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## **LEGAL UPDATE FAW 18/2009: DEDUCTIONS - PARAGRAPHS 5 & 6 OF THE SECOND SCHEDULE TO THE INCOME TAX ACT**

Paragraph 5 of the Second Schedule to the Income Tax Act No. 58 of 1962 provides for the deductions on benefits accruing upon retirement and benefits deemed to have accrued immediately prior to the taxpayer's death, whilst paragraph 6 deals with the deductions on withdrawal or resignation.

### **PARAGRAPH 5: RETIREMENT & DEATH**

The Taxation Laws Amendment Act No. 17 of 2009 which was promulgated in Government Gazette No. 32610 on 30 September 2009 deleted formula B and listed all the deductions pertaining to retirement and death (and now also retrenchment) in paragraph 5 of the second Schedule to the Income Tax Act. The following deductions are listed:

- (a) The member's own contributions that did not previously rank as a deduction;
- (b) any divorce order amount transferred for the benefit of the member to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
- (c) any amount transferred for the benefit of the member from one retirement fund to another, that is deemed to have accrued to the member on the date of transfer, less the deductions listed in paragraph (6);
- (d) an unclaimed benefit transferred to a pension preservation fund or provident preservation fund that was subject to GN35 tax prior to the transfer, and
- (e) any amounts in respect of which formula C applies which have been transferred from a paragraph (a) and (b)-pension fund into another retirement fund, less the amount represented by symbol A of formula C.

In summary, the following deductions are allowed in respect of retirement and death benefits:

- The member's own contributions that did not previously rank as a deduction;
- divorce order amounts transferred to a retirement fund;
- fund-to-fund transfers, from any retirement fund to any other retirement fund;
- amounts transferred to an unclaimed benefit fund, if those amounts were previously subject to GN35-tax, and
- pre-1998 accrued retirement benefits in respect of a paragraph (a) and (b)-pension fund.

These deductions are only allowed if they were not taken into account for previous lump sum benefits. The deductions may also not be more than the lump sum benefit itself.

## **PARAGRAPH 6: WITHDRAWAL OR RESIGNATION**

Paragraph 6 of the Second Schedule to the Income Tax Act has been amended to now provide for the following deductions with effect from 1 March 2009 in respect of divorce order payments, fund-to-fund transfers or payment of lump sum withdrawal benefits:

- (a) in the case of
  - (i) divorce order payments, the amount transferred from a –
    - (aa) pension fund to a pension fund, pension preservation fund or retirement annuity fund;
    - (bb) pension preservation fund to a pension fund or pension preservation fund;
    - (cc) provident fund to a pension fund, provident fund, provident preservation fund or retirement annuity fund;
    - (dd) provident preservation fund to a provident fund or provident preservation fund, and
    - (ee) retirement annuity fund to a retirement annuity fund;
  - (ii) fund-to-fund transfers, the amount transferred from a –
    - (aa) pension fund to a pension fund, pension preservation fund or retirement annuity fund;
    - (bb) pension preservation fund to a pension fund or pension preservation fund;
    - (cc) provident fund to a pension fund, provident fund, provident preservation fund or retirement annuity fund;
    - (dd) provident preservation fund to a provident fund or provident preservation fund, and
    - (ee) retirement annuity fund to a retirement annuity fund;
- (b) in any other case, the sum of –
  - (i) the member's own contributions that did not previously rank as a deduction;
  - (ii) divorce order amounts transferred to a retirement fund;
  - (iii) any fund-to-fund transfers;
  - (iv) amounts transferred to an unclaimed benefit fund, if those amounts were previously subject to GN35-tax, and
  - (v) pre-1998 accrued retirement benefits in respect of a paragraph (a) and (b)-pension fund.

In summary, the following deductions are allowed in respect of withdrawal and resignation benefits:

- In the case of divorce order payments and fund-to-fund transfers, the amount transferred from a –
  - pension fund to a pension fund, pension preservation fund or retirement annuity fund;
  - pension preservation fund to a pension fund or pension preservation fund;
  - provident fund to a pension fund, provident fund, provident preservation fund or retirement annuity fund;
  - provident preservation fund to a provident fund or a provident preservation fund, and

- retirement annuity fund to retirement annuity fund;
- in any other case (eg. the member being paid out):
  - the member's own contributions that did not previously rank as a deduction;
  - divorce order amounts transferred to a retirement fund;
  - any fund-to-fund transfers;
  - amounts transferred to an unclaimed benefit fund, if those amounts were previously subject to GN35-tax, and
  - pre-1998 accrued retirement benefits in respect of a paragraph (a) and (b)-pension fund.

These deductions are only allowed if they were not taken into account for previous lump sum benefits. The deductions may also not be more than the lump sum benefit itself.

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