BIZCOMMUNITY

What the amendments to the Taxation Laws Amendment Bill mean

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Some of the notable changes to the tax laws - the Taxation Laws Amendment Bill (TLAB) and the Income Tax Act, 1962 (ITA) - include a clause that will address the abuse of contributed tax capital provisions and broader options for retirees looking to transfer and preserve their pensions after retiring.

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Other amendments include closing of loopholes that will apply to companies who are using trusts for tax free wealth transfer purposes, and an increase of thresholds for exemption of employer provided bursaries to learners with disabilities. Here is an overview of the major changes that you should be aware of:

Making it easier to support learners with disabilities

In the 2017 Budget Review, a proposal was made to increase the threshold of the exemption for employer provided bursaries from R400,000 to R600,000. It was also proposed that limits for bursaries for qualification below NQF level 5 be increased from R15,000 to R20,000 and from R40,000 to R60,000 for qualifications at NQF level 5 and above.

Many South African schools are financially challenged. In order to properly accommodate learners with disabilities, the 2017 Draft TLAB has accepted a new exemption threshold for employer provided bursaries for learners with disabilities. The new monetary limit of bursaries for learners with disabilities will be set at R30,000 per year for students in Grade R to 12, including qualifications in NQF levels 1 – 4; and R90,000 per year in the qualifications at NQF levels 5 to 10. For learners without disabilities, the monetary limit will be R20,000 per year for learners in Grade R to 12, including qualifications in NQF levels 1 to 4; and R60,000 per year in the case of qualifications at NQF levels 5 to 10.

Companies can no longer abuse trusts for tax-free wealth transfers

Another significant change that has been proposed is amendments made to 7C that seek to include interest-free or low interest loans made to companies held in trusts in the anti-avoidance measure. It is generally understood that this change has been made to curb individuals who are trying to get around tax laws that apply to interest-free or low interest loans made to a trust by using companies to indirectly benefit trusts.

When the law was introduced in 2016, it was accepted that in some instances, low interest or interest-free loans to trusts don't always result in tax free transfer of wealth. Many trusts have been set up for purposes other than tax evasion. In instances where trusts are used for acceptable and legitimate purposes, various exclusions relating to loans and taxes apply.

A number of exclusions relating to companies held by trusts are envisaged. Where relevant, these exclusions will be extended to interest-free and low interest loans made to such companies to cover scenarios where companies held by trusts are used for purposes other than to indirectly facilitate the tax-free transfer of wealth. These exclusions will be revealed in the New Year.

Transferring retirement fund benefits

A proposal that allows employees to transfer their pension funds after the normal retirement date has been extended to include pension and provident funds, pension preservation and provident preservation funds, as well as retirement annuity funds. Currently, transfers to preservations funds were not included since it can result in the withdrawal of all benefits in a lump sum and lead to many citizens not having the nest eggs they need for their retirements.

To remove any possibility of these funds being withdrawn in a "once off withdrawal", it is proposed that specific amendments are included in the Income Tax Act to disallow such withdrawals in respect of these amounts. This amendment to the Income Tax Act will give retirees more options regarding how they want to withdraw and preserve their funds.

Addressing abuse of contributed tax capital provisions

The TLAB proposes a new section 8G to address the abuse of the contributed tax capital (CTC) provisions through certain structures where foreign shareholders increase their CTC and avoid dividends tax through capital distributions. The proposed and accepted amendments are targeted as the main concern is the erosion of contributions by non-residents, as South African residents will eventually be impacted by capital gains tax.

ABOUT THE AUTHOR

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