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Retirement Matters
5/2023

Format of financial statements and regulation 28 quarterly reporting

FSCA Communication 19 of 2023 was issued on 19 July 2023 to clarify the format to be used when submitting annual financial statements and Regulation 28 quarterly reports for financial years ending in 2023.

The reasons why clarification was required are the following:

- Recent changes to Regulation 28 (as gazetted on 5 July 2022 and effective from 1 January 2023) have not yet been incorporated in Schedule IB of the prescribed financial statements, which schedule relates to assets held in compliance with Regulation 28.
- The prescribed format for financial statements is currently under review to cater for not only the recent changes to Regulation 28, but also to incorporate other changes like aligning it to the International Financial Reporting Standards. The consultation process for the new prescribed format has not yet been finalised.
- The new Regulation 28 Quarterly Reporting Requirements have not been finalised yet.
- SARB prescribed the new foreign exposure limit in Exchange Control Circular No 10/22, with effect from 23 February 2022. The offshore limit for all insurance, retirement, and savings funds was harmonised at 45% with no specific Africa limit.

The FSCA clarified in the communication that funds must continue to prepare financial statements in accordance with the current prescribed schedules but must take into account the changes impacting Schedule IB and ensure that the financial statements are completed in line with the new requirements.

The additional reporting requirements in relation to infrastructure assets and certain exclusions previously allowed on look-through basis, are however not taken into consideration with the proposed interim schedule IB. Although it will only be taken into consideration with the overall review of the prescribed format, the FSCA is urging administrators, asset managers, insurers, and collective investment schemes to supply funds and auditors with sufficient evidence to test compliance with Regulation 28.

It is anticipated that the new SARB quarterly reporting requirements will only be available in 2024, and funds should continue to use the current prescribed non-compliance reports. The communication also states that funds may apply for extensions, especially where the year-end is January, February, and March 2023 where audits are underway.

Draft Taxation Laws Amendment Bill

The 2023 draft Taxation Laws Amendment Bill was published on 30 July 2023, and was open for comments until 31 August 2023.

The proposed changes relating to retirement funds are as follows:

Limiting the retirement fund contribution deduction when a person ceases to be a tax resident

When a person ceases to be a South African tax resident during a tax year, two years of assessment is created for such person during a single 12-month tax year. For instance, when a person ceases to be a South African tax resident on 1 June 2022, their year of assessment as a South African tax resident would have commenced on 1 March 2022 but would be deemed to have ended on 31 May 2022, which constitutes a 3-month year of assessment as a South African tax resident. The person's year of assessment as a non-South African tax resident would therefore have started on 1 June 2022 and ended on 28 February 2023, constituting a 9-month year of assessment as a non-tax resident. Both years of assessment (the 3-month and 9-month periods respectively) would fall within a single 12-month tax period.

As a result of the person having two years of assessment in a single 12-month tax period when they cease to be a South African tax resident, the person may double-up on the R350 000 utilised to calculate the allowable deduction for contributions because the respective limitations are available per year of assessment and are currently not apportioned in instances where the year of assessment is less than 12 months.

Proposed change: *National Treasury proposed a change to the Income Tax Act with effect from 1 March 2024. Where any person's year of assessment is less than 12 months, the amount utilised to calculate the allowable retirement contribution deduction (currently R350 000), shall be proportionate to the number of days in that year of assessment.*

Clarifying the amount of employer contribution to a retirement fund to be deductible

Amounts paid or contributed by an employer to a retirement fund on behalf of an employee are deemed to have been contributed by the employee and are therefore taken into consideration when determining the employee's allowable tax deduction. Even if an employer's contribution to the retirement fund is not subject to fringe benefit tax because the employee's remuneration qualifies for income tax exemption due to it being services rendered outside the Republic, the employee may still be entitled to a deduction in terms of the Income Tax Act.

Proposed change: *It is proposed that changes be made with effect from 1 March 2024 to ensure that the tax deduction in respect of contributions only apply to the extent that the employer's contributions on behalf of an employee is taxed as a fringe benefit.*

Transfer between retirement funds by deferred retirees

Since 1 March 2018 and 1 March 2019 respectively, deferred retirees of occupational funds may transfer their retirement interest into a preservation or a retirement annuity fund. To accommodate this change, paragraphs 2(1)(c) and 6A were introduced into the Second Schedule of the Income Tax Act. Paragraph 6A, which caters for the deduction and applies to paragraph 2(1)(c) accruals, currently only provides for a deduction on transfer to preservation funds and retirement annuity funds and not for transfers to occupational funds, which means that those transfers of deferred retirees are not tax neutral.

Proposed change: *It is proposed that with effect from 1 March 2024, where deferred retirees are subject to an involuntary transfer such as a full section 14 transfer, no tax liability will be incurred. The benefit so transferred must however remain ringfenced in the new fund until the member retires from the receiving fund, which means that no withdrawal benefit may be allowed from the receiving fund.*

FSCA complaints management survey

As part of its mandate and ongoing efforts in promoting the fair treatment of financial customers by financial institutions, the FSCA conducted a market study to obtain a deeper understanding of the effectiveness, timeliness and accessibility of complaints handling and management processes provided by the different financial institutions, including intermediaries, retirement funds and retirement fund administrators.

The results of this survey will assist the FSCA to gain deeper understanding of the complaints management processes currently in place, highlight any weaknesses and inconsistencies across the financial sector, and will also inform the FSCA's design of necessary interventions that can improve financial customers and members of retirement funds' experiences and outcomes relating to complaints management.

New trustee training toolkit

The FSCA issued a press release on 22 August 2023, in which they confirmed that they are gearing up to launch the newly revamped trustee training toolkit e-learning platform. The first eleven modules of the platform will be launched in September 2023, with the other eleven modules being launched in 2024.

Completing the new trustee training toolkit will be compulsory. The current toolkit must however still be completed until the new toolkit is rolled out.

The new toolkit will not have a pass or fail outcome, and the emphasis is on equipping the board with the necessary knowledge and skills. However, the new toolkit does contain module assessments and a summative assessment.

Draft interpretation ruling on section 37C and paid-up members, deferred retirees and unclaimed benefits

The FSCA intends to revoke their Interpretation Ruling 1 of 2020 which deals with application of section 37C of the Pension Funds Act to paid-up members, deferred retirees and unclaimed benefits. According to the FSCA, the payment of unclaimed benefits following the death of the member was incorrectly interpreted and section 37C should not apply to unclaimed benefits. Unlike a paid-up benefit or deferred retirement benefit, an unclaimed benefit by its nature is a benefit that has vested because it is due and payable to the person entitled to it. The benefit is therefore not due and payable because of the death of a member, and section 37C will not be applicable.

The draft interpretation ruling intended to replace the existing interpretation ruling was published on 14 August 2023 and will be open for comments until 26 September 2023.

Q&A

Does a fund need to notify the FSCA of the resignation of a deputy principal officer?

Section 8 of the Pension Funds Act only places a requirement to notify the FSCA of the appointment of the principal officer by following the process in Directive 5. However, the FSCA has broadened the functionality so that funds can also notify the FSCA of the appointment of a deputy principal officer. Initially this was not possible – the FSCA only carried the records of one person.
This means that if the FSCA was not notified of the appointment of the deputy principal officer via Directive 5, the fund does not have to notify the FSCA of the resignation of the deputy. If the FSCA was notified of the appointment, the FSCA must be notified of the resignation by using the Directive 5 forms.

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