



LEGAL FOCUS



LIBERTY LIFE

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The Implications of the Taxation Laws Amendment Act

The Taxation Laws Amendment Act 3 of 2008 came into effect on 22 July this year and has some far reaching implications for financial advisers.

Summary:

- Clients may withdraw from their retirement annuities prior to age 55 in the case of emigration
- Clients may remain a member of their retirement annuities after attaining age 70
- Applications for Preservation Funds no longer require a participating employer
- Living Annuities to pay lump sum on death of annuitant irrespective of source of funds

For a more detailed discussion of these highlights, please see below.

Can my client withdraw from his Retirement Annuities before the age of 55, if he emigrates?

The changes to legislation now provide that a client may indeed withdraw from his Retirement Annuities if he emigrates, if he has not yet reached age 55.

In order to proceed with the withdrawal, the client must be able to prove formal emigration ie: his emigration must be recognised by the South Africa Reserve Bank for the purposes of exchange control. The benefit may be subject to tax depending on the specific circumstances of the member.

Although the legislation has been passed and is effective, it may be some time until we are actually able to give effect to the new rules. Fund rule amendments will need to be passed in order to permit these withdrawals. We will also need to wait for SARS to publish processes which will prescribe exactly how these withdrawals will be done.

My client has reached age 70, but is not yet ready to retire. May he remain a member of his Retirement Annuity Fund or is he forced to retire from the fund at age 70?

The upper limit of age 70 has been lifted. Clients may therefore retire at any age after age 55 but may remain in the fund after reaching age 70.

This is ideal for clients who have reached age 70 and are either still working or are not yet ready to retire from their retirement annuities. Due to increased longevity and the fact that in general provision

for retirement is not always sufficient for clients to retire by age 70, this is a welcome change.

Does the Taxation Laws Amendment Act make any changes to the law governing Preservation Funds?

Most definitely! There are some significant changes to the laws governing preservation funds.

Probably the most important change from a marketing perspective is the fact that the requirement for a participating employer has been done away with. This is a relief as this contentious issue was often a barrier to the client being able to transfer his funds to a preservation fund. Remember however that in terms of GN 35 and Addendum C the client will still need to transfer his benefits to the preservation fund within 6 months of leaving service.

What are the implications of this legislation on Linked Life Annuities?

The above legislation has now indicated that we no longer need to identify the source of funds invested into the Linked Life Annuity. The impact of this change is not only that the administrative burden will be lifted, but also that in all circumstances beneficiaries may elect to receive a lump sum from a Linked Life Annuity.

To put this into perspective you will recall that in a previous issue of Legal Focus we explained that beneficiaries could not receive a lump sum where:

- The source was originally a retirement annuity or
- Where the source was unknown and could not be proven **not** to be from a retirement annuity

In these cases the beneficiary was entitled to commute only 1/3 of the proceeds and the balance would be invested in an annuity. Now in all circumstances beneficiaries will be able to choose between receiving a lump sum and investing in an annuity which will pay them a regular income. This is ideal for the beneficiaries, as it gives them far more flexibility and allows them to select an option which is most appropriate for their circumstances at the time.

In addition the fact that the source is now irrelevant allows the client to combine funds from various sources into one Linked Life Annuity. This consolidated approach is much easier for both the client and the financial adviser to manage.

The Act also makes reference to the fact that living annuities below a certain level will be commutable. The value will be gazetted (but some players in the industry claim that SARS/National Treasury has stated verbally that it will be R75 000 or R50 000). The fact is that the amount remains to be finalised but we can expect that it will be gazetted shortly. Once again this is a positive move as clients receiving a minimal income from their Linked Life Annuities will now be able to commute the annuity.

The above discussion clearly indicates the significant changes that are taking place in the financial planning environment at the moment. We are currently in the process of amending our fund rules as well as our business processes to give effect to these changes as soon as possible.

The Draft Revenue Laws Amendment Bill is currently under discussion as well and promises to bring even more changes in 2009.

Please remember to send your compliments or complaints to legalfocus@liberty.co.za. All legal

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Regards,

The Legal Marketing Team

This has been sent from Newsbreak@Liberty.

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