

## ALLOWABLE DEDUCTIONS FROM YOUR RETIREMENT BENEFIT

The Pension Funds Act affords protection to the retirement benefit in your pension or provident fund i.e. the benefit cannot be reduced, pledged or hypothecated. There are however certain deductions which can be made from your benefit i.e. as allowed for in the Pension Funds Act, the Income Tax Act, the Divorce Act, the Maintenance Act and the Magistrates' Court Act. This communiqué provides you with more information regarding the allowable deductions which may be made from your benefit.

The general guideline for the order of preference for deduction of these amounts is:

- tax on lump sums (as per the Second Schedule of the Income Tax Act);
- outstanding balances on housing loans / housing guarantees;
- amounts due in respect of maintenance orders;
- amounts due in respect of divorce orders;
- losses suffered by an employer as a result of fraud or theft by an employee in terms of Section 37(D) of the Pension Funds Act;
- arrear taxes (IT 88);
- insurance premiums/medical aid subscriptions;
- amounts approved by the Authority
- an amount payable to creditors in terms of Section 65 of the Magistrates' Courts Act.

### Tax

#### Benefit due in the event of your resignation or dismissal

The benefit due to you in the event of your resignation or dismissal can be settled as follows:

- You can take your money in **cash** (the benefit will be taxable);
- You can preserve your benefit in the current fund i.e. the benefit will remain invested until you decide to withdraw or retire from the fund. Note: No further contributions can be made to the fund if this option is selected; or
- You can **transfer** your money to a retirement annuity fund, a preservation fund, or your new employer's pension and/or provident fund. There will be no tax payable at the time of transfer.

The taxable portion of the benefit due to you when you leave the fund in the event of your resignation or dismissal will be taxed as follows:

#### Lump sum(Taxable Income)

R 0 – R 25 000

R 25 001 – R 660 000

R 660 001 – R 990 000

R 990 001 and above

#### Rate of Tax

0% of taxable income

18% of taxable income above R 25 000

R 114 300 + 27% of taxable income above R 660 000

R 203 400 + 36% of taxable income above R 990 000

- **Applicable to 2022/2023 tax-year**

#### Benefit due in the event of your retrenchment, death or retirement

The options available to you in the event of retrenchment are the same as those available to you should you resign or are dismissed. The benefit will however be taxed according to the table below (applicable to retirement and death).

The cash portion of the retrenchment, death or retirement benefit payable from the Fund will be taxed according to the table below.

The benefit due to you in the event of retirement will be settled as follows:

- **You can take a portion of your benefit in cash** (the benefit will be taxable). As from 1 March 2021, all retirement fund members can take up to a maximum of one-third of the benefit in cash. *Please note: There are exceptions in respect of members who belonged to a provident fund up to 1 March 2021.* Please contact your fund should you require further information in this regard; and
- **The balance has to be utilized to purchase an annuity** from a registered insurer to provide you with an ongoing income after your retirement. The amount which is transferred to the annuity will not be taxed at the time of transfer but the annuity payments will be taxable as income.

#### Lump sum(Taxable Income)

0 – R 500 000

R 500 001 – R 700 000

R 700 001 – R 1 050 000

R 1 050 001 and above

#### Rate of Tax

0% of taxable income

18% of taxable income above R 500 000

R 36 000 + 27% of taxable income above R 700 000

R 130 500 + 36% of taxable income above R 1 050 000

- **Applicable to 2022/2023 tax-year**

This amount applies to the **aggregate of all retirement lump sums** received over your lifetime. Your retirement benefits from all sources will be added together and the first R 500 000 will be tax-free. The balance will be taxed according to the scale above. Any withdrawal benefit previously received tax-free, as well as tax-free portions for amounts paid out in respect of divorces or maintenance orders after 1 March 2009, will also be deducted off the tax-free amount.

These amounts may change as set out in the relevant legislation.

### Housing loans

The Pension Funds Act allows for housing loans to be made in specific circumstances i.e.:

- Loans can be provided directly from the fund: The rules of the fund have to allow for this; or
- The fund may provide surety for loans taken from a specialized institution such as a bank (Pension-backed loans): In this instance the fund should allow for such loans and the fund and the employer must have entered into an agreement with the credit provider in respect of this arrangement.

