Ninety One

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Previously Investec Asset Management

Masterclass

with Albert Coetzee and Marc Lindley

Ninety One IP – A next generation platform

The three core elements leading to one great outcome for advisers

Efficiencies and scale in advisor practices

- Leading technology to enable **cost reductions & time**
- Turnaround and accuracy of **online transactional functionality**

IFAs can deliver best investment outcomes for investors

- **Financial planning tools** to assist in managing client portfolios
- Leading **investment insight**
- **Legal & technical** advisor services

A high level of administrative service

- Creating **ease of doing business**
- **Tailored products** and **services**
- **Always on functionality** with **personalized support**

Enabling growth in assets and revenue

Masterclass

Webinars

Date	Topic
17 June	Legal update
24 June	Local policy wrappers
1 July	Why use a bank account when you can use a policy wrapper?
8 July	Interrogating offshore investment solutions
15 July	The offshore cash conundrum
22 July	All about beneficiaries
29 July	Section 10C- Disallowed contributions and their estate planning benefits
5 August	Open session

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Legal update

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Janine Langenhoven

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Agenda

01	Options when facing retrenchment
02	Taxation of public sector fund benefits
03	COVID-19 relief for annuitants
04	Montanari judgement

01 Retrenchment

Retrenchment

Options to consider when facing retrenchment

Many South Africans are currently facing retrenchment from employment & have some difficult decisions to make...

Retrenchment

Voluntary vs involuntary retrenchment

Is there a difference?

1 **Voluntary retrenchment**

- initial period of employer's process
- employee can elect to take up an offer of a severance package

2 **Involuntary retrenchment**

- employer decides who will be retrenched

But – from a tax perspective they are treated the same

Note:

- SARS' Completion Guide for IRP3(a) and IRP3(s) Forms & actual IRP3(a) forms still differentiate between voluntary and involuntary retrenchment
- But SARS has confirmed that voluntary and involuntary retrenchment should be treated the same

Retrenchment

What is the employee entitled to receive?

Basic Conditions of Employment Act

The following benefits must be paid to an employee who is retrenched:

- accrued leave
- notice pay if the employee is not required to work the notice period
- severance benefit - minimum amount prescribed is 1 week's salary for every completed year of employment.

Employment contract & other

For example:

- Bonusses / pro-rata bonusses
- Amounts payable in terms of company policy
- Gratuity amounts
- Retirement fund benefits

Retrenchment

What qualifies as a “severance benefit”?

A severance benefit is defined in the Income Tax Act as:

An amount received / accrued in respect of relinquishment, termination, loss, repudiation, cancellation or variation of employment, if:

person attained age of 55 years

such relinquishment, termination, loss, repudiation, cancellation or variation is due to becoming permanently incapable of holding employment due to sickness, accident, injury or incapacity through infirmity

such termination or loss is due to:

- employer having ceased to carry on trade in respect of which person was employed
- person having become redundant in consequence of general reduction in personnel or reduction in personnel of a particular class
  - unless the person at any time held more than 5% of shares or interest in company

Retrenchment

What about notice pay, leave pay & bonusses?

Notice pay

- Flows from contract of employment

Leave pay & bonusses

- Regarded as payment for services rendered

Therefore: These do not qualify as "severance benefits" as defined

Taxed in accordance with PAYE tables (i.e. at employee's marginal rate)

Retrenchment

Severance benefits: Options & Taxation

1

Must be paid as lump sum; cannot be transferred to retirement fund tax neutrally

2

Taxed similarly to a retirement fund benefit – in accordance with retirement tax table

3

Will impact tax payable iro future retirement fund benefits

4

May invest after tax benefit in an RA – possible tax benefits

Retrenchment

What about retirement fund benefits on retrenchment?

Employee may:

- Transfer retirement fund benefit to approved fund (transfer is tax neutral)
- Receive as a lump sum (taxed in accordance with retirement tax table)
- Combination

Taxation of Retirement Lump Sum or Severance Benefit

Taxable income (R)	Tax
0 – 500 000	0% of taxable income
500 001 – 700 000	18% of taxable income above R500 000
700 001 – 1 050 000	R36 000 + 27% of taxable income above R700 000
1 050 001+	R130 500 + 36% of taxable income above R1 050 000

*The following lump sums previously received by or accrued to the individual are taken into account when determining the tax:

- Retirement benefits received or accrued on or after 1 October 2007.
- Withdrawal benefits received or accrued after 1 March 2009.
- Severance benefits received or accrued on or after 1 March 2011.

