, 2021 ("the Bill") has now been introduced in Parliament. The Bill must now be passed by Parliament, thereafter it will be signed into law. The amendments affecting retirement funds are as follows.

Allowing retiring members to choose a combination of annuities

A retiring member is allowed to choose a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities. A member can in other words choose a combination of an in-fund annuity, an annuity purchased from an insurer in the name of the fund and an annuity purchased from an insurer in the name of the member. This is also confirmed in Binding General Ruling 58, which is discussed in point 2 of this report.

There is no limitation on the number of annuities that may be chosen. Where more than one annuity is chosen, the amount utilised to purchase or provide each annuity must however exceed R165 000.

Applying tax on retirement fund interest when a member ceases to be a tax resident

The Draft Taxation Laws Amendment Bill proposed that when a member ceases to be a South African tax resident, and withdraws his/her benefit prior to retirement or death, the member will be deemed to have withdrawn from the fund on the day before he/she ceased to be a South African tax resident. There were many concerns about this proposal, and National Treasury has accordingly withdrawn the amendments in this regard. National Treasury has indicated that further amendments will be considered in the next legislative cycle in order to address the complexities raised.

Transfers by preservation fund members who are 55 years or older

In terms of paragraph 2(1)(c) of the Second Schedule to the Income Tax Act any amount transferred for the benefit of a member on or after normal retirement age forms part of the member's gross income. Paragraph 6A of the Second Schedule makes provision for a deduction in respect of such a transfer, but only in the event of a transfer from a pension or provident fund to a preservation fund or a retirement annuity fund. It is proposed in the Bill that paragraph 6A be amended, with effect from 1 March 2022, to also make provision for a tax-free transfer from a preservation fund to another preservation fund or retirement annuity fund.

Clarifying the calculation of the fringe benefit in relation to employer contributions to a retirement fund that provides self-insured risk benefits

It is proposed that self-insured risk benefits under a retirement fund be classified as a defined contribution component for fringe benefit purposes. This will ensure that retirement funds that provide both defined contribution component retirement benefits and self-insured risk benefits can account for the fringe benefit in respect of employer contributions based on the actual contribution. As a result, the value of the risk premiums under self-insured risk benefits will be determined based on the cost to the employer (i.e. the actual contribution made by the employer).

Paragraph 2B of the Fourth Schedule to the Income Tax Act

Paragraph 2B, which comes into operation on 1 March 2022, currently stipulates that if a taxpayer receives remuneration from more than one source (including a pension from a retirement fund or insurer), the tax rebates applicable to the taxpayer are not to be taken into account by the retirement fund or insurer when calculating the taxes to be withheld on the pension. It is proposed that paragraph 2B be amended so that the tax rebates should still be taken into account in the aforesaid circumstances. The retirement fund or insurer paying the pension should instead apply the fixed tax rate as directed by the South African Revenue Service (SARS) in determining the tax to be withheld.

SARS has sent a letter to all stakeholders, in which they set out how paragraph 2B will be implemented, which letter is discussed in point 3 of this report.