



Tax Laws Acts of 2009

On 30 September 2009, the Taxation Laws Amendment Act and the Taxation Laws Second Amendment Act became law. These Acts have far-reaching implications for retrenchment benefits, divorce orders and payments to beneficiary funds as summarised here

Retrenchment Benefits

Withdrawal benefits from the retirement funds paid due to retrenchment of the member will no longer be taxed as withdrawal benefits but will be taxed on the more generous retirement tax scale. This may provide some relief for retrenched workers concerned about feeding their families but employees should be reminded that:

- Any previous lump sum taken on withdrawal or retiral from a retirement fund will reduce the tax-free amount available on retrenchment or retiral due to old age.
- Using retirement money to meet day-to-day needs is very seldom appropriate and will seriously jeopardise long-term savings. Members should think very carefully about taking a cash lump sum from their retirement fund, and are advised to seek financial advice.
- There is now a distinct tax disadvantage for a retrenched member transferring their retirement money to a preservation fund and then dipping into these funds in the preservation fund. This is because the withdrawal from the preservation fund is taxed at the more penal withdrawal rate, while taking a cash benefit on retrenchment is taxed as a retirement benefit.

Pre-13 September 2007 Divorce Orders

From 1 November 2008, ex-spouses who had been awarded a share of the member-spouse's retirement fund credit on divorce prior to 13 September 2007 no longer had to wait for the member spouse to leave the fund. Unfortunately, the law as to who is responsible for the tax on this benefit and the amount of tax payable has changed frequently. Under the following conditions, the divorce award is now taxable in the *non-member* spouse's hands using the withdrawal benefit tax scale:

- If the date the non-member spouse elected the method of payment ('the election date') falls on or after 1 March 2009; or
- If the non-member spouse did not make an election and if the benefit was paid on or after 1 March 2009.





This may not be the final word on tax on divorce orders.

Taxation of Death Benefits Paid to Beneficiary Funds

Prior to the new Tax Acts and effective from 1 January 2009, a death benefit paid into a beneficiary fund on behalf of a death benefit beneficiary was tax-free on transfer into the beneficiary fund. The disbursements from the beneficiary fund were then taxed as income tax.

The new tax provisions reverse this, but with a phasing in period for the lump sum tax. For all payments to beneficiary funds that have accrued on or after 1 March 2009 and have been paid into a beneficiary fund on or after 1 September 2009, the death benefit will be taxed on payment into the beneficiary fund and the disbursements from the beneficiary fund are now non-taxable. Going forward there is no difference in the taxation of death benefits put into trust or those put into a beneficiary fund.

Any lump sum death benefit which accrued on or after 1 March 2009 and which was paid to a beneficiary fund between 1 March 2009 and 1 September 2009 will not be taxable.

Amounts awarded by a beneficiary fund are no longer taxable as income from 1 March 2009. This means that a death benefit accrued between 1 January 2009 and 1 March 2009 and paid into a beneficiary fund would appear to be non-taxable.