

Legal and Policy
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Date
9 June 2010

Ms R Kassim
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South African Revenue Service

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Dear Ruwaida

I refer to your letter dated 5 May 2010.

Please note that the letter of 4 November 2009 gives effect to tax policy as captured in the 2010 Taxation Laws Amendment Bill (the Bill), in particular the proposed changes to paragraph 2(1)(b)(iA) of the Second Schedule to the Income Tax Act (the Act). In light of the proposed changes to paragraph 2(1)(b)(iA) of the Second Schedule to the Act, the non-member spouse will not be subject to tax on the divorce order granted prior to 13 September 2007 if it is paid out of the member's minimum individual reserve once the Bill has been promulgated.

Paragraph 2B of the Second Schedule to the Act currently provides that the member is taxed on the benefit and has an option to recover the tax payable in respect of the divorce award from the non-member spouse. The "paragraph 2B" request, would therefore, if accepted from a policy point of view, require an amendment to the law.

Based on the above, I am therefore, not able to give effect to your suggested approach. This means that the tax treatment of the pre-13 September 2007 divorce orders paid out of the members' benefits are taxable in terms of paragraph 2B of the Second Schedule to the Act. Effectively, this means that the 4 November 2009 letter is not extended to pre-13 September 2007 divorce orders paid out of the member's benefit.

I trust that you will find the above information helpful.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. Kassim', written over a white background.

for THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE