

ASAP

Legal and Technical Update

Retirement fund contributions

The Taxation Laws Amendment Act, 2017, brought about the deletion of section 11(k) and the introduction of section 11F in the Act. This section prescribes the maximum deduction allowed for retirement fund contributions.

Employer contributions:

All employer contributions made to a retirement fund on behalf of an employee will be included in the gross income of the employee as a fringe benefit (under paragraph 2(l) of the Seventh Schedule) and therefore taxable in the hands of the employee. The employer will enjoy a tax deduction for the contributions made to a pension, provident or retirement annuity fund on behalf of an employee, in terms of section 11(l).

Employee contributions:

Individual taxpayers will be entitled to deduct all contributions made to retirement funds – including pension, provident and retirement annuity funds, and including those contributions made by the employer on their behalf.

The employee/taxpayer will be entitled to a tax deduction equal to the lesser of:

- R350 000 (annual cap); or
- 27.5% of the greater of:
 - o remuneration (excludes retirement fund and severance benefit lump sums), or
 - o taxable income (which includes all income related to trade, any passive income and taxable capital gains and excludes retirement fund and severance benefit lump sums, this retirement fund contribution and donation deduction); or

- taxable income excluding this retirement fund contribution and excluding taxable capital gains.

Remuneration vs Taxable Income

Remuneration is defined by the Fourth Schedule to the Income Tax Act. It means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including-

- Annuity income, lump sums due to employment or the termination of services (like bonuses, leave pay, etc.);
- Any fringe benefit received;
- Any allowance a person receives from an employer, including subsistence, etc;
- Any amount received for services rendered;
- Any amount paid to any employee as a reimbursement of expenditure actually incurred by such employee in the course of his employment;
- 80% of a travel allowance, unless the employer is satisfied that 80% of the allowance is used for business purposes, in which case only 20% of the allowance is included;
- 80% of the fringe benefit relating to the use of a motor vehicle, unless the employer is satisfied that 80% of the fringe benefit is used for business travel, in which case 20% will be included.

Taxable income is defined in the Income Tax Act and it is calculated as follows:

Gross income
Less exempt income (includes section 10C)
Equals income
Less allowed deductions (includes section 11F)
Equals taxable income
Add taxable capital gains (if applicable)
Equals taxable income (incl capital gains)

When determining taxable income for the purposes of calculating the 27.5% limitation, one has to exclude the points from the calculation as prescribed by section 11F. It determines that the retirement fund deduction and the deduction in respect of donations (section 18A deduction) must be excluded from taxable income as well as any retirement fund lump sums and severance benefits.

Therefore, taxable income for purposes of determining the 27.5% bullet is as follow:

<p>All gross income excluding retirement fund lump sums and severance benefits, LESS Exempt income, LESS All deductions allowed, except the retirement fund contribution deduction and the section 18A donation deduction, PLUS Taxable capital gains, EQUALS</p> <p style="text-align: center;">TAXABLE INCOME</p>
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When determining taxable income for purposes of the newly introduced third limitation, one will once again remove the specific exclusions as contained in the Act. Therefore, taxable income for the purpose of determining this third bullet is as follows:

<p>All gross income, LESS Exempt income, LESS All deductions allowed except the retirement fund contribution, PLUS</p> <p style="text-align: center;">TAXABLE INCOME</p>
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Example:

Joe Worker earns the following amounts during the tax year:	
Salary	R150 000
Employer pension fund contribution	R 25 000
Interest income	R 30 000
Taxable capital gain	R850 000

The tax deductible retirement fund contribution will be the lesser of the following:

- R350 000, or
- 27.5% of the greater of:

Remuneration:

Salary	R150 000
Emr contr	R 25 000
Total	R175 000

Taxable income:

Salary	R150 000
Employer contribution	R 25 000
Interest	R 30 000
- exemption	R 23 800
+taxable capital gain	R850 000
Total	R1 031 200

$27.5\% \times R1\ 031\ 200 = R283\ 580$, or

- Taxable income:

Salary	R150 000
Employer contribution	R 25 000
Interest	R 30 000
- exemption	R 23 800
Total	R181 200

Therefore the tax deduction is limited to R181 200.

Disallowed Contributions

All contributions made that were not deductible due to it being in excess of the abovementioned limits, may be carried over to the following tax year and will be deductible as if it were made in that following year (still subject to the abovementioned limitations).

If any contributions have not been deducted at the date the member leaves the fund, that amount of disallowed contributions can be offset against:

- The taxable lump sum on leaving the fund in terms of the Second Schedule, or
- The aggregate of compulsory annuities payable to a person in terms of section 10C.

Section 10C came into operation from 1 March 2014. It determines that an exemption shall apply in respect of the aggregate of compulsory annuities payable to a person, equal to so much of the person's contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person's income.

Practical information

In practice, the order of application is as follows:

- Firstly, all current and disallowed contributions are claimed as a deduction under section 11F. If any part of this is not deductible due to it exceeding the limits imposed by this section, it will be carried forward to the following year as disallowed contributions.
- Where contributions are made and a retirement fund lump sum is received in the same tax year (i.e. the contribution has not been claimed as a deduction yet) the contributions will not be offset against the lump sum during that tax year – it will only be treated as a disallowed contribution if it has in fact been claimed as a deduction and disallowed due to it being in excess of the deductible amount.
- Where a retirement fund lump sum is taken on exiting the fund, the accumulated disallowed contributions up until that point will be allowed as a deduction against the lump sum when determining the taxable portion of this lump sum. This is in terms of paragraph 5 or 6 of the Second Schedule.
- If a surplus of disallowed contributions remain, and the taxpayer receives compulsory annuity income, it can be applied towards exempting the annuity income received in terms of section 10C.

Any surplus disallowed contributions that remain at the end of any tax year will be carried forward to the following year of assessment and will follow the above order of preference.

(Also see the ASAP on section 10C)