



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

13 March 2012

National Budget Review, 2012: Taxation of divorce order-related Retirement benefits

Background

This Media Statement is issued to provide clarity to taxpayers and retirement funds with regard to specific matters which were raised in the National Budget Review, 2012. The matters in question relate to the taxation of divorce order-related retirement benefits. These changes to the Income Tax Act come into effect as from **1 March 2012**.

It is Government's policy to promote the "clean-break" principle in respect of the taxation of all amounts assigned in terms of divorce orders. This means that in principle, each party to a divorce order should be subject to tax on the portion of the pension interest that each party ultimately receives.

Private sector funds

The "clean-break" principle has largely been entrenched in private sector funds through the application of the Pension Funds Act and the Income Tax Act. However, if a non-member ex-spouse presents the divorce order to the private sector fund, he/she may occasionally fail to claim payment of the divorce award prior to the member ex-spouse exiting the fund. In this event, the effect might well be that the member ex-spouse remains liable for the tax on the portion of the pension interest assigned to the non-member ex-spouse. The pending changes ensure equal application of the "clean-break" principle regardless of the timing of the payment to the non-member ex-spouse.

Government Employees Pension Fund (GEPF) and other public sector funds

Under current law, the “clean-break” principle has been introduced in private sector funds. The GEPF will shortly also introduce the “clean-break” principle for the division of pension benefits, and it is expected that other public sector funds will soon follow. Given the regulatory changes, the tax regime as from 1 March 2012 will effectively place all public sector fund members on equal footing with private sector fund members as regards to the application of the “clean-break” principle.

Divorce orders issued before 13 September 2007

Transitional rules were implemented to exempt from tax amounts payable to a non-member ex-spouse by private sector funds under divorce orders issued before 13 September 2007. However, the exemption only applied if the non-member ex-spouse claimed the benefit on or after 1 March 2009. The purpose of the exemption was to shield non-member ex-spouses from unanticipated tax consequences that would result if the non-member ex-spouse was suddenly subject to tax on his/her portion of the lump sum benefit.

The effect of the transitional rules will be extended so that any amount that becomes payable on or after 1 March 2012 in terms of a divorce order that was issued before 13 September 2007 will be free from tax. The principle will apply regardless of the timing of the payment to the non-member ex-spouse, and regardless of whether the retirement fund from which the amount became payable has implemented the “clean-break” principle.

Tax regime applicable as from 1 March 2012

The tax regime described below will apply to all amounts assigned in terms of a divorce order (granted under section 7(8)(a) of the Divorce Act, No. 70 of 1979):

- If an amount **becomes payable** by a retirement fund on or after **1 March 2012** to a non-member ex-spouse, that person (and not the member ex-spouse) will be subject to tax in respect of that amount.
- No tax will be payable on any amount that **becomes payable** on or after **1 March 2012** in terms of a divorce order that was issued before **13 September 2007**.

These changes will apply to all public and private sector funds, regardless of whether or not the fund at issue has introduced the “clean-break” principle.

Administrative considerations

The South African Revenue Service is in a position to provide tax directives on the basis described below:

- The retirement fund or the administrator of the retirement fund must apply for a tax directive in the name of the non-member ex-spouse in the case of an amount assigned in terms of a divorce order that becomes payable by the retirement fund to the non-member ex-spouse on or after 1 March 2012.
- Any amount that becomes payable by a retirement fund to a non-member ex-spouse on or after 1 March 2012, in terms of a divorce order that was issued before 13 September 2007, will be free from tax.
- Note that when applying for a tax directive in respect of pension interest payable by a public sector fund, the retirement fund or administrator must include the pre - 1 March 1998 years of service of the member ex-spouse when applying for the tax directive in the name of the non-member ex-spouse. The intention is to apply Formula C to pension interest payable by the public sector fund to either the non-member or the member ex-spouse on a continuing basis.

The amendments giving effect to the pending changes will be introduced in the 2012 legislative cycle. The legislation, when enacted, will have retrospective application as from **1 March 2012**.