Retrenchment

Example

	Scenario 1: Employee receives severance benefit and takes lump sum from retirement fund	**Scenario 2:** Employee receives severance benefit, transfers retirement fund benefit to preservation fund, and takes once-off withdrawal from preservation fund
Severance benefit	R300,000	R300,000
Tax on severance benefit (using retirement tax table)*	0% of R300 000 = R0	0% of R300 000 = R0
After-tax severance benefit	R300 000	R300 000
Retirement fund benefit	Lump Sum of R1 200 000 at time of retrenchment	Transfers R1 200 000 benefit to pres fund and thereafter takes full benefit as once-off withdrawal
Tax on retirement fund lump sum (using retirement tax table)*	Step 1: R130 500 + 36% of ((R1 200 000 +R300 000) – R1 050 000) = R292 500 Step 2: 0% of R300 000 = R0 Step 3: R292 500 – R0 = R292 500	Step 1: R203 400 + 36% of (R1 200 000 + R300 000) – R990 000) = 387 000 Step 2: 18% of (R300 000 – R25 000) = R49 500 Step 3: R 387 000 – R49 500 = R337 500
After-tax retirement fund lump sum	R907 500	R862 500
Total tax payable for severance benefit & retirement fund lump sum	R292 500	R337 500

02

Taxation of public sector fund benefits

Taxation of public sector fund benefits

Many members of public sector retirement funds are considering their options on resignation or retirement...

Taxation of public sector fund benefits

Formula for calculating taxable portion:

$$A = B / C \times D$$

A represents the taxable amount

B represents the total number of completed years of membership from 1 March 1998 until date of exit from the public sector pension fund

C represents the total number of completed years of membership of the public sector pension fund until date of exit from the public sector pension fund

D represents the lump sum benefit payable upon exit from the public sector pension fund

- Lump sum benefits paid by public sector funds were only taxed with effect from 1 March 1998
- The pre-1 March ‘98 tax-free portion of the benefit is determined by reference to a formula prescribed in paragraph 2A of the 2nd Schedule (previously “Formula C”)

Taxation of public sector fund benefits

The value of "D" in the formula **may differ,** depending on the scenario:

- On **retirement** from the public sector fund, the formula only applies to that portion of the benefit taken as a **lump sum** - not the total benefit
- On **resignation,** the formula is applied to the **full resignation benefit**, irrespective of whether the resignation benefit is taken as a lump sum or transferred.
- **After a transfer to a preservation fund or RA,** when member withdraws or retires, the formula is applied to the **full amount transferred out of the public sector fund**.

Taxation of public sector fund benefits

Can member lose his pre-March ‘98 benefit if he transfers to another fund?

- The pre-March ‘98 benefit will only be retained where benefits were transferred from a public sector fund to another approved fund after 1 March 2009 (1st transfer).

- With effect from 1 March 2018, the pre-March ‘98 tax-free benefit is also retained where there had been a 2nd transfer to another approved fund, but the benefit is lost on a 3rd transfer.

Taxation of public sector fund benefits

Example

A = B / C x D

	Scenario 1: Member's public sector fund benefit is R9mil, which he transfers to a preservation fund on resignation. Subsequently he retires from preservation fund, taking 1/3 as lump sum. Balance is used to purchase an annuity	Scenario 2: Member retires directly from the public sector fund with a total benefit of R9mil. He takes 1/3 of the benefit as a lump sum, and balance is used to purchase an annuity.
Lump sum benefit payable on exit from public sector fund ("D")	R9 000 000	1/3 of R9 000 000 = R3 000 000
Completed years of service after 1 March 1998 ("B")	22 years	22 years
Total completed years of service ("C")	33 years	33 years
Para 2A Formula	22/33 x R9 000 000	22/33 x R3 000 000
Taxable portion of benefit calculated ("A")	= R6 000 000	= R2 000 000
Tax free portion of benefit ("D" – "A")	R9 000 000 – R6 000 000 = R3 000 000	R3 000 000 – R2 000 000 = R1 000 000
Tax on taxable portion of lump sum benefit applying relevant tax table*	R3 000 000 – R3 000 000 = R0 (taxable portion of lump sum payable)	R3 000 000 – R1 000 000 = R2 000 000 (taxable portion of lump sum payable) R130 500 + 36% of (R2 000 000 – R1 050 000) = R472 500

03

Covid-19 relief for annuitants

Covid-19 relief for annuitants

From 1 June to 30 September

- Annuitants are allowed to temporarily make changes to annuity income, outside anniversary date
- May select income of between 0.5% & 20% (from previous limits of 2.5% to 17.5%)

What happens if relief period is extended?

- The annuity income % selected for the relief period will continue to apply

At end of relief period:

- Income will automatically revert to drawdown rate selected at most recent anniversary date
- If anniversary date within relief period, annuitant may make use of Covid-relief, as well as amend income for coming year (after relief period)

Increased de minimus

- R50 000/ R75 000 increased to R125 000
- This increase will not be limited to 4 month period, will continue to apply

04

The impact of Montanari

Montanari judgement - SCA

Q Does my spouse have any right to my ILLA capital or income on divorce?

A recent Supreme Court of Appeal case dealt with this issue.

- Court reaffirmed that **capital** in living annuity is not an asset in annuitant's estate (the underlying capital is owned by the insurer).

- However, the court held that annuitant's right to receive future incomes can be taken into account, not only for maintenance of ex-spouse, but as an asset in annuitant's estate for purposes of calculating accrual.
  The amount would still have to be paid from other sources, not from the living annuity itself. In other words, **administrator would still pay income directly to the annuitant.**

- The court did not deal with how the future income payments must be **valued**. This calculation will be complex, it will depend on market fluctuations, the drawdown rate which may be increased or decreased from year to year (within legislated limits), and the annuitant's mortality. The Supreme Court of Appeal referred the case back to the trial court in order for this point to be decided.

Thank you!

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