Should a member with a loan from the fund or a pension-backed loan leave the fund:

- The member can choose to settle the loan at the time of withdrawing from the fund; or
- The member can transfer the loan to his new pension/provident fund provided that this fund has a similar arrangement in place with the same credit provider and both fund's rules and agreements allow for the transfer; or
- The outstanding balance of the loan has to be settled at the time of withdrawing from the fund.



### Maintenance orders

If you have not been paying maintenance to support your child, you (as the defaulting parent) can have your pension benefits attached, in terms of a maintenance order, to cover the arrear payments. A parent seeking regular payments to support a child needs to obtain a valid maintenance order against the other parent from a maintenance court. The fund will have to receive a valid maintenance order before any such deduction is made.

There are two kinds of maintenance orders which can be deducted:

- An enforcement order for arrear maintenance (in terms of an existing maintenance order);
- An order for deduction of future maintenance (if there is good reason for the court to believe that the member will not meet his future maintenance obligations in terms of an existing maintenance order).

It is important to note that the member will be responsible for payment of tax on any amount payable in terms of such maintenance order.

### Divorce orders

A member's benefit in his/her retirement fund forms part of their overall assets and a portion is often paid to the ex-spouse in the case of divorce. The portion paid to your ex-spouse will depend on the percentage or amount specified in a valid divorce order. In the past the ex-spouse, who was awarded a portion of the other party's pension in terms of a divorce order, would have to wait until the member withdrew from the fund upon resignation, dismissal, retrenchment, retirement or death before the amount due in terms of the divorce order could be paid out. This has changed and the "clean-break" principle applies to current divorce orders i.e. an ex-spouse is now entitled to immediate pay-out of his/her portion of the retirement benefit.

The party responsible for the payment of the tax on the amount due will differ depending on the date of the divorce order. Please contact your fund should you require further information in this regard.

### Damages caused by the employee

When a member withdraws from the fund (as a result of his resignation, dismissal, retrenchment, retirement or death) deductions can be made as compensation to an employer (including any legal costs recoverable from the member in respect of a judgment obtained against the member) for malicious damage caused by the member to the employer in respect of theft, dishonesty, fraud or misconduct, and in respect of which:

- the member has admitted liability, in writing, to the employer; or
- judgment has been obtained against the member.

The fund may make the deduction from the benefit payable to the member or beneficiary and pay it to the employer. Each case has to be investigated thoroughly to ensure that no parties are prejudiced.

#### **Arrear taxes**

The administrator of your fund has to call for a tax directive from SARS when paying any benefit from the fund. When case payments are made, SARS could also issue an IT88 i.e. a directive for arrear taxes. This amount has to be deducted from the benefit and be paid to SARS. An IT88 directive is not enforceable should a member's benefit be transferred in terms of Section 14 of the Pension Funds Act as the benefit does not accrue to the member.

#### **Insurance premiums**

Any amount paid (or payable) by the fund on behalf of a member or beneficiary in respect of insurance premiums can be deducted from the benefit.

#### **Medical aid subscriptions**

Any amount paid (or payable) by the fund on behalf of a member or beneficiary in respect of subscriptions to a medical aid scheme can be deducted from the benefit.

#### **Amounts approved by the Authority**

Any amount paid (or payable) by the fund on behalf of a member or beneficiary in respect of any purpose approved by the Financial Sector Conduct Authority (the Authority) can be deducted from the benefit. An application must be made to the Authority for this deduction. The Authority has previously approved deductions in respect of medical aid shortfalls and burial expenses.

#### **To pay your debtors**

A maximum amount of R3 000 per annum may be taken into account in determining a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act. Section 37D specifies the deductions allowed by the Pension Funds Act. A member or beneficiary may not use their fund benefits as security for other debts. Any attempts to transfer, cede, pledge or hypothecate the benefit will not be enforceable against the fund. The board may, where appropriate, withhold or suspend payment of a member's benefit or pay it to the member's dependants (or their guardians or trustees) if the board discovers that the member is attempting to cede or pledge the benefit to a third party.

*Disclaimer: The information contained in this document does not constitute professional advice. The contents should be used at your sole discretion and Independent Trustee Services is not liable for damages that may be caused by the use of this note. The information is intended as a guideline only and it is recommended that you discuss your benefits with your personal financial planner.*