

Subject: 1 March 2021 Legislative Amendments

On 1 March 2021 several amendments to retirement funds were promulgated and became effective. The amendments are concerning the following:

Annuitisation of the Provident Fund

Subject to specific rules and conditions set out by the change in legislation, the provident fund and provident preservation fund will now be treated in the same manner as pension, pension preservation, and retirement annuity funds. This means that after 1 March 2021, up to one-third of the gross lump sum may be withdrawn as cash. The remaining two-thirds will be used to pay a pension or purchase an annuity, including a living annuity.

Free Portability of Retirement Funds

Due to the alignment of the mandatory annuitisation requirements between all retirement funds, a more flexible system of free portability can now be allowed. As of 1 March 2021, transfer of retirement savings to provident and provident preservation funds from other funds will not attract tax (to the extent that a transfer is allowed to take place on a tax-neutral basis).

The following transfers may take place on a tax neutral basis with effect from 1 March 2021:

- Pension fund, Pension Preservation Fund, Provident Fund, Provident Preservation Fund to Pension Fund, Pension Preservation Fund, Provident Fund, Provident Preservation Fund and Retirement Annuity Fund; and
- Retirement Annuity Fund to Retirement Annuity Fund.

Emigration Withdrawals

The rules relating to persons who have emigrated for Exchange Control Purposes who have applied prior to 1 March 2021, must follow the existing process for obtaining access to their funds in their Retirement Annuity Funds and Preservation Funds.

A transitional period shall be allowed for the processing of emigration applications already submitted to the South African Reserve Bank (SARB). As such, the existing test which refers to payment of lump-sum benefits when a member emigrates from South Africa and such emigration is recognised by the SARB for exchange control purposes, will apply in respect of all applications that have been received on or before 28 February 2021 and approved by SARB or an authorised dealer in foreign exchange on or before 28 February 2022. This transitional arrangement relates to the existing reason for a tax directive application with regards to emigration withdrawal.

With effect from 1 March 2021, taxpayers will be able to access their Retirement Fund benefits if they can prove that they have been non-resident for tax purposes for an uninterrupted period of three years. The taxpayer must have notified SARS that they have ceased to be residents and provide the relevant Fund with the proof (to their satisfaction) that they fulfil the requirements for getting access to the retirement funds. Such proof will include a residency certificate from the foreign jurisdiction. Thereafter the fund will apply for a tax directive. SARS will be

validating the non-residency status on receipt of the directive application. Further details of this will be provided once the system for the directive application goes live on 23 April 2021.

Retirement Annuities

A member of a retirement annuity fund may currently access their benefit in the fund if the member has discontinued contributions to that fund and the total value of the member's withdrawal interest is R 7000.00 or less. The value of R 7000.00 will be increased to R15 000.00 on 1 March 2021 as prescribed by the Minister in the draft Notice dated 24 February 2021.

Commutation of living annuity for terminating Trusts

An annuitant can nominate a trust as a beneficiary of his or her living annuity on his or her death. On death of the annuitant, the Trust becomes the owner of the living annuity and becomes responsible for the payment of the annuities to the Trust beneficiaries. A terminating Trust may commute the remaining assets of the living annuity into a lump sum payable to the trust and taxable as a retirement benefit. The terminating Trust should submit a tax directive using the 'Par (eA) Living Annuity Commutation' on Form E.

ROT [SR1] Enhancement

The FSCA [SR2] number and contact information of both the Transferring fund and receiving fund will become mandatory. In addition, the notifications of outstanding ROT, which are currently sent to the receiving fund, will be enhanced to provide detail of all the outstanding ROT per fund.

Request for Previously issued Directives for Individuals ad Tax Practitioners

Individuals and Tax Practitioners will be able to request previously issued tax directives for a period of up to three years.

SARS is in the process of implementing system enhancements in order to facilitate these changes. We aim to have this concluded by the end of the first quarter of the 2021/22 Financial Year. It is advised that you delay the submission of any tax directive applications until after the implementation has been done so that you receive an accurate outcome which takes the promulgated legislative amendments into consideration.