

Law Navigator



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Maintenance order deductions

This edition of Law Navigator is the third in the series focusing on allowable deductions in alignment with the Pension Funds Act. In this issue, we examine the deductions permitted for maintenance orders, including both interim and final maintenance amounts, as well as the recent legislative changes that allow for future maintenance deductions.

We unpack what these changes mean for retirement funds, explain the conditions that must be met for a valid maintenance order deduction and clarify how tax must be applied in these cases. This edition also highlights the restrictions that apply when a maintenance claim is pending or in force.

What the Pension Funds Act allows

Sections 37D(1)(d)(iA) and (iB) of the Pension Funds Act allow for the deduction of an interim and a final maintenance order amount from a member's fund benefit. The fund must pay this as a lump sum to the maintenance claimant.

It also allows for the deduction of future maintenance. Previously a fund could only make such a deduction if there was clear malintent on the member's side, for example where the member repeatedly failed to meet his maintenance obligations and there is evidence that he is in the process of resigning with the intention of avoiding a maintenance deduction against his fund benefit. With effect from 1 September 2024, section 37D(3)(aC) now specifically allows for future maintenance deductions without placing an onus on the fund to prove such malintent. It is envisaged that the member's mala fides (bad faith) will still play a role when a court decides on the granting of an order for the deduction of future maintenance from a member's benefit.

The fund must deal with future maintenance amounts either as a monthly deduction or as a lump sum payment. If the fund is unable to make monthly payments to the maintenance claimant, it can pay the required amount to a beneficiary fund to make those payments to the claimant.

A fund is also allowed to make maintenance deductions against an annuity provided by and paid from the fund (referred to as an in-fund pension). SURF does not provide in-fund pensions.

The deduction must be made proportionately across the member's vested, savings and retirement components.

Requirements for a valid maintenance order deduction

SURF will only give effect to a maintenance order deduction if:

1. The order was issued by a South African court. An order issued by a court in another country must be made an order by a South African court and must refer to maintenance payable under the Maintenance Act;
2. The order names or identifies the fund. The order must reflect the correct name of the SURF of which the maintenance payer is a member –
 - Sygnia Umbrella Retirement Fund (Pension Section)
 - Sygnia Umbrella Retirement Fund (Provident Section)
 - Sygnia Umbrella Retirement Fund (Managed Pension Section)
 - Sygnia Umbrella Retirement Fund (Managed Provident Section);
3. The order clearly states the exact amount that must be deducted and paid to the maintenance claimant; and
4. The order is an order for the payment of maintenance under the Maintenance Act or for interim maintenance in terms of Rule 43 of the High Court rules or Rule 58 of the Magistrates' Court rules as intended in section 37D(1)(d)(iA) or (iB) of the Pension Funds Act.

Tax payable on maintenance order deduction

The maintenance order amount is not taxed according to the withdrawal tax table. SURF will therefore not apply for a tax directive for this deduction. Instead, the maintenance order amount is taxed at the member's marginal tax rate. The tax payable on the deduction is not taken off the amount payable to the claimant but must be deducted from the balance of the member's benefit.

The tax amount is also taxed at the member's marginal tax rate. SARS has set out the formula to calculate the tax-on-tax effect in Interpretation Note 89 – Maintenance orders and the tax-on-tax principle. The calculations and their application on a maintenance amount of R300 000 in the 2026 tax year are set out below:

Calculation	Application
a. Calculate the tax on the amount awarded under the maintenance order	Tax on R300 000 R42 678 + 26% of taxable income above R237 100 = R59 032
b. Multiply the tax determined in step (a) by $100 \div (100 - \text{marginal tax rate applicable to the member})$	$R59\,032 \times 100 \div (100 - 26)$ $R59\,032 \times 100 \div 74$ = R79 722.97
c. Add the figure determined in step (b) to the amount of the maintenance award to obtain the grossed-up amount after iteration	$R300\,000 + R79\,722.97$ = R379 722.97
d. If the grossed-up amount after iteration as determined in step (c) falls within the same tax bracket as the amount awarded under the maintenance order, the calculations in steps (e), (f) and (g) are not required	R379 722.97 falls in a higher tax bracket, so steps (e) – (g) must be performed
e. If the grossed-up amount after iteration as determined in step (c) falls into a higher tax bracket than the tax bracket that applies to the amount of the maintenance award, calculate the tax on the grossed-up amount after iteration from step (c)	Tax on R379 722.97 R77 362 + 31% of taxable income above R370 500 = R80 211.12
f. Subtract the figure calculated in step (b) from the tax calculated in step (e)	$R80\,211.12 - R79\,722.97$ = R498.15
g. Multiply the figure determined in step (f) by $100 \div (100 - \text{marginal tax rate applicable to the member})$	$R498.15 \times 100 \div (100 - 31)$ $R498.15 \times 100 \div 69$ = R721.96
h. The taxable benefit derived by the member is equal to the result of step (b) plus the result of step (g) (if the latter is applicable). The taxable benefit must be added to the amount of the maintenance award to arrive at the member's income	$R59\,032 + R721.96$ = R59 753.96
Total income of the member is $R300\,000 + R59\,753.96$ = R359 753.96. Tax is R59 753.96, leaving the net maintenance award amount of R300 000.	

Restrictions when there is a maintenance claim

If there is a pending maintenance claim against SURF and SURF receives a formal written notice from the maintenance investigating officer to suspend a savings withdrawal benefit, SURF may only allow the member to make a savings withdrawal if the amount remaining will be sufficient to comply with the pending order once it is granted.

Where there is a maintenance order against SURF in place, SURF may only allow the member to make a savings withdrawal if the amount remaining will be sufficient to comply with the maintenance order.

Looking ahead

Understanding how maintenance orders are processed against retirement fund benefits is essential for ensuring compliance with the Pension Funds Act. These updates simplify the process but also place greater responsibility on funds to apply the rules correctly. Maintenance claims often arise during times of personal and financial stress, such as divorce. In fact, maintenance orders and divorce orders frequently go hand in hand. In the next edition of Law Navigator, we will focus on divorce order deductions.