

beeld 'n jaargeld met 'n bedrag van R540 000 moet aankoop, in welke geval hy 'n enkelbedrag van slegs R160 000 (voor belasting) sal ontvang. Die belasting betaalbaar op die belasbare kapitale waarde sal dan verminder na R65 000 wat beteken dat die gemiddelde koers wat in daardie geval op die *totale* kapitale waarde gehef word, slegs 9,28% sal wees. Indien hierdie lid 45% belasting bespaar het op sy bydraes, kan hy beslis nie kla as hy slegs 9,28% belasting op die opbrengs betaal nie. Die probleem is egter dat die belasting toeneem namate die belasbare kapitale waarde toeneem. In 'n geval waar 'n gedeelte van die kapitale waarde teen die maksimum koers van 45% belas word, negatiewer dit enige belastingbesparing

op die bydraes. Indien die fonds se groeikoers as gevolg van die voorgestelde nuwe 30% belasting nie meer markverwant is nie, sal die lid ten opsigte van 'n gedeelte van sy bydraes nie 'n wins toon nie, maar eintlik verloor.

Slotsom

Alhoewel die implimentering van die voorstelle 'n lid van die Balie se onmiddellike belastingituasie kan verbeter as gevolg van die verhoogde aftrekking, is dit moontlik dat die belastingbesparing op 'n gedeelte van die bydraes deur belasting op die voordele by aftrede uitgewis sal word. 'n Voornemende lid van 'n uittree-annuïteitsfonds moet miskien liever fokus op 'n toekomstige uitkeerbedrag waarvan, indien dit by aftrede so

aangewend word om vir die maksimum belastingvrye bedrag van R380 000 te kwalifiseer, geen gedeelte teen die maksimum koers van 45% belas sal word nie. Daar moet dan bereken word watter gereelde bydrae hy moet maak ten einde hierdie doel te bereik. Dit kan in sekere gevalle beteken dat nie van die volle 22,5% aftrekking gebruik gemaak sal word nie. Uittree-annuïteitsfondse wat ten volle in die aandelemark belê, lyk op hierdie stadium na die beste opsie. Daar moet egter in gedagte gehou word dat sulke fondse geen waarborg verskaf nie. Verder moet mens duim vashou dat aftreefondse nie in die toekoms weer by wyse van wetgewing gedwing sal word om 'n gedeelte van hul kapitaal in verpligte staatsbelegging te belê nie.

PRACTICE

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Legal aid

Tariff in respect of criminal matters with effect from 1 April 1996: Extracts from directive received from the Legal Aid Board

PRIOR hereto legal representation in criminal matters for those who could not afford their own legal representation was, directly or indirectly, provided by the state in three ways, namely by means of the pro Deo system administered by the Department of Justice; by the Legal Aid Board in terms of the provisions of the Legal Aid Guide; and with effect from 10 March 1995 the Legal Aid Board was appointed as the agent of the state for the provision of the legal services envisaged by sections 25(3)(e) and 25(1)(c) of the Constitution.

The Constitutional Court has effectively declared the death penalty unconstitutional. With the abolition of the death penalty the original rationale for the existence of the pro Deo system has disappeared. The treasury has advised the Minister of Justice that the fund which previously existed in respect of pro Deo matters has been frozen. At a recent meeting at which all relevant parties were rep-

resented it was agreed that as an interim measure the pro Deo system should continue as before but that it would debit the fees disbursed in respect thereof to the account in respect of section 25(3)(e) instead of the pro Deo fund. At the same meeting referred to above it was agreed, in principle, that there should be one body responsible for the provision of legal services in criminal matters for those who were unable to afford their own legal representation – ie the Legal Aid Board. Research, planning and consultation concerning the scheme which will replace the pro Deo system is currently proceeding. The pro Deo system will continue in the interim but its replacement by the contemplated new system will be imminent.

An anomaly of the three systems by which legal representation was previously provided in criminal matters to those who were unable to afford their own legal representation was that each system had its own tariffs in terms of which legal practitioners were remunerated. Discrepancies existed between the tariffs. It is undesirable that such discrepancies should continue.

The Board has consequently decided that with effect from 1 April 1996 there will be one tariff in respect of all criminal matters in which legal practitioners act pursuant to a legal aid instruction issued by the Legal Aid Board. A copy of that tariff is obtainable on request.

The tariff will in future apply, in the absence of a specific agreement to the contrary, to all work performed in terms of any instruction issued on or after 1 April 1996 in respect of any criminal matter; and all work performed on or after 1 April 1996 in respect of any instruction issued by the Legal Aid Board in any criminal matter before 1 April 1996.

The tariff will not apply to any work performed in terms of an instruction issued in terms of the pro Deo system, irrespective of whether such work was performed before or after 1 April. Such matters will be administered in terms of the pro Deo system and remunerated in accordance with the tariff applicable thereto; and any work performed prior to 1 April 1996 pursuant to an instruction issued by the Legal Aid Board in a criminal matter prior to 1 April 1996. In respect of such matters the pre-existing Legal Aid Board tariff or section 25(3)(e) tariff, as the case may be, will apply.

Enquiries:

- Pro Deo matters – Department of Justice
- Payment of accounts and queries concerning interpretation and implementation of instructions in section 25(3)(e) matters – Legal Aid Board
- Queries concerning instructions issued pursuant to the legal aid scheme – the Legal Administration Department of the Legal Aid Board.